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U.S. Army Corps of Engineers
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Maryland
Department of
the Environment

Public Notice

In Reply to COE Application Number NAB-2018-02152 (MDOT SHA/I-495 I-270 Managed Lane Study) and MDE, Nontidal Wetlands and Waterways Tracking Numbers 20-NT-0114 / 202060649 / AI 168251 / 22-WQC-0023

Comment Period: 8/1/2022 to 9/29/2022

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

The U.S. Army Corps of Engineers, Baltimore District (Corps) and the Maryland Department of the Environment (MDE) joint public informational hearings provide members of the public the opportunity to present views, opinions, and information that will be considered by the Corps and MDE in evaluating the *Joint Federal/State Application for the Alteration of any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland* (JPA) proposed for the project. As part of the public comment period, the purpose of the hearing(s) is for the Corps and MDE to receive oral or written comments that will enable them to evaluate the impacts of the proposed project on the public interest. All interested parties, including representatives of Federal, State, and local governments and private individuals and organizations, are invited to be present or to be represented. Each will be given an opportunity to express their views regarding the proposed project.

IN-PERSON PUBLIC HEARING DATE AND LOCATION: One in-person public hearing is being held from 6:30 PM to 9:30 PM, with a poster session starting at 5:30 PM on **Thursday, September 8, 2022**. The hearing location will be at the **Hilton Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852**. Interested parties will each have three minutes to provide public testimony (or 5 minutes if representing a group)

VIRTUAL ONLINE PUBLIC HEARING: One virtual public hearing is being held from 6:30 PM to 9:30 PM, with a virtual poster session starting at 5:30 PM on **Wednesday, September 14, 2022**. Interested parties may participate in the virtual online hearings by providing public testimony and/or watching online. Interested parties will each have three minutes to provide public testimony (or 5 minutes if representing a group) by registering online at the Op Lanes Maryland website, oplanesmd.com/environmental/jpa after which email instructions will be provided. The virtual hearings may be watched online at oplanesmd.com/environmental/jpa.

The hearings will be transcribed; hearing transcripts will be available on the Op Lanes Maryland Project website. Comments can also be provided in writing at the public informational hearings, via email or U.S. mail.

Public hearing documents, including the JPA documents, WQC request documents, project plans, and planning documents can be downloaded from the Op Lanes Maryland Project website: <https://oplanesmd.com/environmental/jpa/>. The JPA documents will include the application; the Water Quality Certification (WQC) request and supporting documents, a project location map; a map of the proposed mitigation sites; alignment cross sections by alternative; the wetlands delineation memorandum; the Avoidance, Minimization, and Impacts Report; the Draft Compensatory Wetlands and Waterways Mitigation Plan; Impact Plates; Impact Tables; and the Final Environmental Impact Statement (FEIS). Hard copies of the JPA and WQC request with supporting documents will be available for review during the comment period at the document availability locations listed below beginning July 15, 2022. The hard copies will be available for review in the libraries during normal branch hours.

MARYLAND LIBRARIES:**Montgomery County:**

Gaithersburg Library, 18330 Montgomery Village Avenue, Gaithersburg, MD 20879

Quince Orchard Library, 15831 Quince Orchard Road, Gaithersburg, MD 20878

Rockville Memorial Library, 21 Maryland Avenue, Rockville, MD 20850

Davis Library, 6400 Democracy Boulevard, Bethesda, MD 20817

Kensington Park Library, 4201 Knowles Avenue, Kensington, MD 20895

Chevy Chase Library, 8005 Connecticut Avenue, Chevy Chase, MD 20815

Silver Spring Library, 900 Wayne Avenue, Silver Spring, MD 20910

White Oak Library, 11701 New Hampshire Avenue, Silver Spring, MD 20904

WASHINGTON, DC LIBRARY:

Juanita E. Thornton/Shepherd Park Neighborhood Library, 7420 Georgia Avenue NW, Washington, DC 20012

VIRGINIA LIBRARY:**Fairfax County:**

Dolly Madison Library, 1244 Oak Ridge Avenue, McLean, VA 22101

PERMIT INFORMATION: The Corps and MDE have received and are evaluating the JPA as described below for Department of the Army authorization pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act (33 U.S.C . 403); and State authorization pursuant to Title 5, Subtitle 5 (Waterway Construction) and Title 5, Subtitle 9 (Nontidal Wetlands) of the Environment Article, Annotated Code of Maryland.

APPLICANT: Maryland Department of Transportation, State Highway Administration

Attn: Mr. Jeff Folden

601 North Calvert Street

Baltimore, MD 21202

LEAD FEDERAL AGENCY: The Federal Highway Administration, as the lead federal agency, is responsible for all coordination pursuant to applicable federal authorities.

