

In the Matter Of:

Department of Natural Resources & Environmental Control

SUBAQUEOUS LANDS LEASE APPLICATION

February 10, 2022



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DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL
OF THE STATE OF DELAWARE

RE: Subaqueous Lands Lease Application
Carlo and Teresita Businelli

..

Virtual Public Hearing
Dial-In Number: 1-408-418-9388
Event Number: 2337 561 7326

Thursday, February 10, 2022
6:00 p.m.

..

BEFORE: Theresa Newman, Hearing Officer
FOR THE DIVISION: Rebecca Bobola, DNREC

-- Transcript of Proceedings --

WILCOX & FETZER
Registered Professional Reporters
1330 King Street - Wilmington, Delaware 19801

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TABLE OF CONTENTS

	Page
Introduction by Ms. Newman.	3
Presentation by Rebecca Bobola.	9
Entry of Exhibits 1 through 5	12
Presentation by Robert Whitford on behalf of.	14
the Applicants	
Entry of Applicant Exhibits 1-3	18
Presentation by Mr. Businelli	18
Public Comments by Mr. Eisenmann,	24
Requester of Public Hearing	
Conclusory Remarks by Ms. Newman.	28
Certificate of Reporter	31

1 MS. NEWMAN: Good evening. I
2 believe that everyone is now connected and
3 ready, so we will begin the virtual public
4 hearing.

5 I want to thank you all for taking
6 the time out of your day to connect with us.
7 The date is Thursday, February 10, 2022.

8 We are here this evening to provide
9 a virtual hearing platform for the State of
10 Delaware's Department of Natural Resources
11 and Environmental Control to conduct its
12 public hearing on the application submitted
13 by Carlo and Teresita Businelli for a
14 subaqueous lands lease.

15 My name is Theresa Newman, and
16 Secretary Garvin has appointed me to serve as
17 a hearing officer for tonight's hearing.

18 There have been changes made to
19 DNREC's standard hearing protocols,
20 necessitated by the ongoing COVID-19
21 pandemic.

22 First and foremost, this hearing is
23 being conducted virtually. Staff is not all
24 together in the same room. Everyone is

1 participating independently at their own
2 respective locations.

3 While there is no sign-in sheet to
4 document physical attendance tonight, WebEx
5 does generate a list of those that are
6 virtually present so that the Department can
7 have a record of those who have
8 electronically joined this event.

9 At the conclusion of my
10 introductory remarks, I will be turning the
11 hearing over to the Department staff and then
12 to the applicant to provide formal
13 presentations for the benefit of the hearing
14 record being generated for the matter before
15 us tonight.

16 Once the presentations conclude,
17 those persons who have preregistered prior to
18 12:00 p.m. today will be acknowledged and
19 provided an opportunity to offer comment on
20 the proposed application in alignment with
21 DNREC's standard comment protocols.

22 There is a court reporter virtually
23 present, who will prepare a verbatim
24 transcript of the hearing, pursuant to the

1 statutory requirement for DNREC to have the
2 same prepared. And, as always, that
3 transcript will be posted on the hearing
4 webpage dedicated to this matter as soon as
5 it is received.

6 In addition, I would encourage
7 those who are attending tonight's hearing to
8 also visit the hearing webpage dedicated to
9 this matter for additional details concerning
10 the proposed application submitted by Mr. and
11 Mrs. Businelli.

12 The hearing webpage can be found
13 online under the Administrative Law Section
14 of DNREC's website that will be listed at the
15 conclusion of tonight's hearing.

16 Before we begin the presentations,
17 please be advised of the following protocols
18 that remain in place for all DNREC public
19 hearings:

20 All comment received must be
21 limited solely to the subject matter of
22 tonight's hearing. All comments pertinent to
23 the subject matter of this virtual hearing
24 will be incorporated into the record being

1 generated in this matter.

2 In order to ensure that everyone
3 who wishes to offer comment for the
4 Secretary's consideration is accommodated,
5 the record of this matter shall remain open
6 following tonight's proceeding through
7 Friday, February 25, 2022.

8 There is one authentic record of
9 this formal proceeding tonight, and it is the
10 official court reporter's verbatim
11 transcript.

12 The statutory purpose of tonight's
13 hearing is to build the record with regard to
14 the proposed application before us tonight.
15 A record consisting of tonight's hearing
16 transcript, all written comments, all
17 exhibits, and eventually the Hearing
18 Officer's Report will be reviewed by
19 Secretary Garvin.

20 The Secretary will ultimately issue
21 an order regarding the review process
22 containing his decision on that matter and
23 the reasons therefor.

24 Per DNREC's standard hearing

1 protocols, there will be no Q and A or chat
2 session permitted during this hearing.

3 Those who have preregistered to
4 offer verbal comment will be acknowledged to
5 speak at the conclusion of the presentation
6 portion of tonight's proceeding. Additional
7 instruction with regard to offering a verbal
8 comment tonight will be provided at that
9 time.

10 It is important to note that no
11 decision has already been made by the
12 Department, nor will any decision be made
13 tonight with regard to the proposed
14 application.

15 As previously stated, DNREC wishes
16 to ensure that everyone is enabled to offer
17 comments for the inclusion of the record
18 being generated in this matter. Therefore,
19 the record will remain open through Friday,
20 February 25, 2022, so that the public may
21 offer written comment, should they wish to do
22 so.

23 Comment may be submitted through a
24 comment form link on the hearing webpage, via

1 e-mail to DNRECHearingComments@delaware.gov,
2 or via the U.S. Postal Service at the
3 physical address for DNREC indicated on the
4 hearing webpage and/or the public notices
5 previously issued in this matter.

6 Written comments to DNREC may not
7 be submitted using social media platforms
8 such as Twitter, Facebook, YouTube, or text
9 messaging.

