

July 1, 2026

VIA HAND DELIVERY & E-MAIL

Delaware Environmental Appeals Board

Office of the Secretary

89 Kings Highway

Dover, DE 19901

ATTN: Administrative Assistant to the Environmental Appeals Board

DNREC_EAB_Appeals@delaware.gov

RE: Notice and Statement of Appeal of Wetlands Permit WE-029/26; Subaqueous Lands Permit SP-029/26; and Permit SL-029/26.

Dear Honorable Members of the Environmental Appeals Board:

We represent Renee and Norm Summerall (the Summeralls or “Appellants”), who own 228 N. Flack Avenue, Frederica, Delaware, 19946, located within the Town of Bowers. Appellants hereby appeal Wetlands Permit WE-029/26 (Ex. B); Subaqueous Lands Permit SP-029/26 (Ex. C); and Permit SL-029/26¹ (hereinafter the “Permits”), which the Delaware Department of Natural Resources and Environmental Control (hereinafter “DNREC” or the “Department”) issued on June 12, 2026, to the Town of Bowers (hereinafter the “Town”). The Permits authorize the Town to construct the “North Bayshore Drive Drainage Improvement Project” (hereinafter the “Project”). The Town’s Permit Application is attached hereto as Exhibit A.

This letter provides the “Statement of Appeal” required by Section 2.0 of the Board’s procedural regulations. The Summeralls respectfully request that the Board reverse the Department’s Permitting Decision, or, in the alternative, remand the Permits for further proceedings.

¹ Appellants understand that the Department indicated that a third permit, Permit SL-029/26, was also issued to the Town for this Project; however, Appellants cannot locate a copy of Permit SL-029/26 on DNREC’s website or Environmental Navigator. The Summeralls include Permit SL-029/26 in this Appeal to the extent the Department has issued said permit. As discussed herein, the Department’s failure to affirmatively publish notice that it has issued the Permits to the Town deprives the Summeralls of their rights under 7 Del. C. § 6008 to timely Appeal the Permits.

BACKGROUND

On or about February 25, 2026, the Town applied for subaqueous land and wetland permits to construct the North Bayshore Drive Drainage Improvement Project. The Town has characterized this Project as a “repair;” however, this Project is a complete replacement and installation of a new drainage network to lay stormwater conveyance piping along North Bayshore Drive that will redirect the stormwater from its existing discharge point(s) to a new pumping station located on the Summeralls’ property.² The pumping station, hopefully, will function to convey the stormwater through new conveyance piping beneath North Flack Avenue, ultimately discharging the stormwater from North Bayshore Drive into the marsh located on the westerly side of North Flack Avenue – directly across the street from the Summeralls’ property. Stormwater from North Bayshore Drive does not naturally discharge to the marsh; it is a mischaracterization to call this project a “repair” where it is a complete redesign of the existing drainage system.

The Summeralls have previously raised concerns about the Town’s Project to the Department and the Town, which concerns have largely been brushed aside without substantive response or acknowledgment. The Summeralls’ primary concern remains the absence of any hydrological study to evaluate the effects of this discharge on flooding of the marsh, North Flack Avenue, and their property. Additional concerns are that the Town failed to consider alternative discharge options that would not rely on a pumping station, that the discharge will adversely affect their well water quality, that the Town lacks the resources to maintain the pumping station, and, perhaps most significant, neither the Town nor DNREC has affirmatively addressed whether the Town is required to obtain sediment and stormwater plan approval for this significant stormwater management Project under 7 Del. Admin. C. § 1501.

Despite these concerns, the Department, without prior notice, issued the Permits on June 12, 2026. Only by happenstance did the Summeralls learn that the Department had issued the Permits, even though their concerns remained unaddressed by either the Town or DNREC. Even though the Summeralls, as described herein, wrote to DNREC and the Town on June 26, 2026, objecting to the Permit Application and Project, the Department never bothered to affirmatively notify the Summeralls that it had issued the Permits.

² See Ex. A at pg. 4.

