



January 20, 2023

VIA ELECTRONIC MAIL

District Engineer
U.S. Army Corps of Engineers, Philadelphia District
Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3390
napregulatory@usace.army.mil

**Re: First Pennsylvania Resource LLC Cobbs Creek Mitigation Bank
CENAP-OP-R-2018-00729-84**

Please accept the following supplemental comments made on behalf of the Delaware Riverkeeper Network and Maya K. van Rossum, the Delaware Riverkeeper (collectively, "DRN"), regarding the above-referenced Prospectus. DRN submits these comments in addition to its comments previously submitted December 19 and 21, 2022,¹ to address the risk that the U.S. Army Corps of Engineers ("Corps") might approve a site that is not appropriate for the compensatory mitigation program,² or miscalculate the proposed mitigation bank's environmental benefits,³ without properly accounting for the extensive destruction of hundreds of mature trees at the proposed mitigation bank site. Given the inextricable interconnectedness of the restoration project and the renovation and operation of the golf course, the Corps should utilize the National Environmental Policy Act ("NEPA")⁴ to evaluate the full scope of the project's environmental impacts on the impacted communities, both surrounding the proposed mitigation bank in Cobbs Creek, and those downstream in Eastwick.

¹ Attachment A and Attachment B, respectively.

² 33 C.F.R. § 332.8(d)(5) (requiring the district engineer to determine whether the proposed mitigation bank has potential for providing appropriate compensatory mitigation for activities authorized by Department of the Army permits).

³ *Id.* § 332.8(o)(3) (requiring that the number of credits generated "must reflect the difference between pre- and post-compensatory mitigation project site conditions").

⁴ 42 U.S.C. §§ 4321-4370m-11.

The Corps' regulations make clear that the district engineer should "use a watershed approach to the extent practicable in reviewing proposed mitigation banks" ⁵ A watershed approach would allow the Corps to explicitly consider the communities within the watershed, and the impacts (whether beneficial or adverse) that they may feel from the proposed restoration and development. Rather than relying solely on the sponsor's description of the project to inform the public and solicit public comment, the Corps should utilize the procedures of NEPA to investigate the project's impacts with the interested public's informed participation, as well as to drive its own decision on whether to approve the proposed mitigation bank.

A draft environmental impact statement ("EIS") and additional public comment will facilitate the Corps' compliance with its own recent guidance concerning environmental justice. ⁶ According to that guidance, which currently only applies to the Civil Works program, the Corps' policy is to facilitate the "fair treatment and meaningful involvement of all people regardless of race, color, national origin or income regarding the development, implementation and enforcement of environmental laws, regulations, and policies, with no group bearing a disproportionate burden of environmental harms and risks." ⁷

To date, the "meaningful involvement" of the public has been hindered by the Cobbs Creek Foundation's ("CCF's") premature site preparation activities (including the sudden clearing of hundreds of mature trees on the property), as well as a lack of information regarding how the restoration project will be affected by the golf course development. As it stands regarding this proposed mitigation project, the communities surrounding the relevant parcel have borne the ecological devastation associated with the removal of hundreds of mature trees in the limited area of green space available within their neighborhood. The entity that denuded the landscape is now promising to restore it, but at the same time pursuing a profitable golf course development, which has the potential to directly and adversely impact the streams and wetlands on the property, regardless of whether those streams and wetlands are restored.

While CCF has thus far taken an impacts-first-analysis-later approach to golf course renovation and water resource rehabilitation, the surrounding communities have been deprived of the opportunity to have a say in the overall project. Currently, Philadelphia City Councilmember Jones is pursuing a legislative "Overlay Zoning District" on the property that would exempt the development from restrictions on site clearing and earth moving on steep slopes. ⁸

With the prospect of additional environmental devastation looming on the horizon, the Corps must take this opportunity to assert its regulatory authority and comprehensively

⁵ 33 C.F.R. § 332.8(b)(3).

⁶ See U.S. Army Corps of Eng'rs, Implementation of Environmental Justice and the Justice40 Initiative (Mar. 15, 2022).

