



**U.S. Army Corps
of Engineers**

Baltimore District
PN-23-21

Public Notice

**In Reply to Application Number
NAB-2023-00030-P31 (PSUMBI – Pine Creek Mitigation
Bank)**

Comment Period: April 27, 2023 to May 27, 2023

**THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM
INTERESTED PARTIES CONCERNING THE PROSPECTUS FOR DEVELOPMENT
OF A PRIVATE COMMERCIAL COMPENSATORY MITIGATION BANK.**

The Baltimore District, United States Army Corps of Engineers (Corps) has received a complete prospectus pursuant to the 2008 Mitigation Rule (33 CFR 332) proposing to establish a compensatory mitigation bank (Bank) and generate mitigation credits to offset unavoidable impacts to waters of the United States (WOUS) authorized under Section 404 of the Clean Water Act (33 USC 1344). The proposed Bank may also provide alternative types of mitigation for Corps civil works projects as well as mitigation in connection with resolving Clean Water Act enforcement cases. In addition, the proposed Bank may be used to generate compensatory mitigation credits to offset unavoidable impacts to wetland and/or waters regulated by the commonwealth of Pennsylvania.

BANK SPONSOR:

First Pennsylvania Resource, LLC
317 East Carson Street, Suite 242
Pittsburgh, Pennsylvania 15219

WATERWAY AND LOCATION OF THE PROPOSED BANK:

The proposed 26.88-acre Bank is located on two parcels totaling 66.73-acres in unnamed tributaries to Pine Creek, in Stillwater, Luzerne County, Pennsylvania with the center of the site located approximately at Latitude: 41.17593°, Longitude -76.273366° (decimal degrees). The Bank is located within the 8-digit WOUS Geological Survey Hydrologic Unit Code, Upper Susquehanna 02-05-01-07.

OVERALL PROJECT PURPOSE:

The bank sponsor proposes to establish, design, construct, operate, and maintain a 26.88-acre private commercial wetland and stream Bank to be known as the Pine Creek Mitigation Bank. The proposed Bank will provide off-site compensatory mitigation for unavoidable impacts to wetlands and other WOUS authorized by a Department of the Army (DA) permit within the proposed geographic service area described below.

The linked amendment request (entitled as a “MB Final Prospectus”) provides a summary of the development of the Bank and initiates the Corps’ review associated with establishment of this Bank, under the previously approved Pennsylvania Statewide Umbrella Mitigation Banking Instrument (PSUMBI). The approved PSUMBI, including associated approved site-specific mitigation plans, is the legal document for the establishment, operation, and use of the maintenance of the Bank in a way that complies with the regulations governing compensatory mitigation for activities authorized by DA permits granted by the Corps.

Pursuant to 33 CFR 332.8(d)(4), the Corps has posted a full copy of the subject prospectus online so that it is available for review by the public. The prospectus may be downloaded from the Regulatory In-Lieu Fee and Bank Information Tracking System at web address:

https://ribits.ops.usace.army.mil/ords/f?p=107:0:14647427132971:APPLICATION_PROCESS=AP_DB_DOC:::AI_STRING,AI_ID:inline,119948

PROJECT DESCRIPTION:

The proposed establishment of this 26.88-acre Bank site involves the re-establishment, rehabilitation, and enhancement of aquatic resources. The bank sponsor proposes that ecological lift associated with establishment of this mitigation bank, including stream and floodplain connectivity, flood storage and attenuation, nutrient cycling, wildlife habitat, invasive species control, would generate wetland and/or stream credits that are to provide off-site compensatory mitigation for activities authorized under a DA permit. Specifically, the following is a list of project objectives as described by the bank sponsor:

- Rehabilitate approximately 6.47 acres forested mosaic wetlands, 329 linear feet of perennial stream, 277 linear feet of intermittent stream, and 228 linear feet of ephemeral stream channel;
- Re-establish approximately 7.56 acres of forested mosaic wetlands;
- Restore (relocation) 3,058 linear feet of perennial stream channel;
- Enhance approximately 0.09 acres of existing forested mosaic wetlands;
- The Bank is proposed to be protected in perpetuity via recordation of a real estate instrument such as a conservation easement or restrictive covenant.

- Upon Bank closure, the Bank is proposed to be managed long term by a third-party long-term steward, and if not identified, the bank sponsor will retain the legal responsibility for long-term management of the Bank site.

