

RESOURCE RESTORATION PROJECT PROPOSAL

NYC Parks Bronx River Island Proposal to NYSDEC Freshwater Oxbow Wetland Restoration in Bronx Forest Park

Background

The following Resource Restoration Project (RRP) is proposed to resolve the State of New York's Natural Resource Damages (NRD) Claim against Con Edison for the release of petroleum into the Bronx River on September 9, 2015. The release and resolution of the NRD claim is the subject of Order on Consent R2-20150929-516. Implementation of the following RRP would resolve Con Edison's liability for injury from the subject release.

Project Description

The New York City Department of Parks and Recreation (NYCDPR), Natural Resources Group (NRG) is currently designing a channel restoration project for the Bronx River in the Bronx Forest Park north of Kazimiroff Blvd. at the Bronx River "Island." The Island was created in the 1930-50s during the construction of the Bronx River Parkway when a large natural meander was truncated and a new channel was excavated. The aim of this project is to restore a dominant single, meandering channel through the forest, increase in-stream habitat diversity, help reduce floatable debris accumulation, plant native riparian forest species, manage invasive species, and control bank erosion (see location map in Figure 1 below). This project is funded through NYCDPR Million Trees Program.

Adding \$50,000 to the project will enable the expansion of the restoration effort to the channel on the east side of the Island to create an oxbow floodplain wetland of **approximately 0.7 acres**. This planned restoration work will include moderate regrade. The restoration funds will allow construction of a more complex natural system that is resilient to flooding through the installation of log structures (e.g., weirs, sills, deflectors, snags, etc.) that create pools and cover for aquatic species and thus enhance in-stream habitat and complexity (e.g., trap gravel, confine channel, create spawning habitat, etc.), and the planting of approximately 200 native trees and shrubs (#1 container size), and 3,214 herbaceous plants (quart container size). In addition, approximately 5 lbs. of native seed mix will be applied to increase biodiversity and provide habitat for native wildlife.

We are currently in the design and permitting phase of this project. This restoration funding will allow the incorporation of items into the design and construction that would not otherwise be included in the project. Contractor procurement and construction is expected to occur from 2017-2018.

Approach

The NRG Project Manager will lead this work and carry out the following tasks:

- Manage project and contractor to ensure design and planting plans are appropriate for this site
- Assist with developing final designs of the east channel conversion into an oxbow riparian wetland
- Ensure fine grading and planting of native wetland plants occurs along the east side channel of the river
- Ensure log structures in the east channel of the river are installed properly

The Contractors will be responsible for the following tasks:

- Design consultant: Complete final design and construction documents
- Contractor: Construct project (grading and in-stream structures).

Deliverables and Schedule (Target Completion)

- Design and Construction Documents (January 2017)
- Bid Award (November 2017)
- Construction Complete (May 2019)

Budget Estimate for the In-Stream Structures and Planting Materials for the Freshwater Oxbow Wetland in Bronx Forest Park

ITEM	QTY	COST PER UNIT	COST
Log structures	2*	\$15,000.00 - \$20,000.00	\$ 30,000.00 - 40,000.00
Native trees and shrubs (#1 container size)	214	~\$5.25	\$ 1,123.50
Herbaceous plants (quart container size)	3214	~\$2.45	\$ 7,874.30
Native seed mix	5 lbs.	Lump sum	\$1,000.00
GRAND TOTAL			\$ 50,000.00

*Once the cost per log structure is determined plant quantities will be adjusted to total \$50,000.