WATERWAY AND LOCATION OF THE PROPOSED WORK: The proposed project is located in the Middle Potomac-Catoctin (02070008) and Middle-Potomac-Anacostia-Occoquan (02070010) HUC-8 watersheds in Montgomery County, Maryland, and Fairfax County, Virginia.

I-495 & I-270 MANAGED LANES NEPA STUDY PROJECT PURPOSE: The purpose of the I-495 & I-270 Managed Lanes National Environmental Policy Act (NEPA) Study is to develop a travel demand management solution(s) that addresses congestion, improves trip reliability on I-495 and I-270 within the project limits and enhances existing and planned multimodal mobility. The needs for the Study are:

- Accommodate existing traffic and long-term traffic growth;
- Enhance trip reliability;
- Provide additional roadway travel choices;
- Accommodate movement of goods and services, and
- Accommodate homeland security

PROJECT DESCRIPTION: The project limits include: I-495 from the George Washington Memorial Parkway in Virginia, including improvements to the American Legion Bridge over the Potomac River, to east of MD 187 on I-495, and I-270 from I-495 to north of I-370 and on the I-270 eastern spur from east of MD 187 to I-270. These are the project limits for Alternative 9 – Phase 1 South, the Preferred Alternative chosen for the I-495 & I-270 Managed Lanes Study. Please see the tables below for a summary of aquatic resource impacts for the Preferred Alternative.

On I-495, the Preferred Alternative would consist of adding two new High-Occupancy Vehicle Toll (HOT) managed lanes (MLs) in each direction from the George Washington Memorial Parkway to west of MD 187. On I-270, the Preferred Alternative consists of converting the one existing High-Occupancy Vehicle (HOV) lane in each direction to a HOT ML and adding one new HOT ML in each direction on I-270 from I-495 to north of I-370 and on the I-270 east and west spurs. There are no improvements proposed at this time on I-495 east of the I-270 east spur to MD 5. Along I-270, the existing collector-distributor (C-D) lanes from Montrose Road to I-370 are proposed to be removed. The MLs are proposed to be separated from the general purpose lanes using flexible delineators placed within the buffer. Transit buses and HOV-3+ vehicles would be permitted to use the MLs toll-free. The Preferred Alternative also proposes a full replacement of the American Legion Bridge with a new, wider bridge to accommodate the two HOT lanes in each direction, and will also include a shared use path to provide bicycle and pedestrian connection between Maryland and Virginia. Additional information about the Preferred Alternative can be found in the Final Environmental Impact Statement (FEIS). Off-site and on-site stormwater management will be constructed to meet stormwater requirements and mitigation/restoration sites will also be constructed to meet National Park Service and Maryland-National Capital Parks (M-NCPPC) and Planning Commission mitigation requirements. The following tables reflect the impacts from the Preferred Alternative, and off-site stormwater management..

USACE ANTICIPATED DIRECT EFFECTS ON REGULATED AQUATIC RESOURCES FOR THE PREFERRED ALTERNATIVE (ALTERNATIVE 9 – PHASE 1 SOUTH):

Preferred Alternative	Impact Type	Stream Impact		Stream Impact	Wetland Impact	
		Sq. Ft.	Ac.	Linear Ft.	Sq. Ft.	Ac.
Alternative 9 – Phase 1 South	Permanent	639,109	14.67	40,186	148,598	3.41
	Temporary	323,136	7.42	2,353	27,385	0.63

MDE ANTICIPATED DIRECT EFFECTS ON REGULATED AQUATIC RESOURCES FOR THE PREFERRED ALTERNATIVE (ALTERNATIVE 9 – PHASE 1 SOUTH):

Preferred Alternative	Impact Type	Stream Impact		Stream Impact	Wetland Impact*		Wetland Buffer Impact		Floodplain Impact	
		Sq. Ft.	Ac.	Linear Ft.	Sq. Ft.	Ac.	Sq. Ft.	Ac.	Sq. Ft.	Ac.
Alternative 9 – Phase 1 South	Permanent	618,855	14.21	37,981	152,934	3.51	272,559	6.26	1,054,683	24.21
	Temporary	322,647	7.41	2,300	21,120	0.48	17,934	0.41	323,257	7.42

*The project will permanently impact 0.86 acres (37,346 square feet) of forested nontidal wetland, 0.01 acres (481 square feet) of scrub-shrub nontidal wetland, 2.64 acres (115,107 square feet) of emergent nontidal wetland, and temporarily impact 0.22 acres (9,666 square feet) of forested nontidal wetland and 0.26 acres (11,454 square feet) of emergent nontidal wetland.

