



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. 2022-120

Date: March 30, 2022

Notice No. 22-25

Closing Date: April 29, 2022

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), 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. INTERAGENCY REVIEW TEAM: As indicated in the Corps regulations (33 CFR 332.8(b)), the district engineer will establish an IRT to review documentation for the establishment and management of mitigation banks and in-lieu fee (ILF) programs. The primary role of the IRT is to facilitate the establishment of mitigation banks and/or ILF programs through the development of mitigation banking or ILF program instruments. The IRT reviews draft prospectuses, prospectuses, instruments, and other documents and provides comments to the Corps.

3. APPLICANT/BANK SPONSOR:

Ms. Jessica Stout
EBX-EM, LLC, a Resource Environmental Solutions (RES), LLC subsidiary
137 ½ East Main Street, Suite 210
Oak Hill, WV 25901

4. LOCATION: The proposed mitigation bank site is located in the headwaters of Glade Run and an unnamed tributary to Little Sandy Creek, adjacent floodplains and upland corridors, within the Cheat River watershed, near Bruceton Mills, Preston County, WV (39.613, -79.599).

5. PURPOSE AND DESCRIPTION OF WORK: RES received approval for their umbrella banking mitigation instrument (UMBI) in January, 2008 (amended in 2011 and 2018). As defined in 33 CFR 332.8, an UMBI is a single mitigation banking instrument which provides for future authorization of additional mitigation bank sites. As additional sites are selected, they must be reviewed and approved by the IRT as modifications to the existing mitigation banking instrument. Therefore, the current proposal is under consideration as a modification to RES's UMBI.

EBX-EM, LLC (Sponsor), a subsidiary of RES, has submitted a mitigation plan to the Pittsburgh District Corps and the other members of the WV IRT to develop and operate a stream mitigation bank, known as the Old Oak 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 proposed mitigation bank will involve the enhancement, restoration and preservation of streams and wetlands and their associated riparian buffers.

The Old Oak Mitigation Bank would implement restoration measures and conserve the aquatic environment and upland buffer areas in an effort to provide ecological benefits, including improvements to water quality, fish and wildlife habitat, erosion control, and flood conveyance and storage within the watershed. The primary Geographic Service Area (GSA) would be the Cheat River watershed as defined by the 8-digit Hydrologic Unit Code (HUC) No. 05020004. The Bank Sponsor has also proposed a secondary GSA, which would include Tygart Valley (05020001), West Fork (05020002), Monongahela (05020003), Dunkard (05020005), and Youghiogheny (05020006).

The primary objective of the mitigation bank is to restore and preserve self-sustaining, functional stream corridors and wetlands to replace the functions and values historically lost from the site. The project goals include reconnecting streams which have been disconnected by agricultural and gas impacts, improving the overall watershed through restoration and permanent preservation of riparian areas, re-establishing and enhancing floodplain wetlands, restoring floodplain connectivity, restoring groundwater/surface water interaction, reducing bank erosion and improving lateral and horizontal channel stream channel stability, improving stream bed form diversity, adding large woody debris, reducing invasive plant species and restoring native vegetation communities, improving wildlife habitat, and improving benthic macroinvertebrate habitat. A summary of the proposed work is shown in the following tables:

Table 9: Estimated Old Oak Mitigation Bank Stream Credits Summary		
Stream Mitigation Type	Approximate Length	Approximate Credits
Restoration Level I	12,288	7,372
Restoration Level III	2,433	852
Establishment	500	500
Enhancement	8,532	1,280
Preservation	21,356	1,709
TOTAL	45,109	11,713

Table 10: Estimated Old Oak Mitigation Bank Wetland Credits Summary				
Wetland Mitigation Type	Wetland Class	Acreage	Credit Ratio	Estimated Total Credits
Wetland Re-establishment	PEM	3.00	1:1	3.00
Wetland Enhancement	---	0.00	2.5:1	0.00
Wetland Preservation	---	0.00	10:1	0.00
Totals		3.00		3.00

* Not all existing wetland acreage will be utilized for credit generation.

Attached Figure 1 shows the general location of the proposed mitigation bank, Figure 2 shows the topographic location of the proposed mitigation bank, Figure 7 shows the watersheds of the proposed service area for the proposed mitigation bank, and Figure 8 shows the proposed mitigation development map.

Upon approval of the proposed mitigation bank under the UMBI, the Bank Sponsor would protect the proposed mitigation bank's acreage with a perpetual environmental covenant (along with an appropriate monitoring and enforcement endowment) held by a qualified conservation organization (e.g. land trust). Once all credits generated have been released by the WV IRT, the areas would be maintained under an environmental covenant to which the Bank Sponsor and the landowner would be signatory. A designated third-party manager would be responsible for long-term maintenance after bank closure. The third-party financial assurance designee would be identified in the final mitigation banking instrument. Revenues generated by the sale of mitigation credits would allow the Bank Sponsor to establish a long-term monitoring and maintenance fund for the mitigation banks to provide for the long-term quality and viability of the restored ecosystems.

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.

6. 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.

7. 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 like 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).

8. 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).

9. PUBLIC INVOLVEMENT: 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). The United States (U.S.) 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 proposed mitigation bank.

10. EVALUATION: Interested parties are invited to state any objections they may have to the proposed work. 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 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 issue, modify, condition or deny approval 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.

11. **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. 22-25

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. Alyssa Barkley at the above address, by telephoning (412) 395-7209, or by e-mail at Alyssa.B.Barkley@usace.army.mil. Please refer to LRP-2022-120 in all responses.

FOR THE DISTRICT ENGINEER:



Jon T. Coleman
Chief, Southern Branch
Regulatory Division