



# Public Notice

U.S. Army Corps of Engineers, Norfolk District

April 4, 2014

CENAO-WR-R  
NAO 2013-0672

## FEDERAL PUBLIC NOTICE

The District Commander has received a prospectus to establish a tidal wetland compensatory mitigation bank for Federal and State permits as described below:

### APPLICANT

Chesapeake Land Development, LLC  
6062 Indian River Road, Suite 104  
Virginia Beach, VA

WATERWAY AND LOCATION OF THE PROPOSED WORK: The proposed Bank is located in on the west side of Steel Street, east of Marlboro Avenue, north of I-64 and the entrance to Deep Creek Canal in Chesapeake, Virginia.

PROPOSED WORK AND PURPOSE: Chesapeake Land Development, LLC proposes to establish the Steel Street Tidal Mitigation Bank in Chesapeake, Virginia. This tidal wetland bank will provide effective off-site compensation for impacts to tidal wetlands that cannot be practicably avoided as a result of disturbances within Hydrologic Unit Codes (HUC's) 02080208, 02080206 and any other areas deemed appropriate by the IRT.

The purpose of the Bank will be to provide off-site compensation for the unavoidable loss of tidal wetlands as a result of impacts from development projects authorized under Section 401 and 404 of the Clean Water Act, Section 10 of the Rivers and Harbor Act, and Section § 62.1-44.15:20 of the Code of Virginia, provided such impacts have met all applicable requirements and are approved by the respective permitting agencies.

The principal goal for the proposed bank is to provide self-sustaining tidal wetland mitigation to compensate for unavoidable impacts to other wetlands in the watershed. The constructed tidal wetlands will be created through the conversion of existing uplands, routinely mowed emergent and recently logged forested non-tidal wetlands. Chesapeake Land Development, LLC proposes to establish emergent tidal wetlands on about 30 acres of the Steel Street property in the areas within and between the easements. Upland buffer will account for about 12 acres with about 1.25 acres of preserved existing tidal marsh. All impacts to existing non-tidal wetlands will be mitigated by the purchase of mitigation credits from a non-tidal mitigation bank in the same watershed.

The targeted functions of the mitigation area include improvements/expansion of fish and wildlife habitat, water quality, flood storage, and erosion and sediment control. In particular, the creation of new uncontaminated fish habitat will allow fishery resources to avoid the extensive contaminated habitat in the Southern Branch of the Elizabeth River improving their health and productivity.

In addition to the required Department of the Army permit, the applicant must obtain a Virginia

Water Protection Permit from the Virginia Department of Environmental Quality (DEQ) assuring that applicable laws and regulations pertaining to water quality are not violated and a permit from the Chesapeake Wetlands Board. Project drawings are attached.

AUTHORITY: Permits are required pursuant to Sections 401 and 404 of the Clean Water Act (Public Law 95-217) and Title 62.1 of the Code of Virginia.

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 Environmental Protection Agency's "Guidelines for Specification of Disposal Sites for Dredged or Fill Material" will also be applied (Section 404(b)(1) of the Clean Water Act).

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; and (3) no known properties eligible for inclusion or included in the National Register of Historic Places are in or near the permit area, or would likely be affected by the proposal. 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.irons@deq.virginia.gov](mailto:ellie.irons@deq.virginia.gov) or [john.fisher@deq.virginia.gov](mailto:john.fisher@deq.virginia.gov).

**COMMENT PERIOD:** Comments on this project should be made in writing, addressed to the Norfolk District, Corps of Engineers (ATTN: CENAO-WR-R), 803 Front Street, Norfolk, Virginia 23510-1096, and should be received by the close of business on **May 3, 2014**.

**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 Stephen Decker [stephen.j.decker@usace.army.mil](mailto:stephen.j.decker@usace.army.mil).

FOR THE DISTRICT COMMANDER:

Peter Kube  
Chief, Eastern Virginia  
Regulatory Section

Attachment: Drawings