10 Please remember that all comment
11 received either through USPS or via the
12 electronic mechanisms noted just now, as long
13 as received by the Department on or before
14 February 25th, will bear the exact same
15 weight and will be considered equally by the
16 Secretary prior to making a final decision in
17 this matter.

18 Lastly, the ultimate decision
19 regarding this matter is made by DNREC
20 Secretary Garvin. This formal proceeding
21 tonight acts as a mechanism to enable the
22 Department to thoroughly vet the application
23 to the public and to let the public know the
24 various ways which comment may be submitted

1 for Secretary Garvin's consideration if so
2 desired.

3 I will now hand it over to
4 Mrs. Bobola with the Division of Water to
5 provide the Department's presentation.

6 MS. BOBOLA: Thank you, Theresa.
7 My name is Rebecca Bobola. I'm an
8 environmental scientist with the Division of
9 Water, Wetlands, and Subaqueous Lands
10 Section, and I will be presenting Carlo and
11 Teresita Businelli's application as
12 submitted.

13 The purpose of tonight's public
14 hearing is to provide the public an
15 opportunity to comment on Carlo and Teresita
16 Businelli's application to construct a 6-foot
17 wide 20-foot-long dock extension and to
18 install a 6-foot-wide by 12-foot-long
19 floating kayak launch, and to relocate an
20 existing PWC lift. And their application
21 type is a Subaqueous Lands Lease.

22 On this slide visible is the
23 project location, obviously the zoomed-out
24 aerial image. The parcel we will be speaking

1 about is indicated by the yellow star located
2 in the middle of the image.

3 Here is a representation of the
4 structure we will be talking about tonight, a
5 little more zoomed in. And then the parcel,
6 itself, is highlighted in yellow. The parcel
7 number here is provided on the site, and the
8 address, as well, located on Sundance Lane in
9 Lewes, Sussex County, Delaware.

10 This project was placed on a 20-day
11 public notice published in two statewide
12 circulations, including the Delaware State
13 News and the News Journal, January 19th to
14 February 8th.

15 On this slide you can see the
16 project overview, including a plan view
17 as well as a section view, of not only the
18 existing structure, but the proposed
19 additions to the structure.

20 Again, the additions proposed are a
21 6-foot-wide by 20-foot-long dock extension, a
22 6-foot-wide by 12-foot-long kayak launch, and
23 the relocation of a PWC lift.

24 The additions are highlighted in

1 the transparent yellow squares overlaid on
2 the plan view to indicate the locations of
3 where the new structure will be. The PWC
4 lift is being relocated from the location
5 where the kayak launch is proposed to go.

6 This project has undergone our
7 regulatory review up to this point, as all of
8 our applications. And we conducted a desktop
9 review to determine if the proposed structure
10 is consistent with regulatory requirements.
11 Another component is the interpretation of
12 property lines extended. And an additional
13 component is the equitable apportionment of
14 water access for riparian landowners within
15 the cove.

16 Again, the site we are speaking
17 about tonight is indicated by the yellow star
18 on this image, and the representation of the
19 line extended can be seen in the image on
20 this screen.

21 Theresa, at this time I would like
22 to introduce the Department's exhibits.

23 Exhibit 1 are the state laws and
24 regulations regarding subaqueous lands.

1 Exhibit 2 is the Subaqueous Lands
2 Permit Application.

3 Exhibit 3 is the public notice as
4 it was published in the Delaware State News
5 and in the News Journal and as posted on the
6 Delaware Public Meeting Calendar and on the
7 DNREC website.

8 Exhibit 4, the DNREC public hearing
9 presentation.

10 And Exhibit 5, comments received
11 prior to the public hearing.

12 This concludes my presentation.
13 And available on this slide are the details
14 for this hearing as well as all of the
15 methods to submit comments through
16 February 25, 2022.

17 MS. NEWMAN: Thank you, Ms. Bobola.
18 I have received the Department's exhibits
19 electronically, and I hereby mark those
20 exhibits as Department's Exhibits 1 through
21 5.

22 Now that that concludes the
23 Department's presentation, we will move on to
24 the applicant's presentation.

1 On behalf of the applicant, we have
2 the applicant's consultant, Mr. Robert
3 Whitford, who will provide a presentation.
4 And then we will move on to Mr. and
5 Mrs. Businelli, who will also provide a
6 verbal presentation, as well.

7 Rebecca, could you hand back the
8 presenter role to me, please, or you can pass
9 it to Dina, I'm sorry, by right clicking on
10 her name. Thank you.

11 Mr. Whitford, if you could again
12 please state your name for the record and the
13 company that you are with, and then you may
14 proceed with the presentation. I will now
15 unmute you. Dina, if you could unmute
16 Mr. Whitford. Thank you.

17 MR. WHITFORD: Can you hear me?

18 MS. NEWMAN: Yes.

19 MR. WHITFORD: Again, please, can
20 you hear me?

21 MS. NEWMAN: Yes, we can. I can
22 hear, yes.

23 MR. WHITFORD: Should I start over
24 again? I didn't know. Did that go anywhere?

1 MS. NEWMAN: No, we didn't hear
2 anything.

3 MR. WHITFORD: Okay, fine. Good
4 evening. My name is Rob Whitford,
5 W-H-I-T-F-O-R-D, and I am the owner of
6 Precision Marine Construction.

7 Precision is the agent and
8 contractor for the Businellis in their
9 request for this dock extension.

10 In order to help everyone
11 understand why we see no issues with this
12 application, I need to step back to the year
13 2006 when Tom Biggs had just recently
14 purchased the Coon Farm and was in the
15 process of developing what is now known as
16 the Villages on Herring Creek.

17 Mr. Biggs was interested in
18 obtaining permits for the piers and docks on
19 the waterfront lots. I explained to him
20 that, as a developer, he couldn't apply for
21 the permits, because they were speculative,
22 and that was not permitted by DNREC.

