



**US Army Corps
of Engineers**

Philadelphia District

1650 Arch Street, Fifth Floor
Philadelphia, PA 19103-2004
ATTN: CENAP-OP-R

Public Notice

Comment Period Begins: January 29, 2025

Comment Period Ends: February 28, 2025

File Number: NAP-2019-0288-46

File Name: PIERS 34 AND 35 REDEVELOPMENT

Contact: David J. Caplan

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This District has received an application for a Department of the Army permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

The purpose of this notice is to solicit comments and recommendations from the public concerning issuance of a Department of the Army permit for the work described below.

APPLICANT: Desert Diamond 34, L.P., c/o Ensemble Investments
444 West Ocean Boulevard
Suite 1108
Long Beach, CA 90802

WATERWAY: Delaware River

LOCATION: Noted below:

- A) Project Site - Piers 34/35 South is located at 735 South Christopher Columbus Boulevard along the west bank of the Delaware River in Philadelphia, PA; [Latitude: 39.938403° North; Longitude: -75.141508° West];
- B) Mitigation Site 1 – Pier 40 North is located at the waterward terminus of Ellen Street, north of Waterfront Square, along the west bank of the Delaware River in Philadelphia, PA [Latitude: 39.962004° North; Longitude: 75.132845° West];
- C) Mitigation Site 2 – Pier 56 South is located just north of the waterward terminus of Reed Street, along the west bank of the Delaware River in Philadelphia, PA [39.930366° North; 75.140344° West].

ACTIVITY: Desert Diamond 34, L.P., a Pennsylvania Limited Partnership, c/o Ensemble Investments, LLC, is seeking Department of the Army authorization to construct a 22-story residential building (Tower) with mixed use space on the ground floor and a parking garage (Garage) within a portion of the existing footprint of Pier 34 and a public access park and walkway (Park) on Pier 35.

It should be noted that on July 31, 2019, this office issued a public notice advertising the proposed construction of the 22-story, 300 apartment unit, residential tower and garage on Pier 34 and a park and elevated walkway on Pier 35 as described herein. However, in our previous

Public Notice for the proposed project the applicant proposed on-site habitat enhancement as compensatory mitigation for the associated losses of aquatic habitat.

The applicant has re-applied for the proposed work. The revised permit application entails an overall reduction in proposed impacts from, 14,890 square feet to 12,078 square feet, associated with the construction of the tower and parking garage. A new mitigation package is discussed below. The change in impacts comes from minimization of the overwater platform area between Pier 34 and Pier 35 with the inclusion of a section open to the waters below. The final project would result in the discharge of fill materials within 20,933 square feet of waterway below the high tide line from bulkhead backfill, concrete fill within steel piles, and scour protection for the stormwater outfalls. Of this footprint, 16,667 square feet is associated with Pier 34 for bulkhead backfill and scour protection, 4,202 square feet is associated with Pier 35 for bulkhead backfill and overwater platforms, and 124 square feet is associated with the overwater platform between the two piers.

Tower and Parking Garage

The Project would remove approximately 10,100 square feet (0.23 acres) of collapsed and partially collapsed low deck portion of Pier 34 at the outboard end of the pier. All removed material would be transported offsite for proper disposal or recycling. Granular fill would be reused onsite as structural fill, as appropriate. Construction of a new sheet pile bulkhead supported by plumb and spur H-piles would be placed around the remaining 33,200 square foot (0.76 acres) portion of the pier. The existing earthen fill, along with the concrete seawall and timber decking within the new sheet pile would be removed prior to installing new fill within the same footprint. New pre-cast concrete piles topped with a pre-cast concrete pile cap and concrete roadway U-beams would be installed over approximately 11,809 square feet (0.27 acres) of water/mudflat, creating a high deck structure between Piers 34 and 35 that would physically support the Plaza. The center of the high deck would have a 1,915 square foot opening to allow sunlight to reach the mudflat, and at least 10 percent of the high deck would be surfaced with steel grating to allow diffuse sunlight through the structure. With the opening, the net overwater coverage of the high deck is approximately 9,894 square feet (0.23 acres). When complete, the residential building would result in 1,500 square feet (0.03 acres) of overwater coverage from the portion of the roof that overhangs the Delaware River on the north side of Pier 34.

Pier 35 Park (elevated walkway)

The proposed Pier 35 Park would be comprised of an elevated walkway partially constructed over the original Pier 35 footprint, extending toward, but remaining inside, the historic Pierhead Line. The elevated walkway would result in approximately 11,701 square feet (0.27 acres) of new narrow (i.e., 12 feet wide) overwater structures designed to minimize shading impacts to aquatic habitat of the Delaware River. The Pier 35 elevated walkway will be a steel structure supported by (160) one hundred and sixty 16" D (diameter) steel pipe piles; each pile would be cut to the proper elevation and filled with approximately 0.31 cubic yards (CY) of flowable concrete per pile (50.1 cubic yards in sum total). Once the piles are in place, the walkway would be constructed using structural steel spanning each pile, with a surface consisting of steel grating or wood planks and a steel railing. The park would allow for pedestrian connections to Christopher Columbus Boulevard and the Delaware River Trail, providing an area for outdoor public recreation with visual and physical access to the riverfront.

