



Public Notice

U.S. Army Corps of Engineers, Norfolk District

CENAO-WR-R
NAO-2013-1979/13-V1596

NOVEMBER 5, 2013

PUBLIC NOTICE

The District Commander has received a permit application for work described below:

APPLICANT

City of Virginia Beach
Department of Public Works
C/o Mr. Phillip J. Roehrs
2405 Courthouse Drive
Virginia Beach, VA 23456

WATERWAY AND LOCATION OF THE PROPOSED WORK: The project is located in Bayville Creek, a tributary to the Western Branch of the Lynnhaven River, in the Bayville Creek Subdivision in Virginia Beach, Virginia.

PROPOSED WORK AND PURPOSE: The applicant proposes to mechanically dredge approximately 83,010 square feet (1.9-acres) and/or 12,263 cubic yards (CY) of subaqueous bottom and 12,701 SF (0.29-acre) and/or 1,911 CY of non-vegetated intertidal wetlands to a maximum depth of -5.0 feet mean low water (MLW) in order to re-establish navigational access and attenuate siltation for the Bayville Creek neighborhood in Virginia Beach, Virginia. The waterfront owners of Bayville Creek have agreed to participate in the City of Virginia Beach Special Service District (SSD) program which helps carry out neighborhood dredging projects in the Lynnhaven River. The project is composed of three distinct types of channels: the City spur channel, which leads off the main channel of the Western Branch of the Lynnhaven River to serve multiple neighborhood waterways; the neighborhood SSD channel, which will provide access to Bayville Creek; and the individual access channels which provide access to individual properties. The channel dredging will be accomplished by utilizing a barge mounted mechanical excavator, with the dredge material being loaded onto barges and retained to prevent its re-entry into surface waters or wetlands. The dredge material will be taken by barge to a temporary dredge transfer station pier to be constructed at 1633 Spring House Trail and loaded onto trucks and transported to the USACE and VDEQ approved Whitehurst Dredge Material Management Area on Oceana Boulevard for disposal. A private pier will be constructed at this location, as well, as compensation to the property owner who is providing the lease areas associated with the temporary dredge transfer station.

The City Spur channel will be 1,000 linear feet (LF) long, 30 feet wide, dredged to a maximum depth of -5.0 feet MLW, and result in the removal of approximately 16,717 SF (0.38-acre) and 1,336 CY of subaqueous bottom. The Neighborhood SSD Channel will be 2,053 LF long, 25 feet wide, dredged to a maximum depth of -5.0 feet MLW, and result in the removal of approximately

47,830 SF (1.10-acres) and 7,894 CY of subaqueous bottom. The individual homeowner access channels will vary in size, most will be dredged to a maximum depth of -5.0 feet MLW, some boat basin are proposed to a depth of -6.0 feet MLW to accommodate boat lift operations, but overall will result in the removal of approximately 18,463 SF (0.42-acre) and 3,033 CY of subaqueous bottom. The Dredge Lease Area, including the proposed dredge transfer station location and dredging for 1633 Spring House Trail and 3909 Meeting House Road will impact 97 SF of subaqueous land and 12,701 SF (0.29-acre) of non-vegetated wetlands by removing 2,014 CY of dredge material and will be dredged to a maximum depth of -5.0 below MLW. The dredge lease area is being leased by the City of Virginia Beach from these homeowners for the duration of the dredging project. The project also includes a temporary transfer station pier for trucks and excavator and a permanent private pier at 1633 Spring House Trail. The Bayville Creek SSD Dredging Project proposes a 16 year, three stage dredging cycle with new dredging occurring on year two and maintenance dredging events taking place every seven years on year nine (9) and sixteen (16); however, the Corps authorization can only be issued for a maximum of ten (10) years.

The City Spur and Neighborhood channels will impact sub-aqueous bottom and no mitigation is proposed for subaqueous bottom impacts. The Transfer Station Lease Area and one individual driveway channel (P-9b) will impact non-vegetated intertidal wetlands (mudflats). The design avoids impacts to submerged aquatic vegetation (SAV), oyster grounds and shellfish leases, and fisheries and protected species. Avoidance and minimization of impacts were also achieved by incorporation of the *4x Buffer Rule* into the design process providing a buffer (up to 20 feet on each side of the dredge cut) equal to four times the cut depth in the channel (max 5 feet). Mitigation bank credits for impacts to non-vegetated tidal wetlands are not currently available from any mitigation bank or in-lieu fee trust fund in the watershed. Therefore, the applicant proposes to mitigate for impacts to non-vegetated tidal wetlands through out-of-kind mitigation using vegetated tidal wetland mitigation credits, purchased from the Virginia Aquatic Restoration Trust Fund (VARTF) at a ratio of 0.3:1 (ratio derived from use of the Function Specific Credit Calculation (FSCC) Method developed by Virginia Institute of Marine Science School of Marine Science (VIMS) in 1997).

In addition to the required Department of the Army permit, the applicant must obtain a Virginia Water Protection Permit/401 certification from the Virginia Department of Environmental Quality assuring that applicable laws and regulations pertaining to water quality are not violated and a permit from the Virginia Marine Resources Commission, and/or the City of Virginia Beach Wetlands Board. Project drawings are attached.

