



**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-2016-75	Date February 03, 2016
Application No. CENAP-OP-R-2016-75	File No. CENAP-OP-R-2016-75-85
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).

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: Dr. Peter D. Thompson

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

WATERWAY: Lewes and Rehoboth Canal

LOCATION: 8 Breakwater Street, Lewes, Sussex County, Delaware
Tax Map Parcel 3-35-4.14-62.00 (Lat.38.78705°N/Long.-75.1579°W).

ACTIVITY: The applicant, Dr. Peter D. Thompson has requested a Department of the Army permit to install a 20' x 4' aluminum gangway and a 40' x 6' floating dock to a neighbor's existing 36' x 4' fixed pier to provide safe and adequate access to the federal navigation channel on the Lewes and Rehoboth Canal at 8 Breakwater Street, Tax Map Parcel #3-35-4.14-62.00 Lewes, Sussex County, Delaware. Additionally, the applicant proposes to install a 20' x 6' floating dock with an access ladder along the existing bulkhead for kayaks. The dimensions of the structures are indicated on the attached plans identified as E-1 through E-4.

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 the installation of structures 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. In addition, the structures have been designed to the minimum sizes necessary to support the vessels to be moored at the facility for safe ingress and egress 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 the *Guide to Essential Fish Habitat Designations in the Northeastern United States* website. The following managed species of fish have been listed in the guide as occurring in the vicinity of the project: Atlantic cod (*Gadus morhua*), red hake (*Urophycis chuss*), winter flounder (*Pleuronectes americanus*), windowpane flounder (*Scophthalmus aquosus*), Atlantic sea herring (*Clupea harengus*), monkfish (*Lophius americanus*), bluefish (*Pomatomus saltatrix*), Atlantic butterflyfish (*Peprilus triacanthus*), summer flounder (*Paralichthys dentatus*), scup (*Stenotomus chrysops*), black sea bass (*Centropristus striata*), surf clam (*Spisula solidissima*), spiny dogfish (*Squalus acanthias*), king mackerel (*Scomberomerus cavalla*), Spanish mackerel (*Scomberomerus maculatus*), cobia (*Rachycentron canadum*), sand tiger shark (*Odontaspis Taurus*), Atlantic angel shark (*Squatina dumerili*), Atlantic sharpnose shark (*Rhizopriondon terraenovae*), dusky shark (*Carcharhinus plumbeus*), sandbar shark (*Carcharhinus obscurus*), and scalloped hammerhead shark (*Sphyrna lewini*).

Analysis of the Effects: The proposed work which is the subject of this application would occur 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 proposed 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 area under review. In addition, the work is limited to the installation of two floating docks and an aluminum gangway and does not involve any dredging in waters of the US, nor does 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 be 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.

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 Michael Yost at 302-736-9763, by email at michael.d.yost@usace.army.mil or by writing this office at the above address.

Samuel L. Reynolds
Acting Chief, Regulatory Branch

FLOATING DOCK; AND 6' X 20' FLOATING KAYAK DOCK.
 IN: Lewes and Rehoboth Canal
 AT: 8 Breakwater Street,
 Lewes, Sussex County, DE 19958
 (Tax Map Parcel #3-35-4.14-62.00)
 APPLICANT: Dr. Peter D. Thompson
 DATE: January 15, 2016



Map of Lewes, Sussex County, Delaware, showing site location, 8 Breakwater Street. Directions to site (from Dover, Delaware): SR 1 southbound to Lewes; left at Five Points traffic light onto Route 9 Business (Savannah Road) to Lewes; cross Lewes and Rehoboth Canal bridge and continue approximately 0.3 miles to Cedar Avenue; left onto Cedar Avenue; continue approximately 1.3 miles to Newport Avenue; left onto Newport Avenue; right onto Breakwater Street. Site is on left, house at 8 Breakwater Street. Also see Figure 3.

