

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Water, Bureau of Flood Protection and Dam Safety  
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March 23, 2015

Honorable Greg Letica  
Mayor  
Village of Asharoken  
1 Asharoken Avenue  
Asharoken, New York, 11768

Re: United States Army Corps of Engineers (Corps) response to the draft Public Access Plan (Plan) for the Asharoken Storm Damage Reduction Project

Dear Mayor Letica:

Enclosed is a Memorandum for the Record (MFR) containing the comments from the Corps on the draft Public Access Plan for the Asharoken Storm Damage Reduction Project. The Plan was prepared by the Village of Asharoken and received by the New York State Department of Environmental Conservation (Department) on November 24, 2014. The Department formally submitted the plan to the Corps for review on the same day (November 24, 2014).

It should be noted that these comments represent the position of the Army Corps of Engineers New York District. The Tentatively Selected Plan (TSP) milestone will be used to confirm concurrence on the Plan with both Army Corps North Atlantic Division and Army Corps Headquarters.

The Department would like to offer any assistance or clarifications you may need in addressing the comments presented by the Corps. After reviewing the comments, please contact me to discuss the next steps in the process at (518) 402-8139 or [matthew.chlebus@dec.ny.gov](mailto:matthew.chlebus@dec.ny.gov).

Sincerely,



Matt Chlebus  
Environmental Engineer  
Coastal Erosion Management Section

Enclosure: Corps MFR on the Asharoken Project Public Access Plan  
cc: S. McCormick, NYSDEC  
S Couch, Army Corps of Engineers  
R. Pinzon, Army Corps of Engineers



Department of  
Environmental  
Conservation

MEMORANDUM FOR: The Record

SUBJECT: North Shore of Long Island, Asharoken, NY, Coastal Storm Risk Management Study

1. The subject study is underway and proceeding to the Tentatively Selected Plan (TSP) Milestone to obtain concurrence within U.S. Army Corps of Engineers (USACE) to release the feasibility report for public and agency review. Since this project includes the proposed placement of sand for construction of a beach, the non-Federal sponsor is required to prepare a public access plan, as input into the study for both estimating real estate costs associated with the project and establishing compliance with USACE policy for cost-sharing of the proposed plan. The Village of Asharoken and the New York State Department of Environmental Conservation (NYSDEC), acting as the non-Federal sponsor, submitted a public access plan, dated 18 November 2014 (enclosure 1). This Memorandum for the Record (MFR) documents the New York District (District) position on the public access plan. The upcoming TSP milestone will be used to confirm higher authority concurrence on the District position. Until this occurs, this should be considered as a tentative position.
2. USACE public access requirements are identified in Engineering Regulation (ER) 1105-2-100 and, more specifically, in ER 1165-2-130. The guidance contained in these regulations is based upon U.S.C 426e(d). The law specifically states "Shores other than public will be eligible for Federal assistance if there is benefit such as that arising from public use or from the protection of nearby public property or if the benefits to those shores are incidental to the project, and the Federal contribution to the project shall be adjusted in accordance with the degree of such benefits." The regulations that interpret this law require access plans to be developed that are consistent with the recreational use of the area, and specifically, require access points at every half mile and parking consistent with the expected recreational use.
3. The public access plan identifies the expected recreational use for the study area as low and cites existing use at comparable nearby facilities as evidence of the expected low recreational use of the area after construction. The District agrees with the non-Federal sponsor's assumption of low recreational use. Presently, the recreational use is so low as to not warrant consideration of recreational benefits attributed to the project. However, to solidify this determination, the District requests that the non-Federal sponsor expand upon the information contained in the public access plan to describe the facilities that were evaluated, the access that is allowed at these facilities (for example, are there residential restrictions on use), if the facilities are comparable to the Asharoken Long Island Sound beach, and how the determination of usage was made.
4. The public access plan identifies locations for shore perpendicular access points to the beach along the 2 mile study area. The plan identifies 3 fixed points, 1 located at the east end and 2 located at the west end of the project. The plan identifies a range of possible parcels for 2 access points in the middle of the project that could be acquired. A range of parcels have been identified, since there is uncertainty in the willingness of property owners to sell their property, and the non-Federal sponsor would like to retain flexibility in providing the necessary real estate for the project. A review of the proposed parcels indicates that plan identifies a distance greater than 3/10 of a mile over which each of these access points could be provided. While flexibility in the specific access point can be

provided, the sponsor needs to ensure that selection of the parcels satisfies the half-mile requirement. The acquisition of these parcels cannot be pursued independently, but must be done in recognition of this fact. The access plan should clearly state the intention of providing access points each half mile. If the half-mile requirement is not met, the non-Federal sponsor would be required to provide either additional access points or be responsible for 100% of the costs where there is no public access.

