



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

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OFFICE OF THE  
SECRETARY

**Secretary's Order No. 2017-W-0006**

**Re: STEPHEN AND JOHANNA OWSIANY'S APPLICATION TO USE SUBAQUEOUS  
LANDS FOR A BOAT DOCK IN THE INDIAN RIVER OFFSHORE OF 32472  
RIVER ROAD, MILLSBORO, SUSSEX COUNTY**

**Date of Issuance: February 10, 2017**

**Effective Date: February 10, 2017**

Pursuant to 7 Del. C. Chap. 60, and the *Subaqueous Lands Act* ("SLA"), 7 Del. C. Chap. 72., the Department's Regulations issued under the SLA at 7 DE Admin. Code 7405, ("SLA Regulations") and other relevant authority, the Secretary of the Department of Natural Resources and Environmental Control ("Department") issues this Order following a public hearing on Stephen and Johanna Owsiany's June 25, 2015 Application ("Application") to use subaqueous lands for a boat dock in the Indian River offshore of Applicant's house at 32472 River Road, Millsboro, Sussex County.

**Background and Procedural History**

This Order considers the record on the Application, which seeks authority to use subaqueous lands for a private boat dock in the Indian River, which the Applicants' would use for their house in the Oak Orchard community. The Department's Division of Water, Wetlands and Subaqueous Lands Section ("WSLS") reviewed the Application, determined it was complete, and properly published public notices of it on November 4, 2015.

The WSLS received an objection and request for a public hearing from Brooks E. Reynolds, Jr., owner of the adjoining property to the west of the Applicants' property. Mr.

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Reynolds objected to the Application because he claimed that the proposed boat dock would interfere with the use of his boat dock. In addition, he indicated that there was a property line dispute.

The WSLs attempted to resolve Mr. Reynolds' concerns by extensive negotiations with him and the Applicants, but the negotiations were unsuccessful. Consequently, the WSLs properly published public notices of a July 11, 2016 public hearing at the Department's offices at 89 Kings Highway, Dover. Robert P. Haynes, Esquire, the Department's Senior Hearing Officer, presided over the public hearing.

Following the public hearing, the WSLs provided Mr. Haynes with its Technical Response Memorandum ("TRM"), which recommended granting the Applicants permission to use the subaqueous lands for the proposed dock based upon the WSLs' draft lease. Mr. Haynes prepared the attached Hearing Officer's Report ("Report"), which reviews the procedural history, establishes the record, makes findings of fact, and provides reasons and conclusions that address the Application and the public comments. The Report recommends that the Department issue the requested SLA authority consistent with the WSLs' TRM and its draft SLA lease.

### **Findings of Fact**

The Department finds that the Application satisfies the SLA's regulatory requirements based upon the proposed use of subaqueous lands for a private boat dock to serve the Applicants' waterfront property. The Department adopts the Report to the extent it is consistent with this Order.

The proposed dock approved by this Order will extend channelward from approximately the middle of the Applicants' waterfront property. The property along the Indian River has more than the SLA Regulations required minimum 40' waterfront frontage. The proposed boat docking

facilities approved by this Order will consist of a 4' wide x 15' long pier that extends channelward from the bulkhead shoreline's mean high water line to the low water line connecting to a 4' wide x 205' long pier extending channelward from the low mean water line and connecting to a perpendicular 6' wide x 30' long dock at the end of the pier, which would have a boat docking area with 4 pilings and a boat lift. The width of the Indian River at the proposed dock's site is 7,000'. The proposed dock would be 1,000' from the nearest channel. The Application states that the proposed dock and or any vessel using will be more than 10' from neighboring property lines. Based upon the plans and the survey, as set forth in the WSLs TRM, meets the SLA Regulations' requirements.

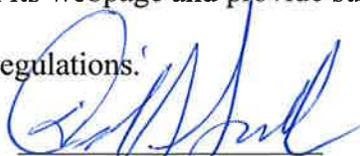
The Department finds that the SLA lease should be issued despite the public comments from the adjoining property owner, Mr. Bruce Reynolds, in opposition. Mr. Reynolds primary objection was that the proposed Oswiany dock would cause boat 'congestion' because it would reduce the space available for him to navigate his boat to his dock. The Department agrees that the Oswiany boat dock will reduce Mr. Reynolds' space to navigate his boat to his dock, but that reduction does not warrant denial of the SLA application because the remaining space is within the SLA Regulations' allowed limits. The Project is consistent with the SLA Regulations and will be within the allowed clearances from the other properties and boat docking facilities. The SLA Regulations established the clearances to allow safe navigation. As noted in the Report, Mr. Reynolds did not support his claims of possible encroachment of his property lines, and the WSLs and the Report properly considered that the Applicants' survey and plans supported the Application and showed no encroachment of private property lines that end at the low mean water line. In sum, overall the Department finds that the Application properly met the SLA's regulatory requirements and hence should be approved based upon the WSLs draft lease and approved plans.

