



Joint Public Notice



U.S. Army Corps
of Engineers
Baltimore District

In Reply to Application Number
NAB-2019-60575 (Ferry Cove Project LLC/ Oyster Nursery)
Maryland Tidal Wetlands License No. 19-WL-0402
Maryland Nontidal Wetlands License No. 19-NT-2035

PN 19-53

Comment Period: August 15, 2019 to September 15, 2019

THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM THE PUBLIC ABOUT THE WORK DESCRIBED BELOW AND TO ANNOUNCE THE DATE OF A CORPS PUBLIC INFORMATION MEETING/MARYLAND DEPARTMENT OF THE ENVIRONMENT PUBLIC INFORMATION HEARING ON THE SUBJECT APPLICATION. AT THIS TIME, NO DECISION HAS BEEN MADE AS TO WHETHER OR NOT AUTHORIZATIONS WILL BE ISSUED. THE CORPS PUBLIC INFORMATION MEETING/MDE PUBLIC INFORMATION HEARING WILL BE HELD:

**Thursday, September 19, 2019
5:30 pm to 7:30 pm
Talbot County Saint Michaels Library
106 Fremont Street
Saint Michaels, Maryland 21663**

The Corps public information meeting/MDE public information hearing provides members of the public the opportunity to present views, opinions, and information which would be considered by the U.S. Army Corps of Engineers, Baltimore District (Corps) and the Maryland Department of the Environment (MDE) in evaluating the permit application. A poster session/display would be available from 5:30 PM to 6:00 PM where project drawings can be reviewed. Agency representatives would also be available to answer questions. From 6:00 PM to 7:30 PM, a brief project presentation would be given by the Ferry Cove Project, LLC followed by public testimony. A time limit of three minutes per speaker may be set, depending on the number of speakers, to ensure that all interested parties have an opportunity to voice their views.

Anyone who is hearing impaired and/or is non-English speaking, who wishes to attend this public meeting/hearing should notify Mr. Jason R. Peters at the address/telephone number listed near the end of this public notice. All requests for an oral, sign language, or non-English language interpreter must be received by September 1, 2019. To the extent possible and feasible, an interpreter would be provided.

The Corps 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)**. MDE has also received an application from Ferry Cove Project, LLC for a Tidal and Nontidal Wetlands License to be authorized by the Maryland Board of Public Works pursuant to Title 16 of the Environment Article, Annotated Code of Maryland. The work is described below:

APPLICANT: Ferry Cove Project, LLC
Attn: Ms. Tina Davenport
4324 John Silver Road
Virginia Beach, Virginia 23455

WATERWAY AND LOCATION: All work is proposed in Ferry Cove and the Chesapeake Bay, off Tilghman Island Road, near Lowes Wharf, in Sherwood, Talbot County, Maryland.

PROPOSED WORK AND PURPOSE: The applicant proposes to upgrade an existing farm road and construct an intake structure, pier, brood stock conditioning area, and two outfall structures to support a proposed oyster hatchery operation as follows: to upgrade an existing farm access lane all within an approximately 2,412 square foot impact area of nontidal wetlands and to construct a water intake structure, pier, brood stock conditioning area, and two outfall structures all within an approximately 6,225 square foot impact area of tidal wetlands and an approximately 3,716 square foot area of submerged aquatic vegetation (SAV) for a proposed oyster hatchery and nursery facility as follows: (1) to fill and grade an existing access road in nontidal wetlands; (2) to emplace 40 linear feet of stone revetment, extending a maximum of 8 feet channelward of the approximate mean high water (MHW) shoreline; (3): install a 12-inch diameter nursery return line with a 20-foot long by 16-foot wide stone scour pad within an approximately 857 square foot area; to install an 8-inch diameter nursery return line and to emplace a 35-foot long by 4-foot wide stone scour pad within 1,031 square foot area; all extending a maximum of 22 feet channelward of MHW; (4) to install two 12-inch diameter intake pipes and trench and embed within an approximately 528 square foot area to a depth of -4.76 feet at mean low water (MLW); to mechanically excavate an approximately 16-foot long by 16-foot wide area to a depth of -7.57 feet MLW resulting in 28 cubic yards of excavated material; to construct an 18-foot long by 18-foot wide filter box; and to emplace stone rip rap within an approximately 1,990 square foot area; all extending a maximum of 162 feet channelward of the approximate MHW shoreline; and (5) to construct a 135-foot long by 8-foot wide support pier with a 45-foot long by 10-foot wide terminal "L-head" platform, install one boat lift, and to construct a 6,000 square foot brood stock conditioning area comprised of twenty four (24) 8-inch diameter piles; all extending a maximum of 175 feet channelward of the approximate MHW shoreline. The brood stock conditioning area would consist of attendant structures including upwellers and oyster cage gear equipment that would be secured to (24) 8-inch diameter pilings located throughout the 6,000 square foot tidal open-water area. All work is proposed in accordance with the attached plans. If you have any questions concerning this matter, please contact Mr. Jason Peters at (410) 962-6029 or Jason.R.Peters@usace.army.mil.

