



**US Army Corps
of Engineers**
Philadelphia District

Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3390
ATTN: CENAP-OP-R

Public Notice

Public Notice No. CENAP-OP-R-2022-00410	Date May 18, 2022
Application No. CENAP-OP-R-2022-00410	File No. CENAP-OP-R-2022-00410-87
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: Delaware Department of Transportation

AGENT: Century Engineering, LLC

WATERWAY: Christina River

LOCATION: The I-95 and SR 896 Interchange, 2.53 miles south of Newark, New Castle County, Delaware (Lat. 39.646985°N/Long. 75.745979°W)
Mitigation Site: 39.500179°N, -75.712816°W.

ACTIVITY: Delaware Department of Transportation has applied for a Department of the Army permit to discharge fill material into waters of the United States in order to improve the operational, congestion and safety deficiencies located at the intersection of I-95 and SR 896 in the City of Newark, New Castle County, Delaware. The project area extends along I-95 from immediately east of the Newark Toll Plaza to approximately 2000 feet east of the bridge over South Chapel Street; and along SR 896 from Welsh Tract Road south to Cobble Creek Curve. The proposed project is funded through the Federal Highway Administration (FHWA), which is the lead federal agency for this project. A draft categorical exclusion completed by DelDOT is currently being reviewed for concurrence from the FHWA for this project.

The I-95 and SR 896 interchange experiences congestion during the morning and afternoon peak hours. Both northbound and southbound I-95, as well as northbound and southbound SR 896 and associated ramps have deficient arterial levels of service for existing and future conditions. In addition, there are safety deficiencies at the interchange due to traffic congestion and a geometrically deficient design. The improvements include reconfiguration of the existing I-95 and SR 896 interchange to a double flyover interchange with new and realigned/widened ramps. As part of this reconfiguration the following ramps are proposed to be constructed:

- A diverging ramp allowing vehicles traveling southbound on I-95 to access northbound

SR 896 (Ramp A) and a flyover ramp (Ramp C) to southbound SR 896.

- A flyover ramp (Ramp D) allowing vehicles traveling southbound on SR 896 to access northbound I-95.
- A converging ramp onto I-95 southbound for vehicles traveling along SR 896 northbound (Ramp G) and for vehicles traveling along SR 896 southbound (Ramp F).
- A ramp (Ramp J) allowing vehicles traveling northbound on SR896 to access northbound I-95 located at the southeast quadrant of the interchange.
- A ramp (Ramp H) allowing vehicles traveling on northbound I-95 to access northbound and southbound SR 896.

To accommodate the reconfigured ramps, six new bridges, four bridge widenings, two bridge rehabilitations, and one bridge removal are proposed. Ramp D will require the construction of four new bridges, two of which will carry ramp traffic over the Christina River. Ramps A and C will require the construction of two new bridges, one of which will carry ramp traffic over the Christina River. The two existing I-95 northbound and southbound bridges located east of the SR 896 bridges (including the merge for Ramp J onto I-95 northbound) will be rehabilitated with a new deck overlay, joint replacements, and upgraded concrete barriers. The I-95 northbound and southbound bridges over the Norfolk Southern Railway and Chapel Street (SR72), both of which are located east of the interchange, are proposed to be widened for the proposed ramp merge and diverge. Additionally, the existing ramp bridge carrying SR 896 southbound over the Christina River and onto I-95 southbound will be removed.

Additional proposed activities include the reconstruction of the I-95 and SR 896 roadways approaching the interchange, stormwater and drainage improvements/additions, addition of new and replacement of existing guardrail, addition of retaining walls to construct the new ramps, and a new 12-foot shared use hot mix path from Old Baltimore Pike to Welsh Tract Road. The project construction will utilize a phased approach to maintain functionality and operation of the existing interchange.

The location and extent of work for the infrastructure improvements and compensatory mitigation (see below) are indicated on the attached plans.

