



**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-2022-00368

Date
April 6, 2022

Application No.
NAP-2022-00368

File No.
NAP-2022-00368-85

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: Terry Deputy of the Delaware Department of Natural Resources and Environmental Control, Division of Watershed Stewardship

AGENT: Lena DeSantis of Anchor QEA, LLC

WATERWAY: White Creek/Assawoman Canal

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

ACTIVITY: The applicant has applied for a 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. The hydraulic dredging is expected to remove approximately 70,000 cubic yards of accumulated sediment. The applicant has proposed to transport the accumulated sediment south along the Assawoman Canal to the Muddy Neck Marsh Complex within the Assawoman Wildlife Area, placing that sediment in the marsh to restore the wetland complex.

White Creek currently supports approximately 16 public/private boat ramps, 15 marinas and more than 600 boat docks. White Creek or portions of White Creek has been dredged approximately 5 times, with the last occurrence being in 2001. A bathymetric survey conducted in 2019 confirmed sediment deposition and shoaling within the main channel and prongs. Previously dredged material was placed in a confined upland disposal facility that is no longer available for use. As such, the Muddy Neck Marsh Complex was identified as an area with marsh restoration potential.

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. The draft project monitoring plan is available upon request.

PURPOSE: The purpose of the project is to improve navigability in White Creek and 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.

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, may be present in the action area. The U.S. Army Corps of Engineers (USACE) will forward this PN to the US Fish and Wildlife Service (USFWS) and/or the 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. The Philadelphia District 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 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 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 the 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 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 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.

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.

FOR: Todd A. Schaible
Chief, Regulatory Branch