



**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. NAP-2021-00956-97	Date 27 OCT 022
Application No. NAP-2021-00956-97	File No. NAP-2021-00956-97
In Reply Refer to: REGULATORY BRANCH (CENAP-OPR)	

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: C-Lyn, LLC (c/o Mr. Lyn Mosley)

AGENT: Water's Edge Environmental, LLC
P. O. Box 118
Ocean City, New Jersey 08226

WATERWAY: Post Creek Basin (a.k.a. Sunset Lake)

LOCATION: Latitude: 38.997371° N; Longitude: -74.823902° W
The project site is the Marina at West Bay, located at 226 Q Avenue, Block 100.03, Lot 3.022, in the Borough of West Wildwood, Cape May County, New Jersey.

ACTIVITY: The applicant proposes to maintain (i.e. legalize) the existing bulkhead and the existing docking configuration and mooring areas at the Marina at West Bay. The existing marina docks to be authorized provide for 37 boat slips, with capacity for an additional 22 personal watercraft floats.

On April 18, 1991, the Corps issued Department of the Army (DA) Standard Permit NAP-1991-00577 to Mr. Albert Ottinger (the prior owner) to "...construct a bulkhead landward of the high tide line, two fixed timber piers and two floating dock systems with 36 boat slips in Post Creek Basin...". This authorization replaced (superseded) previous actions/authorizations provided by the Corps to Mr. Ottinger

An inspection by Corps Surveillance and Enforcement (S&E) staff in 1994 indicated that the work authorized by NAP-1991-00577 was not performed as approved and was in non-compliance with the terms, conditions, and plans authorized by the permit. Subsequently, on September 17, 1998, the Corps verified the use of Nationwide Permit 13 (NWP-13) to authorize construction of an additional 91 linear foot vinyl bulkhead extension (Corps file NAP-1998-02153). This NWP verification legalized any non-compliant bulkhead work performed up to that point.

Review of the Permit Special Conditions, current aerial imagery, and plans submitted by the applicant, indicate that additional work was performed that was not in compliance with DA permit NAP-1991-00577. As such, the current application is to authorize the existing fixed/floating dock systems, as both docks extend farther into the waterway than what was shown on the previously approved plans, with an increased number of slips, as shown on the survey plan provided with this notice.

Tax records indicate that the applicant, Mr. Lyn Mosley, by way of C-Lyn, LLC, purchased the subject property (Lot 3.022, Block 100.03, 226 "Q" Avenue) from Del Star Properties in 2009. Del Star Properties had previously acquired the property from the prior owner and holder of the prior Corps permits in 2001.

The State of New Jersey, Department of Environmental Protection (NJDEP), Division of Land Resource Protection, issued a Waterfront Development Permit for the work that is the subject of this application on May 20, 2021 (NJDEP File Number 0513-09-0007.2 LUP210001). While the applicant's survey plan and State permit reference 0.002 acre of fill below the HTL, with additional fill noted above the HTL, this office has determined that there is no existing Federally regulated fill below the HTL to be legalized on this property.

PURPOSE: The applicant has stated their purpose for the project as: "The existing bulkhead is to be authorized in its current location. Authorization of the existing bulkhead and associated fill is required for bank stabilization. The proposed docking facility will allow for access to Post Creek Basin aka Sunset Lake including the mooring of pleasure vessels and personal watercrafts at the marina."

A preliminary review of this application indicates that species listed under the Endangered Species Act (ESA), or their critical habitat, pursuant to Section 7 of the ESA, may be present in the action area. The Philadelphia District will evaluate the potential effects of the proposed actions on ESA listed species and will consult with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service as appropriate pursuant to Section 7 of the ESA, as amended. Any such required ESA Section 7 consultation will be concluded prior to the final decision on this permit application.

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; Federally recognized Tribal Nations; 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.

All comments on the proposed work should be submitted, within fifteen (30) days, via email only to the District Engineer, U.S. Army Corps of Engineers - Philadelphia District at PhiladelphiaDistrictRegulatory@usace.army.mil.

The Philadelphia District will complete any necessary compliance activities associated with Section 106 of the National Historic Preservation Act.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires all federal agencies to consult with NOAA Fisheries 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 EFH is present within the project area. The Philadelphia District will evaluate the potential effects of the proposed actions on EFH and will consult with NOAA Fisheries as appropriate. Consultation will be concluded prior to the final decision on this permit application.

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.

Compensatory Mitigation: The applicant is not proposing any placement of dredged or fill material in waters or wetlands. As such, compensatory mitigation has not been proposed and is not anticipated.

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 Kendall Papineau at (215) 656-5873 or Kendall.L.Papineau@usace.army.mil.

FOR: Todd A. Schaible
Chief, Regulatory Branch