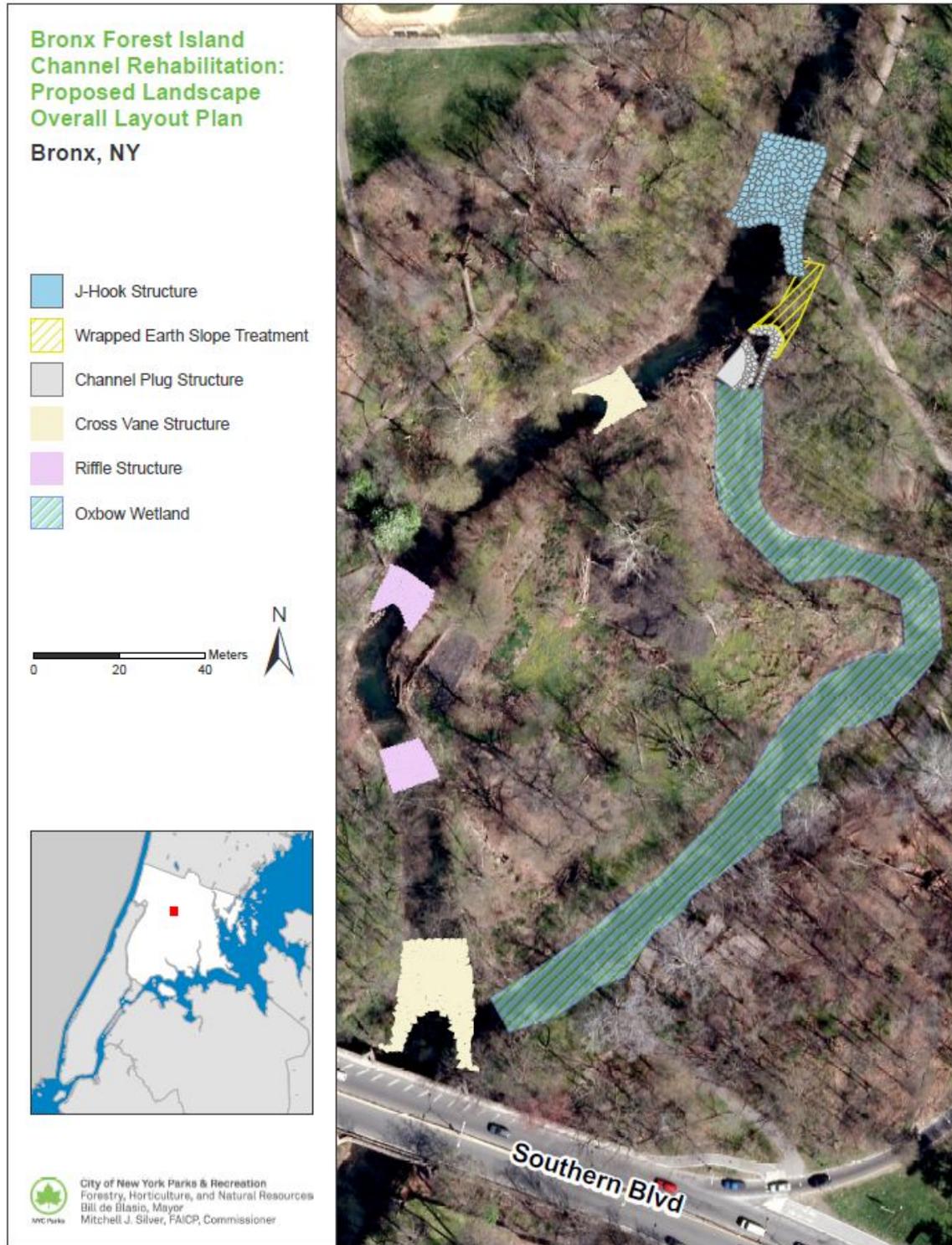


Figure: Proposed design plan for the restoration of the channel at the Bronx River Island. Restoration funding of \$50,000 is proposed to be used to add in-stream habitat structures and planting to the proposed oxbow wetland depicted in this map.

RESPONSE TO PUBLIC COMMENTS RECEIVED

Comments on this Proposal to Spend Settlement Funds are due within 30 days of this proposed RRP in the New York State Environmental Notice Bulletin. Comments can be submitted to

Patrick Foster, Esq.
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, NY 12233

or by email to patrick.foster@dec.ny.gov. Mr. Foster can be reached at (518) 402-9502.

Appendix A
Executed Order on Consent:
Consolidated Edison Company of New York
Case No. R2-20150929-516

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Violations of Articles 17 and 71 of the
New York State Environmental Conservation Law, Article
12 of the New York State Navigation Law, and Title 6 of
the Official Compilation of Codes, Rules and Regulations
of the State of New York,

ORDER ON CONSENT

-by-

**NYSDEC File No.
R2-20150929-516**

CONSOLIDATED EDISON COMPANY OF NEW YORK,
INC.,

Respondent.

