

1996



REPLY TO ATTENTION OF:

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, ALASKA
P.O. BOX 898
ANCHORAGE, ALASKA 99506-0898
JULY, 30 1997

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PKW _____
JEW _____

CERTIFIED

Regulatory Branch
North Section
V-960826

RECEIVED
AUG 04 1997

Mr. Randy Romenesko
City of Nome
Post Office Box 281
Nome, Alaska 99762-0281

Alaska Dept. of Fish & Game
Habitat - Region III

Dear Mr. Romenesko:

This is a Notice of Alleged Violation involving noncompliance with the terms and/or conditions of Department of the Army (DA) permit number 4-960826, Snake River 10, issued to the City of Nome (City) on February 10, 1997. The permit authorized the City to dredge up to 56,000 cubic yards of material from 5.6 acres of waters of the United States (U.S.), including the existing boat harbor, a 200' X 100' X 10' channel within the Snake River, and a creek channel at the north end of the project area. In addition, the permit authorized the construction of sheet pile retaining walls, the installation of two seasonal floating docks, and the placement of up to 18,625 cubic yards of dredged, gravel, and riprap fill material into 1.2 acres of tidelands for harbor stabilization and/or future development activities. The harbor is located at Nome, Alaska, within sections 26, and 35, T. 11 S., R. 34 W., Kateel River Meridian.

The violations are alleged to consist of the following work which was conducted in association with the above-referenced permit:

a. On-site photographs indicate that dredged material was removed from the small boat harbor during the City's dredging operation, transported across the ice, and dumped in the middle of the frozen Snake River. Although some of the dredged material may have been ice and snow, photographs taken after break-up, show mounds of dredged material piled high enough to surface the Snake River. In addition, Corps of Engineers post 1996 and pre 1997 surveys indicate that the amount of material to be dredged from within the Federal project limits more than doubled during that timeframe.

Special condition #2 of your DA permit (page 2) requires that: "The dredged material shall be contained (ie: bermed), to prevent it from exceeding the disposal area limits, and/or reentering waters of the U.S." Your DA permit authorized the placement of the dredged harbor material within the specified disposal area limits, behind sheetpile or a containment berm; not out in the Snake River channel.

b. On-site photographs also indicate that some of the City's harbor dredge material was placed on the adjacent tidelands, ~~without a containment berm.~~ Consequently, it appears that some of this material has reentered waters of the U.S.

Again, special condition #2 of your DA permit reads as above; prohibiting any authorization that would allow that material to slough back into waters of the U.S.

c. We have been made aware of the fact that the City has a sewer line replacement project underway, and that some excess material from that project has been placed as fill on the tidelands around the harbor perimeter.

The City's small boat harbor project was reviewed and evaluated in accordance with the City's application and plans. According to those plans, dredged material would be removed from the harbor basin and placed within the specified tideland/upland disposal area limits. The disposal area would then be capped with a 24" thick layer of pit run gravel. The DA permit did not authorize the placement of fill material obtained from other sources, such as the sewer line replacement project.

My staff is currently conducting an investigation of the alleged violations. To ensure that all pertinent information is available for our evaluation and is included in the public record, you are invited to provide any information which you feel should be considered. We specifically request that you provide the following information:

- a. Why was the dredged material placed on the Snake River instead of the permitted disposal site?
- b. When was the dredge work done?
- c. Why was the disposal site not bermed prior to the placement of the dredged fill material? When was the berm constructed?
- d. What is the name, address, and telephone number of any contractors who have participated in the dredge work?
- e. Where is the location of the sewer line replacement project(s)?
- f. If the sewer line is being replaced, why is the fill material not being reused for that project?
- g. Where in the disposal area is/was the excess material from the sewer line replacement project being placed? When was this work done?
- h. Was the sewer line fill material tested? Was the material found to be a clean, suitable fill source?
- i. Was the sewer line fill material stockpiled in wetlands prior to transport to the disposal area?
- j. What is the name, address, and telephone number of any contractors who have participated in the sewer line replacement work?
- k. Are current plans for the site different from those attached to the permit? If so, what are the new plans for the site, including total area of waters of the United States that have been filled and/or are projected to be filled?
- l. Please include any other information you wish to provide concerning the history of the activity.

