



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF LONG ISLAND SOUND PROGRAMS



MEMO

To: Brian Emerick, Supervising Environmental Analyst
DEP-Office of Environmental Review

From: Margaret L. Welch, Senior Coastal Planner *Margaret Welch*
DEP-Office of Long Island Sound Programs

Subject: Notice of Scoping - Stratford Army Engine Plant

Date: December 11, 1996

Thank you for the opportunity to submit comments on the Army's intended disposal of the Stratford Army Engine Plant. The coastal consistency issues raised by disposition of this property are complex and numerous. Therefore, this memo has intentionally been drafted as a stand-alone document that I hope you will both make reference to in, and attach to, the department's response to the notice of scoping.

The subject property is within Connecticut's coastal boundary and the proposed disposition meets the definition of a "federal development activity" found in 15 CFR 930.31(b). According to 15 CFR 930.33(b), all federal development activities within the coastal boundary are activities directly affecting the coastal zone. Consequently, disposal of this property by the Army requires a federal coastal consistency determination pursuant to 15 CFR 930.37 with state review and anticipated concurrence the responsibility of this office.

In order to provide the Army guidance in developing the required coastal consistency determination, we offer the following information and direction. The enforceable policies of Connecticut's federally approved Coastal Management Program are contained in the Connecticut Coastal Management Act [CCMA]. The coastal resources on and adjacent to the site include coastal flood hazard area, developed shorefront, intertidal flat, tidal wetlands, shellfish concentration areas and estuarine embayment (the Housatonic River). Due to the variety of coastal resources on and adjacent to the site and the potential uses that could reasonably be located there in the future, there are numerous enforceable policies from Connecticut's federally approved Coastal Management Program that might apply. I have attached a copy of our Reference Guide to Coastal Policies and Definitions which contains all the enforceable policies of Connecticut's Coastal Management Program.

The primary concerns from a coastal management perspective are: 1) the preservation and protection of the intertidal flats and tidal wetlands; 2) the provision of an appropriate water-dependent use; 3) formal recognition of the on-site areas subject to the public trust doctrine; 4) appropriate measures to promote proper stormwater management during redevelopment of the site; 5) appropriate redevelopment in a coastal flood hazard zone; 6) the potential need to remediate an off-site tidal channel which may have been adversely affected by the discharge from the on-site wastewater treatment facility; and, 7) what is conveyed as riparian rights. Several of these concerns are directly related to conveyance of the site, while others are related more to the future reuse of the property. In some instances, we have identified specific measures that should ideally be implemented at or prior to the time of conveyance to ensure redevelopment will proceed in a manner consistent with the Connecticut Coastal Management Program. Each of the identified issues is briefly discussed below:

INTERTIDAL FLATS AND TIDAL WETLANDS

There is a substantial expanse of intertidal flats and tidal wetlands along the entire waterfront of this site. The Connecticut Coastal Management Program contains enforceable policies regarding the preservation and protection of both intertidal flats and tidal wetlands. Accordingly, the Army, through the disposition process, must ensure that adverse impacts to these sensitive coastal resources are both minimized and acceptable. The two potential activities most likely to conflict with these policies relate to potential reuse of the site and include: 1) any proposed uses that require dredging of the intertidal area; and 2) improper stormwater management such that discharges are directed towards these resource areas.

WATER-DEPENDENT USE

Enforceable policies of the Coastal Management Program require that highest priority and preference be given to water-dependent uses on waterfront sites [C.G.S. sections 22a-92(a)(3) and 22a-92(b)(1)(a)]. Water-dependent uses are statutorily defined, in part, as "those uses and facilities which require direct access to, or location in, marine or tidal waters and which therefore, cannot be located inland..." Included in this definition is the provision of general public access.

Additionally, in order for an activity to be consistent with the enforceable policies of the CCMA, adverse impacts must be both minimized and acceptable. Adverse impacts on future water dependent opportunities are defined, in part, in the CCMA as "locating a non-water-dependent use at a site that is physically suited for a water-dependent use for which there is a reasonable demand. General public access to coastal waters is in great demand in Connecticut, so allowing a non-water-dependent use on this site without a significant public access component would constitute an unacceptable adverse impact.

In order for the disposition of this site by the Army to be consistent with the water-dependent use enforceable policies of the Coastal Management Program, the Army must ensure future use of this site will be water-dependent.

