



**US Army Corps
of Engineers**
Philadelphia District

Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3390
ATTN: CENAP-OP-R

Public Notice

Public Notice No. CENAP-OP-R-2012-695	Date AUG 09 2012
Application No. CENAP-OP-R-	File No. CENAP-OP-R-2012-695-23
In Reply Refer to: REGULATORY BRANCH	

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: Cono R. Namorato

AGENT: Evelyn M. Maurmeyer, Ph.D., Coastal and Estuarine Research, Inc.

WATERWAY: Lewes and Rehoboth Canal

LOCATION: 85 Anchor Road (Lot 95), North Shores, Rehoboth Beach, Sussex County, Delaware (Tax Map 3-34-8.17-64.00).

ACTIVITY: The applicant, Cono R. Namorato, has applied for a Department of the Army permit to maintain an existing bulkhead, pier, dock and pilings on the Lewes and Rehoboth Canal at 85 Anchor Road (Lot 95), North Shores, Rehoboth Beach, Sussex County, Delaware (Tax Map 3-34-8.17-64.00). The dimensions of the structures are indicated on the attached plans identified as E-1 through E-4.

The structures were constructed by a previous owner and have been in place since prior to 1990 when Mr. Namorato purchased the property. The project first received authorization from the DDNREC, Subaqueous Lands Program on October 19, 1987 under permit SP-1009/87 issued to Mr. Gerald M. Orr. That authorization was later transferred to Mr. Namorato on May 13, 2009 under state permit SP465/08. The project also received a Delaware Coastal Zone Consistency determination from the DDNREC, Coastal Program on April 2, 2009 (FC 09.047).

PURPOSE: The purpose of the project is to provide private recreational access to navigable waters for navigational purposes.

On April 10, 2008, the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency published a *Final Rule on Compensatory Mitigation for the Losses of Aquatic Resources* (33 CFR 325 and 332 and 40 CFR 230). The rule took effect on June 9, 2008. In accordance with 33 CFR Part 325.1(d)(7) of the rule, the applicant has stated that the proposed project has been designed to avoid and minimize adverse effects on the aquatic environment to

the maximum extent practicable, and has further documented that compensatory mitigation is not necessary. The following aspects and features of the project demonstrate the applicant's efforts in this regard. The project cannot be avoided entirely, because it is, by its nature, a water-dependent activity. The project is for maintenance only and has been designed not only to entirely avoid dredging and discharges of dredged or fill material into waters of the United States, but also has been designed to avoid impacts to wetlands and submerged aquatic vegetation. It should be noted that the structures have been in place since prior to 1990 and in that time there has been no need to conduct dredging at the site or to place fill in waters of the U.S. for any reason. In addition, the structures have been designed to the minimum sizes necessary to support the vessel which are moored at the facility and are consistent with the sizes of other navigational structures within the L&R Canal. Because no wetlands or other special aquatic sites would be impacted by the project, the applicant is not proposing to conduct any compensatory mitigation for the work.

A preliminary review of this application indicates that the proposed work would not affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act as amended. As the evaluation of this application continues, additional information may become available which could modify this preliminary determination.

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.

Comments on the proposed work should be submitted, in writing, within 15 days to the District Engineer, U.S. Army Corps of Engineers, Philadelphia District, Wanamaker Building, 100 Penn Square East, Philadelphia, Pennsylvania 19107-3390.

Review of the National Register of Historic Places indicates that no registered properties or properties listed as eligible for inclusion therein are located within the permit area of the work.

The Philadelphia District has determined that the proposed project is of such limited nature and scope that little likelihood exists for the proposed action to impact an historic property. The District has determined that the project will have no effect on properties eligible for or listed in the National Register of Historic Places.

Essential Fish Habitat: The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act 1996 (Public Law 104-267), requires all Federal agencies to consult with the National Marine Fisheries Service on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely effect Essential Fish Habitat (EFH).

Effects of the Project: The project is located in Essential Fish Habitat identified on sheet 81 of the *Guide to Essential Fish Habitat Designations in the Northeastern United States, Volume IV: New Jersey and Delaware*, dated March 1999. The following managed species of fish have been listed in the guide as occurring in the vicinity of the project: winter flounder (*Pleuronectes americanus*), windowpane flounder (*Scophthalmus aquosus*), red hake (*Urophycis chuss*), bluefish (*Pomatomus saltatrix*), Atlantic sea herring (*Clupea harengus*), long finned squid (*Loligo pealei*), short finned squid (*Illex illecebrosus*), Atlantic butterfish (*Peprilus triacanthus*), summer flounder (*Paralichthys dentatus*), scup (*Stenotomus chrysops*), black sea bass (*Centropristus striata*), surf clam (*Spisula solidissima*), ocean quahog (*Artica islandica*), spiny dogfish (*Squalus acanthias*), Atlantic mackerel (*Scomber scombrus*), king mackerel (*Scomberomerus cavalla*), Spanish mackerel (*Scomberomerus maculatus*), cobia (*Rachycentron canadum*), sandbar shark (*Carcharhinus obscurus*), sand tiger shark (*Odontaspis Taurus*), and dusky shark (*Carcharhinus plumbeus*).