We will withhold further enforcement action for 20 days from the date of this letter to allow you to submit the above requested information.

You are advised that substantial penalties are available for conducting work in waters of the U. S., including wetlands, without the necessary DA authorization(s).

Section 12 of the Rivers and Harbors Act provides civil penalties, including fines of not less than \$500, and not more than \$2,500, per day of violation or imprisonment of up to one year, or both, for any person who violates Section 10 of the Rivers and Harbors Act.

Section 309 of the Clean Water Act provides penalties, including fines of up to \$50,000 per day or imprisonment for up to three years for any person who knowingly violates Section 301 of the Act.

For informational purposes, copies of this letter are being provided to the agencies and individuals on the enclosed list.

Please contact Ms. Shannon Hansen at (907) 753-2716, toll free in Alaska at (800) 478-2712, or by mail at the letterhead address, if you have any questions.

Sincerely,

for Shannon Hansen
Steve Meyers
Unit Coordinator

Enclosure

1997



CITY OF NOME

AUG 27 1997

P.O. BOX 281 - NOME, ALASKA 99762
TELEPHONE (907) 443-5242

Alaska Dept. of Fish & Game
Habitat - Region III

CERTIFIED

21 August, 1997

FILE COPY

- SGW _____
- CRH _____
- RFM
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- RAP _____
- RTS _____
- AHT _____
- PKW _____
- IFW _____

Mr. Steve Meyers, Unit Coordinator
 Regulatory Branch, North Section
 Department of the Army
 U.S. Army Engineers District, Alaska
 P.O. Box 898
 Anchorage, Alaska 99506-0898

Ref.: U.S. Army Corps of Engineers File No. V-960826

Subject: City of Nome Small Boat Harbor Project
 Permit Number 2-960826
 Notice of Alleged Violation

Dear Mr. Meyers:

This letter is the response of the City of Nome to the U. S. Army Corps of Engineers Notice of Alleged Violation, dated July 30, 1997. To facilitate communications, we respond in the same format as your letter.

I. RESPONSES TO ALLEGATIONS

Item a: Allegation That Dredged Material Was Disposed Of In Snake River.

The dredging in the Small Boat Harbor pursuant to the subject Corps permit was performed by the City of Nome during the period of April 21 through April 25, 1997, while local temperatures were still below freezing. The average ice thickness in the harbor area during the excavation period was 4 feet to 6 feet in depth. The work was supervised and directed by a City of Nome employee who is a graduate (M.S.) environmental engineer, and the work was accomplished using rented equipment including a large backhoe, rubber-tired off-road haul trucks and support dozers.

In order to safely excavate the dredged materials from the ice platform, the City spread 440 cubic yards of sand on top of the ice, spread over a surface area of 158,543 square feet including the dredge area, the haul road, and the permitted fill area.

government, under the direct supervision of a registered, graduate environmental engineer.

At no time was dredged material placed in the Snake River channel during the excavation. All dredged material was properly placed in the approved fill areas.

Item b: Allegation That Dredged Material Was Placed On Adjacent Tidelands Without A Containment Berm.

The City of Nome is hard-pressed to respond to this allegation, because it comes as a mere three-sentence, summary accusation with neither factually supported assertions nor documentation.

The purpose of containment in Special Condition No. 2 is stated quite specifically "to prevent [dredged material] from exceeding the disposal area limits, and/or reentering waters of the U. S." The Notice of Alleged Violation artfully does not assert that dredged materials exceeded the disposal area limits or reentered waters. The Notice alleges only vaguely that "it appears" from some photograph (not included in the NAV for review and analysis by the City) that some materials have reentered waters of the U. S. Fortunately, the true facts are far more comforting than mistaken perceptions derived from a picture.