## Conclusions and Reasons

The WSLS, as detailed in the TRM, finds that the Project is an appropriate use of subaqueous lands under the SLA and the SLA Regulations. The Report also recommends approval of the Project and issuance of an SLA Permit based upon the record established, which includes the entire WSLS files on the Application through this Order.

The Department hereby enters the following conclusions as ordering paragraphs:

1. The Department has jurisdiction pursuant to *7 Del. C. Section 6006* and *7 Del. C. Chap. 72* to make a determination on the Applicants' subaqueous lands permit application;
2. The Department provided adequate public notice of the Application and of the public hearing, and held the public hearing in a manner required by *7 Del. C. Sections 6003, 6004, and 6006*, and the SLA and the SLA Regulations;
3. The Department considered all timely and relevant public comments in making this determination, and this Order and attached Report establishes the record, makes findings of fact and reasons in support of this final agency action;
4. WSLS shall issue a lease approving the Project's use of subaqueous lands based upon the WSLS' draft lease attached to the Report;
5. The lease's conditions and terms will protect the environment from the activity in the subaqueous lands, consistent with the intent of the SLA, and will allow the Applicants to dock their boat for use at their property; and
6. The Department shall publish this Order on its webpage and provide such notice of it in a manner required by the law and the Department's regulations.



David S. Small  
Secretary

## HEARING OFFICER'S REPORT

TO: The Honorable David S. Small  
Secretary, Department of Natural Resources and Environmental Control

FROM: Robert P. Haynes, Esquire  
Senior Hearing Officer, Office of the Secretary  
Department of Natural Resources and Environmental Control

RE: **STEPHEN AND JOHANNA OWSIANY'S APPLICATION TO USE  
SUBAQUEOUS LANDS FOR A BOAT DOCK IN THE INDIAN RIVER  
OFFSHORE OF 32472 RIVER ROAD, MILLSBORO, SUSSEX COUNTY**

DATE: February 3, 2017

### I. PROCEDURAL HISTORY

On June 25, 2015, the Department of Natural Resources and Environmental Control's ("Department") Division of Water, Wetlands and Subaqueous Lands Section ("WSLS") received the Application dated May 16, 2015 ("Application") of Stephen and Johanna Owsiany ("Applicants"). The Application seeks permission to use subaqueous lands<sup>1</sup> to build and use a boat dock ("Project") in the Indian River offshore of their house at 32472 River Road, Millsboro, Sussex County.

On November 4, 2015, the WSLS had public notices published in the *Delaware State News* and *The News Journal*, which commenced the public comment period that ended on November 24, 2015.

On November 19, 2015, the WSLS received a letter dated November 14, 2015 from Brooks E. Reynolds, Jr., who objected to the Application and requested a public hearing. The WSLS attempted to resolve Mr. Reynold's objection, but was unsuccessful. On June 1, 2016, the WSLS

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<sup>1</sup> The Application seeks authority under the *Subaqueous Lands Act* ("SLA"), 7 *Del. C. Chap. 72*, and the Department's *Regulations Governing the Use of Subaqueous Lands*, 7 *DE Admin. Code 7504* ("SLA Regulations").

had published public notices in *The News Journal* and the *Delaware State News*, which announced the Department's July 11, 2016 public hearing at the Department's offices at 89 Kings Highway, Dover and re-opened the public comment period through the public hearing.

I presided over the public hearing, and at its conclusion, I requested that the Applicant and Mr. Reynolds report to me on their progress to reach a settlement. No settlement occurred.

I requested technical assistance from WSLs, which provided the attached Technical Response Memorandum ("TRM"). The TRM recommends issuance of a lease after reviewing the applicable considerations in the SLA Regulations. The WSLs provided a draft lease consistent with its recommendation should the Secretary's final decision adopt the WSLs recommendation.

I consider the record, as established below, complete for the Department's final decision based upon my recommendation that an Order be entered that directs issuance of the lease to the Applicant consistent with the WSLs's recommendation.

## **II. SUMMARY OF THE RECORD**

This Report establishes the following record: 1) the verbatim transcript of the public hearing, as summarized below; 2) the documents introduced as exhibits at the hearing, as identified below, and 3) this Report, including the documents cited herein and the attached TRM and draft SLA leases.