PROPOSED SERVICE AREA:

The service area of a Bank is a geographic area, such as a watershed or ecoregion, within which the mitigation bank is authorized to provide compensatory mitigation required by DA permits. The proposed primary service area for the Bank would include the Pennsylvania State Water Plan subbasin #5 (Upper Susquehanna Lackawanna). The proposed secondary service area would include the Pennsylvania State Water Plan subbasin #4 (Upper Susquehanna Lackawanna River) and the Pennsylvania State Water Plan subbasin #10 (Lower West Branch Susquehanna River). The use of the secondary service area would be considered by the Corps only when credits are not available from another approved mitigation bank within the primary service area and the applicant demonstrates that the mitigation credits will replace the lost aquatic functions and services at the impact site. Impacts to coastal and tidal aquatic resources would be excluded from mitigating at this nontidal bank.

MITIGATION BANK APPROVAL AND PERMITTING PROCESSES:

This Bank may be one of a number of practicable options available to applicants to compensate for unavoidable impacts associated with permits issued under the authority of Section 404 of the Clean Water Act. Released mitigation bank credits are generally the preferred option for compensatory mitigation because Banks consolidate resources, involve more financial planning and scientific expertise, and must meet certain performance standards, thereby reducing risks associated with mitigation projects. Approval to use an approved Bank site to offset impacts for a specific project is the decision of the Corps pursuant to Section 404 of the Clean Water Act. The Corps provides no guarantee that any particular individual or general permit will be granted authorization to use an approved Bank site to compensate for unavoidable impacts associated with a proposed permit. Authorization by the Pennsylvania Department of Environmental Protection may also be required to use this Bank to offset specific impacts regulated by the Commonwealth of Pennsylvania.

Issuance of a public notice regarding proposed Bank sites is required pursuant to 33 C.F.R. § 332.8(d)(4) and 40 C.F.R. § 230.98(d)(4). The proposed establishment of the bank will be evaluated pursuant to the 2008 Mitigation Rule (33 CFR Part 332).

The Sponsor must obtain the appropriate federal, state, and local permits required to implement the Bank construction activities. The bank sponsor would submit an application for a Corps permit should the Bank construction activities involve a discharge of dredge or fill material within WOUS or work within navigable WOUS and receive Corps authorization prior to initiating construction activities. The Corps would complete consultation, if appropriate, under the Endangered Species Act, the National Historic Preservation Act and other applicable federal laws, prior to any DA permit authorization for construction of the Bank site.

Based upon a preliminary review of the prospectus, the proposed work to develop the Bank site may result in temporary and/or permanent impacts to WOUS or work within navigable WOUS. No DA permit application has been submitted to date for the proposed construction activities associated with development of the Bank. A preliminary review indicates that the proposed work may qualify for Corps authorization under the Nationwide Permit #27 (Aquatic Habitat Restoration, Enhancement, and Establishment Activities) or State Programmatic General Permit. Both the Programmatic General Permit and Nationwide Permit #27 have undergone a full public interest review as required by Corps regulations (33 CFR 320.4(a)), and National Environmental Policy Act documentation has been prepared that addresses environmental considerations.

Please refer to the table below for a summary of approximate aquatic resource impacts to construct the Bank.

EFFECTS ON AQUATIC RESOURCES:

Activity (i.e. culvert)	Stream Impact (lf)	Wetland Impact (Acres)	Authority (Section 10/404/408)
Rehabilitation	834	6.47	Section 404
Re-Establishment		7.56	Section 404
Restoration	3,058		Section 404
Enhancement		0.09	Section 404

LEAD FEDERAL AGENCY:

The Corps, as the lead federal agency, is responsible for all coordination pursuant to applicable federal authorities.

The Interagency Review Team (IRT) responsible for review, approval, and oversight of the proposed mitigation bank includes representatives from the Corps, the United States Environmental Protection Agency, the United States Fish and Wildlife Service,

the National Marine Fisheries Service, the Pennsylvania Fish and Boat Commission, the Pennsylvania Game Commission, the Pennsylvania Department of Conservation and Natural Resources, and the Pennsylvania Historical and Museum Commission. The Baltimore District of the Corps chairs the IRT and the Pennsylvania Department of Environmental Protection co-chairs the IRT.

