

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON WATERFRONTS WITH COMMITTEE ON ECONOMIC DEVELOPMENT

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February 27, 2015
Start: 10:23 a.m.
Recess: 12:25 p.m.

HELD AT: Council Chambers - City Hall

B E F O R E:

DEBORAH L. ROSE
Chairperson

DANIEL R. GARODNICK
Co-Chairperson

COUNCIL MEMBERS:

CHAIM M. DEUTSCH
COREY D. JOHNSON
PAUL A. VALLONE
DONOVAN J. RICHARDS
I. DANEEK MILLER
INEZ D. BARRON
JULISSA FERRERAS
KAREN KOSLOWITZ
MARK S. WEPRIN
RUBEN WILLS
VINCENT J. GENTILE

1 COMMITTEE ON WATERFRONTS WITH COMMITTEE ON ECONOMIC DEVELOPMENT 2

2 [gavel]

3 CHAIRPERSON ROSE: Good morning. This
4 hearing is now called to order. It is the joint
5 hearing on the examination of the use of mitigation
6 banking for waterfront restoration. And it is with
7 the Committee on Waterfronts and the Committee on
8 Economic Development. Good morning, my name is
9 Debbie Rose and I'm the chair of the city Council's
10 Committee on Waterfronts. I'd like to thank very
11 much my colleague and Council Member Dan Garodnick
12 who is the chair of the economic development
13 committee for agreeing to hold this hearing
14 jointly. I'd like to welcome the administration,
15 advocates, and members of the public to our hearing
16 which will focus on the EDC led MARSHES initiative
17 and the practice of mitigation banking. Whenever a
18 development project is proposed to occur on
19 wetlands that project is required to obtain a
20 permit from the State Department of Environmental
21 Conservation in order to commence with
22 construction. With such a project, if such a
23 project will result in damaging part of the wetland
24 the Federal Clean Water Act and state law will
25 require the developer to engage in what is known as

compensatory mitigation to replace the loss or damaged land in order to enforce the no net loss policy when it comes to wetlands. With a traditional on-site mitigation the developer would be required to replace or, or repair the lost or damaged wetlands at cost in order to receive the permit. However the practice of mitigation banking off, offers an alternative where a wetland will be restored, created, or enhanced. This area is then set aside to compensate for the future loss of other wetlands resulting from development activities. Instead of the project developer doing the mitigation the developer will purchase credits generated in part from the acreage of the bank that will be used to meet their requirements for compensatory mitigation. Instead of traditional onsite mitigation where we rely on the developer at some point in the future to complete mitigation work. With mitigation banking the mitigated area has already been created beforehand and will be in part supported by the funds that developers use to purchase the bank's credits. This process will be used in the MARSHES initiative. I know EDC will detail this plan in their testimony. But as a brief

synopsis MARSHES will be the first mitigation bank ever in the city in which Saw Mill Creek, a wetland area that has long been neglected and on Staten Island will be restored and designated as a mitigation bank and managed by EDC and eventually the Parks Department. Credits generated by the bank can be sold by EDC to public agencies, private property owners, and any other groups that seek to develop on wetlands in the service area designated under the initiative. This initiative and mitigation banking and general sound very promising with its noted positives including having a government entity responsible for the mitigation rather than a developer relieving uncertainty about whether or not the required compensatory mitigation is successful in offsetting wetland losses and reducing permit processing times. However while banking has clear benefits there are a number of concerns and unanswered questions that I'd like to delve into. Especially since this is the first time we are attempting to use this type of mitigation in New York City. Specifically we want to examine how the restored creek will benefit Staten Island residents and whether it will improve the storm

1 COMMITTEE ON WATERFRONTS WITH COMMITTEE ON ECONOMIC DEVELOPMENT 5
2 resiliency of the immediate area. How will the
3 money spent on the credits be allocated whether
4 traditional on site compensatory mitigation will
5 still be used for any wetland projects in the city
6 and how will that decision be made. Will members of
7 the public have any say as to how this will be
8 implemented and how long will the bank take to
9 implement. I hope this hearing will provide more
10 insight regarding the complexities and beneficial,
11 and the potential benefits of the MARSHES project
12 and mitigation banking. But more importantly I hope
13 the hearing can serve to guide the various levels
14 of government in taking solid steps to ensure that
15 current and future wetland mitigation efforts
16 benefit all New Yorkers. I want to thank you again
17 and welcome you. And I want to thank the
18 Waterfronts Committee council Chris Satori and
19 Patrick Movahil who is our policy analyst and Allie
20 Alayah who is the financial analyst as well as the
21 economic development committee's council policy
22 analyst and financial analyst. And now we'll have
23 opening remarks by Council Member Garodnick.

24 COUNCIL MEMBER GARODNICK: Thank you
25 very much. Thank you very much Council Member Rose,

Chair Rose. Let me just note that we have been joined by Council Members Corey Johnson, Paul Vallone, and Chaim Deutsch, and Karen Koslowitz. And we look forward to having this hearing today about this implementation of a new and novel mechanism for preserving the city's wetlands. As Chair Rose noted wetlands are a critical part of the city's local environment. They provide more than just a habitat for coastal plant and animal life they also keep river levels stable and prevent flooding by soaking up water during storms or periods of high tide. Preserving our wetlands therefore serves a dual function maintaining the ecological diversity of the city's waterfront areas while also protecting the city's coastline from damage caused by storms and flooding. We certainly have seen our share of that. One method of preserving wetlands is known as mitigation banking which is what we're talking about today. And Council Member Rose described that in summary so I will note, not go back through it. But on the subject of the MARSHES initiative this is going to be the city's first attempt at wetland mitigation banking which requires that anyone seeking a

development permit in a wet land area to purchase these credits from a different wetland that has already been protected or restored in order to offset the damage caused by the development. The credits would then be used by the managers of the protected wetland to fund restoration or conservation projects in other regional wetlands. While there are a variety of compensatory mitigation schemes available wetland mitigation banking may be preferable to some others because the responsibility to designate the bank site and carry out restoration work is on the agency responsible for the bank instead of the private developer. Proponents of this process highlight the positive economic impacts of programs like the MARSHES initiative going to have upon those seeking development permits as well as upon the impacted ecosystems themselves. When properly implemented mitigation banks should reduce the cost of developers who would no longer need to conduct mitigation work on their own similarly the environmental cost to wetland ecosystems is typically reduced through, to, through mitigation banking since protected areas are consolidated and

1 COMMITTEE ON WATERFRONTS WITH COMMITTEE ON ECONOMIC DEVELOPMENT 8
2 managed by experienced environmental professionals.
3 Mitigation banking should improve the functionality
4 of coastal ecological systems by ensuring the long
5 term protection of large wetland areas. So with
6 that we are looking forward to the hearing today
7 and the committee on economic development is
8 particularly interested in hearing from EDC with
9 respect to the progress of sawmill basin, the
10 estimated cost of the credits for developers, the
11 impact of the initiative on the city's existing
12 compensatory mitigation schemes and the projected
13 long term economic impact of wetland mitigation
14 banking on the city. Big picture how are the sites
15 determined, who qualifies, how do we figure it out,
16 who holds and allocates the money, all these basic
17 nuts and bolts questions I think are pretty core to
18 this hearing today and we look forward to speaking
19 with you about those issues. So thank you Chair
20 Rose.

21 CHAIRPERSON ROSE: Thank you Chair.
22 Excuse me? Yes. So our first panel will be from the
23 administration and it will consist of Ray Fusco
24 from EDC, Max Taffet from New York EDC, Joseph
25 Coletti New York City EDC, and Bill Tai from New

1 COMMITTEE ON WATERFRONTS WITH COMMITTEE ON ECONOMIC DEVELOPMENT 9

2 York City Parks. And we will swear you in. So raise
3 your right hand. And do you affirm to tell the
4 truth, the whole truth, and nothing but the truth
5 in your testimony before this committee and to
6 respond honestly to committee, council members'
7 questions.

8 [combined affirmations]

9 CHAIRPERSON ROSE: Yes, okay. Everybody
10 said yes?

11 UNIDENTIFIED MALE: Yes.

12 CHAIRPERSON ROSE: Okay alright. And now
13 would you please identify yourself and present your
14 testimony.

15 RAY FUSCO: Good morning Chairperson
16 Rose and Chairman Garodnick, and members of the
17 Waterfront and Economic Development Committees. My
18 name is Ray Fusco and I am Assistant Vice
19 President in Ports and Transportation at New York
20 City Department of Economic, New York City Economic
21 Development.

22 [cross-talk] [off mic]

23 RAY FUSCO: Sure. Thank you for this
24 opportunity to provide an update on MARSHEs pilot
25 project, MARSHEs or mitigation and restoration

COMMITTEE ON WATERFRONTS WITH COMMITTEE ON ECONOMIC DEVELOPMENT 10

strategy for habitat and ecological sustainability

is an effort to create the city's first wetland

mitigation bank. Mitigation banking is, is defined

as a large scale restoration, creation,

enhancement, or preservation of a wetland stream or

other habitat area undertaken expressly for the

purpose of compensating for unavoidable impacts to

natural resources such as title wetlands in advance

of project actions. This is only for instances when

such compensation cannot otherwise be achieved at

project sites. We must emphasize the existence of a

mitigation bank does not affect the rigor

undertaking during a federal, state, or local

review of waterfront and environmental permitting.

The requirements to avoid, minimize, and only then

mitigate for wetland impacts remains in place.

Mitigation banking is a nationally proven federal

program designated under the clean water act to

ensure that the policy of no net loss of wetlands

could be met. There are 28 states that have

established over 1,000 mitigation banks since 1990

resulting in the restoration of over 960 thousand

acres of wetlands. In New Jersey within the New

York district of Army Corp of Engineers there are

four existing wetland mitigation banks. EDC working with New York City Department of Parks and Recreation is proposing to develop the bank on an approximately 68 acre city owned site at sawmill creek on the west shore of Staten Island. The site is comprised of severely degraded wetlands prior to coming into city's position portions of the site were filled, ditched, and suffered from illegal dumping. The present state of the site impedes tidal flow encouraging the growth of invasive species, the area no longer provides a resiliency or habitat function of a healthy wetland.