### **A. Public Hearing**

At the public hearing, WSLs' environmental scientist Tyler Brown provided the following exhibits:<sup>2</sup>

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<sup>2</sup>This corrects the transcript's incorrect identification. The Department has no burden of proof to develop the record at the hearing, but provides relevant documents to assist the public in making their public comments. The Department is neutral on the merits of the Project until after the public hearing.

DNREC Ex. 1-The Application;  
DNREC Ex. 2-the Department's public notices of the Application;  
DNREC Ex. 3- public notice of the public hearing; and  
DNREC Ex. 4-public comments of Bruce Reynolds.

Following Mr. Brown's presentation, the Applicants' counsel, Harold Dukes, Esquire, and Asim Gelab, Esquire, of the law firm Tunnell and Raysor, introduced themselves. Mr. Dukes asked Mr. Oswiany questions on direct examination. Mr. Oswiany described how he measured for the proposed dock using a triangulation method that located the middle of his property extending seaward. He also measured the distance from Mr. Reynolds' existing dock and the floating dock of the other adjoining neighbor, Dale Wetzel, who Mr. Oswiany said has a pontoon boat and requires 12' clearance. He indicated that his proposed dock would provide 13' clearance from the Wetzel dock.

He identified the following exhibits: Applicant Ex. 1- a photograph taken from the waterfront showing the Reynolds dock on the left and the Wetzel dock on the right and pipes marking the proposed dock's location; Applicant Exhibit 2-an aerial photograph,. Applicant Exhibit 3- tax map showing the parcels; Applicant Exhibit 4- a photograph of the Reynolds dock and the pipe marking the proposed dock location; Applicant Exhibit 5- a letter from John Rogers, the proposed builder of the dock, indicating that it will be built upon the Department's approval; Applicant's Exhibit 6-the Department's contractor list indicating Mr. Rogers as a contractor.

Mr. Oswiany indicated that he had spoken with the Wetzels and he said that they were fine with his proposed dock. He discussed the water depth. He said it was very shallow at low tide and wished he could go out 300', but the Department would not allow that. Mr. Brown added that the depth at mean low tide was approximately 18". He discussed his negotiations with the Reynolds.

He explained how he tried to accommodate their concerns with navigation and the view of the water by providing them with 14 different designs for the proposed dock.

Dale Wetzel spoke next and indicated he lived next door to the Oswianys and had a dock that goes out 300'. He said he approved of the proposed plans that provided 13' of access.

Jean Wetzel spoke next and mentioned the handicap dock that she needed to get into the boat at low tide.

Ty Reynolds spoke next and complimented Tyler Brown on his work the past year on this matter. He requested that the record include all his correspondence with Mr. Brown. He commented on the Applicant Ex. 4 and agreed with its measurements. He discussed his concern with the property lines and the surveys. He indicated that the area had wedge shaped lots. He indicated that his lot was 16 and parcel number 51. He said the issue is running the lot lines seaward that caused insufficient navigational access. He indicated he had applied to extend his dock to 250' that would help eliminate the congestion. He stated that his biggest issue was the proposed boat lifts and said they would cause extreme congestion. He said he had the pier built and it was changed approximately 20 years ago. He discussed the situation if everyone put a pier in based upon extending the wedge shaped property lines.

Mr. Dukes commented that the Oak Orchard community was the first resort communities in Sussex County created in the 1880s. He also stated that the Applicant had no objection to Mr. Reynolds' application.

The public hearing comments then evolved into a settlement dialogue between the Applicants and Mr. Reynolds discussing alternatives discussing the Applicant's large drawings depicting the present and proposed docks that were marked as Applicant Exhibits 6 and 7. I

concluded the hearing and requested that settlement negotiations continue with a deadline for a settlement in two weeks. No settlement was submitted.

#### B. The Application.

The Applicant owns Lot 15, Sussex County tax parcel. 234-34.12.50.00 in the Oak Orchard development in an unincorporated area of Sussex County. The Applicant purchased the property on December 20, 2013 and the deed indicates a frontage of 50' along the Indian River. The Applicants own a boat and they decided they wanted a boat dock. The WSLs determined that the Application was complete.

