



**US Army Corps
of Engineers**®
New England District
696 Virginia Road
Concord, MA 01742-2751

PUBLIC NOTICE

Comment Period Begins: November 01, 2022
Comment Period Ends: December 01, 2022
File Number: NAE-2019-00215
In Reply Refer To: Mike Wierbonics
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The District Engineer has received a permit application to conduct work in waters of the United States from The Town of Fairfield Conservation Department, 725 Old Post Road, Fairfield, Connecticut 06824. This work is proposed along the southern dike of Pine Creek located north of the Fairfield Recreation Area and south of the Fairfield Sanitary Landfill. The site coordinates are Latitude: 41.125653, Longitude: -73.262004.

The work involves the replacement of the three existing South Pine Creek outfalls (two outfalls are 48-inches in diameter and one is 54-inches) with five proposed tidal outfalls equipped with tide gates to provide the project site and adjacent marsh lands with improved tidal water flow through Pine Creek to/from the Long Island Sound. Tidal water flow through the marsh located around the site is vital for the survival of the indigenous species that reside in the area. Without consistent tidal flow, invasive species will populate the area and will degrade the natural habitats within the marsh. In addition to allowing tidal flow, the outfalls will provide drainage during storm events for the upper marshes. While the dike serves to limit water entering the marshes during storm surges from Long Island Sound, the outfalls provide drainage from upland runoff that enters the marsh.

The proposed project consists of abandoning the three existing tidal outfalls and gates in place and constructing five new tidal outfalls and tide gates to the north beneath a historic bridge's existing location. By placing the proposed outfalls beneath the historic bridge, the Applicant will realign Pine Creek to its historic and more natural orientation. The existing tidal outfalls will be permanently filled with approximately 91 cubic yards (CY) of concrete and grout and the existing headwalls will be removed. The proposed five tidal outfalls will have a diameter of 60 inches each and will be fitted with closure gates and self-regulating tide gates (SRT). Three tidal outfalls will have SRT tide gates measuring 75-linear feet in length. The remaining two tidal outfalls will have closure gates measuring 70-linear feet in length. The installation of a new concrete headwall will result in the permanent discharge of approximately 190 CY below the high tide line (HTL) and will be constructed adjacent to the proposed tidal outfalls and will be founded on deep pile foundations.

The proposed project will allow the Applicant to better control the amount of tidal water that enters and exits the marsh from Pine Creek. The self-regulating tide gate closure is adjustable and may be adjusted to allow more or less water into the upper marsh. Currently, typical operations are to allow flooding to elevation (El.) +2.3' +/- in the northern end of the marsh near Thorpe Street. Higher flood levels in the north would result in tidal flooding along existing neighbouring properties. Lower flood elevations have in the past resulted in increased mosquito complaints. These operations of flooding to up to El. +2.3' +/- in the north of the marsh will be continued with the new gates. Over time operations may be adjusted in the future based on observations of environmental conditions at that time to restrict coastal tidal flooding at adjoining properties, provide saltwater inundation for vegetation, and mosquito control. During periods of foul weather, the Applicant will be able to reduce the amount of water that enters the marsh and will be able to drain the marsh at a faster rate.

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The work is shown on the enclosed plans entitled “SOUTH PINE CREEK OUTFALL REPLACEMENT SOUTH PINE CREEK WATERSHED” on eleven sheets dated “2/7/2019”.

The project has been designed to avoid and minimize impacts to Waters of the United States to the greatest extent practicable.

AUTHORITY

Permits are required pursuant to:

- Section 10 of the Rivers and Harbors Act of 1899
- Section 404 of the Clean Water Act
- Section 103 of the Marine Protection, Research and Sanctuaries Act.

The decision whether to issue a permit will be based on an evaluation of the probable impact 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 may reasonably 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 value, fish and wildlife values, flood hazards, flood plain value, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people.

The U.S. Army Corps of Engineers, New England District (USACE), 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. The USACE will consider all comments received 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.

Where the activity involves the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of disposing it in ocean waters, the evaluation of the impact of the activity in the public interest will also include application of the guidelines promulgated by the Administrator, U.S Environmental Protection Agency, under authority of Section 404(b) of the Clean Water Act, and/or Section 103 of the Marine Protection Research and Sanctuaries Act of 1972, as amended.

ESSENTIAL FISH HABITAT

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires all federal agencies to consult with the National Marine Fisheries Service on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). Essential Fish Habitat describes waters and substrate necessary for fish for spawning, breeding, feeding or growth to maturity.

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This project will have an adverse effect on approximately .25 acres of EFH. This habitat consists of emergent tidal marsh and silt/mud substrate. Loss of this habitat may adversely affect species that use these waters and substrate. The District Engineer has made a preliminary determination that site-specific impacts may be substantial. Accordingly, the USACE will submit an expanded EFH assessment to the National Marine Fisheries Service, who in turn will provide conservation recommendations to the USACE. The USACE will coordinate with the applicant regarding implementation of these recommendations. The EFH consultation will be concluded prior to the final decision.

NATIONAL HISTORIC PRESERVATION ACT

Based on initial review, the District Engineer has determined that the proposed work may impact properties listed in, or eligible for listing in, the National Register of Historic Places. Additional review and consultation to fulfill requirements under Section 106 of the National Historic Preservation Act of 1966, as amended, will be ongoing as part of the permit review process.

ENDANGERED SPECIES CONSULTATION

The USACE has reviewed the application for the potential impact on Federally listed threatened or endangered species and their designated critical habitat pursuant to section 7 of the Endangered Species Act as amended. It is our preliminary determination that the proposed activity for which authorization is being sought is designed, situated, or will be operated/used in such a manner that it is not likely to adversely affect a listed species or their critical habitat. We are coordinating with the National Marine Fisheries Service and/or U.S. Fish and Wildlife Service on listed species under their jurisdiction and the ESA consultation will be concluded prior to the final decision.

OTHER GOVERNMENT AUTHORIZATIONS

The state of has an approved Coastal Zone Management Program. Where applicable, the applicant states that any proposed activity will comply with and will be conducted in a manner that is 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 following authorizations have been applied for, or have been, or will be obtained:

- Permit, license or assent from State.
- Permit from local wetland agency or conservation commission.
- Water Quality Certification in accordance with Section 401 of the Clean Water Act.

COMMENTS

In order to properly evaluate the proposal, we are seeking public comment. Anyone wishing to comment is encouraged to do so. Comments should be submitted in writing by the above date to michael.s.wierbonics@usace.army.mil. If you have any questions, please contact Mike Wierbonics at (978) 318-8723

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the application. Requests for a public hearing shall specifically state the reasons for holding a

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public hearing. The USACE holds public hearings for the purpose of obtaining public comments when that is the best means for understanding a wide variety of concerns from a diverse segment of the public.

The initial determinations made herein will be reviewed in light of facts submitted in response to this notice. All comments will be considered a matter of public record. Copies of letters of objection will be forwarded to the applicant who will normally be requested to contact objectors directly in an effort to reach an understanding.

THIS NOTICE IS NOT AN AUTHORIZATION TO DO ANY WORK.

Kevin R Kotelly

Kevin R. Kotelly, P.E.
Chief, Permits and Enforcement Branch
Regulatory Division

If you would prefer not to continue receiving Public Notices by email, please contact Ms. Tina Chaisson at (978) 318-8058 or e-mail her at bettina.m.chaisson@usace.army.mil.