A turbidity curtain would be deployed around all in-water work areas described herein.

For further details, please see the attached plans as follows:

- A) **PIERS 34 AND 35 PROJECT PLANS:** 16-page plan set prepared by S.T. Hudson on 6/12/2019, entitled identified as “Proposed: Pier Rehabilitation; At: City of Philadelphia; County of: Philadelphia; Application By: Desert Diamond, 34 LP,” File Number E2030, Contract Number H-7478-01, Sheets 15 and 16b un-revised, Sheets 1-3 last revised 8/21/2020, Sheets 4-8, 11, and 13 last revised 6/10/2020, Sheets 9 and 10 last revised 7/21/2020, Sheets 12 and 14 last revised 8/25/24;
- B) **PIERS 40 NORTH AND 56 SOUTH CONDITION SURVEYS:** 1-page plan prepared by S.T. Hudson in August 2023 and entitled “Pier 40 North - Mitigation, Condition Survey Plan,” Drawing Number 1, File G-1245, and 1-page plan prepared by S.T. Hudson in August 2023 and entitled “Pier 56 South - Mitigation, Condition Survey Plan,” Drawing Number 2, File G-1245, both un-revised;
- C) **PIER 40 NORTH MITIGATION PLANS:** 2-page plan set prepared by S.T. Hudson on 10/06/2024 and entitled “Pier 40 North - Mitigation, Demolition Plan,” Drawing Number S-1 and “Pier 40 North – Mitigation, Demolition Sections,” Drawing Number S-2, File G-1249, both un-revised. noted as “For Information Only” dated 1-02-25; and
- D) **PIER 56 SOUTH MITIGATION PLANS:** 2-page plan set prepared by S.T. Hudson on 10/06/2024 and entitled “Pier 56 South - Mitigation, Demolition Plan,” Drawing Number S-3 and “Pier 56 South – Mitigation, Demolition Sections,” Drawing Number S-4, File G-1249, both un-revised. noted as “For Information Only” dated 1-02-25.

PURPOSE: The applicant’s stated purpose is for the redevelopment of two vacant and derelict piers in order to provide for residential and mixed-use development.

CORPS EVALUATION FACTORS:

The decision whether to issue a permit will be based on an evaluation of the activity's probable impact including its cumulative impacts on the public interest. The decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the work must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the work will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and welfare of the people. A Department of the Army permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act.

Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

CULTURAL RESOURCES AND TRIBAL TRUST

Through the original permit application review between 2019 and 2022, the USACE Cultural Resource Specialist determined that the disturbances to Piers 34 and 35 would constitute an adverse effect to historic properties eligible for or listed on the National Register of Historic Places. Specifically, Pier 35 includes archaeological site (36PH0249) which is eligible for inclusion on the Register. After USACE coordination with the SHPO and tribal governments, this office and the applicant signed a memorandum of agreement, fully executed on August 15, 2022, to ensure that any action taken by this office will not adversely affect any historic property or archaeological resource if present. Such determination of effect to cultural resources did not include the currently-proposed mitigation at Piers 40 North and 56 South. As such, this office has determined that the proposed removal of Piers 40 and 56 as compensatory mitigation will require additional investigations to evaluate their eligibility for listing on the National Register of Historic Places. The USACE will consult with the PASHPO, the Tribes and other consulting parties for the final eligibility determination.

ENDANGERED SPECIES ACT (ESA)

A preliminary review of this application by this office indicates that species listed under the Endangered Species Act (ESA) or their critical habitat pursuant to Section 7 of the ESA, as amended, may be present in the action area and the proposed work is not likely to adversely affect those listed species. Within the Delaware River, the two species of fish that occur or have the potential to occur within the action area include the shortnose sturgeon (Acipenser brevirostrum) and Atlantic sturgeon (Acipenser oxyrinchus). Designated Critical habitat for the Atlantic sturgeon is located within the project's action area. ESA Section 7 consultation will be concluded prior to the final decision on this permit application.

ESSENTIAL FISH HABITAT (EFH)

The Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended, requires all federal agencies to consult with the National Marine Fisheries Service (NMFS) on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). A preliminary review of this application indicates that no EFH is present within the project area. However, it is noted that prey species for managed EFH species may be present within the project site. As a result, USACE will be coordinating with the NMFS to ensure impacts to those aquatic resources will be minimized. In order to avoid or minimize impacts to those prey species and their habitats, the use of seasonal restrictions and additional conservation recommendations may be incorporated into this permit decision.

COASTAL ZONE MANAGEMENT ACT

In accordance with Section 307(c) of the Coastal Zone Management Act of 1972, applicants for Federal Licenses or Permits to conduct an activity affecting land or water uses in a State's coastal zone must provide certification that the activity complies with the State's Coastal Zone Management Program. The applicant has stated that the proposed activity complies with and

will be conducted in a manner that is consistent with the approved State Coastal Zone Management (CZM) Program. No permit will be issued until the State has concurred with the applicant's certification or has waived its right to do so. Comments concerning the impact of the proposed and/or existing activity on the State's coastal zone should be sent to this office, with a copy to the State's Office of Coastal Zone Management. An application has been submitted to the Pennsylvania Department of Environmental Protection (PADEP) for the necessary State approvals, which would include the required CZM consistency concurrence.

