



**US Army Corps
of Engineers**®
New England District

PUBLIC NOTICE

696 Virginia Road
Concord, MA 01742-2751

Date: September 16, 2008
Comment Period Ends: October 17, 2008
File Number: NAE-2005-1930
In Reply Refer To: Brian E. Valiton
Or by e-mail: brian.e.valiton@usace.army.mil

The District Engineer has received a permit application from the applicant below to **conduct work in waters of the United States** as described below. The Corps is soliciting comments on both the project itself and the range of issues to be addressed in the environmental documentation.

APPLICANT

MILL WAY REALTY TRUST, 275 Millway Road, Barnstable, Massachusetts

ACTIVITY

The work includes maintenance dredging (previously permitted by the Corps in 1995) of an area of approximately 12,000 square-foot (SF) area to a depth of 6 feet (FT) below mean low water (MLW) at Maraspin Creek/Barnstable Inner Harbor in Barnstable, Massachusetts. Of this area to be dredged approx. 1000 sq. ft. is now inter-tidal resource area. Approximately 1200 cubic yards (CY) of sandy material will be removed by mechanical means, dewatered above the high tide line (HTL) at the nearby Blair property parking lot and then ultimately used in upland areas as authorized by the Mass. DEP. The work is described on the enclosed plans entitled, "PLANS ACCOMPANYING PETITION OF MILL WAY REALTY TRUST TO MAINTENANCE DREDGE IN THE WATERS BARNSTABLE INNER HARBOR BARNSTABLE, MA," on four (4) sheets, and dated, "Oct. 11, 2005 with a revision 12/13/07."

At the same time we are simultaneously issuing a public notice for the abutting landowner, R.E.V. REALTY TRUST, to dredge an area of approx. 9,600 sq. ft. also to a similar depth of 6 feet (see Corps file # NAE 2005-1931). The R.E.V. REALTY TRUST dredging is new dredging and includes dredging an intertidal resource area of approx. 5600 sq. ft.

WATERWAY AND LOCATION OF THE PROPOSED WORK

This work is proposed in Maraspin Creek/Barnstable Inner Harbor in Barnstable, Massachusetts. The proposed location on the USGS Barnstable quadrangle sheet is at UTM coordinates 41.71 N and 70.30 W.

AUTHORITY

Permits are required pursuant to:

- Section 10 of the Rivers and Harbors Act of 1899
 Section 404 of the Clean Water Act
 Section 103 of the Marine Protection, Research and Sanctuaries Act).

The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which may reasonably accrue from the proposal must be balanced against

its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are: conservation, economics, aesthetics, general environmental concerns, wetlands, cultural value, fish and wildlife values, flood hazards, flood plain value, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people.

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.

ESSENTIAL FISH HABITAT

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 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).

This project will impact approximately .22 acres of Essential Fish Habitat (EFH) for Atlantic cod (all life stages), haddock (eggs and larvae), pollock (all life stages except eggs), whiting (all life stages), red hake (all life stages), white hake (all life stages), winter flounder (all life stages), yellowtail flounder (all life stages), windowpane flounder (all life stages), American plaice (all life stages), ocean pout (all life stages), Atlantic halibut (all life stages), Atlantic sea scallops (all life stages), Atlantic sea herring (all life stages), bluefish (juveniles and adults), long finned squid (juveniles and adults), short finned squid (juveniles and adults), Atlantic butterfish (all life stages), Atlantic mackerel (all life stages), summer flounder (adults only), scup (juveniles and adults), black sea bass (juveniles and adults), spiny dogfish (juveniles and adults) and bluefin tuna (juveniles and adults). This habitat consists of intertidal and subtidal sandy substrate. Loss of this habitat may adversely affect the species listed above.

The District Engineer has made a preliminary determination that the site-specific adverse effects to EFH will not be substantial. Further consultation with the National Marine Fisheries Service regarding EFH conservation recommendations is being conducted and will be concluded prior to the final decision.

SECTION 106 COORDINATION

Based on his initial review, the District Engineer has determined that the proposed work may impact properties listed in, or eligible for listing in, the National Register of Historic Places. Additional review and consultation to fulfil requirements under Section 106 of the National Historic Preservation Act of 1966, as amended, will be ongoing as part of the permit review process.