⁷ *Id.*

⁸ See City of Philadelphia Bill No. 22091801, As Amended Dec. 6, 2022, <https://phila.legistar.com/View.ashx?M=F&ID=11517199&GUID=99C342F6-507B-4DD4-872D-FF6D838BE0EF>

evaluate the overall development of this property and provide the surrounding and downstream communities with accurate information necessary to evaluate how they will be affected.

As DRN highlighted in our December comments, a commitment to accuracy begins with a true understanding of the environmental “baseline” from which the sponsor proposes to “restore” the water resources. In addition, the Corps must utilize the NEPA process to consider the overall development of both the mitigation project and the golf course renovation, and how this proposal (and alternatives) will affect the surrounding and downstream environmental justice communities. The Corps should remedy the concerns raised in DRN’s prior comments (which have yet to be addressed). prepare a draft EIS, and provide additional opportunity for public comment based on that document, in order to reach an environmentally protective, just, and equitable decision on this proposed mitigation bank.

Respectfully submitted,

/s/ Kacy C. Manahan

Kacy C. Manahan

Senior Attorney

Enclosures

Attachment A



December 19, 2022

U.S. Army Corps of Engineers (First Class mail and electronic)
District Engineer, U.S. Army Corps of Engineers
Philadelphia District, Wanamaker Building
100 Penn Square East
Philadelphia, Pennsylvania 19107-3390

napregulatory@usace.army.mil

Attention: Mr. Todd Schaible, Chief, Regulatory Branch
Mr. Brian Anthony

Re: CENAP-OP-R-2018-00729-84/First Pennsylvania Resource LLC Cobbs Creek Mitigation Bank

Good Day,

The undersigned organizations respectfully request a new Public Notice be issued by the Corps, as well as a new and extended comment period (90-day) on the above captioned matter. This is a highly controversial project that will have substantial implications for the tens of thousands of people, property, and natural resources in the already highly flood-prone Darby and Cobbs Creek Watershed. Our request is based upon the following:

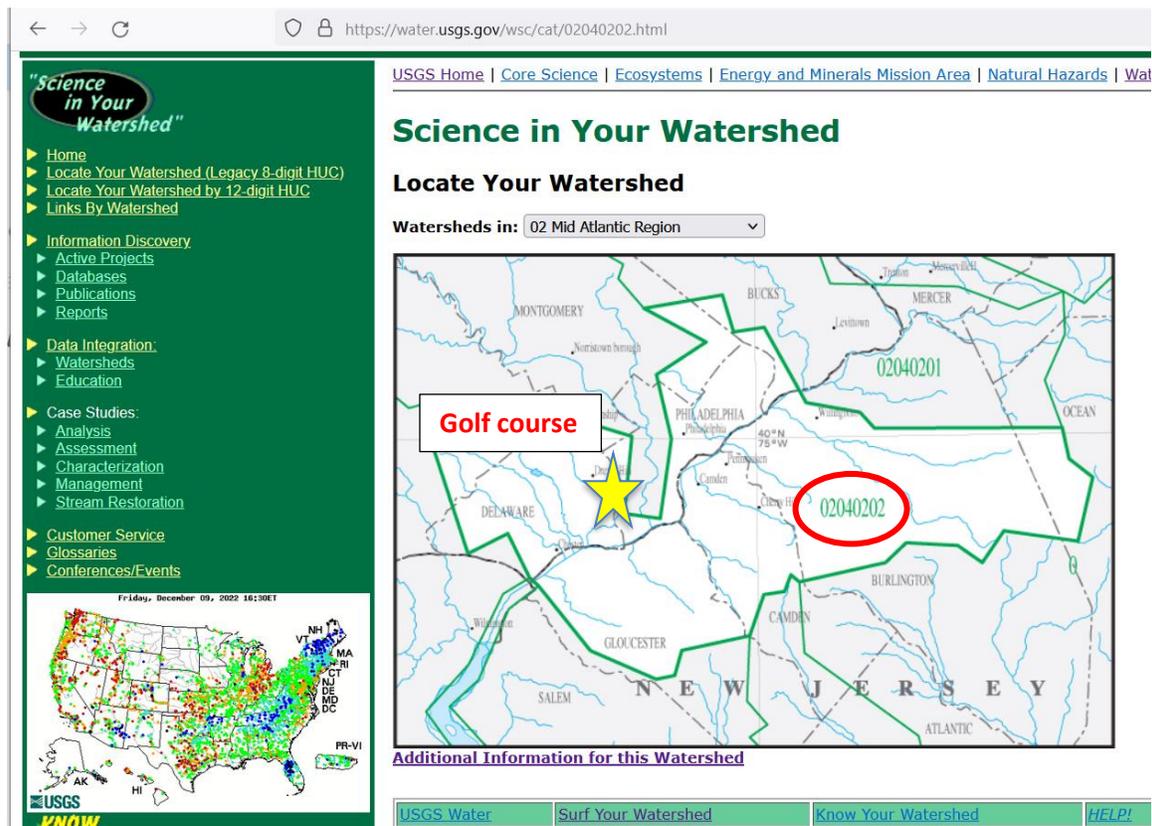
- The proposed streambank and wetland restoration plan might have the potential to mitigate some downstream flooding and sediment deposition, however, there is a newly proposed steep slope tree and ground cover clearing ([Zoning Bill No. 220918](#) entitled 'Cobbs Creek Golf Course Overlay District), on up-land sections at the golf course now under consideration by the City of Philadelphia. As you are already likely aware, the Darby/Cobbs is one of the most flood prone watersheds in SE Pennsylvania. The Army Corps Philadelphia District is assessing flood mitigation projects, including the construction of a berm, in Eastwick in an attempt to reduce the flooding from the Cobbs Creek that already poses a threat to Eastwick residents and the U.S. Fish and Wildlife John Heinz National Wildlife Refuge. Those communities located downstream of the golf course are largely designated as Environmental Justice communities and already suffer from chronic and catastrophic flooding. While it is true that the cleared 108-acre golf course site, which included the cutting of 500 large trees (24" DBH and larger), now absolutely requires the implementation of the streambank and wetland restoration, there is substantially more devastating clearing proposed and under consideration by the Philadelphia City Planning Commission (PCPC). The Army Corps should not approve this Mitigation Bank approval without all of the information to make a sound, scientifically-based decision. Without the full extent of what

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ecological impacts that new steep slope clearing can have on the proposed streambank and wetland restoration, the Corps cannot know if this streambank and wetland restoration plan will be sufficient to manage the volume and velocity of runoff because the clearing of more trees could easily add more stormwater to the system. The Corps must base their decision on the total and cumulative impacts of the full-site clearing this developer and the City of Philadelphia is considering.

- As noted above, these substantial site development changes to the project scope are being considered by the PCPC – perhaps as early as their January 2023 meeting. Currently the PCPC is considering an ordinance overlay that will allow this developer to clear-cut mature trees from both steep slopes in and outside of the riparian zone and floodplain. The PCPC’s ordinance action reduces the opportunities for public input.
- The Corps’ determination regarding issuance of a mitigation bank permit should be based on the total and cumulative activities of the potential current and future environmental impacts of the golf course redevelopment project, both negative and positive. These impacts include, but are not limited to, the volume and velocity of stormwater runoff and sedimentation impacted by the current site clearing, but also plans for additional site work including the deposition of fill in onsite wetlands and planned and ongoing golf course management and use. The Corps must also evaluate the proposed bank service area, specifically whether it is occurring at a responsible distance, and how resources may be potentially impacted there.
- In testimony at the December 8, 2022 PCPC, the majority of the public comment drew into question the effectiveness of the public notification of the applicant’s attempts to hold public meetings to discuss the site clearing or the proposed restoration and mitigation plan. Many residents in the immediate area of the golf course, including a Philadelphia Block Captain, had not been notified. All of the residents from the downstream environmental justice Eastwick community that gave testimony to the PCPC had not been notified despite the fact that their community is routinely flooded by Cobbs Creek,
- The Corps’ Public Notice is deficient in that it is incomplete and contains errors. Specifically:
 - It refers to several affirmative statements of what the proposed mitigation project will accomplish but does not have the documentation for the community to fully understand and make informed comment. Specifically,
 - “...the restoration activities will buffer and capture stormwater runoff preventing nutrients and sediments from discharging directly into the watershed...in accordance to the mitigation design plan...” (**Activity Para #1**). The applicant’s Preliminary Resources Development Map (Figure 13A) does not provide the detail necessary for the public to make an informed comment. The Corps should at least provide these documentation resources as Attachments to the Public Notice or offer live weblinks to them online,
 - In **Activity Para #4**, it states “Existing resources are outlined on the two figures in E2.” There is no “E2” figure in this Public Notice. This element of the permit application seems critical since it helps the public understand the assessment of the compatibility of the on-site utility easements and those of the restored natural resources on the site,
 - In **Activity Para #5**, the Public Notice refers to the Service Area Map “E1.” However, the only Service Area Map in this Public Notice is depicted as “Figure 1A.” Is this the accurate map depicting the information that the community needs to make an informed decision? It is not clear and a new Public Notice – including a new comment deadline – should be prepared,

