



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

OFFICE OF THE
SECRETARY

PHONE
(302) 739-9000

Secretary's Order No.: 2026-OTS-0014

**RE: Reconsideration of the Notice of Coastal Construction Permit
Application Denial, pursuant to Section 6.2 of the
Regulations Governing Beach Protection and the
Use of Beaches (7 DE Admin. Code 5102)**

**Date of Issuance: June 29, 2026
Effective Date: June 29, 2026**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to the Beach Preservation Act (the "Act"), 7 Del. C. Ch. 68; the *Regulations Governing Beach Protection and the Use of Beaches* ("Regulations"), 7 DE Admin. Code 5102; and all other relevant statutory authority, the Department hereby issues this final Order following its formal reconsideration of the January 16, 2026 decision of the Department's Division of Watershed Stewardship ("Watershed Stewardship") denying the Coastal Construction Permit application ("Application") for a concrete structure that measures 118 feet in length by 10 feet in width, with a 10-degree slope and 6-inch thickness, extending over the dune, and installed seaward of the DNREC Building Line ("Concrete Structure") located at Lot 2, Clifton Shores, Sussex County, Delaware, Tax Parcel No. 230-17.00-241.00 ("Property").

In summary, DNREC upholds Watershed Stewardship's denial of the Application for what is essentially a concrete driveway, which was constructed without a permit and is the only structure of its kind located seaward of the Delaware coastal construction building line. DNREC further upholds the requirement that the Applicant remove the structure, requiring that removal occur between August 30 and September 30, 2026, to avoid time of year restrictions currently in effect for horseshoe crab protection.

The following findings of fact, record of information ("Record"), reasons and conclusions are entered as an Order of the Secretary in the above-referenced proceeding.

Background, Procedural History and Findings of Fact

A virtual public hearing was held on Monday, April 6, 2026, at 10:00 a.m., via the Department's State of Delaware Zoom Platform, to receive testimony from David Heffernan ("Applicant,") and to further build the Record for the Secretary's reconsideration of the decision to deny the Application submitted by Applicant, on behalf of the property owner, Barbara Curtis, for the Concrete Structure that did not comply with requirements of the Regulations.

On October 29, 2025, Watershed Stewardship issued a Notice of Violation ("NOV") regarding an unpermitted concrete beach access structure

built seaward of the DNREC Building Line. Watershed Stewardship determined that the Concrete Structure had been installed without a Coastal Construction permit or letter of approval as required under the Regulations. The NOV also advised that the concrete slab-on-grade construction was not an acceptable material for a dune crossover due to its susceptibility to erosion and breakage and potential to become waterborne storm debris. At that time, Mr. Heffernan was advised of the compliance options, including removal of the Concrete Structure, submission of an after-the-fact Coastal Construction permit application, or appeal of the violation notice.

On November 14, 2025, Mr. Heffernan submitted an after-the-fact Coastal Construction Permit application to Watershed Stewardship seeking authorization to retain an existing Concrete Structure that had already been installed and that he described as serving both as a dune crossover and a boat ramp. Following the initial review of the Application and consideration of the public comments received during the public notice process, Watershed Stewardship then evaluated the Application pursuant to the applicable provisions of the Regulations.

A letter dated January 16, 2026, issued from Watershed Stewardship, advised the Applicant that the requirements of Section 4.5.3, 3.1.1.4, 5.3.1.2, and 5.3.1.6 of the Regulations had not been met with regard to the installation of the Concrete Structure. Specifically, Watershed Stewardship found that the Concrete Structure had been constructed seaward of the Building Line without first obtaining the required approval from the

Department. In addition, the Concrete Structure could not reasonably be characterized as a boat ramp because it functioned as a driveway. A boat ramp would extend into the waters of the Delaware Bay; a driveway would not. Moreover, driveways are not structures that may be located seaward of the Building Line. Additionally, the use of concrete material was unsuitable for a dune crossover due to the risks associated with erosion and storm-generated debris. Finally, the anticipated vehicular use of the Concrete Structure for launching watercraft could adversely affect coastal resources and wildlife, including protected species. Based upon these findings, Watershed Stewardship concluded that the Application did not satisfy the requirements of the Regulations to issue an after-the-fact Coastal Construction Permit and denied the Application.

Consistent with the Department's authority and responsibility to protect Delaware's coastal resources under both the Regulations and the Act (7 Del. C. Ch. 68), Watershed Stewardship's denial, dated January 16, 2026, directed the Applicant to remove the unpermitted Concrete Structure within fifteen (15) days of receipt of the notice, restore the dune by grading the sand to its pre-construction contours (consistent with the surrounding dune system), and replant the disturbed area with American beachgrass (*Ammophila breviligulata*).

