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The Honorable Richard Jackson
Director, Department of Energy and Environment
1200 First Street, NE
Washington, DC 20002

**Re: DC Appleseed Comments on Anacostia River Sediment Project
(ARSP) 100% Basis of Design Final Report and Related Supporting
Documents**

Dear Director Jackson:

The DC Appleseed Center for Law and Justice (DC Appleseed) is grateful for the opportunity to comment on the 100% Basis of Design Report (BoDR). We thank the District Department of Energy and Environment (DOEE) for addressing concerns raised in comments to the 30% and 60% BoDR. This comment letter highlights remaining issues in the 100% BoDR that we hope DOEE will address and consider moving forward. Notably, there are several key aspects of the plan that are not fully defined, described, or resolved, which raises questions of whether this report can be appropriately considered a “final report.” We believe that, in its current state, the 100% BoDR omits necessary facts and analysis that impedes meaningful, informed public participation. Such information must be included before this final report can be considered complete. The public continues to be engaged in this project and effective information plays an important role in enabling public involvement and participation.

**Unresolved Elements of the 100% BoDR Raise Concerns of Incomplete
Analysis Inconsistent with Considering the Document as Final Design.**

The Basis of Design process progresses in stages “to ensure that the detailed final design will meet stakeholders’ expectations and avoid

Affiliations listed only for identification purposes

changes during the detailed design.”¹ Several incomplete or uncertain aspects of the 100% BoDR, however, increase the likelihood of substantial changes during the detailed design period. These incomplete and uncertain aspects include the following:

- a. Future additional applicable or relevant and appropriate requirements (ARARs) that may be identified in permits that are not yet obtained;
- b. Considerable uncertainty of the location and availability of laydown and staging areas;
- c. Lack of a determined end-use for dewatered dredged material;
- d. Undetermined mitigation requirements;
- e. Pre-construction sediment sampling that has not yet been conducted could influence the remedial design; and
- f. EAA Performance Monitoring Work Plan is not provided.

The primary consequence of the lack of specificity on these issues is that the public is not adequately informed about design elements that may adversely affect them and their community. DOEE’s omissions in its BoDR also have the potential to hinder the success of the project’s implementation and efficacy. We will address each of these above-listed issues in more detail below.

- a. Future additional applicable or relevant and appropriate requirements (ARARs) that may be identified in permits that are not yet obtained

Section 11.0 of the 100% BoDR anticipates various permits² that will be required for sediment clean-up of the Anacostia River. The final report also recognizes that, pursuant to the District’s Brownfields Revitalization Amendment Act of 2000,³ DOEE must either obtain, or justify the waiver of, federal and DC requirements that are applicable or relevant and appropriate requirements (ARARs) for the remedial action (RA).⁴ The final report, therefore, should clearly outline all of the requirements that DOEE must meet for ARARs for the RA, including those that DOEE anticipates will be listed in permits.

¹ Notice of Extension of Public Comment Period, DOEE, Anacostia River Sediment Project: Basis of Design Report (30 Percent Design Phase), p.1, online at <https://app.box.com/s/h2s6iv1do6i6x8pqkzp3gf4m1289hm8h/file/1389270321219?sb=/details>.

² These permits include, for example, a CWA 404 permit from USACE; a CWA 401 permit from DOEE’s Regulatory Review Division (with consultation of EPA), and a special use permit from NPS. “Early Action Area Remedial Design Report (Draft Final Design), DOEE (Aug. 2025), p.82-84, online at <https://app.box.com/s/wkvfvpp739nlovs2u8vyumpyrhd3vnl/file/1968640844548> [hereinafter “Final Report”].

³ D.C. Code §§ 8-631.01, et seq.; D.C. Code § 8-104.31. D.C. Code § 8-104.31 explicitly requires that DOEE’s remedial design for sediment in the Anacostia River be consistent with Section 121 of CERCLA, requiring the selected remedial action(s) to “attain a degree of cleanup . . . which assures protection of human health and the environment,” and that such remedial actions be “relevant and appropriate under the circumstances presented[.]” 42 U.S.C. § 9621(d)(1).