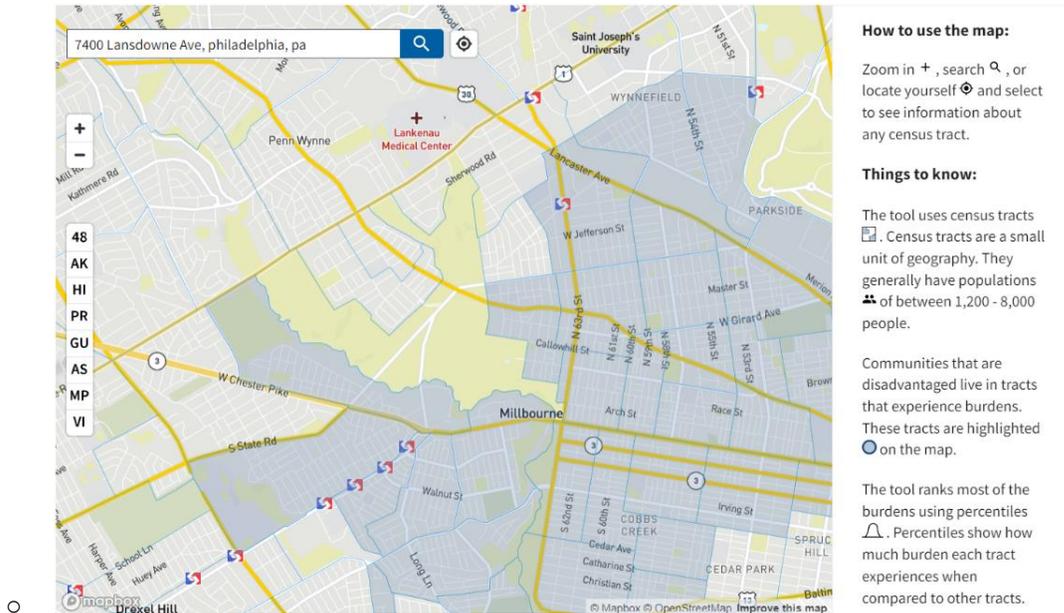
- Also in **Activity Para #5**, The Service Area depicted in the Attached Figure 1A indicates that the mitigation projects could be as far north as Allentown or south as far as the Maryland/Delaware border. However, according to our research of HUC 02040202 on the USGS website (see below), those mitigation projects could even be sited in New Jersey. This is contradictory to what the Public Notice states. The Public Notice must make sense for the community residents that you seek comment from. The information provided in the Public Notice does not mesh with the USGS website. This should be corrected in the revised Public Notice.