Implementing sawmill creek wetland mitigation bank will restore and rehabilitate the site. The west shore of Staten Island near the sawmill creek is adjacent to hundreds of residents, businesses, and the significant transportation corridor of the west shore expressway. The December 2012 special initiative for rebuilding and resiliency, SIRR report found that the area incurred some of the most severe flooding of any part of New York City during Hurricane Sandy. SIRR identifies the sawmill creek as a priority restoration site. The current degraded conditions of the wetlands puts local

COMMITTEE ON WATERFRONTS WITH COMMITTEE ON ECONOMIC DEVELOPMENT 12

residents and businesses at risk during significant storm events. The restoration of sawmill creek and the establishment of the mitigation bank in New York City is part of the city's official comprehensive resiliency plan post Sandy. Sawmill creek is also listed as a priority restoration site in the Army Corp of Engineers 2009 Comprehensive Restoration Plan which identifies sites throughout New York New Jersey estuary that possesses important ecological functions needing restorations. To address the sites vulnerabilities EDC and parks undertook the process of creating a mitigation bank. The clean water act rule empowers federal and state resource agencies to oversee the development of the bank through a process that guarantees better ecological outcomes than traditional mitigation. It also mandates stakeholder involvement through agency and public comment. The federal and state agencies involved in the establishment of the sawmill creek mitigation bank include the US Army Corp of Engineers, the Environmental Protection Agency, Fish and Wildlife Service, National Marine Fishery Service, along with New York State Department of Environmental

Conservation, and the Department of State. This group makes up the interagency review team, the IRT, chaired by the Army Corp. Each of the IRT members participates in the federal process of establishing a mitigation bank by providing its own agency expertise on environmental construction and long term maintenance aspects of the project. A key component of wetland mitigation, wetland banks, is a credit system in which credits are sold to entities undertaking construction projects that will affect waters of the United States. This could include any project built within the coastal zone such as a sewer outfall, a bulkhead restoration, a dock, ferry landing, or a public esplanade. The credits generated from the pilot are due, are to be made available for priority city initiatives and businesses in need of an appropriate compensatory mitigation. Beyond the extensive IRT process for determining the ability of projects to use credits for compensatory actions EDC is in the process of designing a structure and criteria for credit allocation. Credits are generated as the site is restored under a rigorous uplifts demonstrated to the satisfaction of of the regulatory agencies. The

specific success criteria are defined in a mitigation banking instrument, the MBI. Credit sales are crucial to the successful banks because they provide the financial support for the entire wetland restoration and site management in perpetuity. In contrast New York's current mitigation approach is largely at hawk. Mitigation takes place on a case by case basis where restoration sites are identified by project sponsors and regulators through a lengthy negotiation process. For permeates mitigation ratios are often unpredictable and difficult to identify. Negotiated mitigation actions often take place on a small and disconnected site with no long term stewardship obligation to guarantee restoration success. Wetlands are exponentially more effective as larger systems and when located adjacent to high functioning natural areas while the clean water act does oversee the current ADHOC [phonetic] system of compensatory mitigation the rules for establishing mitigations banks are more explicit in their requirement to establish long term stewardship funding. To fund MARSHEs the sawmill creek's initial support will come from

Community Development block grants disaster recovery funds and the state of New York. An important element in the pilot project is our technical advisory committee made up of more than a dozen environmental and other waterfront stakeholders such as the environmental defense fund, the New York City league of conservation voters, New York City Auto Bond Society, the Hudson River Foundation, the Regional Plan Association, and the Metropolitan Waterfront Alliance among others. The attack has been a vital sounding board in confirming the need for mitigation banking, identifying sawmill creek as a priority restoration site as well as validating the site design and methodology. We can also affirm that that they have provided a healthy dialogue which has made the project better. The project is currently in the preconstruction phase. We expect to receive approvals by fall of 2014. Restoration and planting will occur over the next two years followed by a five to six years of monitoring and maintenance. At the end of that period all bank credits will be generated and available for use. All the credit are exhausted, once all the credits are exhausted the

1 COMMITTEE ON WATERFRONTS WITH COMMITTEE ON ECONOMIC DEVELOPMENT 16

2 bank will be closed and long term stewardship under
3 the parks and recreation will begin. In closing
4 this is a tremendous opportunity that the city can
5 embrace to unlock resources that can be directed to
6 restore large wetland systems while still
7 protecting existing wetlands under current laws. If
8 successful the model can be implemented at
9 appropriate sites throughout the city such as
10 Jamaica Bay, the Bronx, and northern Queens using
11 both public and private lands and funds. We
12 appreciate the opportunity to update both
13 committees and look forward to your questions.
14 Thank you.

15 CHAIRPERSON ROSE: Thank you. Mr. Tai.

16 BILL TAI: Morning Chair Rose, Chair
17 Garodnick, and members of the Waterfront and
18 Economic Development Committees. My name is Bill
19 Tai and I'm the Principal Environmental Planner at
20 the New York City Parks and Recreation Department.
21 Thank you. Prior to joining the planning division I
22 was the Director of the National Resources Group at
23 parks for almost 10 years. The Parks Department has
24 been partnering with the New York City Economic
25 Development Corporation to create the city's first

wetland mitigation bank as part of the marshes project. In addition to the update you've heard from my colleagues at EDC I would like to provide some additional context for you about this particular location. Sawmill Creek MARSH contains the largest expanse of remaining salt MARSH along Staten Island's west shore. New York City Parks' currently manages 178 acres of city owned parks property there. This unique expanse has sustained breeding populations of sharp tailed seaside and swamp sparrows, short eared owls and even wintering northern harriers. In addition to be significant habitat for such wildlife and fish the MARSH captures much of the storm water runoff in this area and as you've heard probably more often since hurricane Sandy tidal wetlands can be considered natural or green infrastructure and they're valued for their resiliency and ability to provide coastal protection. Since 1994 our parks has acquired property at sawmill creek primarily for its conservation and a natural resource value that has continued to the present day with our most recent acquisition completed in January of last year. Working with other partners and leveraging

available funds parks has carried out some limited wetland restoration work at sawmill creek also. In 1998 a transportation project at the Chelsea road bridge provided for the first wetland mitigation work at the site. Then with support from the New York State environmental protection fund and other natural resource damage funds Parks carried out a project to remove a manmade obstruction and reestablish tidal circulation in some of the area. Six years later a second phase of that obstruction removal project was completed with state, federal, and local funds. These individual efforts each improved approximately one to five acres at this site. Overall all three projects also cleared 3,000 tires, 15 cars, three boats, and 330 cubic yards of debris from the MARSH. So sawmill creek provides a good example of one of the primary themes of wetland restoration that you'll hear from others today too. Most often restoration projects and specifically mitigation projects are relatively small in size. So it warrants emphasis that the pilot MARSHES initiative at sawmill creek will contribute to restoration over a 68 acre complex. That's an order of magnitude increase over the

previous efforts I described. Parks has been an active partner in the MARSHEs project since it began. As a land owner we have a vested interest in its success. And as you've heard beyond the most active construction monitoring and maintenance phases of work Parks will continue to act as a long term steward of this site as required by the MBI, the Mitigation Banking Instrument. The initial sale of credits from the bank will fund this work and guarantee ongoing maintenance during the first and most important five year period. Credit sales also support Parks' ongoing involvement with the bank through this formative period. And they also create a long term stewardship fund. In closing New York City Parks supports the MARSHEs project not only because of its benefits for sawmill creek and Staten Island but for its potential to be repeated elsewhere magnifying the benefits of focus and mitigation work to enhance even more of New York City's wetlands. Thank you for this opportunity to speak to you today. On behalf of Parks we appreciate the council's interest and attention on such an important initiative.

2 CHAIRPERSON ROSE: Thank you. Thank you
3 so much. This MARSHEs project has never been done
4 in New York City right? And so could you just take
5 us through the typical process which is involve in
6 setting up the mitigation bank?

7 RAY FUSCO: The, the federal process in
8 general?

9 CHAIRPERSON ROSE: Yeah.

10 RAY FUSCO: So the, the, the process is
11 outlined by the clean water act, the federal
12 regulation volume 73, number 70 part 332. The first
13 is to develop a plan, design, and permit which
14 comes in the form of perspectives. Then we develop
15 the mitigation banking instrument which is the
16 guiding document on what's going to take place at
17 the site, then the actual earth works happens
18 through the actual restoration. And then there's a
19 period of monitoring and maintenance to make sure
20 that the site actually provides environmental
21 uplift, ecological uplift, and then in perpetuity
22 the site needs to be maintained and kept as a
23 working wetland.

24 CHAIRPERSON ROSE: How are the credits
25 determined?

2 RAY FUSCO: The credits are determined
3 through a process that is created through the IRT,
4 the federal regulatory agencies, federal..
5 interagency review team, sorry about that. The, the
6 process itself is called the UMAM which is Max the..

7 MAX TAFFET: Sure... Max, I'm the project
8 manager for this. The actual math behind the number
9 of acreage, the type of plants, the state of the,
10 the current land is put through a process called
11 the Uniform Mitigation Assessment Methodology that
12 has specific stipulations around restoration and
13 rehabilitation for which depending upon the
14 quantities of land and different states that are
15 uplifted how many credits are received for that
16 action of uplift.

17 CHAIRPERSON ROSE: Okay. So if anybody
18 understood that you know I'm, I'm really pleased
19 because I, I don't. So let me, let me try to sort
20 of parcel this out. Is, is the, is there an
21 equivalent for what the amount of wetlands that is
22 going to be used for by the developer. Is an
23 equivalent amount banked in the bank?

24 RAY FUSCO: So I think, if I could just
25 try to clarify... [cross-talk]

2 CHAIRPERSON ROSE: Are, and are we
3 looking at acreage? What are we looking at? What's
4 the metric for this?

5 RAY FUSCO: Yeah so we have a 68 acre
6 site. And through this calculation process we've
7 received 18.54 credits. So the calculations go into
8 how much of the site is restored, how much of the
9 site is remediated, and different actions that
10 provide environmental and ecological uplift, get a
11 certain percentage of credits towards it which goes
12 into this calculation. So if we're clearing out one
13 of the channels of the MARSH that gets X percent
14 worth of credits. If we're remediating soil,
15 creating better tidal flow, and providing, taking
16 away invasive plants, and providing new plantings
17 that's a different percentage under this UMAM. So
18 it's, it's a little challenging but it is dependent
19 upon our ability and the project design that
20 demonstrates ecological uplift. So it's based on
21 some parameters. You know a seed planting or a
22 planting is a little bit different than opening up
23 a channel in the eyes of this UMAM and I feel silly
24 saying it but yes the UMAM and the IRT.

2 CHAIRPERSON ROSE: Okay so if I'm a
3 developer and I'm utilizing 24 acres of, of
4 wetland... [cross-talk]

5 RAY FUSCO: You're restoring 24 acres?

6 CHAIRPERSON ROSE: I am going to, I want
7 to build on 24 acres of wetlands what would my
8 equivalent, what am I, what's the bank ratio?

9 MAX TAFFET: So to start out with no
10 developer in New York City will likely in the eyes
11 of the Department of Environmental Conservation be
12 allowed to develop on top of 24 acres. That's a
13 very large track.

14 CHAIRPERSON ROSE: Okay well you use...

15 MAX TAFFET: A possibility as to what
16 could happen would be an effect on the rain, a
17 small effect, a half-acre. And that could, effects
18 take lots of different forms. Effects could be a
19 universal downgrading of habitat or it can be kind
20 of a partial downgrading of habitat. A downgrading
21 of habitat could be something like casting a shadow
22 on top of open water. And in such a case as that
23 let's say a developer's new pedestrian esplanade
24 casts a shadow that is covering the total of a half
25 an acre of water. In a case such as that you are

looking at likely a, I believe one and a half equivalent that, that you would have to purchase an equivalent of one and a half of the size of the effect that you had. So the metric is acres and the, the idea of the credits is kind of an acre goes to a credit. But a half acre of impact will depend because it's different types of impact as to the scale of, of that, that acre.

RAY FUSCO: And also if I might to make a clarification. So if someone is developing a parcel of land that is on the waterfront they are required through New York State, DEC, and Army Corp to exhaust all local mitigation efforts at the site before they become eligible to acquire a credit from the bank. So if they're building a ferry landing somewhere then somewhere close to that ferry landing DEC and Army Corp will ask them to try to provide mitigation at the site specific location. If in fact that doesn't happen, let's say it's somewhere along the east river with fast moving current and open water then they would then be looking after DEC and Army Corp has said local mitigation has been exhausted, you may look to something such as a mitigation bank. Then they

would, that number would be determined of how many credits they might be able to purchase from the bank. And then they would come to the bank owner.

CHAIRPERSON ROSE: Great. Because that was like my next question. You know is on-site mitigation still available as a mitigation option for projects that are within the bank service area? So...

MAX TAFFET: Yeah.

CHAIRPERSON ROSE: ...you're saying absolutely. And that is the first option. And so...

