



**US Army Corps
of Engineers**
Philadelphia District
Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3390
ATTN: CENAP-OPR

Supplemental Public Notice

Public Notice No. NAP-2019-00278-86	Date November 10, 2021
Application No. NAP-2019-00278-86	File No. NAP-2019-00278-86
In Reply Refer to: REGULATORY BRANCH	

Public Notice NAP-2019-00278-86 is being issued to reflect the addition of compensatory mitigation to mitigate for adverse impacts to aquatic resources. This supplemental public notice is related to an earlier public notice identified as CENAP-OP-R-2019-278, issued, re-issued, and extended by this District on July 24, July 30, and September 1, 2020. **The purpose of this public notice is to solicit comments and recommendations from the public concerning the proposed draft compensatory mitigation plan.**

APPLICANT: Diamond State Port Corporation
c/o Eugene Bailey
820 North French Street, Fourth Floor
Wilmington, Delaware 19801

AGENT: Richard M. Beringer
Duffield Associates, Incorporated
5400 Limestone Road
Wilmington, Delaware 19808

WATERWAY: Delaware River & Brandywine Creek

LOCATION: The proposed Port of Wilmington Edgemoor Expansion is located at 4600 Hay Road in the Edgemoor section of unincorporated New Castle County, Delaware.
Latitude/Longitude: 39.74825° N / 75.496028° W.

The proposed Fox Point State Park Intertidal Restoration with Wetland Enhancement mitigation site is located north of Lighthouse Road within Fox Point State Park in unincorporated New Castle County, Delaware. Latitude/Longitude: 39.768767° N / 75.483068° W.

The proposed Brandywine Creek Dam No. 2 Fish Passage mitigation site is located along Park Drive within Brandywine Park in the City of Wilmington, New Castle County, Delaware.
Latitude/Longitude: 39.758649° N / 75.555097° W.

ACTIVITY: The applicant, Diamond State Port Corporation (DSPC), seeks authorization from the U.S. Army Corps of Engineers under the authorities of 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) to discharge fill material and to conduct dredging and disposal activities within, and adjacent to, navigable waters of the United States at the proposed Port of Wilmington Edgemoor Expansion

project site. In addition, DSPC has requested Corps of Engineers permission under Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408; hereinafter Section 408) to utilize a portion of the Main Navigation Channel of the Delaware River, Philadelphia to Sea Federal Navigation Project as their ship turning basin.

For more information on the previously re-issued and extended public notices for this project please go to our website: <https://www.nap.usace.army.mil/Missions/Regulatory/Public-Notices/>. **The sedimentation fans have been removed from the proposed project to minimize impacts to aquatic resources and plans for an on-site confined disposal facility (CDF) in uplands have been added to the project.** Removal of the fans and addition of the CDF are shown on the attached project plans.

The Department of the Army permit application did not include a statement describing how impacts to the waters of the United States are to be compensated for or an explicit statement explaining why compensatory mitigation should not be required for the proposed impacts. After a review of the Department of the Army permit application, public comments recommending compensatory mitigation, and applicant responses to those public comments, this office determined that compensatory mitigation would be required for the direct loss of 5.5 acres of waters associated with the proposed bulkhead filling and 7.5 acres of functional loss associated with the shading resulting from the wharf construction.

After several meetings with the applicant, the applicant's agent, Delaware Division of Natural Resources and Environmental Control (DNREC), Delaware River Basin Commission (DRBC), National Marine Fisheries Service (NMFS), National Park Service (NPS), U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (USFWS), and this office, four activities have been considered appropriate compensatory mitigation by the agencies and this office: Fox Point State Park Intertidal Restoration with Wetland Enhancement; Brandywine Creek Dam 2 Fish Passage; Brandywine Creek Fisheries Sampling Support; and Establishment of the State of Delaware eDNA Monitoring and Research Program. The two projects at Fox Point State Park and Brandywine Park represent in-kind and out-of-kind mitigation, respectively. In addition to these two mitigation sites, the applicant proposes to support the state and federal resource agencies in their efforts to monitor fisheries in the Brandywine Creek and Delaware River.

Fox Point State Park Intertidal Restoration with Wetland Enhancement

Fox Point State Park is located adjacent to the proposed project location along the Delaware River and provides an opportunity to develop environmental improvements in the immediate area where impacts will occur from construction of the Port of Wilmington Edgemoor Expansion. According to the applicant, the design is intended to restore intertidal habitat with wetland enhancement including features to provide productive foraging habitat for native fish species as well as habitat for other aquatic species. To accomplish this, the proposed mitigation calls for the removal and treatment of the invasive plant, *Phragmites australis*, from a one-acre site. This site will be excavated down to the appropriate elevations to provide intertidal interaction and hydrology, creating a range of habitat communities from deep to shallow and emergent intertidal wetlands. Portions of an existing revetment will be removed to facilitate

intertidal flow to the wetland area and provide access to the wetland habitat for aquatic species. Details are shown on the attached Fox Point State Park mitigation plans.

