



**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-2021-00092-85	Date March 25, 2021
Application No. CENAP-OPR-2021-00092-85	File No. CENAP-OPR-2021-00092-85
In Reply Refer to: REGULATORY BRANCH	

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

APPLICANT: Margie Cyr, Middlesex Beach Association

AGENT: Brian Newbury, Gahagan and Bryant Associates, Incorporated

WATERWAY: Atlantic Ocean

LOCATION: Middlesex Beach Dune Road, Bethany Beach, Sussex County, Delaware
Tax Map Parcel 134-17.16-117.00
Lat. 38.519277° N /Long. 75.051609° W (NAD 83).

ACTIVITY: The applicant has applied for a Department of the Army 10-year maintenance permit to conduct periodic dredging for beach nourishment along approximately 1,900 linear feet of shoreline in the Middlesex Beach Community in Bethany Beach, Sussex County, Delaware. In order to minimize costs and impacts, it is the intent of the applicant to conduct the nourishment activity in coordination with the surrounding Federal Project nourishments. As such, the method of sand placement will match that of the Federal Project by either cutter suction dredge with booster pumps or by a trailing suction hopper dredge equipped with a pumpout capability from the offshore Fenwick Borrow Area or Borrow Area E. The nourishment area will match that of the Federal Project design template, without the dune and is expected to require approximately 103,000 cubic yards of dredged material. The dredge and disposal areas are indicated on the attached plans.

PURPOSE: The purpose of the project is to provide increased protection benefits from storm damage, coastal erosion, and add to the recreational value of the Middlesex Beach community.

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 project cannot be avoided entirely because it is, by its nature, a water-dependent activity. Because the project involves replenishing the beach with like-sized material within the footprint of what previously existed, the applicant is not proposing to conduct any compensatory mitigation for the work. Impacts have been minimized by conducting the activity at the time of other nourishment activities, thereby avoiding multiple series of dredging activities.

A preliminary review of this application indicates that species listed under the Endangered Species Act or their critical habitat pursuant to Section 7 of the ESA as amended, may be present within the action area. The Philadelphia District will evaluate the potential effects of the proposed actions on ESA listed species or their critical habitat and will consult with US Fish and Wildlife Service and/or National Marine Fisheries Service as appropriate. 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 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 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. If necessary, 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 within 30 days via email to philadelphiadistrictregulatory@usace.army.mil, or to the District Engineer, U.S. Army Corps of Engineers, Philadelphia District, Wanamaker Building, 100 Penn Square East, Philadelphia, Pennsylvania 19107-3390.

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.

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



Todd A. Schaible
Chief, Regulatory Branch