MAX TAFFET: I would say even the, the option before that is to minimize the impact. So if through design there's the possibility of ensuring that mitigation won't be necessary but do, you arrive at a point in the case of a ferry landing where there's no way that you can design the structure that it won't have a shadow.

CHAIRPERSON ROSE: Okay. Great. So how much total funding has been set aside for this MARSHES project?

RAY FUSCO: Currently to date there is 13.5 million dollars for the project. 1.5 comes from empire state development grants.

1 COMMITTEE ON WATERFRONTS WITH COMMITTEE ON ECONOMIC DEVELOPMENT 26

2 MAX TAFFET: As well as the Department
3 of State. It's a million from the Department of
4 State and a half million from Empire State
5 Development.

6 RAY FUSCO: And 12 million from the CDBG
7 Disaster Recovery Funds.

8 CHAIRPERSON ROSE: And does that figure
9 include what the mayor's office put in specifically
10 for sawmill creek?

11 RAY FUSCO: Not sure what the...

12 JOSEPH COLETTI: Sorry this is Joe
13 Coletti from EDC. Do you mean separately what the
14 city may or may not have put in in terms of
15 mitigation to date?

16 CHAIRPERSON ROSE: Well the project,
17 right. For...

18 JOSEPH COLETTI: That's on, that would
19 be separate yes. I don't know that number off hand.

20 CHAIRPERSON ROSE: Okay. Okay. Okay.
21 And, and I, I know my colleague has questions. I
22 was really concerned about what, what input members
23 from the local communities have in setting up the
24 mitigation bank. Did local or community members
25 have any input into setting up the mitigation bank?

2 MAX TAFFET: So several instances on
3 this project there has been public comment for, on
4 the perspectives which is the initial establishment
5 kind of proposal document for where the mitigation
6 bank is, what type of improvements will be done to
7 the site, at that juncture in late 20 or in 2013
8 and 2014 that happened as well as currently there
9 is public comment for the Army Corp permit for this
10 site as well as the DEC permit. But in addition to
11 that over the last two years EDC has on a bi-
12 monthly basis in convening our technical advisory
13 committee that ray mentioned during the initial
14 testimony comprised of more than a dozen
15 environmental stakeholders group as well as
16 waterfront constituencies.

17 CHAIRPERSON ROSE: And since the
18 wetlands are so critical to our resiliency efforts
19 the, the mitigation bank and the areas that are
20 going to be developed are the resiliency
21 qualifications or requirements at, being adhered to
22 and, is there another standard that's being
23 applied?

2 RAY FUSCO: When, when you mention
3 development are you saying applicants who might be
4 interested in credits from the bank?

5 CHAIRPERSON ROSE: Yes.

6 RAY FUSCO: We, we're not sure how or
7 who would be eligible at the time so the way
8 credits are allocated are only after we show
9 environmental uplift that a certain percentage of
10 the credits become available for use. And at that
11 time when credits are available for use we would
12 need to see what permits are currently residing
13 within DEC and Army Corp that may have a need from
14 the bank. So currently we are focused on priority
15 city initiatives as the primary focus for use of
16 credits to the bank. So, but really it will
17 determine the construction, earth works, and the
18 ecological uplift will determine when credit are
19 available and what potential projects may be
20 eligible to use credits from the bank. So it's
21 still a big work in process.

22 MAX TAFFET: And to add on to the, the
23 question as to building it to resiliency standards
24 absolutely anybody who would be making use of
25 credits will be adhering to flood plain

requirements. There's nothing about this bank that changes requirements this provides an option given if all other avenues are exhausted surrounding reducing, minimizing and onsite mitigation.

CHAIRPERSON ROSE: My last question before my very patient co-chair I give the mic to. What happens to the bank after all the credits have been sold?

RAY FUSCO: So the, once the credits are closed and our monitoring and maintenance is closed the bank goes into the long term stewardship component of the bank. And that's when our partners at Parks will take it over to manager in perpetuity.

CHAIRPERSON ROSE: Thank you. Council Member Garodnick.

CHAIRPERSON GARODNICK: Thank you Chair Rose. And kudos to you for taking on a highly highly highly technical issue, one which I think that I have a few more clarifying questions before I even get into the meat of any of this stuff. You know the, the terminology that we're using for a bank even to begin with, the way it sounds is that the bank is not a situation where credits are

2 offered to a developer who's doing something that's
3 environmentally harmful, the money goes to a place
4 and the money is therefore thereafter used to
5 support an environmental initiative. The bank is
6 the remediation site itself? Is that right?

7 RAY FUSCO: That's correct.

8 CHAIRPERSON GARODNICK: Okay. So that
9 itself is just a little confusing off the bat
10 because you know usually you think somebody buys
11 credits, money goes to a place, and then that place
12 uses money to spend it, that's not what this is. So
13 the, the bank is the, the place that needs the, the
14 remediation like sawmill in this situation. Okay.
15 So you, you noted before that the, the sites that
16 would qualify to have an obligation here, to buy
17 credits are not where we might typically think of
18 somebody building on wetlands as Chair Rose was
19 describing the 24 acres. In fact it's really
20 anybody who is building on waterfronts at all where
21 there is an impact to either fish or impact to
22 currents or other things that we might be concerned
23 about, is that right.

24 RAY FUSCO: That's correct.

2 CHAIRPERSON GARODNICK: Is there any
3 geographic limitation here for anywhere in New York
4 City that might not be subject to this particular
5 regulatory scheme.

6 RAY FUSCO: No.

7 CHAIRPERSON GARODNICK: Every coastline,
8 every waterfront area in the city is accessible,
9 has the ability to buy into the credits for the
10 bank?

11 RAY FUSCO: Oh no so I misunderstood...

12 MAX TAFFET: Yeah no that, that is
13 correct at this point with some specificity around
14 it that there is a primary area and there is a
15 secondary area. The primary and secondary area
16 cover the entirety of New York City proper.

17 CHAIRPERSON GARODNICK: What does it
18 mean to be a primary versus a secondary area in
19 this context? By the way pull that mic just a
20 little closer to you. Yeah, there you go.

21 MAX TAFFET: In the case of the primary
22 service area and the secondary service area these
23 were agreed upon with the members of the IRT for
24 this specific, for the location of this specific
25 mitigation bank. The primary and secondary service

area, the form of that would change for any future mitigation bank.

CHAIRPERSON GARODNICK: Why, why, so why did the IRT say okay for air, and when I think I've, I have a general understanding of what the map looks like for this particular bank, it's like Manhattan and Staten Island is more or less what is available for primary... [cross-talk]

MAX TAFFET: East River Waterfront...

CHAIRPERSON GARODNICK: Sorry?

MAX TAFFET: East River Waterfront.

CHAIRPERSON GARODNICK: East River Waterfront for this and secondarily everything else for this. So does that mean that once... at what point would you go to the secondary areas to satisfy our needs for this bank.

MAX TAFFET: You could easily go to the secondary... it, it'll be project dependent. If there's a project taking place in the Rockaways that needs credit it's, there is a question as to when in time projects are taking place. There are projects that would take place along the east river. There are projects that could take place anywhere in New York City. But this is, it's, it's

not an, an order of preference that defines primary or secondary service area. It's more a question of procedure. In the primary service area there is not the necessity of, of a renegotiation of, of negotiating with the IRT as in depth about the eligibility of a project in the secondary area there is an additional layer of going back to the IRT to get clearance in order for the project to be able to use the credits.

CHAIRPERSON GARODNICK: Is, is that somehow related to the sawmill creek issue or is about the development areas themselves?

MAX TAFFET: It's about the development areas themselves.

CHAIRPERSON GARODNICK: Because I, I was going to test a thesis with you that wouldn't we want to just say if you are developing anywhere in New York City and you are in any way impacting the waterfront in a deleterious fashion you must satisfy your onsite mitigation opportunities. And you also will have an opportunity to buy credits into the sawmill creek wetland mitigation bank because that's the first one on our list. Why wouldn't we want that to be the case for any city

wide development that has, that has impacts that we're concerned about?

MAX TAFFET: Well the usage of credits from the bank would only be in the case of where there is no possibility of avoiding impacts or on site impact. You aren't going to layer credits and on site mitigation. You're either going to do on site mitigation in which case you don't need credits or you're unable to do on-site mitigation in which case you need credits. The difference between... part of the IRT who has defined the extent of the primary and secondary service area is that should another mitigation bank that is not this mitigation bank be established in Jamaica Bay? There is a feeling from the IRT that that being there would be, that would have a different primary and secondary service area. It's possible that a project in the Rockaways that is currently in the Sawmill Creek secondary area would be in the primary area of another mitigation bank.

CHAIRPERSON GARODNICK: I understand that. I, I, I guess what I'm wondering is if there were a development in the Rockaways today that had impacts that could not be mitigated on site they

1 COMMITTEE ON WATERFRONTS WITH COMMITTEE ON ECONOMIC DEVELOPMENT 35

2 would be able to buy credits into this mitigation
3 bank. Is that right?

4 MAX TAFFET: Correct.

5 CHAIRPERSON GARODNICK: So it's really...
6 I guess that I'm a little confused by what primary
7 secondary really means because it's an order of
8 time as to when the development actually happens
9 and whether the mitigation bank in question is
10 already alive.

11 RAY FUSCO: Right. To be clear it's part
12 of this process that we go through with developing
13 the mitigation banking instrument with the IRT. So
14 the Army Corp of Engineers leads us through this
15 process to set up a primary service area and a
16 secondary service area. So it's through
17 conversations with them and the processes outlined
18 in the clean water act to set up these areas and
19 what seems to be the best suited for the overall
20 area. So it's a conversation that happens with a
21 greater IRT committee over this.

22 CHAIRPERSON GARODNICK: I understand.
23 But as a practical matter it doesn't seem like it
24 really matters, is that right?

25

2 MAX TAFFET: Well it's, it's a question
3 of regulatory preference for hydrological zone. So
4 it's just a, it's at this point they say we prefer
5 those things in the primary area but we'll also
6 consider the secondary area if you come to us with
7 concepts in the secondary...

8 RAY FUSCO: It's very procedural. So the
9 way the clean water act outlines this mitigation
10 process it's extremely procedural. And with all the
11 federal resource agencies putting in their
12 feedbacks and comments on what they'd like to see
13 or they'd prefer to see they follow very
14 prescriptive guidelines.

15 CHAIRPERSON GARODNICK: Okay restricted
16 guidelines of preference but it doesn't have any
17 actual applicability if a development were to come
18 on in the secondary area before one came on in the
19 primary?

20 RAY FUSCO: The only thing they would
21 need to do is go through an extra layer of
22 paperwork.

23 CHAIRPERSON GARODNICK: Okay I got it.
24 Okay well let's talk about the onsite mitigation. I
25 see we've got colleagues from some, questions from

2 some of our colleagues too but... On site mitigation;
3 sounded like the way you just described it a minute
4 ago that it is an, an either or proposition, that
5 if you have it on site then you don't need to buy
6 credits. But it seems to me I couldn't envision a
7 scenario in which somebody is building an esplanade
8 or whatever impact you can describe. And there is
9 only a partial mitigation that you can actually do
10 on site but that you really do need to do more
11 things. In that situation you can buy credits, is
12 that right?

13 RAY FUSCO: That's accurate, yes.

14 CHAIRPERSON GARODNICK: And we will
15 require somebody to buy credits?

16 RAY FUSCO: It's their, they aren't
17 going to be able to do the construction without
18 being able to find mitigation elsewhere.

19 CHAIRPERSON GARODNICK: And the rules
20 today prior or to mitigation bank offers are you do
21 what you can and that's it, you do what you can on
22 site and that's it?

