



**US Army Corps
of Engineers**
Philadelphia District

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

Public Notice

Public Notice No. CENAP-OPR-2014-740	Date OCTOBER 13, 2020
Application No. CENAP-OPR-2014-740	File No. CENAP-OP-R-2014-740-85
In Reply Refer to: REGULATORY BRANCH	

This Philadelphia District Corps of Engineers (Corps) has received a request to modify a previously authorized Department of the Army permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

The purpose of this notice is to solicit comments and recommendations from the public concerning the requested amendment as described below.

APPLICANT: Delaware Department of Natural Resources and Environmental Control,
Division of Watershed Stewardship

AGENT: N/A

WATERWAY: Indian River

LOCATION: Cupola Park in Millsboro, east (downstream to Channel markers #53 and #54, a distance of approximately 11,840 feet (2.25miles), Sussex County, Delaware.
(Lat. 38.592694°N/Long.75.283283°W).

ACTIVITY: The Delaware Department of Natural Resources and Environmental Control, Division of Watershed Stewardship has requested to amend the disposal site associated with dredging the Indian River Federal Navigation Channel. The existing Department of the Army permit authorizes the removal of approximately 40,000 cubic yards of accumulated sediment to depth of 4 feet below mean low water utilizing a 10-inch cutterhead dredge and pumping the material to a previously constructed upland confined disposal facility. The existing Department of the Army permit will expire on December 31, 2024. The purpose of this Public Notice is to solicit comments concerning the proposed modification of the existing permit to allow the utilization of the dredged material to complete a marsh restoration project located on the south side of the Indian River directly north of the Millsboro wastewater treatment facility. Utilizing this site for disposal will restore approximately 7 acres of tidal emergent wetlands. Rebuilding the historical marsh platform will occur over two winter seasons (2020 and 2021). The sediment will be delivered via hydraulic pump and pipes and contained using low berms of heavier dredged material at the perimeter. Once the marsh platform has settled to the target elevation, aerial seeding or manual planting will be done to restore the vegetation. The location and plan for the additional proposed disposal site and the previously authorized dredging area is indicated on the attached plans.

PURPOSE: The purpose of the project is to maintain navigable depths within the federal navigation channel and restore an adjacent wetland utilizing dredged sediment.

AVOIDANCE/MINIMIZATION/COMPENSATION STATEMENT:

On April 10, 2008, the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency published a *Final Rule on Compensatory Mitigation for the Losses of Aquatic Resources* (33 CFR 325 and 332 and 40 CFR 230). The rule took effect on June 9, 2008. In accordance with 33 CFR Part 325.1(d)(7) of the rule, the applicant has stated that the proposed project has been designed to avoid and minimize adverse effects on the aquatic environment to the maximum extent practicable, and has further documented that compensatory mitigation is not necessary. The following aspects and features of the project demonstrate the applicant's efforts in this regard.

The dredged material utilized to restore the wetland area will be contained using low berms of heavier dredged material at the perimeter in order to minimize downstream transport of suspended sediment. Additionally, work will be conducted during months of low biological productivity as to minimize adverse effects on aquatic resources. Because the project does not result in the loss of aquatic resources and will result in the restoration of tidal emergent wetlands, the applicant is not proposing to conduct any compensatory mitigation for the work.

A preliminary review of this modification request indicates that the proposed work would not affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act as amended. As a result, consultation with the US Fish and Wildlife Service and NOAA Fisheries pursuant to Section 7 of the ESA is not necessary. As the evaluation of this application continues, additional information may become available which could modify this preliminary determination.

The Magnuson-Stevens Fishery Conservation and Management Act requires all federal agencies to consult with the NOAA Fisheries on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). A preliminary review of this application indicates that EFH is present within the project area. The Philadelphia District will evaluate the potential effects of the proposed actions on EFH and will consult with NOAA Fisheries as appropriate. Consultation will be concluded prior to the final decision on this permit application.

The decision whether to modify the existing permit will be based on an evaluation of the activity's probable impact including its cumulative impacts on the public interest. The decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the work must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the work will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and welfare of the people. A Department of the Army permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

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 modification. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Comments on the proposed work should be submitted within 15 days via email to PhiladelphiaDistrictRegulatory@usace.army.mil or in writing to the District Engineer, U.S. Army Corps of Engineers, Philadelphia District, Wanamaker Building, 100 Penn Square East, Philadelphia, Pennsylvania 19107-3390.

Review of the National Register of Historic Places indicates that no registered properties or properties listed as eligible for inclusion therein are located within the permit area of the work. The Philadelphia District has determined that the proposed project is of such limited nature and scope that little likelihood exists for the proposed action to impact an historic property. The District has determined that the project will have no effect on properties eligible for or listed in the National Register of Historic Places.

In accordance with Section 307(c) of the Coastal Zone Management Act of 1972, applicants for Federal Licenses or Permits to conduct an activity affecting land or water uses in a State's coastal zone must provide certification that the activity complies with the State's Coastal Zone Management Program. The applicant has stated that the proposed activity complies with and will be conducted in a manner that is consistent with the approved State Coastal Zone Management (CZM) Program. No permit will be issued until the State has concurred with the applicant's certification or has waived its right to do so. Comments concerning the impact of the proposed and/or existing activity on the State's coastal zone should be sent to this office, with a copy to the State's Office of Coastal Zone Management.

In accordance with Section 401 of the Clean Water Act, a Water Quality Certificate is necessary from the State government in which the work is located. Any comments concerning the work described above which relate to Water Quality considerations should be sent to this office with a copy to the State.

The evaluation of the impact of the work described above on the public interest will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404(b) of the Clean Water Act.

Any person may request, in writing, to the District Engineer, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for a public hearing shall state in writing, with particularity, the reasons for holding a public hearing.

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Additional information concerning this permit application may be obtained by calling Michael Yost at 302-736-9763 or by email at michael.d.yost@usace.army.mil.

Todd A. Schaible
Chief, Regulatory Branch