



STATE OF NEW YORK
DEPARTMENT OF STATE
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SECRETARY OF STATE

October 17, 2007

Mr. Michael Trovich
Shoreline Bulkheading Inc.
323 Edelweiss Road
West Islip, NY 11795

Re: F- 2007-0340
U.S. Army Corps of Engineers/ Buffalo District Permit
Application - Canty - Replace 64' of bulkhead, replace in-place
an existing 8' x 40' floating dock, 3' x 16' ramp, 4' x 22' fixed pier, a
4' x 4' and a 4' x 8' fixed pier. Remove an existing 8' x 10' fixed
pier and install an additional 4' x 22', a 4 pile boat lift, and a 10'
x 10' jet ski float. Place 30' of stone rip rap,
Seatuck Creek, Town of Brookhaven, Suffolk County
Objection To Consistency Certification

Dear Mr. Trovich:

The Department of State (DOS) has completed its review of the above-referenced proposal and the consistency certification that you provided for it.

Pursuant to 15 CFR Part 930.63 and based on the information you submitted for this proposal, the Department of State objects to the consistency certification for this proposed activity because the proposed activity is not consistent with Policies Policy #2, and 17 of the New York State Coastal Management Program (CMP). As a result of this objection the consistency provisions of the federal Coastal Zone Management Act (CZMA) prohibit the U.S. Army Corps of Engineers (Corps) from authorizing this activity unless this objection is overridden on appeal to the U.S. Secretary of Commerce.

Subject of the Review :

Your clients, Ms. Lisa Canty, has applied to the New York District of the U.S. Army Corps of Engineers (Corps) for authorization to replace 64' of bulkhead, replace in place an existing 8' x 40' floating dock, a 3' x 16' ramp, a 4' x 22' fixed pier, a 4' x 4' deck, a 4' x 9' fixed pier. Your client has also proposing to remove an existing 8' x 10' fixed pier, construct a 4' x 22' fixed pier, a 4 pile boat lift, a 10' x 10' jet ski ramp, and to place a undisclosed amount of rip-rap along 30' of shoreline, and to place approximately 20 cubic yards of backfill behind the proposed reconstructed bulkhead and stone rip-rap in and over Seatuck Creek, in the Town of Brookhaven, Suffolk County. The permit application for the proposed activity states:

“The purpose of the activity is for “private use.”

Applicable Policy and Policy Analysis:

Photographs submitted with the Corps permit application and the consistency certification for the activity depict upland areas and shoreline associated with the existing residential structure adjacent to Seatuck Creek. Those photographs show the existing docking structures, indicating existing access to navigable waters of the upland owner. The submitted photographs also depict a shoreline that does not appear to be subject to erosion that significantly damage property or endanger human lives.

The explanation of policy for Policy 2 includes a list of water-dependent uses and facilities. This definition is included in Policy 2 of the CMP. In a August 1, 2007, Mr. Gary Haight of this Department indicated that a dock, built as an accessory structure to a primarily residential use is not consider to be water dependant. Uses involved in the sea/land transfer of good (including docks) are considered to be water dependant. In that letter it was also noted that a riparian landowner may excercise his/her riparian right to safely reach navigable water that is reasonable and necessary. From the submitted information it appears that the upland owner currently is excercising his/her riparian right by the presence of the existing docking structure and the proposed addition of a second structure is unnecessary.

CMP Policy # 17 requires the use of non-structural measures rather than structural measures to minimize damage to natural resources and property from flooding and erosion, whenever possible, where such structures are determined to offer sufficient protection. Reconstruction of the existing bulkhead and placement of rip-rap is a structural measure, not a non-structural measure.

Policy #17 shall apply to planning, siting, and design of proposed activities, including measures to protect existing activities. To ascertain consistency with this policy, it must be determined if any one, or a combination of, non-structural measures would afford the degree of protection appropriate both to the character of the proposed activity or to the development, and to the hazard. If non structural are determined to offer sufficient protection, then consistency with the policy would require the use of such measures, whenever possible. An analysis of alternative protection measures was requested by this office and never received.

You were informed that the Department's objection could be avoided if the request for additional data and information was provided. To date, the the additional data and information has not been provided, nor has consistency certification been withdrawn.

Conclusion

Based on the foregoing, the proposed activity would not be consistent with the New York State CMP.

Alternatives

Pursuant to 15 CFR Part 930.63(c), the Department of State may describe alternatives (if they exist), which would be consistent with the CMP.

The information submitted with the Corps application and the consistency certification clearly demonstrate that the applicant have reasonable alternatives for access to navigable waters and to the placement of fill in those waters.

The photographs submitted with the Corps permit application and consistency certification depict an existing docking structure which of could be modified with minimal expansion to achieve the applicants objectives for access to navigable waters and shoreline protection (if necessary) with non-structural measures. Neither of the preceding alternatives would be inconsistent with the CMP.

Appeal To U.S. Secretary of Commerce

Pursuant to 15 CFR Part 930, Subpart H, and within 30 days from receipt of this letter, you may request that the U.S. Secretary of Commerce 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 Coastal Management Program and to the federal permitting or licensing agency. The Secretary may collect fees from you for administering and processing your request.

The appeal process can be a lengthy one. If you would like to continue discussions with this office while pursuing an appeal, please call Mr. Steven C. Resler at (518) 473-2470. If you or your client are represented by counsel, kindly have your attorney contact Mr. Resler for referral to our Legal Division.

Sincerely,

George R. Stafford
Director
Division of Coastal Resources

c: OCRM - John King
COE/NY - Michael Vissichelli
NYSDEC/Region I - John Pavacic