The Summeralls appreciate that the Project is intended to mitigate flooding along North Bayshore Drive; but the Town's well-intentions do not excuse the need to ensure that this Project will not increase flooding of their property and North Flack Avenue. There are significant deficiencies in the Town's Application and the Department's overall evaluation of this Project that demand reversal of the Permitting decision. Under Chapter 40 of Title 7, the Department is charged with "management of stormwater runoff consistent with sound water and land use practices," and reducing the "adverse effects of stormwater runoff on the water and lands of the State." Furthermore, under the *Regulations Governing the Use of Subaqueous Lands* and *Delaware's Wetland Regulations*, the Department must consider the Project's effects on flooding. The Department cannot permit this Project without ensuring that it won't adversely affect the Summeralls' property and that the Project complies with Chapter 40 of Title 7; *Delaware's Wetland Regulations*; and the *Regulations Governing the Use of Subaqueous Lands*.

THE INTEREST(S) WHICH HAS BEEN SUBSTANTIALLY AFFECTED

The Department's issuance of the Permits to the Town substantially affects the Summeralls' interests in several ways. The Permits authorize construction of a Project that will directly affect their property rights – specifically, the Town intends to utilize an easement on the Summeralls' property to place the drainage piping, pumping station, and pumping station control panel within wetlands/subaqueous lands. This direct interference with the Summeralls' property is a substantial interest standing alone.

In addition to the direct intrusion on the Summeralls' property, the Permits further substantially affect the Summeralls' interests by substantially increasing the risks of flooding of their property. By redirecting stormwater flows from North Bayshore Drive to discharge into the marsh across from the Summeralls' property, the Town and DNREC are increasing the likelihood of devastating flooding events occurring on the Summeralls' property. Furthermore, the increased flooding risks also increase the risks of infiltration/contamination of the Summeralls' well, which they rely on for potable water.

Lastly, the Summeralls' quiet use and enjoyment of their property is substantially affected by the Project. The Permits authorize the Town to engage in construction activities on the Summeralls' Property and only feet from the Summeralls' residence. Furthermore, the Project involves the permanent placement of a control panel on their property, which will

involve regular visits from Town personnel to maintain, and the placement of a pumping station that will operate for unknown periods generating continuous noise.

The Department's decision to issue the Permits substantially affects the Summeralls' property interest in materially adverse ways; thus, there is no dispute that the Summeralls have standing to appeal issuance of these Permits.

THE DECISION IS IMPROPER

The Department's issuance of the Permits is improper, as explained below.

THE REASONS WHY THE DECISION IS IMPROPER

The Board's rules contemplate that the "Statement of Appeal" provide a "concise" statement of the reasons for the appeal (Sec. 2.1). The reasons the Department's issuance of the Permits is improper are concisely stated as follows:

1) Issuance of the Permits is Contrary to the *Regulations Governing the Use of Subaqueous Lands* (7 Del. Admin. C. § 7504): The *Regulations Governing the Use of Subaqueous Lands* require that the Department consider various criteria when deciding whether to issue a subaqueous lands permit, stating: "An application may be denied if the activity could cause harm to the environment, either singly or in combination with other activities or existing conditions, which cannot be mitigated sufficiently." (7 Del. Admin. C. § 4.2). Among these criteria are:

- 4.6.6 The extent to which the applicant's primary purpose and objectives can be realized by alternatives, i.e. minimize the scope or extent of an activity or project and its adverse impact.
- 4.7.1.6 The extent to which the proposed project may adversely impact natural surface and groundwater hydrology and sediment transport functions.