<https://water.usgs.gov/wsc/cat/02040202.html>

- In **Activity Para #7**, again, the Preliminary Resources Map is identified as “E2,” but the only one in the Public Notice is identified as “13A.” That too should be corrected for clarity.
- Realization of the project would be in direct conflict with high priority federal programs such as the currently active [Justice 40 initiative](#). The Justice 40 Initiative aims to deliver 40% of the overall benefits of climate, clean energy, affordable and sustainable housing, clean water, and other investments to disadvantaged communities that are marginalized, underserved, and overburdened by pollution and climate change pressures like increased flooding. Many of the covered programs are led by the Army Corps. Assistant Secretary of the Army for Civil Works Michael L. Connor himself said “I am committed to furthering the administration’s goals under the Justice40 Initiative to ensure that marginalized communities are supported by the Army Corps of Engineers with critical infrastructure that provides healthy ecosystems and helps them to reduce their flood risks.” The [Climate and Economic Justice Screening Tool](#) (CEJST) is a geospatial mapping tool used to identify disadvantaged communities that are marginalized, underserved, and overburdened by pollution to be targeted to receive Justice 40 Initiative benefits. The CEJST specifically identified neighborhoods surrounding the golf

course as Environmental Justice communities (see image below). Considering the facts presented above, it is crucial that the Army Corps remain committed to its mission of supporting the climate resiliency of environmental justice communities and grant a 90-day extension on the public commenting period. This would allow necessary community input and analyses by technical experts on the project to take place to ensure a socially responsible and ecologically sustainable future for communities neighboring and downstream of the Cobbs Creek Golf Course.



- The timing of this Corps permit comment period falls directly between the Thanksgiving, Christmas and Hanukkah holidays. With all of these important, but time-consuming issues taking place, concerned residents and organizations will not have the bandwidth to fully absorb, digest and prepare comment to meet the Corps' December 21, 2022 deadline.

For all of the reasons stated above, we are requesting the Corps' issue a revised Public Notice that incorporates accurate and complete information and an extended 90-day public comment period. Please contact Fred Stine, Community Action Coordinator, Delaware Riverkeeper Network (O 215.369.1188x113/M 856.816.8021 or email: fred@delawareriverkeeper.org). Thank you.

Sincerely,

Cobbs Creek Environmental Justice
 Cobbs Creek Park Ambassadors
 Darby Creek Valley Association
 Delaware Riverkeeper Network
 Eastwick Friends and Neighbors Coalition
 Eastwick United CDC
 Pennsylvania Sierra Club
 Philadelphia Mycology Club

Attachment B



December 21, 2022

VIA ELECTRONIC MAIL

District Engineer
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CENAP-OP-R-2018-00729-84**

Please accept the following comments made on behalf of the Delaware Riverkeeper Network and Maya K. van Rossum, the Delaware Riverkeeper (collectively, "DRN"), regarding the above-referenced Prospectus. DRN submits these comments to address the risk that the U.S. Army Corps of Engineers ("Corps") might approve a site that is not appropriate for the compensatory mitigation program,¹ or miscalculate the proposed mitigation bank's environmental benefits,² without properly accounting for the extensive destruction of hundreds of mature trees at the proposed mitigation bank site.

The Prospectus, submitted by First Pennsylvania Resource, LLC ("FPR"), details a "proposed stream and wetland restoration" which is "a necessary component of the golf course refurbishment project planned by the Cobbs Creek Foundation."³ The Cobbs Creek Foundation ("CCF")⁴ is a nonprofit organization that has leased the City of Philadelphia-owned Cobbs Creek Golf Club, Karakung Golf Club, and City Line Sports Center, all of which are a part of the City of Philadelphia's Fairmount Park system. CCF was formed to restore

¹ 33 C.F.R. § 332.8(d)(5) (requiring the district engineer to determine whether the proposed mitigation bank has potential for providing appropriate compensatory mitigation for activities authorized by Department of the Army permits).

² *Id.* § 332.8(o)(3) (requiring that the number of credits generated "must reflect the difference between pre- and post-compensatory mitigation project site conditions").

³ First Pennsylvania Resource LLC, Cobbs Creek Mitigation Bank Final Prospectus at 9 (May 2022) (hereinafter, "Final Prospectus") (Attachment A).

⁴ Sometimes alternately referred to as the "Cobbs Creek Restoration and Community Foundation."

