

24 CFR Part 55

8-Step Determination: Floodplain Management &
Wetlands Protection Determination

Alhambra Park Improvements Project
Floodplain Management & Wetlands Protection Determination

February 26, 2020

Introduction & Overview

The purpose of Executive Order (EO) 11988, Floodplain Management, is “to avoid to the extent possible the long- and short-term adverse impacts associated with occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative.” The purpose of EO 11990 Protection of Wetlands is “to avoid to the extent possible the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative.” This report contains the analysis prescribed by 24 CFR Part 55.

This project involves U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant Program – Disaster Recovery (CDBG-DR) funding for improving the existing Alhambra Park infrastructure, increasing the resiliency of the area by stabilizing the shoreline while incorporating green infrastructure and other sustainable elements into the Park’s design, and revitalizing Alhambra Park. The proposed project is located in the hamlet of Massapequa, Town of Oyster Bay, Nassau County, New York. The analysis that follows focuses on the wetland and floodplain impacts associated with this project. Based on the type of land use, facility, and other case characteristics described herein, it is concluded that there is a reasonable basis to proceed with funding for this project/activity within floodplain and wetland.

Description of Proposed Action & Land Use

The Alhambra Park Improvements Project (Project) will involve improving the existing Alhambra Park infrastructure, increasing the resiliency of the area by stabilizing the shoreline while incorporating green infrastructure and other sustainable elements into the Park’s design, and revitalizing Alhambra Park. Alhambra Park, located at the southernmost termination of Alhambra Road, hamlet of Massapequa, Town of Oyster Bay, Nassau County, New York, consists of ten (10) parcels. These parcels will be collectively referred to as Alhambra Park.

The proposed Project will include the following components: clearing and grubbing of grasses, small ornamental trees, and shrubs; in-kind replacement of approximately 1,230 feet of existing timber bulkhead with sheet pile bulkhead and approximately 83-foot timber groin with a sheet pile groin; removal of an existing asphalt parking area; installation of an approximately 620-foot timber boardwalk that ranges from 8-foot – 12-foot wide adjacent to the bulkhead, asphalt walkways, a new 185-foot by 64-foot asphalt parking area, a bio-retention area, a drainage swale, an 8-foot by 35-foot timber kayak ramp with a railing, a kayak launch with a 6.5-foot by 50-foot mobi-mat, a 15-foot by 25-foot timber floating dock with a 4-foot by 60-foot gangway ramp, and eight (8) timber mooring piles for a floating dock and kayaks; re-location of existing riprap; and miscellaneous other site improvements such as adding fencing and vegetation. The Project will also involve abandoning and/or removing existing utility services and the installation of new utility services. The Project area will be graded and native plants will be planted in disturbed areas. Best management practices (BMPs) such as the use of silt fence, filter sock, and a turbidity curtain will be implemented to prevent sediment from leaving the Project upland area.

Superstorm Sandy severely damaged the small existing Alhambra Park and the two adjacent parcels near the end of Alhambra peninsula. After the storm, the informal kayak launch and the small park were unusable. As one of only two places within Massapequa where residents can access South Oyster Bay, the demand to repair, expand, and improve the park is critical, and will provide diverse local benefits. The proposed Project will revitalize Alhambra Park, which is currently comprised of vacant properties, and

will provide the community with enhanced waterfront access, as well as improve resilience, enhance economic development, and add value to the surrounding homes and quality of life. The residents would benefit from the creation and preservation of recreational and educational opportunities as well as the natural buffer provided by an open space equipped to better absorb and manage stormwater, storm surge, and flooding. Reinforcing the shoreline of Alhambra Park will slow the regular erosion and storm impacts of the park's waterfront. The enhanced stormwater capacity will reduce the risk to environmental assets and better protect critical infrastructure by creating needed redundancy for drainage and outflow. The development of walking paths with permeable paving around bio-swales and storm water retention ponds would make the park more overall environmentally sustainable and better able to withstand future storm damage. The improvements to Alhambra Park will also eliminate future development on these parcels, which will serve to intrinsically improve storm protection at the site. By completing the proposed Project, Alhambra Park would have additional storm protection and a stabilized shoreline; and a more resilient enhanced public facility will be created.