The Town's Permit Application lacks any consideration of alternative discharge locations for stormwater from North Bayshore Drive. Pumping stormwater from North Bayshore Drive to the marsh is a substantial change in the natural flow of stormwater from North Bayshore Drive; alternative discharge locations must be considered before the Department issues the Permits, particularly locations that can rely on gravity as opposed to mechanical

pumps. Appellants are also aware that the Town has historically discharged stormwater from North Bayshore Drive directly to the Bay pursuant to permit approval (<https://www.facebook.com/photo.php?fbid=326535420432655&set=pb.100092285987766.-2207520000&type=3>). Discharging stormwater to the marsh when the Town is already permitted to discharge to the Bay undermines the need for this Project. Considering the proximity of North Bayshore Drive to the Jones River and Bay, and the evidence that the Town already has approval to discharge stormwater to the Bay, the lack of any consideration for discharging directly to either the Jones River or Bay is reversible error.

Furthermore, the Department has not required any verification of claims made in the Town's Permit Application that the Project will not adversely impact natural surface and groundwater hydrology. Elsewhere, the Town acknowledges that the marsh is in need of "restoration" and frequently floods; however, the Town now plans to direct additional stormwater flows to the marsh without first establishing that the marsh can handle the additional flows without increased flooding risks or adverse impacts to the natural surface and groundwater hydrology and sediment transport functions of the marsh.

DNREC's own prior evaluations of the marsh further contradict the Town's representations that the discharge to the marsh will not increase flooding risks or degrade the marsh. In *Delmarsh, LLC v. Environmental Appeals Board*, the Delaware Supreme Court noted that DNREC staff testified about the marsh in the Town, noting areas prone to flooding. *See Delmarsh, LLC v. Env't Appeals Bd.*, 277 A.3d 281, 293 (Del. 2022) ("testified that he had seen standing water on the lots, witnessed water from the bay flood the area during storms, and tried to pump standing water from the lots."). Considering DNREC's own prior evaluations of the marsh document flooding concerns, failure to require supporting documentation/studies verifying that the Project will not increase flooding risks or adversely impact the marsh and surrounding properties is reversible error.

2) Issuance of the Permits is Contrary to Delaware's Wetland Regulations (7 Del. Admin. C. § 7502): *Delaware's Wetland Regulations* provide that "it is declared to be in the public policy of this State to preserve and protect . . . wetlands," noting that the loss of such wetlands will "disturb the natural ability of wetlands to reduce flood damage[.]" (7 Del. Admin. C. § 7502-2.0). Furthermore, under § 12.2.1.2 of *Delaware's Wetland Regulations*, permit conditions should be based on consideration of the wetland's value "as a natural protective system of absorption of storm wave energy, flood waters, and heavy

rainfall, thereby decreasing flood and erosion damage.” Moreover, § 12.7.5 provides: “Increases or decreases in the cost of flood control or expected flood damage which might be caused by the effect of the activity on the natural capacity of the wetland to reduce flood damage.”

The Town’s Permit Application represents that the Project will not increase the risk of downstream flooding. (Ex. A at 11). However, there is no support in the record for the Town’s assertion of no increased flooding risk; nor did DNREC require that the Town provide any support for this assertion. At a minimum, a hydrological study should have been required to verify the Town’s assertion of no increased flooding risk, particularly given the Town’s prior contradictory statements that the marsh (the ultimate discharge point) is prone to flooding. Failure to require a hydrological study to verify the Town’s assertion is reversible error.

3) Sediment and Stormwater Plan Approval: The Town’s Permit Application makes representations that redirecting the stormwater from North Bayshore Drive to the marsh will not result in an increased risk of downstream flooding (Ex. A at pg. 11); however, there is no hydrologic study supporting this claim. Furthermore, to Appellants’ knowledge, the Town has not sought a Sediment and Stormwater Plan Approval, only the wetlands and subaqueous lands permits were sought. Appellants inquired with the Department’s Division of Sediment and Stormwater Management about whether the Town’s Project requires sediment and stormwater plan approval on June 2, 2026. On June 8, the Division responded by simply directing Appellants to submit the information to the Kent County Conservation District. No further information or guidance was offered by the Department, nor any denial of the underlying contention that the Town’s Project is subject to sediment and stormwater plan approval requirements. Kent County Conservation District has not responded to Appellants’ inquiry sent on June 10, 2026. We maintain that the Town’s Project should be subject to stormwater management approval requirements, because:

