



U.S. Army Corps
of Engineers

Baltimore District
PN-22-26

Public Notice

In Reply to Application Number
NAB-2021-61843-M47 (Long Point Preserve LLC/ Living
Shoreline, Marsh Establishment, Bulkhead, Low Profile
Sill)

Comment Period: August 19, 2022 to September 18, 2022

THE PURPOSE OF THIS PUBLIC NOTICE IS TO INFORM INTERESTED PARTIES OF THE PROPOSED ACTIVITY AND TO SOLICIT COMMENTS. NO DECISION HAS BEEN MADE AS TO WHETHER OR NOT A PERMIT WILL BE ISSUED AT THIS TIME.

This District has received an application for a Department of the Army permit pursuant to Section 10 of the Rivers and Harbors Act (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344), as described below:

APPLICANT:

Long Point Preserve, LLC
c/o Heather Murren
5140 Long Point Farm Drive
Oxford, Maryland 21654

WATERWAY AND LOCATION OF THE PROPOSED WORK:

The proposed project is located at 5252 Long Point Farm Drive, on a peninsula adjacent to Flatty Cove, Goldsborough Creek, and the Tred Avon River in Oxford, Talbot County, Maryland (Latitude: 38.696652; Longitude: -76.145928).

OVERALL PROJECT PURPOSE:

To provide shoreline erosion control and to establish/enhance marsh habitat.

PROJECT DESCRIPTION:

To stabilize approximately 3,630 linear feet (lf) of eroding shoreline utilizing a living shoreline design within an approximately 127,956 square foot (sf) (2.94 acre) impact area as follows: to emplace 2,540 lf of low profile stone sill by emplacing approximately 7,658 cubic yards (cu.yds) of stone fill with (18) eighteen 10-foot (ft) wide tidal flushing vents, and to establish tidal marsh habitat by depositing approximately 6,414 cu.yds of sloped, clean select sand fill stabilized with 41,258 sf of low marsh (*Spartina alterniflora*) and 41,258 sf of high marsh (*S. patens*) plantings; to stabilize 580 sf of shoreline by emplacing stone marsh edging within an approximate 2,320 sf impact area and

enhance the existing tidal marsh by depositing approximately 43 cubic yards of sloped, clean select sand fill stabilized with additional marsh plantings; and to replace 220 lf of deteriorated bulkhead; all to extend no more than 35 feet channelward of the approximate mean high-water shoreline. All work is proposed in accordance with the attached plans as prepared by Lane Engineering, LLC dated September 2021. Please refer to the table below for a summary of aquatic resource impacts.

EFFECTS ON AQUATIC RESOURCES:

Activity	Impact (sf)	Resource Type	Authority (Section 10/404/408)
Stone Sill	45,440	Unconsolidated Tidal River Bottom, Submerged Aquatic Vegetation (SAV)	Section 10/404
Sand Fill & Marsh Plantings	86,770	Unconsolidated Tidal River Bottom, SAV	
Marsh Edging	2,320	Unconsolidated Tidal River Bottom, SAV	
Bulkhead Replacement	330	Unconsolidated Tidal River Bottom	

LEAD FEDERAL AGENCY:

The U.S. Army Corps of Engineers, as the lead federal agency, is responsible for all coordination pursuant to applicable federal authorities.

APPLICANT'S PROPOSED AVOIDANCE, MINIMIZATION, AND COMPENSATORY MITIGATION:

As part of the planning for the proposed project, steps were taken to ensure avoidance and minimization of impacts to waters of the United States to the maximum extent practicable based on the site conditions.

Due to mapped submerged aquatic vegetation (SAV) at the project site, the applicant proposes marsh edging above the mean low water (MLW) tidal elevation to avoid direct loss of mapped SAV at the marsh-open water interface, as mapped by the Virginia Institute of Marine Sciences (VIMS) for the most recent five years (2016-2021). The applicant has reduced the overall living shoreline footprint/channelward encroachment of the project by keeping the stone sills as close to the shoreline as possible without

impacting existing marsh vegetation and reducing the height of the stone sills in Section A-A for tidal overtopping. The applicant has also revised the application to remove the proposed beach nourishment activity from the project. Given the constraints of fetch, boat traffic, and impinging wave energy, the living shoreline and marsh edging has been designed to be the minimum size practicable to achieve the project purpose.

The applicant has identified approximately 85,680 sf (1.97 acres) of potential SAV loss that would occur as a result of the proposed project for those areas supporting rooted SAV species to the MLW tidal elevation between 2016-2021. Compensatory mitigation is not being proposed by the applicant for the permanent loss of the approximately 85,680 square foot (1.97 acres) area of mapped SAV occurring below the MLW tide elevation at this time. The permanent impacts are the result of a conversion of vegetated shallow water habitat to tidal and intertidal marsh. The project would result in a net increase of approximately 82,516 square feet of estuarine marsh habitat. No fill in wetlands is proposed.

CORPS EVALUATION REQUIREMENTS:

This project will be evaluated pursuant to Corps Regulatory Program Regulations (33 CFR Parts 320-332). The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonable may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are conservation, economic, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, and consideration of property ownership and in general, the 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, United States Environmental Protection Agency.

