



**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-2017-777

Date
January 11, 2018

Application No.
CENAP-OP-R-2017-777

File No.
CENAP-OP-R-2017-777-85

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: Kenneth Newberg

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

WATERWAY: Lewes and Rehoboth Canal

LOCATION: 9 Breakwater Street, Lewes, Sussex County, Delaware
Tax Map Parcel 3-35-4.14-61.00 (Lat.38.78724° N/Long.-75.158074° W).

ACTIVITY: The applicant has requested a Department of the Army permit to install a 6' x 35' fixed dock and a 14' x 14' boat lift on 4 pilings in the Lewes and Rehoboth Canal at 9 Breakwater Street (Tax Map Parcel #3-35-4.14-61.00), Lewes, Sussex County, Delaware. 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 for private recreational vessel docking.

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 vessel which is 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.

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.

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 a result, consultation with NOAA Fisheries and/or the U.S. Fish and Wildlife service pursuant to Section 7 of the ESA is not necessary. As the evaluation of this application continues, additional information may become available which could modify this preliminary determination.

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 affect Essential Fish Habitat (EFH). A preliminary review of this application indicates that EFH is present within the project area. The following managed species of fish have been listed in the Guide to Essential Fish Habitat Designations in the Northeastern United States as occurring in the vicinity of the project: Atlantic cod (*Gadus morhua*), red hake (*Urophycis chuss*), 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*), surf clam (*Spisula solidissima*), black sea bass (*Centropristus striata*), spiny dogfish (*Squalus acanthias*), king mackerel (*Scomberomerus cavalla*), Spanish mackerel (*Scomberomerus maculatus*), cobia (*Rachycentron canadum*), sand tiger shark (*Carcharias Taurus*), Atlantic angel shark (*Squatina dumerili*), Atlantic sharpnose shark (*Rhizopriondon terraenovae*), dusky shark (*Carcharhinus obscurus*), sandbar shark (*Carcharhinus plumbeus*) and scalloped hammerhead shark (*Sphyrna lewini*). The Philadelphia District will evaluate the potential effects of the proposed actions on EFH and will consult with NOAA Fisheries as appropriate. If necessary, 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; 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.

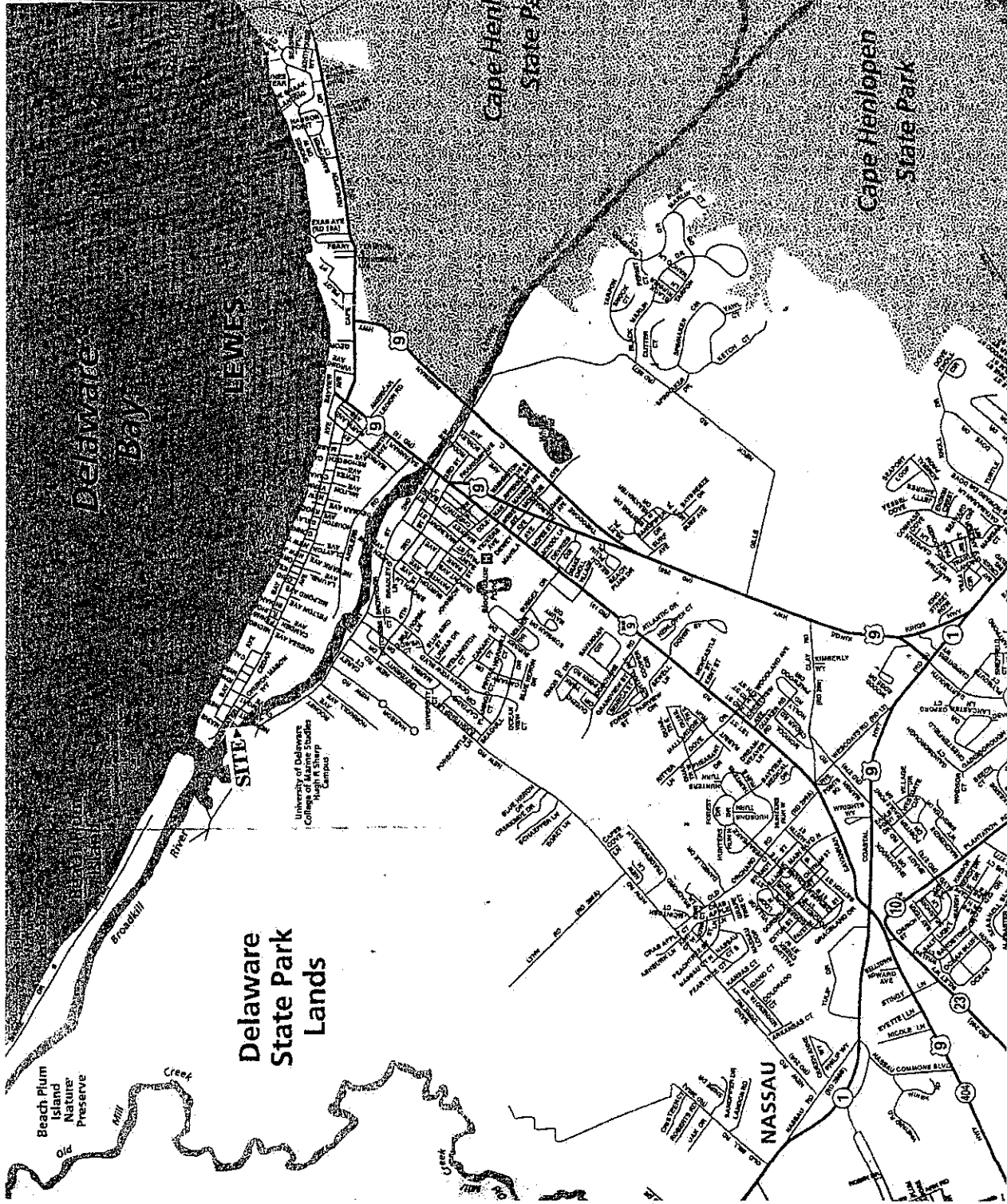
In accordance with Section 307(c) of the Coastal Zone Management Act of 1972, applicants for Federal Licenses or Permits to conduct an activity affecting land or water uses in a State's coastal zone must provide certification that the activity complies with the State's Coastal Zone Management Program. 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 D. Yost at (267) 240-5278, by email at michael.d.yost@usace.army.mil or by writing this office at the above address.