The proposed Project is located in a densely populated residential area in the hamlet of Massapequa, which is located in eastern Nassau County. According to the Nassau County Multi-Jurisdictional Hazard Mitigation Plan (2014 Update), approximately 32.25% of the population of Massapequa reside in the 100-year floodplain and approximately 36% of the land in Massapequa is in a high or moderate flood risk area.

During Superstorm Sandy, residents who did not evacuate initially were trapped by flooded roadways as waves surged over the bulkheads and onto coastal neighborhoods. Homes on peninsulas, including those on Alhambra Road, were severely affected by floodwaters during Superstorm Sandy. Coastal parks, such as Alhambra Park, are the primary points of public physical and visual access to the water, and have great potential to be rebuilt in ways that make them more resilient. The proposed Project will revitalize Alhambra Park, which is currently comprised of vacant properties, and will provide the community with enhanced waterfront access, as well as improve resilience, enhance economic development, and add value to the surrounding homes and quality of life. The proposed improvements to the community's ecological and waterfront assets will ensure that the Alhambra Park, with its improvements, will serve to improve resilience, add value to the surrounding homes, and preserve quality of life.

Applicable Regulatory Procedure Per EO 11988

The proposed action corresponds with a noncritical action not excluded under 24 CFR §55.12(b) or (c). Funding is permissible for the use in the floodplain and wetlands if the proposed action is processed under §55.20 and the findings of the determination are affirmative to suggest that the Project may proceed.

The Project occurs in a community that is in the regular program of the National Flood Insurance Program (NFIP) and the community is currently in good standing. Substantial Improvement/ Substantial Damage calculations do not apply to this Project. In accordance with definitions set forth in §55.2, the Project involves new construction in wetlands and modification of the 100-year floodplain; therefore, the decision making steps in §5.20 (b), (c), and (g) apply to the Project. As such, the full eight-step floodplain determination process in §55.20 is required and the following analysis examines each step in the floodplain management and wetlands protection determination process.

Step 1. Determine Whether the Proposed Action is Located in the 100-year Floodplain (500-year for Critical Actions) or results in New Construction in Wetlands.

According to the Federal Emergency Management Agency (FEMA) National Flood Hazard Layer (**Appendix I**), the Project is located in the 100-year floodplain. According to the U.S. Fish & Wildlife Service (USFWS) National Wetlands Inventory Map and New York Department of Environmental Conservation (NYSDEC) Wetlands and Waterways Map and Tidal Wetlands Map, (**Appendix II**), there are wetlands located in the Project area. All applicable permits from the NYSDEC, USACE, and Town of

Oyster Bay will be obtained prior to the commencement of Project activities, and all permit conditions will be followed.

The Proposed Activity will result in approximately 1.6 acres of temporary impacts and 0.4 acres of permanent impacts in the 100-year floodplain; and approximately 0.3 acres of temporary impacts in wetlands. Permanent floodplain impacts are associated with the creation of a new asphalt walkway, bio-retention area, and drainage swale area; removal of an existing parking area; and installation of a new parking area. Temporary floodplain impacts are associated with clearing and grubbing grass, small trees, and shrubs; grading and restoration of the project area by planting native plants; and installation of a timber walkway. Temporary wetland impacts are associated with bulkhead and groin replacement and installation of a floating dock and kayak launch. Best management practices (BMPs) such as the use of silt fence, filter sock, and a turbidity curtain will be implemented to prevent sediment from leaving the project area. Reinforcing the shoreline of Alhambra Park will slow the regular erosion and storm impacts of the waterfront. The proposed stormwater capacity improvements will reduce the risk to environmental assets and better protect critical infrastructure by creating needed redundancy for drainage and outflow. By completing the proposed Project, Alhambra Park would have additional storm protection, a stabilized shoreline, and a more resilient enhanced public facility would be created.

Step 2. Initiate Public Notice for Early Review of Proposal.

Because the proposed Project is located in floodplain, the Governor’s Office of Storm Recovery (GOSR) published an early notice that allowed for public and public agency input on the decision to provide funding for reconstruction and development activities. The early public notice and 15-day comment period is complete. No public comments were received.

An “Early Notice of a Proposed Project in a 100-Year Floodplain and Wetlands” for the Project was published on February 5, 2020 in the Massapequa Observer. The 15-day comment period expired at 5 pm on February 20, 2020. The notice targeted local residents, including those in the floodplain. The notice was also sent to the relevant state and federal agencies: Federal Emergency Management Agency (FEMA); U.S. Dep. of Housing and Urban Development; NYSDEC; NYS Historic Preservation Office; USFWS; USACE; USEPA; NYSDOS; and New York State Office of Emergency Management. The notice was also sent to the Town of Oyster Bay. See **Appendixes III and IV** of this Wetlands Protection and Floodplain Management Determination for the letter distributed to these agencies and the associated newspaper notice affidavit.