ENDANGERED SPECIES:

A preliminary review of this application indicates that the proposed work will have no effect on federally listed threatened or endangered species or their critical habitat, pursuant to Section 7 of the Endangered Species Act, as amended. The project site has been mapped as migrating and foraging habitat for subadult and adult Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*); and migrating and foraging habitat for adult and juvenile Green sea turtle (*Chelonia mydas*), Kemp's ridley sea turtle (*Lepidochelys kempii*), Leatherback sea turtle (*Dermochelys coriacea*), and Loggerhead sea turtle

(*Caretta caretta*). The project activities are proposed in tidal waters less than 3 feet below mean high water, which has the potential to have no effect for National Marine Fisheries Service (NMFS) NMFS-PRD protected species. The project location and vicinity is not mapped as critical habitat for any known federally-listed threatened or endangered species under USFWS' jurisdiction. As the evaluation of this application continues, additional information may become available which could modify this preliminary determination.

ESSENTIAL FISH HABITAT:

The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 04-267), 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), including species of concern, life cycle habitat, or Habitat Areas of Particular Concern (HAPC). The project site lies in or adjacent to EFH as described under MSFCMA designated in the Tred Avon River for little skate (*Leucoraja erinacea*), Atlantic herring (*Clupea harengus*), red hake (*Urophycis chuss*), winter skate (*Leucoraja ocellata*), clearnose skate (*Raja eglanteria*), windowpane flounder (*Scophthalmus aquosus*), bluefish (*Pomatomus saltatrix*), and summer flounder (*Paralichthys dentatus*); all managed species under the MSFCMA. The site does support SAV during the last five years of most recent mapped data from VIMS for years 2016-2021. SAV has been designated a HAPC for summer flounder by the Mid-Atlantic Fishery Management Council.

The Baltimore District has made a preliminary determination that the project will not have a substantial adverse effect on EFH. The Baltimore District has made a preliminary determination that mitigative measures are not required to minimize adverse effects on EFH at this time. This determination may be modified if additional information indicates otherwise.

HISTORIC RESOURCES:

Pursuant to Section 106 of the National Historic Preservation Act of 1966 and applicable guidance, the Corps has reviewed the latest published version of the National Register of Historic Places and initially determined that no registered properties listed as eligible for inclusion, therein, are located at the site of the proposed work. The Corps has made the preliminary determination that the proposed project has no potential to cause effects on historic properties. The Corps final eligibility and effect determination will be based on coordination with the State Historic Preservation Office as appropriate and required, and with full consideration given to the proposed undertaking's potential direct and indirect effects on historic properties within the Corps' identified permit area.

TRIBAL RESOURCES:

Section 106 of the National Historic Preservation Act also requires federal agencies to consult with federally recognized American Indian tribes that attach religious and

cultural significance to historic properties that may be affected by the agency's undertaking. Corps Tribal Consultation Policy mandates an open, timely, meaningful, collaborative, and effective deliberative communication process that emphasizes trust, respect, and shared responsibility. The policy further emphasizes that, to the extent practicable and permitted by law, consultation works toward mutual consensus and begins at the earliest planning stages before decisions are made and actions taken. The Corps final eligibility and effect determination will be based on coordination with interested tribes, in accordance with the Corps current tribal standard operating procedures as appropriate and required, and with full consideration given to the proposed undertaking's potential direct and indirect effects on tribal resources.

MODIFICATION OF CIVIL WORKS PROJECTS: 33 USC 408 (SECTION 408):

All Section 408 proposals will be coordinated internally at USACE. The Section 408 decision will be issued along with the Section 404 and/or Section 10 decision. Please see the following link for more information regarding Section 408:

<https://www.nab.usace.army.mil/Missions/Regulatory/Section-408-Requests/>.

WATER QUALITY CERTIFICATION:

The applicant is required to obtain a water quality certification in accordance with Section 401 of the Clean Water Act.

COASTAL ZONE MANAGEMENT PROGRAMS:

Where applicable, the applicant has certified in this application that the proposed activity complies with and will be conducted in a manner consistent with the approved Coastal Zone Management Program. By this public notice, we are requesting the state concurrence or objection to the applicant's consistency statement.

The applicant must obtain any state or local government permits which may be required.

SUBMISSION OF COMMENTS:

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 provided will become part of the public record for this action and are subject to release to the public through the Freedom of Information Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Written comments concerning the work described above related to the factors listed above or other pertinent factors must be received by the U.S. Army Corps of Engineers, Baltimore District within the comment period specified above through postal mail at the address below or electronic submission to the project manager email address below. Written comments should reference the Application Number (NAB-2021-61843-M47).

PUBLIC HEARING REQUESTS:

Any person who has an interest which may be adversely affected by the issuance of this permit may request a public hearing. The request, which must be in writing, must be received within the comment period as specified above to receive consideration. Also, it must clearly set forth the interest which may be adversely affected by this activity and the manner in which the interest may be adversely affected. The public hearing request may be submitted by electronic mail or mailed to the following address:

Meg Fullam
meghan.e.fullam@usace.army.mil
U.S. Army Corps of Engineers, Baltimore District
Regulatory Branch
2 Hopkins Plaza
Baltimore, Maryland 21201

It is requested that you communicate this information concerning the proposed work to any persons known by you to be interested, who did not receive a copy of this notice.

General information regarding the Corps' permitting process can be found on our website at <https://www.nab.usace.army.mil/Missions/Regulatory.aspx>. This public notice has been prepared in accordance with Corps implementing regulations at 33 CFR 325.3. If you have any questions concerning this specific project or would like to request a paper copy of this public notice, please contact Meg Fullam of this office at (443) 310-4567 or via email at meghan.e.fullam@usace.army.mil. This public notice is issued by the Chief, Regulatory Branch.