Edward E. Bonner
Chief, Regulatory Branch

PROPOSED 6' X 35' FIXED DOCK AND BOAT LIFT ON FOUR PILINGS
 IN: Lewes and Rehoboth Canal
 AT: 9 Breakwater Street,
 Lewes, Sussex County, DE 19958
 (Tax Map Parcel #3-35-4.14-61.00)
 APPLICANT: Kenneth Newberg
 DATE: September 5, 2017



Map of Lewes, Sussex County, Delaware, showing site location, 9 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 9 Breakwater Street. Also see Figure 3.

Figure 2.

2017-777
 E-1

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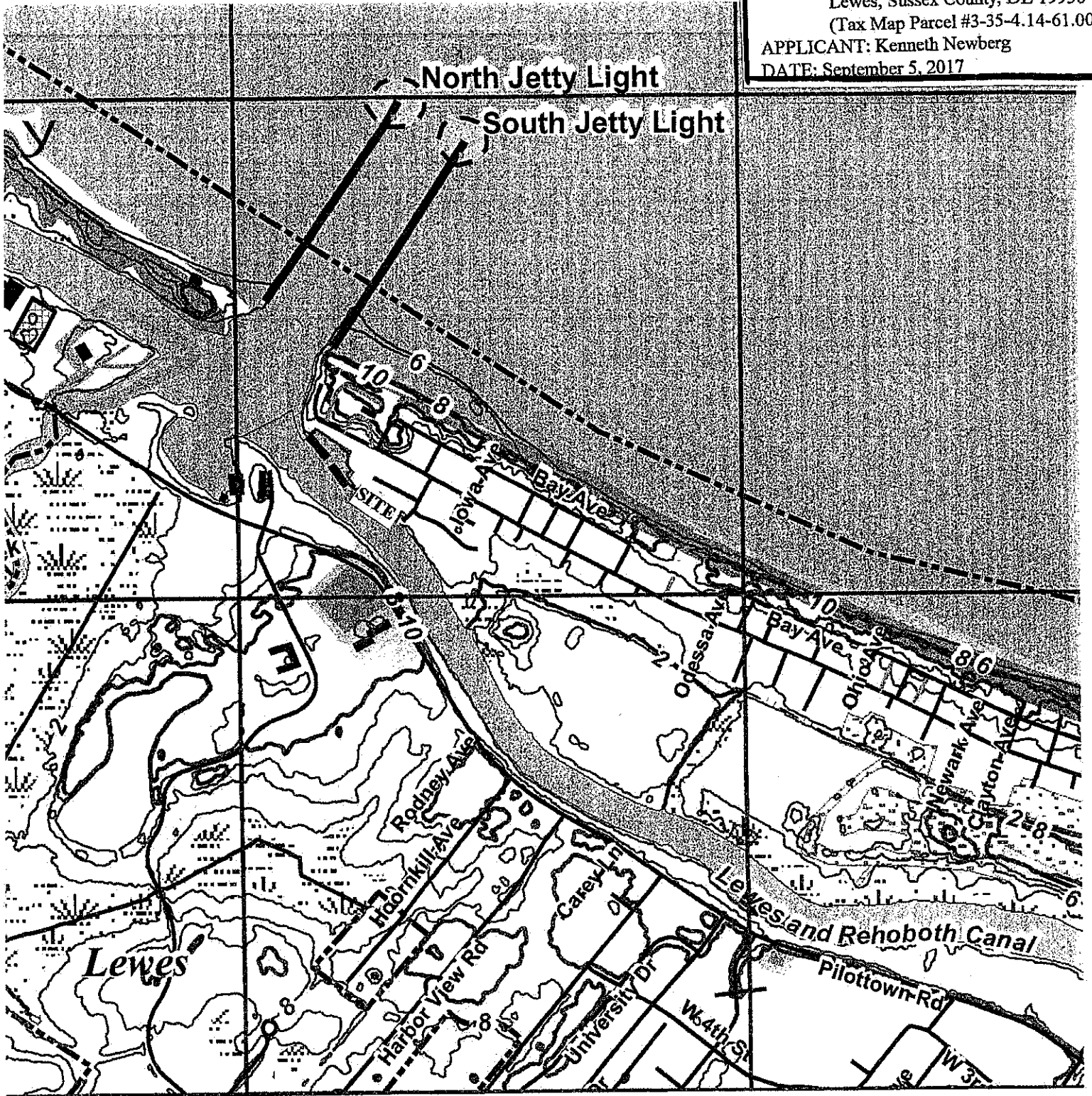


