



**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-2013-170

Date
APR 23 2013

Application No.
CENAP-OP-R-2013-170

File No.
CENAP-OP-R-2013-170-23

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: Dewey Beach Enterprises, Incorporated

AGENT: Evelyn M. Maurmeyer, Ph.D.
Coastal and Estuarine Research, Incorporated
Marine Studies Complex
Post Office Box 674
Lewes, Delaware 19958

WATERWAY: Rehoboth Bay

LOCATION: Ruddertowne Complex, 124 Dickinson Street, Dewey Beach, Sussex County, Delaware. (38.68933 and -75.07616, Tax Map Parcel 3-34-23.06-1.00).

ACTIVITY: Dewey Beach Enterprises, Incorporated proposes to conduct activities in waters of the United States at the Ruddertowne Commercial Complex intended to improve public access to Rehoboth Bay for recreational purposes. The proposed activities include the following .

To maintain a 2.5' wide by 60' long timber deck/walkway over Rehoboth Bay constructed by a previous owner.

To construct a 16' wide by 358' long public access recreational timber walkway over Rehoboth Bay along the northern and western perimeter of the site.

To place 1600 cubic yards of clean, beach-compatible sand along 190 linear feet of shoreline of Rehoboth Bay to widen the existing beach by 60' and to raise the elevation 2' above MHW (0.37 acre of fill in waters).

To construct a stone containment structure (groin) 90' in length consisting of 200 to 400 pound stone perpendicular to the shoreline along the northern limit of the beach to contain the sand (0.10 acre of fill in waters).

To replace an existing reinforced concrete storm-water outfall pipe and extend it approximately 50 feet to the water-ward limit of the filled area.

PURPOSE: The purpose of the deck/walkway is to provide public access to Rehoboth Bay for multi-generational water-dependant activities, including crabbing, fishing, bird-watching, etc. The purpose of the sand placement is to restore and expand the beach to provide a clean, wide and safe public access recreational beach. The purpose of the groin is to contain the beach sand. The purpose of the outfall pipe is to replace the existing deteriorated pipe.

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. Absent the proposed beach improvements and timber walkways, recreational access to the bay-front in Dewey Beach would be limited. Furthermore, the beach replenishment activity furthers the general goal of shoreline conservation and protection within the Rehoboth Bay. Initially, the applicant had proposed a 24 slip marina at the site, however the applicant has reduced potential impacts to waters of the United States by eliminating this feature of the project. 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.

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 90 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 proposed work would occur in a small area of waters within an active recreational site located within a busy resort town, a site which is subject to heavy boating activity and substantial wake energy and erosion. For these reasons the work area is 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 work area. In addition the project would not impact wetlands, aquatic vegetation or other special aquatic sites. The pelagic adults and juveniles of the listed species are highly mobile and capable of avoiding impacts associated with the work.

Corps of Engineers View: Based upon the above analysis, the Corps of Engineers has determined that the proposed 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

PROPOSED 330' X 8' BAYS² RE PUBLIC ACCESS RECREATIONAL WALKWAY WITH 8' X 32' AND 8' X 48' CRABBING/FISHING PLATFORMS; 2,000 C.Y. BAYSHORE BEACH RENOURISHMENT; 90' STONE GROIN; 50' RCP EXTENSION; AND 24-SLIP PUBLIC MARINA IN: Rehoboth Bay
 AT: Ruddertowne, 124 Dickinson Street Dewey Beach, Sussex County, DE (Tax Map Parcel #3-34-23.06-1.00)
 APPLICANT: Dewey Beach Enterprises, Inc.
 DATE: October, 2012



Figure 2. Map of Dewey Beach showing site location. Ruddertowne Complex, located on the west side of Coastal Highway (Route 1), between Dickinson Avenue and Van Dyke Avenue. Directions to site (from Dover, DE): SR-1 southbound to Dewey Beach; right onto Dickinson Avenue. Site is along Rehoboth Bay shoreline between Dickinson Avenue and Van Dyke Avenue.