23 RAY FUSCO: Well it's, it's a little
24 more convoluted than that. I think... [cross-talk]
25

2 CHAIRPERSON GARODNICK: I, I had a
3 feeling, I had a feeling. Go ahead.

4 RAY FUSCO: So, so currently through DEC
5 and Army Corp they ask the applicant who's doing
6 the development to present several forms of
7 mitigation to provide the mitigation necessary for
8 their impacts. And so it's a complicated, sometimes
9 convoluted process of determining what is the exact
10 amount of mitigation that they would perform to get
11 the mitigation resolved. One of the reasons why the
12 Sawmill Creek mitigation bank is so successful and
13 the model is it is a very closely managed
14 ecologically uplift proven model demonstrate so
15 that they can go to the bank and get credits. So
16 the, ad hawk part of it is very unpredictable.

17 JOSEPH COLETTI: Sorry this is Joe
18 Coletti again. Just the other thing I wanted to add
19 yes it is, it hopefully will give a little bit more
20 certainty instead of going into sort of a process
21 where you know on average in the past you know
22 mitigation projects can take over three and a half
23 years, can cost something like two million dollars
24 an acre. And I think that's another problem you're
25 trying to solve for here. You're having certainty

and hopefully a mitigation bank will help you know provide that certainty. That just doesn't exist today.

CHAIRPERSON GARODNICK: How about the, the selection process for a mitigation bank. It sounds like there are sites that the Army Corp has identified throughout New York and New Jersey that have important ecological functions that need restoration. What was, and I assume this is the, is it the IRT that makes the call on this or is it a different group? Sorry there's a lot of acronyms here but we have this interagency review team that the Army Corp, that the Army Corp chairs. But is that, is that who makes the decision on what our first and second and third mitigation bank options will be?

MATT TAFFET: No. It's a bank sponsor who proposes. In this case EDC as the bank sponsor that proposes the location.

CHAIRPERSON GARODNICK: I see.

MAX TAFFET: In this case it's been a variety of elements have impacted why Sawmill Creek is the right site for the first mitigation bank in New York City. These factors are specific,

physical, technical elements regarding the Sawmill Creek site as well as a robust history of, of, of reports, restoration related reports and resiliency related reports that have identified sawmill creek as a desirable site. So it's kind of this triangulation of, of element, physical elements of this site that make it right. As well as many arrows pointing at it from, from city, city and federal related reports.

CHAIRPERSON GARODNICK: So is it fair to say that the Army Corp and other federal agencies put a bunch of sites on our, on our list and then the city is in this context picking and prioritizing which sites we will proceed with first, second, third, etcetera?

RAY FUSCO: Yes.

CHAIRPERSON GARODNICK: And give us a sense as to what other sites are potential for nest rounds of mitigation banking if you will. What, what else is out there, will you give us some examples of the other sites that, that the army corps has identified, sites that potentially could qualify down the line?

2 MAX TAFFET: So just to really emphasize
3 that at this point this is a pilot project to, to
4 demonstrate mitigation banking, establish
5 mitigation banking as being functional and
6 operational in New York City. At, at this point as
7 a pilot project there is not a laundry list of, of
8 next sites because this is a two year process to
9 get through this and then a seven year process in
10 order for the bank to be able to close. So success
11 on this project, and as we gain more traction with
12 this project we'll open up that horizon.

13 CHAIRPERSON GARODNICK: Okay what other
14 sites did the Army Corp identify that are in New
15 York City that you know this 2009 comprehensive
16 restoration plan that you cited in the testimony,
17 EDC cited in their testimony which identified sites
18 throughout the New York New Jersey estuary that
19 possessed important ecological functions needing
20 restoration. Give us some examples of those?

21 BILL TAI: Councilman I was just going
22 to point out too that the comprehensive restoration
23 plan is a restoration plan. It does designate
24 sites. They're not particular sites for potential
25 mitigation banks. And so the distinction there as

you heard mass describe too is this convergence of other factors that comes into play to determine a bank site versus a more standard restoration site. The current methodology is to, is to confer with regulatory agencies and land owners about potential restoration sites but it doesn't have those other factors for a mitigation bank.

CHAIRPERSON GARODNICK: I, I understand that just because it's on that list does not mean that it will be on the city's list as a bank site for post pilot implementation. But I just, you know we can pull it up ourselves but I thought I'd give you a chance to just identify what some of those sites are just so that you know people who are interested and following... could understand what estuary sites are actually on that list that might even be in the ballpark of consideration.

RAY FUSCO: Off, I mean off the top of our head we don't know because we... focus on this one but we can certainly share the reports.

CHAIRPERSON GARODNICK: That's fine. We can also look it up. It's not that tough but I just thought that maybe you, you had a sense. Okay last from me and then we're going to go... and then we're

2 going to go to Council Member Barron. Let's just
3 talk process for one moment. The project when, when
4 we say in the testimony that the project, the
5 project is currently in the preconstruction phase.
6 We're talking about Sawmill is the project that
7 we're talking about right?

8 RAY FUSCO: Correct.

9 CHAIRPERSON GARODNICK: Okay what does,
10 this is another technical challenge that I'm having
11 here. What does preconstruction and construction
12 look like because it sounds like you can just
13 explain this all together because you said that
14 you're going to get approvals by fall of 2015.
15 Approvals from whom for what I don't completely
16 understand. But you said that there'll be
17 restoration and planting over the next two years.
18 And then they're going to be five or six years of
19 monitoring and maintenance. And then at the end of
20 that period bank credits will be generated and
21 available. To e I would have thought the bank
22 credits are available to do all that good and
23 important work but it works somehow differently and
24 I'd like you to explain to us what that all means.

MAX TAFFET: So ideally construction and construction is a bit of a confusing term in this context because the construction that will occur is in the forms of earth works. So reshaping the ground, reestablishing channel flow, that looks like some, some heavy machinery moving a lot of earth around for a while. Once the grades are completely established that finishes the earth works component. Then there is planting, initial planting of, of native species across the site. That is the initial kind of construction phase. The really interesting thing about this project is when, when it comes to speaking about plantings as a form of construction plants are not constructed at the moment that they're dropped in the ground. The construction itself ends up being done by the plants themselves over an extended period of time. The entire... [cross-talk]

CHAIRPERSON GARODNICK: So, so wait, just to interrupt you...

MAX TAFFET: Yep.

CHAIRPERSON GARODNICK: ...so planting of plants is preconstruction and growth of plants is construction?

2 MAX TAFFET: Planting of plants is part
3 of construction. Right now we are in the
4 preconstruction as far as permitting, ensuring that
5 our permits are in place and that permits to your
6 question about which and who and what it is,
7 permits being issued by the United States Army Corp
8 of Engineers who are, oversee all navigable
9 waterways and the New York City Department of
10 Environmental Conservation which ensures that any
11 effects to, to the state of New York's waterfront's
12 coastal zones are managed appropriately. So there
13 will be dirt that is stirred up throughout this
14 process as we are doing a lot of earth works as
15 well as considerations around protecting against,
16 protecting in the case of archeological resources.
17 So we have to ensure that we are allowed to do this
18 construction in the form of the regarding and the
19 planting. And that's the pre-construction phase
20 right now.

21 CHAIRPERSON GARODNICK: Okay so, so the
22 money that you described before the 13 or so, 13
23 and a half million dollars, that will go to the, to
24 pay for the work that you're describing. But
25

2 presumably it does not pay for all the work
3 necessary there? Is that correct?

4 MAX TAFFET: Correct.

5 CHAIRPERSON GARODNICK: Okay. And that's
6 where the credits come in?

7 MAX TAFFET: Correct.

8 CHAIRPERSON GARODNICK: Okay. So the
9 thought here is apply grant monies to get this off
10 the ground and then take the credits to finish it
11 out, is that right?

12 MAX TAFFET: Exactly.

13 CHAIRPERSON GARODNICK: Okay. And then
14 my last question is if you were to summarize as to
15 why New Yorkers should be excited about mitigation
16 banking in contrast to the current set of rule that
17 are out there for mitigation how would you, how
18 would you describe that. What's so good either for
19 our economic development initiatives or our
20 environmental protection initiatives or both...

21 RAY FUSCO: Right. So from the
22 environmental side having a managed and having a
23 managed tidal wetland in perpetuity under the
24 guidelines is very effective. Currently mitigation
25 that happens on site is not required to have a long

term stewardship component. So it may or may not work. It may or may not be completely effective. And this is why the nationally proven model is so successful. So what our city gets is this incredibly successful ecologically functioning tidal wetland that has been proven through this process and then stewarded with parks in perpetuity. So that's one very important process. On the economic development side of things it significantly diminishes the time necessary for finding the right mitigation means for a project that has exhausted its local mitigation opportunities as well as it is significantly less expensive than just putting a lot of money into potentially successful mitigation at a site. So it's a much more prescriptive process. It decreases the amount of time and the money necessary for development to take place through the mitigation process.

CHAIRPERSON GARODNICK: Okay so to, to summarize what I understand from you is one for developers it provides a little more certainty and perhaps even speed because we know what to do when you've run out of onsite options. And for the

environment you have a stewardship which doesn't exist today because if a developer were to sell their property and you know you, you don't know whose hands it's going into we currently have no way to protect against bad acts there. Is that... [cross-talk]

RAY FUSCO: Well if, if in the process the, if, if a developer places a mitigation reef, let's say they come to an agreement with army corps and DEC that, their mitigation at this particular site is they have to place an artificial reef under the water as a mitigation means. So they're not required to manage that reef, that reef in perpetuity. They just place it there and hope that it provides the ecological uplift. So what we're providing with this site is guaranteed ecological uplift with the long term stewardship component.

MAX TAFFET: And I would just say that really what it represents is economies and ecologies of scale. It'll help both the business community as well as the natural environment. And in the long run it is going to be significant and an important element in moving resiliency forward in New York City.

2 CHAIRPERSON GARODNICK: Thank you very
3 much. And we've been joined by Council Members
4 Miller, Barron, Wills, and we're now going to
5 Council Member Barron for questions. Thank you all.

6 COUNCIL MEMBER BARRON: Thank you to the
7 chairs who are having this hearing. And I represent
8 the 42nd Councilmatic district in Brooklyn and the
9 southern border of my district is along the belt
10 parkway, the Jamaica bay area. And it also
11 encompasses the 26 ward water treatment plant. Okay
12 just to lay out that area for you. So along that
13 portion of the belt parkway about six years ago I
14 noticed that they brought in soil and they sort of
15 mounded up that area that is the border with the
16 water. So would that be what I read in your
17 testimony? Would that classify as earth work?

18 RAY FUSCO: I, I can't speak to exactly
19 what took place in your district and what that
20 looks like. Earth works in this circumstance is
21 taking large equipment and increasing slopes,
22 decreasing slopes, opening up the title channels of
23 the MARSH and doing the actual movement of the
24 earth planting plants at the, at the MARSH site. So
25

1 COMMITTEE ON WATERFRONTS WITH COMMITTEE ON ECONOMIC DEVELOPMENT 50

2 earth works is moving the earth at the site and the
3 specific designed fashion.

4 COUNCIL MEMBER BARRON: So who could I
5 find, who could give me that information as to why
6 that occurred. Because when I called the community
7 board at that time and asked them what is the
8 purpose, where is this soil coming from, who's
9 making an assessment as to what's in the soil, why
10 is it being done... no one could give me an answer.
11 That was about eight years ago.