Figure 4. Site location on USGS topographic map, Lewes, Delaware quadrangle. Site is adjacent to Lewes and Rehoboth Canal.

2017-777

E-2

(a) ALON VIEW (1" = 20' ±)

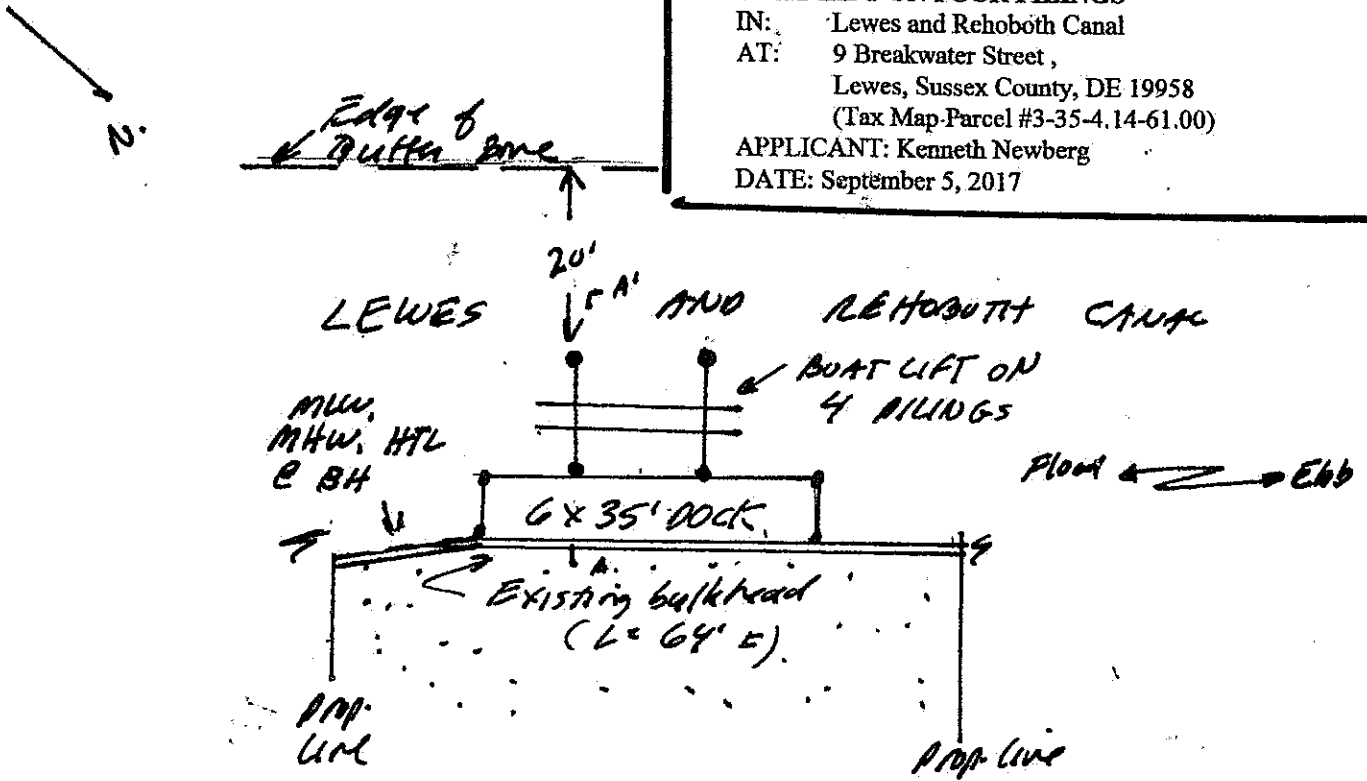