Cobbs Creek Golf Club and to manage and operate the golf course. The lease between the City and CCF also includes plans to restore streams and wetlands located on the property.

At some point, it appears that the decision was made to bifurcate the stream and wetland restoration and the golf course renovation, and to use the stream and wetland restoration project to generate credits for both Pennsylvania's In-Lieu Fee program⁵ and the Corps' compensatory mitigation program.⁶ Recognizing the functional interconnectedness of the two projects, in a powerpoint dated December 15, 2020, the Pennsylvania Department of Environmental Protection ("PADEP") explains that "Golf Course impacts will be deducted from the overall project restoration areas prior to crediting determination."⁷ In addition, a representative from PADEP advised the applicant that a major amendment to the restoration permit will be necessary as the Cobbs Creek Golf Course renovation plans materialize further.⁸ This major amendment would "subtract any impacts that occur [from the golf course renovation] from the restoration outcomes."⁹

This process makes good sense, as it prevents CCF and FPR from receiving credit for restoration benefits where the impacts from the golf course renovation undermine or negate those benefits. The concept can be explained mathematically: if the mitigation bank creates +20 in benefits, but the golf course renovation and operation inflicts -5 in impacts, then CCF and FPR should only be credited +15, rather than +20.

However, this hypothetical calculation assumes that we are starting at zero, and in this situation, we are not. Prior to both the stream and wetland restoration and the renovation of the golf course, CCF cut down hundreds of mature trees on the property, many of which were located in the riparian buffer of streams.¹⁰ The Final Prospectus erroneously implies that the current, denuded state of the property is the "baseline" (zero) from which credits should be calculated.

DRN urges the Corps to see past this sleight of hand and properly account for the impacts of the tree clearing that took place. Using the mathematical hypothetical, we are actually starting at -10 due to the tree clearing, then adding +20 in benefits, and then later

⁵ See Pa. Dept. of Env'tl. Prot, Pennsylvania Function-Based Aquatic Resource Compensation Protocol 310-2137-001 (March 1, 2022), <https://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=307843> (last visited Dec. 21, 2022).

⁶ See Compensatory Mitigation for Losses of Aquatic Resources, 73 Fed. Reg. 19,594 (Apr. 10, 2008) (codified at 33 C.F.R. Parts 332 and 40 C.F.R. Part 230).

⁷ Powerpoint, Cobbs Creek Prospectus Plan Overview, Slide 19 (Dec. 15, 2020) (Attachment B).

⁸ See E-mail Correspondence between Benjamin Uhler, Land Studies and David Goerman, PADEP, with Attachment (March 5, 2020 through May 11, 2020). (Attachment C).

⁹ *Id.*

¹⁰ See Frank Kummer, *Clear-cutting woods for Philadelphia's Cobbs Creek Golf Course project angers local group and birders*, Philadelphia Inquirer, Feb. 28, 2022, <https://www.inquirer.com/news/cobbs-creek-golf-course-philadelphia-trees-clear-cut-20220228.html> (last visited Dec. 21, 2022) (Print Copy at Attachment D). See also Sophia Schmidt, *Alarms raised after hundreds of trees removed from city-owned Cobbs Creek Golf Course*, WHYY, March 1, 2022, <https://whyy.org/articles/alarms-raised-about-removal-of-hundreds-of-trees-at-city-owned-cobbs-creek-golf-course/> (last visited Dec. 21, 2022). According to an estimate by Shereen Chang, a Cobbs Creek Park Ambassador, CCF cut 500 mature trees with a 24" or larger diameter.

accounting for the -5 in golf course renovation impacts, meaning that CCF and FPR should be credited only +5. While these numbers are made up for the purposes of illustration and do not reflect the degree or relative proportion of impacts and benefits, they clearly explain why and how CCF's tree clearing should factor into the Corps' determination of credits generated, or whether the site is able to generate credits at all.

