



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278-0090

JAN 06 2015

Reply to:
Regulatory Branch

Subject: Living Breakwaters Project
Borough of Staten Island, Richmond County, New York

Mr. Daniel Greene, Deputy General Counsel
New York State Governor's Office of Storm Recovery
25 Beaver Street, 5th Floor
New York, New York 10004

Dear Mr. Greene:

On December 10, 2014, Regulatory Branch staff from the New York District of the U.S. Army Corps of Engineers attended a meeting of the Sandy Recovery Federal Review and Permitting Team, during which the New York State Governor's Office of Storm Recovery (GOSR) and its consultants provided a briefing on the Living Breakwaters project proposed for the south shore of Staten Island. This project is one of the proposals being brought forward under the Rebuild by Design (RBD) program, with the sponsorship of the Federal Emergency Management Agency (FEMA) and the U.S. Department of Housing and Urban Development (HUD).

Based on this briefing, it appears that the construction of the proposed project will require a Department of the Army permit pursuant to Section 10 of the Rivers Act of 1899 (Title 33 of the United States Code, Section 403) and Section 404 of the Clean Water Act (Title 33 of the United States Code, Section 1344).

During the course of the meeting, several issues were identified that should be addressed before the project sponsor (which is yet to be specifically determined) submits an application for such Department of the Army authorization. These include:

- a. The importance of accurately defining the basic purpose, the overall purpose, and the need for the project, in a regulatory sense;
- b. The importance of setting out the scope and extent of the current project as proposed, as it appears that there are ancillary projects (dunes and levees) also under consideration in the immediate area that may have roles that tie them into the breakwater project;
- c. The consideration of possible impacts to the adjacent federal channel (and its side slopes), especially in the western part of the project, that may require review under Section 14 of the Rivers and Harbors Act of 1899 (Title 33 of the United States Code, Section 408);

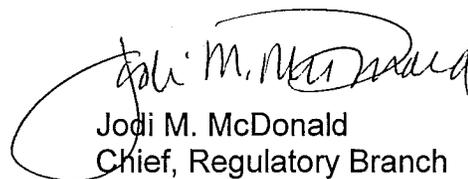
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- d. The appropriateness of the choice of oysters as the target species for restoration, as this could create an attractive nuisance;
- e. The potential for negative impacts to sediment transport, and shoreline accretion and erosion, from the change in the dynamics of the normal wave action;
- f. The possible negative impacts of slowing tidal exchange (flushing) on the shoreward side of the breakwater, and the possible sequestration of contaminants, plant nutrients, and pathogens in the area between the breakwaters and the shore, as well as the impact on dissolved oxygen levels;
- g. The impacts on existing benthic, littoral, and psammon communities in the area of the breakwater, between the breakwater and the shore, and along the shoreline respectively, and the possible requirements for mitigation for such impacts; and
- h. The possible impacts of the refraction of wave energy by the breakwater during storm events to the Arthur Kill and the neighboring shoreline of New Jersey.

Once these issues are addressed, this office anticipates that the project sponsor designated by your office will proceed with the timely submittal of an appropriate permit application. This office looks forward to working with your office on this challenging project. If any questions arise concerning this matter, please contact Dr. Chris Mallery, Deputy Chief of the Regulatory Branch, at 917-790-8418.

Sincerely,



Jodi M. McDonald
Chief, Regulatory Branch

c: HUD
FEMA
NYSDEC
USEPA



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FEB 27 2015

SUBJECT: Governor's Office of Storm Recovery – Staten Island Living Breakwaters and Tottenville Dune Projects, Borough of Staten Island, Richmond County, NY – Cooperating Agency Request and Preliminary Draft Scope for Environmental Review

Daniel Greene
Deputy General Counsel and Certifying Officer
Governor's Office of Storm Recovery
25 Beaver Street
New York, NY 10004

Dear Mr. Greene:

Thank you for your letter dated January 30, 2015 requesting that the U.S. Army Corps of Engineers be a cooperating agency in the National Environmental Policy Act (NEPA) review process for the Governor's Office of Storm Recovery Staten Island Living Breakwaters and Tottenville Dune projects and to provide comments on the preliminary draft scope for environmental review. This letter serves to supplement my letter of January 6, 2015, copy enclosed. The proposed project would consist of a system of breakwaters along approximately 13,000 linear feet of the south shore of Staten Island, New York and an upland dune system in the same geographic location.