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WHEREAS:

1. The New York State Department of Environmental Conservation (“NYSDEC” or the “Department”) is an executive department of the State of New York authorized under Article 3 of the New York State Environmental Conservation Law (“ECL”) to provide for prevention and abatement of all water, land and air pollution within the state;

2. It is the responsibility of the Department to conserve, improve and protect New York State’s natural resources and environment, and control pollution in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being;

3. In carrying out its responsibilities, the Department has the power to promote and coordinate management of water, land, fish, wildlife and air resources to assure their protection, enhancement, provision, allocation, and balanced utilization consistent with the environmental policy of the state, and take into account the cumulative impact upon all such resources in making any determination in connection with any license, order, permit, certification, or other similar action;

4. The Department is authorized to enforce the containment and remediation of petroleum spills and discharges pursuant to Article 17 of the ECL, Article 12 of the New York State Navigation Law (“NL”), and Titles 6 and 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“NYCRR”);

5. The Department has jurisdiction over the abatement and prevention of pollution of the waters of the state pursuant to Article 17 of the ECL and Title 6 of the NYCRR;

6. The Department carries out the state’s role as trustee of natural resources pursuant to ECL §§ 1-0101 and 15-0105, and NL § 171.

7. The respondent, Consolidated Edison Company of New York, Inc. (“Con Edison”), is a domestic business corporation licensed to do business in the State of New York and is a “person” as defined in ECL §§ 17-0105 and 24-0107; and

8. Con Edison has at no time held a State Pollutant Discharge Elimination System (“SPDES”) permit authorizing the discharge of dielectric fluid into the Bronx River.

FACTS

9. On September 9, 2015, Con Edison discovered an ongoing discharge of dielectric fluid from 345 kv transmission feeder cable Y50, and reported the release to the Department (the “Spill”). The initial report was assigned NYSDEC spill number 1506149.

10. On September 10, 2015, the Bronx Botanical Garden notified the Department of heavy oil sheening on the Bronx River toward the Bronx Zoo. This notification was assigned NYSDEC spill number 1506177, which governs subsequent response to the Spill.

11. On September 10, 2015, the location of the cable leak was determined to be under the road surface at or near the intersection of Mile Square Road and Lincoln Avenue in Yonkers, approximately 1,500 feet from the Bronx River, where dielectric fluid emerged on the road surface, impacted soils, entered storm sewers and discharged to the river through an outfall.

12. On September 11, 2015, NYSDEC Region 2 and 3 response staff met with Con Edison to coordinate containment and recovery operations from the point of discharge to the Bronx Zoo approximately five miles downriver.

13. From September 13 to 17, 2015, Con Edison engaged in cleanup activities including excavation of contaminated soil in the area of the leak, cleanup of the impacted storm sewer from the source of the leak to the Bronx River outfall, deployment of a skimmer to contain the continuing discharge of dielectric fluid from the impacted outfall, and cleanup of contaminated debris on the Bronx River.

14. The total volume of petroleum product discharged in the Spill was approximately 2,200 gallons of dielectric fluid, an indeterminate portion of which reached the Bronx River.

15. Tri-State Bird Rescue and Research, Inc., a non-profit organization specializing in, among other things, oil spill response and the rehabilitation of injured, orphaned and oiled wild birds, participated in the Spill response by surveying the impacted area of the Bronx River for bird and wildlife impacts.

LAW

Petroleum Spill Provisions (Navigation Law)

16. NL § 173 prohibits the discharge of petroleum.

17. NL § 181 holds any person who has discharged petroleum strictly liable, without regard to fault, for all cleanup and removal costs and all direct and indirect damages, no matter by whom sustained.

18. NL § 192 provides for civil penalties of up to \$25,000 per day for each violation of Article 12 of the NL or any regulation issued thereunder.

Water Pollution Control Provisions (ECL Article 17)

19. ECL § 17-0501 prohibits any person from directly or indirectly discharging organic or inorganic matter into the waters of the state that shall cause or contribute to a condition in contravention of the standards adopted by the Department pursuant to ECL § 17-0301, as set out at 6 NYCRR Part 700, *et seq.*

20. ECL § 17-0503 prohibits the discharge of sewage, industrial waste or other wastes into the waters of the state in the marine district.

21. ECL § 17-0505 prohibits the making or use of an outlet or point source discharging into the waters of the state without a valid SPDES permit.

22. ECL § 17-0511 prohibits the use of an outlet or point source to discharge sewage, industrial waste or other wastes into the waters of the state unless such discharge is in compliance with all applicable standards, criteria, limitations, rules and regulations.

23. ECL § 17-0701 prohibits the discharge of sewage or other wastes to the waters of the state from any outlet or source until a written SPDES permit therefor has been granted.

24. ECL § 17-0803 prohibits the discharge of pollutants to the waters of the state from any outlet or point source without a SPDES permit, or in a manner other than prescribed by such permit.

