

## **COMBINED PUBLIC NOTICE**

### **NOTICE OF FINDING OF NO SIGNIFICANT IMPACT AND NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS AND FINAL NOTICE AND PUBLIC EXPLANATION OF A PROPOSED ACTIVITY IN A 100-YEAR FLOODPLAIN AND WETLANDS**

#### **UNION COUNTY**

August 28, 2015

New Jersey Department of Community Affairs  
101 South Broad Street  
PO Box 800  
Trenton, NJ 08625-0800

This Notice is related to Federal assistance provided in response to the Presidentially-declared disaster, Superstorm Sandy. This notice shall satisfy three separate but related procedural requirements for activities to be undertaken by New Jersey Department of Community Affairs (DCA).

Per 24 CFR 58.33, and 24 CFR 55.20(b)(1), the combined Notice of Finding of No Significant Impact (FONSI), Notice of Intent to Request Release of Funds (NOI-RROF), and the Final Notice and Public Explanation of a Proposed Activity in a 100-Year Floodplain and Wetlands will be published simultaneously with the submission of the RROF. The funds are needed on an emergency basis due to a declared disaster from the impacts of Superstorm Sandy, which made landfall on October 29, 2012. As a result, the comment periods for the FONSI, NOI-RROF, and 100-Year Floodplain and Wetlands have been combined. Commenters may submit comments to DCA and objections to the U.S. Department of Housing and Urban Development (HUD) to ensure they will receive full consideration.

#### **REQUEST FOR RELEASE OF FUNDS**

On or about September 14, 2015, the DCA will submit a request to HUD for the release of Federal funds under the Community Development Block Grant Program (CDBG) pursuant to the Disaster Relief Appropriations Act of 2013 (Public Law 113-2, approved January 29, 2013) for the Elizabeth River Trail project. DCA expects to fund the project using approximately \$5,491,662.00 of NCR funds.

#### **PROJECT DESCRIPTION**

Application ID number: NCR40034

Project Title: Elizabeth River Trail project

Location: Multiple Areas along the Elizabeth River

The total estimated project cost is \$5,491,662.00.

The 15.2 acre proposed site involves construction of the Elizabeth River Trail in public areas in the heart of the city's midtown stretching from around Bridge Street to South Broad Street

generally paralleling the river and passing through or adjacent to governmental buildings, educational institutions, public and mass transit facilities, low- to moderate-income housing areas, open space, and green space. The finished trail will provide local citizens and visitors enjoyment of the trail and its proposed associated amenities, namely, foot transportation, benches, bicycle racks, lighting and landscaping as well as the necessary trash receptacles, signage, curbs, etc.

## FINAL NOTICE AND PUBLIC EXPLANATION OF A PROPOSED ACTIVITY IN A 100-YEAR FLOODPLAIN AND WETLANDS

This is to give notice that the DCA has conducted an evaluation as required by Executive Order 11988 and 11990, in accordance with HUD regulations at 24 CFR 55.20 Subpart C, Procedures for Making Determinations on Floodplain Management and Wetlands Protection. The activity is funded with Community Development Block Grant Disaster Recovery (CDBG-DR) funds under HUD grant number B-13-DS-34-0001.