⁴ Final Report, p.7

While we understand that it is not uncommon for 100% BoDR documents to be prepared before all permits are obtained, the lack of any substantive discussion in the document regarding the likely requirements of these permits is a significant omission. Some of these requirements were likely discussed at pre-application meetings that the project team held with US Army Corps of Engineers (USACE) and DOEE's Regulatory Review Division. It is not clear whether the project team has met or intends to meet with National Park Service (NPS) to discuss requirements of the Special Use permits that NPS must issue before work can begin. Until the anticipated permit requirements are identified, the remedial design should not be considered final. We respectfully request that the final report be updated to include the information and requirements that DOEE anticipates will be necessary for obtaining permits. Any additional ARARs that are identified through the course of meetings with the regulatory agencies responsible for issuing each necessary permit should be identified in the final remedial design document.

b. Considerable uncertainty of the location of laydown and staging areas

Section 5.8.5 expresses that the laydown and sediment processing area has not yet been determined.⁵ The *proposed* area is the NPS' Kenilworth Maintenance Yard (KMY), and many documents hinge on the KMY being the laydown area, but there are two competing projects from DDOT and DPW that plan to use the KMY during the same time as the ARSP.⁶ Until the laydown and sediment processing area is firmly decided, contractors cannot provide an accurate bid for completing the project, and thus the basis of design cannot be considered complete. DOEE states that the "laydown area does not affect the function or purpose of the design,"⁷ but even if that were true, the laydown area for dredged material presents serious implications for nearby communities. DOEE estimates that approximately 34,900 cubic yards (CY) of sediment will be dredged from the Anacostia as part of the sediment clean-up project.⁸ That is enough material to fill over 10 Olympic-sized swimming pools.

The sediment in the Anacostia contains PCBs, heavy metals (including lead), pesticides, and some volatile organic compounds that are hazardous substances. These contaminants present serious adverse health effects, including an elevated risk of cancer; negative impacts on children's cognitive development; and disruptions to immune, reproductive, endocrine, and neurological systems.⁹ As such, the laydown area that is ultimately selected presents serious concerns to community health and wellbeing, and DOEE should solicit community feedback

⁵ Final Report, p.37.

⁶ Final Report, p.2, 37.

⁷ Final Report, p.2.

⁸ Final Report, Appendix G Contingency Plan, p.4-5 (p.169-70 of the PDF).

⁹ "Damage Assessment, Remediation, and Restoration Program: Anacostia River," National Ocean and Atmospheric Administration (last updated March 17, 2025), online at <https://darrp.noaa.gov/hazardous-waste/anacostia-river>.

before proposing or confirming a laydown area in the affected community.

Furthermore, DOEE mentions that an additional material laydown site will be selected south of the CSX railroad crossing, but that laydown site has not yet been determined.¹⁰ Selecting an additional laydown option south of the CSX bridge is necessary due to distance and limited vertical clearance of the bridge.¹¹ Thus, even if KMY is successfully selected as one of the laydown areas, there will still be considerable uncertainty surrounding where DOEE will select for its additional laydown area south of the CSX bridge. Because of how integral a laydown site south of bridge is to the feasibility of this project, DOEE should list the specific site(s) that it is considering in its final report and consult with the public before making a final determination.

c. Lack of a clear plan for end-use of dewatered dredged material

Section 2.2.3 of the final report indicates that “dewatered dredged material may be stockpiled at the laydown area temporarily (a year or less) until an end use can be determined.”¹² While the report acknowledges that negotiations between DOEE and NPS on the topic of dredged material are ongoing,¹³ the final report does not adequately describe which alternatives are being considered, the process by which a decision will be made, or the anticipated date for when that decision will be made. The end use of the dredged material is a critical part of the basis of design, and additional information is needed in the final report.

Further, in Appendix G of the 100% BoDR, DOEE states that Kingman Island may be used as the location for upland beneficial use.¹⁴ In Appendix M, DOEE acknowledges in response to comments from NPS that upland reuse of dredged materials on Kingman Island was used as the basis for cost estimates in both the 90% and 100% BoDR.¹⁵ DOEE has not sought public input on its plan to use Kingman Island as the location for upland beneficial use of sediment dredged from the river and did not explicitly name this possibility until the 100% BoDR. If it aims to utilize Kingman Island for this purpose, we urge DOEE to engage stakeholders and solicit public feedback before proceeding further. Specifically, DOEE should clearly and thoroughly explain to the public the benefits and potential consequences of using Kingman Island as the site for

¹⁰ Final Report, p.2, 9, 37, 55.

¹¹ Final Report, p.62.

¹² Final Report, p.64.

¹³ Final Report, p.64.

