

Appendix F2
Jurisdictional Determination Letter



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

JUL 21 2017

Regulatory Branch

SUBJECT: Department of the Army Permit Application No. NAN-2016-01363-ETY Jurisdictional Determination for New York City Department of Parks & Recreation and New York City Department of Small Business Services for Proposed East Side Coastal Resiliency Flood Protection System at the East River from Montgomery Street to East 23rd Street in the Borough of Manhattan, City of New York, New York County, New York

Kay Zias
Director of Environmental Remediation
New York City Department of Parks and Recreation
Olmstead Center, Flushing Meadows-Corona Park
Capital Projects
117-02 Roosevelt Avenue, Room 46
Corona, NY 11368

Meenakshi Verandani, AIA, AICP
Director, Waterfront Permits
New York City Small Business Services
110 William Street, 7th Floor
New York, NY 10038

Dear Ms. Zias and Ms. Verandani:

On August 19, 2016, the New York District, U.S. Army Corps of Engineers (USACE), received your request for a Department of the Army jurisdictional determination to identify and locate jurisdictional waters of the United States, including wetlands, that are regulated by USACE under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act of 1977 (33 U.S.C. 1344) for the portion of the proposed East Side Coastal Resiliency Flood Protection System Project to be located along the western shoreline of the East River between Montgomery Street to East 23rd Street in the Borough of Manhattan, City of New York, New York County, New York.

Based on the documents submitted, including drawings, as well as aerial and site photographs, the project review area as depicted on **Figure 1, Project Area One and Project Area Two Shoreline Characteristics** (attached) has been determined to contain jurisdictional waters of the United States comprised of five (5) distinct areas:

1) Pier 42 Area:

- East River Shoreline Location: Montgomery Street (40°42'34.00"N, 73°59'5.12"W) eastward to the approximate eastern terminus of Jackson Street (40°42'36.65"N, 73°58'52.52"W).

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- Jurisdictional Waters: A 931.40-linear foot open water area from the Plane of Spring High Water (SHW) located beneath existing overhanging decking and extending seaward. This area is subject to all terms and conditions of Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act of 1977 (33 U.S.C. 1344).

2) Pier 42/Corlears Hook Area:

- East River Shoreline Location: Approximate eastern terminus of Jackson Street (40°42'36.65"N, 73°58'52.52"W) eastward to the eastern terminus of the East River Park Amphitheatre (40°42'39.25"N, 73°58'38.90"W).
- Jurisdictional Waters: A 1,121.40-linear foot open water area from the Plane of SHW at the existing bulkhead and extending seaward. This area is subject to all terms and conditions of Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act of 1977 (33 U.S.C. 1344).

3) East River Park Area:

- East River Shoreline Location: Eastern terminus of the East River Park Amphitheatre (40°42'39.25"N, 73°58'38.90"W) to eastern terminus of East 13th Street (40°43'32.93"N, 73°58'18.32"W).
- Jurisdictional Waters: A 5,858.30-linear foot open water area from the Plane of SHW located beneath existing overhanging decking and extending waterward. This area is subject to all terms and conditions of Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act of 1977 (33 U.S.C. 1344).

4) Con Edison Area:

- East River Shoreline Location: Eastern terminus of East 13th Street (40°43'32.93"N, 73°58'18.32"W) to eastern terminus of East 15th Street (40°43'38.89"N, 73°58'17.34"W).
- Jurisdictional Waters: A 777.80-linear foot open water area from the Plane of SHW at the existing bulkhead and extending seaward. This area is subject to all terms and conditions of Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act of 1977 (33 U.S.C. 1344).

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5) Captain Patrick J. Brown Walk Area "A":

- East River Shoreline Location: Eastern terminus of East 15th Street (40°43'38.89"N, 73°58'17.34"W) to a point along Captain Patrick J. Brown Walk extending from East 17th Street (40°43'46.67"N, 73°58'17.91"W).
- Jurisdictional Waters: A 713.80-linear foot open water area from the Plane of SHW at the existing bulkhead and extending seaward. This area is subject to all terms and conditions of Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act of 1977 (33 U.S.C. 1344).

In accordance with Title 33 of the United States Code, Section 59c - East River, New York, "That portion of the East River, in New York County, State of New York, lying between the south line of East 17th Street, extended eastwardly, the United States pierhead line as it existed on July 1, 1965, and the south line of East 30th Street, extended eastwardly, is hereby declared to be not a navigable water of the United States within the meaning of the Constitution and the laws of the United States." To clarify, Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) **would NOT apply** to "that portion of the East River, in New York County, State of New York, lying between the south line of East 17th Street, extended eastwardly, the United States pierhead line as it existed on July 1, 1965, and the south line of East 30th Street, extended eastwardly." However, all terms and conditions of Section 404 of the Clean Water Act of 1977 (33 U.S.C. 1344) **would apply** to "that portion of the East River, in New York County, State of New York, lying between the south line of East 17th Street, extended eastwardly, the United States pierhead line as it existed on July 1, 1965, and the south line of East 30th Street, extended eastwardly."