2016-75
 E-1

2016-75

E-2

INSTALLATION OF 20' X 4' GANGWAY AND 40' X 6'
FLOATING DOCK AND 6' X 20' FLOATING KAYAK DOCK
IN: Lewes and Rehoboth Canal
AT: 8 Breakwater Street, Lewes, Sussex County, DE 19958
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Google earth

feet 200
meters 60



Figure 7. GoogleEarth® 2015 aerial photograph of project site, 8 Breakwater Street, Lewes, Sussex County, Delaware, adjacent to the Lewes and Rehoboth Canal. Width of waterway at project site = 214±. Existing 36' x 4' fixed pier (with boat lift) present on neighbor's property, approximately 4' from property line. Applicant proposes to install a 20' x 4' gangway and a 40' x 6' floating dock extending from the fixed pier. (Written permission from owner, Howard Burris, H. W. Burris Family L.P., enclosed). Applicant also proposes to install a 6' x 20' floating kayak dock with access ladder adjacent to existing bulkhead. See Figures 9 and 10 for plan view and cross-section sketches.

2016-75
E-3

INSTALLATION OF 20' X 4' GANGWAY AND 40' X 6' FLOATING DOCK; AND 6' X 20' FLOATING KAYAK DOCK
 IN: Lewes and Rehoboth Canal
 AT: 8 Breakwater Street,
 Lewes, Sussex County, DE 19958
 (Tax Map Parcel #3-35-4.14-62.00)
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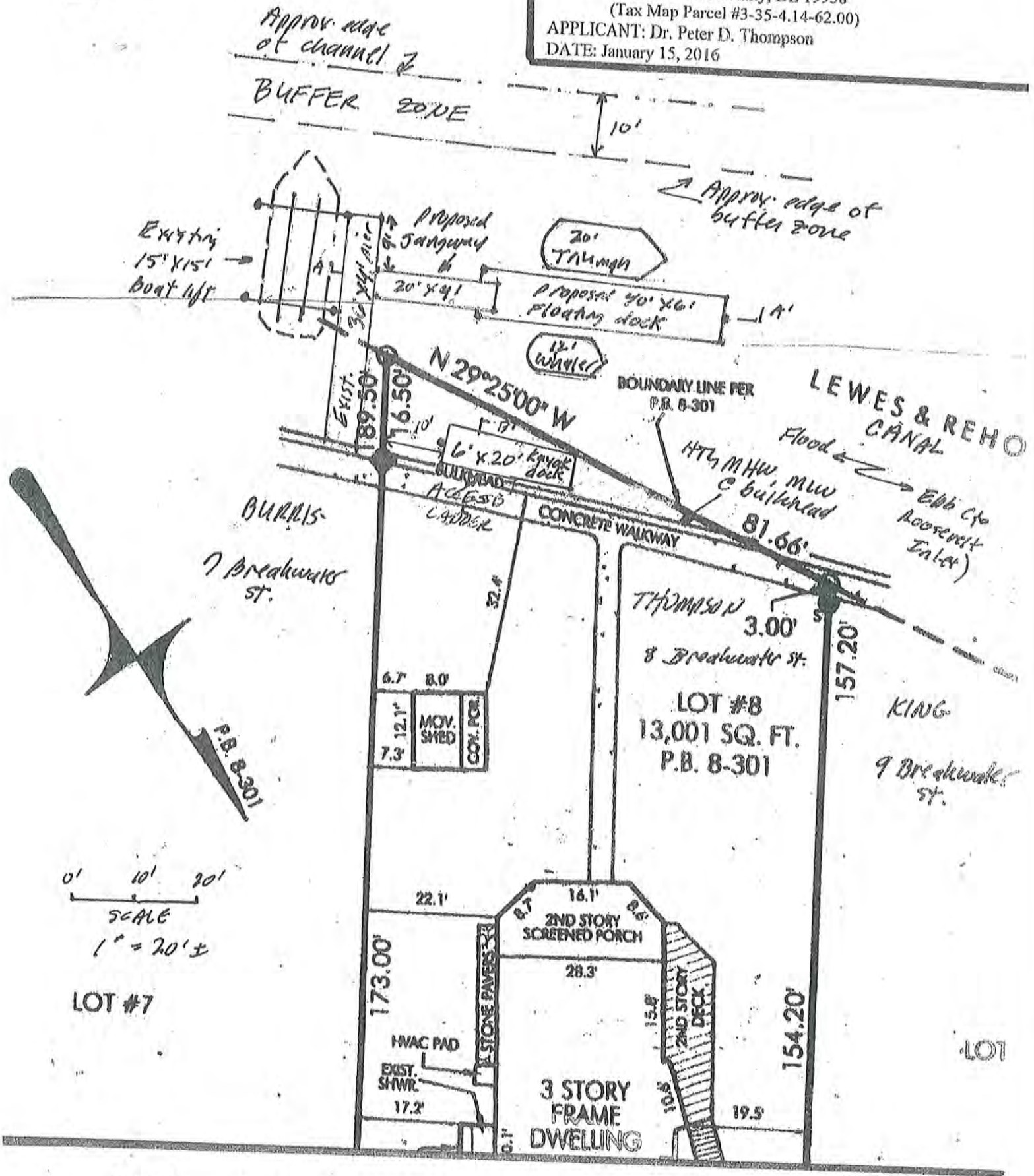
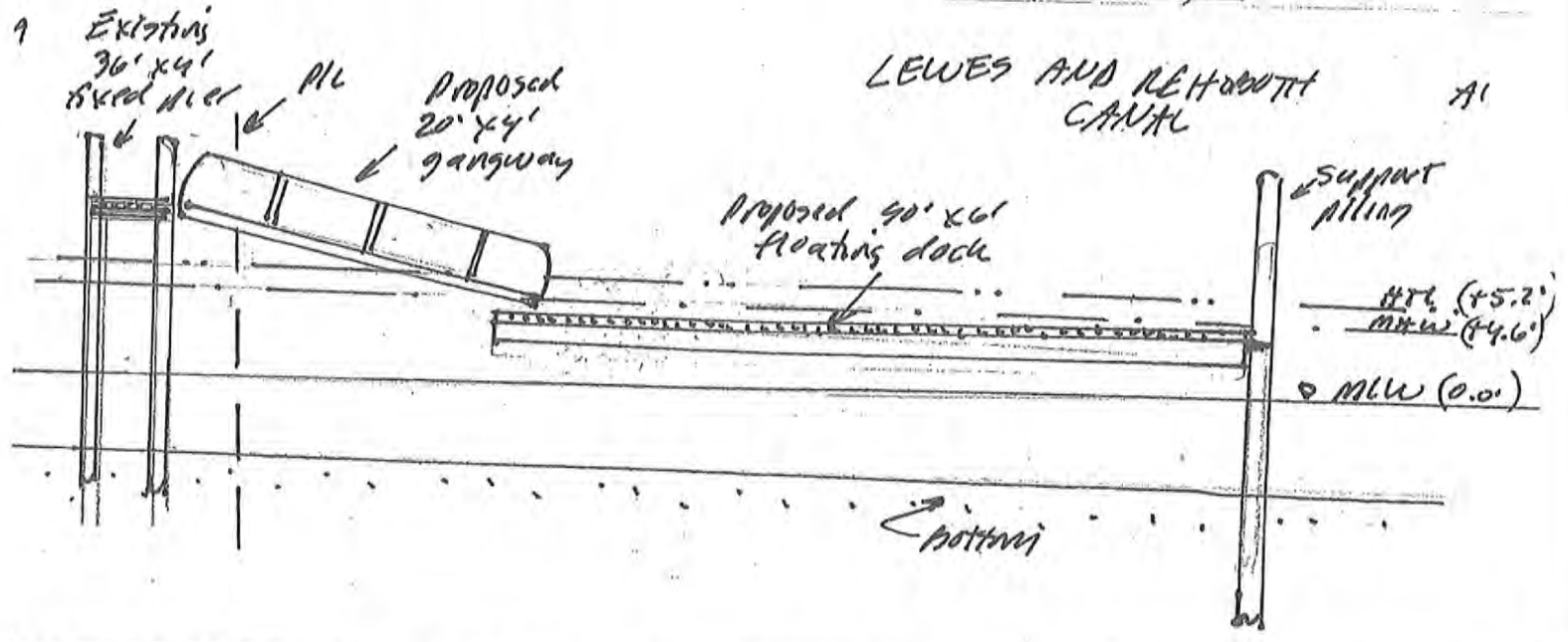


Figure 9. Plan view sketch of proposed project. Sketch for permit application purposes only.