The Application includes a property survey, dated December 9, 2015, that indicates a frontage of 46.55' along the Indian River. The Project will be a pier with a 4' wide x 15' long pier from the bulkheaded shoreline channelward from mean high water line to the low mean high water line to connect to 4' wide 205' long pier extending channelward connecting to a perpendicular 6' wide x 30' long dock at the end of the pier with a boat dock with 4 pilings and a boat lift. The width of the Indian River at the proposed dock's site is 7,000'. The proposed dock would be 1,000' from the nearest channel. The Application states that the proposed dock and or any vessel using will be more than 10' from neighboring property lines.

The record includes the WSLs TRM that reviews the applicable SLA regulations and recommends that the Department should approve the Project subject to reasonable conditions included in the attached draft lease, which includes the WSLs approval of the plans on October 15, 2016.

### **III. FINDINGS OF FACT**

I find that the Applicants have met their burden to support the Application, and agree with the WSLs TRM that concludes that the Application complies with the SLA Regulations. The

Project, as a boat dock serving a residence on the Applicants' property, meets the regulatory requirements of the SLA and the Department's SLA Regulations. The Project is an appropriate use of subaqueous lands. I find that the public comments do not support any denial, or the addition of permit conditions other than the WSLS recommends in its draft lease.

The Project will provide a reasonable use of subaqueous lands for a private residence. The Applicants determined that no other alternative was reasonable and the WSLS' experts agree due to the distance from boat slips or boat launching facilities and the right to have water access to waterfront property. The Project will use 1,004 square feet of public subaqueous lands. The Project will not adversely impact navigation because the Project will be more than 10' from the property lines of adjoining properties and their docking facilities, which Section 4.9 of SLA Regulation 7504 established as sufficient for safe navigation. *7 DE Admin. Code 7405*. The water depth at the proposed boat docking area will be sufficient for the Applicants' use of their boat for docking purposes without dredging.

Having found that the Applicants met their regulatory burden, the burden shifted to Mr. Reynolds, who opposed the Application. Mr. Reynolds seeks to include in the record the entire file. The WSLS and the Applicants did not object to this request. Consequently, I reviewed the entire file. My review found no information that was credible and sufficient to support a finding that the proposed dock would unduly interfere with navigation or would encroach on the property lines of adjoining owners.

On the issue of property lines, the WSLS TRM relies on a June 9, 2006 Department of Justice ("DOJ") memorandum on riparian boundaries. The DOJ memorandum cites Delaware court case that established that a waterfront property's ownership if based on the water as a boundary extends to the low mean water line. *Delaware ex rel Buckson v Pennsylvania Railroad*,

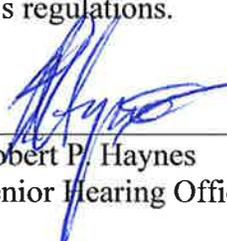
*228 A. 2d. 587 (Del. Super 1967 aff'd 267 2nd. 455 (Del. 1969).* This means that any encroachment must occur within the private subaqueous lands from the high water line to the low water line, and the plans show that there should be more than 10' feet from the adjoining property lines to the proposed dock at the private subaqueous lands boundary lines. Second, if Mr. Reynolds considers that there is a boundary dispute, then the Department has no authority to resolve such a dispute. Instead, the Department must consider the information presented to it in support of and opposition to the Application, and such investigation by the WSLs. The WSLs was satisfied that the Applicants' survey and plans would allow the Project meet the SLA Regulations, which require the 10' clearance from any private property lines. Thus, based upon the plans approved by the WSLs on October 15, 2016, the Project will not infringe on ownership rights and the surface waters are open to public access except for the boat docking areas included in the Department's grant of subaqueous lands leases.

#### **IV. REASONS AND CONCLUSIONS**

The above findings support a decision that the Department should issue the lease that WSLs prepared. The Applicants satisfied their regulatory burden and the Mr. Reynolds' objection and presentation at the public hearing failed to refute the Applicants' convincing evidence based upon the plans and survey. This matter has been pending for a considerable time because of the hope of a mutual agreement that would satisfy the Reynolds' objection. While this matter has been pending, Mr Reynolds received the WSLs' approval to extend his dock to 250'. Despite this approval, Mr. Reynolds has not signed the lease to finalize the lease.

