



**U.S. Army Corps
of Engineers**
Baltimore District
PN 21-18

Public Notice

In Reply to Application Number
NAB-2020-60650(MO DEP Wheaton Branch Dam/SWM Pond)

Comment Period: May 20, 2020 to June 4, 2020

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 404 of the Clean Water Act (33 USC 1344), as described below:

APPLICANT: Montgomery County DEP
255 Rockville Pike #120
Rockville, MD 20850

WATERWAY AND LOCATION OF THE PROPOSED WORK:

The proposed project is located in Wheaton Branch a tributary to Sligo Creek in Silver Spring, Montgomery County, Maryland. (39.016758°, -77.033403°)

OVERALL PROJECT PURPOSE: To maintain a stormwater management pond and provide flood protection along Wheaton Branch.

PROJECT DESCRIPTION: To armor 1,859 square feet along 45 linear feet of Wheaton Branch by placing a stone riprap apron below the culvert under Etna Place, to excavate 17,592 cubic yards of material of 66,513 square foot area of the overbank area of Wheaton Branch to provide additional flood storage between Etna Place and Dennis Avenue temporarily impacting 2,391 square feet of area along 503 linear feet of stream, to excavate 20,947 square feet along 367 linear feet within Cell 1 of the Wheaton Branch Stormwater facility by removing 4,000 cubic yards of accumulated sediments. After removal of accumulated sediment, the pond would be graded to return elevations to as-built design. After removal of accumulated sediment, the pond would be graded to return elevations to as-built design.

The work is proposed in accordance with the enclosed plans.

NOTE: This project is being re-noticed to modify the project description to more accurately describe the work to be performed.

EFFECTS ON AQUATIC RESOURCES:

Activity	Perm. WoUS Impact (sq. ft.)	Perm. WoUS impact (ln. ft.)	Temp. WoUS impact (sq. ft.)	Temp. WoUS impact (ln. ft.)	Volume dredge material (cu. yd.)	Authority (Section 10/404/408)
Riprap Apron	1,859	45	0	0	0	404
Excavate overbank	0	0	2,391	503	17,592	404
Cell 1	0	0	20,947	367	4,000	404

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: Steps were taken to ensure avoidance and minimization of impacts to waters of the United States to the maximum extent possible. The proposed impacts are the minimal possible while still meeting the overall project purpose. Compensatory mitigation is not being proposed by the applicant for impacts to the area along Wheaton Branch and Cell 1 of the stormwater management facility because the applicant will permanently impact less than 5,000 square feet (200 linear feet) of stream for the construction of the project. The project will restore all temporary impacts along the stream to preconstruction contours, will restore vegetation along stream, and it would restore the surface water management facility pond to its original configuration and function.

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, U.S. Environmental Protection Agency.

ENDANGERED SPECIES: The lead federal agency is responsible for Endangered Species Act coordination. 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. As the evaluation of this application continues, additional information may become available which could modify this preliminary determination.

ESSENTIAL FISH HABITAT: The lead federal agency is responsible for Essential Fish Habitat coordination. 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), including species of concern, life cycle habitat, or Habitat Areas of Particular Concern. The project site lies in or adjacent to EFH as described under MSFCMA for managed species under the MSFCMA. The Baltimore District has made a preliminary determination that the project will have no 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:

The lead federal agency is responsible for historic resources coordination. Pursuant to Section 106 of the National Historic Preservation Act (NHPA) 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 would have no effect 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 NHPA 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. The lead federal agency is responsible for tribal coordination. 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/section408/>.

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 (CZM) 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 NAP-ORP-P-2018-61991.

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. It must also 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:

Mr. Robert Fewster
Robert.j.fewster@usace.army.mil
U.S. Army Corps of Engineers, Baltimore District
Regulatory Branch
2 Hopkins Plaza
Baltimore, MD 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 Mr. Robert Fewster at 410-962-6144, or at Robert.j.fewster@usace.army.mil. This public notice is issued by the Chief, Regulatory Branch.