12 RAY FUSCO: Do you, are you familiar... is
13 it a city owned site or is it a privately owned
14 site?

15 COUNCIL MEMBER BARRON: It, it's Jamaica
16 Bay.

17 RAY FUSCO: It's Jamaica Bay.

18 COUNCIL MEMBER BARRON: It's Jamaica
19 Bay.

20 RAY FUSCO: We can make some inquiries...

21 COUNCIL MEMBER BARRON: Okay.

22 RAY FUSCO: ...to see if we get some
23 information for you.

24 COUNCIL MEMBER BARRON: Okay.
25

2 RAY FUSCO: We're not familiar with what
3 you're mentioning specifically but we could look
4 into it for you.

5 COUNCIL MEMBER BARRON: Thank you. And
6 then what would be the benefit of mounding or
7 increasing that area? Is it a protection method?
8 What might be some of the reasons that that
9 occurred?

10 RAY FUSCO: Again I'm, I'm not quite
11 familiar with that particular site. Obviously
12 anytime you raise or elevate land it provides some
13 barrier to water. I really can't speak to the exact
14 nature of that particular site. It, it's hard to
15 speak exactly without seeing it and understanding
16 what the design principals were behind it.

17 COUNCIL MEMBER BARRON: Thank you. In,
18 in going to that site we were interested to know
19 what might be the possibilities of development at
20 that site. And my understanding was oh we can't
21 build anything here because we had to lay a
22 protective barrier and if we have to penetrate that
23 barrier there would be a release of the gasses that
24 are under that barrier so nothing can be built
25 there.

2 RAY FUSCO: Again I'm sorry to be ill
3 informed at this particular project in your
4 district but it sounds like you know we'll look for
5 some information on it for you to see, I can't
6 speak to the development of it. I just got word
7 from my colleague...

8 COUNCIL MEMBER BARRON: Yes.

9 RAY FUSCO: ...Joe Coletti that you might
10 check in, we will check in with DEP about that
11 particular site.

12 COUNCIL MEMBER BARRON: Yeah okay, yes.
13 My colleague just put this bug in my ear, yes it is
14 a landfill but I wanted to understand what were the
15 restrictions and limitations only being a landfill
16 and what could be possibly done. Because we know
17 Battery City Park is a landfill, or was a landfill.
18 So I don't want to know, I want to know what
19 limitations there are, what can possibly be done,
20 no matter, I don't want to put limitations on how
21 extensive a project could possibly be built if we
22 then look at it in another context.

23 RAY FUSCO: We're not completely
24 familiar with that project.

25 COUNCIL MEMBER BARRON: Okay.

2 RAY FUSCO: But I mean we would be,
3 we'll, we'll do a little bit of research for you
4 and see if we can't uncover some information or
5 certainly the contacts that you could search out
6 that information.

7 COUNCIL MEMBER BARRON: I appreciate
8 that. Now in terms of the 26 ward water treatment
9 facility can you speak to us about how that
10 process, what happens to that water before it goes
11 into that bay? Can you speak generally to that
12 process?

13 RAY FUSCO: No we, we can't. That seems
14 like it's a DEP...

15 COUNCIL MEMBER BARRON: Okay.

16 RAY FUSCO: ...question with the waste
17 water treatment. But now then my final question is
18 once we determine what has happened then the
19 increasing of the slope of the land might that
20 limit that area from being considered in this
21 MARSHES program mitigation banking for waterfront
22 restoration would that be a limitation if in fact
23 all of those things are true or with a landfill or
24 there's a barrier that's been put there, or that
25 prevents any kind of major development there.

2 RAY FUSCO: You know every project that
3 is eligible for mitigation credits goes through an
4 exhaustive process through DEC and Army Corp. So if
5 there is a specific project that happens at that
6 site that you're referencing they would go through
7 the same exact process that other projects would go
8 through. And that determination would be made by
9 DEC and the Army Corp as to whether or not that
10 site specific is eligible for mitigation credits.
11 So without knowing or having a specific project or
12 a specific site plan you know they would go through
13 the same scrutiny and would be eligible or not
14 eligible dependent on the DEC and Army Corp
15 permits.

16 COUNCIL MEMBER BARRON: Thank you.

17 CHAIRPERSON GARODNICK: Thank you. Let
18 me recognize that we've been joined by Council
19 Member Weprin and we're now going to Council Member
20 Vallone for questions.

21 COUNCIL MEMBER VALLONE: Thank you
22 Chairs. And good morning. It's always exciting when
23 there's pilot projects and there's always concern
24 when there's, talking about our wonderful
25 waterfront and environment. So my district like so

2 many of us here have those possibility and
3 potential for use of the banking system. Just some
4 clarification so what, what agencies are involved
5 with this? Because I see there's, right at the
6 table we're talking about multiple agencies and
7 departments already so...

8 RAY FUSCO: City agencies, our Parks
9 Department, EDC, part of the review team is DEP,
10 Office of resiliency, Office of Assisting Ability,
11 DCP is involved, the federal process is as we
12 outlined Army Corp, EPA, Fish and Wildlife,
13 National Marine Fisher... [cross-talk]

14 COUNCIL MEMBER VALLONE: As, as I
15 thought. We were talking about quite a bit here
16 which is, is good but it also creates some more
17 confusion. So who will be in the lead, and who
18 determines the scope of the project and how the
19 different agencies are going to coordinate with
20 each other.

21 RAY FUSCO: Well so EDC is currently in
22 the lead of the project. I would say that depending
23 on the action item it would depend on which agency
24 is in the lead. So in the example of the mitigation
25 banking instrument and the IRT which is the federal

2 board the Army Corp is in the lead on that. So you
3 know the lead determines, is being, is determined
4 by the action. So the lead agency for the long
5 term, long term stewardship component of the
6 project is the Parks Department.

7 COUNCIL MEMBER VALLONE: Now you had
8 mentioned that in perpetuity is one of the reasons
9 why this would be a successful change in the
10 current system. So how will Parks Department
11 continue to monitor these in perpetuity?

12 RAY FUSCO: So part of the sale, yeah,
13 and bill you can chime in too, but part of the sale
14 of the credits establishes a long term stewardship
15 fund that we've worked with Parks to develop and
16 the money would go to Parks for them to manage the
17 site in perpetuity.

18 COUNCIL MEMBER VALLONE: So the long
19 term stewardship plans are going to be community
20 involvement with that...

21 RAY FUSCO: As far as the, the specific
22 elements of the long term stewardship plans those
23 are agreed upon by the members of the IRT. The, the
24 public has the opportunity to comment on the
25 perspectives as well as the permits that are going

1 COMMITTEE ON WATERFRONTS WITH COMMITTEE ON ECONOMIC DEVELOPMENT 57

2 through Army Corp and DEC. In the approval of those
3 permits copies of the mitigation bank perspectives
4 are³ available. As far as the specific actions that
5 are taken during monitoring and maintenance that is
6 an element of, of conversation between Parks and
7 EDC. There, its, its questions as to the number of,
8 of rather technical ideas such as transects which
9 are lines going across the site upon which plots,
10 five foot by five foot squares are looked at, the
11 number of those squares that'll be looked at. It's,
12 it's not something that's, I myself even can fathom
13 expertise in. It's... [cross-talk]

14 COUNCIL MEMBER VALLONE: I may suggest
15 then since this is a pilot that there may..

16 RAY FUSCO: Yeah.

17 COUNCIL MEMBER VALLONE: ...be some
18 additional input at the before finalization of the
19 projects in going forward and EDC walking away and
20 Parks taking over that we have a greater community
21 board and community involvement as to what this
22 hopefully future amazing site will look like
23 because if we're relying on 17 different agencies
24 and different notices going out I, I have neighbors
25 complaining they don't even know when you knot the

2 community board meetings are being held let alone
3 all of these additional aspects going on. It just
4 seems like we're going to be left, and especially
5 as the council member who are the stewards of the
6 districts with possible complaints and oversight
7 and how did this happen without community input. So
8 again as the overall impact sounds like a good
9 first step I think there's a lot to be done before
10 folks walk away from it. And I think that's where
11 we can have a greater partnership I believe. And,
12 and site finding and possible use of the credits,
13 long term, maybe partnerships with some private or
14 non for profit groups that want to take ownership
15 of some of the areas since Parks is always looking
16 for some help in those areas, just some suggestions
17 I think might be helpful going forward.

18 RAY FUSCO: Councilman your point's well
19 taken. I might also point out since this is a pilot
20 project the, as Chair Garodnick mentioned to the,
21 the mechanics and the construction of this
22 mitigation bank are quire technical and the
23 ecological uplift that we've talked about is, is
24 quite technical. But the one of the aspects of this
25 too is this, this bank will be a restored wetland

1 COMMITTEE ON WATERFRONTS WITH COMMITTEE ON ECONOMIC DEVELOPMENT 59

2 and quite a scenic area. It, it already is quite a
3 scenic area for the people of Staten Island and
4 visitors too so one thing we might want to consider
5 going forward is how we're increasing. Although
6 the, the federal and state agencies don't consider
7 this a recreational project. This is an ecological
8 project and we're looking at conservation values
9 but we may want to look at how, how the public
10 might want to view this site and access this site
11 in the... [cross-talk] and there's, there's some
12 limitations there too but... [cross-talk]

13 COUNCIL MEMBER VALLONE: ...great way to
14 have the students... [cross-talk]

15 RAY FUSCO: ...big part of... [cross-talk]

16 COUNCIL MEMBER VALLONE: ...involved with
17 the... [cross-talk] wetland preservation and all
18 that.

19 RAY FUSCO: Yes.

20 COUNCIL MEMBER VALLONE: Especially in
21 my world by Willets Point and Flushing Bay is what
22 to do and if anything's ever grown there maybe you
23 know have an educational component I think to
24 everything would be a great idea. So that... [cross-
25 talk]

2 RAY FUSCO: ...learning about what just
3 happened here is, is wonderful. Thanks for your
4 point.

5 COUNCIL MEMBER VALLONE: Thank you very
6 much. Thank you Chair.

7 CHAIRPERSON ROSE: Well thank you you
8 know for your testimony. And I, I really would like
9 you to, or stay if you can or, or leave a
10 representative to stay so that we can hear... so that
11 you can hear also from the advocates and, and the
12 communities because there are some folks who are
13 not enamored with this idea and you know I'd like
14 you to hear you know some of their comments and,
15 and see how it works into this framework. So I'd
16 like to thank you for, for being here. And the next
17 panel is Beryl Thurman from the North Shore
18 Waterfront Conservancy Staten Island, Natasha Dwyer
19 the New York City Environmental Justice Alliance,
20 Donald Reckle [phonetic] Recklies from the
21 Protectors of Pine Oats Oaks, and Lauren Price from
22 New York Legal Assistance Group. And when everyone
23 is seated would you please take our little oath. We
24 don't have to do them right? Just for
25 administration. And when you're ready please

1 COMMITTEE ON WATERFRONTS WITH COMMITTEE ON ECONOMIC DEVELOPMENT 61

2 identify your name, your organization, and you can
3 begin.

