



**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.
NAP-2019-00401

Date
May 5, 2022

Application No.
NAP-2019-00401

File No.
NAP-2019-00401-85

In Reply Refer to:
REGULATORY BRANCH

This District has received an application for a Department of the Army permit pursuant to 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 issuance of a Department of the Army permit for the work described below.

APPLICANT: Christie Bonniwell of the Delaware Department of Transportation

AGENT: Karley Routh of Rummel Klepper & Kahl

WATERWAY: Millsboro Pond

LOCATION: Millsboro Pond from US Route 113 to State Route 24 in Millsboro, Sussex County, Delaware (Lat. 38.602867°N/Long. 75.291778°W).

ACTIVITY: The applicant has applied for a Department of the Army permit to construct a new bypass route from US Route 113 to State Route 24 over Millsboro Pond in Millsboro, Sussex County, Delaware. The project includes a grade separated interchange at US Route 113, a new alignment of State Route 24, new overpasses over Gravel Hill Road, Fox Run Road and the Norfolk Southern Railroad and two multi-span bridges (BR 3-596 and BR 3-597) over the northern portion of Millsboro Pond. The typical roadway section includes a 12-foot eastbound and 12-foot westbound travel lane and an 8-foot paved outside shoulder/bike lane in each direction. Furthermore, the project will include a 10-foot wide multi-use path on the southside of the alignment.

In an effort to avoid and minimize impacts, a Top-Down construction approach will be utilized for BR 3-596. The top-down construction method eliminates the need for heavy construction equipment on the ground or within the limits of the Millsboro Pond by building the bridge outward from the abutments and moving construction equipment across the completed sections of the structure. The top-down construction method enables the superstructure and the underground structure to be built simultaneously while utilizing the previously built span as the work platform equipment. This method allows for the elimination of temporary causeways or trestle structures; therefore, eliminating large temporary and permanent impacts to the pond. Due to the proposed pile bent design and construction method of Bridge 3-596, there are no permanent open water impacts associated with Bridge 3-596.

A top-down construction is not proposed for the construction on Bridge 3-597 due to the height of the structure and the length of the spans. As such, a temporary trestle approach will be implemented to construct Bridge 3-597, resulting in temporary impacts for placement of 36" diameter steel trestle piles in Millsboro Pond to be removed after construction is complete. Permanent open water impacts are limited to one fixed pier concrete tub form (58'-7" x 14'-4") and one expansion pier concrete tub form (58'-1" x 13'-10").

The new bypass route will permanently impact 0.0003 acre of non-tidal wetlands and 0.0377 acre of Millsboro Pond open water associated with the construction of bridge pier foundations. There will be an additional 0.0115 acre of temporary impacts associated with the placement of trestle piles for bridge construction in Millsboro Pond. The new bypass route is indicated on the attached project plans.

PURPOSE: The purpose of the project is to preserve mobility for local residents and businesses, while providing highway improvements that reduce congestion, decrease frequency and severity of accidents and accommodate increased traffic.

A preliminary review of this application indicates that species listed under the Endangered Species Act (ESA) or their critical habitat pursuant to Section 7 of the ESA as amended, are not present within the action area. As a result, consultation with the US Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS) 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 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 application indicates that no EFH is present within the project area. As a result, consultation with NMFS pursuant to the EFH provisions of the MSA is not necessary. As the evaluation of this application continues, additional information may become available which could modify this preliminary determination.

The USACE Cultural Resource Specialist is currently reviewing the proposed permit action for potential impacts to Historic Properties eligible for or listed on the National Register of Historic Places in accordance with Section 106 of the National Historic Preservation Act. A determination of effects will be coordinated with the State Historic Preservation Office, the Tribes and other consulting parties.

The decision whether to issue a 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 activity. 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, by email, within 15 days to the District Engineer, U.S. Army Corps of Engineers, Philadelphia District at PhiladelphiaDistrictRegulatory@usace.army.mil. If it is necessary to provide a paper copy of your comments, they should be submitted by traditional mail within 15 days to District Engineer, attn CENAP-OPR, U.S. Army Corps of Engineers, Philadelphia District, Wanamaker Building, 100 Penn Square East, Philadelphia, Pennsylvania 19107-3390.

Because the discharge of fill material into waters of the United States has been avoided and minimized to the maximum extent practicable resulting in permanent impacts to only 0.038 acre of waters of the United States and the activity will result in no more than minimal individual and cumulative adverse environmental effects, compensatory mitigation is neither proposed nor warranted.

In accordance with Section 307(c) of the Coastal Zone Management (CZM) 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 CZM 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 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, by email, to the District Engineer at PhiladelphiaDistrictRegulatory@usace.army.mil, 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, with particularity, the reasons for holding a public hearing. If it is necessary to provide a written request by traditional mail, such request shall be submitted within the comment period specified in this notice to the District Engineer, attn CENAP-OPR, U.S. Army Corps of Engineers, Philadelphia District, Wanamaker Building, 100 Penn Square East, Philadelphia, Pennsylvania 19107-3390.

Additional information concerning this permit application may be obtained by calling Michael D. Yost at (267) 240-5278, or by email at michael.d.yost@usace.army.mil.

Todd A. Hoernemann
Chief, Applications Section I