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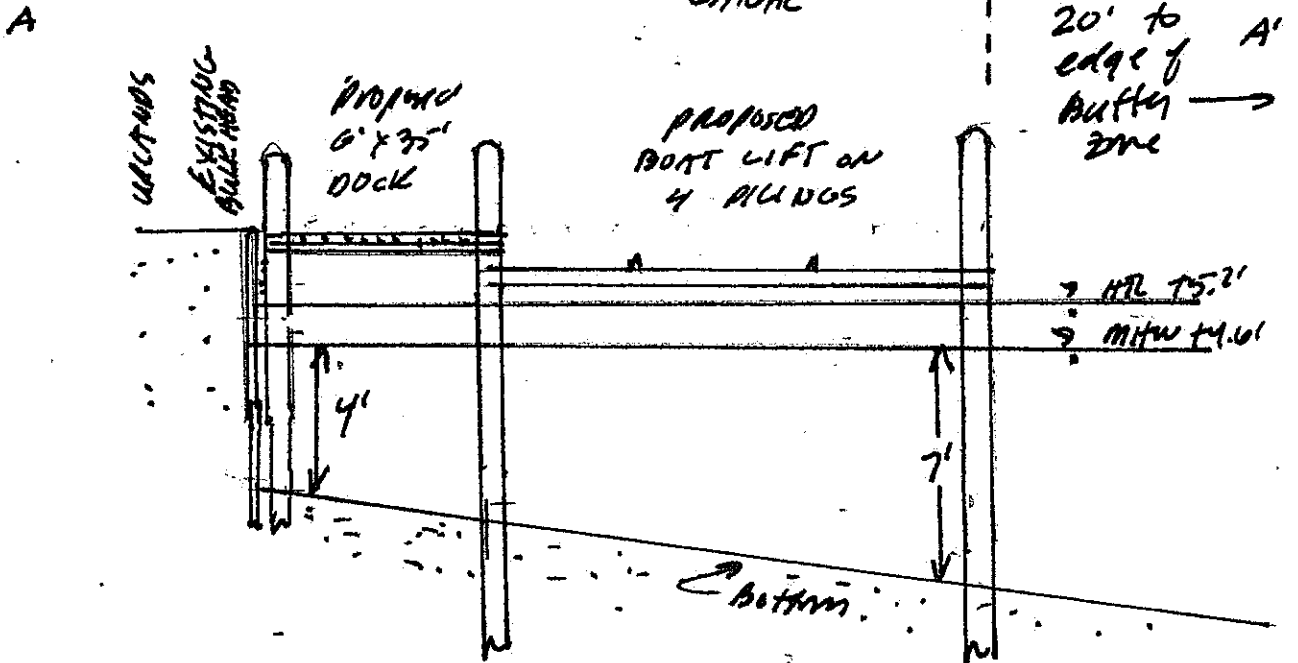
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(b) CROSS-SECTION (1" = 5' ±)