PUBLIC TRUST

Under the Public Trust Doctrine, the State of Connecticut holds all bottom lands of tidal, coastal and navigable waters in trust for its citizens. The entire 39 acres identified as riparian rights is public trust lands. In accordance with the public trust doctrine, the Army is not authorized to sell, transfer or otherwise convey, or to purport to sell, transfer or otherwise convey, any public trust lands waterward of the high tide line. Therefore, while the riparian rights may be conveyed, the actual ownership of the intertidal and subtidal lands remains with the State of Connecticut.

Additionally, a significant portion of the site consists of previously filled public trust lands as authorized by a letter from the Connecticut Flood Control & Water Policy Commission dated September 15, 1943 (attached). Although it authorized the placement of dredged materials to make dry land, the letter clearly states that property rights were not conveyed in any lands of the state. The State of Connecticut has not abandoned its interest in the filled area that was formerly waterward of historic mean high water. The Army, prior to conveyance of the property, must take appropriate measures to ensure that the general public of the State of Connecticut will retain the right to access, in perpetuity, these public trust lands. This requirement should dovetail with the requirement for provision of a water-dependent use on the site, since all the filled lands are abutting the current shoreline. To satisfy this goal and the issue of water-dependency, as described above, **we strongly recommend that an easement, or other legal mechanism, in favor of the State of Connecticut, be filed in the land records of the Town of Stratford. The specific area covered by the easement should be the area of public trust lands filled pursuant to the 1943 approval, the entire seaplane access area, and appropriate access routes of sufficient width to support two-way vehicular traffic, to and from Main Street (State Route 130) and Sniffens Lane.**

STORMWATER MANAGEMENT

In addition to limiting stormwater discharges to the levels that currently exist on the site as noted above, in order to protect water quality as required by Connecticut's Coastal Management Program, stormwater should be treated prior to discharge to remove total suspended solids, oils and greases. While there is no identified goal for oil and grease removal, the U.S. Environmental Protection Agency has identified a goal of 80 percent removal for total suspended solids. **Future owners of the subject property should**

be advised that any construction of a new stormwater system or reconstruction of the existing stormwater system will require that these goals be addressed.

COASTAL FLOOD HAZARD AREA

The majority of site is within several coastal flood hazard zones as determined by the Federal Emergency Management Agency (FEMA). These zones vary from V-zones where direct wave damage can be expected during the 100-year storm event through A-zones where still water flooding can be expected during a 100-year storm event and B-zones which are subject to flooding during a storm event greater than the 100-year design storm, to an area of Zone C, which is above the 500 year storm base flood elevation. The base flood elevation of any particular portion of the site is dependent upon which FEMA-designated zone it is in. The enforceable policies of the Coastal Management Program related to coastal flood hazard areas require that risks to life and property be minimized. In general, that would preclude use of the portions of this site that are located within the V-zone for residential purposes and require appropriate flood-proofing of any industrial or commercial development located within V- or A-zones.

TIDAL CHANNEL REMEDIATION

It is our understanding that elevated levels of certain contaminants have been found in a tidal channel on property abutting the former on-site wastewater treatment plant. A determination should be made as to whether the source of the contamination is the Stratford Army Engine Plant. If this is the case, an appropriate remediation plan should be developed and implemented as part of the Army's disposition of this property.

RIPARIAN RIGHTS

The property description attached to the notice of scoping that we received described the property as "consisting of approximately 115 acres, of which approximately 79 acres are improved land and 39 acres are riparian rights." In Connecticut, the formal limits of riparian rights can only be determined by adjudication and court order. The draft NEPA document should contain information regarding how the limits of riparian rights were ascertained.

Additionally, it is important to understand what riparian rights are and what they are not. Riparian rights are limited property rights and merely involve the right of a waterfront property owner to reasonable access to navigable water. While it is possible to own and transfer riparian rights in this state, such rights are not only limited, but are generally subject to permitting requirements of this department. In transferring or otherwise conveying these rights, there should be no implication that "ownership" of the

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39 acres of riparian rights grants any privilege beyond reasonable access to navigable water, subject to departmental permits.