Pursuant to the **Endangered Species Act**, the District Engineer is hereby requesting that the appropriate Federal Agency provide comments regarding the presence of and potential impacts to listed species or its critical habitat.

The States of Connecticut, Maine, Massachusetts, New Hampshire and Rhode Island have approved **Coastal Zone Management Programs**. Where applicable the applicant states that any proposed activity will comply with and will be conducted in a manner that is consistent with the approved Coastal Zone Management Program. By this Public Notice, we are requesting the State concurrence or objection to the applicant's consistency statement.

The following authorizations have been applied for, or have been, or will be obtained:

- (X) Permit, License or Assent from State.
- (X) Permit from Local Wetland Agency or Conservation Commission.
- () Water Quality Certification in accordance with Section 401 of the Clean Water Act.

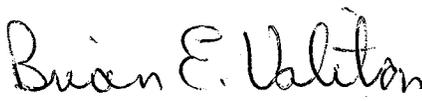
In order to properly evaluate the proposal, we are seeking public comment. Anyone wishing to comment is encouraged to do so. **Comments should be submitted in writing by the above date.** If you have any questions, please contact Brian Valiton at (978) 318-8166, (800) 343-4789 or (800) 362-4367, if calling from within Massachusetts.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the application. Requests for a public hearing shall specifically state the reasons for holding a public hearing. The Corps holds public hearings for the purpose of obtaining public comments when that is the best means for understanding a wide variety of concerns from a diverse segment of the public.

The initial determinations made herein will be reviewed in light of facts submitted in response to this notice. All comments will be considered a matter of public record. Copies of letters of objection will be forwarded to the applicant who will normally be requested to contact objectors directly in an effort to reach an understanding.

For more information on the New England District Corps of Engineers programs, visit our website at <http://www.nae.usace.army.mil>.

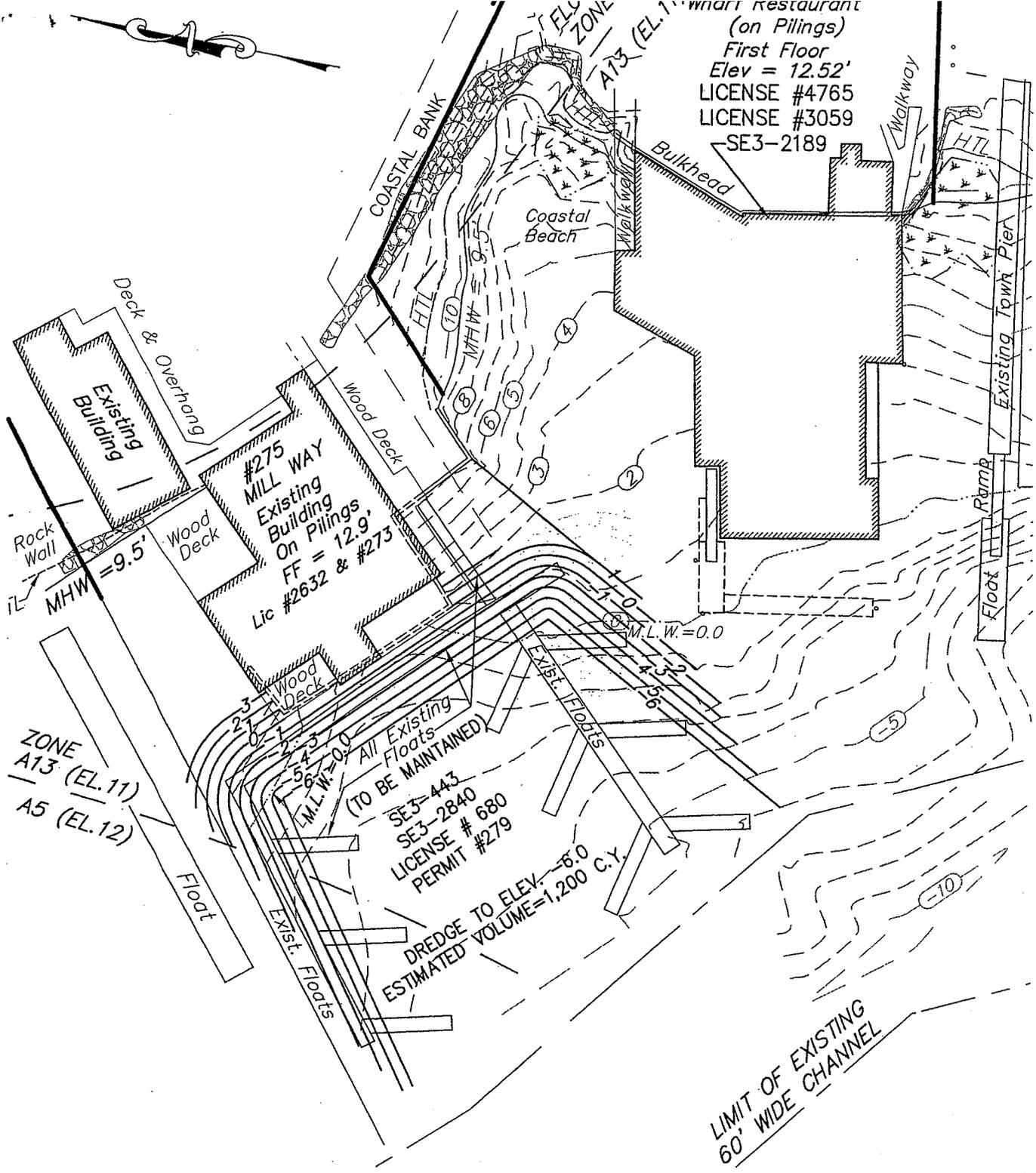
THIS NOTICE IS NOT AN AUTHORIZATION TO DO ANY WORK.