23 So after some time had passed, I
24 received a phone call from Mr. Hal Dukes, who

1 had recently purchased Lot 48 within the
2 villages of Herring Creek, and he wanted us
3 to install a pier on his adjacent to his lot.

4 During this time it was quite
5 normal to reach out to DNREC and have an
6 on-site meeting to go over the proposed
7 structure and to get guidance.

8 I called Chuck McNally at DNREC and
9 asked him for such a meeting. We met in the
10 fall of 2006 on Lot 48. I told him of my
11 conversation with Tom Biggs, and he said we
12 should lay out this entire code for future
13 use and guidance.

14 I had a plot plan with me. And
15 Chuck said he would take it and lay out the
16 proposed plan so that I could use it in the
17 future.

18 About a week later, Chuck and I
19 met, and he gave me the plot plan back with
20 the guidance drawn on it, and I used it for
21 all the piers and docks within the cove.

22 We have built all but one pier and
23 dock in this community. However, that one
24 pier and dock is west of the cove, more out

1 in open water.

2 This is Exhibit 1. This is the
3 section of the plot plan that Chuck had given
4 me. It's what I used to locate, design, and
5 build the pier on 48 for Mr. Dukes.

6 Using the extended property lines
7 as shown, the pier extends channel-ward to a
8 point where the 10-foot side setback limit
9 the pier's overall length. This pier was
10 approved by DNREC on June 5, 2007.

11 Can I have Exhibit 2, please?

12 This is the approved plan for Lot
13 Number 48. In October of 2009, I received a
14 phone call from Mr. Donald Reed. He had
15 purchased Lot 47 and wanted riprap, a
16 walkway, pier dock, and a boatlift.

17 I referenced the document that
18 Chuck McNally had given me, and then designed
19 the structure based off that plan and
20 extended property lines.

21 The structure was flipped, because
22 Mr. Reed wanted to place a pool where the
23 wetland walkway was originally placed. DNREC
24 approved and issued a permit as originally

1 designed on February 15, 2009 under SL38409.

2 So I'm sharing this information to
3 show that the existing structures are
4 permitted and built as per the guidance
5 document given to me by DNREC.

6 I'm suggesting that the property
7 lines extension drawing currently used by the
8 Department is not valid in this area, and it
9 shouldn't be used because it does not
10 accurately depict the guidance document given
11 to us and used during the original
12 construction.

13 Exhibit 3, please.

14 So this proposed addition that the
15 Businellis are requesting will have zero
16 impact on the owner of Lot 48, since the
17 existing structures are closer to the
18 property lines than any of the new proposed
19 work or structures.

20 I would like to thank the
21 Department for giving me the opportunity to
22 give them this information. Thank you.

23 MS. NEWMAN: Thank you,
24 Mr. Whitford. Before you are placed back on

1 mute, I just want to confirm that the three
2 documents that were just provided virtually
3 as Exhibit 1, 2, and 3, do you wish to mark
4 these into the record?

5 MR. WHITFORD: Yes, ma'am, please.

6 MS. NEWMAN: Thank you. I hereby
7 mark the documents, as provided
8 electronically, as Applicant's Exhibits 1
9 through 3.

10 We will now move on to Mr. and
11 Mrs. Businelli, and I will have them unmuted,
12 please.

13 Mr. and Mrs. Businelli, please
14 state your name for the record, and then you
15 may begin with your presentation.

16 MR. BUSINELLI: Okay. Can you hear
17 me?

18 MS. NEWMAN: Yes.

19 MR. BUSINELLI: Okay. Good
20 evening, everyone. My name is Carlo
21 Businelli, and I'm speaking on behalf of my
22 wife, Teresita, and myself.

23 We are the owners of 23962 Sundance
24 Lane, sometimes referred to as Villages of

1 Herring Creek, Lot 47. We are the applicants
2 of the dock extension being discussed today.

3 We purchased our home in 2018, and
4 the pier, dock, and boatlift on our property
5 were included in the sale. The associated
6 Subaqueous Land Lease was transferred to us
7 by DNREC shortly thereafter.

8 At this time we are requesting
9 DNREC's approval to extend our dock 20 feet
10 eastward, as presented by Ms. Rebecca Bobola
11 and by Mr. Rob Whitford so that we can add a
12 floating dock with a kayak launch.

13 The extension is required so that
14 we can relocate our existing jet-ski lift to
15 accommodate the requested floating dock.

16 The design of our extension was
17 very carefully thought out so that it would
18 have a zero negative impact to all our
19 neighbors. We opted for our extension to run
20 parallel to our shoreline, directly behind
21 our house.

22 Our extension does not go deeper
23 into Herring Creek waters, nor does it impact
24 the views or water access or navigation of

1 any other property in our cove.

2 As Mr. Whitford explained, our
3 design meets all of DNREC's regulations and
4 requirements and utilizes the same surveys,
5 drawings, and property lines that were
6 defined and approved by DNREC when all of the
7 existing structures in our cove were
8 permitted and built.

9 Our extension is well within all of
10 the required property line setbacks in both
11 Mr. Whitford's and Ms. Bobola's exhibits.

12 Our extension application went on
13 public notice, as required by DNREC, and
14 there was only one single comment received.
15 That one single comment resulted in today's
16 public hearing.

17 That comment was submitted by
18 Mr. Matt Eisenmann. He is our neighbor next
19 door to the west on Lot 48.

20 As many of you are aware,
21 Mr. Eisenmann has applied to extend his own
22 dock approximately 60 feet outward into
23 Herring Creek, and his application also went
24 to public hearing.

1 The Eisenmann public hearing
2 transcript and all the public comments
3 received in regards to that application are a
4 matter of public record, and I will not
5 discuss them today.