4 BERYL THURMAN: Is there an oath we're
5 supposed to take or, or just consider ourselves
6 sworn... [cross-talk]

7 CHAIRPERSON ROSE: No, no we're not
8 going to, I'm sorry.

9 BERYL THURMAN: Okay.

10 CHAIRPERSON ROSE: We're not going to
11 swear you in.

12 BERYL THURMAN: Okay.

13 CHAIRPERSON ROSE: We only do that to
14 the administration.

15 BERYL THURMAN: Oh okay.

16 CHAIRPERSON ROSE: Thank you.

17 BERYL THURMAN: Chair Rose I appreciate
18 the opportunity to come before the Waterfront
19 Committee and express our concerns regarding the
20 Sawmill Creek mitigation bank. My name is Beryl
21 Thurman. I am the executive director and president
22 of the North Shore Waterfront Conservancy of Staten
23 Island. [cross-talk]

24

25

1 COMMITTEE ON WATERFRONTS WITH COMMITTEE ON ECONOMIC DEVELOPMENT 62

2 CHAIRPERSON ROSE: Would you put the mic
3 closer to you Beryl so everyone can hear you. Thank
4 you.

5 BERYL THURMAN: My name is Beryl
6 Thurman. I am the executive director and president
7 of the North Shore Waterfront Conservancy of Staten
8 Island. On behalf of the North Shore Waterfront
9 Conservancy of Staten Island Inc. and the
10 waterfront and environmental justice communities
11 that we advocate on behalf of we are opposed to the
12 Sawmill Creek mitigation banking scheme that is
13 being proposed by New York City Economic
14 Development Corporation. We are opposed to Sawmill
15 Creek mitigation banking plan because the funding
16 was obtained under false pretenses by New York City
17 EDC stating that it was Hurricane Sandy resiliency
18 project and that this funding was going to protect
19 Hurricane Sandy impacted communities and businesses
20 when in reality Sawmill Creek is nowhere near any
21 existing communities and/or businesses let alone
22 any that were impacted by Hurricane Sandy. We
23 object to Sawmill Creek mitigation bank, banking
24 plan because it's unethical. Three years later
25 after Hurricane Sandy our waterfront communities

are still just as vulnerable as the day that Sandy hit. This 12 million dollars of Sandy money is blood money. Islanders died homes and communities were wiped off the face of this planet. That's how this funding came about. Mitigation banking at Sawmill Creek is a benevolent gesture but it is the kind of project that a government agency would do once you have every other environmental and climate change issue that is directly and or indirectly affecting your people populated areas resolved and clearly we do not. We need mitigation alternatives, not mitigation banking. We no longer live in an environment of Henry David Thorough, John James Audubon, or President Theodor Roosevelt. Our environmental conditions are much more dire but many of our environmental laws are based on their theories of protecting pristine environments and not environment of an urban populated, people populated areas that exist today. In terms of environmental agencies people are not even considered as part of the environment although we are. There are more laws to protect a tree frog than there are to protect people. And that is why the US EPA and New York State DEC are okay with

mitigation banking because it has nothing to do with people, it is strictly about the environment. By all means protect and preserve the natural areas that we have. However climate change dictates that you show reasonable judgment and at the same time protect your vulnerable people populated areas first. Mitigation banking offers no climate change defense for the communities where the development is taking place. It doesn't even address it. We believe that if you're going to do a resiliency mitigation project then there should be visible resiliency benefits at the front where the development is taking place, the middle and at the end of the project in order that everyone sees the environmental benefits of this project. From a marketing standpoint it would be much easier for a developer to support a mitigation alternative project that saves lives and then a project that does not. We have eight million plus people on the islands and no visible means of protecting them from climate changes, sea level rising, storm surges, and flooding. We need mitigation alternatives to change that. We're asking that you scrap the mitigation banking scheme for a plan that

will work. In addition to this none of the local environmental organizations were asked to participate on the panel that gave the thumbs up for this. And everybody knows who we are. And Arlington Marsh as we have understood for years is the largest city owned title wetlands that New York City has and yet and still Arlington Marsh was not considered per mitigation and remediation and restoration work. Thank you.

NATASHA DWYER: Hello my name is Natasha Dwyer and I'm testifying on behalf of the New York City Environmental Justice Alliance. Founded in 1991 NYEJA is a non-profit citywide membership network linking grassroots organizations from low income neighborhoods and communities of color in their struggle for environmental justice. As an EJ group I just have to take a moment to note that we always say it's important to listen to the voices of local communities and environmental justice groups like Beryl Thurman and the North Shore Waterfront Conservancy and we're very happy that she's here today. The impact of climate change on waterfront communities and mitigation measures is central NYEJA's agenda. And our research and

advocacy for the waterfront justice project as well as the Sandy regional assembly NYEJA's established a track record of advocating for wetlands restoration and green infrastructure in New York City's industrial waterfront communities. In 2010 NYEJA launched the waterfront justice project, New York City's first citywide community resiliency campaign. When the city of New York initiated its overhaul of the comprehensive waterfront plan in 2010 NYEJA began an advocacy campaign to convince the Bloomberg administration to reform waterfront zones designated as a significant maritime industrial areas or SMIAs. These are zones created by the 2002 New York City Waterfront Revitalization Program to encourage the protection and citing of industrial and maritime uses along the waterfront. Our research findings emphasize the vulnerability of the SMIAs to potential hazardous exposures in the event of severe weather and the importance of wetlands restoration and green infrastructure projects in general. NYEJA commends the city council for inviting comments on the MARSHES initiative to create the city's first wetlands mitigation bank on Staten Island. The decisions

guiding this project have the potential to shape future mitigation banking along New York City's waterfronts. For this reason NYEJA strongly urges the city council to ensure that this project addresses the concerns of environmental justice communities living in storm surge vulnerable neighborhoods and industrial waterfronts. We welcome ongoing opportunities to discuss these concerns and strategies to address them. NYEJA's key recommendations include the fact that wetlands mitigation banking must not generate environmental inequities in other areas. Planning for wetlands mitigation bank to finance ecological restoration in the Sawmill Creek MARSH in Staten Island must explicitly address the potential for mitigation banking to enable development in other flood prone areas of the city or encourage high-end residential or commercial development that will result in gentrification driven displacement pressures. Next the city must prioritize opportunities for wetlands mitigation banking in low income communities and communities of color that are vulnerable to storm surge and sea level rise. The SMIA's in Brooklyn, Queens, and the Bronx may contain smaller amounts

of wetlands acreage than Staten Island but there is a need to promote ecologically sensitive development in these areas none the less. Next require that in order to be eligible to participate in the mitigation bank by purchasing credits projects must first mitigate the potential loss of wetlands and/or lost opportunities for local wetlands restoration. This will ensure that local communities are not adversely affected by projects participating in the wetlands mitigation bank. Next provide mitigation alternatives and climate resiliency strategies for all communities including industrial waterfront communities. This means ensuring that green infrastructure projects and other mitigation measures are incorporated in development projects and storm surge vulnerable low income communities and communities of color where mitigation banking may not be feasible. Such measures may include increased permeable surfaces, trees, rain gardens, enhanced tree pits, low impact development technologies, storm water retention, and improved storm drainage. Finally we'd like to make sure that the city defines the criteria used to evaluate which projects will be eligible to

participate in the mitigation bank by purchasing credits and invite public comment before selling any credits. Thank you.

CHAIRPERSON ROSE: Thank you.

DONALD RECKLIES: Good afternoon. Is this mic working? Can you hear me okay? Can't tell from here. First I'd like to thank the council for giving us this opportunity to testify here. My name is Don Recklies. I represent Protectors of Pine Oak Woods a land conservation organization in Staten Island. And I am here today to speak for our president Cliff Hagen who has written a statement but is unable to attend this meeting. I'll now read that statement into the record. Members of the City Council thank you for allowing Protectors of Pine Oak Woods an opportunity to address the issue of wetlands mitigation banking and the proposed mitigation and restoration strategies for habitat and ecological sustainability that is MARSHES initiative and folding along the west shore of Staten Island. The proposed mitigation and restoration strategies for habitat and ecological sustainability MARSHES initiative brings a new complex mechanism for economic development in New

York City. Wetlands banking with available mitigation credits for purchase has not been established within our city and the precedent to be set with the approval of this proposal deserves thorough consideration. A review of the United States geological survey water supply paper 24 25 restoration creation and recovery of wetlands, wetlands restoration and creation written by Marry E. Cotulla of the United States Environmental Protective Agency provides a summary to the challenges of tidal MARSH mitigation Cotulla Rights, the relative merits to destroying the function of an existing wetland or other ecosystem in exchange for another wetland function involves the consideration of numerous questions such as one which is more important, the existing or the replacement function. And two will the proposed wetland increase wildlife diversity. The answer to both questions would indicate marshes is an inappropriate proposal through the site. The first question asks if the benefit outweighs the impact to the area proposed for restoration. Of course the environmental benefits are negligible at best. The site proposed for restoration is already a rich and

varied ecosystem. The area of tidal wetlands to be restored as proposed by MARSHEs is a complex vital habitat and the restoration of that habitat will cause undue harm to current flora and fauna utilizing the site for migration, breeding, and foregoing or a collection of Neotropical passerines, marsh birds, and an assortment of gulls, hawks, shorebirds, and water fowl. On site throughout the wetlands intended for restoration swamp and song sparrows nest alongside salt, marsh, sharp tail sparrows and seaside sparrows. Ibisinigrets [phonetic] feed among the grasses that camouflage the nets of the clapper rail, Marsh ran... New York state listed threatened species. Osprey and Eagles utilize the area to forage as do an array of herrings and hawks all of which nest within a half mile radius of the area proposed for restoration. In nests among the branches of pin oak and chestnut oak red maple and sweet gum trees and various sumac trees are yellow warblers and common yellow throats besides American Goldfinch, Cedar Wax Wing, and Brown Thrasher. Butterflies abound, migrant species, red admiral, common buckeye, and the beloved monarch enjoy the many flowers on site.

Many stop to mate and lay eggs which mature on species specific native host plants already available on site. All other butterflies that utilize the various habitat include sulfurs and hair streaks, day old blue, and red spotted purple. The blackish title waters that continually rise and fall teem with aquatic life as do their freshwater ponds and puddles. Diamondback terrapins patrol the waterways while countless fiddler crabs jostle for position among the banks. In the ponds on the property are green and bullfrogs, spring peepers, and southern leopard frogs. New York state species a special concern. As well as a previously unknown species of frog *Rana Kauffeldi*, at least that is the projected name. On March 14th, 2012 Jeremy Feinberg, a doctoral candidate at Rutgers University announced that DNA evidence of frogs sampled on the properties to be restored through marshes showed the uniqueness of this new species. The second... the second... let me try... back again. Okay. The second question proposed Marry E. Cotulla of United States EPA is will the proposed wetlands increase wildlife diversity. Environmental review which support that restoration would not increase

the diversity of wildlife in the area for the great majority of probably species. For the great majority of probably species already utilize the site for breeding foregoing and immigration.

Understanding the lack of ecological necessity to restore the wetlands proposed for mitigation banking. There's no environmental need to move forward with the project. The unimpeded tides rise and fall twice daily throughout these tidal wetlands. These wetlands in the heart of industrial Staten Island were resilient during Superstorm Sandy and they will continue their inherent resiliency even without the marsh's initiative. The New York City Council should not allow MARSHEs or the wetlands mitigation banking which is the economic engine deriving, driving MARSHEs. John Carey writes in the December 2013th Scientific American that projects to restore wetlands have largely failed and wasted millions of dollars, primarily because they have attempted to fully engineer all the aspects of an ecosystem to their original conditions. MARSHEs proposes such draconian change to a viable tidal wetland. The applicant, Loose Burger and Associate PC reports on

the MRI bank, the first bank approved by the core New York district. They write that the site was degraded, fragmentize... this monoculture underlying with dredge spoils in pete was isolated from tidal inundation. That scenario does not occur at the proposed site for restoration. As previously described the site proposed for restoration is a rich vital habitat and benefit to wildlife would be negligible. A similar but more grand restoration has been proposed for 700 acres of wetlands along the lower savanna river watershed. In June 2013 Chris DeCher [sp?] managing attorney for the southern environmental law center said in reference to the proposed wetlands restoration mitigation banking system that quote this is money making operation masquerading as an environmental restoration project, unquote. So to the proposed MARSHEs in New York City is a masquerade for profit. Little of New York City's tidal MARSH habitat remains. The approval of MARSHEs would endanger those precious few acres of MARSH scattered through the five boroughs. A mitigation bank would allow for the destruction of small portions of MARSH and the overall net loss would be

2 greater than the supposed benefits of restoring
3 six, 60, or 600 rich vital acres of wetlands. The
4 New York City Council must not approve Sawmill
5 Creek plot wetland mitigation bank on Staten Island
6 New York. Thank you, Cliff Hagen, President.