25. ECL § 17-0807 prohibits any discharge into the waters of the state not permitted by the provisions of ECL Article 17, the rules and regulations applicable thereto, the Federal Water Pollution Control Act, or provisions of a permit issued pursuant to ECL Article 17.

26. 6 NYCRR 750-1.4 (a) prohibits any discharge not permitted by, *inter alia*, 6 NYCRR Part 750, ECL Article 17, or the provisions of a SPDES permit.

27. ECL § 71-1929 provides for civil penalties of up to \$37,500 per day for each violation of the cited provisions of ECL Article 17 or any regulation issued thereunder.

VIOLATIONS

28. By discharging approximately 2,200 gallons of dielectric fluid, Con Edison violated NL § 173, ECL §§ 17-0501, 17-0503, 17-0505, 17-0511, 17-0701, 17-0803 and 17-0807, and 6 NYCRR 750-1.4 (a).

CONSENT

29. In settlement of its civil liability for the aforesaid violations, Con Edison admits the violations set forth herein, waives its right to a hearing herein as provided by law and consents to the issuing and entering of this Order on Consent pursuant to the provisions of Articles 17 and 71 of the ECL, and Article 12 of the NL, and agrees to be bound by the provisions, terms and conditions herein.

NOW, being duly advised and having considered this matter, it is hereby ORDERED that:

I. **Civil Penalty:** In settlement of the violations set forth above, Con Edison is assessed a total civil penalty in the amount of THIRTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$37,500) payable as follows, and submitted with the signed and notarized original of this order to John K. Urda, Assistant Regional Attorney, NYSDEC, 47-40 21st Street, Long Island City, New York, 11101:

- i) TWENTY-FIVE THOUSAND DOLLARS (\$25,000) payable to the **Environmental Protection and Spill Compensation Fund**; and
- ii) TWELVE THOUSAND, FIVE HUNDRED DOLLARS (\$12,500) payable to the **NYSDEC Marine Resources Account**.

II. **Natural Resource Damages and Restoration:** Con Edison shall fund, in the amount of \$50,000, the Resource Restoration Project set forth in Attachment A (the "RRP") under the following terms:

A. Within 15 days of the effective date of this Order, the Department will publish the RRP for a 30 day public comment period. Thereafter, the Department will address any public comments and may finalize the RRP within 30 days. Within 15 days of receiving notice of the Department's finalization of the RRP, Con Edison shall make payment of \$50,000 for the implementation of the RRP by check to the **New York City Department of Parks and Recreation** and provide the Department with evidence of payment.

B. If the Department, in its sole discretion, does not finalize the RRP, Con Edison shall within 15 days of receiving notice, make payment of \$50,000 to the Department, by check made payable to **NYSDEC Natural Resource Damages Fund** and sent to NRD Section, NYSDEC, 625 Broadway, 14th Floor, Albany, New York 12233.

C. If payment is made to implement the RRP, Con Edison shall provide the Department with a report outlining the satisfactory implementation of the RRP by December 15, 2019. If the satisfactory implementation of the RRP is not reported complete by December 15, 2019, Con Edison or the New York City Department of Parks and Recreation may petition the Department once for an extension of time to complete the RRP, which the Department shall not unreasonably withhold. Failure to complete the finalized RRP shall be a violation of this Order.

D. The Department shall be the sole judge of whether Con Edison has complied with the terms of this Order as it relates to satisfactory implementation of the RRP.

F. Any statements, whether oral or written, that Con Edison (or a third party at the request of Con Edison) makes with respect to the RRP will include language stating that the project was undertaken as part of the resolution of a Department enforcement action.

G. Communications regarding the provisions in this section shall be made to Patrick Foster, Office of General Counsel, NYSDEC, 625 Broadway, 14th Floor, Albany, NY 12233, or patrick.foster@dec.ny.gov. Contact information for a representative from Con Edison authorized to provide information regarding the provisions of this section shall be transmitted to Mr. Foster within 15 days of the effective date of this Order.

H. Communications with the New York City Department of Parks and Recreation regarding the RRP may be made with Elizabeth Jordan, Ecological Restoration Manager, New York City Department of Parks and Recreation, 1234 Fifth Avenue, New York, NY, 10029; elizabeth.jordan@parks.nyc.gov; 212-360-1454.

III. Default of Payment: The penalty assessed in the Order, including the RRP funding, constitutes a debt owed to the State of New York. Failure to pay the assessed penalty, the RRP funding, or any part thereof, in accordance with the schedule contained in this Order, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset any tax refund or other monies that may be owed to you by the State of New York by the penalty amount.

