



STATE OF NEW YORK
DEPARTMENT OF STATE
41 STATE STREET
ALBANY, NY 12231-0001

GEORGE E. PATAKI
GOVERNOR

CHRISTOPHER L. JACOBS
SECRETARY OF STATE

June 29, 2006

A Christopher Gross
12 Harbor Ridge Drive
Centerport, NY 11721

Re: F-2006-0026
U.S. Army Corps of Engineers/New York District
Permit Application # 2005-00177-L4 - Prescott
Ammarell - Construct 4' x 54' elevated fixed pier, 3' x
30' ramp, and 6' x 20 float (dock assembly);
Lloyd Harbor Village of Lloyd Harbor, Suffolk County
NYSDEC # 1-4726-01923
Objection to Consistency Certification

Dear Mr. Gross:

The Department of State (DOS) has completed its review of the above-referenced activity and your consistency certification that the activity complies with and will be undertaken in a manner consistent with New York's approved Coastal Management Program (CMP).

Pursuant to 15 CFR 930.63 and based on the information you submitted for this dock assembly proposal, the DOS objects to your consistency certification. As a result of this objection, the consistency provisions of the federal Coastal Zone Management Act in 15 CFR 930.64 prohibit authorization of this proposed activity by the U.S. Army Corps of Engineers.

Subject of the review

You have requested, on behalf of your client Prescott Ammarell, authorization from the U.S. Army Corps of Engineers/New York District to construct a dock assembly from the southern shoreline of and into the water body known as Lloyd Harbor, in the Village of Lloyd Harbor, Suffolk County. The information submitted for the proposed activity indicates the proposed structure would be used to support the private use of a privately owned vessel and would extend seaward of the applicant's privately owned upland.

The proposed structure would be elevated and fixed four feet (4') above the substrate on pilings for a length of fifty four feet (54') , with an aluminum ramp measuring thirty feet (30') in length leading from the fixed elevated portion of the structure to a float twenty feet (20') in length (dock assembly). The entire structure would traverse unvegetated intertidal and littoral tidal wetland areas. The ramp and float would be removed from November through March and the 54' fixed permanent elevated portion of the structure would remain throughout all months of the year.

The dock assembly structure would extend approximately ninety nine feet (99') seaward of the mean high water line along the shore, into the publicly owned land and water area of Lloyd Harbor

where the seaward most end of the structure would reach a point where the water depth is approximately four feet (4') at mean low water. It would be located within within the State-designated Lloyd Harbor Significant Coastal Fish and Wildlife Habitat. The habitat was designated in accordance with Article 42 of the Executive Law and implementing regulations in 19 NYCRR Part 602 and the CMP to advance Policy 7 of the CMP. The entire shoreline area was also designated a Critical Environmental Area by the Village of Lloyd Harbor pursuant to Article 8 of the Environmental Conservation Law and implementing regulations in 6 NYCRR Part 617.

All of the area of Lloyd Harbor is within the area covered by the Village of Lloyd Harbor's State and federally approved Local Waterfront Revitalization Program (LWRP). The LWRP contains a comprehensive land and water use plan and land and water use standards for the coastal area. The LWRP was included as a component of the CMP by its incorporation in and amendment to the CMP by State and federal approval on May 27, 1997 and July 10, 1997, respectively.

Pursuant to the federal and State consistency provisions of the Coastal Zone Management Act (CZMA) and Article 42 of the Executive Law, respectively, certain federal and State agency actions and activities requiring agency authorizations, including activities requiring authorizations from the U.S. Army Corps of Engineers (Corps) pursuant to Sections 9 and 10 of the Rivers and Harbors Act and the actions involving tidal wetlands permits by the New York State Department of Environmental Conservation pursuant to Article 25 of the Environmental Conservation Law, are required to be consistent with the Village of Lloyd Harbor's approved LWRP. This proposed activity, which requires authorization from the Corps, is subject to the federal consistency provisions of the CZMA.

Lloyd Harbor is generally characterized as being very shallow and narrow in its westernmost half, and deeper and wider in its easternmost half where the Village has designated anchorages and a mooring area for vessels, one of which the South Anchorage shown on Figure 2.7 entitled Harbor Management Area Map in the Village's LWRP is adjacent to the applicant's property. The Village's formal mooring area exists in the deepest parts of Lloyd Harbor a few hundred feet northeast of the applicant's upland property.

Regarding the applicant's proposed activity, the Department of State was notified by Lloyd Harbor's attorney, that "...the proposed dock structure will have a length of 99 linear feet from the mean high water line, which exceeds the maximum permitted 75 linear feet permitted in Coastal Overlay District - 1."

