



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

Baltimore District
PN-24-35

Public Notice

**In Reply to Application Number
NAB-2012-00567-P31 (PSUMBI – Pine Creek Stream and
Wetland Mitigation Bank)**

Comment Period: November 22, 2024 to December 22, 2024

THE PURPOSE OF THIS PUBLIC NOTICE IS TO INFORM INTERESTED PARTIES OF THE PROPOSED ACTIVITY AND TO SOLICIT COMMENTS. NO DECISION HAS BEEN MADE AS TO WHETHER OR NOT A PERMIT WILL BE ISSUED AT THIS TIME.

The Baltimore District, United States Army Corps of Engineers (Corps) has received a complete mitigation banking instrument modification (“Instrument Modification”) request pursuant to the 2008 Mitigation Rule (33 CFR 332.8(d)) proposing to establish a new compensatory mitigation bank site (“Bank”) under the PSUMBI, approved by the Corps on July 2, 2013, and generate mitigation credits to offset unavoidable impacts to waters of the United States authorized under Section 404 of the Clean Water Act (33 USC 1344), the proposed Bank may also provide alternative types of mitigation for Corps of Engineers 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.

Please note that this public notice (PN-24-35) for the Pine Creek stream and wetland mitigation bank site supersedes the prior PN-23-21 dated April 27, 2023 for this Bank. Since the prior PN, the Sponsor is proposing to expand the Bank boundary through the addition of an additional property parcel that adds 22.76 acres to the proposed mitigation bank.

APPLICANT:

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

WATERWAY AND LOCATION OF THE PROPOSED WORK:

The proposed 49.64-acre compensatory mitigation Bank is located on a 107.63-acre property in unnamed tributaries to Pine Creek, in New Columbus and Huntington Townships, Luzerne County, Pennsylvania with the center of the site located approximately at Latitude: 41.17593°, Longitude -76.273366°. The Bank is located within the 8-digit United States Geological Survey Hydrologic Unit Code (USGS HUC Upper Susquehanna 02-05-01-07).

OVERALL PROJECT PURPOSE:

The Bank Sponsor proposes to establish, design, construct, operate, and maintain a 49.64 acre private commercial wetland and stream compensatory mitigation bank to be known as Pennsylvania Statewide Umbrella Mitigation Banking Instrument (PSUMBI) - Pine Creek Mitigation Bank. The proposed Bank will provide off-site compensatory mitigation for unavoidable impacts to wetlands and other waters of the United States authorized by a Department of the Army (DA) permit within the proposed geographic service area described below.

The draft instrument modification request provides a summary of the development of the proposed mitigation Bank and initiates the Corps' review associated with establishment of this mitigation bank, including the development of an approved mitigation banking instrument (MBI). A final MBI may be prepared by the Bank Sponsor following the Corps' review of the comments received in response to this public notice and determination that the proposed Bank site has potential for providing appropriate compensatory mitigation for activities authorized by DA permits. An approved MBI is the legal document for the establishment, operation, use, and maintenance of the Bank in a way that complies with the regulations governing compensatory mitigation for activities authorized by Department of the Army permits granted by the Corps.

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

https://ribits.ops.usace.army.mil/ords/f?p=107:10:5258322056997:::P10_BANK_ID:6486.

PROJECT DESCRIPTION:

The proposed establishment of this 49.64-acre mitigation bank site involves the re-establishment, rehabilitation, enhancement, and preservation 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 Department of the Army permit. Specifically, the following is a list of project objectives as described by the Bank Sponsor:

1. Rehabilitate approximately 6.16 acres of forested/scrub shrub wetlands, 0.02 acres of emergent wetlands, 2,533.28 linear feet of perennial stream, 5,236.93 linear feet of intermittent stream, and 2,135.48 linear feet of ephemeral stream channel.

2. Re-establish approximately 10.18 acres of forested and scrub-shrub wetlands.
3. Restore 2,968.77 linear feet of perennial stream channel.
4. Enhance approximately 2.17 acres of forested wetlands, 0.73 acres of emergent wetlands, 227.46 linear feet of ephemeral stream channel.
5. The Bank is proposed to be protected in perpetuity via recordation of a real estate instrument such as a conservation easement or restrictive covenant.
6. Upon Bank closure, the bank is proposed to be managed long term by a third-party Long-Term Steward. If a third-party long-term steward is 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 Department of the Army permits. The proposed primary service area for the Bank would include the Upper Susquehanna Watershed, 8-digit USGS HUC: 02-05-01-07 (or Pennsylvania State Water Plan Upper Susquehanna Lackawanna Subbasin No. 5). The proposed secondary service area would include the State Water Plan Subbasins: Great Bend Susquehanna River (04E), Tunkhannock Creek (04F), Mehoopany-Bowman Creeks (04G), Loyalsock Creek (10B), Muncy-Chillisquaque Creek (10D), and Mahanoy-Shamokin Creeks (06B). 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 compensatory mitigation 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 compensatory mitigation Bank will be evaluated pursuant to the 2008 Mitigation Rule (33 CFR Part 332). If the proposal progresses to the Bank Sponsor's submittal of a complete draft MBI to the Corps, the Corps will use the comments received on this public notice to inform an Environmental Assessment completed for the Corps' decision on the MBI.

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 waters of the United States or work within navigable waters of the United States 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 proposed draft instrument modification, the proposed work to develop the compensatory mitigation Bank site may result in temporary and/or permanent impacts to waters of the United States or work within navigable waters of the United States. 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 State 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 NEPA 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 compensatory mitigation bank.

EFFECTS ON AQUATIC RESOURCES:

Activity	Stream Impact (LF)	Wetland Impact (Sq. Ft.)	Authority
Rehabilitate	9,905.69	6.18	Section 404
Re-establish		8.10	Section 404
Restore	2,968.77		Section 404
Enhance	227.46	2.90	Section 404

LEAD FEDERAL AGENCY:

The United States Army Corps of Engineers, 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, United States Fish and Wildlife Service, 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 United States. The Corps chairs the IRT and the Pennsylvania Department of Environmental Protection co-chairs the IRT.

ENDANGERED SPECIES:

A preliminary review of this proposed draft instrument modification indicates that the proposal is not likely to adversely affect 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 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 will have no adverse effect on EFH. The Baltimore District has made a preliminary determination that mitigative measures are not required to minimize adverse effects on EFH at this time. This determination may be modified if additional information indicates otherwise.

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 registered properties listed as eligible for inclusion, therein, are located at the site of the proposed work. The Corps has made the preliminary determination that the proposed project would have no effect 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 United States Army Corps of Engineers. 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.

SUBMISSION 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 the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. 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. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Written comments concerning the work described above related to the factors listed above or other pertinent factors must be received by the United States Army Corps of Engineers, Baltimore District within the comment period specified above through postal mail at the address below or electronic submission to the project manager email address below. Written comments should reference the Application Number NAB-2012-00567-P31.

PUBLIC HEARING REQUESTS:

Any person who has an interest which may be adversely affected by the issuance of this permit may request a public hearing. The request, which must be in writing, must be received within the comment period as specified above to receive consideration. Also, it must clearly set forth the interest which may be adversely affected by this activity and the manner in which the interest may be adversely affected. The public hearing request may be submitted by electronic mail or mailed to the following address:

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

It is requested that you communicate this information concerning the proposed work to any persons known by you to be interested, who did not receive a copy of this notice.

General information regarding the Corps' permitting process 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 Mr. Robert Fewster at (410) 962-6144 or at robert.j.fewster@usace.army.mil with NAB-2012-00567-P31 in the subject line. This public notice is issued by the Chief, Regulatory Branch.