



Public Notice

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

In Reply Refer to
Notice No. below

US Army Corps of Engineers, Pittsburgh District
1000 Liberty Avenue
Pittsburgh, PA 15222-4186

Application No. RGS-2020-358

Date: October 27, 2020

Notice No. 20-35

Closing Date: November 27, 2020

1. TO ALL WHOM IT MAY CONCERN: The district engineer has received a prospectus to establish a stream and wetland compensatory mitigation bank, in the State of West Virginia (WV) and a request to establish a new umbrella mitigation banking instrument (UMBI), for federal and state permits as described in this Public Notice. Issuance of a Public Notice regarding proposed mitigation banks is required pursuant to the “Compensatory Mitigation for Losses of Aquatic Resources; Final Rule,” (Rule) as published in the April 10, 2008, Federal Register, Vol. 73, No. 70, Pages 19594-19705 (33 CFR Parts 332). In addition, the proposed mitigation bank has been submitted for authorization under the provisions of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. The United States Army Corps of Engineers (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 this proposal. The purpose of this Public Notice is to inform you of the proposed mitigation bank and to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest.

2. APPLICANT/BANK SPONSOR:

Nate Ober
Water and Land Solutions, LLC (WLS)
333 Baldwin Road
Pittsburgh, PA 15205

3. LOCATION: The proposed mitigation bank site is located at Tomlinson Run State Park approximately 1.5 miles north of New Manchester, Hancock County, West Virginia. The project is located on the eastern portion of the state park at the coordinates 40.540743°N, 80.575108°W.

4. PURPOSE AND DESCRIPTION OF WORK: With this submittal the applicant proposes to establish a mitigation bank as defined in 33 CFR 332.8.

WLS has submitted a mitigation plan to the Pittsburgh District Corps and the other members of the WV Interagency Review Team (IRT) to develop and operate a stream and wetland mitigation bank, known as the Tomlinson Run Mitigation Bank. The purpose of the mitigation bank is to provide off-site compensatory mitigation for projects

that result in unavoidable adverse impacts (including the discharge of dredged or fill material) to streams and wetlands within the specified service area, as noted below. The bank is projected to provide 3,099 linear feet of Level 1 restoration, 3,722 linear feet of Level 3 restoration, and 1-2 acres of PFO wetland re-establishment.

The primary Geographic Service Area (GSA) would be the Upper Ohio North and Upper Ohio South watersheds as defined by the 8-digit Hydrologic Unit Code (HUC) Nos. 05030101 and (05030106), respectively. The Bank Sponsor has also proposed a secondary GSA, which would include: Middle Ohio North watershed (05030201), Middle Ohio South watershed (05030202), and the Little Kanawha watershed (05030203).

The stated goals of the mitigation bank are to promote nutrient and sediment reduction, improve flood attenuation, and improve aquatic habitat. These goals are intended to be accomplished through the following actions:

1. Correcting incised streams to bank height ratios of less than 1:1 to promote floodplain storage and overbank flood flows
2. Improving bank stability by installing natural reinforcements and planting a forested riparian buffers
3. Increase native species within the riparian buffer and wetlands and improve the density and composition of vegetation along streambank and floodplain areas
4. Improve aquatic habitat and fish species diversity and migration through the addition of in-stream cover and native woody debris
5. Remove 4 impoundment to connect headwater streams with South Fork Tomlinson Run allowing for food sources to migrate downstream
6. Remove undersized culverts which are causing migration barriers to aquatic species
7. Protect the streams, wetlands, and riparian areas in perpetuity.

In accordance with the Rule, performance standards and success criteria, established by the application of conditional assessments and/or suitable metrics, would be outlined and implemented as requirements. More specifically, this will include the use of West Virginia Stream and Wetland Valuation Metric v. 2.1 (or newer if revised) and any other functional assessment(s) as deemed applicable by the IRT. For further information, the Prospectus shall be made available for review upon request.

5. WEST VIRGINIA CERTIFICATION: All regulated work will be reviewed for eligibility under Nationwide Permit No. 27 Aquatic Habitat Restoration, Establishment and Enhancement Activities which includes the required Section 401 Water Quality Certification. The West Virginia Department of Environmental Protection will be part of the review of the proposed UMBI as a member of the IRT.
6. IMPACT ON NATURAL RESOURCES: The District Engineer has consulted the

most recently available information and has determined that the project may affect, but is not likely to adversely affect endangered species or threatened species, or result in destruction or adverse modification of habitat of such species which has been determined to be critical. This Public Notice serves as a request to the U.S. Fish and Wildlife Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended). If the U.S. Fish and Wildlife Service concurs with the may affect, not likely to adversely affect determination please respond with written concurrence.

7. IMPACT ON CULTURAL RESOURCES: The National Register of Historic Places has been consulted, and it has been determined that there are no properties currently listed on the register which would be directly affected by the proposed work. If we are made aware, as a result of comments received in response to this notice, or by other means, of specific archeological, scientific, prehistorical, or historical sites or structures which might be affected by the proposed work, the District Engineer will immediately take the appropriate action necessary pursuant to the National Historic Preservation Act of 1966 - Public Law 89-665 as amended (including Public Law 96-515).

8. PUBLIC INVOLVEMENT: Any person may request, in writing, within the comment period specified in the paragraph below entitled "RESPONSES," that a public hearing be held to consider this application. The requests for public hearing shall state, with particularity, the reasons for holding a public hearing.

9. EVALUATION: Interested parties are invited to state any objections they may have to the proposed work. The decision whether to approve the bank will be based on an evaluation of the criteria set forth in the mitigation rule found at 33 CFR 332.8. 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 proposals 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, flood plain 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. Any comments received will be considered by the Corps of Engineers to determine whether to approve the mitigation bank. 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.

After the end of the comment period, the district engineer will review the comments received in response to the public notice, and make a written initial evaluation as to the potential of the proposed mitigation bank or in-lieu fee program to provide compensatory mitigation for activities authorized by DA permits. This initial evaluation letter will be provided to the sponsor within 30 days of the end of the public notice comment period.

If the district engineer determines that the proposed mitigation bank or in-lieu fee program has potential for providing appropriate compensatory mitigation for activities authorized by DA permits, the initial evaluation letter will inform the sponsor that he/she may proceed with preparation of the draft instrument.

If the district engineer determines that the proposed mitigation bank does not have potential for providing appropriate compensatory mitigation for DA permits, the initial evaluation letter must discuss the reasons for that determination. The sponsor may revise the prospectus to address the district engineer's concerns, and submit the revised prospectus to the district engineer. If the sponsor submits a revised prospectus, a revised public notice will be issued in accordance with 33 CFR 332.8 (d)(4).

10. **RESPONSES:** A permit will be granted unless its issuance is found to be contrary to the public interest. Written statements concerning the proposed activity should be received in this office on or before the closing date of this Public Notice in order to become a part of the record and to be considered in the final determination, comments can be mailed to:

U.S. Army Corps of Engineers, Pittsburgh District
1000 Liberty Avenue
Pittsburgh, PA 15222-4186
Re: CELRP-RGS Public Notice No. 20-35

Any objections which are received during this period may be forwarded to the applicant for possible resolution before the determination is made whether to issue or deny the requested banking instrument. All responses to this notice should be directed to the Regulatory Division, attn. Jared Pritts at the above address, by telephoning (412) 395-7251, or by e-mail at jared.n.pritts@usace.army.mil. Please refer to CELRP-RGS 2020-358 in all responses.

CELRP-RGS
Public Notice No. 20-35

FOR THE DISTRICT ENGINEER:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Jon T. Coleman
Chief, Southern Branch
Regulatory Division