COASTAL CONSISTENCY TIMING

With respect to the timing of the required consistency determination, according to guidance provided by the federal Office of Ocean and Coastal Resources Management (OCRM), coastal management consistency determinations are most appropriately made at the draft EIS stage. More specifically, according to 15 CFR section 930.34(b) federal agencies shall provide state coastal management programs with a consistency determination at the earliest practicable time in the planning of an activity. A determination should be prepared following the development of sufficient information to reasonably determine the consistency of an activity, but before the federal agency reaches a significant point of decision-making. An FEIS is not usually the earliest practicable time for a determination and it is a significant point in the federal agency's decision-making process; accordingly, is not the best time to initiate this process. Development of a coastal consistency determination by the federal agency and its review by the state coastal management program should most appropriately occur before publication of the final EIS.

We hope these comments are useful to the Army in the development of a DEIS. We are available to work directly with the appropriate Army personnel to resolve these issues prior to the submittal of a coastal consistency determination. We strongly encourage contact with us as early in the process as possible for pre-submittal discussion and further guidance. Once a formal coastal consistency determination is ready for submittal, it should be directed to:

Mr. Charles H. Evans
Director
DEP-Office of Long Island Sound Programs
79 Elm Street
Hartford, CT 06106-5127

Should you have any questions regarding this memo or any other coastal management matter, please do not hesitate to contact me by mail, by phone at 860-424-3034 x2773, by fax at 860-424-4054, or by e-mail at margaret.welch@po.state.ct.us. Thank you.

Attachments

September 15, 1945

Mr. C. W. Erickson
Assistant Plant Engineer
Dunham Boughton Ironworks
Stratford, Connecticut

Dear Mr. Erickson:

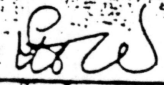
This will acknowledge receipt of a copy of the
statement of the Army District Engineer's office at Providence
relating to your request for permission to dredge and fill
the Stratford River at Stratford, town of Stratford, Connecticut
on the east side of the river about 2000 feet north of Galice Point.

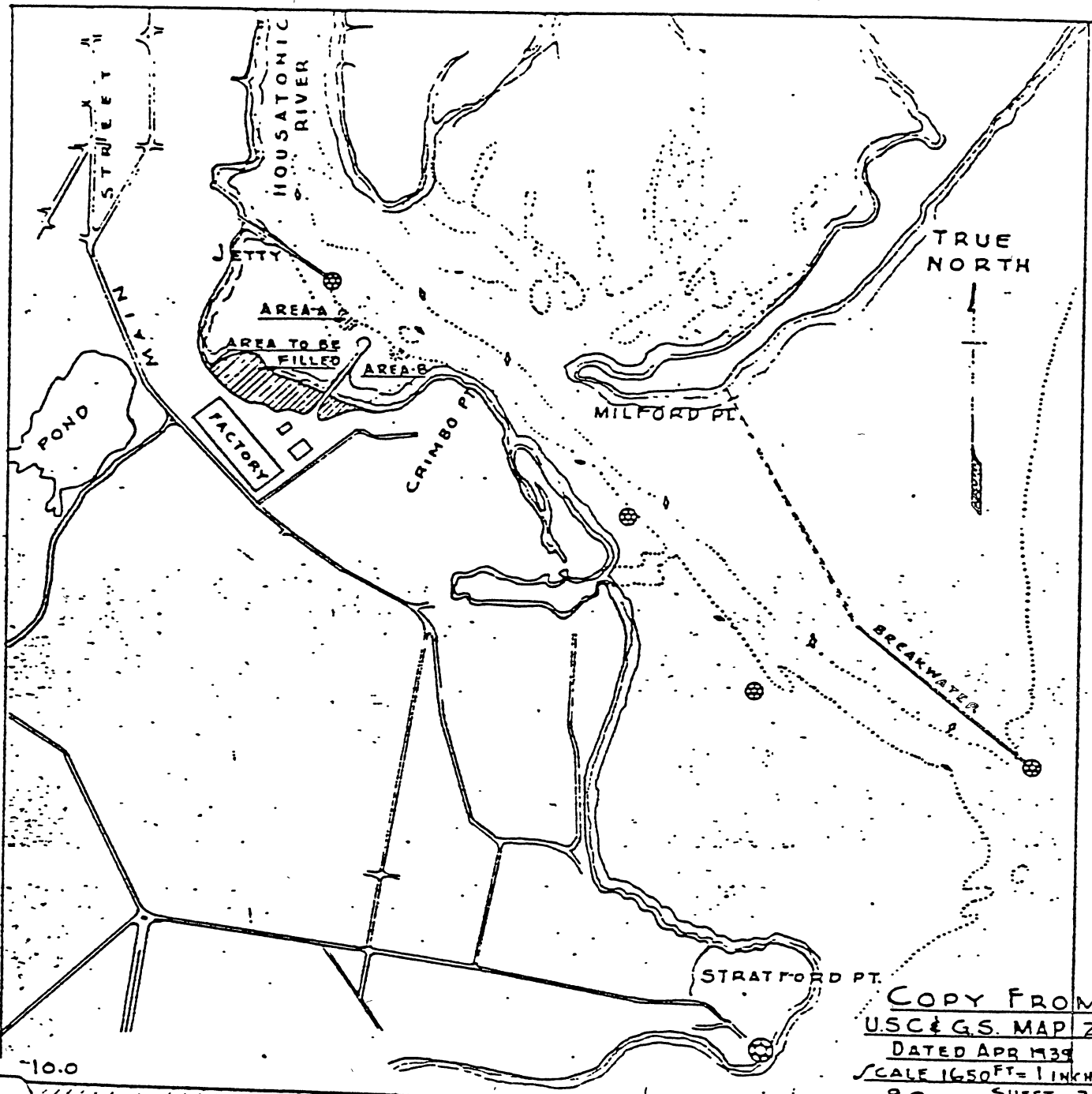
It is noted that such construction will have no ad-
verse effect upon the navigability of the river and will not in-
crease the danger to life or property by reason of flood waters.
It is not the intent of this Commission to convey or waive any
property right in any lands of the State, nor will this letter be
construed as giving any property rights in real estate or material
or any exclusive privileges, nor does it authorize any injury to
private property for the invasion of private rights or any infringem-
ent of Federal, State or local laws or regulations. These limita-
tions are similar to those contained in Federal permit regulations
to such matters.