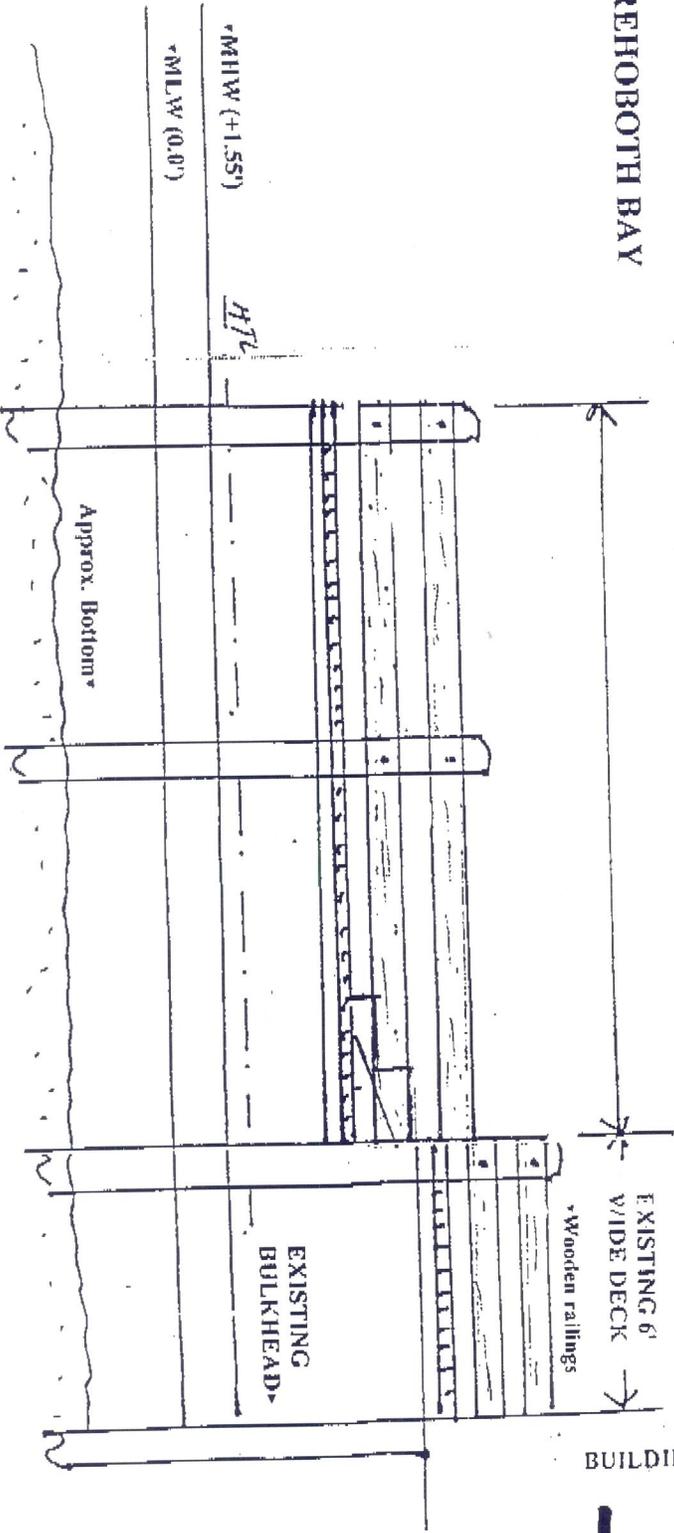
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0' 4'
SCALE
1" = 4'

WEST
A'

REHOBOTH BAY

PROPOSED 358' X 16' PUBLIC ACCESS
RECREATIONAL WALKWAY



EAST
A

BUILDING

PROPOSED 358' X 16' BAYSHORE PUBLIC ACCESS
RECREATIONAL WALKWAY; 1,600 C.Y. BAYSHORE
PUBLIC BEACH RENOVATION;
90' STONE GROIN; 50' RCP EXTENSION
IN: Rehoboth Bay
AT: Rudderovine, 124 Dickinson Street
Dewey Beach, Sussex County, DE
(Tax Map Parcel #3-34-23.06-1.00)
APPLICANT: Dewey Beach Enterprises, Inc.
DATE: Revised February, 2013

Figure 14A. Cross-section, proposed 358' x 16' bayshore public access recreational walkway. Diagram for application purposes only.