Applicable policies

The applicable policies and purposes of the CMP expressed in the Lloyd Harbor LWRP are policies 2B, 5, 7, 7A, 20, 20A, 25, 25A, 44 and the land and water use plan contained in Section IV of the LWRP. In addition, the Village's Coastal Overlay District 1 zoning standards implement the applicable policies of the LWRP and its comprehensive land and water use plan.

The applicable LWRP policies in Section III of the Village's LWRP state:

LWRP Policy 2B: Water-dependent uses on or adjacent to Lloyd Harbor shall be compatible with the conservation and preservation of this harbor as a sensitive environmental resource and habitat area.

LWRP Policy 5: Encourage the location of development in areas where public services and facilities essential to such development are adequate.

LWRP Policy 7: Significant coastal fish and wildlife habitats, as identified on the coastal area map, shall be protected, preserved, and where practicable, restored so as to maintain their viability as habitats.

LWRP Policy 7A: The Lloyd Point, Lloyd Harbor, and Cold Spring Harbor Significant Coastal

Fish and Wildlife Habitats shall be protected, preserved and, where practicable, restored so as to maintain their viability as habitats.

LWRP Policy 20: Access to the publicly-owned foreshore and to lands immediately adjacent to the foreshore or the water's edge that are publicly-owned shall be provided and it shall be provided in a manner compatible with adjoining uses. Such lands shall be retained in public ownership.

LWRP Policy 20A: Public access shall be protected and enhanced to public trust lands and to the waters above such lands.

LWRP Policy 25: Protect, restore or enhance natural and man-made resources which are not identified as being of statewide significance, but which contribute to the overall scenic quality of the area.

LWRP Policy 25A: Maintain and enhance visual access to important scenic resources by preventing vegetative growth from interrupting sight lines and by developing specific plans for enhancing the enjoyment of visual resources at suitable locations.

LWRP Policy 44: Preserve and protect tidal and freshwater wetlands and preserve the benefits derived from these areas.

The policies in Section III of the LWRP are followed by explanations of their application and intent.

Policy Analysis

The Village of Lloyd Harbor LWRP is a comprehensive land and water use plan for the coastal area of the State that lies within the Village of Lloyd Harbor. The LWRP contains enforceable coastal policies and purposes to guide land and water uses and development in that coastal area. Many of the policies and purposes of the LWRP and its land and water use plan are implemented by the Village's zoning, LWRP consistency and other local laws, and federal and State laws and regulations, including Article 42 of the State Executive Law and implementing regulations in 19 NYCRR Parts 600, 601, 602, and 603, and the federal Coastal Zone Management Act of 1972, as amended, and its implementing regulations in 15 CFR Part 930. These legislative acts and their implementing regulations require the proposed activity to be consistent with the policies and purposes of the CMP as expressed in the Village of Lloyd Harbor LWRP.

As part of and to implement its LWRP, the Village adopted Coastal Overlay Districts in its zoning law in order to effectively manage land and water uses in Lloyd Harbor and maintain and protect its important visual character and development pattern, natural resource values, and important human uses including public access to and use of the harbor and its natural resources.

Coastal Overlay District 1 encompasses the area where the dock assembly is proposed. The District provides for certain docks in Lloyd Harbor but limits their length to protect the character, sensitive natural resource values and certain public uses of the Harbor. In addition, Coastal Overlay District 1 standards limit docks to seasonal and low-lying floating structures rather than year-round permanently fixed and elevated structures.

Relevant standards in the Village's Coastal Overlay District 1 zoning law provide for docks that meet the following standards:

Section 205-104.B(1)(a) - ". . . the dock shall be of the floating variety only and shall only be permitted in those locations where the rising and lowering of such floating dock will not have a significant adverse impact upon vegetation, wildlife or wildlife habitat, including fish and fisheries resources."

Section 205-104.B(1)(b) - "The dock. . . shall be of a length which, in no case, exceeds seventy-five (75) linear feet seaward from the mean high water line."

Section 205-104.B(1)(c) - "In no case shall the seaward end of the dock extend beyond the point where the mean low water depth at such point exceeds two (2) feet."

Section 205- 104.B(1)(f) - "The dock shall be removed from the water during the months November through March."

Coastal Overlay District 1 encompasses the area where the dock assembly is proposed to be located. Docks are limited and regulated to protect the shallow waters of Lloyd Harbor which contain and support high value natural resources; to maintain open space and the relatively undeveloped character of the Harbor; to reduce and prevent encroachments and unreasonable interference with public access and use of the harbor and its resources; and to minimize the effects of the physical presence and intrusion of docks in and to the visual quality and character of the area.

