



**US Army Corps  
of Engineers**  
Philadelphia District  
1650 Arch Street  
Philadelphia, PA 19103-2004  
Attn: CENAP-OPR

# Public Notice

**Comment Period Begins:** August 18, 2023  
**Comment Period Ends:** September 4, 2023  
**File Number:** NAP-2022-00368-85  
**File Name:** DDNREC White Creek Dredging and Thin Layer  
Placement SX  
**Contact:** Michael D. Yost  
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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:** Terry Deputy, Division of Watershed Stewardship

**AGENT:** Lena DeSantis, Anchor QEA, LLC

**LOCATION:** Assawoman Canal and the Assawoman Wildlife Area in Bethany Beach, Sussex County, Delaware (Lat. 38.566°N/Long. 75.094°W).

**PURPOSE:** The purpose of the project is to improve navigability in the Assawoman Canal and restore an area of highly degraded coastal salt marsh using dredged material, thereby providing enhanced resiliency to coastal wetlands from the continued effects of sea level rise and other environmental stressors.

## **PROJECT DESCRIPTION:**

The applicant has applied for a modification to the existing Department of the Army permit to conduct 20,400 linear feet of hydraulic dredging of White Creek to include the main channel and two prongs to depth of -4 MLLW, as well as a portion of the northern end of the Assawoman canal to depth of -3 MLLW, with transporting the dredged material south along the Assawoman Canal to the Muddy Neck Marsh Complex within the Assawoman Wildlife Area for marsh restoration. This public notice is required due to a significant change in the scope of the existing permit.

The modification provides for hydraulic maintenance dredging of approximately 50,000 cubic yards of accumulated sediment from the remaining portion of the Assawoman Canal to a depth of -3 feet MLLW and utilizing that material for marsh restoration over approximately 122.91 acres in the Muddy Neck Marsh Complex.

The Muddy Neck Marsh Complex has experienced significant marsh degradation over the last 70 years resulting in ponding and fragmentation, leaving approximately 57% of the proposed 123-acre restoration area unvegetated. The restoration design involves multiple point, low pressure discharge of the dredged material into three placement cells within the marsh complex. The dredged material will rely mainly on unconfined placement, allowing the material to disperse to areas of lower elevation until the target elevation is reached (approximately 6 to 18 inches). Physical perimeter controls will be deployed in critical boundary areas only. These perimeter controls will consist of 12-inch to 18-inch coir logs left in place to minimize any disturbance post restoration. The dredge area and restoration area are indicated on the attached plans. As part of the marsh restoration, the Delaware Department of Natural Resources and Environmental Control (DDNREC) proposes to monitor the site for 5 years following construction completion. Monitoring will include elevation and vegetation surveys compared to a reference marsh nearby. As part of the monitoring plan, the DDNREC proposes to institute active planting measures to ensure revegetation occurs.

For additional project details, see the attached plans identified as: PERMIT DRAWING ASSAWOMAN CANAL DREDGING AND BENEFICIAL USE PROJECT DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, prepared by Anchor QEA, dated March 2023 and revised in June 2023, 30 sheets.

## **MITIGATION**

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. Information provided in the application and on the plans indicates that compensatory mitigation is neither practicable nor feasible for the amount of dredged or fill material to be discharged into waters of the United States.

Because the discharge of dredged material into waters of the United States is intended to provide an uplift in aquatic resource function, compensatory mitigation is neither proposed nor warranted.

## **CORPS EVALUATION FACTORS**

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 these factors 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.

The evaluation of the impact of this project will also include application of the Clean Water Act Section 404(b)(1) Guidelines promulgated by the Administrator, U.S. Environmental Protection Agency if the project includes a discharge of dredge or fill material pursuant to Section 404 of the Clean Water Act.

### **ENDANGERED SPECIES**

A preliminary review of this application indicates that species and/or their critical habitat pursuant to Section 7 of the Endangered Species Act (ESA) may be present in the action area. This office will forward this Public Notice to the U.S. Fish and Wildlife Service (USFWS) and/or National Marine Fisheries Service (NMFS) with a request for technical assistance on whether any ESA-listed species or their critical habitat may be present in the area which would be affected by the proposed activity. This office will evaluate the potential effects of the proposed actions on ESA-listed species or their critical habitat and will consult with the USFWS and/or NMFS, as appropriate. ESA Section 7 consultation would be concluded prior to the final decision on this permit application.

### **CULTURAL RESOURCES AND TRIBAL TRUST**

The District's Cultural Resource Specialist and Tribal Liaison is currently reviewing the proposed permit action for potential impacts to Historic Properties eligible for or listed on the National Register of Historic Places and for potential issues concerning the Tribes. A determination of effects will be coordinated with the State Historic Preservation Office, the Tribes and other consulting parties as necessary.

### **ESSENTIAL FISH HABITAT**

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires all federal agencies to consult with the NMFS for 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. This office will evaluate the potential effects of the proposed actions on EFH and will consult with NMFS, as appropriate. Consultation would be concluded prior to the final decision on this permit application.

### **WATER QUALITY CERTIFICATE**

In accordance with Section 401 of the Clean Water Act, a Water Quality Certificate (WQC) is required 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.

## **COASTAL ZONE MANAGEMENT ACT**

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 (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 on the State's coastal zone should be sent to this office with a copy to the State's CZM office.

## **SUBMISSION OF COMMENTS AND PUBLIC HEARING REQUEST**

Any comments received will be considered by this office to determine whether to issue, modify, condition, or deny a permit for this proposed project. To make this decision, comments are used to assess the probable impact on the public interest. 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 must be submitted, in writing, within the comment period indicated in the header above. Any person may request, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for a public hearing must be in writing and state the reasons for holding a public hearing.

Please provide any comments, request for a public hearing, or requests for additional information to the Regulatory Project Manager indicated above. All Public Notices are posted on our website at:

<https://www.nap.usace.army.mil/Missions/Regulatory/Public-Notices/>

FOR: Todd A. Schaible  
Chief, Regulatory Branch