SUMMARY OF THE BASIS FOR MDE'S DECISION TO ISSUE WQC NO. 22-WQC-0050 ASSOCIATED WITH NONTIDAL WETLANDS & WATERWAYS AUTHORIZATION NO. 22-NT-3165/202261158

U.S. National Park Service Name of Applicant	22-NT-3165/202261158/22-WQC-0050 Application Number
Melissa Knapp/Paula Stonesifer Project Managers	February 23, 2023 Date of Decision

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Section 401 of the Clean Water Act (CWA) requires that any applicant for a Federal permit or license to conduct an activity, including, but not limited to, the construction or operation of facilities, which may result in a discharge to a navigable water shall provide certification from the State that the proposed discharge complies with the State's water quality standards and requirements. Some common examples of federal actions which trigger a Section 401 Water Quality Certification (WQC) include: (1) U.S. Army Corps of Engineers' (ACOE) Section 404 permits; (2) ACOE Section 10 Rivers and Harbors Act; (3) Federal Energy Regulatory Commission (FERC) licenses for hydroelectric projects; and (4) U.S. Coast Guard bridge permits.

An applicant submits one individual water quality certification request to the Department when necessitated by the federal permitting or licensing process. The request addresses all the key elements necessary to be addressed related to water quality impacts in accordance with Section 401 of the Federal Water Pollution Control Act and its Amendments and in accordance with § 9-313 through § 9-323, inclusive, of the Environment Article, Annotated Code of Maryland regulations 26.08.02. The Department issues one water quality certification decision for the proposed project.

Under authority of Section 401 of the Federal Water Pollution Control Act and its Amendments and in accordance with § 9-313 through § 9-323, inclusive, of the Environment Article, Annotated Code of Maryland regulations 26.08.02 the Department shall grant a Water Quality Certification if the activity will not violate Maryland's Water Quality Standards

PROJECT DESCRIPTION

National Park Service, C&O Canal National Historical Park, 142W. Potomac Street, Williamsport, MD 21795 has requested a State Water Quality Certification for sediment removal from the Chesapeake and Ohio Canal prism, repair of the Chesapeake and Ohio Canal liner, tributary rehabilitation, and structural protection of the dry-stone wall in the Chesapeake and Ohio Canal near Milepost 11, located in the Chesapeake and Ohio National Historical Park, Montgomery County, Maryland. The National Park Service is proposing to dredge the Chesapeake and Ohio Canal to a depth of approximately 4.5 feet from design water surface elevation (plus approximately one foot of overdepth) for a width of 40 feet along 2,507 feet of the canal, resulting in approximately 8,440 cubic yards of material consisting of accumulated alluvial sediment. Dredged material will be removed from the site to an upland disposal site. The project also includes rehabilitation of three tributaries entering the canal to reduce sediment load along a total of 445

linear feet, fill of an erosional feature along 39 linear feet, and stabilization of the historic wall. Access routes and pedestrian detours will temporarily impact 2,154 square feet of forested wetlands.

PROJECT PURPOSE AND NEED

The purpose of this project is to prevent failure of the dry-stone wall, decrease sediment load entering the Canal, and prevent damage to the Potomac Interceptor. The proposed action is needed because sinkholes have formed behind the dry-stone wall, threatening the stability of the historic wall, towpath, canal, and Potomac Interceptor. The primary goals of the project include reducing the risk of damage to the Potomac Interceptor (and subsequent potential to adversely impact the Potomac River and the Chesapeake Bay Watershed ecosystem), stabilizing the historically significant dry-laid stone masonry wall, stabilizing the contributing tributaries adjacent to the site, and restoring hydraulic connectivity within the canal prism while minimizing leakage out of it. (See *Joint Federal/State Application for the Alteration of Any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland – Supplemental Narrative* (Application), *file*.)

PUBLIC PARTICIPATION PROCESS

Once an application is determined to be processed as a Letter of Permission for dredging by the Corps, and the Application is determined to be complete, the Department issues a public notice providing an opportunity to submit written comments or to request a public informational hearing. The public notice was issued December 20, 2022 on the Department's website.

During the public notice comment period, a public informational hearing was requested but the request was formally withdrawn. A virtual meeting was held February 8, 2022 with the West Montgomery County Community Association and the National Park Service. The Department received several comments as a result of this meeting. The following is a summary of the comments the Department received after the meeting:

- General: letter of general support of the project from the West Montgomery County Community Association, letter opposing the stream stabilization measures due to concerns about longevity of the infrastructure and lack of stormwater control upstream of the subject property.
- Erosion and Sediment Control: concerns about erosion along a portion of the temporary pedestrian detour.
- Archeological Resources: question about recovery of artifacts from sediment.
- Aquatic Life: question about relocation of aquatic life found in the dredge area.
- Public Safety: question about addition of a safety railing.