The materials were excavated and placed in the fill area during the period from April 21 through April 25, 1997. Temperatures in Nome were well below freezing all of those four days. Excavating during frozen conditions made the material very easily manageable. Surfaces re-froze very quickly, acting as one form of containment.

The material characteristics at the time of excavation were very dense and/or frozen. The method of excavation, using a large backhoe in winter rather than a cutter/suction dredge or dragline, resulted in highly manageable, virtually dewatered materials being extracted. The materials were then end-dumped and dozed into the stockpile. All materials were placed beyond a buffer zone of at least 50 feet from the edge of the excavation, to prevent material from reentering the excavation site.

In addition, the dredged materials were constantly contained and managed with a D-10N dozer until the completion of the dredging. Because of the

facility. If the material does not meet trench backfill standards, and does not contain utilidor materials, it has been used for general fill at other City jobs including the small boat harbor.

Beginning about July 5, and continuing to August 9, 1997, approximately 6,600 cubic yards of this material was trucked directly from the excavation sites shown on Attachment B and placed within the Permit area behind a rock containment dike in the northeast corner of the small boat harbor. Attachment A indicates where this fill area is located.

These materials were exclusively clean, native soils suitable for small boat harbor fill. The composition is gravel (6-inch minus) and sand, with some limited silts or organics. Some of the materials were frozen at the time of deposit.

The City of Nome recognizes that this use of imported soils from the Utilidor Replacement Project as fill near the small boat harbor was a technical mistake contrary to the letter of the Permit. However, it was inadvertent, minor in nature, and resulted in no damage. This import of materials has been stopped, and will not recur.

II. RESPONSES TO REQUEST FOR INFORMATION

a. "Why was the dredged material placed on the Snake River instead of the permitted disposal site?" Only ice blocks with surficial dirt were placed on the Snake River. Ice blocks with significant frozen dirt were placed in the fill area. The mound in your photographs is grounded ice coated with dirt.

b. "When was the dredge work done?" All dredging was accomplished from the ice platform during the period from April 21 through April 25, 1997, while temperatures were below freezing.

c. "Why was the disposal site not bermed prior to the placement of the dredged fill material? When was the berm constructed?" Nothing in the Permit says that the disposal site must be "bermed prior to the placement." ~~The Permit only requires containment, to prevent the material from~~ exceeding the disposal area and/or reentering waters of the U.S. The dense and/or frozen materials were contained effectively and successfully by multiple measures (including berming), namely by using a backhoe to

contractors. All of the work is being performed in house by the City of Nome municipal division known as Nome Joint Utilities.

k. "Are current plans for the site different from those attached to the permit? If so, what are the new plans for the site, including total area of waters of the United States that have been filled and/or are projected to be filled?" At this point in time, approximately 0.9 acres of the permitted 1.2 acres have been filled. Future plans for the site may change, but not materially. No more activities will occur in the permitted area until the matter has been addressed fully in a separate application to modify the Permit.

l. "Please include any other information you wish to provide concerning the history of the activity." The City of Nome is an environmentally sensitive public government, very concerned and cautious to prevent any damage to the waters or marine life of the local area. The small boat harbor project is being supervised and monitored by a graduate environmental engineer employed by the City. All material was excavated carefully and efficiently before break-up, and only ice blocks with surficial dirt were placed on the Snake River ice rather than into the fill. All excavated materials were carefully contained from the first moment of fill activities, and no fill has reentered the waters.

The Nome Utilidor Replacement Project also provided significant improvements to utility worker safety and public health improvements for the community at Nome. While the use of some of this fill at the small boat harbor was a technical error, that fill was sorted carefully, with unsuitable material being transported to the dump closure project, and only a relatively small quantity of clean, suitable native materials used at the small boat harbor. This material was carefully bermed behind rock, and there is no evidence of contamination or of material exceeding the boundaries of the fill area.