for **Karen K. Adams**
Chief, Permits and Enforcement Branch
Regulatory Division

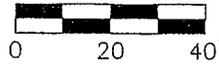
CENAE-R
FILE NO. NAE-2005-1930

If you would prefer not to continue receiving Public Notices, please contact Ms. Tina Chaisson at (978) 318-8058 or e-mail her at bettina.m.chaisson@usace.army.mil. You may also check here () and return this portion of the Public Notice to: Bettina Chaisson, Regulatory Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751.

NAME: _____
ADDRESS: _____



Scale: 1" = 40'



**PLANS ACCOMPANYING PETITION OF
MILL WAY REALTY TRUST
TO MAINTENANCE DREDGE IN THE
WATERS OF
BARNSTABLE INNER HARBOR
BARNSTABLE, MA**

DATE: OCTOBER 11, 2005 REV. 12/13/07
JOB NO. 91-012 02-307D.dwg SHEET 2 OF 4

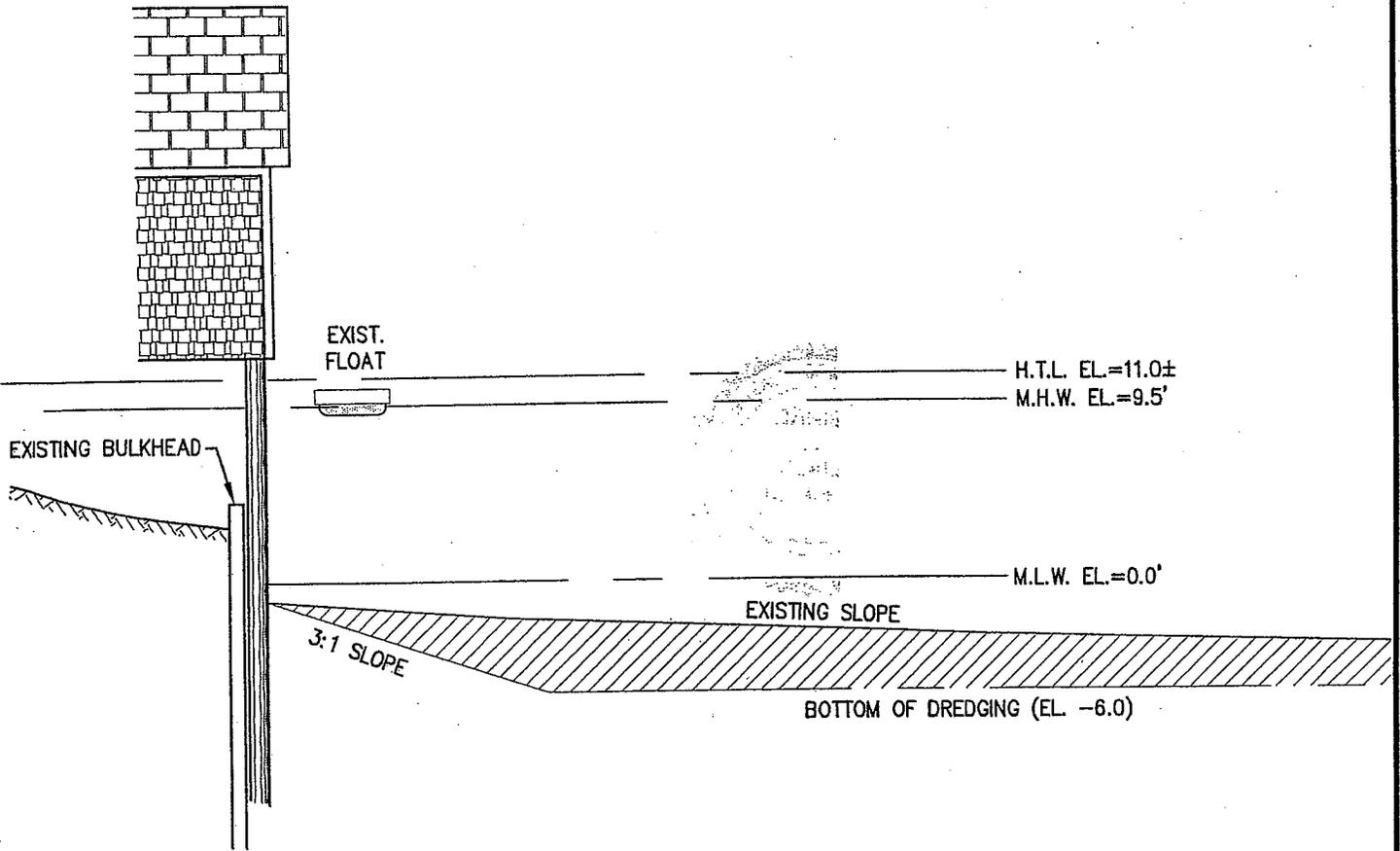
down cape engineering, inc.

**CIVIL ENGINEERS
LAND SURVEYORS**

off. 508-362-4541
fax. 508-362-9880

939 main st. yarmouth, ma 02675

ELEVATIONS ARE BASED ON M.L.W.



TYPICAL CROSS SECTION A-A

Scale: 1" = 10'



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(2) PROPOSED 45 W X 60 L X 9 AVE.
 DEPTH. BAYS FOR DRYING DREDGE
 SPOIL. EACH BAY TO HOLD 350 C.Y. OF
 MOUNDED DREDGE SPOIL.
 USE ON ALTERNATING DAYS.

COMMONWEALTH OF
 MASS, DEPT OF
 ENVIRONMENTAL MGNT

MILL WAY REALTY TRUST

R.E.V. REALTY
 TRUST

TOWN OF BARNSTABLE

Millway
 Road

Barnstable Inner Harbor

TOWN RAMP

MILLWAY
 MARINA INC

MARLU LLC

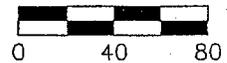
BARNSTABLE MARINE
 SERVICES

**DREDGE SPOIL
 DEWATERING AREA**

PLANS ACCOMPANYING PETITION OF
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 WATERS OF
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 BARNSTABLE, MA

DATE: OCTOBER 11, 2005 REV. 12/13/07
 JOB NO. 91-012 02-307D.dwg SHEET 4 OF 4

Scale: 1" = 80'



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