



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-2024-01024-WKA
Issue Date:
Expiration Date:

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 "Arthur Kill Wetland Mitigation Bank", sponsored by Arthur Kill Power, LLC. 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 concerning the work as described below.

AUTHORITY: Issuance of public notices regarding proposed compensatory mitigation sites is required pursuant to Compensatory Mitigation for Losses of Aquatic Resources; Final Rule as published April 10, 2008, in the Federal Register, Vol. 73, No. 70, pages 19,594-19,705 (33 CFR 325 and 332 and 40 CFR 230). **This is not an application for work in federally regulated waters;** however, authorization under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act may be required for implementation of the proposed 47-acre site, if approved. No decision has been made as to whether this proposed mitigation bank will be approved.

SPONSOR: Arthur Kill Power, LLC
Attn: John Kenny
4401 Victory Boulevard
Staten Island, NY 10314

ACTIVITY: Arthur Kill Wetland Mitigation Bank Prospectus

WATERWAY: Arthur Kill, a tributary of the Raritan Bay

LOCATION: Along West Shore Expressway, Staten Island, Richmond County, New York

LATITUDE AND LONGITUDE: 40.5943, -74.19654

PURPOSE AND PROPOSED WORK: The sponsor proposes to design, construct, establish, and operate the Arthur Kill Wetland Mitigation Bank (Bank). The purpose of the Bank is to provide off-site, third-party compensatory mitigation for projects that result in unavoidable impacts to waters of the United States, including wetlands, within the Bank's specified service areas. Under Section 404 of the Clean Water Act (CWA), 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

CENAN-OP-RE
PUBLIC NOTICE NO. NAN-2024-01024-WKA

established by the regulations): mitigation banks, in-lieu fee programs, and permittee-responsible mitigation.

The proposed Arthur Kill Wetland Mitigation Bank Prospectus is described in the documents entitled “**Arthur Kill Wetland Mitigation Bank Prospectus**”, dated December 2024. These documents contain all the information normally included in a prospectus. A detailed description and plans of the Sponsor's proposed Mitigation Bank activities have been published on the New York District, USACE website.

The sponsor proposes to rehabilitate 23.60 acres of degraded wetlands dominated by common reed, *Phragmites australis*, and hydrologically isolated from tidal influence. An area of 1.30 acres of historic, native salt marsh that was filled and is currently dominated by Japanese knotweed, *Reynoutria japonica*, will be excavated and re-established. An existing 7.39 acres of salt marsh on the northern and western boundaries of the Bank threatened by shoreline erosion and encroachment of common reed will be enhanced. The remaining 15.02 acres of upland habitat will be maintained as a buffer and enhanced through debris removal and addressing established non-native, invasive plants.

PROPOSED SERVICE AREA: The sponsor proposes two service areas: a primary service area and a secondary service area. The proposed service areas are depicted in the enclosed prospectus Figure 3: Service Area Map. The use of the secondary service area will be restricted to authorized projects that meet the following requirements:

- (a) No practical or more ecologically beneficial on-site mitigation alternatives are available that meet all of the mitigation requirements,
- (b) No practical or more ecologically beneficial off-site mitigation alternatives are available within the primary service area where impacts occur that meet all of the mitigation requirements, and
- (c) There are no other approved mitigation banks with available credits servicing the primary service area where the impacts occur.

Decisions authoring use of credits within the secondary service area from the Bank will be made on a case-by-case basis by the Corps and/or the New York State Department of Environmental Conservation.

The primary service area includes portions of the Sandy Hook-Staten Island (HUC 02030104) and the Lower Hudson (HUC 02030101) Subbasins that occur within the New York City Municipal limits. The secondary service area includes portions of the Sandy Hook-Staten Island (HUC 02030104), Lower Hudson (HUC 02030101), Bronx (HUC 02030102), Northern Long Island (HUC 02030201), Southern Long Island (HUC 02030202), and Mullica-Toms (HUC 02040301) Subbasins.

INTERAGENCY REVIEW TEAM: 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) in the New York District. The IRT is presently comprised of the Corps (New York District), the U.S. Environmental Protection Agency (USEPA), the U.S. Fish and Wildlife Service (USFWS), the National Oceanic and Atmospheric Administration (NOAA), the New York State Department of State (NYSDOS), and the New York State Department of Environmental Conservation (NYSDEC).