6 However, I do want to respond to
7 Mr. Eisenmann's public comments in regards to
8 our application.

9 First, Mr. Eisenmann implies that
10 we are the only ones opposed to his proposed
11 extension, when, in fact, that is not the
12 case.

13 As the public record shows, his
14 extension is opposed by nearly all of his
15 neighboring waterfront property owners,
16 including the Villages of Herring Creek HOA,
17 which represents the waterfront access rights
18 of over 140 homeowners in our community.

19 Second, as Mr. Whitford has
20 explained and illustrated in his Exhibit 1,
21 all of the docks in our cove were designed
22 and built exactly where DNREC placed them
23 when DNREC defined, established, and approved
24 the extended property lines in our cove.

1 Our proposed extension falls well
2 within these established and approved
3 property lines, as well as within the lines
4 of Ms. Bobola's exhibit, as well.

5 Lastly, Mr. Eisenmann states that
6 until his dock extension is resolved, we
7 should not be permitted to extend our dock.

8 Quite frankly, that's completely
9 unreasonable. Our dock extension has zero
10 impact on Mr. Eisenmann. In fact, our
11 extension is in the complete opposite
12 direction of his property. So we are not at
13 all clear as to how our extension would
14 negatively impact his current structure or
15 his pending application as per his comments.

16 There is no reason that approval
17 for our application should be dependent on a
18 resolution, on resolution of issues related
19 to someone else's dock application.

20 It's our understanding that every
21 application is reviewed and considered on its
22 own merits by DNREC, and we assume that will
23 be the case with ours.

24 Thank you, everyone, for your time

1 today.

2 MS. NEWMAN: Thank you, Mr.
3 Businelli. Now that the presentations have
4 concluded, we will now turn our attention to
5 those who have preregistered for the
6 opportunity to offer verbal comment at
7 tonight's hearing.

8 Per the protocol set forth in
9 DNREC's public hearing webpage, those wishing
10 to offer verbal comment should have
11 registered no later than noon the day of the
12 hearing.

13 All comments must adhere to DNREC's
14 Department protocols with regard to offering
15 verbal comment, including making their
16 comments as concise as possible, respecting
17 the three-minute timeline, and limiting their
18 comments to the subject matter of this
19 hearing.

20 To assist the commenter with regard
21 to the amount of time they have, there is a
22 visual timer that has appeared on the screen
23 that will count down three minutes.

24 When it is that speaker's turn to

1 comment, the speaker's audio will be unmuted,
2 and their identity will be confirmed, and the
3 timer will begin.

4 At the end of the three minutes,
5 the speaker's audio will be automatically
6 placed back on mute.

7 Please note there is no video feed
8 of the commenter, as they will provide a
9 comment by audio only. All comments will be
10 transcribed by the court reporter and thereby
11 incorporated into the hearing record.

12 If the speaker is not able to
13 finish their comment within the three-minute
14 time allotted, the Department encourages you
15 to submit the completed comment in writing no
16 later than February 25th.

17 There is only one commenter that
18 has registered to provide comment at
19 tonight's hearing. With that said, I would
20 like to have Mr. Matthew Eisenmann unmuted.
21 Please state your name and who you are
22 representing for the record, if any, and then
23 you may begin your comments.

24 MR. EISENMANN: Hi. Can you hear

1 me?

2 MS. NEWMAN: Yes.

3 MR. EISENMANN: Okay. My name is
4 Matt Eisenmann. I want to thank everyone
5 from DNREC for their time today. I am the
6 owner of the adjacent property.

7 The Businelli application fails to
8 mention that on October 5, 2020, DNREC
9 representatives presented a map of the
10 proportional property lines extended, as
11 determined by DNREC legal counsel based on
12 existing case law.

13 This has been ignored in this
14 application, so that additional structures
15 could be placed within our proportional
16 property lines, further complicating the
17 issue.

18 These structures are outside of the
19 property owner's actual property lines and,
20 as such, are controlled and regulated by the
21 state, following their rules, regulations,
22 and laws. No landowners own the water lines
23 beyond the end of their property -- the State
24 does -- and that's the residents of Delaware.

1 Property lines extended into the water are
2 not an absolute and not the landowner's
3 right.

4 We are happy to see that DNREC has
5 mentioned in their presentation tonight the
6 proportional property lines extended is being
7 considered by the Department in their
8 analysis.

9 And, as always, we are appreciative
10 of the Department's hard work to ensure
11 equity and fair access to this amazing
12 resource to all.

13 It is my hope DNREC notices the
14 differences in complaints from some of the
15 waterfront neighbors nearby and recognizes
16 the arguments they make on a case-by-case
17 basis are not consistent and are used to
18 attempt to block access to the water for
19 those they choose should not have it.

20 Given the comments made tonight,
21 you know, I'd point out that I see no
22 complaints from those neighbors that were
23 made against our application related to
24 impacts and view, even though this

1 application is in the same exact viewing area
2 for that owner.

3 I see no complaints related to the
4 environmental impact for this additional
5 dockage, as made by those neighbors and even
6 the applicants in this case.

7 I see no complaints that the
8 structure blocks use by others to the water,
9 as was made in the case against us, as well.

10 This application ignores the
11 thoughtful determination made and
12 communicated by DNREC for all applications
13 going forward in the cove, while the
14 applicants have argued to prevent any fair
15 and equitable requests made by us, many
16 requests, in fact.

17 Our stance is and continues to be,
18 if our current application under review is
19 approved for fair and equitable access, we
20 would drop our objections to this permit to
21 allow amicable middle ground.

22 We see no reason to prevent the
23 applicants access to the water, as long as we
24 are not prevented from fair and equitable

1 access ourselves.

2 In the absence of that approval, we
3 are forced to highlight the additional
4 proposed structures by this application
5 further complicate the issue of water
6 appropriation, and it should be declined by
7 DNREC unless both applicants' applications
8 are approved.