7 CHAIRPERSON ROSE: Thank you. Thank you
8 each for your, for your testimony. I just want to
9 ask the first two panelists you're, you're
10 objection to this panel, to this, this proposal is
11 that it's not, it, that it has just a, a small sort
12 of concentrate area that it's not being extended to
13 the waterfront or the EJ communities. I'm not quite
14 sure what your... [cross-talk]

15 BERYL THURMAN: I'm sorry the objection
16 is is that the way that this particular, the way
17 the mitigation banking is structured is at the
18 community where the development is taking place in.
19 There are no resiliency measures for that. So
20 basically if you have a developer who's building on
21 that waterfront okay that developer bills whatever
22 it is they're building but there is no requirement
23 for the developer to build in a way that whatever
24 he's building actually protects the community
25 that's behind his, his property.

2 CHAIRPERSON ROSE: And that was the
3 source of, of my question. And, and the response
4 was that the onsite remediation would still have to
5 be done. So the onsite remediation in terms of not
6 only the remediation but the resiliency which is
7 now a requirement, or it's regulated would have,
8 that's the first sort of metric that they look at.
9 And then if they are not, if they are, if they are
10 eligible for the mitigation bank then that becomes
11 you know another option. Am I right sir? Okay.

12 BERYL THURMAN: Okay. In terms of the
13 remediation or mitigation...

14 CHAIRPERSON ROSE: Yes.

15 BERYL THURMAN: ...because remediation
16 usually means that you're cleaning up a
17 contaminated area. But in terms of the mitigation
18 what it requires is the, whatever the code is for
19 lifting... let's say they're building a structure,
20 lifting the structure of up higher so that it
21 doesn't get flooded and having the lower levels be
22 parking or whatever that is. But that doesn't keep
23 the water front going back towards the community.
24 Okay? So think of it in terms of St. George or Port
25 Richmond, more so areas like Port Richmond and

areas of Mariner Harbor where they're low-lying areas.

CHAIRPERSON ROSE: Right.

BERYL THURMAN: Okay.

CHAIRPERSON ROSE: Mm-hmm.

BERYL THURMAN: And so the development is taking place at the waterfront.

CHAIRPERSON ROSE: Mm-hmm.

BERYL THURMAN: Okay. So they lift up their let's say offices so it's no longer on the first floor. And what some of the, some of the proposals are is that that lower area is parking or it's a breakaway wall. But that doesn't, if the sea level is rising and the storm surges is coming in the water's just going to go right past or underneath it and back towards the residential community and flood us out.

CHAIRPERSON ROSE: So I, I, I get what you're saying in terms of the resiliency efforts. And I think that's a slightly different conversation from the, the banking..

BERYL THURMAN: No it's the same conversation because...

2 CHAIRPERSON ROSE: You're talking about
3 the resiliency and this is the, the banking to
4 ensure that the loss of, of wetlands that, that
5 there's no net loss of wetlands.

6 BERYL THURMAN: Understandable.

7 CHAIRPERSON ROSE: So it is, it's a
8 relevant conversation but I, I think we need to
9 have it in a different context.

10 BERYL THURMAN: Can I say this?

11 CHAIRPERSON ROSE: Mm-hmm.

12 BERYL THURMAN: They are, New York City
13 EDC received HUD money...

14 CHAIRPERSON ROSE: Mm-hmm.

15 BERYL THURMAN: Okay? For Hurricane
16 Sandy...

17 CHAIRPERSON ROSE: Right.

18 BERYL THURMAN: ...resiliency...

19 CHAIRPERSON ROSE: Yes.

20 BERYL THURMAN: Right?

21 CHAIRPERSON ROSE: Mm-hmm.

22 BERYL THURMAN: So that means that when
23 you're get, in our, in our take when you're giving
24 someone money to do a resiliency project that is
25 supposed to protect human life then it really

2 should protect human life at the beginning of the
3 project, at the middle of the project, and at the
4 end of the project. And if they're saying that they
5 cannot tell you where they're going to be doing
6 these development projects then that's like writing
7 a blank check, you know that's like signing off on
8 a blank check. Because they're saying that they're
9 going to build a sea wall but this opens up the
10 opportunity for other types of waterfront and in
11 water development to take place if there is no
12 structure to say otherwise.

13 CHAIRPERSON ROSE: Okay so could, could
14 we do this? Could we have a, a conversation with
15 EDC to address these concerns? What we will do is
16 we will try, we will get a conversation with EDC to
17 address those concerns. But thank you for your
18 testimony but we're actually going to move forward
19 in terms of what's going on with the banking of
20 the... it's a mitigation banking.

21 BERYL THURMAN: It's a bad idea Council
22 Member Rose. It's a bad idea.

23 CHAIRPERSON ROSE: Okay.

24 BERYL THURMAN: It doesn't protect us.
25

2 CHAIRPERSON ROSE: Okay. Well I want to
3 have that conversation, a continuation of that
4 conversation offline and, and we'll have it with
5 EDC okay. I'd like to thank you...

6 NATASHA DWYER: Oh I just wanted to
7 respond as well. Obviously we defer to local groups
8 on some of the specific impacts that are happening
9 on Staten Island but from the New York City
10 Environmental Justice Alliance's perspective I
11 think the, the critical concern in addition to
12 what's been stated is about really the possibility
13 of generating inequities in other areas. So imagine
14 a development and project moving forward in the
15 South Bronx, taking advantage of, of those credits.
16 What is the criteria to decide whether or not that
17 project can do that? Perhaps the potential for
18 wetlands mitigation has been exhausted as what's
19 been, was discussed by EDC on a particular project
20 but there are many green infrastructure projects
21 happening in an area like the South Bronx. We want
22 to see that there's local support for that. And
23 then any project that's happening is going to
24 ultimately benefit the entire area. So we want to
25 be able to have a better understanding of what the

criteria are for deciding how a project becomes eligible for those credits.

CHAIRPERSON ROSE: Mm-hmm.

NATASHA DWYER: And then what local community input can be a part of that.

CHAIRPERSON ROSE: Right okay.

NATASHA DWYER: Thank you.

CHAIRPERSON ROSE: Thank you.

NATASHA DWYER: Right.

CHAIRPERSON ROSE: Again I, I thank you all for taking time to come today to testify. Thank you. And the next and our last panel will be Roland Lewis from the Metropolitan Water Alliance, Jessica Evans from the New York New Jersey Bay Keepers, and Eric Sanderson from the Wildlife Conservatory Conservation Society. Yes, please identify yourself and your organization and you can begin.

JESSICA EVANS: Thank you very much for the opportunity to speak in front of the council. My name is Jessica Evans and I'm testifying on behalf of New York New Jersey Bay Keeper. The proposal for MARSHES states that the majority of the funding for the proposed mitigation bank would come from the third round of community development

block grant, disaster recovery funding, being allocated for Hurricane Sandy recovery efforts. While we support the idea of a wetlands mitigation bank in New York, enhancing a wetland on the northwest shore of Staten Island will offer very minimal if any flood protection to nearby homes and businesses which are all located more closely to and are more exposed to the north shore. Since the funding for the majority of this project is coming from Hurricane Sandy resiliency funding we suggest that the proposal be amended to require that the credits created through the plan be allocated to projects which will increase the resiliency of those residents and municipalities who are most impacted by Hurricane Sandy. Additionally a financing plan should be completed before funds are released in order to confirm that the credits will be distributed appropriately. According to the plan the city of New York will be required to pay for the use of mitigation credits generated by the project. Since funds would be diverted from New York City recovery efforts in order to complete the project we see this as a double charge to the city of New York for the same work. At a minimum we

encourage the proposal be revised to specify a significant discount for credits sold to the city of New York. The final concern we have with the project is the size of the service area which would be eligible for mitigation credits and the type of projects that would be eligible. The service area extends north as far as the Bronx where residents would not see any of the benefits of this mitigation. The service area should be limited to projects within the same sub water shed as the wetlands impact. Eligible projects should also be limited to in kind water, in kind wetland impacts. For example restoration of wetlands should not be used as a credit for a project which has open water fill as the two have different impacts which are not equivalent. Thank you for your consideration of these comments.

ROLAND LEWIS: Good afternoon. My name is Roland Lewis. I'm the president of the Metropolitan Waterfront Alliance, an alliance of over 800 organizations dedicated to accessible and open environment. And Chairman Rose I'm glad to see you back here and looking, looking good. We are in favor of, of the mitigation bank and it's an idea

we think... time has come, the particular acre, the site in Staten Island will restore 68 acres of, of a place that's filled with garbage and illegal dumping and invasive weeds. It's something we've long called for within the city of New York. It's an idea that has been used successfully across the country in, in a couple dozens states at least. Look no further than the middle lands in New Jersey to see what great work a mitigation bank can do. It's a favored way of restoration by the Army Corp and the EPA. Also it's something that you all, Chairman Rose, Mayor... at that time Mayor Elect de Blasio, Scott Stringer, many of our now elected officials endorsed in our waterfront political questionnaire we put forward during the last election campaign. It enjoys wide support among many. And now just very briefly earlier I was asked why is this a good thing. I think it's, it's a triple win for, for the waterfront. It's you know we, we can discuss it we should have that... discussion but it does provide for restoration of, of MARSH land. It can and should provide for greater resiliency. And I think those two things are not mutually exclusive. They, the go together.

2 And the third win which I, I don't want to overlook
3 especially Chairman Rose with, with your district,
4 it's a win for economic development. There are
5 businesses that literally are driven to insanity
6 and, and despair by the, by the necessity to keep
7 their waterfront businesses going and having to do
8 mitigation at the same time in a, in a process now
9 that is almost impossible for them to negotiate. If
10 this pilot is successful and I hope it will be
11 successful this will be a place for them to go to,
12 in a simple and rational way mitigate whatever the
13 necessary environmental harm that is part of, part
14 and parcel of a ship repair facility or a tugboat
15 operation or those, those very important blue
16 collar jobs that populate the north shore of Staten
17 Island. That's what one of the, I think most
18 important things about the mitigation bank that'll
19 make it easier and possible for those businesses to
20 go ahead, go forward. So again it's, I think good
21 for the environment, good for resiliency and, and
22 good for business and, and it's about time that New
23 York City gets on board with mitigation banking.

24 ERIC SANDERSON: Thank you very much.

25 Thank you for the committee for inviting me. I'm

Doctor Eric Sanderson from the Wildlife Conservation Society, Wildlife Conservation Society runs the, the zoos in New York; the Bronx Zoo, the New York Aquarium, Central Park Zoo, Prospect Park Zoo, and Queens Zoo. We're also a global conservation organization with projects in 65 countries around the world including many mitigation type efforts like this. And so I'm here and you know in the last, the last moments of the testimony just to provide a little bit of context to what we're talking about... I'm also the author of Mona Hota [phonetic] A Natural History in New York City which is a review of the historical ecology of the city and we've been expanding that over the rest of the city including Staten Island. And so I'd just like to make two very brief points. So one is when we think about wetlands and other ecosystems in the city we have to realize that the reason we live in such a productive place is because of the nature of its place. We wouldn't be here if it wasn't for the extraordinary ecology of this city. And that, that... much of that ecology has been transformed to build the economic development of the city including tidal wetlands as we know.