PURPOSE: The purpose of the project is to improve safety and traffic operations.

AVOIDANCE/MINIMIZATION/COMPENSATION STATEMENT:

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 to the aquatic environment to the maximum extent practicable. Sediment and erosion control measures will be utilized to reduce additional impacts to surrounding resources. Due to no available mitigation banks or an in-lieu fee program, permittee-responsible compensatory mitigation is proposed for unavoidable impacts.

The proposed transportation improvements will result in 2.32 acres of permanent wetland impacts (primarily forested wetlands), 1.41 acres of temporary wetland impacts, .61 acre of permanent stream impacts (including 3,176 LF of stream loss), .002 acre of temporary stream impacts, and .32 acre of open water impacts. The applicant proposes to mitigate for these impacts through the creation of forested wetlands. Forested wetlands will be created to mitigate for all permanent impacts at a ratio of 1:1 for impacts to emergent wetlands, a ratio of 2:1 for impacts to forested wetlands, and a ratio of 1:1 for impacts to streams and open waters. Total mitigation will include the creation of 4.5 acres of forested wetlands. Due to a lack of suitable areas for on-site compensatory mitigation the applicant is proposing off-site compensatory mitigation in an agricultural field located at 39.500179°N, -75.712816°W, which is located immediately south of 4677 Summit Bridge Road in Middletown, Delaware, 19709. This mitigation site is located about 10 miles south of the proposed project area.

The proposed mitigation site (referred to as the Weston mitigation site) is currently an upland farm field adjacent to an unnamed tributary to Drawyer Creek. Two distinct wetland types were observed in the vicinity of the proposed mitigation site: a relatively undisturbed floodplain wetland system and headwater wetlands recovering from agricultural practices. The location of the mitigation site was selected because of the opportunity to create and enhance an existing stream corridor and riparian habitat and to revert a portion of an agricultural field to functional wetland.

The mitigation site has been designed as much as possible to replace ecosystem services that will be lost due to the proposed reconfiguration of the SR 896 and I-95 Interchange. The mitigation design provides for a gently sloped, slightly meandering forested wetland area with a hydrologic connection to an existing stream channel and the surrounding wetlands. The mitigation area would effectively become an extension of the existing wetland features along the stream corridor.

The applicant has stated that, as designed, the mitigation site will replace the functions of headwater seeps at the toe-of-slope across the construction site, provide an overall groundwater slope/swale run, and provide an expansive wetland bottom elevation similar to floodplains. While limited in sediment retention from flooding events, the wetland will retain large storm events while slowly releasing otherwise flooding waters downstream. The functions at the mitigation site will, in turn, replicate many of the functions from the project site. The mitigation site will provide wetland functions associated with water quality improvement, flood flow desynchronization, sediment trapping and accumulation, nutrient retention (seasonal and long-term), groundwater recharge and discharge (functions change with groundwater elevation through year), flood channel support, stream cooling, and wildlife habitat. While no values associated with open water habitat are provided, the addition of numerous functions to the existing stream corridor and associated existing wetlands allow this mitigation site to fully compensate for all impacts to existing wetland resources according to the applicant.

The Weston mitigation site would be deed restricted and recorded in the New Castle County Recorder of Deeds office before or upon completion and approval of final grading or as directed under the USACE permit conditions.

The FHWA, lead Federal agency for this project, coordinated with the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) under Section 7

of the Endangered Species Act. Their review concluded that the proposed work would not affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act as amended. As a result, consultation with the United States Fish and Wildlife Service and the National Marine Fisheries Service 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 (MSA) 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). The FHWA, lead Federal agency for this project, concluded that no EFH is present in the project area. As a result, consultation with NOAA Fisheries 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, in writing, within 30 days 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 Rachel Ward at (215) 656-6733, by email at rachel.j.ward@usace.army.mil, or by writing this office at the above address.

FOR: Todd A. Schaible
Chief, Regulatory Branch