AUTHORITY: Permits are required pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

FEDERAL EVALUATION OF APPLICATION: The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity 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 from the proposal must be balanced against its reasonably foreseeable detriments. All of the proposal's relevant factors will be considered, including conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use classification, navigation, shoreline erosion and accretion, recreation, water

supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people.

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 direct, indirect, and cumulative 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. Anyone may request a public hearing to consider this permit application by writing to the District Commander within 30 days of the date of this notice, stating specific reasons for holding the public hearing. The District Commander will then decide if a hearing should be held.

Preliminary review indicates that: (1) no environmental impact statement will be required; (2) after conducting the NAO ESA Project Review Process, no listed/proposed/candidate species and/or designated/proposed critical habitat under the Endangered Species Act of 1973 (16 U.S.C. 1531-1544, 87 Stat. 884), as amended) will be affected. Based on this no effect determination, no further coordination with the Fish and Wildlife Service is required, however, the Official Species List and Species Conclusion Table is attached for review and comment by Fish and Wildlife Service; and (3) several known properties eligible for inclusion or included in the National Register of Historic Places are in or near the permit area, but would not likely be affected by the proposal. Coordination with the Virginia Department of Historic Resources will be conducted separately from this public notice. Additional information might change any of these findings.

For compliance with the Coastal Zone Management Act of 1972, as amended for projects located in Tidewater, the applicant must certify that federally licensed or permitted activities affecting Virginia's coastal uses or resources will be conducted in a manner consistent with the Virginia Coastal Zone Management Program (VCP) and obtain concurrence from the Department of Environmental Quality (DEQ), Office of Environmental Impact Review (OEIR). We have not received a certification from the applicant prior to publication of this public notice. It is the applicant's responsibility to submit a consistency certification to the Office of Environmental Impact Review for concurrence or objection and proof of concurrence must be submitted to the Corps prior to final permit issuance. A template federal consistency certification can be found here: <http://www.deq.state.va.us/Programs/EnvironmentalImpactReview/FederalConsistencyReviews.aspx#cert>. For more information or to obtain a list of the enforceable policies of the VCP, contact the Department of Environmental Quality, Office of Environmental Impact Review at (804) 698-4330 or e-mail: ellie.ironson@deq.virginia.gov or john.fisher@deq.virginia.gov.

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires all Federal agencies to consult with the NOAA Fisheries Service on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). The Western Branch of the Lynnhaven River contains Essential Fish Habitat (EFH) for the egg, larval, juvenile, and adult life

stages of 16 species including red hake (*Urophycis chuss*), windowpane flounder (*Scopthalmus aquosus*), Atlantic sea herring (*Clupea harengus*), bluefish (*Pomatomus saltatrix*), Atlantic butterfish (*Peprilus triacanthus*), summer flounder (*Paralichthys dentatus*), scup (*Stenotomus chrysops*), black sea bass (*Centropristus striata*), king mackerel (*Scomberomorus cavalla*), Spanish mackerel (*Scomberomorus maculatus*), cobia (*Rachycentron canadum*), red drum (*Sciaenops ocellatus*), sand tiger shark (*Odontaspis taurus*), Atlantic sharpnose shark (*Rhizopriondon terraenovae*), dusky shark (*Charcharinus obscurus*), and sandbar shark (*Charcharinus plumbeus*). The habitat which this project would affect consists of shallow water areas and non-vegetated intertidal wetlands (mudflats). The proposed project is described in Proposed Work and Purpose, above. Our assessment of the project leads us to a preliminary determination that it will not have a substantial adverse effect on EFH and therefore expanded EFH consultation is not required. Our rationale for this preliminary determination is based on the expected minimal nature of the direct impacts, minimal and temporary increases in turbidity, and the absence of submerged aquatic vegetation and anadromous fish spawning habitat in the project area. The applicant stated in the application that the non-vegetated wetland impact area is considered a mudflat and is located within the Bayville Creek Watershed adjacent to salt marsh and residential maintained land uses. A stormwater outfall discharges to the area serving as a prominent source of sediment and siltation from adjacent land uses. The land uses adjacent to the wetlands are residential development and these particular mudflats are adjacent to the highly maintained residential land uses which likely serve as significant sources of non-point source pollution. Based on comments from the NOAA Fisheries Service in response to this public notice, further EFH consultation may be necessary.

COMMENT PERIOD: Comments on this project should be made in writing via US Mail addressed to the Norfolk District, Corps of Engineers (ATTN: Katy Damico (CENAO-WR-RS)), 803 Front Street, Norfolk, Virginia 23510-1096 or via email to katy.r.damico@usace.army.mil , and should be received by the close of business on December 6, 2013.

PRIVACY & CONFIDENTIALITY: Comments and information, including the identity of the submitter, submitted in response to this Public Notice may be disclosed, reproduced, and distributed at the discretion of the U.S. Army Corps of Engineers. Information that is submitted in connection with this Public Notice cannot be maintained as confidential by the U.S. Army Corps of Engineers. Submissions should not include any information that the submitter seeks to preserve as confidential.

If you have any questions about this project or the permit process, contact Ms. Katy Damico either via telephone at (757) 201-7121 or via email at katy.r.damico@usace.army.mil .

Attachment: Project Plans
USFWS No Effect Determination