



STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

DAVID A. PATERSON
GOVERNOR

LORRAINE A. CORTÉS-VÁZQUEZ
SECRETARY OF STATE

December 11, 2009

Mr. Thomas Cramer
Cramer Consulting Group
P.O. Box 5535
Miller Place, NY 11764

Re: **F-2009-0400** - Mr. Mark Teitelbaum
U.S. Army Corps of Engineers/New York District
Permit Application, Proposed construction of a 4' x
200' fixed elevated catwalk at 4' above the marsh
leading to a set of stairs down to a fixed 4' x 13' fixed
platform with a ladder down to the water. Conscience
Bay, Town of Brookhaven, Suffolk County.
Objection to Consistency Certification

Dear Mr. Cramer:

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

Pursuant to 15 C.F.R. Part 930.63, the Department of State objects to the consistency certification for this proposed activity. 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 from authorizing this activity unless this objection is overridden on appeal to the U.S. Secretary of Commerce.

Subject of the review:

Mark Teitelbaum has requested authorization from the U.S. Army Corps of Engineers, New York District to construct a 4' x 200' recreation dock elevated 4' above the high marsh, a set of 4' x 6' of stairs down to a 4' x 13' lower platform. The proposed private residential dock would be constructed within and adjacent to Conscience Bay in the Town of Brookhaven, Suffolk County.

Project Purpose:

The stated purpose for the proposed project is for “access by small recreational boats to dock. No boat docking at low tide.”

Factors relevant to this review:

Pursuant to the consistency provisions of the federal CZMA, certain activities requiring federal agency authorizations are required to be consistent with the policies of the New York Coastal Management Program (NY CMP). The proposed activity, which requires authorization

from the U.S. Army Corps of Engineers, is subject to the federal consistency provisions of the CZMA, and is required to be consistent with the enforceable policies of the NY CMP. The enforceable policies of the NY CMP in the area where the activity is proposed are contained within the Long Island Sound Coastal Management Program (LIS CMP).

Pursuant to Article 42 of the State Executive Law and the implementing regulations at 19 NYCRR Part 602, the State of New York has designated Conscience Bay, Little Bay, and Setauket Harbor a Significant Coastal Fish and Wildlife Habitat (SCFWH). That designation implements policy #6 of the LIS CMP.

Applicable LIS CMP Policies:

LIS CMP POLICY 1: FOSTER A PATTERN OF DEVELOPMENT IN THE LONG ISLAND SOUND COASTAL AREA THAT ENHANCES COMMUNITY CHARACTER, PRESERVES OPEN SPACE, MAKES EFFICIENT USE OF INFRASTRUCTURE, MAKES BENEFICIAL USE OF A COASTAL LOCATION, AND MINIMIZES ADVERSE EFFECTS OF DEVELOPMENT.

LIS CMP SUB-POLICY 1.2: ENSURE THAT DEVELOPMENT OR USES TAKE APPROPRIATE ADVANTAGE OF THEIR COASTAL LOCATION.

LIS CMP SUB-POLICY 1.4: MAINTAIN AND ENHANCE NATURAL AREAS, RECREATION, OPEN SPACE, AND AGRICULTURAL LANDS.

LIS CMP SUB-POLICY 1.5: MINIMIZE ADVERSE IMPACTS OF NEW DEVELOPMENT AND REDEVELOPMENT.

Conscience Bay is an important component of the Port Jefferson Harbor Complex. In 1999, the Port Jefferson Harbor Complex Harbor Management Plan (HMP) was developed as a cooperative effort of the Town of Brookhaven, the Incorporated Villages of Port Jefferson, Belle Terre, Old Field, and Poquott, and DOS.¹ The HMP contains policies and narrative which have limited docks in the southern two-thirds of Conscience Bay, where this structure is proposed, in order to protect and restore the undisturbed natural character and ecological value of the bay.

Conscience Bay is utilized by the public and shoreowners for a wide range of recreation-related activities. Access to its navigable waters is gained by launching small vessels from a limited number of areas where there are no sensitive vegetated wetlands fringing the shoreline. Importantly, from the coastal perspective, the lower portion of Conscience Bay is one of the few remaining undisturbed and functioning wetland complexes on Long Island.