The purpose and need for the project is to establish an oyster hatchery. The project proposes to produce and sell native *Crassostrea virginica* oyster larvae and seed for commercial harvest and sale.

As part of the planning process for the proposed project, steps were taken to ensure avoidance and minimization of impacts to aquatic resources to the maximum extent practicable based on the existing site conditions. Avoidance and minimization measures were incorporated into the proposed project by minimizing the project's design to meet the project purpose. The initial proposal for the oyster hatchery included "Option B" intake

bay water with a filter box approximately 540 linear feet channelward, however this option would have impacted approximately 2,160 square feet of subaqueous habitat including benthic bottom and SAV for the intake route to install gravity pipes. Although locating the intake structures further channelward would ensure optimum water quality parameters for the land-based operation, applicant has requested only what is necessary for length and depth. Option C investigated the option of installed collector wells to bring bay water through the bay bottom substrate into a central location via installation of collector wells from which the bay water would be pumped to the hatchery. This option was determined from the investigation since the bay bottom has very low permeability, which would render this approach incapable of producing the water needed to run the hatchery. Option C also presents a concern for potential contamination of underground freshwater aquifers with salt/ brackish water return water from the hatchery operations. Concerning the channelward extent, the pier, intake lines, and filter box is the minimum necessary to ensure that optimum water quality and volume are available to serve the commercial oyster hatchery/ nursery operation. The stone rip-rap outfall structures have been sized to account for required water depths and wave action and to ensure return water flowing back to the waterway does not cause erosion or disturbance of SAV or benthic bottom habitat. The stone rip-rap intake structures are to be a primary filter of debris prior to hatchery intake, but are also designed to ensure the structural stability is maintained to protect against damage by ice flows and wave energy. To minimize the intake/outfall structure impacts, the intake source has been moved as close to shore as possible and the outfall pads have been minimized. The applicant has proposed to seed the rock outfall and intake structures with oyster seed within an approximately 2,088 square foot area. Additional hard bottom areas in the vicinity of the project may be considered for additional oyster seeding for additional mitigation area.

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. 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.

By this public notice, the Corps and MDE are 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 and MDE to determine whether to issue, modify, condition or deny a permit or license for this proposal. To make these

decisions, comments are used to assess impacts on navigation, endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed below. 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 overall public interest of the proposed activity.