The proposed project is located at multiple areas along the Elizabeth River in the City of Elizabeth, Union County, New Jersey. The Elizabeth River Trail project, which consists of four phases designed to be easily accessible from major roadways in order to provide a safe and centrally located corridor to major areas of the city, entails activities within the 100-year Floodplain, as determined by current Digital Flood Insurance Rate Maps (DFIRM) for Union County. Approximately 12.37 acres of the proposed project area is located within the Special Flood Hazard Area Zone AE, of which approximately 5.35 acres are also within the FEMA-designated Floodway, as shown on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) Panels 23, 24 and 35 of 49, Map Numbers 34039C0023F, 34039C0024F and 34039C0035F, effective September 20, 2006. Additionally, the newer FEMA Preliminary FIRM also shows similar portions of the project area within the SFHA Zone A and Floodway. The preliminary flood map Zone "A" incorporates all "A" categories, including, in this case "AE". Additionally, portions of the proposed Phase III and IV areas are also situated within the regulatory floodway, in particular, along the east boundaries adjacent to Elizabeth River. The NFIP prohibits the use of federal assistance for projects in a floodway; however, the river trail is construed as a functionally-dependent use whereby under HUD regulations at 24 CFR 55.2(b)(6), it is a land use that must necessarily be conducted in close proximity to water (e.g., a dam, marina, port facility, water-front park, and many types of bridges) and would pose to be an exception to the rule. The development of the trail does not involve any construction of structures and does not increase floodplain occupancy and is not expected to endanger existing development, result in harm to or within the floodplain, or to be vulnerable to flood damage. The proposed trail and landscaping will not impair floodwater flow; rather, it will help enhance runoff and preserve floodplains and floodways. A desktop review of the National Wetlands Inventory (NWI) and the New Jersey Department of Environmental Protection - HUD Environmental Review Tool as well as a site visit conducted by a qualified Wetland Biologist verify the presence of and characteristics of wetlands (including wetland vegetation, hydrology, and soils) on 3 portions of the trail. The first is the area is known as Elizabeth River Park. The extreme southern end of the park area is associated with a drainage swale that collects surface water from the park and directs it to a culvert that runs under South Street and appears to drain into the Elizabeth River just below the South Street Bridge. This area is approximately 900 ft<sup>2</sup>.

The second is in the middle portion of the trail currently referred to as the Elizabeth River Parkway. Views of the river from the north end (Route 1 overpass) and south (Summer St. Bridge) of this section confirm that an herbaceous wetland exists adjacent to the levee. Lastly is the southernmost end of the trail, known as Mattano Park, which is approximately 1 acre of NJDEP mapped wetland and is identified as “managed wetland (modified).”

DCA has considered the following alternatives and mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values: Among the alternatives were: (i) undertaking the project as proposed, (ii) Relocation of the project to a different location outside the 100-Year floodplain and wetlands, (iii) Limiting project activities to only include areas located outside the 100-Year floodplain and wetlands, (iv) Use of alternative construction methods or materials to reduce impacts to wetlands and the 100-Year floodplain, and (v) not undertaking the project at all (No Action).

Construction of the trail as proposed in accordance with all applicable local, state and federal floodplain requirements will provide local citizens and visitors a much-needed paved transportation route for foot traffic in addition to a scenic path for recreational use. The proposed project will not alter topography; therefore, runoff is expected to continue to drain towards Elizabeth River with no anticipated negative impacts on flood levels, flood risk, or the flow of floodwaters on the project site or surrounding areas. The trail will serve the community by becoming an attraction and acting as a compliment to the city and surrounding businesses, and bringing back nature to the city. This alternative meets the goal of the NCR program, which is designed to promote the long-term revitalization of communities, and has been selected for the majority of the project.

The alternative to relocate the entire project to a different location outside the 100-Year Floodplain and Wetlands was determined to be financially infeasible and contrary to the purpose and function of the proposed project. It would eliminate the effort of returning a place of nature to the city, providing the public an alternate route around the city, and improving quality of life for residents and visitors. Therefore, there are no relocation alternatives where the river trail project could be beneficial to the nearby businesses and community as a whole and would not serve to fully accomplish the goals of the NCR program, which is designed to promote the long-term revitalization of communities. Therefore, this alternative is rejected.

The alternative of a scaled-down scope by conducting the new improvements and repairs to include only areas outside the 100-Year Floodplain and Wetlands would only be limited to a few specific areas sporadically located along the proposed trail. The completed trail would be truncated at several locations and would not serve to fully accomplish the goal of bringing nature to the city. Additionally, the long-term goals of this project that align with the goals of the NCR program, which is designed to promote the long-term revitalization of communities, would not be met. Therefore, this alternative was considered and also rejected.