The construction of a new catwalk and dock at this location would introduce development in an area that would detract from the undisturbed wetland character of the area, would interfere with open space values, would introduce structures in an area where nearby launching sites for small watercraft are available, and would adversely affect wetlands by introducing new development. As a result, the proposed catwalk and dock at this location would not support the objectives of the referenced policies and the HMP.² Therefore, the proposed activity would not be consistent with this policy.

¹ Port Jefferson Harbor Complex Harbor Management Plan (HMP) and Final Generic Environmental Impact Statement (FGEIS). March 1999. pp. 114-122.

² Port Jefferson Harbor Complex HMP and FGEIS. p. 114-122.

LIS CMP POLICY 6 : PROTECT AND RESTORE THE QUALITY AND FUNCTION OF THE LONG ISLAND SOUND ECOSYSTEM.

LIS CMP SUB-POLICY 6.1: PROTECT AND RESTORE ECOLOGICAL QUALITY THROUGHOUT LONG ISLAND SOUND.

LIS CMP SUB-POLICY 6.2: PROTECT AND RESTORE SIGNIFICANT COASTAL FISH AND WILDLIFE HABITATS.

The proposed activity would be undertaken within the State designated Conscience Bay, Little Bay, and Setauket Harbor Significant Coastal Fish and Wildlife Habitat (SCFWH).

Conscience Bay, Little Bay and Setauket Harbor comprise one of the largest areas of intertidal mudflats with pockets of salt marsh on the north shore of Long Island and a considerable amount of the shoreline remains in a natural condition. Areas such as these play a valuable role as habitat for commercially and recreationally important invertebrates and fishes, and serve as foraging sites for a variety of migratory birds. Vegetated tidal wetlands are the most biologically productive component of this designated habitat, and are rare and irreplaceable.

As noted above, the lower portion of Conscience Bay is one of the last remaining undeveloped wetland complexes on Long Island. The presence and function of these undisturbed wetlands play a major role in the sustainability of the ecosystem of the Port Jefferson Harbor Complex and Long Island Sound. The guidance for sub-policy 6.1 states “Avoid significant adverse changes to the quality of the Long Island Sound ecosystem as indicated by physical loss, degradation, or functional loss of ecological components” and “Avoid fragmentation of natural ecological communities...”³ This is supported in the SCFWH documentation which indicates that the construction of shoreline structures, such as docks and piers, in areas not previously disturbed by development (such as natural salt marsh or mudflats) would result in the loss of productive areas which support the fish and wildlife resources of the habitat.⁴ The construction of the fixed elevated walkway through and over the marsh fringing the bay would result in the shading of the marsh, leading to a reduction in vigorous vegetative growth, and possible scouring of the marsh around the walkway. These effects would cause fragmentation to the ecological communities of the area, thus reducing the beneficial physical, chemical and biological value and affecting the overall ecological quality of the habitat.⁵ The construction of a new catwalk and dock at this location would not protect and restore the ecological quality of the area and therefore, the proposed activity would not be consistent with this policy.

Conclusion:

The proposed activity would not be consistent with policies # 1 and #6 of the Long Island Sound CMP.

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 (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

³ LIS CMP. pp. 79-80.

⁴Conscience Bay, Little Bay, and Setauket Harbor Coastal Fish & Wildlife Habitat Assessment Form. Available online at: http://nyswaterfronts.com/waterfront_natural_narratives.asp

⁵ Port Jefferson Harbor Complex Harbor Management Plan (HMP) and Final Generic Environmental Impact Statement (FGEIS). March 1999. pp. 114-122.

F-2009-0400

Teitelbaum

p. 4

York Department of State 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, therefore, if you would like to continue discussions with this office while pursuing an appeal, please call Mr. Fred Anders at (518) 473-2477. If you or your client are represented by counsel, kindly have your attorney contact Mr. Anders for referral to our Legal Division.

Sincerely,

George R. Stafford
Deputy Secretary of State

GRS/jls

cc: OCRM - John King
COE/New York District - Larry Young
NYS DEC/Region 1 - Jacqueline R. Pasquini
US Fish & Wildlife Service, LIFO – Steve Sinkevich