

U.S. Army Corps of Engineers Baltimore District

Public Notice

In Reply to Application Number NAB-2018-60141 (Miles-A-Way Farm, LLC/Shoreline Stabilization)

PN 19-26 Comment Period: May 3, 2019 to May 24, 2019

THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM THE PUBLIC ABOUT THE WORK DESCRIBED BELOW. AT THIS TIME, NO DECISION HAS BEEN MADE AS TO WHETHER OR NOT A PERMIT WILL BE ISSUED.

The Baltimore District has received an application for a Department of the Army (DA) permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (33 U.S.C. 1344), as described below:

APPLICANT: Miles-A-Way Farm, LLC 832 Georgia Avenue, Suite 400 Chattanooga, Tennessee 37402

WATERWAY AND LOCATION OF THE PROPOSED WORK: In the Miles River, located at 10443 Sherwood Manor Drive, in Claiborne, Talbot County, Maryland.

PROPOSED WORK AND PURPOSE: To stabilize approximately 390 linear feet of eroding shoreline using a living shoreline approach, all within an approximate 5,200 square foot area as follows: to construct two stone breakwaters with shore-connected planted sand tombolo structures by depositing approximately 1,445 cubic yard of sloped, clean select sand fill and 78 cubic yards of stone and to stabilize with approximately 10,500 square foot Smooth cordgrass (*Spartina alterniflora*); all to extend a minimum of 42 feet and a maximum of 109 feet channelward of the approximate mean high water (MHW) shoreline. The purpose of the proposed project is shoreline erosion control.

AVOIDANCE AND MINIMIZATION STATEMENT: As part of the planning process for the proposed project, steps were taken to ensure avoidance and minimization of impacts to waters of the United States, including wetlands to the maximum extent practicable.

Due to mapped SAV occurring at the project site, the applicant has redesigned the project to remove a previously proposed stone spur groin to avoid direct loss of mapped SAV. In addition, the living shoreline approach uses two stone breakwaters and shore-connected planted sand tombolo structures to minimize impacts to SAV mapped in the project area to more closely mimic the edge of the SAV limits and would include the use

MITIGATION STATEMENT: Compensatory mitigation is not being proposed by the applicant for the permanent loss of an approximately 2,545 square foot (0.058 acre) area of mapped SAV occurring below the mean low water (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 10,500 square feet of estuarine marsh habitat. No fill in wetlands is proposed.

All work is proposed in accordance with the attached plan(s) and work description. If you have any questions concerning this matter, or would like to submit written comments, please contact: Mr. Jason R. Peters, Baltimore District, Corps of Engineers, Regulatory Branch, Easton Field Office, Talbottown Shopping Center, 218 N. Washington Street, Suite 51, (410) 820-8550, Jason.R.Peters@usace.army.mil.

The decision whether to authorize this project will be based on an evaluation of 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 reasonably 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, economics, 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, and, in general, the needs and welfare of the people.

The evaluation of the impacts of the work described above on the public interest will include application of the Clean Water Act 404(b)(1) Guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 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 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. 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 District Engineer, U.S. Army Corps of Engineers, Baltimore District, Regulatory Branch, Easton Field Office, Talbottown Shopping Center 218 N. Washington Street, Suite 51, Easton, Maryland, 21601, within the comment period specified above.

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 National Marine Fisheries Service (NMFS) on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). The project lies in or adjacent to EFH as described under the MSFCMA designated in the Chesapeake Bay Mainstem for *Urophycis chuss* (red hack) juvenile and adult; *Scopthalmus aquosos* (windowpane flounder) juvenile and adult; Clupea harengus (Atlantic sea herring) adult; *Pomatomus saltatrix* (blue fish) juvenile and adult; *Peprilus triacanthus* (Atlantic butterfish) eggs, larvae, juvenile, and adult; *Paralicthys dentatus* (summer flounder) larvae, juvenile and adult; Stenotomus chrysops (scup) juvenile and adult; *Centropristus striata* (black sea bass) juvenile and adult; and eggs, larvae, juvenile, and adult stages of Sciaenops ocellatus (red drum), *Scomberomorus cavalla* (king mackerel), *Scomberomorus maculatus* (spanish mackerel), and *Rachycentron canadum* (cobia), all managed species under the MSFCMA.

The proposed project has the potential to adversely affect EFH, managed species, or associated species of concern such as major prey species, including affected life history stages by loss of spawning, nursery, forage and/or shelter habitat as described under the MSFCMA for the species and life stages identified above. The site does support SAV during the last five (5) of most recent mapped data available from the Virginia Institute of Marine Science (VIMS) data for years 2013 to 2017. SAV has been designated as a habitat area of particular concern (HAPC) for summer flounder by the Mid-Atlantic Fishery Management Councils. The applicant has identified approximately 2,545 square foot (0.058 acre) area of direct SAV loss that would occur as a result of the proposed project in areas likely to support rooted SAV species below the MLW tide elevation.

The Baltimore District has made a preliminary determination that site-specific impacts would not be substantial and an abbreviated consultation will be conducted with NMFS. No mitigative measures are recommended to minimize adverse effects on EFH at this time both individually and cumulatively. This determination may be modified if additional information indicates otherwise and would change the preliminary determination.

WATER QUALITY CERTIFICATION: The applicant is required to obtain a water quality certification in accordance with Section 401 of the Clean Water Act from the Maryland Department of the Environment. Any written comments concerning the work described above which relate to water quality certification must be received by the Wetlands and Waterways Program, Maryland Department of the Environment, 1800

Washington Blvd., Suite 430, Baltimore, Maryland 21230-1708 within the comment period as specified above to receive consideration. The Section 401 certifying agency has a statutory limit of one year from the date of this public notice to make its decision.

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 State's federally-approved Coastal Zone Management (CZM) Program. By this public notice, we are requesting the State's concurrence or objection to the applicant's consistency certification statement. It should be noted that Maryland's CZM Program has a statutory limit of six (6) months from the date of this public notice in which to make its consistency determination.

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

ENDANGERED SPECIES ACT: A preliminary review of this application using the U.S. Fish and Wildlife Service IPaC online screening tool indicates that the proposed work will not affect any Federal listed threatened or endangered species or their critical habitat, pursuant to Section 7 of the Endangered Species Act (ESA), as amended. 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.

NATIONAL HISTORIC PRESERVATION ACT: Review of the latest published version of the National Register of Historic Places indicates that no registered properties listed as eligible for inclusion therein are located at the site of the proposed work. Currently unknown archeological, scientific, prehistoric, or historical data may be lost or destroyed by the work to be accomplished under the requested permit. As the evaluation of this proposal continues, additional information may become available which could modify this preliminary determination.

The evaluation of the impact of this project on the public interest will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 of the Clean Water Act.

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 by the District Engineer, U.S. Army Corps of Engineers, Baltimore District, District Engineer, U.S. Army Corps of Engineers, Baltimore District, Regulatory Branch, Easton Field Office, Talbottown Shopping Center, 218 N. Washington Street, Suite 51, Easton, Maryland, 21601, 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.

-5-

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

FOR THE DISTRICT ENGINEER:

KATHY B. ANDERSON Chief, Maryland Section Southern











