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TL/Secretary

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Team Leader

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OH5014/JS Supt.

NOV 15 1999

(NF'S/PHSO/S&P-C)
Re: Gregory Norell Permit Application
315 Old River Road; Mays Landing, NJ

Frank Cianfrani, Chief
Regulatory Branch
Department of the Army - Phila. District
Wanarnaker Building
100 Penn Square East
Philadelphia, PA 19107-3390

Dear Mr. Cianfrani:

We have received information from the New Jersey Department of Environmental Protection regarding an application to legalize and extend the dock located at 315 Old River Road in Mays Landing. The proposed structure would be approximately 165 feet channelward for the mooring of private boats in the Great Egg Harbor National Scenic and Recreational River.

Comment: This situation requires an after-the-fact permit under Section 404 of the Clean Water Act.

We have reviewed the above referenced permit pursuant to section 7(a) of the Wild and Scenic Rivers Act, as amended (P.L. 90-542) which states "no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration." National Park Service authority under Section 7(a) of the Wild and Scenic Rivers Act has been upheld in federal district court. In the case of the United States versus Kenneth Harris in 1992 a decision was rendered that upheld the removal of an illegal dock on the Little Miami River. In 1998 in Sierra Club, et al., versus United States, the federal district court clarified what constitutes a "water resources project" and also upheld the authority to review such projects under Section 7(a).

Comment: It is important to establish the authority of the river-administering agency under Section 7(a) of the Act. However, a reference to court cases is usually unnecessary.

In October 1992, 129 miles of the Great Egg Harbor River and its tributaries were designated into the National Wild and Scenic Rivers System. This includes three river segments on the mainstem totaling 39.5 miles and 89.5 miles of tributaries. Over 99 percent of the eligible waterways and adjacent lands are within the boundary of the Pinelands National Reserve. .

As part of the study process, outstandingly remarkable resource values were documented in the "Great Egg Harbor Wild and Scenic River Study Final Eligibility and Classification Report" (August 1988) and in the "Great Egg Harbor River Final Study Report" (January 1991) that were the basis for designation. The following facts regarding outstandingly remarkable river-related resources are contained in these reports and pertain to the area of the proposed dock:

Wetlands adjacent to the lower, middle and upper Great Egg Harbor River and its tributaries provide habitat for rare and endangered species such as the northern harrier and Pine Barrens tree frog. All of these areas are documented by the NJ Natural Heritage Program.

The Great Egg Harbor River is the longest canoeable river in the NJ Pinelands. The middle section of the Great Egg Harbor River is recognized for its outstandingly remarkable canoeable waters.

The tidal portions of the Great Egg Harbor River (below Mays Landing) and its tributaries serve as critical nursery habitat and spawning grounds for anadromous, resident estuarine and transient marine fish, including Alewife Herring and Striped Bass.

It is our determination that this particular dock will have a direct and adverse effect on the values for which the Great Egg Harbor River was designated for the following reasons:

Comment: We recommend use of the evaluation procedure outlined in Appendix C of the Council's technical report, *Wild and Scenic Rivers Act: Section 7* (2004) to provide a basis for the determination. This determination, which was supported by an internal file memo, should also more clearly document potential effects on free-flowing condition, water quality and other outstandingly remarkable values.

The middle Section of the Great Egg Harbor River (below the bulkhead at Mays Landing) was identified as an outstandingly remarkable recreational resource for non-motorized recreation. It is important to recognize that at the time the Great Egg Harbor River was studied and recommended for inclusion into the National Wild and Scenic Rivers System in 1992, there were a very limited number of docks. Those that existed were short and inconspicuous. Over the years, both the number and size of docks (some of which have been constructed illegally) have seriously impacted recreational activities of non-motorized recreationists. Still today, during high and mid-tides these recreational watercraft (canoes, kayaks, sailboats) can and do avoid the high traffic main channel and the large and/or powercraft that use it by travelling in shallower waters along the shore. The proposed dock, 165' in length from shore toward the main channel, would severely restrict non-motorized craft in this intertidal zone. It would effectively block passage in this area forcing recreationists into the main channel. Restricting non-motorized

recreational use constitutes a direct and adverse effect on the recreational river resource values. We direct your attention to the enclosed photos which show the unencumbered shoreline in the area of the proposed dock.