Note that any waters east of the New York County pierhead line of the East River lying between the south line of East 17th Street and the south line of East 30th Street are determined to be Navigable Waters of the U.S. and thus subject to all terms and conditions of Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act of 1977 (33 U.S.C. 1344).

In accordance with Title 33 of the United States Code, Section 59c - East River, New York, two (2) distinct in-water areas, as depicted on **Figure 1 Project Area One and Project Area Two Shoreline Characteristics**, are characterized as follows:

1. Captain Patrick J. Brown Walk Area "B"

- East River Shoreline Location: Point along Captain Patrick J. Brown Walk extending from East 17th Street (40°43'46.67"N, 73°58'17.91"W) to eastern terminus of Avenue C (40°43'52.78"N, 73°58'24.65"W).

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- **Subject to all terms and conditions of Section 404 of the Clean Water Act of 1977 (33 U.S.C. 1344) only:** A 750.00-linear foot open water area running north to south and extending from the Plane of SHW located beneath existing overhanging decking eastward to the pierhead line of the East River.
- **Subject to all terms and conditions of both Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act of 1977 (33 U.S.C. 1344):** A 750.00-linear foot open water area running north to south and extending from the pierhead line of the East River eastward.

2. Stuyvesant Cove Park

- **East River Shoreline Location:** Eastern terminus of Avenue C (40°43'52.78"N, 73°58'24.65"W) to eastern terminus of East 23rd Street (40°44'6.85"N, 73°58'27.81"W).
- **Subject to all terms and conditions of Section 404 of the Clean Water Act of 1977 (33 U.S.C. 1344) only:** A 1,531.10-linear foot open water area running north to south and extending from the Plane of SHW at the existing bulkhead eastward to the pierhead line of the East River.
- **Subject to all terms and conditions of both Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act of 1977 (33 U.S.C. 1344):** A 1,531.10-linear foot open water area running north to south and extending from the pierhead line of the East River eastward.

This determination regarding the delineation shall be considered valid for a period of five (5) years from the date of this letter unless new information warrants revision of the determination before the expiration date.

This determination was documented using the Approved Jurisdictional Determination Form, promulgated by the Corps of Engineers in June 2007. A copy of that document is enclosed with this letter, and will be posted on the New York District website at:

<http://www.nan.usace.army.mil/Missions/Regulatory/JurisdictionalDeterminations/RecentJurisdictionalDeterminations.aspx>

This determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed is a combined Notification of Appeal Process (NAP) and

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Request For Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the North Atlantic Division Office at the following address:

James W. Haggerty, Regulatory Program Manager, CENAD-PD-OR
North Atlantic Division, U.S. Army Engineer Division
Fort Hamilton Military Community
General Lee Avenue, Building 301
Brooklyn, New York 11252-6700

In order for a RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit a RFA form, it must be received at the above address by SEP 21 2017. It is not necessary to submit a RFA form to the Division Office if you do not object to the determination in this letter.

It is strongly recommended that project activities be designed and implemented in such a manner as to avoid as much as possible the discharge of dredged or fill material into waters of the United States. If project activities involve such discharges, authorization from this office would be necessary prior to the initiation of the proposed work. The extent of such discharge of fill will determine the level of authorization that would be required. In order to allow for the USACE permit process to be completed in an efficient and timely manner, it is requested that a joint permit application be submitted to our office as soon as possible. Guidance for obtaining a Department of the Army permit may be found at the following link: <http://www.nan.usace.army.mil/Missions/Regulatory/Obtaining-a-Permit/>. Additionally, a copy of our Regulatory Program Applicant Information Guide is enclosed.

If any questions should arise concerning this matter, please contact Ms. Melanie Tymes, of my staff, at (917) 790-8085.

Sincerely,



Stephan A. Ryba
Chief, Regulatory Branch

cc: Gabriela A. Amabile (HUD)

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Enclosures:

- 1) Figure 1, Project Area One and Project Area Two Shoreline Characteristics
- 2) Approved Jurisdictional Determination Form
- 3) Notification of Appeal Process and Request For Appeal form
- 4) Regulatory Program Applicant Information Guide



* Includes waters within 100 feet of shoreline and under Pier 42, East River Park, and Captain Patrick J. Brown Walk decking

Project Area One and Project Area Two Shoreline Characteristics
Figure 1