Step 3. Identify and Evaluate Practicable Alternatives to Locating the Proposed Action in a 100-year Floodplain (or 500-year Floodplain if a Critical Action) or Wetland.

The New York State Rising Community Reconstruction Program is structured to provide eligible communities resources and expertise to build communities resilient to future flooding events. This community was impacted by Superstorm Sandy, which brought rain, wind, and record-high storm surge that flooded much of the Community. In addition to flooding, trees were downed, power was lost, and homes were damaged.

Under the “no action” alternative, shoreline deterioration would be expected to continue due to erosion and storm impacts. The proposed Project area would continue to be comprised of vacant properties, and the community would not be provided with enhanced waterfront access and improved resilience. The stormwater capacity of the Project area would not be enhanced. The “no action” alternative would provide no protection to the Project area and adjacent residential neighborhoods from future flood events, as mitigation would be compromised due to lack of financial support. Thus, the “no action” alternative is not feasible in relation to the desired objective of creating area resiliency to future flooding events.

Step 4. Identify & Evaluate Potential Direct & Indirect Impacts Associated with Occupancy or Modification of 100-year Floodplain and Potential Direct & Indirect Support of Floodplain and Wetland Development that Could Result from Proposed Action.

The focus of floodplain evaluation should be on adverse impacts to lives and property, and on natural and beneficial floodplain values. Natural and beneficial values include consideration of potential for adverse impacts on water resources such as natural moderation of floods, water quality maintenance, and groundwater recharge.

According to the FEMA Report - A Unified National Program for Floodplain Management, two definitions commonly used in evaluating actions in a floodplain are “structural” and “non-structural” activities. Per the report, structural activity is usually intended to mean adjustments that modify the behavior of floodwaters through the use of measures such as public works dams, levees and channel work. Non-structural is usually intended to include all other adjustments (e.g., regulations, insurance, etc.) in the way society acts when occupying or modifying a floodplain. These definitions are used in describing impacts that may arise in association with potential advancement of this case.

Natural moderation of floods

The Project is intended to provide additional storm protection and a stabilized shoreline, and create a more resilient enhanced public facility. The Project will minimize the loss of human life by stabilizing the shoreline. If no action is taken, a subsequent storm event could result in catastrophic flooding and destruction of the existing bulkheading and adjacent properties, potentially resulting in the loss of life. Federal financial assistance will support activities representing a long-term public investment in a critical piece of infrastructure that is necessary to protect the community of Massapequa and the well-being of its residents and local economy. The Project will stabilize the shoreline of a public area. The intent of the Project is not to develop the shoreline to serve a new purpose, but rather to stabilize and protect the shoreline against erosional forces and improve a public area.

Living resources such as flora and fauna

A potential impact that may arise is that during construction there could be disturbance in the waterbody and the associated wetlands. However, a qualitative evaluation suggests the potential would be relatively minor, and if such releases do occur, it would likely be part of an area wide impact. Given the nature of the Project, the potential for an acute or chronic level of water quality impact from the proposed Project is very low. BMPs will be implemented to protect flora and fauna adjacent to the Project area.

The U.S. Fish and Wildlife Service (USFWS) lists the northern long-eared bat (threatened), piping plover (threatened), red knot (threatened), roseate tern (endangered), sandplain gerardia (endangered) and seabeach amaranth (threatened) as the only threatened, endangered, proposed, or candidate species that may occur within the boundaries of the proposed Project. The Project will involve improving the existing Alhambra Park infrastructure, increasing the resiliency of the area by stabilizing the shoreline while incorporating green infrastructure and other sustainable elements into the Park’s design, and revitalizing Alhambra Park. The Project is located in a developed residential area that does not support or provide habitat for any rare, threatened or endangered plant or animal species. Therefore, GOSR has determined that the proposed Project would have “No Effect” on any federally endangered, threatened, proposed, or candidate species regulated by the USFWS.