¹⁴ “Waste Management and Transportation & Disposal Plan,” ARSP 100-Percent Design Report, Appendix G Project Plans, p.18, online at <https://app.box.com/s/wkvfvpp739nlovs2u8vyumpyrhmd3vnl/file/1968643060344> (“District-owned locations (such as Kingman Island) may be used by the [Remedial Action] Contract following approval by DOEE’s On-Site Representative”).

¹⁵ “Early Action Area Remedial Design Report (90-Percent Design Phase) Response to Comments Matrix,” ARSP 100-Percent Design Report, Appendix M, p.M-6 Comment 41, online at <https://app.box.com/s/wkvfvpp739nlovs2u8vyumpyrhmd3vnl/file/1968627791260>.

beneficial reuse. DOEE should also explicitly identify potential alternative sites for the location of beneficial reuse of dredged material. If DOEE does not intend to use Kingman Island for upland beneficial reuse, then the cost estimate based on that assumption arguably needs to be revised.

d. Undetermined mitigation requirements

Section 11.1 explains that mitigation requirements are still being determined as the permitting process unfolds and that “any required mitigation will be designed and performed later.”¹⁶ The ASACE Final Mitigation Rule states that “implementation of the compensatory mitigation project shall be, to the maximum extent practicable, in advance of or concurrent with the activity causing the authorized impacts.”¹⁷ Although the full scope of required mitigation may not be known until the monitoring and permitting processes are complete, DOEE can predict likely or potential impacts from implementing the remedial design and describe potential mitigation projects to be completed in advance of, or concurrently with, the remedial action. For example, DOEE has already evaluated potential impacts on submerged aquatic vegetation (SAV),¹⁸ and thus can describe potential mitigation projects that would minimize impacts on SAV.

The Final Mitigation Rule and DOEE regulations both encourage the use of functional and conditional assessment methodologies in determining mitigation needs for impacts.¹⁹ Furthermore, the remediation area contains over 10 acres of SAV and over seven acres of wetlands.²⁰ SAV may be impacted by the placement of non-aggregate material used for outfall scour protection and erosion protection.²¹ It is unclear whether there has been a functional assessment of these areas. Such assessments should be conducted as part of the remedial design.

e. Pre-construction sediment sampling that has not yet been conducted could influence the remedial design

Section 2.2.2. briefly mentions pre-construction sediment sampling,²² but fails to describe the

¹⁶ Final Report, p.82.

¹⁷ 33 C.F.R. § 332.3(m).

¹⁸ Final Report, p.82.

¹⁹ 33 C.F.R. 332.5(b); 21 DCMR § 2607.12(b); *see also* “Wetland and Stream Permit (WSP) / Water Quality Certification (WQC) Application Requirements,” DOEE (last updated April 4, 2024), online at https://doee.dc.gov/sites/default/files/dc/sites/doee/service_content/attachments/updated%2020240404_guidance%20-%20Copy.pdf.

²⁰ Final Report, Table 2.4.

²¹ Final Report, Table 2.5.

²² Final Report, p.6.

scope and schedule for the sampling and the specific decisions that may result from the sampling. Because the pre-construction sampling has the potential to affect the scope of the remediation, DOEE should provide additional details about the pre-construction sampling effort.

f. EAA Performance Monitoring Work Plan is not provided

DOEE mentions that an EAA Performance Monitoring Work Plan (2025) was prepared as an addendum to the Baseline / Performance Monitoring Plan (2024).²³ The final report references information and processes outlined in the 2025 work plan several times,²⁴ but that work plan is not included in the final report. Even if the 2025 work plan is largely similar to the 2024 baseline plan, it should be made public and provided as part of the final report for the sake of transparency and informed public input.

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Thank you for the opportunity to provide comments on the 100% BoDR. We look forward to continuing to work with DOEE to restore the Anacostia River. DOEE's efforts to make the Anacostia once again safe for fishing and swimming are commendable. If there are any questions, they can be directed to Vanessa Batters-Thompson at vbattersthompson@dcappleseed.org.

Sincerely,



Vanessa Batters-Thompson
Executive Director, DC Appleseed Center for Law & Justice

Submitted on behalf of DC Appleseed's Anacostia River Sediment Project Team:

cc:

Dev Murali, Anacostia Sediment Remedial Project Manager
Gretchen Mikeska, Anacostia Coordinator

²³ Final Report, p.2.

²⁴ See Final Report p.11, 50, 52, 82.