9 It is very unfortunate that an
10 amicable solution that allows for fair and
11 equitable access to all property owners could
12 not be reached without this hearing process.
13 This has added unnecessary expense to both
14 applicants and unnecessary work for DNREC.

15 MS. NEWMAN: Mr. Eisenmann, I
16 apologize. The three minutes is up. You
17 have been muted.

18 I want to thank you for providing
19 your comment. And if you could please submit
20 any additional remarks that you would like to
21 provide for the record in writing, we would
22 greatly appreciate that.

23 I want to thank everyone who has
24 joined this hearing for tonight. That will

1 conclude our public comment portion of
2 tonight's hearing.

3 Again, for those who may not have
4 been able to register to provide a public
5 comment for tonight and would like to submit
6 a written public comment, please feel free to
7 do so.

8 On the screen you will see the
9 different ways to which to submit the public
10 comment through February 25, 2022, to which
11 the hearing will remain open.

12 Again, I want to thank you all for
13 attending the virtual hearing. The hearing
14 is now concluded at 6:28 p.m.

15 (Concluded at 6:28 p.m.)

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CERTIFICATE

I, Lorena J. Hartnett, a Notary Public and Registered Professional Reporter, do hereby certify that the foregoing is an accurate and complete transcription of the proceeding held at the time and place stated herein, and that the said proceeding was recorded by me and then reduced to typewriting under my direction, and constitutes a true record of the testimony given by said witnesses.

I further certify that I am not a relative, employee, or attorney of any of the parties or a relative or employee of either counsel, and that I am in no way interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office on this 15th day of February 2022.



Lorena J. Hartnett
Registered Professional Reporter

Subaqueous Lands Lease Application - February 10, 2022

1		
1 11:23 12:20 16:2 18:3,8 21:20	6-foot 9:16	applications 11:8
10 3:7	6-foot-wide 9:18 10:21,22	applied 20:21
10-foot 16:8	60 20:22	apply 14:20
12-foot-long 9:18 10:22		appointed 3:16
12:00 4:18	8	apportionment 11:13
140 21:18	8th 10:14	approval 19:9 22:16
15 17:1		approved 16:10,12,24 20:6 21:23 22:2
19th 10:13	A	approximately 20:22
	access 11:14 19:24 21:17	area 17:8
2	accommodate 19:15	assist 23:20
2 12:1 16:11 18:3	accommodated 6:4	assume 22:22
20 19:9	accurately 17:10	attendance 4:4
20-day 10:10	acknowledged 4:18 7:4	attending 5:7
20-foot-long 9:17 10:21	acts 8:21	attention 23:4
2006 14:13 15:10	add 19:11	authentic 6:8
2007 16:10	addition 5:6 17:14	aware 20:20
2009 16:13 17:1	additional 5:9 7:6 11:12	B
2018 19:3	additions 10:19,20,24	back 13:7 14:12 15:19 17:24
2022 3:7 6:7 7:20 12:16	address 8:3 10:8	based 16:19
23962 18:23	adhere 23:13	bear 8:14
25 6:7 7:20 12:16	adjacent 15:3	begin 3:3 5:16 18:15
25th 8:14	Administrative 5:13	behalf 13:1 18:21
	advised 5:17	benefit 4:13
3	aerial 9:24	Biggs 14:13,17 15:11
3 12:3 17:13 18:3,9	agent 14:7	boatlift 16:16 19:4
	alignment 4:20	Bobola 9:4,6,7 12:17 19:10
4	amount 23:21	Bobola's 20:11 22:4
4 12:8	and/or 8:4	build 6:13 16:5
47 16:15 19:1	appeared 23:22	built 15:22 17:4 20:8 21:22
48 15:1,10 16:5,13 17:16 20:19	applicant 4:12 13:1	Businelli 3:13 5:11 13:5 18:11,13, 16,19,21 23:3
	applicant's 12:24 13:2 18:8	Businelli's 9:11,16
5	applicants 19:1	Businellis 14:8 17:15
5 12:10,21 16:10	application 3:12 4:20 5:10 6:14 7:14 8:22 9:11,16,20 12:2 14:12 20:12,23 21:3,8 22:15,17,19,21	C
		Calendar 12:6