Analysis of the Effects: The previously conducted work which is the subject of this application occurred prior to 1990 in a small area of waters within an active navigational canal (L&R Canal) subject to regular boating activity and substantial wake energy and potential erosion. For these reasons the work area is and was an unlikely spawning or nursery area for the managed species. Consequently, concentrations of the sessile life stages (eggs and larva) of the listed species are not expected to be within the area under review. In addition, the work was limited to the installation of timber structures only and did not involve any dredging in waters of the US, nor did the work impact wetlands or aquatic vegetation. The pelagic adults and juveniles of the listed species are highly mobile and capable of avoiding such impacts as may have been associated with the work.

Corps of Engineers View: Based upon the above analysis, the Corps of Engineers has determined that the proposed maintenance project would not have substantial direct, indirect, site-specific, or habitat-wide impacts on EFH, or upon the managed species and their life stages listed in the above referenced EFH guide, either individually, cumulatively or synergistically. The proposed project would not eliminate, diminish, nor disrupt the functions of EFH.

Proposed Mitigation: Because the impacts of the proposed work on EFH have been determined to be minor, the Corps of Engineers has determined that mitigative measures are not necessary.

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

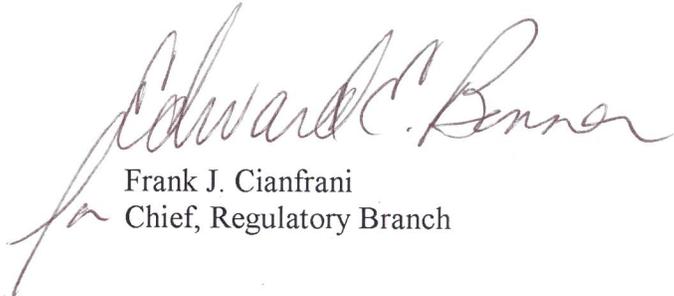
Zone Management Program. The applicant has stated that the proposed activity complies with and will be conducted in a manner that is consistent with the approved State Coastal Zone Management (CZM) Program. No permit will be issued until the State has concurred with the applicant's certification or has 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.

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) of the Clean Water Act.

Any person may request, in writing, to the District Engineer, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for a public hearing shall state in writing, with particularity, the reasons for holding a public hearing.

Additional information concerning this permit application may be obtained by calling John Brundage at 302-736-9763 between the hours of 1:00 and 3:30 p.m. or writing this office at the above address.



Frank J. Cianfrani
Chief, Regulatory Branch

**AFTER-THE-FACT (ATF) APPLICATION:
110' BULKHEAD; 24' X 5' PIER; 5' X 19' DOCK AND
SIX (6) FREE-STANDING MOORING PILES**

IN: Lewes and Rehoboth Canal
 AT: 85 Anchor Road, North Shores
 Rehoboth Beach, Sussex Co., DE 19971
 (Tax Map Parcel #3-34-8.17-64.00)

APPLICANT: Cono R. Namorato
 DATE: February, 2009



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 Figure 4
E-1

Site location on USGS topographic map, Rehoboth Beach, Delaware quadrangle. Site is adjacent to the Lewes and Rehoboth Canal at 85 Anchor Road, North Shores, Rehoboth Beach, Sussex County, Delaware. Scale: 1" = 2,000'.