The assumption behind the credits generated from a mitigation bank is that the restoration is "additional"—that is, but for the creation of the mitigation bank, the resource would remain in a degraded state.¹¹ This assumption is unfounded here, where CCF has already "subtracted" from the baseline by clearing hundreds of mature trees from the site. It appears that CCF and FPR are attempting to silo the effects of the tree clearing—which is purportedly for the golf course renovation—from the restoration plan. This artificial separation makes it difficult to account for the purported benefits of the restoration plan, and makes it especially difficult to determine whether the total impacts of the golf course renovation are undermining or negating any of those benefits. In other words—would the site have provided more ecological benefits had the trees remained in place, regardless of restoration efforts? Without considering the effects of the tree clearing, that question is unanswerable and the project's true benefits unaccountable.

The "Upland Assessment" in the "Baseline Information" section of the Final Prospectus merely states that "[a] review of the historic and current aerial mapping shows that vegetation has largely been removed in association with development and maintenance of the golf course."¹² This vague and neutral language obscures the fact that a large number of mature trees were very recently removed *by CCF* for the golf course renovation, and instead implies that the lack of vegetation could be the result of action taken by unknown parties decades ago. The Final Prospectus then ironically proposes to "restore" uplands with "little to no existing woody stands,"¹³ without explaining *why* there may be no existing woody stands in the restoration area. Even more ironically, it claims that "[h]ealthy upland forested stands will be preserved,"¹⁴ when in fact, the majority of healthy upland forested stands have been destroyed by CCF, or CCF is proposing to destroy them. These purported benefits must be reevaluated by the Corps in light of the deliberate tree clearing carried out by CCF.

Any tree clearing performed in connection with the golf course redevelopment should not be considered a part of the "baseline" prior to restoration, but rather should be considered a part of the golf course renovation that must be subtracted from the benefits provided by the stream and wetland restoration. Essentially, the site developer should not be permitted to degrade the environmental conditions on the site by clearing mature trees, and then claim credit for restoration to alleviate that degradation.

¹¹ See, e.g., 33 C.F.R. § 332.8(o)(3) ("The number of credits must reflect the difference between pre- and post-compensatory mitigation project site conditions, as determined by a functional or condition assessment or other suitable metric.").

¹² Final Prospectus at 19.

¹³ *Id.* at 25.

¹⁴ *Id.*

While accounting for the extensive tree clearing that has already taken place, depicted in the attached Erosion and Sedimentation plans and accompanying zoning permit,¹⁵ the Corps should also evaluate CCF's plans to clear even more trees from steep slopes on the property.¹⁶ These plans involve circumventing the land use review process and obtaining an ordinance from Philadelphia City Council that would override protections for steep slopes, which are necessary to prevent harmful erosion.

DRN urges the Corps not to take the claims in the Final Prospectus at face value, but rather to examine closely the impacts caused by CCF's massive deforestation efforts at the site, and ensure that the harms caused by CCF's actions are accounted for in determining "the potential of the proposed mitigation bank . . . to provide compensatory mitigation for activities authorized by [Department of the Army] permits"¹⁷ as well as the amount of credits that could be generated by the proposed mitigation banking site.¹⁸

Respectfully submitted,

/s/ Kacy C. Manahan
Kacy C. Manahan
Senior Attorney

Enclosures

¹⁵ Cobbs Creek Foundation, KS Engineers, P.C., Cobbs Creek Golf Course Restoration Tree Cutting Erosion Control Plan (Attachment E).

¹⁶ See Frank Kummer, *City to exempt new Cobbs Creek Golf Course project from anti-erosion regulation*, Philadelphia Inquirer, Nov. 18, 2022, <https://www.inquirer.com/real-estate/philadelphia-cobbs-creek-golf-course-environment-steep-slope-ordinance-20221118.html> (last visited Dec. 21, 2022) (Print Copy at Attachment F). See also Sophia Schmidt, *Proposed exemption for Cobbs Creek Golf Course delayed in City Council, amid pushback*, WHYY, Dec. 16, 2022, <https://whyy.org/articles/philly-cobbs-creek-golf-course-proposed-exemption-delayed-in-city-council-amid-pushback/> (last visited Dec. 21, 2022).

¹⁷ 33 C.F.R. § 332.8(d)(5).

¹⁸ *Id.* § 332.8(o)(3).