I recommend that the Department enter the following conclusions as ordering paragraphs in a Secretary's Order:

1. The Department has jurisdiction pursuant to *7 Del. C. Section 6006* and *7 Del. C. Chap. 72* to make a determination on the Applicants' subaqueous lands permit application;
2. The Department provided adequate public notice of the Application and of the public hearing, and held the public hearing in a manner required by *7 Del. C. Sections 6003, 6004, and 6006*, and the SLA and the SLA Regulations;
3. The Department considered all timely and relevant public comments in making this determination and this Order and attached Report establishes the record, makes findings of fact and reasons in support of this final agency action;
4. WSLs shall issue a permit approving the Project's use of subaqueous lands based upon the WSLs' draft lease attached to the Report;
5. The lease's conditions and terms will protect the environment from the activity in the subaqueous lands, consistent with the intent of the SLA, and will allow the Applicants to dock their boat for use at their property; and
6. The Department shall publish this Order on its web site and provide such notice of it in a manner required by the law and the Department's regulations.



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Robert P. Haynes  
Senior Hearing Officer



WETLANDS & SUBAQUEOUS  
LANDS SECTION

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## Technical Response Memorandum

To: Robert Haynes, Hearing Officer

Through: Virgil Holmes, Director, Division of Water  
Steven Smailer, Section Manager, Wetlands and Subaqueous Lands Section

From: Tyler Brown, Program Manager, Wetlands and Subaqueous Lands Section

Date: November 21, 2016

Subject: Stephen and Johanna Owsiany Subaqueous Lands Permit Application

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### INTRODUCTION

The Wetlands and Subaqueous Lands Section (WSLS), Division of Water, Department of Natural Resources and Environmental Control received an application from Stephen and Johanna Owsiany to construct a boat docking facility in the Indian River at 32472 River Road, Millsboro, Sussex County, Delaware. The proposed project is subject to the requirements of the Subaqueous Lands Act (7 Del C., Chapter 72) and the Regulations Governing the Use of Subaqueous Lands.

This Technical Response Memorandum (TRM) presents the Wetlands and Subaqueous Lands Section's (WSLS) findings regarding the above-referenced permit application. The TRM also addresses comments presented at the public hearing held on July 11, 2016. The project was placed on 20 day public notice on November 4, 2015. During the public notice period the WSLS received 1 letter of objection from Brooks Reynolds, Jr. The objection stated that the property lines were inaccurately portrayed on the plans contained in the application; the comment further stated that the structure projects too far into the Indian River and would impede navigation, to the docking facility to the east of the proposed project. Lastly, the comment also expressed concerns about the conflict of property lines extended into the waterbody. The letter requested that the WSLS either deny the project or hold a public hearing.

The applicant, Stephen and Joanna Owsiany, originally proposed to install a 4 foot wide by 215 foot long pier, a 6 foot wide by 35 foot long dock, a boat lift with 4 associated pilings, and 4

mooring pilings. Before and during the public hearing Stephen Owsiany presented the alternative application and plans which propose to install a 4 foot wide by 220 foot long pier a 6 foot wide by 30 foot long dock, and a boat lift with 4 associated pilings. The alternative application reduces the overall foot print of the docking facility, addresses the fact that no permanent structure would be constructed on the east side of the dock eliminating navigational issues with the neighbor.

### **Summary/Discussion**

Prior to the public hearing, the WSLs held several meetings and had multiple correspondences with the applicant and their adjacent neighbor, Brooks Reynolds Jr. and his son Ty Reynolds. During the correspondences several proposals were considered but none of the scenarios could be agreed upon. The Reynolds family believes the installation of a structure would infringe on their property line extended, under their interpretation of lot lines extended. As part of the discussion, Brooks and Ty Reynolds indicated that they would possibly be receptive of the project if they were granted a pier extension, similar to what the Owsiany's have proposed. Brooks Reynolds Jr. and Bruce Reynolds did apply for a pier extension and the relocation of their boatlift to a distance of 250 feet channelward of mean high water. No comments were received during the public notice period for the Reynolds pier extension. The WSLs, as of this date, has sent a lease to the Reynolds for their review and signature; upon the return of the lease WSLs will finalize the document.

### **REGULATORY REVIEW- SUBAQUEOUS LANDS**

The following review evaluates the proposed project with respect to the requirements of the Subaqueous Lands Act (7 Del. C., Chapter 72 (Chapter 72) and the Regulations Governing the Use of Subaqueous Lands (Regulations) adopted in accordance with the statute. The Regulations provide the criteria for evaluating projects that are proposed to be constructed in public or private subaqueous lands. The burden is on the applicant to satisfy the Department that the requirements of these Regulations have been met; and if the granting of the permits, lease or approval will result in loss to the public of a substantial resource, that the loss has been offset or mitigated. The public comments received prior to, and at the hearing, as well as the Department's regulatory evaluation, are addressed according to the pertinent sections of the Regulations as follows.