And that's had very long term consequences for us. Just on Staten Island, Staten Island once had 56 hundred acres, 5,600 acres. There's approximately 18 hundred acres of wetland left. So we're talking about a 68 acre project in that, in that context right? So it's really good that in our modern world that we think about the environmental impacts of every project but we have to realize that we also live in a world that the very degraded ecosystem because of decisions, some of which were made a hundred years 200 years ago. And so anything we can do to create more flexibility about the way the economic system and the natural systems of our city work together including things like mitigation banks like the other panelists I would support that, this initiative as a precedent for other places but realize we really need to move the scale up you know a hundred times from where we are from this very precedence. So that would be the, the very first point I'd like to make. And the second, the second point which again I'll be brief refers to the briefing packet if you have it. I brought some maps showing this particular area on Staten Island over time. And actually... actually brings

some context and I, I hope my colleagues at EDC and the Parks Department also look at these because I actually show why so much land work is required for this particular site. If you look on page three of the testimony you see a map from 1782 of Staten Island. This was actually made before, you know before the American republic, it was made during the American Revolution by British Military Cartographers. The green line on the map shows the overall Sawmill Creek MARSH area as it current exist and the purple line shows you the current project's site. And you can see how it's actually right on the margin or the Eco tone as we would call it between the salt marsh which is sort of a grey hashed area beside the, beside the, the river and the land. And there's a little note that it used be wood. So this used to be a place that was marshlands fronting woodlands. And if you turn the page you'll see a map from 1844 so this is another 70 years later. It shows the same thing. It shows this very extensive band of wetlands that was on the western shore of Staten Island merging into a forested area. The southern part of that forested area as you can see in 1844 is already being

converted for agriculture. Right so it was at one time a very rural landscape which you'll see again in 1875. I'm sorry the reproduction is so poor, that's on page five. And then you can see, and I think this is actually in some ways the most interesting map of the series is the map on page six. This is from the... atlas of the metropolitan district from 1891. This is from the US Coast and Geodetic Survey. And you can see actually a much more extensive wetland probably created through either local subsidence or changes, land use changes. Particular site we're talking about here is partially wetland and partially upland which is why when we talk about this specific project so much earth work is required if you want to turn it all into tidal marsh you're actually going to have to lower, lower the land. And so you know I think it's really important we think about the, the, the history of these sites right? It's not just what we do from here going forward. Obviously that's what you know the city's going to fund and what the mitigation bank would fund. But it, we have to put it in the context of how this particular place has changed over time. You know salt marshes provide so

many different ecological benefits as you described in your, you know initial commentary and, and, and, and Chair Garodnick did as well. So I need to reiterate those to you. But I just think you know we need to think about how our city is evolving from the decisions that we're making into the future. And I'll just point you to the last figure on page eight which is a new web forum that, that my organization launched last year which is a way for all of us to contribute our ideas and what we want to see for the future of the city. And it's initial iteration it just focuses on, on Manhattan but we're going to be launching the citywide version of that this summer and it'll be called Vision Maker dot NYC and so you know these kind of conversations that we have in meetings before the city council or the advisory meetings that are held by all the agencies, this kind of conversation can extend onto the internet in a way that everybody, all of us that are here, anybody who's watching at home, anybody in the city can actually create their own idea of what they would like to see for say the Sawmill Creek wetland area and then share that with

1 COMMITTEE ON WATERFRONTS WITH COMMITTEE ON ECONOMIC DEVELOPMENT 91

2 everyone else using a mechanism like this. Thank
3 you very much.

4 CHAIRPERSON ROSE: Thank you. And do you
5 usually participate in the public response when
6 these projects are proposed? Have you...

7 ERIC SANDERSON: Yes.

8 CHAIRPERSON ROSE: ...participated?

9 ERIC SANDERSON: When, when I, when I
10 get an invitation to I always come.

11 CHAIRPERSON ROSE: Okay. Thank you so
12 much. I'd like to thank this panel. And I'd like to
13 ask EDC if you would just come back to the mic
14 under oath and, and maybe have some general comment
15 or response to the, the community you know
16 opposition to this project? Hi.

17 ANDREW GAN: Alright I'm Andrew Gan. I
18 was not on the original panel but I'm the Senior
19 Vice President for Ports and Transportation DDC and
20 since Joe Coletti had to leave early I would like
21 to be able to join my colleagues here.

22 CHAIRPERSON ROSE: Fine. Fine Andrew.

23 ANDREW GAN: Okay thank you.

24 CHAIRPERSON ROSE: Welcome. And I'm glad
25 to see you. Want to step up and, and take you know

some of the seat. But yeah I just thought that the, the community and the legal community express some concerns. And I would like EDC to address those.

ANDREW GAN: Sure. Well I think we welcome you know this dialogue. I think part of the process has been having a dialogue through our technical advisory committee through the, the various public hearings and opportunities to comment on the perspicuous and the, and the other elements of the MARSHES process. So this really came out of discussions that were a hand, that were held with respect to the, the waves initiative that waterfront enhancement strategy of the former administration and also the waterfront management advisory board which is still a standing entity. And the, the idea behind mitigation banking was to really look at how we could restore large scale wetlands within the city by unlocking the value of, of the city's economic might let's say. And because mitigation had been handled on an add hawk basis for so long I think what we, you know what we are doing here I think is kind of reframing the discussion around how do we again create a, a mitigation bank that will restore large scale

2 wetlands so we get better outcomes and better
3 environmental outcomes. But we also have a more
4 efficient waterfront permit review process. That's
5 really the, the heart of this. Because in the past
6 you know it can take several years for a project to
7 find appropriate mitigation. Once it's gone through
8 the process of first avoiding the impact in the
9 first place, then minimizing it, and then only then
10 are you able to, to go through mitigation through
11 the permit process. So, so this was a way to
12 collectivize that, that value and do it on a large
13 scale and get the stewardship value too which means
14 we're, we're never leaving this marsh we're always,
15 you know we always have money to protect it and,
16 and keep it functioning at a very high level.

17 CHAIRPERSON ROSE: I think one of the
18 questions was also in, that EDC have gotten some
19 FEMA funds for resiliency.

20 ANDREW GAN: Yes.

21 CHAIRPERSON ROSE: And were any of those
22 funds used for the establishment of the mitigation
23 bank and if so you know how and why was it taken
24 from resiliency efforts?

2 ANDREW GAN: So the, the approach that
3 was taken really an was identified in the SIRR
4 report after Sandy, that was the report that
5 recommended both hard and soft interventions in
6 order to protect the coastline. And so this would
7 fall under sort of a soft protection which is using
8 natural areas to buffer where people live and where
9 people work. So that's, that's why the community
10 development block grant disaster recovery funds
11 have been applied in this case. And, and, and we
12 think it's appropriate because wetlands inherently
13 are resilient and that's, and, and another point
14 I'd like to make is that where we have to do hard
15 infrastructure to protect the coastline meaning
16 we're building higher bulkheads, we're moving
17 bulkheads out, we're creating sea walls, any of
18 those types of interventions would require
19 mitigation because they are affecting the waters of
20 the United States as Ray pointed out. So, so the
21 bank, the Sawmill Creek bank could become the
22 source of the mitigation credits that are needed
23 for those hard interventions to protect the
24 coastline to take place. So this way we, we assure
25

2 that we're not losing wetlands. The, the no net
3 loss rule is, is protected.

4 CHAIRPERSON ROSE: Okay. And you are
5 going to look at the hard, the hardening of the,
6 the waterfronts also?

7 ANDREW GAN: In, in some places where
8 it's appropriate that's you know that's, that's
9 certainly for the office of resiliency recovery and
10 resiliency to talk to. But, but yes because this is
11 such a, such a large city, eight million residents
12 and growing and we live on the coastline inevitably
13 there are places where the intervention is going to
14 require a hard intervention you know like lower
15 Manhattan would be an example of that. But in other
16 areas where you can strengthen wetlands that's part
17 of you know the tool kit.

18 CHAIRPERSON ROSE: Okay thank you.

19 MAX TAFFET: Just like to add on to what
20 Andrew has said. That, that this is part of a 17
21 billion dollar coastal protection package in total.
22 So at the investment on the upfront of the
23 restoration of 13 and a half million this is a very
24 small portion of the overall 17 billion dollar
25 package. But this, this package, this, the specific

2 site has direct resiliency benefits to its site as
3 well as the possibility of supporting those other
4 elements of coastal protection.

5 CHAIRPERSON ROSE: Okay. Thank you so
6 much. And...

7 RAY FUSCO: May I add...

8 CHAIRPERSON ROSE: Thank you... Oh yes...
9 [cross-talk]

10 RAY FUSCO: So earlier you had mentioned
11 that you'd like us to have a conversation...[cross-
12 talk]

13 CHAIRPERSON ROSE: Yes.

14 RAY FUSCO: ...with Beryl. And we welcome
15 that opportunity. I would like to mention for the
16 record though that we have had many conversations
17 with the stakeholders. Beryl Thurman we have had
18 several email exchanges and a very lengthy and
19 hardy conversation. Andrew and I talked with Beryl
20 several times. Max and I personally invited the
21 Executive Director of New York New Jersey Bay
22 Keeper to personally inform her of this project and
23 its current status...

24 CHAIRPERSON ROSE: Mm-hmm.
25

2 RAY FUSCO: ...as a part of our public
3 comment and above and beyond our public comment we
4 have reached out to these folks to try to answer
5 hard questions and discuss some of these very
6 nuanced questions, very complicated federal
7 process. We also had a conversation with the
8 environmental justice alliance as well to educate
9 them on our process and everything. So in addition
10 to the traditional public comment periods where we
11 met demands of the Army Corp, DEC, both on the
12 perspectives and the construction we did individual
13 organizational outreach to make sure that if things
14 were unclear or if things were of concern that we
15 spoke to those individuals on a, on a, on a basis
16 that would be open to a significant dialogue. So
17 we've done both the necessary mandatory public
18 comment as well as significant public outreach to
19 these folks in addition to having a very hardy
20 conversation through our technical advisory
21 committee. So this project is without, is not
22 without scrutiny... significant amount of players
23 looking at every single aspect of this. And we have
24 been in public comment with an individual's

2 organizations and federal resource agencies
3 significantly over the last two years.

4 CHAIRPERSON ROSE: I, I appreciate your,
5 your efforts above and beyond you know the mandated
6 public response period and it sounds as if you
7 have. You know but the fact that we've talked to
8 people doesn't really mean that we've addressed
9 their concerns. So I, I want you to be aware that
10 these communities have valid concerns and that
11 there are EJ communities that have been overlooked
12 and neglected and their voices haven't been heard.
13 So I appreciate that you've given them the
14 opportunity to have voice but I would like to see
15 something done in terms of addressing the concerns.
16 And so I thank you for staying behind to hear all
17 of the comments. And, and for coming back and, and
18 addressing the questions that some of our panelists
19 had. So thank you. [cross-talk] And, and again I, I
20 will feel free to call you to have additional
21 dialogue if that is in fact needed.

22 RAY FUSCO: Yeah absolutely... [cross-
23 talk] Thanks.

24 CHAIRPERSON ROSE: Okay thank you so
25 much. Have a good day and this hearing is... oh wait?

2 Oh I, I just want to mention that we did receive
3 for the record an in support of this proposal, the
4 MARSHES proposal statements from Staten Island EDC
5 and REBNY New York so they will be added to the
6 record. And with that said this meeting is
7 adjourned. Thank you for coming.

8 [gavel]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date March 10, 2015