Existence of anadromous fish spawning areas was identified by the National Park Service as an outstandingly remarkable resource for purposes of designating the river into the National Wild and Scenic River System. In 1998 the National Park Service began working with the University of Maryland Eastern Shore to conduct a fisheries study for the tidal portion of the Great Egg Harbor National Scenic and Recreational River. The two year study, which should be completed by December 1999, will confirm that the Great Egg Harbor River is still an important critical nursery habitat and spawning ground for anadromous fish. Previous conversations with the US Fish and Wildlife Service indicate that there is a general decline of Alewife Herring, a federal trust resource, in the State. There is speculation that the proliferation of docks and bulkheading may have contributed to this decline; however, no studies have been conducted to date to verify this. The use of creosoted timber pilings and pressure treated wood used in the construction of docks may also contribute to a decline in water quality.

According to local residents, there is already a serious decline of Herring spawning. The decline of Herring results in a decline in the Striped Bass population which feed on the Herring and ultimately in the raptor population which feed on the Herring and Striped Bass.

The US Fish and Wildlife Service considers the anadromous fish population to be important enough to pursue the construction of a fish ladder at the Lake Lenape dam above the location of this proposed dock.

As you are also aware, bulkheading causes higher velocities for the flow of the river which create scouring problems in adjacent areas. This scouring of the substrate causes reductions in benthic organisms living in the mudflats. Herring feed on the benthic organisms during their early life stages.

One of the unique features of the Great Egg Harbor River is its ever-changing nature. According to area residents, after the severe storms of 1998, the navigational channel changed. In 1999 the buoy markers were moved closer to the Hamilton Township side of the river. The significance of this is that some long docks, which may have originally been close to the navigational channel, may now be in it forcing a dangerous situation for non-motorized recreationists. While we cannot predict when these changes in the river will occur, we can and should prepare for those changes by keeping docks at a reasonable length.

The draft of the Great Egg Harbor National Scenic and Recreational River Comprehensive Management Plan and Environmental Impact Statement, which

was available for public review from July 1999 through October 8, 1999, contains very specific recommendations for long term protection of the designated river corridor. One recommendation is the need to evaluate the impact that the proliferation of docks may have not only on non-motorized recreationists but also on water quality, and the scenic and natural qualities of the river, as well.

The 1998 survey report for the Great Egg Harbor River produced by Virginia Polytech for the National Park Service supports limits on dock lengths because of their negative impact on other recreationists and also for their negative impact on the scenic views of the river. This very extensive survey was conducted to gauge public opinion of both visitors and waterfront residents, with a sizable portion of both groups in support of limiting the length of docks. An overwhelming majority of docks on the Great Egg Harbor River do not reach water during low tide. The trend toward longer docks is a relatively new issue on the river.

Comment: The preceding section makes good use of existing planning documents and studies to support the determination. It is appropriate to request a future study to further address an issue(s).

We understand that pursuant to our Section 7(a) determination the Corps will deny this permit. The National Park Service would consider reviewing its position should the applicant revise its application and provide a design more in keeping with a National Scenic and Recreational River.

Comment: The Section 7 review process allows for an applicant to resubmit a modified project; helpful to alert the applicant and federal assisting agency accordingly.

Sincerely,

J. Keith Everett, Superintendent
Philadelphia Support. Office

Enclosure

M.Vavra/mhv: 11/6/99

Bcc: Reading, Daily, General,
Hamilton Township —

Julie Akers

Angela Perry
Bill Christman