#### **Section 4.0 Criteria of Permits, Leases and Letters of Authorization**

Section 4.0 of the Regulations requires that the application be evaluated based on the consideration of specific performance specifications, standards and other criteria, including Section 4.6 - Public Use Impacts, Section 4.7 - Environmental Considerations, Section 4.8 Requirements for all Structures and Section 4.9 – Boat Docking Facilities. It also states that 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.

The WSLs concludes that public use impacts will be minimal since the structure will be placed between two existing structures, which have already limited public use in the immediate area. The proposed design does meet the requirements for all boat docking structures and doesn't exceed 250 linear feet in length.

#### **Section 4.6 Public Use Impacts**

Under this section the Department must consider, among other things, the potential effect on the public and the extent to which the public would benefit or suffer detriment from the project. Additionally, the Department must consider the degree to which the applicant's primary purpose could be realized by alternatives that would minimize or avoid impacts. The public use impacts most relevant to the proposed project are discussed in Sections 4.6.3 and 4.6.5, below.

**4.6.3 Navigation - The potential effect on the public with respect to commerce, navigation, recreation, aesthetic enjoyment, natural resources, and other uses of the subaqueous lands.**

The proposed facility will be placed within State waters of the Indian River, and requires a lease from the State of Delaware. Under Section 4.9 Boat Docking Facilities, paragraph 4.9.2.5 states: In no case shall a structure extend more than 20 percent of the width of the waterbody, nor shall it extend seaward more than 250 feet, except under exceptional circumstances necessary to provide access for needed commerce. In tidal natural features 20 percent is measured from the mean low water mark of one side of the waterbody to the mean low water mark of the other. The proposed structure is proposed to extend 250 feet channelward of the mean high water mark and is far from exceeding 20 percent of the width of the waterbody. The length of the structure is justified due to the shallow water depths. The department verified the bathymetry on a normal mean low tide with a depth of 17 inches 250 feet from the mean high water line. Navigation issues will be minimal since the structure is proposed to be installed between two existing structures that extend to 250 feet, or will extend to 250 linear feet, in accordance to a recently approved lease.

**4.6.5 Avoidance - The extent to which the applicant's primary objectives and purposes can be realized without the use of such lands (avoidance).**

The applicant owns 46 feet and 5 inches of waterfront property; this is the only area where the applicant can construct a facility on their riparian property boundary. The applicant does have the right to wharf and access the water from their riparian property boundary.

However, the applicant could moor a vessel in subaqueous lands, without a permit, adjacent to their property and wade to and from their vessel; although, this can be dangerous considering the distance the applicant would have to wade. There is also a State-owned boat ramp approximately 2 miles from the applicant's residence; this would require the applicant to trailer the vessel for each use. Lastly, there are several marinas along River Road that the applicant could consider; although, its unknown of the marinas availabilities and cost.

**4.6.6 Minimization - 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.**

The applicant has considered reducing the length of the structure in order to minimize impacts and address the adjacent neighbors' concerns, but the minimization would create an impact that wouldn't achieve their goal. The structure reduction wouldn't allow them to berth a vessel due to shallow waters.

**Section 4.7 Environmental Considerations**

**4.7.1.1 Any impairment of water quality, either temporary or permanent which may reasonably be expected to cause violation of the State Surface Water Quality Standards.**

**This impairment may include violation of criteria or degradation of existing uses.** The proposed structure is expected to have minimal adverse impacts to water quality. The facility will primarily be used to berth one vessel and does not include any refueling, maintenance, or convenience facilities which could be sources of potential contaminants. The leaking of contaminants, such as, gas and oil, into the waterway from the vessel alone is expected to be minimal. The treated lumber used for the facility can leach contaminants; however, this is mostly during the first few months after installation and can be considered minimal.

**4.7.1.3 Any harm to aquatic or tidal vegetation, benthic organisms or other flora and fauna and their habitats. 4.7.1.4 Any loss of aquatic habitat.** The dock will cause some shading, but should allow for the growth of aquatic vegetation and the continued use of the area by benthic organisms. The waterbody is currently used by the general public and currently contains hundreds of docks and the addition of one vessel and docking facility should not have a significant adverse impact.

**4.7.1.2 Any effect on shellfishing, finfishing, or other recreational activities, and existing or designated water uses.** The primary use of Indian River is for adjacent property owners to gain access to the Inland Bays and for the general public's use. A secondary use would be crabbing and fishing. The proposed structure would allow the applicant to use Indian River for these same reasons and would not impede others from gaining access to, or using, Indian River.