A copy of this letter is being forwarded to the
District Engineer's Office at Providence, R. I. and the

Very truly yours,

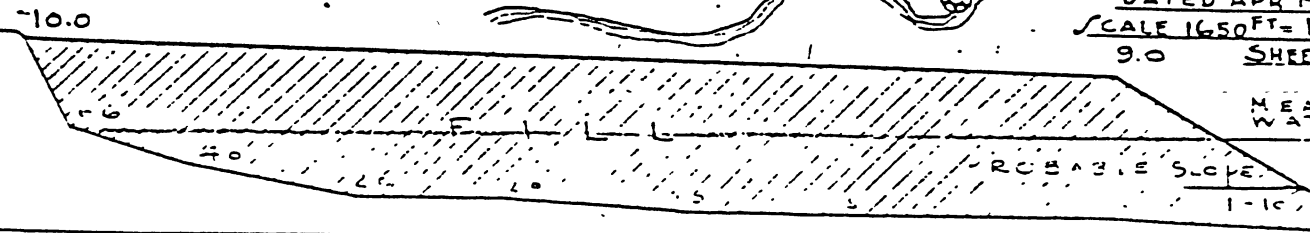
FLOOD CONTROL & WATER POLICY COMMISSION

By 
S. H. Wadhams, Secretary



COPY FROM
 USC & GS. MAP 219
 DATED APR 1939
 SCALE 1650 FT = 1 INCH
 9.0 SHEET - 2.

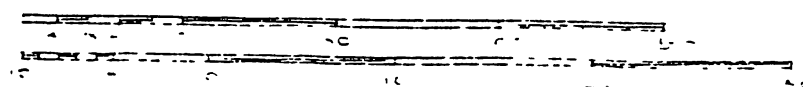
MEAN HIGH WATER 5.2



TYPICAL CROSS SECTION
 SHOWING FILL
 TAKEN AT THIS SHEET

MEAN LW WATER 0.46

HORIZONTAL SCALE 60' = 1"
 VERTICAL SCALE 10' = 1"
 DWG NO. 300 X BA



TRUE NORTH



AREA-A & B INDICATES DREDGING OF MATERIAL TO A DEPTH OF 40 FT
MEAN HIGH WATER - 5.96
MEAN LOW WATER 0.46
SHEET N° 1

JETTY

BEACON
-10° -10°

AREA-A

AREA-B
EAST TO CHANNEL

RYAN

MAIN
FACTORY
FL. LEVEL 105

AVERAGE
GR. 9.5

ENGINEERING
BLDG

SNIFFET LANE

ALICE L.
SNIFFEN

PROPOSED
DREDGING & FILLING-IN
CHANCE VOUGHT AIRCRAFT CO
STRATFORD CONN.
DWG. NO. 370 X 84

