



# PUBLIC NOTICE

US Army Corps  
of Engineers  
New York District  
Jacob K. Javits Federal Building  
New York, N.Y. 10278-0090  
ATTN: Regulatory Branch

**In replying refer to:**  
**Public Notice Number: NAN-2013-00259-WCO**  
**Issue Date:**  
**Expiration Date:**

## To Whom It May Concern:

The New York District, Corps of Engineers (Corps) has received a proposal pursuant to Title 33 Code of Federal Regulations, Section 332.8(d)(8), requesting the modification of the existing federally approved "Saw Mill Creek Pilot Mitigation Bank Mitigation Banking Instrument" (MBI) sponsored by the New York City Economic Development Corporation (NYCEDC) to include a 10.90-acreS of proposed mitigation. The NYCEDC currently provides mitigation for unavoidable impacts to waters of the United States associated with Department of the Army permits issued under Section 404 of the Clean Water Act through the federally approved Saw Mill Creek Pilot Wetland Mitigation Bank (NAN-2013-00259) that encompasses primary and secondary service areas within the state of New York. The purpose of this notice is to solicit comments and recommendations from the public; Federal, state, and local agencies and officials, Indian tribes and other interested parties so that we may consider and evaluate the impacts for the work described below and determine whether to issue, modify, condition, or deny a Department of the Army permit.

**This is not an application for work in federally regulated waters;** however, authorization under Section 404 of the Clean Water Act may be required for future implementation of the proposed 10.9-acre site that is proposed under the modification of the MBI, if approved. No decision has been made as to whether to this proposed modification will be approved.

**APPLICANT:** Mr. Anthony DellOlio  
General Counsel  
New York City Department of Small Business Services  
1 Liberty Plaza, 11<sup>th</sup> Floor  
New York, NY 10006

**ACTIVITY:** The mitigation bank sponsor, New York City Economic Development Corporation (NYCEDC) is in the process of requesting Department of the Army authorization to amend the federally approved Saw Mill Creek Pilot Mitigation Banking Instrument and add an additional 10.90-acre area that would consist of a tidal emergent marsh, mudflat, and open water ecosystem.

**WATERWAY:** Saw Mill Creek, a tributary to the Arthur Kill

**LOCATION:** Borough of Staten Island, Richmond County, New York

The site is located at Latitude 40.61006, Longitude -74.18869 within the NYSDEC Atlantic Ocean/Long Island Sound Watershed and the 8-digit Hydrologic Unit Code (HUC08) Sandy Hook-Staten Island subbasin (02030104). The Primary Service Area of this site is comprised of waters of the United States, including wetlands, located within certain areas of the area known as the "Lower Hudson River Basin" (HUC06 020301), that are within City municipal limits, including portions of the HUC08 subbasins known as "Lower Hudson River" and "Sandy Hook-Staten Island", excluding the HUC12 sub-watershed region known as "Raritan Bay-Lower Bay Deep", and including the Boroughs of Staten Island and Manhattan and portions of the Boroughs of the Bronx, Brooklyn and Queens.

**DESCRIPTION OF PROPOSED ACTIVITY:** Under Section 404 of the Clean Water Act, applicants applying for the Department of the Army permits to discharge dredge or fill material into waters of the United States, including wetlands, are often required to provide compensatory mitigation for permitted unavoidable wetland losses by creating, restoring, enhancing, and preserving wetlands or streams. Authorized Mitigation Banks provide the Corps and the regulated public with additional options for compensatory mitigation of aquatic resource losses. As per the Final Mitigation Rule (33 CFR Parts 325 and 332), there are three mechanisms for providing compensatory mitigation (listed in order of preference as established by the regulations): mitigation banks, in-lieu fee programs, and permittee-responsible mitigation .

All aspects associated with the objectives, establishment, operation, maintenance, and monitoring of the proposed mitigation bank expansion are discussed in the **"Saw Mill Creek Pilot Wetland Mitigation Bank Instrument"** Modification 1, dated February 2024. A detailed description and plans of the activity can be found with this notice and also the original MBI at the Regulatory In-lieu Fee & Banking Tracking System (RIBITS) within the cyber repository, Public Notice folder :

[https://ribits.ops.usace.army.mil/ords/f?p=107:278:11361299300795::::P278\\_BANK\\_ID:3022](https://ribits.ops.usace.army.mil/ords/f?p=107:278:11361299300795::::P278_BANK_ID:3022)

The establishment, management, and use of a Mitigation Bank must be in accordance with a Mitigation Banking Instrument, and any approved by the Interagency Review Team (IRT). The IRT is presently comprised of the Corps, the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (USFWS), The US National Oceanic and Atmospheric Administration (NOAA), the State of New York Department of State (NYSDOS), and the New York State Department of Environmental Conservation (NYSDEC).