The Coastal Overlay District 1 zoning standards limit the length of docks to a distance no greater than 75' seaward of the line of mean high water along the shore, or reaching a water depth no greater than 2' at the seaward end of a dock, whichever length comes first, to implement several of the policies and purposes of the Village's LWRP and the State's CMP, especially LWRP Policies 2B, 5, 7, 7A, 20, 20A, 25, 25A, and 44.

The length and depth standards implement: LWRP Policy 2B relating to appropriate water dependent uses in the Lloyd Harbor Significant Coastal Fish and Wildlife Habitat (see also LWRP Policies 5, 7, 7 A, 20, 20A, 25, 25A, and 44); LWRP Policy 5 relating to development in areas where public services and facilities essential to such development are adequate (see also LWRP Policy 2B); LWRP Policies 7 and 7A relating to the protection, preservation, and where practicable the restoration of the Lloyd Harbor Significant Coastal Fish and Wildlife Habitat so as to maintain its viability as a habitat (see also LWRP Policy 2B); LWRP Policies 20 and 20A relating to public access to and use of publicly owned underwater lands and waters; LWRP policies 25 and 25A relating to scenic quality and the visual resources of Lloyd Harbor; and, LWRP Policy 44 relating to vegetated and unvegetated tidal wetlands and tidal wetland areas, which include publicly owned shallow open water areas that are important components of the State-designated Lloyd Harbor Significant Coastal Fish and Wildlife Habitat, and support important habitat functions and values, other natural qualities, and important public uses (see also LWRP Policies 2B, 7, 7A, 20, 20A, and 25).

The proposed fixed and elevated permanent dock, ramp and float (dock assembly) would be approximately ninety-nine feet (99') in length when measured from the mean high water line along the shore, and would reach a water depth of approximately 4' at its seaward terminus. It would exceed the seventy-five feet (75') dock length and two feet (2') water depth zoning standards adopted by the Village of Lloyd Harbor which implement the relevant and applicable policies and purposes of the Village's LWRP.

Conclusion

The proposed activity would not comply with the relevant dock length, water depth, and floating dock standards for Lloyd Harbor and, therefore, is inconsistent with the New York Coastal Management Program as it is expressed in and implemented through the Village of Lloyd Harbor LWRP.

Alternatives

Pursuant to 15 CFR Part 930.63, the Department of State may describe alternative measures which, if adopted by an applicant, would permit the proposed activity to be conducted in a manner consistent with the New York State Coastal Management Program.

There are alternatives to the proposed activity that would not deprive the applicant of his riparian rights and a berth for his boat (see, Stutchin v. Town of Huntington and Incorporated Village of Lloyd Harbor, 71 F. Supp2d 76, 102 E.D.N.Y [1999]). There are no vegetated intertidal or other vegetated wetlands located where the dock assembly is proposed to be located or anywhere else along the applicant's property abutting the Harbor. Therefore, vegetated wetlands would not be affected by the construction, physical presence and uses of a removable floating dock which conforms to the standards identified in the Village's LWRP and which is located on and abutting the applicant's upland property and anywhere along the shoreline of his property. Also, Lloyd Harbor's mooring area includes water depths greater than those in the shallow near shore areas. The applicant could use a dinghy with or without a removable floating dock for access to a larger vessel secured to mooring tackle in the Harbor. The applicant could also use a berth or mooring in other areas such as Huntington Harbor which is located less than one mile from the applicant's property. That Harbor is dredged and supports several private commercial and publicly owned marinas, yacht clubs, and mooring areas for a wide range of types and sizes of vessels. Any of these alternatives would be consistent with the New York Coastal Management Program as it is expressed in the Village of Lloyd Harbor LWRP.

Appeal

Pursuant to 15 CFR 930, Subpart H, and within thirty (30) days from receipt of this letter, you or your client may request that the U.S. Secretary of Commerce (Secretary) override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the New York Department of State, which administers the New York Coastal Management Program, and the federal permitting and licensing agency (in this instance the U.S. Army Corps of Engineers/New York District). The Secretary may collect fees from you for administering and processing your request.

Given that the appeal process can be a lengthy one, if the applicant would like to continue discussions with this office while pursuing an appeal, please contact Mr. Steven C. Resler at (518) 474-5290. If the applicant is represented by counsel, his attorney may contact Mr. Resler for referral to our Legal Division.

Sincerely,

George R. Stafford
Director
Division of Coastal Resources

GRS/SCR

c: OCRM - J. King
COE/NY - M. Vissichelli
NMFS - Diane Rusanosky
NYSDEC/Region 1 - J. Pavacic
NYSDEC/Region 1 - Karen Graulich, Tidal Wetlands Unit
Village of Lloyd Harbor - Hon. Lee Hairr, Mayor
Village of Lloyd Harbor Attorneys - J. Ritter, Jr., Humes & Wagner