As the proposed structures would require a Department of the Army permit, the U.S. Army Corps of Engineers will be a cooperating agency in the preparation of an Environmental Impact Statement under NEPA. We look forward to working with your agency as the document is developed to ensure the information presented in the EIS is adequate to fulfill the requirements of Corps regulations, the Clean Water Act (CWA) Section 404(b)(1) Guidelines, and the Corps public interest review process.

To meet the requirements of the Corps, we request that the following topics be comprehensively evaluated in the EIS:

1. Purpose and Need for the Project. In order to satisfy Department of the Army regulations, the Corps will review and comment on the purpose and need statement for the project. The purpose and need statement should satisfy the Department of the Army

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regulations for review of the project under Section 404 of the CWA and Section 10 of the Rivers and Harbors Act.

2. Clean Water Act Section 404(b)(1) Guidelines. The 404(b)(1) Guidelines require an alternatives analysis which addresses how impacts to waters of the United States and wetlands have been avoided and minimized. If impacts to waters of the United States and wetlands have been minimized to the maximum extent practicable, the alternatives analysis identifies the compensatory mitigation required to replace lost functions and services of the aquatic resources. Information on the alternatives analysis and the results of any studies, assessments and evaluations of the proposed project are needed in the Environmental Impact Statement. The range of alternatives in the alternatives analysis must be based on the project purpose. The alternatives analysis must address all practicable alternatives to the discharge of dredged or fill material for the breakwaters. The Corps will review and comment on the range of alternatives retained for detailed study in the EIS.

3. Corps Public Interest Review. The decision to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Factors that must be evaluated as part of the Corps' public interest review include: conservation, economics, aesthetics, general environmental concerns, wetlands, historic and cultural resources, fish and wildlife values, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, energy needs, safety, food and fiber production, mineral needs, water quality, consideration of property ownership, air and noise impacts, and in general, the needs and welfare of the people. Each of the Corps' public interest factors must be evaluated comprehensively in the EIS.

4. Delineation of all wetlands and waters within the project study area. This would include construction staging areas or access roads, and property identified for compensatory mitigation.

5. Quantification of Impacts to all waters of the United States, including wetlands.

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- a). Permanent loss: Those impacts resulting from the direct discharge of dredged or fill material into wetlands or waters of the United States.
 - b). Temporary impacts: Those impacts resulting from the placement of dredged or fill material where the dredged or fill material would be removed and waters/wetlands will be restored, and
 - c). Direct Secondary impacts: Those impacts due to the placement of dredged or fill material into wetlands or waters that would result in changes to the overall size of the wetlands or waters, hydrology, cover type, species assemblage, or in habitat fragmentation.
6. Analysis of cumulative and indirect impacts resulting from the placement of dredged or fill material into aquatic resources and from the overall project.
 7. Proposed compensatory wetland and/or open water mitigation plan that provides for the replacement or compensation of lost functions and services, including temporal losses in accordance with the Environmental Protection Agency/Corps Mitigation Rule dated April 10, 2008.
 8. Analysis of the project's compliance with Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, and the Magnuson-Stevens Fishery Conservation and Management Act.
 9. Air quality impacts (e.g. Section 176(c) of the Clean Air Act General Conformity Rule).

In addition, the evaluation of the proposed structures in accordance with Title 33 of the United States Code Section 408, regarding possible impacts to the adjacent federal channel and its side slopes, is required. As suggested at the meeting on February 26, 2015, I recommend you participate in a pre-application meeting with appropriate technical staff from the US Army Corps of Engineers, New York District, especially the Regulatory Branch and Operations Support Branch.

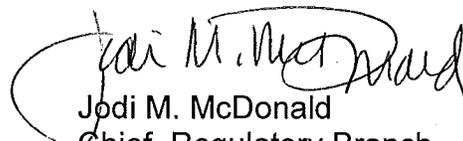
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We look forward to working with your agency as the NEPA document is developed and the overall review as the project proceeds. Should you have any questions concerning this matter or to set up a pre-application meeting, please contact Dr. Christopher Mallery, Deputy Chief, Regulatory Branch at 917-790-8418.

Sincerely,



Jodi M. McDonald
Chief, Regulatory Branch

Enclosure

CF:
USEPA – Region 2
USFWS – Long Island Field Office
NMFS – Sandy Hook
NMFS – Gloucester
NYSDEC Region 2
NYSDOS