AFTER-THE-FACT (ATF) APPLICATION:
 110' BULKHEAD; 24' X 5' PIER; 5' X 19' DOCK AND
 SIX (6) FREE-STANDING MOORING PILES
 IN: Lewes and Rehoboth Canal
 AT: 85 Anchor Road, North Shores
 Rehoboth Beach, Sussex Co., DE 19971
 (Tax Map Parcel #3-34-8.17-64.00)
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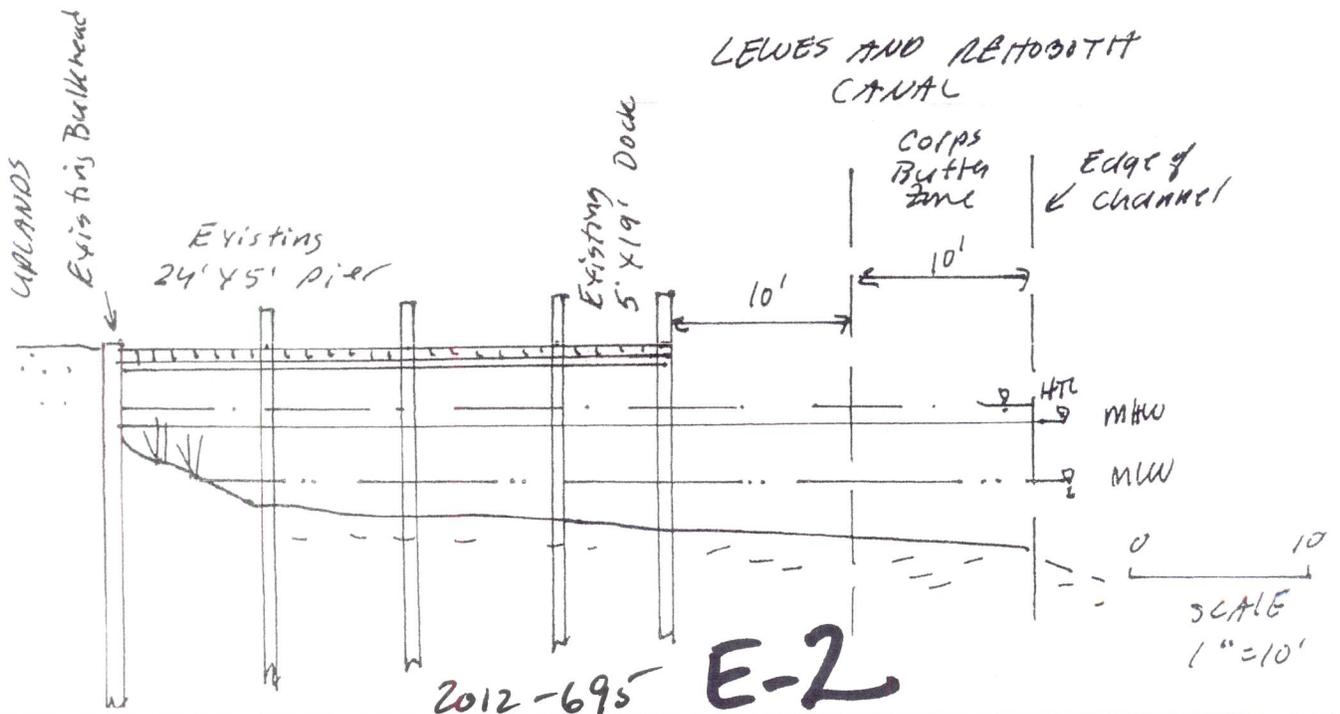
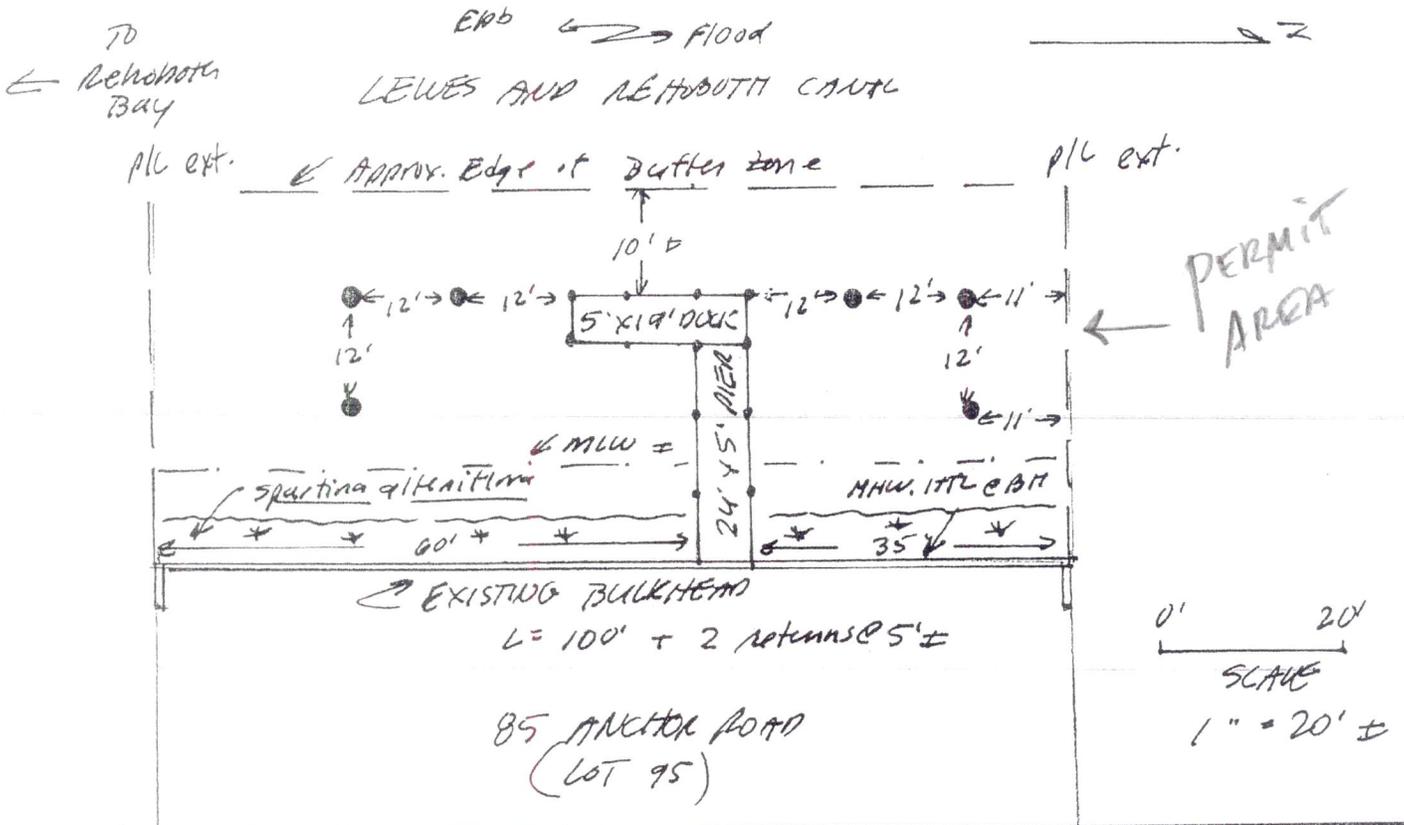