#### **Section 4.7.5 Other Considerations**

**4.7.5.2 The degree to which the project incorporates sound engineering principles and appropriate materials of construction.**

The structure is proposed to use CCA treated lumber and will be constructed to typical standards by a local marine contractor, as is common for the majority of the structures in the vicinity.

**4.7.5.3 The degree to which the proposed project fits in with the surrounding structures, facilities and uses of the subaqueous lands and uplands.** There are numerous docks located both east and west of the project location. Structures in the area range from 60 feet long to 600 feet long. The use of the docks varies from berthing motorized vessels for residential use and for the operations of marinas.

#### **Section 4.8 Requirements for all Structures**

**4.8.4 Structures shall not interfere with navigation, public, or other rights.** This structure meets the requirements stated in the regulations for proper navigation. The adjacent neighbor claims that a portion of the proposed structure may be within their property line extended or the associated setback, which is the basis for their opposition and the associated hearing request.

#### **CONCLUSION**

The WSLs finds that the activity described in the application for the Subaqueous Lands Permits by Stephen and Johanna Owsiany, including installation of a pier, dock, and boatlift, complies with the Regulations administered by the WSLs. Additionally, the structure dimensions are consistent with the applicable regulations, guidance documents, and the nearby structures. The

WSLS finds that the structure will not negatively affect the navigation of the public or their adjacent neighbors. The Reynolds family has applied for a pier extension, and the WSLS has sent the lease for their signature. Upon WSLS receipt the structure should be issued further reducing any navigable concerns. After reviewing the associated surveys, plot plan, deeds, and after evaluating the legal opinion from the State of Delaware Department of Justice to DNREC dated June 9, 2006 referencing Riparian Boundaries on Navigable Rivers and Across Accretions, the WSLS's opinion is that the proposed construction of the Owsiany's dock is within their riparian boundaries. The proposed installation of the Owsiany's docking facility and the proposed extension of the Reynolds structure, in WSLS' opinion, appropriately addresses the navigational concerns raised by the Reynolds.

In the event the Secretary determines that this project should be approved, we have included draft permits with appropriate conditions for consideration.



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES &  
ENVIRONMENTAL CONTROL  
**DIVISION OF WATER**  
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WETLANDS & SUBAQUEOUS  
LANDS SECTION

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Stephen and Johanna Owsiany  
247 West Linfield Road  
Royersford, PA 19468  
Tax Parcel: 2-34-34.12-50.00

Subaqueous Lands Lease: SL-252/15  
Associated Permits:  
Date of Issuance:  
Construction Expiration Date:

**SUBAQUEOUS LANDS LEASE**

**GRANTED TO:**

**Stephen and Johanna Owsiany**

**TO CONSTRUCT AND UTILIZE:**

**A 4 foot wide by 220 foot long pier  
A 6 foot wide by 30 foot long linear dock  
A boat lift with 4 associated pilings**

**OCCUPYING PUBLIC SUBAQUEOUS LANDS TOTALING:**

**1004 square feet**

**LOCATED CHANNELWARD OF MEAN LOW WATER:**

**In the Indian River  
at 32472 River Road  
Millsboro, Sussex County, Delaware**

Pursuant to the provisions of 7 Del. C. §7205, and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 2016, to construct the above-referenced project in accordance with the approved plans for this Lease (4 sheets) as approved on October 26, 2016 and the application dated May 15, 2016, and received by this Department on June 25, 2015, and with a public hearing held on July 11, 2016.

WHEREAS, the State of Delaware is the owner of ungranted subaqueous lands lying beneath the waters of Indian River; and

WHEREAS, Stephen and Johanna Owsiany, owner(s) of certain lands adjoining to the Indian River have applied for permission to occupy 1004 square feet of those public lands to install the indicated structures for private use; and

*Delaware's good nature depends on you!*

WHEREAS, pursuant to the provisions of 7 Del. C. §7203, the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

This Lease shall be continued for a period of **ten (10) years** or so long as the conditions attached to the Lease are adhered to, whichever is the shorter in time. Upon the expiration of the ten-year term, this Lease shall expire and become null and void, unless prior thereto the lessee shall have applied for and received a renewal of this Lease. A renewal may be denied if the State determines that the Lease is no longer in the public interest.

