



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 permit (CENAP-OP-R-2019-0288-83) has been submitted by Desert Diamond 34, L.P., a Pennsylvania Limited Partnership, c/o Ensemble Investments, LLC, seeking to re-develop a portion of the existing Pier 34 and the and interpier area between Piers 34 and 35. The sites are located at 735 South Christopher Columbus Boulevard along the west bank of the Delaware River in Philadelphia, PA; [Latitude: 39.938403° North; Longitude: -75.141508° West at RM 99]. A public notice soliciting comments on that Department of the Army permit application was published on July 31<sup>st</sup>, 2019. The review of that permit application, which also includes a public interest determination, will also include an evaluation of the proposed activity pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and harbors Act of 1899.

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 declaration. 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](mailto:timothy.j.rooney@usace.army.mil) or writing this office at the above address.



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