National Marine Fisheries Service (NMFS) Maps for the Atlantic Coast indicate that the Project is located within the range of sea turtles, and within the estimated range of Atlantic sturgeon distinct population segments (DPSs). Best Management Practices (BMPs) will be implemented to ensure there are no adverse impacts to species under NMFS jurisdiction, including the use of a turbidity curtain, sediment filter bags, and permit specified BMPs. Since BMPs will be implemented to ensure there are no adverse impacts to

species under NMFS jurisdiction, it has been concluded that there would be “no effect” on the listed marine species or EFH as a result of the proposed Project activities.

Impacts to Property & Lives

The highest priority of this review is to prevent the loss of life. The proposed Project is intended to improve the existing Alhambra Park infrastructure, increasing the resiliency of the area by stabilizing the shoreline while incorporating green infrastructure and other sustainable elements into the Park’s design, and revitalize Alhambra Park. The proposed Project will minimize the loss of human life by stabilizing the shoreline along the community of Massapequa. If no action is taken, a subsequent storm event could result in catastrophic flooding and destruction of the adjacent existing residences and businesses, potentially resulting in the loss of life. Federal financial assistance will support activities representing a long-term public investment in a critical piece of infrastructure that is necessary to protect the community of Massapequa and the well-being of its residents and local economy.

Cultural resources such as archaeological, historic & recreational aspects

The New York State Historic Preservation Office confirmed on August 22, 2019 that there will be “no historic properties, including archaeological and /or historic resources, affected” by the Project, as documented in **Attachment 10** of the Alhambra Park Improvements Project Environmental Review Record Report.

Agricultural, aquacultural, & forestry resources

There is substantial agriculture and fishing industry on Long Island including aquaculture, however none in the immediate area of the project site. The 2012 State Comptrollers Report, [Agriculture in Long Island](#), indicates that aquaculture brought in approximately \$7.6 Million in sales revenue, representing 2.9% of the total economic share. It is possible during the short-term construction activities the disturbance could impact local water quality and this economic sector, although the impact attributable to this use could not be quantitatively derived. However, a qualitative analysis suggests that the impact would be very small and very localized as mitigative measures and BMPs will be utilized during construction. These measures include, but are not limited to, installing temporary silt fencing on land to prevent soil and/or debris from being washed off-site and installing turbidity curtains in the water to minimize sediment transportation from the area of disturbance to the larger body of water. Project activities will be completed in accordance with all applicable federal, state and local permit requirements and conditions. Therefore, no or very minor localized temporary impacts from the proposed Project activities could be anticipated.

Wetland Evaluation

The purpose of wetland evaluation is to consider factors relevant to a proposal’s effect on the survival and quality of the wetland. These factors should include public health (including water supply and water quality), maintenance of natural systems, cost increases attributed to construction in wetland, and other uses of wetland in the public interest.

Public health, safety, and welfare, including water supply, quality, recharge, and discharge; pollution; flood and storm hazards and hazard protection; and sediment and erosion.

The proposed action is located in wetlands that are designated by the USFWS and NYSDEC. These are not directly used for water supply. The Project is not suspected to pose a threat to public health and safety, or to increase flood and storm hazards, as the Project solely involves improvements of existing shoreline stabilization structures and improvements to publicly accessible land. The proposed action will not decrease the area of wetlands.

Maintenance of natural systems, including conservation and long-term productivity of existing flora and fauna; species and habitat diversity and stability; natural hydrologic function; wetland type; fish; wildlife; timber; and food and fiber resources.

The proposed permanent floodplain impacts are associated with the creation of a new asphalt walkway, bio-retention area, and drainage swale area; removal of an existing parking area; and installation of a new parking area. The proposed temporary floodplain impacts are associated with clearing and grubbing grass, small trees, and shrubs; grading and restoration of the project area by planting native plants; and installation of a timber walkway. The proposed temporary wetland impacts are associated with bulkhead and groin replacement and installation of a floating dock and kayak launch. The Project will improve the community's natural and engineered stormwater management and flood control systems to build resilience against future flooding. Therefore, implementation of the Proposed Project will preserve the natural and beneficial functions and values of the floodplain and wetlands. The proposed Project will stabilize the shoreline of a public area that currently provides the public with access to the waterfront. The intent of the proposed Project is not to develop the shoreline to serve a new purpose, but rather to stabilize and protect the shoreline against erosional forces and improve a public park and waterfront access.

Cost increases attributed to wetland-required new construction and mitigation measures to minimize harm to wetlands that may result from such use.