Subaqueous Lands Lease Application - February 10, 2022

<p>call 14:24 16:14</p> <p>called 15:8</p> <p>carefully 19:17</p> <p>Carlo 3:13 9:10,15 18:20</p> <p>case 21:12 22:23</p> <p>channel-ward 16:7</p> <p>chat 7:1</p> <p>Chuck 15:8,15,18 16:3,18</p> <p>circulations 10:12</p> <p>clear 22:13</p> <p>clicking 13:9</p> <p>closer 17:17</p> <p>code 15:12</p> <p>comment 4:19,21 5:20 6:3 7:4,8,21, 23,24 8:10,24 9:15 20:14,15,17 23:6, 10,15</p> <p>commenter 23:20</p> <p>comments 5:22 6:16 7:17 8:6 12:10, 15 21:2,7 22:15 23:13,16,18</p> <p>community 15:23 21:18</p> <p>company 13:13</p> <p>complete 22:11</p> <p>completely 22:8</p> <p>component 11:11,13</p> <p>concise 23:16</p> <p>conclude 4:16</p> <p>concluded 23:4</p> <p>concludes 12:12,22</p> <p>conclusion 4:9 5:15 7:5</p> <p>conduct 3:11</p> <p>conducted 3:23 11:8</p> <p>confirm 18:1</p> <p>connect 3:6</p> <p>connected 3:2</p> <p>consideration 6:4 9:1</p> <p>considered 8:15 22:21</p> <p>consistent 11:10</p> <p>consisting 6:15</p>	<p>construct 9:16</p> <p>construction 14:6 17:12</p> <p>consultant 13:2</p> <p>contractor 14:8</p> <p>Control 3:11</p> <p>conversation 15:11</p> <p>Coon 14:14</p> <p>count 23:23</p> <p>County 10:9</p> <p>court 4:22 6:10</p> <p>cove 11:15 15:21,24 20:1,7 21:21,24</p> <p>COVID-19 3:20</p> <p>Creek 14:16 15:2 19:1,23 20:23 21:16</p> <p>current 22:14</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>date 3:7</p> <p>day 3:6 23:11</p> <p>decision 6:22 7:11,12 8:16,18</p> <p>dedicated 5:4,8</p> <p>deeper 19:22</p> <p>defined 20:6 21:23</p> <p>Delaware 10:9,12 12:4,6</p> <p>Delaware's 3:10</p> <p>Department 3:10 4:6,11 7:12 8:13, 22 17:8,21 23:14</p> <p>Department's 9:5 11:22 12:18,20, 23</p> <p>dependent 22:17</p> <p>depict 17:10</p> <p>design 16:4 19:16 20:3</p> <p>designed 16:18 17:1 21:21</p> <p>desired 9:2</p> <p>desktop 11:8</p> <p>details 5:9 12:13</p> <p>determine 11:9</p> <p>developer 14:20</p>	<p>developing 14:15</p> <p>Dina 13:9,15</p> <p>direction 22:12</p> <p>directly 19:20</p> <p>discuss 21:5</p> <p>discussed 19:2</p> <p>Division 9:4,8</p> <p>DNREC 5:1,18 7:15 8:3,6,19 12:7,8 14:22 15:5,8 16:10,23 17:5 19:7 20:6, 13 21:22,23 22:22</p> <p>DNREC's 3:19 4:21 5:14 6:24 19:9 20:3 23:9,13</p> <p>DNRECHEARINGCOMMENTS@ DELAWARE.GOV 8:1</p> <p>dock 9:17 10:21 14:9 15:23,24 16:16 19:2,4,9,12,15 20:22 22:6,7,9,19</p> <p>docks 14:18 15:21 21:21</p> <p>document 4:4 16:17 17:5,10</p> <p>documents 18:2,7</p> <p>Donald 16:14</p> <p>door 20:19</p> <p>drawing 17:7</p> <p>drawings 20:5</p> <p>drawn 15:20</p> <p>Dukes 14:24 16:5</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>e-mail 8:1</p> <p>eastward 19:10</p> <p>Eisenmann 20:18,21 21:1,9 22:5,10</p> <p>Eisenmann's 21:7</p> <p>electronic 8:12</p> <p>electronically 4:8 12:19 18:8</p> <p>else's 22:19</p> <p>enable 8:21</p> <p>enabled 7:16</p> <p>encourage 5:6</p> <p>ensure 6:2 7:16</p> <p>entire 15:12</p>
---	--	---

Subaqueous Lands Lease Application - February 10, 2022

<p>environmental 3:11 9:8</p> <p>equally 8:15</p> <p>equitable 11:13</p> <p>established 21:23 22:2</p> <p>evening 3:1,8 14:4 18:20</p> <p>event 4:8</p> <p>eventually 6:17</p> <p>exact 8:14</p> <p>exhibit 11:23 12:1,3,8,10 16:2,11 17:13 18:3 21:20 22:4</p> <p>exhibits 6:17 11:22 12:18,20 18:8 20:11</p> <p>existing 9:20 10:18 17:3,17 19:14 20:7</p> <p>explained 14:19 20:2 21:20</p> <p>extend 19:9 20:21 22:7</p> <p>extended 11:12,19 16:6,20 21:24</p> <p>extends 16:7</p> <p>extension 9:17 10:21 14:9 17:7 19:2,13,16,19,22 20:9,12 21:11,14 22:1,6,9,11,13</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>Facebook 8:8</p> <p>fact 21:11 22:10</p> <p>fall 15:10</p> <p>falls 22:1</p> <p>Farm 14:14</p> <p>February 3:7 6:7 7:20 8:14 10:14 12:16 17:1</p> <p>feet 19:9 20:22</p> <p>final 8:16</p> <p>fine 14:3</p> <p>flipped 16:21</p> <p>floating 9:19 19:12,15</p> <p>foremost 3:22</p> <p>form 7:24</p> <p>formal 4:12 6:9 8:20</p> <p>found 5:12</p>	<p>frankly 22:8</p> <p>Friday 6:7 7:19</p> <p>future 15:12,17</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>Garvin 3:16 6:19 8:20</p> <p>Garvin's 9:1</p> <p>gave 15:19</p> <p>generate 4:5</p> <p>generated 4:14 6:1 7:18</p> <p>give 17:22</p> <p>giving 17:21</p> <p>Good 3:1 14:3 18:19</p> <p>guidance 15:7,13,20 17:4,10</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>Hal 14:24</p> <p>hand 9:3 13:7</p> <p>hear 13:17,20,22 14:1 18:16</p> <p>hearing 3:4,9,12,17,19,22 4:11,13,24 5:3,7,8,12,15,22,23 6:13,15,17,24 7:2,24 8:4 9:14 12:8,11,14 20:16,24 21:1 23:7,9,12,19</p> <p>hearings 5:19</p> <p>Herring 14:16 15:2 19:1,23 20:23 21:16</p> <p>highlighted 10:6,24</p> <p>HOA 21:16</p> <p>home 19:3</p> <p>homeowners 21:18</p> <p>house 19:21</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>illustrated 21:20</p> <p>image 9:24 10:2 11:18,19</p> <p>impact 17:16 19:18,23 22:10,14</p> <p>implies 21:9</p> <p>important 7:10</p>	<p>included 19:5</p> <p>including 10:12,16 21:16 23:15</p> <p>inclusion 7:17</p> <p>incorporated 5:24</p> <p>independently 4:1</p> <p>information 17:2,22</p> <p>install 9:18 15:3</p> <p>instruction 7:7</p> <p>interested 14:17</p> <p>interpretation 11:11</p> <p>introduce 11:22</p> <p>introductory 4:10</p> <p>issue 6:20</p> <p>issued 8:5 16:24</p> <p>issues 14:11 22:18</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>January 10:13</p> <p>jet-ski 19:14</p> <p>joined 4:8</p> <p>Journal 10:13 12:5</p> <p>June 16:10</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>kayak 9:19 10:22 11:5 19:12</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>Land 19:6</p> <p>landowners 11:14</p> <p>lands 3:14 9:9,21 11:24 12:1</p> <p>Lane 10:8 18:24</p> <p>Lastly 8:18 22:5</p> <p>launch 9:19 10:22 11:5 19:12</p> <p>Law 5:13</p> <p>laws 11:23</p> <p>lay 15:12,15</p> <p>lease 3:14 9:21 19:6</p>
---	--	---