Brandywine Creek Dam 2 Fish Passage

The American Shad Habitat Plan for the Delaware River specifically defines Brandywine Creek Dam No. 2 as a relevant barrier to fish migration. This dam serves as a water supply intake for the City of Wilmington. The applicant has proposed to construct a rock weir, nature-like fishway on the face of the dam. The intent is to restore fish passage and access to approximately 12 acres of shallow and deeper water spawning and nursery habitats in the Brandywine Creek, specifically for river herring, striped bass, and American shad. The applicant would monitor for the presence of these fish species upstream of Brandywine Creek Dam No. 2 to Brandywine Creek Dam No. 4 (the next upstream American shad migration barrier). Details are shown on the attached Brandywine Creek Dam No. 2 Fish Passage plans.

Brandywine Creek Fisheries Sampling Support

In addition to the monitoring proposed above, the applicant is also proposing to monitor areas of the Brandywine Creek downstream of Brandywine Creek Dam No. 2 and upstream of Brandywine Creek Dam No. 4. The applicant would provide funding support to DNREC, the University of Delaware or an identified non-profit group(s) for labor and equipment, and the data will be collected by or forwarded to DNREC for data analysis and public reporting.

Establishment of Environmental DNA Monitoring and Research Program

The applicant is proposing to provide financial support for an environmental DNA monitoring and research program that will be implemented by DNREC. Monitoring data will help evaluate and understand potential impacts of the proposed project on resident and transient species that utilize the area around Edgemoor. The data collected during this three-year project will be vital for state and federal fisheries managers to mitigate impacts from dredging, water withdrawals, shoreline stabilization projects, development of breakwater structures and other possible future perturbations within the Delaware River. Also, the eDNA monitoring for river-resident juvenile Atlantic sturgeon and migratory adult Atlantic sturgeon in the Delaware River will provide a better understanding of habitat use within the Delaware River Estuary and provide guidance for traditional sampling efforts to evaluate changes in the location of nursery habitat.

PURPOSE: The purpose of the proposed mitigation is to compensate for the direct loss of 5.5 acres of waters associated with the proposed bulkhead filling and 7.5 acres of functional loss associated with the shading resulting from the wharf construction.

A preliminary review of the proposed draft compensatory mitigation plan indicated that the proposed mitigation activities would not affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act (ESA) as amended. It should be noted, however, that this office has determined that the port expansion activities are likely to adversely affect Atlantic sturgeon. These mitigation activities have been included in a Biological Assessment that was sent to the NMFS on October 25, 2021. This office will continue to consult with the NMFS, and

ESA Section 7 consultation will be concluded prior to the final decision on this permit application.

The Magnuson-Stevens Fishery Conservation and Management Act requires all federal agencies to consult with the NMFS 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 mitigation plan indicates that EFH is present within the project area. This office is currently evaluating the potential effects of the proposed actions on EFH and will continue consultation with NMFS as appropriate. Consultation will be concluded prior to the final decision on this permit application.

The USACE Cultural Resource Specialist is currently reviewing the proposed draft compensatory mitigation plan for potential impacts to Historic Properties eligible for or listed on the National Register of Historic Places. A determination of effects will be coordinated with the State Historic Preservation Office, the Tribes and other consulting parties.

Comments on the proposed draft compensatory mitigation plan should be submitted, in writing, within 30 days to the District Engineer, U.S. Army Corps of Engineers, Philadelphia District at PhiladelphiaDistrictRegulatory@usace.army.mil.

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. **On September 30, 2021, the DNREC Delaware Coastal Management Program concurred with the DSPC's certification that the Port of Wilmington Edgemoor Expansion project, which includes the compensatory mitigation proposed above, is consistent with Delaware's enforceable policies.**

In accordance with Section 401 of the Clean Water Act, a Water Quality Certificate is required from the State government in which the work is located. **DNREC received a request for Section 401 Water Quality Certification from the permit applicant on March 16, 2020. Since DNREC did not act on that request within a reasonable period of time (not to exceed one year) as required by Section 401(a) of the Clean Water Act (33 U.S.C. 1341(a)(1)), this office determined that the Section 401 Water Quality Certification requirement has been waived for this project. However, the DNREC Wetlands & Subaqueous Lands Section did issue a Subaqueous Lands Permit on September 30, 2021, which includes both the compensatory mitigation proposed above and conditions for monitoring water quality parameters.**

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.

Additional information concerning this permit application may be obtained by calling Genevieve T. Sarlo at (215) 656-8597, or by email at PhiladelphiaDistrictRegulatory@usace.army.mil.

Todd A. Schaible
Chief, Regulatory Branch