



**US Army Corps
of Engineers**
Philadelphia District

Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3390
ATTN: CENAP-OP

Public Notice

Public Notice No. **SPECIAL PUBLIC NOTICE** Date **December 8, 2017**

Application No. File No. **CENAP-OP-R-2017-00681**

In Reply Refer to:
OPERATIONS DIVISION

Reference is made to the Water Infrastructure Improvements for the Nation (WIIN) Act dated December 5, 2016. Specifically, Section 1308 of the act makes the following statements.

SEC. 1308. CENTRAL DELAWARE RIVER, PHILADELPHIA, PENNSYLVANIA.

(a) **AREA TO BE DECLARED NONNAVIGABLE.**—Subject to subsection (c), unless the Secretary finds, after consultation with local and regional public officials (including local and regional public planning organizations), that there are substantive objections, those portions of the Delaware River, bounded by the former bulkhead and pier headlines that were established by the Secretary of War and successors and described as follows, are declared to be non-navigable waters of the United States:

(1) Piers 70 South through 38 South, encompassing an area bounded by the southern line of Moore Street extended to the northern line of Catherine Street extended, including the following piers: Piers 70, 68, 67, 64, 61–63, 60, 57, 55, 53, 48, 46, 40, and 38.

(2) Piers 24 North through 72 North, encompassing an area bounded by the southern line of Callowhill Street extended to the northern line of East Fletcher Street extended, including the following piers: Piers 24, 25, 27–35, 35.5, 36, 37, 38, 39, 49, 51–52, 53–57, 58–65, 66, 67, 69, 70–72, and Rivercenter.

(b) **PUBLIC INTEREST DETERMINATION.**—The Secretary shall make the public interest determination under subsection (a) separately for each proposed project to be undertaken within the boundaries described in subsection (a), using reasonable discretion, not later than 150 days after the date of submission of appropriate plans for the proposed project.

(c) **LIMITS ON APPLICABILITY.**—The declaration under subsection (a) shall apply only to those parts of the areas described in subsection (a) that are or will be bulkheaded and filled or otherwise occupied by permanent structures, including marina and recreation facilities.

The legislation establishes certain reaches of the western portion of the Delaware River, within the City of Philadelphia, to be non-navigable. Unlike previous Declarations by Congress, this legislation requires process and determination by the Corps as to whether local or regional officials have any objection to the final determination of non-navigability. The determination is required to be made for each proposed project within the identified reaches and within 150 days of submission of plans.

It should be noted that the declaration of this portion of the Delaware River as non-navigable does not alter or restrict the applicability of the U.S. Army Corps of Engineers regulatory authority under Section 10 of the Rivers and Harbors Act or Section 404 of the Clean Water Act. Rather, it would affect the government's authority under what is commonly referred to as "navigational servitude." Under this authority, the Federal government may require a permittee to remove and/or modify any authorized work or structures in navigable waters where those structures may conflict with a Federal navigation or other civil works projects. Department of the Army permits for work in navigable waters are subject to the following condition:

The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration. (This special condition is applicable to Corps of Engineers permits that provide authorization under Section 10 of the Rivers and Harbors Act of 1899.)

Under the provisions of Section 1308 of the Water Infrastructure Improvements for the Nation (WIIN) Act dated December 5, 2016, this condition would be removed from any authorized structures within this specific section of the Delaware River. The purpose of this notice is to solicit comments and recommendations from the public concerning areas along the Delaware River in the City of Philadelphia to be declared as non-navigable pursuant to the above referenced legislation.

An application for a Department of the Army Nationwide permit (CENAP-OP-R-2017-00681) has been submitted by the Penn Treaty Homes, LLC for work in the Delaware River in conjunction with the installation of a storm water outfall pipe, headwall and rock apron at the intersection of Delaware Avenue and Marlborough Street in the City and County of Philadelphia, Pennsylvania. The project site is located within the areas described above. At this time the permit application is under review and the decision is currently pending.

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 the proposed declaration described above in Section 1308 of the Water Infrastructure Improvements for the Nation (WIIN) Act dated December 5, 2016.. This public interest determination will be based on an evaluation of the probable impact including its cumulative impacts on the public interest, and in particular, navigation.

Comments on the above referenced legislation should be submitted, in writing, within **30** days to the District Engineer, U.S. Army Corps of Engineers, Philadelphia District, Wanamaker Building, 100 Penn Square East, Philadelphia, Pennsylvania 19107-3390. Additional information concerning this action may be obtained by calling Mr. Timothy J. Rooney at 215-656-6592, via email at timothy.j.rooney@usace.army.mil or writing this office at the above address.

A handwritten signature in blue ink, appearing to read "Anthony J. DePasquale".

Anthony J. DePasquale, P.E.
Chief, Operations Division