Use of alternative construction methods or materials to reduce impacts to wetlands and the 100-Year Floodplain. Though this alternative is not feasible for reducing impacts to the 100-year floodplain due to the amount of the project within the floodplain, the alternative to use bituminous construction materials such as porous concrete has been deemed a feasible alternative for Phase II of the trail and will also be considered during design preparation for Phase IV in

order to reduce impacts in some areas of the trail that are located on wetlands. However, this alternative was rejected for Phase III of the trail, which will require the use asphalt in kind on top of the flood control levee.

No Action Alternative would result in the trail to remain in its current storm-damaged condition. The completed Phase I of the project would serve a small portion of the city with no links to the remaining planned areas, thereby defeating the intended revitalization of mid-city. The waterway will remain underutilized with no safe alternate centralized passageway to facilities that are important to the community. Therefore, the No Action alternative would contribute to the continued lack of revitalization in the community and was also rejected.

Mitigation measures resulting from agency consultations:

The NJDEP/DLUR has issued a Coastal General Permit 17 for the Construction of Recreational Facilities at Public Parks, Permit # 2004-12-0005.1, CAF150001, dated April 24, 2015 authorizing the Phase II activities of the Elizabeth River Trail. This permit was issued following DLUR's review of the approved design plan as mentioned in the permit. Special and standard conditions as set forth in relation to preserving floodplains, drainage control, and minimization of the potential of adverse impact to lives and property include:

- The permittee shall take all reasonable steps to prevent, minimize or correct any adverse impact on the environment resulting from activities conducted pursuant to the permit, or from noncompliance with the permit.
- The permittee must not cause any unreasonable interference with the free flow of a regulated feature by placing or dumping any materials, equipment or debris or structures within or adjacent to a regulated area.
- All materials must be removed upon completion of work. Soil disturbance, creation of drainage structures or changes in natural contours must be conducted in accordance with state soil erosion and sediment control regulations.
- All temporary disturbances must be permanently discontinued within 6 months after activities commence and all temporary disturbed areas must be restored to the original condition.
- Sediment barriers and other soil erosion control measures shall be installed prior to commencing any clearing, grading or construction onsite and properly maintained throughout the entire duration of the project.
- All excavated material shall be disposed of in a lawful manner outside any flood hazards areas riparian zone, open water, freshwater wetland and adjacent transition area and not interfere with positive drainage of the receiving area.
- Any future expansion or alteration of the approved layout which would affect water quality, increase rate or volume of stormwater leaving the site, etc. shall be reviewed and approved prior to construction.
- This project was not reviewed for consistency with the applicable Areawide Water Quality Management Plan or the Statewide Water Quality Management Planning Rules (N.J.A.C. 7:15). As such, this review did not include consistency determination for any sewage generating structures.

USACE determined on May 19, 2015 that, based on the submitted project activities and documentation, it appears that there is a potential for impacts to occur to three jurisdictional

wetlands and possible additional unmapped wetlands in the project area, adjacent to the Elizabeth River. Any discharge of fill or structures within Jurisdictional wetlands and/or waters may require a Department of the Army Permit Authorization for proposed work. Therefore, as the project plans are developed and finalized, the proposed project must be submitted to the USACE for a jurisdictional determination.

In addition to any requirements set forth by the USACE and the DLUR following review of final plans, recommended mitigation measures include:

- All construction activities must adhere to the latest requirements of the governing authority using methods that do not adversely impact the wetland and preserve the natural and beneficial values of the property and surrounding area.
- Construction activities should stay within the proposed project area, using best management practices such as the use of temporary vegetative ground cover, brush barriers, silt fences or hay bales between the designated wetland areas and construction activities.
- Use of bituminous materials should be used where feasible for construction of the trail in order to allow for percolation and reduce surface runoff and erosion.
- Lastly, the EPA made recommendations to be considered during development of construction plans including use of porous materials, construction of an infiltration trenches, and use of educational environment related trail signs (a full list of EPA recommendations can be found at <http://www.nj.gov/dca/divisions/sandyrecovery/review/>).