The formal Notice of Alleged Violation is based in an unfortunate misunderstanding and an unfortunate misinterpretations of photographs. The City of Nome has conscientiously devoted long hours, many resources, and much money to the preparation of this response, with sincere hopes that a clear, full explanation here can result in a speedy return by all parties to constructive investments of time and money into the on-going improvements at Nome.

Copies Furnished:

Mr. William D. McGee
Regional Environmental Supervisor
Alaska Department of Environmental
Conservation
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Fairbanks, Alaska 99709-3643

Dr. Al Ott
Regional Supervisor, Region III
Habitat Protection Section
Alaska Department of Fish and Game
1300 College Road
Fairbanks, Alaska 99701-1599

Project Coordinator
Office of Management and Budget
Division of Governmental Coordination
Southcentral Regional Office
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Anchorage, Alaska 99503-5930

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Environmental Protection Agency
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Ecological Service Anchorage
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Anchorage, Alaska 99501-2249

Mr. Ronald J. Morris
Western Alaska Ecological Supervisor
National Marine Fisheries Service
222 West Seventh Avenue, # 43
Anchorage, Alaska 99513-7577

Ms. Nancy Welch
Regional Manager
Alaska Department of Natural
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Division of Land
Northern Regional Office
3700 Airport Way
Fairbanks, Alaska 99709-4699

Ms. Judith Bittner
Alaska Department of Natural
Resources
State Historic Preservation Office
3601 C Street, Suite 1278
Anchorage, Alaska 99503-5921

LIST OF ATTACHMENTS

- (A) Area of NJUS Utilidor Project Material Fill.
- (B) Nome Joint Utility Utilidor Replacement Project - 1997.
- (C) Nome Joint Utility Utilidor Replacement Project typical cross-section.
- (D) Photo's