ENDANGERED SPECIES:

A preliminary review of this prospectus indicates that the proposal will have no effect federally listed threatened or endangered species or their critical habitat, pursuant to Section 7 of the Endangered Species Act, as amended. As the evaluation of this application continues, additional information may become available which could modify this preliminary determination.

ESSENTIAL FISH HABITAT:

The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 04-267), requires all federal agencies to consult with the National Marine Fisheries Service (NMFS) on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH), including species of concern, life cycle habitat, or Habitat Areas of Particular Concern. The project site lies in or adjacent to EFH as described under MSFCMA for managed species under the MSFCMA. The Baltimore District has made a preliminary determination that the project is not within on EFH and will have no effect on EFH.

HISTORIC RESOURCES:

Pursuant to Section 106 of the National Historic Preservation Act of 1966 and applicable guidance, the Corps has reviewed the latest published version of the National Register of Historic Places and initially determined that no properties listed or eligible for inclusion, in the National Register of Historic Places, are located at the site of the proposed Bank. The Corps has made the preliminary determination that the proposed project has no potential to cause effects on historic properties. The Corps final eligibility and effect determination will be based on coordination with the State Historic Preservation Office as appropriate and required, and with full consideration given to the proposed undertaking's potential direct and indirect effects on historic properties within the Corps' identified permit area.

TRIBAL RESOURCES:

Section 106 of the National Historic Preservation Act also requires federal agencies to consult with federally recognized American Indian tribes that attach religious and cultural significance to historic properties that may be affected by the agency's undertaking. Corps Tribal Consultation Policy mandates an open, timely, meaningful, collaborative, and effective deliberative communication process that emphasizes trust, respect, and shared responsibility. The policy further emphasizes that, to the extent practicable and permitted by law, consultation works toward mutual consensus and begins at the earliest planning stages before decisions are made and actions taken. The Corps final eligibility and effect determination will be based on coordination with interested tribes, in accordance with the Corps current tribal standard operating procedures as appropriate and required, and with full consideration given to the proposed undertaking's potential direct and indirect effects on tribal resources.

MODIFICATION OF CIVIL WORKS PROJECTS: 33 USC 408 (SECTION 408):

All Section 408 proposals will be coordinated internally at the Corps. The Section 408 decision will be issued along with the Section 404 and/or Section 10 decision. Please see the following link for more information regarding Section 408:

<https://www.nab.usace.army.mil/Missions/Regulatory/Section-408-Requests/>

The applicant must obtain any state or local government permits which may be required.

NOTE:

This public notice is being issued based on information furnished by the bank sponsor. This information has not been verified or evaluated to ensure compliance with laws and regulation governing the regulatory program.

REQUEST FOR PUBLIC HEARING:

Any person may request a public hearing. The request must be submitted in writing to the district engineer within the designated comment period of the notice and must state the specific reasons for requesting the public hearing.

SUBMISSION OF COMMENTS:

The Corps is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties to help inform the Corps and the IRT as to the overall merits of the proposed Bank, the scope of the proposed mitigation bank, the delineation of the proposed service area, the ecological suitability of the Bank site to achieve restoration of WOUS, and to identify project aspects that should be addressed during the development of a draft mitigation banking instrument. Any comments received will be considered by the Corps to determine whether the proposal has the potential to provide mitigation opportunities for project proponents (permittees) authorized to impact WOUS under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act or as a means of resolving Section 404 and/or Section 10 enforcement actions. Comments provided will become part of the public record for this action and are subject to release to the public through the Freedom of Information Act.

Written comments concerning the proposed Bank must be received within the comment period specified above through postal mail at the address below or electronic submission to the project manager's email address below. All comments should reference the Application Number NAB-2023-00030-P31.

Mr. Robert Fewster
U.S. Army Corps of Engineers, Baltimore District
Regulatory Branch
2 Hopkins Plaza
Baltimore, MD 21201
robert.j.fewster@usace.army.mil

Please share this information concerning the proposed work with any persons known by you to be interested, who did not receive a copy of this notice.

General information regarding the Corps' permitting and mitigation processes can be found on our website at <https://www.nab.usace.army.mil/Missions/Regulatory.aspx>. This public notice has been prepared in accordance with Corps implementing regulations at 33 CFR 325.3. If you have any questions concerning this specific project, or would like to request a paper copy of this public notice, please contact Robert Fewster, at (410) 962-6144 or by email at robert.j.fewster@usace.army.mil. This public notice is issued by the Chief, Regulatory Branch.