- i) The Project, while claiming to have less than 1-acre area of disturbance, (Ex. A pg. 7, Appendix F), has a drainage area of at least 4.5 acres (Ex. A at pg. 11, Appendix P). That the Project will manage stormwater for a large area subjects the Project to approval under Chapter 40 of Title 7 and 7 Del. Admin. C. § 1501.

ii) There is no independent support for the critical assertion that the Project will not increase risks of downstream flooding. The Town's own representations regarding the marsh undermine the credibility of this assertion (*see* Town of Bowers request for \$47,000.00 in FEMA Funding for marsh restoration, citing Hubbard Avenue flooding and marsh instability). The Town must perform a hydrological study to verify the assertion that the marsh can receive this stormwater without increased flooding risks to the Summeralls' and others' property.

iii) History shows the areas of North Bayshore Drive and North Flack Avenue are subject to significant flooding events. Redirecting stormwater through a pumping station from North Bayshore Drive upstream to the marsh across North Flack Avenue has the potential to increase the frequency of flooding events on North Flack Avenue. There is nothing in the Town's documentation or the Department's record for this Permitting decision refuting the potential for increased flooding – a critical omission.

iv) Adverse effects on private property rights – portions of the marsh, including adjacent to the area where the Town proposes to discharge the stormwater from North Bayshore Drive, are privately owned. Specifically, Parcel Number 8-01-11513-01-0700-00001 is privately owned, which lies between the Town's two parcels, Parcel Numbers: 8-01-11513-01-0400-00001 and 8-01-11513-01-2600-00001. There is no documentation in the record demonstrating that the Town has an agreement with this property owner(s) to discharge stormwater onto this private property. In addition, the State of Delaware, DNREC Division of Fish and Wildlife, owns portions of the marsh, specifically the two parcels, Parcel Numbers: 8-01-11416-01-0300-00001 and 8-01-11416-01-0301-00001, adjacent to the Town's parcel where the proposed stormwater outfall will be located, Parcel Number: 8-01-11513-01-0400-00001. That the private property and State property is part of the marsh does not excuse the Town from ensuring that its stormwater discharge does not adversely affect property it does not own. Under well-established Delaware precedent, a landowner cannot "artificially increase the flow of his waters downstream" in a manner that unreasonably interferes with the downstream landowner's property. (*Weldin Farms, Inc. v. Glassman*, 414 A.2d 500 (Del. Supr.)). Redirecting stormwater flows through use of a pumping station to increase the flow of waters to the marsh is undoubtedly an artificial increase that will impair the adjacent private properties, as the Town cannot ensure that the redirected stormwater will be confined to the Town's portions of the marsh.

The Department's failure to require, and the Town's failure to seek sediment and stormwater plan approval for the Project is reversible error.

4) Well & Aquifer Integrity: The Summeralls rely on a well for their potable water at their residence. The Town proposes redirecting significant volumes of stormwater to the marsh, adjacent to their wellhead. The Summeralls are understandably concerned that this additional stormwater volume will infiltrate and degrade the quality of their existing well. The Summeralls maintain that the Town must monitor the aquifer to verify that the Project will not adversely affect their well.

Failing to condition the Permits on monitoring the Summeralls' well quality is reversible error.

5) Reliability Concerns: This Project relies on the new pumping station to function as intended. However, power supply is unreliable, particularly during periods of stormy weather when flooding concerns are elevated. The Town represents that this Project is intended to manage stormwater and reduce flooding along North Bayshore Drive, it is only logical that the Town would ensure that the pumping station will operate during periods of power loss. The only reason given for omitting a backup generator is a lack of funding; however, this lack of funding raises greater concerns about the Town's ability to maintain the pumping station. Moreover, absent a reliable source of backup power, during a power outage, stormwater will be conveyed via gravity to the pumping station until it is overwhelmed, resulting in flooding along North Flack Avenue and/or North Bayshore Drive. Proceeding with this Project without the resources necessary to ensure adequate backup power to guarantee that the Project will function as intended during periods with the greatest flooding risks is a gross oversight to properly budget for this Project.

