



# 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-2022-00836-WCO  
Issue Date: February 7, 2024  
Expiration Date: March 8, 2024

## To Whom It May Concern:

The New York District, U. S. Army Corps of Engineers (Corps) has received a proposal pursuant to Title 33 Code of Federal Regulations, Section 332 requesting the initiation of the proposed “The Mitigation and Restoration Strategies for Habitat and Ecological Sustainability (MARSHES) Initiative Umbrella Mitigation Bank”, sponsored by the New York City Economic Development Corporation (EDC), in three service areas encompassing parts of five 8-digit hydrologic units (HUC). The EDC 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 implementation of particular mitigation sites later proposed under the umbrella mitigation banking instrument, if approved. Such sites would be advertised under separate public notices. No decision has been made as to whether this proposed umbrella mitigation bank will be approved.

**APPLICANT:** Anthony Dell’olio, 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 and Restoration Strategies for Habitat and Ecological Sustainability (MARSHES) Initiative Umbrella Mitigation Bank Prospectus

**WATERWAY:** New York Harbor, Hudson River

**LOCATION:** The proposed Umbrella Bank Service Area includes all areas within the New York City Municipal limits divided into three Service Areas. These Service Areas are proposed to provide off-site compensatory mitigation for authorized unavoidable impacts to waters of the United States and/or State waters, including wetlands, within defined watershed areas. The three Service Areas as depicted on the Service Area Map (Exhibit A of Prospectus) include:

**CENAN-OP-RW**  
**PUBLIC NOTICE NO. NAN-2022-00836-WCO**

- 1) the portions of the Lower Hudson River Basin, also known as Hydrologic Unit Code 06 (HUC06) 020301, that are within the New York City Municipal limits and includes portions of the following HUC08 subbasins: Lower Hudson (02030101) and Sandy Hook-Staten Island (02030104);
- 2) the portions of the following HUC08 subbasins that are within the New York City Municipal limits: Bronx River (02030102), Long Island Sound (02030203), and Northern Long Island (02030201); and,
- 3) the portions of the following HUC08 subbasins that are within the New York City Municipal Southern Long Island (02030202), Mullica-Toms (02040301), and Sandy Hook-Staten Island (02030104).

**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 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.

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

The proposed MARSHEs Umbrella Mitigation Bank prospectus, along with a proposed site specific plan for the Bush Terminal Pier 7 (HUC 02030101), are described in the documents entitled **“The Mitigation and Restoration Strategies for Habitat and Ecological Sustainability (MARSHEs) Initiative Umbrella Mitigation Bank, New York City, New York, Prospectus”**, dated May 2023, and **“Plans for Umbrella Mitigation Bank and Permitting Bush Terminal Pier 7, 1<sup>st</sup> Avenue and 43<sup>rd</sup> Street, Brooklyn, NY 11232, Sheets 1 through 11”**, dated December 18, 2022. These documents contain all the information normally included in a prospectus plus additional detail to place one service area within the Umbrella Bank into operation. A detailed description and plans of the applicant's proposed Umbrella Mitigation Bank activities has been published on the New York District, USACE website.

The first project site specific plan of the proposed MARSHEs Umbrella Mitigation Bank is located at the Bush Terminal Piers Park, Pier 7, Marginal Street and 43rd Street, Brooklyn, New York (40.6573 –74.0163). A permit is not being sought at this time. The Project is being proposed to offset unavoidable impacts within open waters. The first stage is to remove the remnants of the dilapidated Pier 7, with the goal of restoring a stable littoral zone habitat. Demolition of the pier will include excavation to elevation -8.6 NAVD88, which is the extent of the littoral zone based on tidal datum at the Pier 7. The second goal for the restoration design is to install a stone revetment with the goal of providing stable, long-term shoreline protection and habitat structure for fish and macroinvertebrates.

**CENAN-OP-RW**  
**PUBLIC NOTICE NO. NAN-2022-00836-WCO**

**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 will be provided in the UMBI. NYC EDC plans to use the Evaluation for Planned Wetlands (EPW) or another acceptable functional assessment methodology for the proposed Umbrella Mitigation Bank sites. Credit ratios may be considered, if warranted. The available credits will be determined by the approved functional assessment methodology and approved by the Corps and NYSDEC, in consultation with the IRT.

The decision whether to issue a permit 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 and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. 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 develop the MARSHEs Umbrella Mitigation Bank. Comments provided will become part of the public record for this permit application. 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.

**CENAN-OP-RW**  
**PUBLIC NOTICE NO. NAN-2022-00836-WCO**

Our preliminary determination for the MARSHES Umbrella Mitigation Bank is 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.

Based upon a review of the latest published version of the National Register of Historic Places, there are no known sites eligible for, or included in, the Register within the permit area for the MARSHES Umbrella Mitigation Bank. Presently unknown archeological, scientific, prehistorical, or historical data may be lost by work accomplished under the required permit.

Reviews of 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>.

 Digitally signed by  
Rosita Miranda

**FOR AND IN BEHALF OF**  
Stephan A. Ryba  
Chief, Regulatory Branch

**Enclosures**

1. Prospectus, January 2024
2. Project Plans