The Project will not involve cost increases attributed to wetland-required new construction. Mitigation measures will be implemented to minimize harm to wetlands during construction. BMPs will be implemented to ensure there are no adverse impacts to wetlands, including the use of a turbidity curtain and sediment filter bags. All applicable permits from the NYSDEC, USACE, and Town of Oyster Bay will be obtained prior to the commencement of Project activities, and all permit conditions will be followed. There are not anticipated to be any additional cost increases attributed to necessary mitigation measures to minimize harm to wetlands that may result from such use.

Other uses of wetland in the public interest, including recreational, scientific, and cultural uses.

According to the Outdoor Industry Association's two page fact sheet [New York the Outdoor Recreation Economy](#), outdoor recreation generates \$338 billion in consumer spending and 305,000 direct jobs within the State. This is an important sector of the regional and local economy. As such, the proposed activities will revitalize Alhambra Park after it was damaged by Superstorm Sandy and stabilize the shoreline at Alhambra Park, which is utilized by the public as a recreational park and for enjoyment of the waterfront.

Step 5. Where Practicable, Design or Modify the Proposed Action to Minimize the Potential Adverse Impacts To and From the 100-Year Floodplain and to Restore and Preserve its Natural and Beneficial Functions and Values.

The proposed Project will stabilize the shoreline of a public area and revitalize a park that was damaged by Superstorm Sandy, incorporating green infrastructure and other sustainable elements into the park's design. The intent of the proposed Project is not to develop the shoreline to serve a new purpose, but rather to stabilize and protect the shoreline against erosional forces and improve a public park. The Project would mitigate future flood risk and minimize potential impacts to the surrounding community located within the 100-year floodplain. Applicable permits from the NYSDEC, USACE, and Town of Oyster Bay will be obtained prior to the commencement of Project activities, and all permit conditions will be followed. BMPs will be employed to preserve natural values, lives, and living resources. Utilizing BMPs will confine impacts to the floodplain and wetlands to the proposed Project location. The Project has been designed to minimize potential adverse impacts to and from the 100-year floodplain and preserve its natural and beneficial functions and values.

Step 6. Reevaluate the Alternatives and Proposed Action.

The proposed Project is intended to stabilize and protect the shoreline against erosional forces. The potential alternatives are not practicable or feasible. The "no action" alternative for not funding the Project would not address the purpose and need of the proposed action. Without the proposed action, the impacted community would be left more susceptible to future flooding events in this area than it would after the implementation of the proposed action. Therefore, the "no action" alternative examined is not

considered desirable and the proposed action is still practicable in light of exposure to flood hazards in floodplain, possible adverse impacts on floodplain and wetlands, the extent to which it may aggravate current hazards to other floodplains, and the potential to disrupt natural and beneficial functions and values of floodplains and wetlands. Additionally, implementation of the proposed action will abide by all applicable state and local codes for floodplain development. As such, the impact of the proposed action on the floodplain and wetlands would be less the “no action” alternative.

Step 7. Issue Findings and Public Explanation.

A final notice, formally known as “Final Notice and Public Review of a Proposed Activity in a 100-Year Floodplain and Wetlands”, was published in accordance with 24 CFR 55. This public notice was combined with the “Notice of Finding of No Significant Impact and Notice of Intent to Request Release of Funds (FONSI-NOIRROF)” on February 26, 2020 in the Massapequa Observer. The final notice requires a 7-day comment period after publication; however, the FONSI-NOIRROF requires a 15-day comment period. As such, a 15-day comment period was used for this Final Notice. The 15-day comment period expires at 5pm on March 13, 2020. The combined notice describes the reasons why the Project must be located in the floodplain and wetlands, alternatives considered, and all mitigation measures to be taken to minimize adverse impacts and preserve natural and beneficial floodplain and wetland values. Project activities will be completed in accordance with all applicable federal, state and local regulations.

Step 8. The Proposed Action Can Be Implemented After the Above Steps Have Been Completed.

GOSR, operating under the auspices of the New York State Homes and Community Renewal’s (NYSHCR) Housing Trust Fund Corporation as the responsible entity, will ensure that the Proposed Action, as described above, is executed and necessary language will be included in all agreements with participating parties. Implementation of the proposed action may require additional local and state permits, which could place additional design modifications or mitigation requirements on the Project. It is acknowledged there is a continuing responsibility by the responsible entity to ensure, to the extent feasible and necessary, compliance with the steps herein.