#### **ASSESSMENT METHODOLOGY**

The credits will be determined by the Corps and/or NYSDEC, in consultation with the IRT, and informed using a functional assessment methodology that the Corps and NYSDEC, in consultation with the IRT, determine to be appropriate and are discussed in the MBI.

To support the establishment of the Southwestern Section of the Bank, NYCEDC is employing a functional assessment methodology to determine wetland mitigation credits generated by the proposed ecological improvements. This approach is consistent with the Final Rule for Compensatory Mitigation for Losses of Aquatic Resources (33 CFR Parts 325 and 332 and 40 CFR Part 230) which encourages the use of functional assessment metrics as a basis to establish bank credits.

The decision whether to modify the MBI will be based on an evaluation of the probable impact 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, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.

The Corps is 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 these proposed activities. Any comments received will be considered by the Corps of Engineers 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 are used in preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activities.

ALL COMMENTS REGARDING THE PERMIT APPLICATION SHOULD BE SUBMITTED VIA ELECTRONIC MAIL TO [Danielle.R.Courtois@usace.army.mil](mailto:Danielle.R.Courtois@usace.army.mil), TO REACH THIS OFFICE BY THE EXPIRATION DATE OF THIS NOTICE, otherwise, it will be presumed that there are no objections to the activity.

Comments submitted in response to this notice will be fully considered during the public interest review for the request to amend the federally approved "Saw Mill Creek Pilot Wetland Mitigation Bank Instrument". Comments provided will become part of the public record for this MBI amendment. All written comments, including contact information, will be made a part of the administrative record, available to the public under the Freedom of Information Act (FOIA). The Administrative Record, or portions thereof, may also be posted on a Corps of Engineers internet web site. Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to individual letters of comment.

Any person may request, in writing, before this public notice expires, that a public hearing be held to collect information necessary to consider this application. Requests for public hearings shall state, with particularity, the reasons why a public hearing should be held. It should be noted that information submitted by mail is considered just as carefully in the permit decision process and bears the same weight as that furnished at a public hearing.

If the MBI is modified for this expansion, the Corps expects that the activity for which authorization is sought herein is not likely to affect any federally endangered or threatened species or their critical habitat. However, pursuant to Section 7 of the Endangered Species Act (16 U.S.C. 1531), the District Engineer is consulting with the appropriate Federal agency to determine the presence of and potential impacts to listed species in the project area or their critical habitat.

If the MBI is modified for this expansion, the Corps expects that the activities associated with this modification would avoid areas where known sites eligible for, or included in, the National Register of Historic Places. However, pursuant to Section 106 of the National Historic Preservation Act (36 CFR Part 800), the Corps will consult with the appropriate Federal, State and Tribal Historic Preservation Officers to determine the presence of and potential impacts to known or eligible sites. Presently the September 2015 Programmatic Agreement associated with the signed June 2015 MBI is under review with the New York State Historic Preservation Office. The Programmatic Agreement was entered into by the Corps with the NYCEDC, the New York City Landmarks Preservation Office, the Stockbridge-Munsee Community, The Band of Mohican Indians, The Delaware Nation, and The Delaware Tribe of Indians in order to protect unknown archeological, scientific, prehistorical, or historical data that may be affected by work accomplished under the required permit.

If the MBI is modified for this expansion, the review of proposed activities pursuant to Section 404 of the Clean Water Act will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 (b) of the Clean Water Act and the applicant will obtain a water quality certificate or waiver from the appropriate state agency in accordance with Section 401 of the Clean Water Act prior to a permit decision.

In addition to any required water quality certificate and coastal zone management program concurrence, the applicant has obtained or requested the following governmental authorization for the activity under consideration from the New York State Department of Environmental Conservation.

In order for us to better serve you, please complete our Customer Service Survey located at <http://www.nan.usace.army.mil/Missions/Regulatory/CustomerSurvey.aspx>.

For more information on New York District Corps of Engineers programs, visit our website at <http://www.nan.usace.army.mil>.

**FOR AND IN BEHALF OF**

Stephan A. Ryba  
Chief, Regulatory Branch

Enclosures

1. MBI Modification 1, February 2024
2. Project Plans