On February 7, 2026, pursuant to Section 6.2 of the Regulations, the Applicant submitted a written request for the Department to hold a public hearing for the reconsideration of Watershed Stewardship's decision to deny

the Application. Accordingly, the administrative public hearing for this matter was held on Monday, April 6, 2026. All proper notice of the hearing was provided to the public and the Applicant, as required by law and included in the Record.

On April 6, 2026, Department staff, members of the public, the Applicant, and the witnesses called by the Applicant attended the administrative public hearing. Appearing on behalf of the Department were Devera Scott, Deputy Attorney General, and Jennifer Pongratz, Environmental Scientist IV with Watershed Stewardship. Department representatives submitted relevant documents which Hearing Officer Theresa Smith marked into the Record as Department exhibits. The Record remained open after the hearing until April 13, 2026, to allow for the submission of post-hearing materials.

It should be noted that the Department received comments from members of the public expressing opinions regarding the Application. The purpose of the administrative proceeding, however, was not to re-evaluate the Application as originally proposed, but rather to provide the Applicant with an opportunity to seek the Secretary's review of Watershed Stewardship's decision denying the Application. Accordingly, the burden rests with the Applicant to present sufficient facts and evidence in support of the appeal to demonstrate why Watershed Stewardship's basis for denial should be reconsidered.

Pursuant to the testimony provided at the public hearing, the Applicant provided documentation to Hearing Officer Smith, via email, immediately following the administrative public hearing, which was immediately incorporated into the Record. In addition, a statement dated April 7, 2026, from the Department's Division of Fish and Wildlife ("DFW"), attached to the Hearing Officer's report ("Report") as Appendix "A", recommended that any project work not occur between April 15 and August 30. This restriction is based upon the Property's location within the Delaware Ecological Network and is intended to protect red knot migration activities that occur from April 15 through June 7, as well as horseshoe crab spawning activities that occur from April 15 through August 30.

Following the close of the Record as noted above, Hearing Officer Smith prepared the Report, dated June 16, 2026. The Report sets forth the procedural history, summarizes and establishes the Record relied on in the Report, and provides findings of fact, reasons, and conclusions that recommend the final decision in this matter. Further, at the request of Hearing Officer Smith, Watershed Stewardship staff provided clarification of the Record via email, dated May 8, 2026, which was attached to the Report as Appendix "B".

The Report, together with its Appendices "A" and "B," is expressly incorporated herein by reference. No additional documentation was submitted for inclusion to the Record prior to its closure on April 13, 2026.

Reasons and Conclusions

Currently pending before the Department is the Applicant's request for reconsideration of the decision to deny the Application, as referenced above. This reconsideration is being made pursuant to Section 6.0 of the Regulations, and all other relevant statutory authority.

I find that the Applicant's request and the Department's April 6, 2026, administrative public hearing are consistent with the statutory provisions authorizing the Department to make such reconsideration, and that proper notice regarding this matter was provided as requested by law. The testimony offered by the Applicant and the witnesses at the public hearing, along with the exhibits and other documentation incorporated into the Record by the Hearing Officer, constitute the Record generated in this matter.

Consistent with the applicable provisions of the Regulations, I find that the Record supports the reasons set forth by Watershed Stewardship in the denial of the Application. Specifically, testimony from the Applicant, in addition to the Record developed by the Department, demonstrates that the Concrete Structure was constructed seaward of the Building Line without obtaining the required approval from the Department, in violation of Section 4.5.3. I further find that the Concrete Structure functions as a driveway rather than a permissible boat ramp, as it does not extend into the waters of the Delaware Bay. Therefore, the Concrete Structure cannot reasonably be

characterized as a boat ramp. As driveways are not structures authorized to be located seaward of the Building Line, the Application does not satisfy the requirements of Section 3.1.1.4.

In addition, the Department denied the Application because the concrete material used for the structure is inconsistent with Sections 5.3.1.2 due to the risks associated with erosion, breakage and storm-generated debris. In the Applicant's letter dated February 7, 2026, he stated he would place an environmentally safe government-grade coating to encapsulate and contain the concrete, preventing movement or erosion. I find that with the consideration of the Concrete Structure located seaward of the Building Line and Section 5.3.1.2, the Concrete Structure poses a threat to erosion, because concrete material (with or without a coating), has the potential to be undermined when there is beach erosion which would cause the Concrete Structure to become waterborne storm debris. I find the testimony to reconsider the Application based on providing a coating on the concrete is not supported.