APPLICANT'S PROPOSED AVOIDANCE, MINIMIZATION, AND COMPENSATORY MITIGATION: Impacts to wetlands, their buffers, waterways, and the FEMA 100-year floodplain are being minimized to the greatest extent practicable at this stage of the project. Avoidance and Minimization will continue throughout the design process. Design revisions were made to avoid and minimize direct impacts to natural resources including:

- A substantial reduction in project scope resulting in a 60% or greater reduction in roadway work and a 70% or greater reduction in impacts to wetlands and waterways.
- Elimination of the collector-distributor system on I-270;
- Preliminary alignment shift designs;
- Alterations to preliminary roadside ditch and grading designs;
- Additions to preliminary retaining wall designs to minimize the roadway footprint;
- Revisions to preliminary ramp designs, construction access areas, preliminary stormwater management (SWM) facility locations, and sound wall locations;
- Relocations of preliminary managed lane access locations

- Revisions of proposed SWM facility locations; and
- Targeted avoidance and minimization of the Potomac River and Plummers Island, Thomas Branch, and other major stream crossings to the greatest extent practicable

The Preferred Alternative includes a substantially revised project scope. The Preferred Alternative project limits include: I-495 from the George Washington Memorial Parkway in Virginia, including improvements to the American Legion Bridge over the Potomac River, to east of MD 187 on I-495, and I-270 from I-495 to north of I-370 and on the I-270 eastern spur from east of MD 187 to I-270. The original project limits included: I-495 from south of the George Washington Memorial Parkway in Virginia, including improvements to the American Legion Bridge over the Potomac River, to west of MD 5 in Maryland and along I-270 from I-495 to north of I-370, including the east and west I-270 spurs. Work which was proposed on I-495 east of the I-270 east spur to MD 5 has been removed from the project scope resulting in a 70% or greater reduction of impacts to wetlands, waterways, and Waters of the U.S.

Additionally, the Preferred Alternative would completely avoid significant stream valley parks including Rock Creek, Northwest Branch, Sligo Creek, Southwest Branch, and Henson Creek Stream Valley Parks, as well as historic parks of national significance including the Baltimore-Washington Parkway, Greenbelt Park, and Suitland Parkway.

Wetland mitigation requirements in Maryland and Virginia were developed using Corps and MDE standard practices. For the Preferred Alternative, the MDE mitigation requirement in Maryland is 4.38 acres of wetland mitigation and 7,400 functional feet of stream mitigation; and the Corps mitigation requirement in Maryland is 4.28 acres of wetland mitigation and 7,511 functional feet of stream mitigation. Several mitigation opportunities were explored including on-site mitigation for open channels, mitigation banking, in-lieu fee programs, and off-site permittee-responsible mitigation on public and private lands. Two permittee-responsible mitigation sites were chosen for the Final Compensatory Mitigation Plan based on their potential for functional uplift, construction feasibility, proximity to the study area, mitigation credits, and replacement of lost functions and values resulting from roadway improvements.

The two chosen mitigation sites include the Cabin Branch Stream Restoration and Wetland Mitigation Site (RFP-2) and the Unnamed Tributary to Great Seneca Creek Stream Restoration Site (CA-5). Both mitigation sites are located in the Middle Potomac-Catoctin HUC-8 (02070008) watershed in Montgomery County. Construction of the proposed wetland and stream mitigation sites would temporarily impact 0.08 acres (3,515 square feet) of forested nontidal wetland, 0.11 acres (4,889 square feet) of emergent nontidal wetland, 0.63 acres (27,430 square feet) of 25-foot nontidal wetland buffer, 11,860 linear feet (349,178 square feet) of perennial channel, 322 linear feet (2,126 square feet) of intermittent channel, and 27.03 acres (1,177,631 square feet) of 100-year floodplain. Of the temporary wetland impacts, approximately 0.03 acres (1,172 square feet) of forested nontidal wetland and 0.05 acres (2,378 square feet) of emergent nontidal wetland at the CA-5 Mitigation Site require replacement and will be replaced in-kind on-site. All other temporary impacts will be restored. Mitigation will include restoring approximately 721 functional feet of stream at the Unnamed Tributary to Great Seneca Creek Stream Restoration Site (CA-5) and restoring approximately 5,149 functional feet of Cabin Branch and restoring approximately 4.38 acres (190,793 square feet) of nontidal wetland, enhancing 0.01 acres (653 square feet) of nontidal wetlands, and enhancing 0.16 acres (7,115 square feet) of nontidal wetland buffer at the Cabin Branch Stream Restoration and Wetland Mitigation Site (RFP-2). The remaining 1,530 functional feet of stream mitigation requirement will be satisfied through purchase of credits from an approved Mitigation Bank.