IV. Access: For the purpose of monitoring compliance with this Order, authorized representatives of NYSDEC shall be permitted access to relevant facilities and records during reasonable hours at such times as may be desirable or necessary in order to inspect and determine the status of compliance.

V. Violation of this Order: The Department reserves the right to initiate actions based upon the violation of this Order, and also to seek penalties for additional violations, including continued violations, occurring after the effective date of this Order. Whether Con Edison is in violation of this Order shall be the sole determination of the Department.

VI. Binding Effect: The provisions of this Order on Consent shall be deemed to bind Con Edison, its successors and assigns, and all persons, officers, directors, employees and agents acting under or for Con Edison, including, but not limited to, any successor in title to the Site or any interest therein.

VII. Indemnification: Con Edison shall indemnify and hold harmless New York State, NYSDEC, and any of their employees, agents or contractors for all claims, actions, damages and costs resulting from Con Edison's acts in fulfillment or attempted fulfillment of the provisions of

this Order by Con Edison and/or any of Con Edison's directors, officers, employees, servants, agents, successors, and assigns.

VIII. Satisfaction of Liability: Compliance with all the material terms of this Order on Consent shall satisfy Con Edison's outstanding liability for the violations described above and from all claims for natural resource damages and costs resulting from the Spill.

IX. Reservation of Rights: The Department reserves the right to require Con Edison to take any additional measures required by law to protect human health and the environment. Nothing in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights, remedies, or authorities, including, but not limited to, the right to require performance of further investigations and/or response action, and/or to exercise any of the Department's summary abatement powers. The Department reserves the right to proceed against Con Edison and its successors for recovery of natural resource damages based on conditions that were unknown to the Department as of the effective date of this Order, or were undiscoverable with the exercise of due diligence and that contribute to and materially increase an injury to, destruction of, or loss of natural resources, or information received after the effective date of this Order that indicates material injury to, destruction of, or loss of natural resources of a type and extent unknown to the Department and which were undiscoverable with the exercise of due diligence as of the effective date of this Order.

X. Entire Agreement: This Order constitutes the entire agreement of the parties. No informal advice, guidance, suggestions, plans, schedules or any other writing submitted by Con Edison shall be construed as relieving Con Edison of its obligations to obtain such formal approvals as may be required by this Order. No changes or modifications to this Order shall be binding on the Department unless such changes are authorized in writing by the NYSDEC Region 2 Director.

XI. Miscellaneous:

A. This Order resolves only those violations specifically described herein and does not relieve Con Edison of liability for any acts, omissions or violations not articulated herein, nor does it relieve Con Edison of any liability pursuant to the jurisdiction of any other local, state or federal agency.

B. Con Edison and its successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Con Edison including, but not limited to, any transfer of assets or real or personal property shall in no way alter Con Edison's obligations under this Order. Con Edison shall cause its officers, directors, employees, servants, agents, contractors and subcontractors to comply with the relevant provisions of this Order, and Con Edison shall be solely responsible for ensuring that its employees, servants, agents, contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

C. Except as the parties may both otherwise approve, in the event of an inconsistency between the provisions of this Order and any term, condition or provision

contained in any other agreement between Con Edison or its representative and the Department, the term, condition or provision contained in this Order shall control.

D. Notwithstanding anything to the contrary in this Order, Con Edison shall not be deemed in breach of this Order due to an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented, a war, hostilities, an invasion, an embargo, a blockade, an epidemic, an insurrection, a riot, mob violence, malicious mischief, sabotage, an injunction, or other similar cause beyond the control of Con Edison and not caused by the action, omission or delay of Con Edison; provided that Con Edison shall have notified the Department in writing not later than five days after Con Edison had actual notice of the occurrence which had the effect of delaying the performance of its obligations under this Order, which delay shall be deemed reasonable only so long as Con Edison shall be using best efforts to minimize the effects thereof. Con Edison shall include in such notice the measures taken and to be taken by Con Edison to prevent or minimize any delay, and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Con Edison shall have the burden of proving that an event is a defense to compliance with this Order.

E. This Order shall be effective on the date it is signed on behalf of the Department.

DATED: Long Island City, New York
Nov 1, 2016

BASIL SEGGOS
Commissioner, NYSDEC

By: 
STEPHEN M. ZAHN
Regional Director
NYSDEC - Region 2