Further, as noted by DFW, the Property is located within an area identified in the Delaware Ecological Network. Thus, pursuant to Section 5.3.1.6, the Department finds that there are potential adverse impacts to coastal resources and wildlife, including species such as red knots and horseshoe crabs. Although the Applicant, through witness testimony and argument presented at the hearing, asserted that the Concrete Structure has not disrupted the coastal resources or wildlife, the Applicant did not provide

any supporting scientific evidence for this position. Regardless, the Concrete Structure was built without the required approval letter or permit authorization from the Department. Therefore, I find that the evidence and testimony presented in this matter does not support reconsideration of the Application under the requirements of the Regulations.

The Applicant and witnesses testified that the Concrete Structure should be reconsidered because its 10-foot-width provides accessibility for individuals with mobility limitations. The Applicant also offered to remove the existing Concrete Structure and reconstruct a wooden crossover of the same width to retain accessibility benefits. The Department denied the Application, however, because the Concrete Structure exceeds the crossover dimensions established under Section 4.5.3 of the Regulations. Although Section 4.5.3.1.4 of the Regulations authorizes the Department to consider variances for crossover dimensions to serve residents with special needs on a case-by-case basis, I find that there is no evidence in the Record which shows the Concrete Structure was proposed to serve a resident with mobility limitations. Rather, the Applicant testified that the access was intended for visitors. Accordingly, I find that neither the testimony regarding accessibility for individuals with mobility limitations, nor the proposal to reconstruct the Concrete Structure as a 10-foot-wide wooden crossover, provides a basis for reconsideration of the denial of the Application.

The Applicant and witnesses also testified that the Concrete Structure would provide benefits for public safety and emergency access by allowing

first responders to drive vehicles closer to the beach and deploy lifesaving equipment more quickly. The Applicant also offered to remove the Concrete Structure and rebuild the structure with wood or composite walkway at the same dimensions to preserve emergency access. While I acknowledge that emergency access may serve a public safety function, I find that the Regulations contain no provision authorizing, exempting, or granting a variance for dune crossovers or similar structures based upon emergency access considerations. Moreover, designated access points already exist along Delaware's beaches to facilitate first responder access for emergency and lifesaving operations. Accordingly, I do not find that the testimony regarding emergency access provides a basis to reconsider the denial of the Application.

Finally, in accordance with 7 *Del. C. Ch. 68* and the Regulations, the Department is responsible for enhancing, protecting, and preserving public and private beaches. In consideration of the coastal resources and wildlife concerns, as set forth in the October 29, 2025, correspondence from Watershed Stewardship, I find that the guidance for the removal of the Concrete Structure and restoration of the dune is consistent with the requirements of the Regulations. I further find that the compliance deadlines contained in that correspondence have since expired. Therefore, this Order instructs Watershed Stewardship to calculate new dates from the effective date of this Order for removal of the Concrete Structure. Additionally, to avoid disruption of red knot migration activities and horseshoe crab spawning activities, the compliance deadlines shall also include a time of year

restriction.

Accordingly, for the reasons set forth above, I find that Watershed Stewardship's decision to deny the Application submitted by Applicant is supported by the applicable provisions of the Regulations. I further find that the testimony and documentary evidence presented by the Applicant does not establish a basis for reconsideration of Watershed Stewardship's prior decision of January 16, 2026. Further, I conclude and specifically direct the following:

1. The Department has jurisdiction, under the Beach Preservation Act, 7 *Del. C. Ch. 68*; the *Regulations Governing Beach Protection and the Use of Beaches*, 7 DE Admin. Code 5102; and all other relevant statutory authority, to make a final determination on Applicant's request to reconsider Watershed Stewardship's denial of a Coastal Construction permit, after holding the administrative public hearing on April 6, 2026, and reviewing the Record;
2. The Department has carefully considered the factors required to be weighed in issuing a final decision in this reconsideration matter, and finds that the Record supports the same;
3. The Department has reviewed the Record for the reasons stated above, and consistent with the applicable provisions of 7 *Del. C. Ch. 68*, and 7 DE Admin. Code 5102, I find no factual or legal basis upon which to reconsider or modify the Department's decision to deny the Application. Therefore, I adopt the Hearing Officer's Report and

appendices, in their entirety, and affirm Watershed Stewardship's denial of the Application, as the Record supports the same;

4. Furthermore, the Record supports the Department's instruction that the Applicant take the additional actions as set forth in the correspondence dated October 29, 2025; however, Watershed Stewardship shall establish an updated timeline for completion of such actions by the Applicant, with the deadline for removal no later than September 30, 2026. Such actions shall include a time of year restriction between April 15 and August 30 to avoid disrupting red knot migration activities and horseshoe crab spawning activities, and Watershed Stewardship shall provide the Applicant with this information within 30 days of the final Order;
5. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
6. The Department shall serve and publish its Order on its internet site.



Gregory Patterson
Secretary