The lack of an Operations and Maintenance Plan for the pumping station and stormwater management infrastructure again emphasizes the need for an approved sediment and stormwater plan for the Project. (*See* 7 Del. Admin. C. §§ 5101-3.0 & 5101-7.0). Failing to condition the Permits on approval of an operations and maintenance plan is reversible error.

6) Technical Concerns: The Summeralls have voiced concerns that the Project will adversely affect their property, will result in nuisance levels of noise from operation of the pumping station, and will not be completed outside the mandatory work stoppage windows. The Town has also failed to demonstrate any ability to maintain the pumping station – having redirected stormwater to North Flack Avenue, the Town must ensure funding remains available to maintain and operate the pumping station. Failure to ensure that the Town can operate and maintain the pumping station is reversible error.

7) Urgency of Action: The Town is actively soliciting bids for a contractor to perform the Project and has scheduled a “special meeting,” despite these significant unaddressed concerns. (<https://bowersbeach.delaware.gov/files/2026/06/N-Bayshore-Drainage-Project-Special-Meeting-Agenda-July-1-2026-final.pdf>). The Summeralls wish to avoid an all-too-common problem of rushing to build before significant deficiencies are addressed. The Town's Contractor Q&A (https://bowersbeach.delaware.gov/files/2026/06/2026-6-23_Contractor-Questions.pdf) explicitly admits that the Town bypassed standard pre-bid requirements due to "quick turnaround needs" to force a reckless 30-day construction schedule (June 29 to July 29). The Town is also representing in the Q&A that it “has acquired all environmental permits required. No other environmental certificates are required.” However, there is no affirmative confirmation that this project does not require an approved sediment and stormwater plan. Furthermore, interestingly, the Town is representing in the Q&A that “Certified Construction Reviewer (CCR) inspections and reports are required and shall be signed/sealed by a Professional Engineer registered in the State of Delaware. CCR Reports shall be submitted to DNREC.” Yet, the requirement for a CCR is embedded in the Department’s sediment and stormwater regulations (7 Del. Admin. C. § 5101-6.0), again raising concerns about the need for an approved sediment and stormwater plan for this project. Issuing the Permits without first addressing these concerns is reversible error.

The Town has also misrepresented the Project to FEMA to obtain federal funding. Specifically, the Town has published FEMA’s Approval Letter, which states, “The funds for this project will be utilized . . . to purchase a mobile pump to be used with gravity drainage to the outfalls.” (<https://bowersbeach.delaware.gov/files/2026/06/N-Bayshore-Drainage-Project-Special-Meeting-Agenda-July-1-2026-final.pdf>). However, the Project design documents that gravity is impossible and provides for a permanent pumping station with a fixed control panel and power supply located on the Summeralls’ property. This is

not a “mobile pump” as apparently represented to FEMA to secure the funding to construct the Project (though the Town has not set aside funding to maintain the Project).

8) Misuse of the Easement on the Summeralls' Property: By its express terms, the Project exceeds the allowable uses of the easement on the Summeralls' Property. (A copy of the easement is included with Ex. A at pg. 49). While not conceding any arguments the Summeralls may have regarding the validity of the easement, the Summeralls also maintain that a pumping station and the associated infrastructure exceed the passive “storm water drains” described in the easement. Specifically, the easement provides: “Purposes: (a) To install, construct, reconstruct, operate, maintain, add to, extend, relocate, and remove public utility fixtures and equipment including aboveground and underground storm water drains, pipes, catch basins, and all related appurtenances[.]” All of the activities listed involve passive utility fixtures, not a pumping station that requires a continuous power supply, noisy pumps, and an aboveground control panel. The Town represented to DNREC that this easement allows for the proposed pumping station; despite the Summeralls' concerns and clear limitations on the easement.