NOW THEREFORE, this Lease is issued subject to the attached Subaqueous Lands Lease General Conditions and the following special conditions:

### **SPECIAL CONDITIONS**

1. This Lease shall not be considered valid until it has been duly recorded in the office for the Recorder of Deeds in and for the appropriate County, and a copy of the recorded Lease is returned to, and has been received by, the Department.
2. This approval is in accordance with the plans and application submitted to the Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.
3. The work authorized by this Lease is subject to the terms and conditions of the attached Department of the Army Permit Number CENAP-OP-R SPGP-20.
4. This Lease is granted for the purpose of berthing no more than four vessels, as indicated on the approved plans. Any other use without prior approval shall constitute reason for this Lease being revoked.
5. The authorized area of structure over public subaqueous lands is 1004 square feet, represented by the 6 by 30 foot long dock, 4 by 205 foot long pier, and a boatlift with 4 associated pilings.
6. The structures authorized by this Lease shall be constructed and maintained in a manner so as to assure water access to adjacent properties.
7. No portion of the structure shall be constructed using creosote treated lumber.
8. No portion of the structure authorized by this Lease shall exceed the dimensions for that structure identified on page one of this Lease.

IN WITNESS WHEREOF, (We), Stephen and Johanna Owsiany, have caused this instrument to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

By: \_\_\_\_\_  
Stephen G. Owsiany (Lessee)

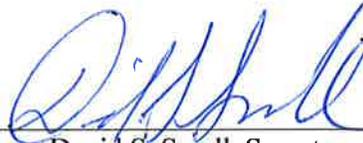
By: \_\_\_\_\_  
Johanna M. Owsiany (Lessee)

Sworn and Subscribed before me on  
this \_\_\_\_ day of \_\_\_\_\_, 2016

(Notary Seal)

\_\_\_\_\_  
Notary

IN WITNESS WHEREOF, I, David S. Small, Secretary of the Department of Natural Resources and Environmental Control, have hereunto set my hand this 10<sup>th</sup> day of February, 2016.



\_\_\_\_\_  
David S. Small, Secretary

Department of Natural Resources and Environmental Control



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES &  
ENVIRONMENTAL CONTROL  
**DIVISION OF WATER**  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

WETLANDS & SUBAQUEOUS  
LANDS SECTION

TELEPHONE (302) 739-9943  
FAX (302) 739-6304

**SUBAQUEOUS LANDS LEASE  
CONTRACTOR'S COMPLETION REPORT  
POST-CONSTRUCTION**

**Subaqueous Lands Lease Number:** SL-252/15

**Name:** Stephen and Johanna Owsiany

**Address:** 247 West Linfield Road  
Royersford, PA 19468

**Parcel #:** 2-34-34.12-50.00

*I hereby certify that I have constructed the project authorized by the above-referenced Subaqueous Lands Lease in accordance with the approved plans for the project.*

\_\_\_\_\_  
**Printed Name of Contractor**

\_\_\_\_\_  
**Name of Company**

\_\_\_\_\_  
**Contractor's Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Telephone Number**

Upon completion of construction, this form shall be completed, signed by the contractor, and mailed to the Wetlands and Subaqueous Lands Section at:

**DNREC  
Wetlands and Subaqueous Lands Section  
89 Kings Highway  
Dover, Delaware 19901**

Or faxed to the Wetlands and Subaqueous Lands Section at: **302-739-6304**

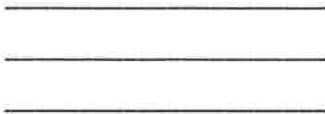
***This form must be received by the Department within ten days of the date that construction is completed.***

=====  
*For official use only*

*Compliance inspection date* \_\_\_\_\_ *Built in accordance with plans*  *Yes*  *No*

*Scientist:* \_\_\_\_\_

*Delaware's good nature depends on you!*



Affix  
Proper  
Postage  
Here

**Mail to:**  
DNREC – Wetlands and Subaqueous Lands Section  
89 Kings Highway  
Dover, DE 19901

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**WETLANDS AND SUBAQUEOUS LANDS SECTION**

**LEASE NO.: SL-252/15**

**CONSTRUCTION EXPIRATION DATE:** \_\_\_\_\_

**TO CONDUCT THE FOLLOWING ACTIVITIES:**

**TO CONSTRUCT AND UTILIZE:**

- A 4 foot wide by 220 foot long pier
- A 6 foot wide by 30 foot long linear dock
- A boat lift with 4 associated pilings

**LOCATED ON PUBLIC SUBAQUEOUS LANDS:**

In the Indian River  
at 32472 River Road  
Millsboro, Sussex County, Delaware

**ISSUED TO: Stephen And Johanna Owsiany**

**DISPLAY THIS CERTIFICATE IN A HIGHLY  
VISIBLE LOCATION ON THE JOB SITE.**

**Authorized by:** \_\_\_\_\_