As in the review of the Phase II plans by the NJDEP/DLUR, the Phase III and Phase IV plans and specifications that adhere and comply to floodplain regulations will be submitted to the applicable agencies for approval and permitting prior to construction activities.

DCA has reevaluated the alternatives to building in the floodplain and wetlands and has determined that it has no practicable alternative. Environmental files that document compliance with steps 3 through 6 of Executive Orders 11988 and 11990, are available for public inspection, review and copying upon request at the times and location described in the Public Comments section of this notice.

There are three primary purposes for this notice. First, people who may be affected by activities in floodplains and wetlands and those who have an interest in the protection of the natural environment should be given an opportunity to express their concerns and provide information about these areas. Second, an adequate public notice program can be an important public educational tool. The dissemination of information and request for public comment about floodplains and wetlands can facilitate and enhance Federal efforts to reduce the risks and impacts associated with the occupancy and modification of these special areas. Third, as a matter of fairness, when the Federal government determines it will participate in actions taking place in floodplains and wetlands, it must inform those who may be put at greater or continued risk.

#### FINDING OF NO SIGNIFICANT IMPACT

The DCA has determined that this project will have no significant impacts on the human environment. Therefore, an Environmental Impact Statement (EIS) under the National Environmental Policy Act of 1969 (NEPA) is not required. Additional project information is

contained in the Environmental Review Record (ERR) on file at the New Jersey Department of Community Affairs, Sandy Recovery Division, 101 South Broad Street, Trenton, NJ 08625-0800. The record is available for review and may be examined or copied weekdays 9 A.M. to 5 P.M. or can be viewed online at <http://www.nj.gov/dca/divisions/sandyrecovery/review/>.

## PUBLIC COMMENTS

Any individual, group, or agency disagreeing with this determination or wishing to comment on this project may submit written comments to Stacy Bonnaffons, Assistant Commissioner, Sandy Recovery Division, New Jersey Department of Community Affairs, 101 South Broad Street, PO Box 800, Trenton, NJ 08625-0800 or online at <http://www.nj.gov/dca/divisions/sandyrecovery/review/> and to Tennille Smith Parker, DRS, Acting Division Director, HUD, 451 Seventh Street SW, Washington, D.C. 20410. All comments received by September 14, 2015, or fifteen (15) days from the actual date of publication, whichever is later, will be considered by DCA. Comments should specify which Notice they are addressing.

## ENVIRONMENTAL CERTIFICATION

DCA certifies to HUD that Charles A. Richman, in his capacity as Commissioner of DCA consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. HUD's approval of the certification satisfies its responsibilities under the National Environmental Policy Act and related laws and authorities, and allows DCA to use CDBG-DR funds.

## OBJECTIONS TO RELEASE OF FUNDS

HUD will accept objections to its release of funds and DCA's certification for a period of fifteen (15) days following the anticipated submission date or its actual receipt of the request (whichever is later) only if they are on one of the following bases: (a) the certification was not executed by the Certifying Officer of DCA; (b) DCA has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58; (c) the grant recipient has committed funds or incurred costs or undertaken activities not authorized by 24 CFR Part 58 before approval of a release of funds by HUD; or (d) another Federal agency, acting pursuant to 40 CFR Part 1504, has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58.76) and shall be addressed to Tennille Smith Parker, DRS, Acting Division Director, HUD, 451 Seventh Street SW, Washington, D.C. 20410. Potential objectors should contact HUD to verify the actual last day of the objection period.

Commissioner Charles A. Richman  
New Jersey Department of Community Affairs