2016-75
E-4

INSTALLATION OF 20' X 4' GANGWAY AND 40' X 6' FLOATING DOCK, AND 6' X 20' FLOATING KAYAK DOCK
IN: Lewes and Rehoboth Canal
AT: 8 Breakwater Street,
Lewes, Sussex County, DE 19958
(Tax Map Parcel #3-35-4.14-62.00)
APPLICANT: Dr. Peter D. Thompson
DATE: January 15, 2016

1) CROSS-SECTION A-A' : GANGWAY / FLOATING DOCK (1" = 10' ±)



2) CROSS-SECTION B-B' : BULKHEAD / ACCESS LADDER / KAYAK DOCK (1" = 4' ±)

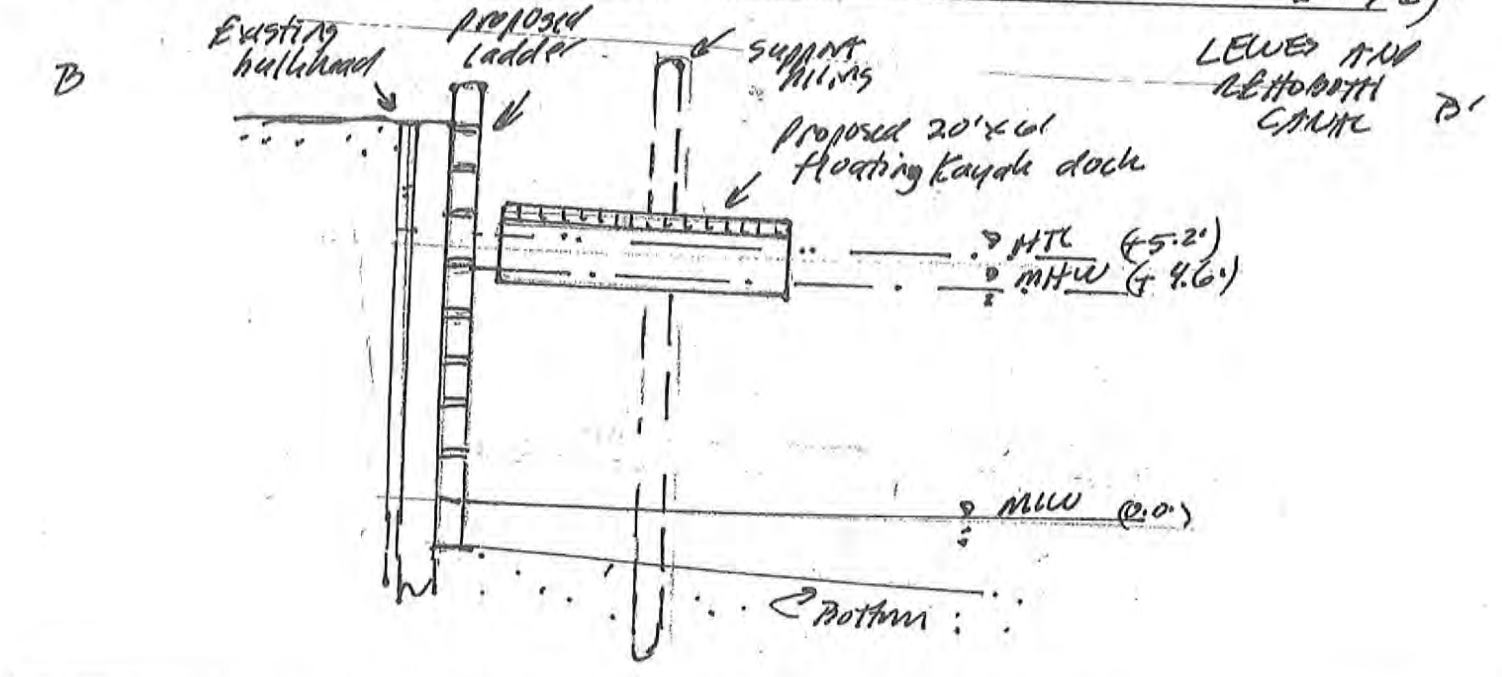


Figure 10. Cross-section sketch of proposed project. Sketch for permit application purposes only.