5. The access plan identifies that access point 1, located at the east end of the project area, would be located on property owned by the Town of Huntington. It is the District's understanding that the beach in this area is in ownership of the Town and Village, but that a large portion of the area, including the parking facilities, are on property owned by the power plant. The access plan attaches an existing, 1970 agreement between the Town of Huntington and the power plant (at the time LILCO) that provides for access to the boat ramp facility. This existing agreement was written specifically to allow for access to the boat ramp. If this agreement is intended to ensure parking for recreational beach use, it is likely this would need to be revised or amended to address some specific concerns, described below.
  - A. The Village of Asharoken is not a party to this agreement. The Village of Asharoken will be the local sponsor for the Asharoken Project, responsible for ensuring public access. The Village would need to have a formal standing with this agreement, either directly or indirectly, for example, through an inter-municipal agreement with the Town of Huntington.
  - B. The existing agreement, since written for boating use, contains seasonal restrictions that allow limitations on use outside of March 1 through November 30 (Page 5 item 7). It also contains time of day restrictions from 5:30 AM to 9:30 PM (Page 5 item 8). While the time of day restrictions may be appropriate, restrictions should not be placed on seasonal usage.
  - C. The existing agreement contains language that allows the Town to restrict usage to Town of Huntington residents only (Page 6 item 12). This would not be allowable, to be compliant with our public access requirements.
  - D. The agreement allows the power company to terminate use of facility intermediately or permanently w/o notice (Page 6 item 16), and allows either party to terminate the agreement upon 1 year's prior notice (Page 9 item 22). These provisions would not allow the Village to guarantee that the access would be maintained over the life of the project and would need to be reconciled.
6. The access plan identifies the proposed parking that would be included across the project area. The plan has identified that the existing site conditions limit the availability of parking. The plan proposes a large parking lot in the east end of the project area that would provide for a relatively high density recreational use and a small parking lot in the west end of the project area that would allow for medium density recreational use. In the middle locations within the project area, the plan proposes curb cuts for drop-off locations, without parking. These sites would provide for access by facilitating circulation within the project area access points, using alternative transportation such as walking or biking, which would provide for low-use recreation. USACE regulations require for parking at each access point consistent with the expected recreational use of the area. As described in paragraph 3, there is very low expected recreational use of the beach. Further, it is understood by the District that there are practical limits on providing parking within these areas, specifically that providing the footprint for parking would have a negative impact on environmental resources, and could contribute to problems with safety along the road. The District recommends that to support the access plan, the non-Federal sponsor expand upon the following topics:

- A. The availability of alternative transportation that would facilitate intrasite circulation. For example is it reasonable to assume that individuals could walk or use a bicycle to access the sites with no parking.
  - B. A further explanation of why expanded curb cuts are not available to provide minimal parking in these areas, in addition to a drop off location. If there is adequate space along the edge of Asharoken Avenue to provide curb cuts to facilitate drop-off locations, associated with the access points, the District would like to understand if it is possible to expand the curb cuts to provide for several parking spots or if there are reasons why this is not possible.
  - C. A further discussion of the environmental impacts, and safety impacts associated with providing parking along Asharoken Avenue. It is recognized that adjacent to Asharoken Avenue there is sensitive habitat, either in the form of dune habitat or wetlands habitat that would potentially be impacted by providing expanded parking. The access plan would benefit by providing further details on the existing site conditions that limit parking availability.
  - D. It is the District's understanding that these drop-off locations would be located along the road right of way. The District would like a better understanding of the width of the existing road right of way, to better understand the configuration of these drop-off locations, and the relationship to the adjacent properties.
7. The District requests that the non-Federal sponsor provide the additional information and assurances requested in paragraph 3 (supporting the determination of low recreational use), paragraph 4 (explicitly committing to access points every half mile), and paragraph 6 (supporting parking availability at the two points along Asharoken Avenue), as well as a commitment per paragraph 5 to obtain a specific agreement to allow for use of the parking area for beach recreation. Assuming these further details will be provided, the District would support a recommendation within USACE that the public access plan is sufficient to allow for Federal cost-sharing along the project length. As noted above, the upcoming TSP milestone will ultimately be used to confirm higher authority concurrence on the District position.
  8. The point of contact for this MFR is Mr. Stephen Couch, Chief, Sandy Planning Branch at 917-790-8707.

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Stephen Couch  
Chief, Sandy Planning Branch

Enclosure

(1) 18 November 2014 Public Access Plan