It is important to note that the Department's decision is confined to the issues relevant to the water quality statutes and regulations and discussed in detail in the appropriate sections below. Certain issues raised during the public comment period are not directly within the scope of the Department's review. Comments will be addressed in a subsequent section of this document.

WQC REVIEW

The application for a water quality certification requires the applicant to address multiple key elements which are required for a thorough review. Included among these key elements are the requirements to characterize all potential discharges which may affect water quality, to provide the means and methods by which discharges will be treated or controlled, and to provide a plan set for review.

Water quality for this project is expected to be maintained through standard erosion and sediment control measures. The necessity and citation support for the suite of general conditions is provided in the Water Quality Certification document (22-WQC-0050, *attached*).

Erosion and Sediment Control Measures

A comment was received related to erosion and sediment control along a portion of the temporary pedestrian detour.

Erosion and sediment control measures are designed to prevent the degradation of ground and surface water quality. Sediment pollution is addressed under Maryland's Erosion and Sediment Control Act. The law mandates local Soil Conservation Districts to review and approve erosion and sediment control plans developed in accordance with State standards. The Department's programmatic responsibilities are limited to promulgating regulations, and developing standards, ordinances, and other criteria necessary to administer an erosion and sediment control program, including program oversight and delegation of enforcement authority to local governments. In this case, since the applicant is a Federal entity – the Department's Sediment and Stormwater Program is responsible for the review and approval of erosion and sediment control plans for the Project.

During the application review process, the Department verifies that appropriate BMPs are incorporated into the erosion and sediment control plans to protect the State's water resources. In order to ensure that these practices are contained in the project's final design plans, NPS is required to submit approved erosion and sediment control plans to the Department prior to the commencement of construction activities authorized by the Permit.

NPS submitted the erosion and sediment control plans in accordance with the Waterway Construction regulatory requirements (COMAR 26.17.04). The plans detail the methods of erosion and sediment control during construction and the methods of stream diversion to be used during construction. The Department verified that appropriate BMPs and the Department's Guidelines for Waterway Construction were incorporated into the plans, and that all temporary stream/wetland/floodplain impacts satisfy the waterway regulations.

Aquatic Life

In consultation with the Maryland Department of Natural Resources, a Time of Year Restriction Waiver was granted for this project because the canal's current sedimentation provides little to no viable fish habitat and the relatively short length of the tributaries indicates that spawning activities

may occur upstream of the proposed work (e-mail communications July 15, 2022 and August 30, 2022, *file*). As such, time of year restrictions will be waived for the 2023 closure period.

The Department received one question about relocation of aquatic life in the dredge area. The National Park Service provided the following response in an email dated February 13, 2023: "NPS has conducted many similar types of work in the canal previously across the park. Of note is that much of the construction area is not open water habitat due to the large amounts of sediment accumulation. Past experience has shown that during initial dewatering of the work area, the majority of aquatic life naturally moves out of the work area. Nonetheless, monitoring throughout construction will be performed by NPS staff and contractors. Depending on the findings observed during monitoring, NPS will determine appropriate actions to mitigate any significant issues to aquatic life."

RESPONSE TO ADDITIONAL PUBLIC COMMENTS

General

i. Letter of Support from West Montgomery County Community Association
   a. Acknowledged
ii. Letter opposing the stream stabilization measures due to concerns about longevity of the infrastructure and lack of stormwater control upstream of the subject property.
   a. Stream stabilization measures were reviewed and found to meet the criteria set forth in COMAR 26.17.04.07 and the Maryland's Waterways Construction Guidelines (see *Joint Federal/State Application for the Alteration of Any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland – Hydrologic and Hydraulic Assessment Report, file*). Stormwater control upstream of the subject property is outside of the scope of the Department's review.

Other

While outside the scope of the Water Quality Certification review, NPS has provided the following comment responses (email communication February 13, 2023).

i. Archeological Resources: NPS requires special conditions in the construction contract to safeguard any archeologic resources that may be discovered during construction. If anything is found during construction, NPS cultural resource specialists evaluate it and work with the entire NPS team to determine the next step for the discovered objects (which may include archiving it, etc.). Of note is that much of the excavation anticipated for this project is in relatively modern sediment deposits.

ii. Public Safety: The current project does not include construction of a more permanent fence along the riverside of the log wall.

CONCLUSION

Based on the Department's review of the Request and all additional submissions from the applicant and commenting parties, the Department has determined that the Project is not expected to violate Maryland's State Water Quality Standards subject to any conditions identified in the Certification. Therefore, it is the Department's decision to issue Water Quality Certification Number 22-NT-0050 for the regulated activities associated with this Project.