The easement further requires that “any areas disturbed by Town will be restored by to a condition **equal or better than their original condition.**” The Town's proposed use of the easement will irreparably alter the area leaving behind permanent fixtures, thus violating the requirement that the Town restore the area to equal or better condition.

In addition, the terms of the easement demand an affirmative vote of the Town Council approving such use. “The undersigned acknowledge that this easement authorizes Town to make use of the easement herein granted for the purposes listed herein but does not require Town to engage in any the purposes listed herein. **Town shall not make use of the easement for any of the purposes stated herein without the majority vote of the Town Council approving such use.**” The Summeralls have requested minutes documenting the vote authorizing use of the easement; yet no such minutes have been produced.

The Department's failure to verify that the Town's use of the easement on the Summeralls' property is reversible error.

9) Failure to Adequately Consider and Respond to Appellants' Comments on the Permit Application: DNREC noticed the Town's Permit Application on or about February 25, 2026. In its notice, DNREC represented that the public comment period extended through March 27, 2026.

On March 21, 2026, the Summeralls submitted their first public comment on the Town's Permit Application (DNREC subsequently forwarded these comments to the Town's engineering firm). The Summeralls submitted additional follow-up comments on April 14, April 21, April 22, and May 11, 2026. On April 21, 2026, DNREC, through Matthew Jones, responded that "some of [the Summeralls'] comments were submitted after the close of the public comment period" There was no further response to the Summeralls' public comments.

Unaware that the Department had already issued the Permits on June 12, 2026, the Summeralls, through Counsel, wrote to the Town and the Department on June 26, 2026, to express their concerns and objections to the Town's Permit Application and the Project. There has been no substantive response to the June 26 Letter, nor did the Department ever affirmatively notify the Summeralls that it had issued the Permits at that time.

There is no decision document accompanying the Permits nor response within the Permits to the Summeralls' comments. Furthermore, the Department's prior representations and the Summeralls' timely submission of its initial public comment demand that the Department extend the public comment period until the record is complete. Failure to adequately respond to the Summeralls' comments and failure to enlarge the public comment period considering the Summeralls' ongoing dialogue with Department staff about the Project is reversible error.

Furthermore, while the Department publishes notice of permit applications, it does not appear that it publishes notice when it issues wetland and subaqueous lands permits. Appellants are unable to locate a public notice publishing the Department's decision to grant the Town the sought Permits. Failure to adequately notice issuance of the Permits is reversible error and a deprivation of the Summeralls' due process rights.

The Board is empowered under 7 *Del. C.* § 6008 to “affirm, reverse or remand to the secretary with instructions” For the foregoing reasons, Appellants respectfully request that the Board utilize this authority and discretion to: reverse the Department’s decision to issue the Permits; or, in the alternative, remand the Department’s decision to require, among other things, that the Town perform an appropriate hydrological study to verify its claims that discharging to the marsh will not increase flooding risks to the Summeralls’ property.

**ESTIMATED NUMBER OF WITNESSES AND TIME INVOLVED IN PRESENTING
THE APPEAL**

Appellants estimate that they will call two-to-three witnesses and that it will take two-to-three hours to present their appeal, exclusive of the time needed to cross-examine DNREC witnesses, and for DNREC to present its case or cross-examine Appellants’ witnesses.

Enclosed is a check in the sum of \$50.00, which represents payment of the prescribed costs.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "William J. Kassab".

WILLIAM J. KASSAB, Esq. (Bar Id. No. 5914)

Cc: Counsel for the EAB, Deputy Attorney General, Nicholas D. Picollelli (via email: nicholas.picollelli@delaware.gov);
Matthew Jones, DNREC Division of Water-Wetlands and Waterways Section (via email Matthew.jones@delaware.gov);
DNREC Division of Sediment and Stormwater Management (via email: DNREC.Stormwater@delaware.gov);
Kent County Conservation District (via email: stormwater@kentcd.org; questions@kentcd.org);
Town of Bowers Council and Mayor (via email: info@bowersde.gov; mayor@bowersde.gov).