Written comments and information provided by interested parties must be received by the Corps and MDE by the closing date of this notice's comment period, September 15, 2019, to receive consideration. If you have any questions, or would like to submit written comments, please see as follows:

Questions or comments pertaining to impacts to waters of the United States, including jurisdictional wetlands associated with the Corps regulatory program should be submitted to:

Mr. Jason R. Peters
Baltimore District, Corps of Engineers
Regulatory Branch – Easton Field Office
Talbottown Shopping Center
218 N. Washington Street, Suite 51
Phone: 410-820-8550
Email: Jason.R.Peters@usace.army.mil

Questions or comments pertaining to the State's Tidal Wetlands License should be directed to:

Ms. Megan Spindler
Maryland Department of the Environment
Tidal Wetlands Division - Baltimore Office
1800 Washington Blvd.
Baltimore, MD 21230
Phone: 410-537-3622
Email: megan.spindler@maryland.gov

Questions or comments pertaining to the State's Nontidal Wetlands License should be directed to:

Mr. Al Kampmeyer
Maryland Department of the Environment
Nontidal Wetlands Division – Salisbury Office
201 Baptist Street. Room 3307
Salisbury, MD 21801
Phone: 410-713-4227
Email: alan.kampmeyer@maryland.gov

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 site 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; *Scophthalmus aquosus* (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; *Paralichthys 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 project has the potential to adversely affect EFH or the species of concern by alteration of spawning, nursery, forage and/or shelter habitat. The project may have an adverse effect on approximately 0.23-acres (9,941 square feet) of Essential Fish Habitat as described under the Magnuson-Stevens Fishery Conservation and Management Act for the species and life stages identified above. Preliminary mapping of the project site depicts mapped SAV present within the footprint of the proposed project and in adjacent areas during the five most recent years of available data (2013-2017) from the Virginia Institute of Marine Science (VIMS). Additionally, the nearshore habitat consist of intertidal and tidal wetlands that transitions to shallow-water habitat supporting underwater grasses. A review of the VIMS preliminary 2018 mapping data also depicts the presence of mapped SAV. The mapped density in 2018 is 70% coverage within the project footprint and in adjacent areas. Species observation data available from VIMS shows *Ruppia maritima* species present at the project site historically. As part of the planning process for the project, a benthic bottom survey was completed on June 9 and June 12, 2017 in the areas west of Lowes Wharf. The applicant is working with the Oyster Recovery Partnership to provide current ground-truthing information for 2019.

SAV has been designated as a habitat area of particular concern (HAPC) for summer flounder by the Mid-Atlantic Fishery Management Council. HAPCS are discrete subsets of EFH that provide important ecological functions and/or are especially vulnerable to degradation. The benthic bottom habitat type is characterized as consisting mostly of medium sand, silt and sandy silt substrate. 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. 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.

COASTAL ZONE MANAGEMENT PROGRAM: 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 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, as amended. The project location and vicinity is not mapped as critical habitat for any known Federally-listed threatened or endangered species. The project waterway including the areas of review in Ferry Cove and the Chesapeake Bay may be utilized by transient individuals of the following marine species of concern to the National Marine Fisheries Service (NMFS): *Caretta caretta* (Loggerhead sea turtles); *Lepidochelys kempii* (Kemp's Ridley sea turtles); *Dermochelys coriacea* (Leatherback sea turtles); *Chelonia mydas* (Green sea turtles); *Acipenser brevirostrum* (Shortnose sturgeon); and *Acipenser oxyrinchus* (Atlantic sturgeon). Although a few transient threatened and endangered NMFS listed species may occur in Ferry Cove and the Chesapeake Bay, the work would not individually or cumulatively have an adverse effect on ESA-listed species. Based on the preliminary analysis that all effects of the proposed actions would be insignificant and/or discountable, we have determined that the entire project for 0.23-acres (9,941 square feet) of in-water work in Ferry Cove and the Chesapeake Bay, "may affect, but is not likely to adversely affect" any listed species or critical habitat under NMFS' 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 or 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 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 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 District Engineer must receive the request, which must be in writing, to the U.S. Army Corps of Engineers, Baltimore District, 2 Hopkins Plaza, Baltimore, Maryland 21201, within the comment period as specified as above to receive consideration. Also, it must clearly state the interest that may be

adversely affected by this activity and the manner in which the interest may be adversely affected.

It is requested that you communicate the foregoing 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. If you have any questions concerning this matter, please contact Mr. Jason Peters at (410) 962-6029 or Jason.R.Peters@usace.army.mil. This public notice is issued by the Corps and MDE.