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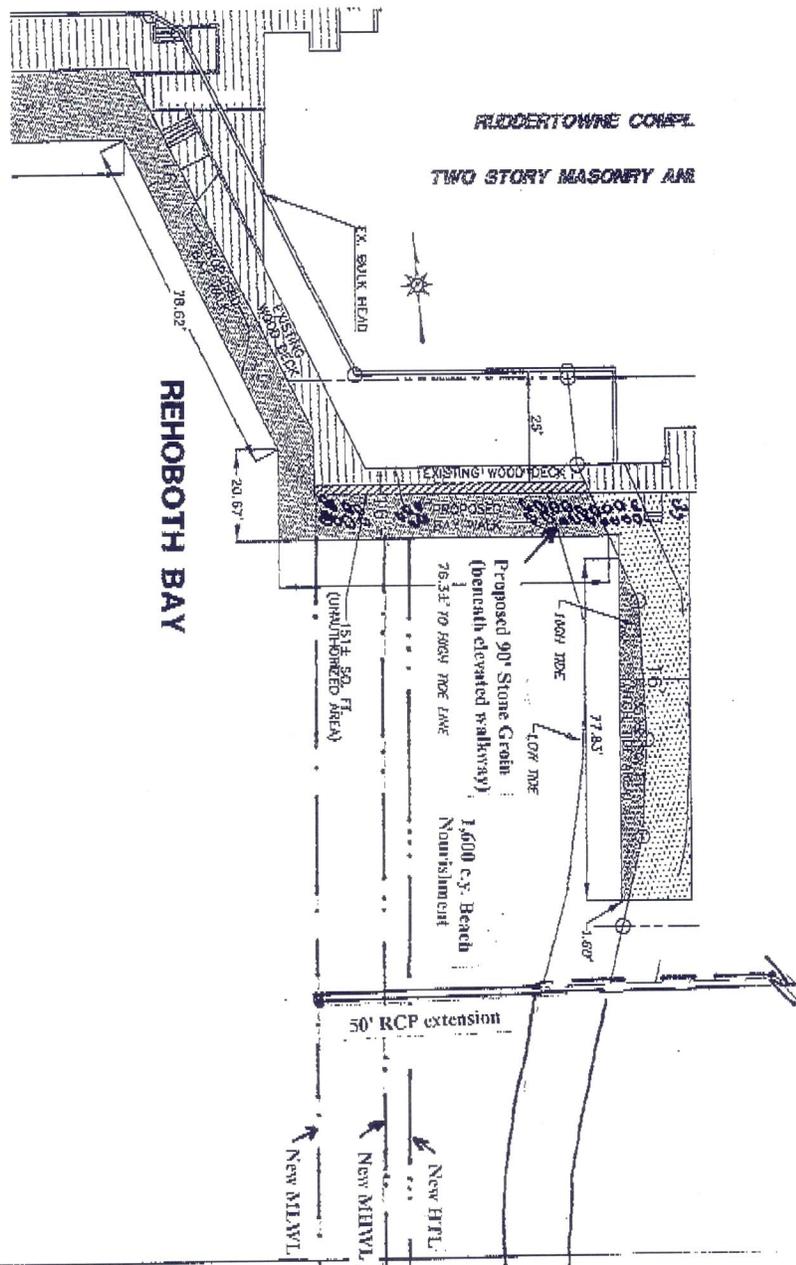


Figure 13d.

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