CENAN-OP-RE
PUBLIC NOTICE NO. NAN-2024-01024-WKA

ASSESSMENT METHODOLOGY: The credits will be determined by the Corps and/or NYSDEC, in consultation with the IRT, and informed using a credit ratio that the Corps and NYSDEC, in consultation with the IRT, determine to be appropriate, and will be provided in the future Mitigation Banking Instrument (MBI). Pursuant to 33 CFR 332, the 23.60 acres of habitat dominated by common reed restored in the establishment of the proposed mitigation bank will be categorized as rehabilitation, the 1.3 acres of upland habitat restored will be categorized as re-establishment, and the 7.39 acres of habitat threatened by encroaching common reed and shoreline erosion will be categorized as enhancement.

ENDANGERED SPECIES CONSULTATION: Our preliminary determination for the “Arthur Kill Wetland Mitigation Bank Prospectus”, is that the proposed activity 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.

ESSENTIAL FISH HABITAT: The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act (Public Law 104-267), requires all Federal agencies to consult with the National Oceanic and Atmospheric Administration Fisheries Service (NOAA/FS) on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). The proposed work, fully described in the enclosed prospectus, could cause the disruption of habitat for various life stages of some EFH-designated species as a result of a temporary increase in turbidity during construction. However, the New York District has made the preliminary determination that the site-specific adverse effects are not likely to be substantial because it is expected that fish populations would avoid the small area of disturbance. Further consultation with NOAA/FS regarding EFH impacts and conservation recommendations is being conducted and will be concluded prior to the final decision.

NATIONAL HISTORIC PRESERVATION ACT: 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 “Arthur Kill Wetland Mitigation Bank Prospectus”. Presently unknown archeological, scientific, prehistorical, or historical data may be lost by work accomplished under the required permit.

COASTAL ZONE MANAGEMENT ACT: Pursuant to Section 307 (c) of the Coastal Zone Management Act of 1972 as amended [16 U.S.C. 1456 (c)], for activities under consideration that are located within the coastal zone of a state which has a federally approved coastal zone management program, the applicant has certified in the permit application that the activity complies with, and will be conducted in a manner that is consistent with, the approved state coastal zone management program. For activities within the coastal zone of New York State, the applicant's certification and accompanying information is available from the New York State Department of State, Division of Coastal Resources and Waterfront Revitalization, Coastal Zone Management Program, One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231, Telephone (518) 474-6000. Comments regarding the applicant's certification, and copies of any letters to this office commenting upon this proposal, should be so addressed.

WATER QUALITY CERTIFICATION: 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.

CENAN-OP-RE
PUBLIC NOTICE NO. NAN-2024-01024-WKA

SUBMITAL OF COMMENTS: The Corps of Engineers 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 this proposed activity. 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 activity.

ALL COMMENTS REGARDING THE PROSPECTUS SHOULD BE SUBMITTED VIA ELECTRONIC MAIL TO KATHRYN.KADLUBAR@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 "Arthur Kill Wetland Mitigation Bank Prospectus". 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, within the comment period specified in this notice, that a public hearing be held to consider this proposal. Requests for a public hearing shall state, with particularity, the reasons for holding a public hearing. The decision whether to approve or deny the proposed Mitigation Bank will be based on an evaluation of the probable impact including cumulative impacts of the activity on the public interest. The benefit which reasonably may be expected to accrue from the project must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the project 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, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production and, in general, the needs and welfare of the people.

This public notice and associated plans are available on the Corps' website at: <https://www.nan.usace.army.mil/Missions/Regulatory/Regulatory-Public-Notices/> and on the Regulatory In-Lieu Fee and Bank Information Tracking System (RIBITS) website, located under the New York District's drop-down menu, and Public Notices tab: <https://ribits.ops.usace.army.mil/ords/f?p=107:622:1332995602237::NO>

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

CENAN-OP-RE
PUBLIC NOTICE NO. NAN-2024-01024-WKA

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. Arthur Kill Wetland Mitigation Bank Prospectus (with plans), dated December 2024