LEWES AND REHOBOTH
CANAL

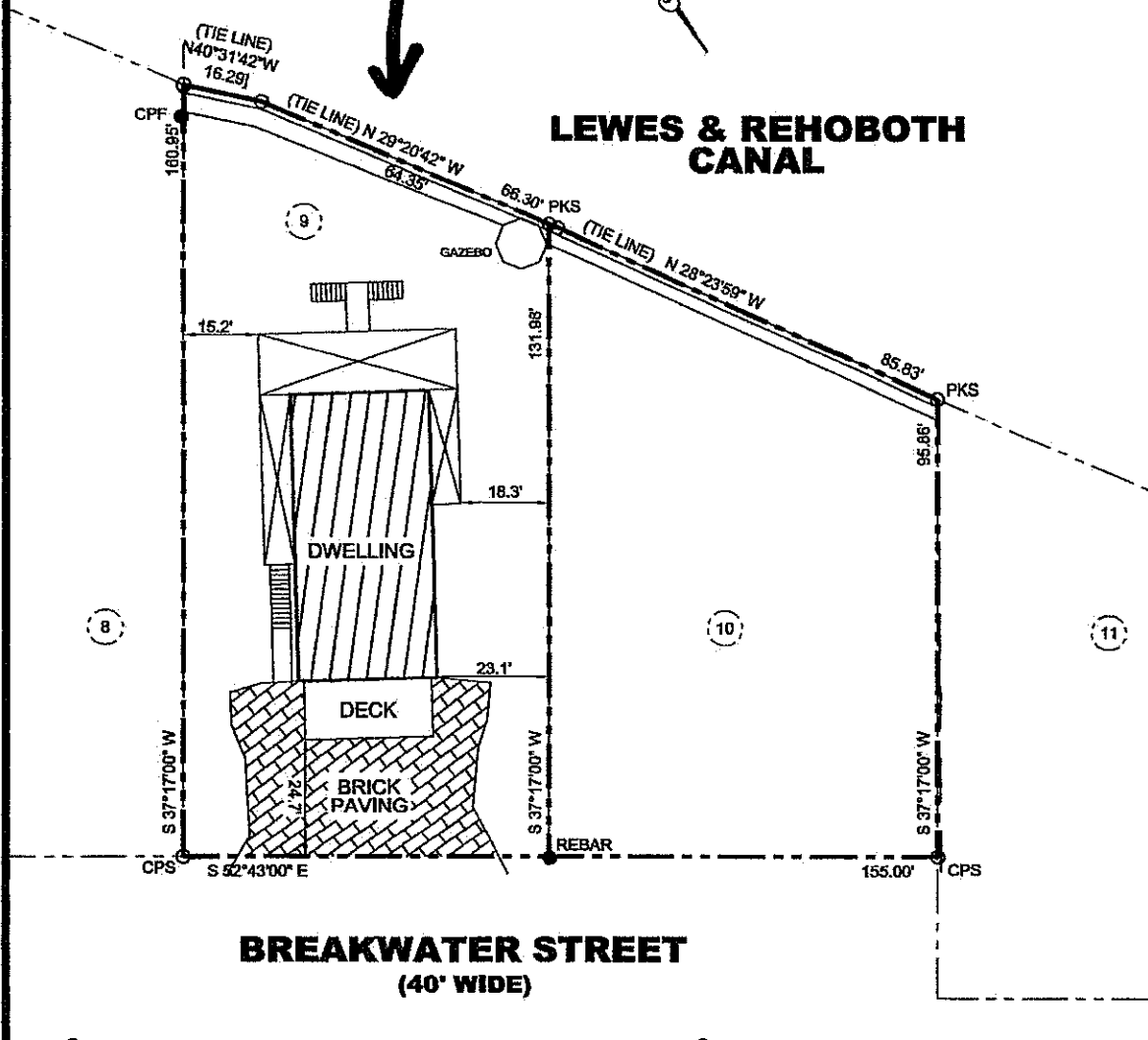


2017-777
E-3

Figure 9. Plan view and cross-section sketches of proposed project. Sketches for permit application purposes only.

Site

2017-777
E-4



Prcel Number: 335-4.14-061.00
 Boundary Survey Plan
 for
 Kenneth Newberg
 9 Breakwater Street
 Lot #9 & 10, Relco Inc. Subdivision
 Lewes & Rehobeth Hundred
 Sussex County, Delaware

NOTES:
 1. PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT.
 2. BUILDING DISTANCES TO PROPERTY LINES SHOULD NOT BE USED FOR FUTURE DETERMINATION OF IMPROVEMENT.

THE **PELSA** COMPANY
 Engineering, Surveying, Environmental Sciences

816 PEOPLES PLAZA NEWARK, DE 19702
 (302) 634-3771 (410) 398-3800

DEGREE OF ACCURACY ± _____ MARSH _____ RURAL _____ SUBURBAN _____ URBAN _____
 Date: 08/02/11 Scale: 1" = 30' Project Number: P-3322