

September 25, 2024

US Army Corps of Engineers
New York District
Jacob K. Javits Federal Building
New York, N.Y. 10278-0090
ATTN: Regulatory Branch

Comments on Pre-Construction Notification
Permit Application Number NAN-2024-00797-EMI by Newtown
Development, LLC for Bank Stabilization

To Whom It May Concern;

We are writing to offer comments on the Pre-Construction Notification for seawall removal and new bulkhead construction at 364 Maspeth Avenue in Brooklyn, NY in the English Kills tributary of Newtown Creek.

The Newtown Creek Alliance is a community-based organization dedicated to restoring, revealing, and revitalizing Newtown Creek. We work to restore community health, water quality, habitat, access, and vibrant commerce along Newtown Creek. Since 2002, the Alliance has served as a catalyst for effective community action.

We acknowledge that this application is being processed under Nationwide Permit (NWP) 13 - Bank Stabilization, and that NWP verifications do not require public notice or public comment periods (33 CFR 330.6 describes the process of NWP verifications). So we appreciate the agencies' considerations of our comments below. While this project is small in scope, removing existing seawall and construction of a new approximately 154 linear feet of sheet pile bulkhead, it is occurring at a critical site on Newtown Creek.

Proximity to High Levels of Sediment Contamination

The sediments in the Newtown Creek off the shores of 364 Maspeth Ave have some of the highest concentrations of Chemicals of Primary Concern (CoPCs) for the entire Superfund Site. This primarily includes PAHs and PCBs - including the single highest level of Total PAHs in subsurface sediment.¹ Additionally, this is one of the most active areas within the Superfund Site for the transportation of sediment based chemicals through ebullition.²

It is crucial that any construction in hotspot areas like this have high levels of coordination with EPA and NYS DEC, and implement extensive safety measures and protocols to protect human and ecological health through the likely disruption of highly contaminated sediments. We ask that the agency require

¹ https://drive.google.com/file/d/1PjyXXY0D1ha2InhzbhBxm-Gx7_wrt_Rv/view?usp=sharing EPA presentation Newtown Creek Superfund Site Technical CAG Meeting February 20, 2018.

² <https://drive.google.com/file/d/1ubNRhbdXQtBBxXV3klupDJwKPrRtCQkV/view?usp=sharing> NYC DEP Ebullition Study Reconnaissance Areas, 2015.

robust monitoring protocols while the working is taking place to document and reduce any potential disruption, migration and recontamination.

Superfund Remediation Considerations

Newtown Creek is a federally designated Superfund Site, with high concentrations of hazardous chemicals located within the sediment beds of the Creek. The Creek was listed on the National Priorities List (NPL) in 2010, but a Record of Decision (ROD) will not be completed until 2028 (estimated)³. As discussed above, this section of English Kills is one of the most contaminated areas of the site, but we do not yet know what an EPA led remediation strategy for this area will consist of. Our organization is supportive of a thorough and comprehensive cleanup that prioritizes removal of sediment contaminants and prevention of ongoing pollution sources.

Because bulkhead replacements will likely be considered necessary components of a remedy, both to prevent shoreline failure with deep in-water dredging, and as a potential measure to prevent recontamination of the Creek through upland sources, it is very important to consider this project in the larger context and implement a bulkhead system that can withstand typical demands in a Superfund context.

Intertidal Loss and Ecological Mitigation

We are concerned that this project is not properly considering the ecological impacts on the marine environment inherent within the project. The existing “seawall” is in fact an ecologically valuable naturalized shoreline where wetland plant species have lived for many decades. We ask that the agency properly evaluate the existing conditions and plant life at this site. There will be ecological disruption and habitat loss by replacing this intertidal area with a vertical sheet pile bulkhead. There are numerous examples nearby where USACE and DEC have required shoreline replacement typologies that address ecological impact, including the property next door at 340 Maspeth Avenue (TNT Scrap).

In addition to loss of wetland and intertidal habitat there are a number of mature trees and plants along the existing shoreline that will need to be removed for this proposed project. As documented in our current Tree Planning Project this area along English Kills has both significantly low tree canopy and extremely high heat index in the surrounding Industrial Business Zone.⁴ The loss of mature trees in this area will further ecological and human health risk for local wildlife and workers alike. As such, we request that mitigation be required for the loss of these trees, and that the USACE or NYSDEC pursue mitigation locally, on shorelines adjacent to the site.

We appreciate your consideration of these comments.

Sincerely,



Willis Elkins

Executive Director

welkins@newtowncreekalliance.org

347-504-6701

³ <https://newtowncreekcag.org/about-the-superfund-site/>

⁴ https://drive.google.com/file/d/1ftPWciHDM1HRy26_POy1OG0s_-ni3CF7/view?usp=sharing

CC:

Rodney Rivera, NYS DEC Acting Region 2 Director

Steve Watts, NYS DEC Region 2 Division of Water

Michael Haggerty, NYS DEC Newtown Creek Project Manager

Patrick Foster, NYS DEC

Rupika Ketu, EPA Remedial Project Manager

Caroline Kwan, EPA Remedial Project Manager

Stephanie Vaughn, EPA Remedial Project Manager

Mike Dulong, Riverkeeper, Senior Attorney