Subaqueous Lands Lease Application - February 10, 2022

<p>length 16:9</p> <p>Lewes 10:9</p> <p>lift 9:20 10:23 11:4 19:14</p> <p>limit 16:8</p> <p>limited 5:21</p> <p>limiting 23:17</p> <p>lines 11:12 16:6,20 17:7,18 20:5 21:24 22:3</p> <p>link 7:24</p> <p>list 4:5</p> <p>listed 5:14</p> <p>locate 16:4</p> <p>located 10:1,8</p> <p>location 9:23 11:4</p> <p>locations 4:2 11:2</p> <p>long 8:12</p> <p>lot 15:1,3,10 16:12,15 17:16 19:1 20:19</p> <p>lots 14:19</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>made 3:18 7:11,12 8:19</p> <p>making 8:16 23:15</p> <p>Marine 14:6</p> <p>mark 12:19 18:3,7</p> <p>Matt 20:18</p> <p>matter 4:14 5:4,9,21,23 6:1,5,22 7:18 8:5,17,19 21:4 23:18</p> <p>Mcnally 15:8 16:18</p> <p>mechanism 8:21</p> <p>mechanisms 8:12</p> <p>media 8:7</p> <p>meeting 12:6 15:6,9</p> <p>meets 20:3</p> <p>merits 22:22</p> <p>messaging 8:9</p> <p>met 15:9,19</p> <p>methods 12:15</p>	<p>middle 10:2</p> <p>minutes 23:23</p> <p>move 12:23 13:4 18:10</p> <p>mute 18:1</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>Natural 3:10</p> <p>navigation 19:24</p> <p>necessitated 3:20</p> <p>negative 19:18</p> <p>negatively 22:14</p> <p>neighbor 20:18</p> <p>neighboring 21:15</p> <p>neighbors 19:19</p> <p>Newman 3:1,15 12:17 13:18,21 14:1 17:23 18:6,18 23:2</p> <p>News 10:13 12:4,5</p> <p>noon 23:11</p> <p>normal 15:5</p> <p>note 7:10</p> <p>noted 8:12</p> <p>notice 10:11 12:3 20:13</p> <p>notices 8:4</p> <p>number 10:7 16:13</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>obtaining 14:18</p> <p>October 16:13</p> <p>offer 4:19 6:3 7:4,16,21 23:6,10</p> <p>offering 7:7 23:14</p> <p>officer 3:17</p> <p>Officer's 6:18</p> <p>official 6:10</p> <p>on-site 15:6</p> <p>ongoing 3:20</p> <p>online 5:13</p> <p>open 6:5 7:19 16:1</p>	<p>opportunity 4:19 9:15 17:21 23:6</p> <p>opposed 21:10,14</p> <p>opposite 22:11</p> <p>opted 19:19</p> <p>order 6:2,21 14:10</p> <p>original 17:11</p> <p>originally 16:23,24</p> <p>outward 20:22</p> <p>overlaid 11:1</p> <p>overview 10:16</p> <p>owner 14:5 17:16</p> <p>owners 18:23 21:15</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>p.m. 4:18</p> <p>pandemic 3:21</p> <p>parallel 19:20</p> <p>parcel 9:24 10:5,6</p> <p>participating 4:1</p> <p>pass 13:8</p> <p>passed 14:23</p> <p>pending 22:15</p> <p>permit 12:2 16:24</p> <p>permits 14:18,21</p> <p>permitted 7:2 14:22 17:4 20:8 22:7</p> <p>persons 4:17</p> <p>pertinent 5:22</p> <p>phone 14:24 16:14</p> <p>physical 4:4 8:3</p> <p>pier 15:3,22,24 16:5,7,9,16 19:4</p> <p>pier's 16:9</p> <p>piers 14:18 15:21</p> <p>place 5:18 16:22</p> <p>plan 10:16 11:2 15:14,16,19 16:3,12, 19</p> <p>platform 3:9</p> <p>platforms 8:7</p>
--	--	--