Figure 8 Plan view and cross-section sketches of existing structures.

**AFTER-THE-FACT (ATF) APPLICATION:
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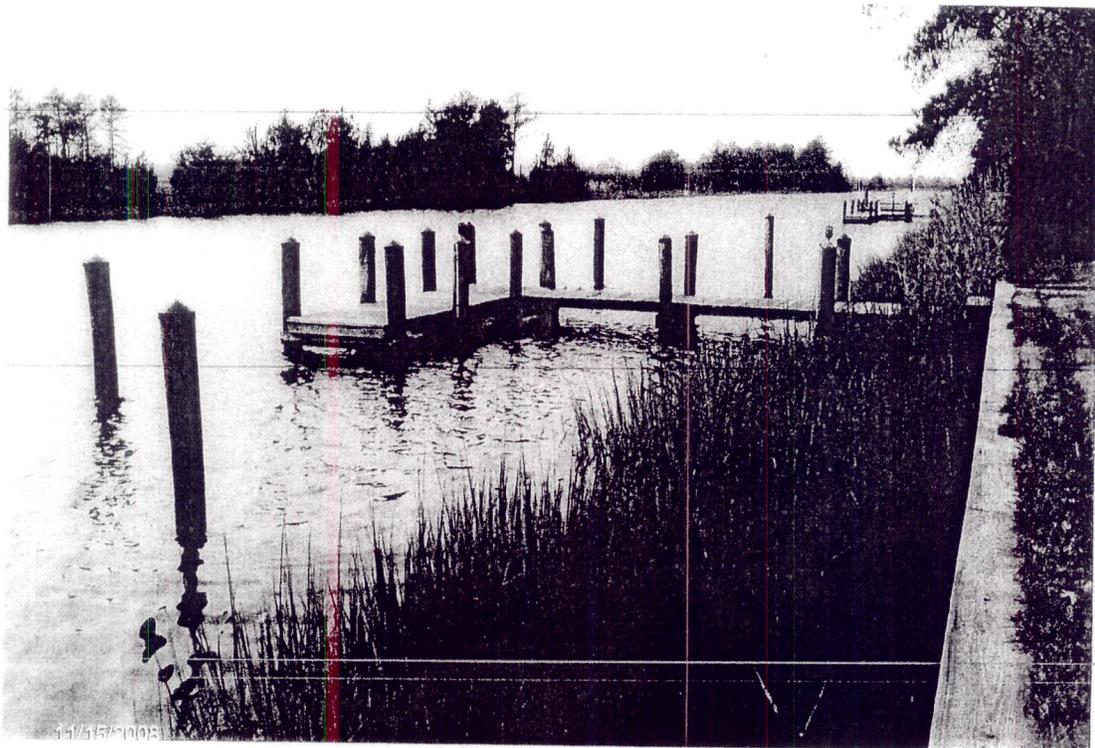


Figure 7. Photograph of existing 110' bulkhead, 24' x 5' pier, 5' x 19' dock, and six (6) free-standing mooring pilings adjacent to the Lewes and Rehoboth Canal at 85 Anchor Road, North Shores, Rehoboth Beach, Sussex County, Delaware (Tax Map Parcel #3-34-8.17-64.00).

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