WATER QUALITY CERTIFICATE:

In accordance with Section 401 of the Clean Water Act, a Water Quality Certificate is necessary from the State government in which the work is located. Any comments concerning the work described above which relate to Water Quality considerations should be sent to this office with a copy to the State.

The evaluation of the impact of the work described above on the public interest will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404(b)(1) of the Clean Water Act.

MITIGATION

COMPENSATORY MITIGATION: In accordance with Sections 33 CFR 325.1(d)(7) and 33 CFR 332.4 (b)(1), applicants wishing to discharge fill material into waters of the U.S. must include a statement on how impacts to waters of the United States are to be compensated for or a statement explaining why compensatory mitigation should not be required for the proposed impacts. The applicant has stated that they propose to restore aquatic habitat with the removal of a section of Pier 40 North and the removal of debris and fill materials from between the failed portions of Pier 56 as noted below.

A turbidity curtain would be deployed at both mitigation sites.

Pier 40 North - Over-Water Removal: Most of Pier 40 North, located at Ellen Street north of Waterfront Square, is a filled pier structure with a timber cribbing perimeter. However, a portion of its southern edge and the entire outboard section of the pier comprises timber high deck structure with an overwater platform. The waterward portion of Pier 40 is deteriorated, and the timber high deck apron along the southern edge currently supports a failing concrete slab that is at risk of collapsing. A survey conducted in August 2023 confirmed that the waters beneath the high deck areas are subject to tidal flow and therefore constitute overwater coverage. The end of the pier is about 66 feet wide and 140 feet long (9,240 square feet or 0.21 acres) and the apron along the southern edge comprises about 1,260 square feet (0.03 acres), for a total of 0.24 acres of high deck and associated overwater coverage. Any structural debris observed beneath the platforms would be removed, and the piles would be cut at the mudline. The high deck areas of Pier 40 comprise overwater coverage that would be removed as in-kind compensatory mitigation for shading resulting from the Project, and the filled portion of the pier would be left in place.

Pier 56 South – Fill and Debris Removal: Pier 56 South, located just north of Reed Street, is currently in an advanced state of deterioration with exposed timber clamps and pile caps

extending about 250 feet waterward where they meet the remnants of a timber crib structure containing stone and soil fill material. The timber materials are located in inter-pier mudflat habitat similar to that affected by the Project, and the timber cribbing and fill material are located mostly in open waters beyond the mean low water (MLW) elevation. A survey conducted in August 2023 estimated that the timber remnants and concrete footings that were visible above the mudline comprise approximately 3,044 square feet of fill material. The mounded fill material associated with the remnants of Pier 56 South, at the waterward extent of the structure, has a footprint of about 9,500 square feet. Together, the mounded fill and timber and concrete remnants comprise a total of 12,544 square feet (0.29 acres) of fill material that would be removed. Because these remnants of Pier 56 South can be clearly identified as fill material within the Delaware River, the removal of fill within this 0.29-acre area is counted as in-kind mitigation at a 1:1 ratio for the Project. To satisfy the remaining requirement for 0.145 acres of mitigation that is not addressed by in-kind fill removal, the mudflat habitat within the 19,362-square foot (0.44-acre) footprint of Pier 56 that does not contain fill would be enhanced by the fill removal. The section of Pier 56 where the timber clamps and pile caps would be removed is fully deteriorated to the extent that it no longer contains fill material and is exposed to tidal action, and therefore does not contribute to the in-kind mitigation. At a ratio of 1.5:1 for enhancement, this area would constitute an additional 0.29 acres of mitigation, for a total mitigated area of 0.58 acres for the Project at Pier 56.

SUBMISSION OF COMMENTS AND PUBLIC HEARING REQUEST:

Any comments received will be considered by this office to determine whether to issue, modify, condition, or deny a permit for this proposed project. To make this decision, comments are used to assess the probable impact on the public interest. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Comments on the proposed work must be submitted, in writing, within the comment period indicated in the header above. Any person may request, within the comment period specified in this notice, that a public hearing be held to consider this application. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Requests for a public hearing must be in writing and state the reasons for holding a public hearing.

Please provide any comments, request for a public hearing, or requests for additional information to the Regulatory Project Manager indicated above. All Public Notices are posted on our website at: <https://www.nap.usace.army.mil/Missions/Regulatory/Public-Notices/>.

Additional information concerning this permit application may be obtained by calling Mr. David Caplan at (215) 656-6731 (office) or 215-605-7029 (mobile), via email at David.J.Caplan@usace.army.mil or PhiladelphiaDistrictRegulatory@usace.army.mil, or writing to this office at the above address.

FOR: Todd Schaible
Chief, Regulatory Branch

Enclosure