Subaqueous Lands Lease Application - February 10, 2022

plot 15:14,19 16:3	PWC 9:20 10:23 11:3	resolution 22:18
point 11:7 16:8		resolved 22:6
pool 16:22	<hr/> R <hr/>	Resources 3:10
portion 7:6	reach 15:5	respecting 23:16
Postal 8:2	ready 3:3	respective 4:2
posted 5:3 12:5	reason 22:16	respond 21:6
Precision 14:6,7	reasons 6:23	resulted 20:15
prepare 4:23	Rebecca 9:7 13:7 19:10	review 6:21 11:7,9
prepared 5:2	received 5:5,20 8:11,13 12:10,18 14:24 16:13 20:14 21:3	reviewed 6:18 22:21
preregistered 4:17 7:3 23:5	recently 14:13 15:1	rights 21:17
present 4:6,23	record 4:7,14 5:24 6:5,8,13,15 7:17, 19 13:12 18:4,14 21:4,13	riparian 11:14
presentation 7:5 9:5 12:9,12,23,24 13:3,6,14 18:15	Reed 16:14,22	riprap 16:15
presentations 4:13,16 5:16 23:3	referenced 16:17	Rob 14:4 19:11
presented 19:10	referred 18:24	Robert 13:2
presenter 13:8	regard 6:13 7:7,13 23:14,20	role 13:8
presenting 9:10	registered 23:11	room 3:24
previously 7:15 8:5	regulations 11:24 20:3	run 19:19
prior 4:17 8:16 12:11	regulatory 11:7,10	<hr/> S <hr/>
proceed 13:14	related 22:18	sale 19:5
proceeding 6:6,9 7:6 8:20	relocate 9:19 19:14	scientist 9:8
process 6:21 14:15	relocated 11:4	screen 11:20 23:22
project 9:23 10:10,16 11:6	relocation 10:23	Secretary 3:16 6:19,20 8:16,20 9:1
property 11:12 16:6,20 17:6,18 19:4 20:1,5,10 21:15,24 22:3,12	remain 5:18 6:5 7:19	Secretary's 6:4
proposed 4:20 5:10 6:14 7:13 10:18, 20 11:5,9 15:6,16 17:14,18 21:10 22:1	remarks 4:10	section 5:13 9:10 10:17 16:3
protocol 23:8	remember 8:10	serve 3:16
protocols 3:19 4:21 5:17 7:1 23:14	Report 6:18	Service 8:2
provide 3:8 4:12 9:5,14 13:3,5	reporter 4:22	session 7:2
provided 4:19 7:8 10:7 18:2,7	reporter's 6:10	set 23:8
public 3:3,12 5:18 7:20 8:4,23 9:13, 14 10:11 12:3,6,8,11 20:13,16,24 21:1,2,4,7,13 23:9	representation 10:3 11:18	setback 16:8
published 10:11 12:4	represents 21:17	setbacks 20:10
purchased 14:14 15:1 16:15 19:3	request 14:9	sharing 17:2
purpose 6:12 9:13	requested 19:15	sheet 4:3
pursuant 4:24	requesting 17:15 19:8	shoreline 19:20
	required 19:13 20:10,13	shortly 19:7
	requirement 5:1	show 17:3
	requirements 11:10 20:4	shown 16:7

Subaqueous Lands Lease Application - February 10, 2022

<p>shows 21:13 side 16:8 sign-in 4:3 single 20:14,15 site 10:7 11:16 SL38409 17:1 slide 9:22 10:15 12:13 social 8:7 solely 5:21 speak 7:5 speaker's 23:24 speaking 9:24 11:16 18:21 speculatory 14:21 squares 11:1 staff 3:23 4:11 standard 3:19 4:21 6:24 star 10:1 11:17 start 13:23 state 3:9 10:12 11:23 12:4 13:12 18:14 stated 7:15 states 22:5 statewide 10:11 statutory 5:1 6:12 step 14:12 structure 10:4,18,19 11:3,9 15:7 16:19,21 22:14 structures 17:3,17,19 20:7 subaqueous 3:14 9:9,21 11:24 12:1 19:6 subject 5:21,23 23:18 submit 12:15 submitted 3:12 5:10 7:23 8:7,24 9:12 20:17 suggesting 17:6 Sundance 10:8 18:23 surveys 20:4 Sussex 10:9</p>	<hr/> <p>T</p> <hr/> <p>taking 3:5 talking 10:4 Teresita 3:13 9:11,15 18:22 text 8:8 therefor 6:23 Theresa 3:15 9:6 11:21 thought 19:17 three-minute 23:17 Thursday 3:7 time 3:6 7:9 11:21 14:23 15:4 19:8 22:24 23:21 timeline 23:17 timer 23:22 today 4:18 19:2 21:5 23:1 today's 20:15 told 15:10 Tom 14:13 15:11 tonight 4:4,15 6:9,14 7:8,13 8:21 10:4 11:17 tonight's 3:17 5:7,15,22 6:6,12,15 7:6 9:13 23:7 transcript 4:24 5:3 6:11,16 21:2 transferred 19:6 transparent 11:1 turn 23:4,24 turning 4:10 Twitter 8:8 type 9:21</p> <hr/> <p>U</p> <hr/> <p>U.S. 8:2 ultimate 8:18 ultimately 6:20 undergone 11:6 understand 14:11 understanding 22:20</p>	<p>unmute 13:15 unmuted 18:11 unreasonable 22:9 USPS 8:11 utilizes 20:4</p> <hr/> <p>V</p> <hr/> <p>valid 17:8 verbal 7:4,7 13:6 23:6,10,15 verbatim 4:23 6:10 vet 8:22 view 10:16,17 11:2 views 19:24 villages 14:16 15:2 18:24 21:16 virtual 3:3,9 5:23 virtually 3:23 4:6,22 18:2 visible 9:22 visit 5:8 visual 23:22</p> <hr/> <p>W</p> <hr/> <p>W-H-I-T-F-O-R-D 14:5 walkway 16:16,23 wanted 15:2 16:15,22 water 9:4,9 11:14 16:1 19:24 waterfront 14:19 21:15,17 waters 19:23 ways 8:24 Webex 4:4 webpage 5:4,8,12 7:24 8:4 23:9 website 5:14 12:7 week 15:18 weight 8:15 west 15:24 20:19 wetland 16:23 Wetlands 9:9 Whitford 13:3,11,16,17,19,23 14:3,4 17:24 18:5 19:11 20:2 21:19</p>
---	--	--

Whitford's 20:11

wide 9:17

wife 18:22

wishes 6:3 7:15

wishing 23:9

work 17:19

written 6:16 7:21 8:6

Y

year 14:12

yellow 10:1,6 11:1,17

Youtube 8:8

Z

zoomed 10:5

zoomed-out 9:23