NOPE SMALL BOAT HARBOR

CONCEPTUAL PLAN

REVISED 12-16-96

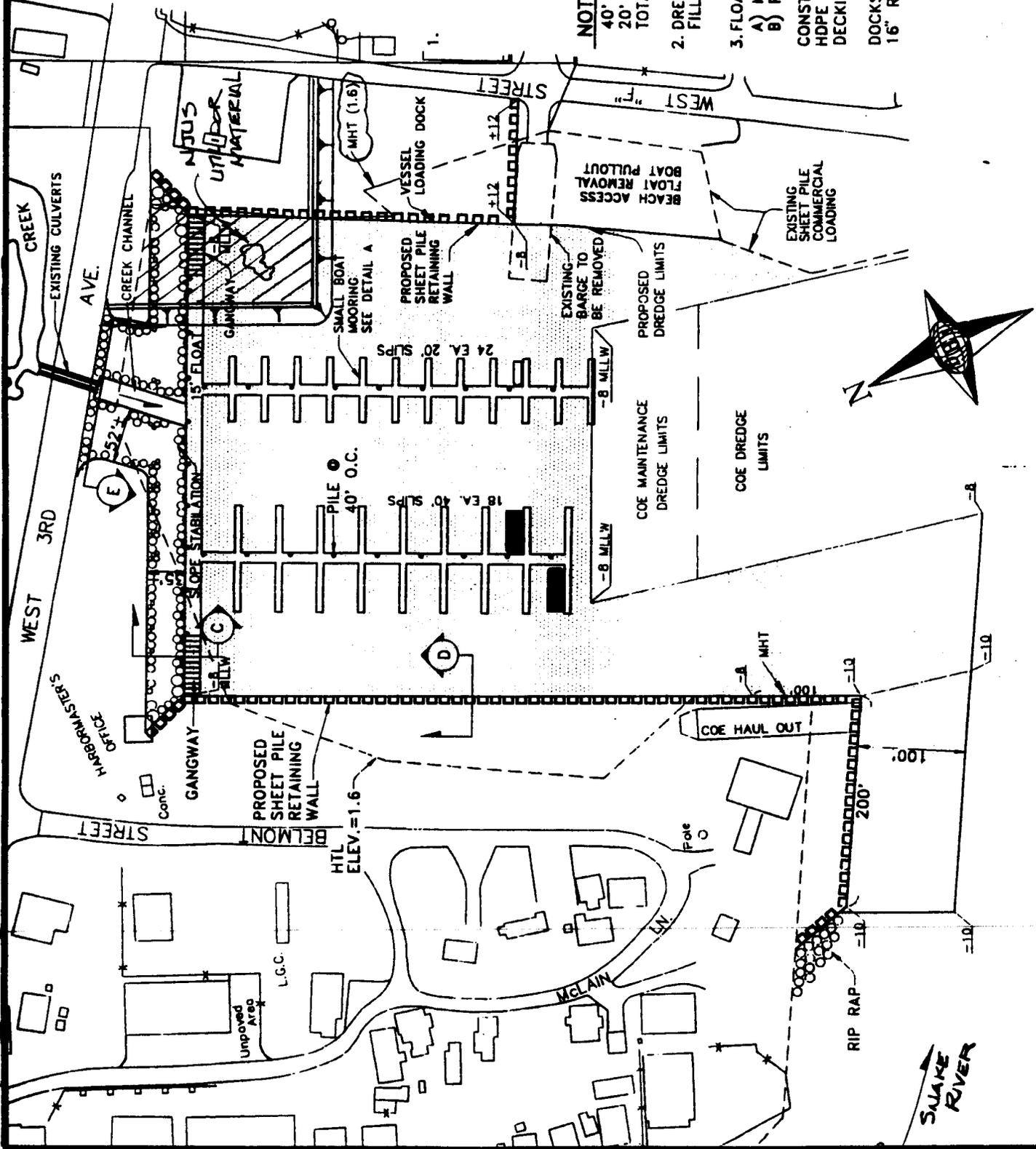
DHI CONSULTING ENGINEERS
 CIVIL SURVEYING • PLANNING



Telephone: (907) 444-1900 Fax: (907) 444-1283

8 BATES B-BAL, ANCHORAGE, ALASKA 99518

W.D. 95183 COMP. FILE: B33CAD SCALE 1"=100' DATE: 12-9-96 BY: DDH



NOTES:

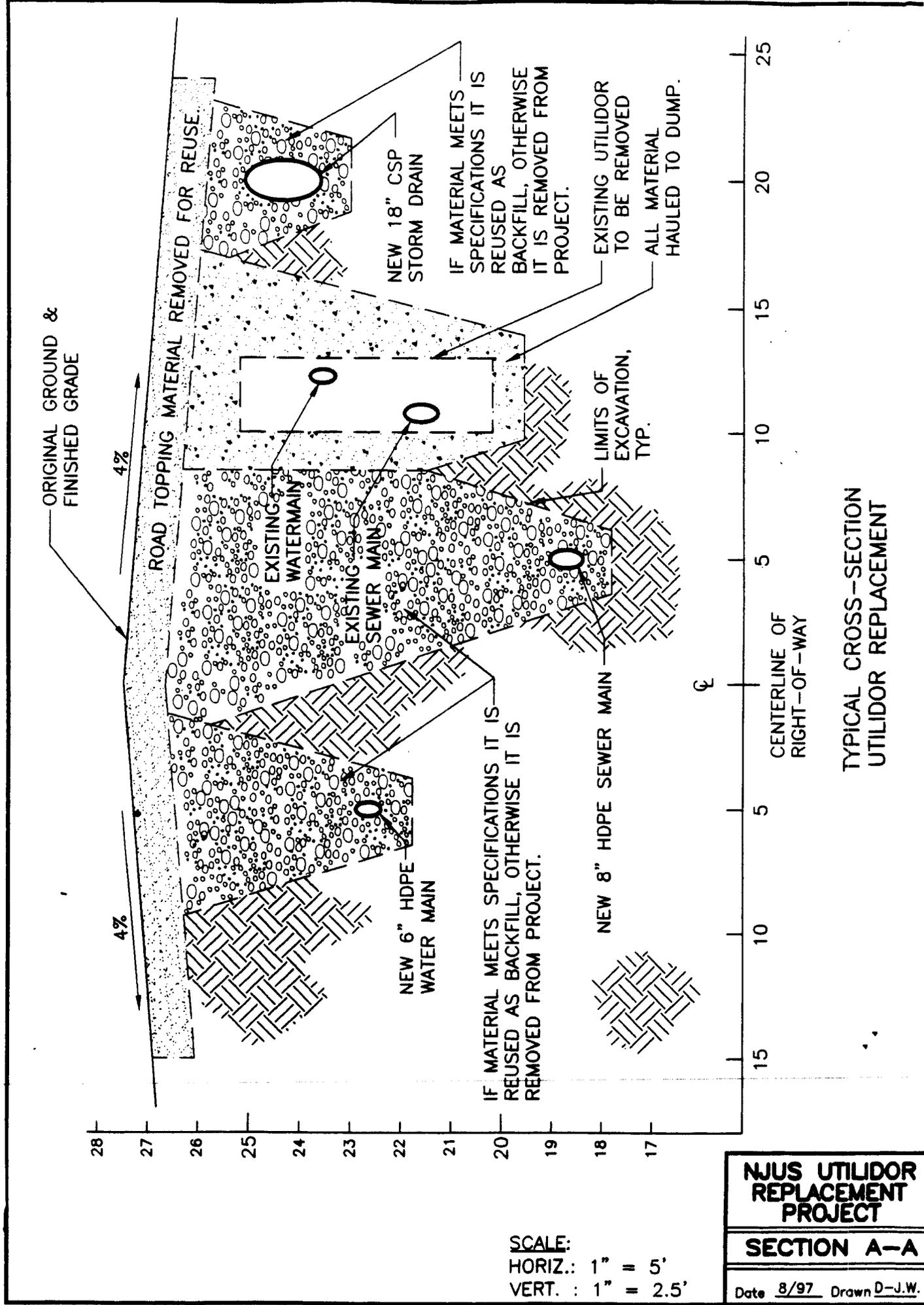
40' SLIPS	36
20' SLIPS	48
TOTAL SLIPS	84

2. DREDGE = 41,000 TO 65,000 C.Y.
 FILL 55,000 TO 65,000 C.Y.

3. FLOATIN DOCK:

- A) MAIN DOCK - 15' WIDE
 - B) FINGER DOCKS 8' WIDE
- CONSTRUCTION WILL CONSIST OF HDPE OR STEEL FLOATS W/ WOOD DECKING (NON TREATED)
- DOCKS WOULD BE ANCHORED WITH 16" ROUND STEEL PILE.

Attachment (C): NJUS Utilidor Replacement Project Typical Cross-section



28
27
26
25
24
23
22
21
20
19
18
17

4%

4%

ORIGINAL GROUND &
FINISHED GRADE

ROAD TOPPING MATERIAL REMOVED FOR REUSE.

EXISTING WATERMAIN

EXISTING SEWER MAIN

NEW 6" HDPE WATER MAIN

IF MATERIAL MEETS SPECIFICATIONS IT IS REUSED AS BACKFILL, OTHERWISE IT IS REMOVED FROM PROJECT.

NEW 18" CSP STORM DRAIN

IF MATERIAL MEETS SPECIFICATIONS IT IS REUSED AS BACKFILL, OTHERWISE IT IS REMOVED FROM PROJECT.

NEW 8" HDPE SEWER MAIN

EXISTING UTILIDOR TO BE REMOVED ALL MATERIAL HAULED TO DUMP.

LIMITS OF EXCAVATION, TYP.

℄

CENTERLINE OF RIGHT-OF-WAY

25

20

15

10

5

5

10

15

SCALE:
HORIZ.: 1" = 5'
VERT.: 1" = 2.5'

NJUS UTILIDOR REPLACEMENT PROJECT

SECTION A-A

Date 8/97 Drawn D-J.W.