The National Park Service and M-NCPPC will require additional mitigation/restoration for impacts to park properties. Construction of the proposed park mitigation projects would temporarily impact 2.44 acres (106,485 square feet) of forested nontidal wetland, 0.77 acres (33,500 square feet) of 25-foot nontidal wetland buffer, 915 linear feet (34,153 square feet) of perennial channel, 657 linear feet (4,779 square feet) of intermittent channel, and 4.71 acres (205,225 square feet) of 100-year floodplain.

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 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, 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: Review of this application indicates that the proposed work is not likely to adversely affect Federally-listed threatened or endangered species or their critical habitat, pursuant to Section 7 of the Endangered Species Act, as amended.

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), including species of concern, life cycle habitat, or Habitat Areas of Particular Concern. No EFH was identified within the project corridor.

HISTORIC RESOURCES: FHWA is completing Section 106 of the National Historic Preservation Act (NHPA) of 1966 compliance by participating in FHWA's Section 106 Programmatic Agreement. The sites covered in the JPA have been evaluated and FHWA has made the determination that the proposed project will have an adverse effect on historic properties. FHWA 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 FHWA's identified permit area. The signed final Programmatic Agreement [ER1] is available on the P3 Program website: https://oplanesmd.com/wp-content/uploads/2022/06/md.fhwa_montgomery-pg-counties.I-495-I-270.MLS_pa_2022-3.pdf

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. FHWA 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. FHWA final eligibility and effect determination will be based on coordination with interested tribes, in accordance with FHWA 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. Tribal coordination is completed pending the 30 day FEIS availability period.

MODIFICATION OF CIVIL WORKS PROJECTS: 33 USC 408 (SECTION 408): All Section 408 proposals will be coordinated internally at USACE. If required, 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 from MDE, the Section 401 certifying agency. The applicant has requested a 401 Water Quality Certification from MDE on May 21, 2022; comments on the water quality certification request from the public will be taken as part of this notice and hearing.

COASTAL ZONE MANAGEMENT PROGRAMS: The applicant is required to obtain Coastal Zone Management consistency approval in accordance with the Federal Coastal Zone Management Act of 1972. The applicant has applied for CZM approval from MDE concurrent with the JPA if required.

The applicant must obtain any Federal, State or local government permits and authorizations that may be required.

SUBMISSION OF COMMENTS: 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 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 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 overall public interest of the proposed activity.

For MDE, only those issues subject to regulation by the MDE Nontidal Wetlands and Waterway Construction Divisions (impacts to nontidal wetlands, wetland buffer, and waterways, including the 100-year nontidal floodplain) will be considered in rendering a decision to grant or deny the MDE Permit. **Future public notices on the application will be included on the MDE website:**

(https://mde.maryland.gov/programs/Water/WetlandsandWaterways/Pages/MLS_I-495_I-270.aspx) and sent via certified mail to any newly identified adjacent property owners and sent via regular mail to the Interested Persons List. Please refer to Subsection 5-907 of the Annotated Code of Maryland or the Code of Maryland Regulations 26.23.02 for information regarding the application process.

Written comments concerning the work described above related to the factors listed above or other pertinent factors must be received by the Corps, Baltimore District and MDE within the comment period specified above through postal mail at the addresses below or electronic submission to the project manager email address below. Comments should reference the USACE Application Number (NAB-2018-02152) and the MDE Tracking Numbers 20-NT-0114 / 202060649.

U.S. Army Corps of Engineers
Baltimore District
Attn: Mr. Nicholas Ozburn
2 Hopkins Plaza
Baltimore, Maryland 21201
(410) 962-6083
Nicholas.R.Ozburn@usace.army.mil

Maryland Department of the Environment
Wetlands and Waterways Program
Attn: Mr. Steve Hurt
1800 Washington Blvd., Suite 430
Baltimore, Maryland 21230-1708
443-856-4760
MDE.SHAprjects@maryland.gov

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 the following website: <https://www.nab.usace.army.mil/Missions/Regulatory.aspx>. General information regarding the MDE Nontidal Wetlands and Waterways permitting process can be found online at the following web address: <https://mde.maryland.gov/programs/Water/WetlandsandWaterways/Pages/index.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, please contact the individuals listed above.