TYPICAL CROSS-SECTION UTILIDOR REPLACEMENT

Attachment (D): City of Nome Photo's

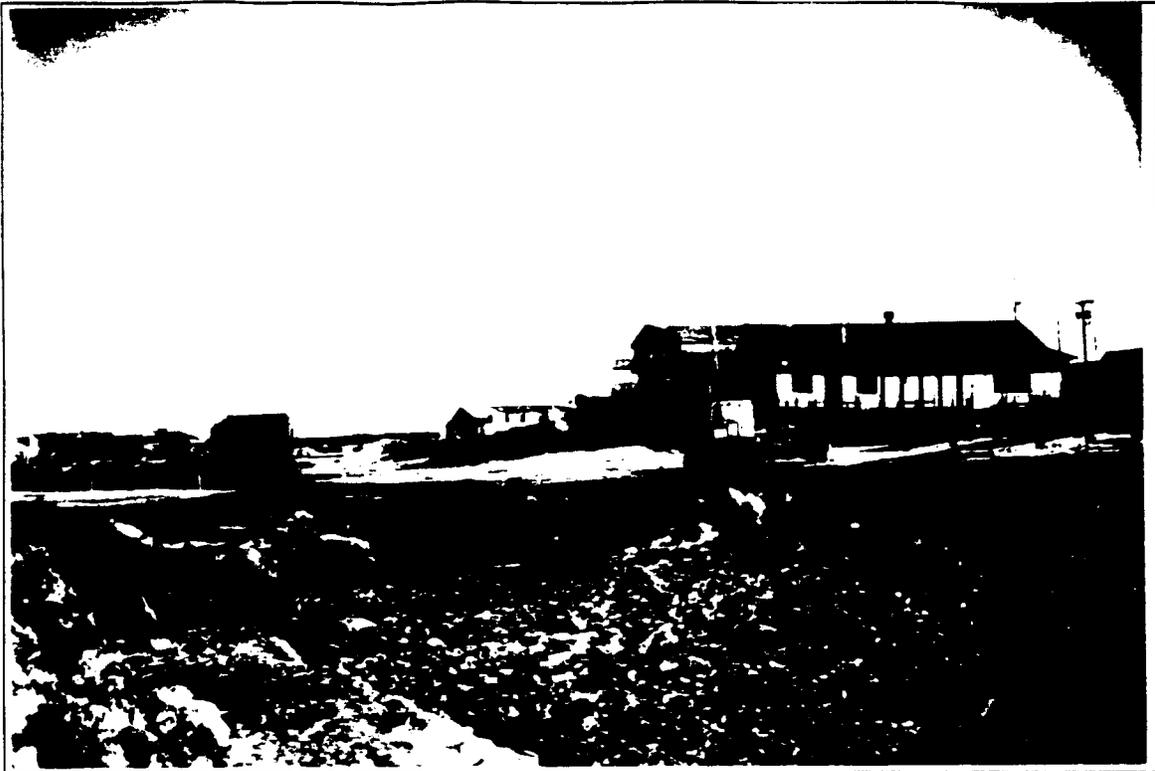


Photo 1: Nome Small Boat Harbor Project. Looking west. Photo taken at SE corner of excavation. Task: hauling ice to river.



Photo 2: Nome Small Boat Harbor Project. Looking north. Photo taken at SE corner of excavation. Task: dredging and preparing north edge of work site.



Photo 3: Nome Small Boat Harbor Project. Looking north. Photo taken at SW corner of excavation. Task: removing ice before dredging.



Photo 4: Nome Small Boat Harbor Project. Looking north. Photo taken at SW corner of excavation. Task: removing ice before dredging.

Attachment (D): City of Nome Photo's



Photo 5: Nome Small Boat Harbor Project. Looking SW. Photo taken at new anchor location. Task: relocate anchor.



Photo 6: Nome Small Boat Harbor Project. Looking WNW. Photo taken at east limit of dredge area. Task: dredging. Note buffer zone between dredge stockpile & dredging area.