



PUBLIC NOTICE

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

In replying refer to:
Public Notice Number: NAN-2022-00979-WCO
Issue Date:
Expiration Date:

To Whom It May Concern:

The New York District, U. S. Army Corps of Engineers (Corps) has received a proposal pursuant to Title 33 Code of Federal Regulations, Section 332 requesting the initiation of the proposed "Upper Penhorn Creek Mitigation Bank, Freshwater Wetland Enhancement and Preservation", sponsored by GreenVest LLC., in one service area encompassing parts of four (4) 11-digit hydrologic units (HUC). The purpose of this notice is to solicit comments and recommendations from the public; Federal, state, and local agencies and officials, Indian tribes, and other interested parties so that we may consider and evaluate the impacts for the work described below and determine whether to issue, modify, condition, or deny a Department of the Army permit.

This is not an application for work in federally regulated waters; however, authorization under Section 404 of the Clean Water Act may be required for implementation of the proposed 81.03-acre site, if approved. No decision has been made as to whether this proposed mitigation bank will be approved.

APPLICANT: Mr. Brian Cramer
GreenVest, LLC
35A Kennedy Road
P.O. Box 200
Tranquility, NJ 07879

ACTIVITY: Upper Penhorn Creek Mitigation Bank Prospectus

WATERWAY: Penhorn Creek and tributaries, Hackensack River, New Jersey

LOCATION: Route 3 Service Road, Block 451, Lots 1, 18, 19.01 and 20.01 in the Township of North Bergen, Hudson County, New Jersey (40.773884 -74.050333).

PROPOSED SERVICE AREA: The proposed service area is depicted in the attached figure (Figure 5: Service Area Map). The service area for wetland and riparian zone credits includes all of Watershed Management Area (WMA) 5.

Specific HUC-11 watershed unit numbers as follows:
WMA 5
2030103170
2030101170
2030103180
Portion of 2030104010

CENAN-OP-RW
PUBLIC NOTICE NO. NAN-2022-00979-WCO

DESCRIPTION OF PROPOSED ACTIVITY: Under Section 404 of the Clean Water Act (CWA), applicants applying for the Department of the Army permits to discharge dredge or fill material into waters of the United States, including wetlands, are often required to provide compensatory mitigation for permitted unavoidable wetland losses by creating, restoring, enhancing and preserving wetlands or streams. Authorized Mitigation Banks provide the Corps and the regulated public with additional options for compensatory mitigation of aquatic resource losses. As per the Final Mitigation Rule (33 CFR Parts 325 and 332), there are three mechanisms for providing compensatory mitigation (listed in order of preference as established by the regulations): mitigation banks, in-lieu fee programs, and permittee-responsible mitigation.

The establishment, management, and use of a Mitigation Bank must be in accordance with a Mitigation Banking Instrument approved by the Meadowlands Interagency Review Team (IRT) in the Hackensack Meadowlands District of New Jersey. The IRT is presently comprised of the Corps (New York District), the U.S. Environmental Protection Agency (USEPA), the U.S. Fish and Wildlife Service (USFWS), the National Oceanic and Atmospheric Administration (NOAA), the New Jersey Sports and Exposition Authority (NJSEA), and the New Jersey Department of Environmental Preservation (NJDEP).

The proposed Upper Penhorn Umbrella Mitigation Bank Prospectus is described in the documents entitled “**Upper Penhorn Creek Mitigation Bank, Freshwater Wetlands Enhancement and Preservation**”, November 2022 and revised June 2023 and February 2024. Also included are the “**Upper Penhorn Creek Mitigation Bank Block 451, Lot 18.02 North Bergen Township, Hudson County, New Jersey**” pages 1-22, drawn by Princeton Hydro and dated June 8, 2023, as part of the Prospectus, and Attachment A. These documents contain all the information normally included in a prospectus. A detailed description and plans of the Sponsor’s proposed Mitigation Bank activities has been published on the New York District, USACE website.

The purpose of the proposed 81.03-acre Upper Penhorn Creek Mitigation Bank is to enhance 59.94 acres of degraded emergent wetlands, enhance 14.05 acres of degraded forested wetlands, preserve 1.29 acres of forested wetlands, and preserve 5.75 acres of open water within a highly urbanized portion of WMA 5.

ASSESSMENT METHODOLOGY

The credits will be determined by the Corps and/or NJDEP, in consultation with the IRT, and informed using a credit ratio that the Corps and NJDEP, in consultation with the IRT, determine to be appropriate, and will be provided in the future Mitigation Banking Instrument (MBI). The 81.03 acres of habitat utilized in the establishment of the proposed mitigation bank will be categorized as enhancement and preservation pursuant to 33 CFR 332. The Sponsor is proposing a 3:1 ratio for enhancement of common reed-dominated wetland habitat to credits allotted and an 8:1 ratio for Riparian open water preservation and Riparian forested wetland preservation. Additionally, the Sponsor is proposing a 3:1 ratio for riparian zone enhancement. GreenVest proposes that the credits be divided into three categories: a) Wetlands only; b) Riparian Zone only; and c) both Wetlands and Riparian Zone. Any overlapping wetlands/riparian zone areas receive one set of credits that can be sold one time for wetland impacts, riparian zone impacts or overlapping wetland/riparian zone impacts.

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics,

CENAN-OP-RW
PUBLIC NOTICE NO. NAN-2022-00979-WCO

aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.

The Corps is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of these proposed activities. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activities.

ALL COMMENTS REGARDING THE PERMIT APPLICATION SHOULD BE SUBMITTED VIA ELECTRONIC MAIL TO Danielle.R.Courtois@usace.army.mil , TO REACH THIS OFFICE BY THE EXPIRATION DATE OF THIS NOTICE, otherwise, it will be presumed that there are no objections to the activity.

Comments submitted in response to this notice will be fully considered during the public interest review for the request to develop the "Upper Penhorn Creek Mitigation Bank, Freshwater Wetlands Enhancement and Preservation". Comments provided will become part of the public record for this permit application. All written comments, including contact information, will be made a part of the administrative record, available to the public under the Freedom of Information Act (FOIA). The Administrative Record, or portions thereof, may also be posted on a Corps of Engineers internet web site. Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to individual letters of comment.

Any person may request, in writing, before this public notice expires, that a public hearing be held to collect information necessary to consider this application. Requests for public hearings shall state, with particularity, the reasons why a public hearing should be held. It should be noted that information submitted by mail is considered just as carefully in the permit decision process and bears the same weight as that furnished at a public hearing.

Our preliminary determination for the "Upper Penhorn Creek Mitigation Bank, Freshwater Wetlands Enhancement and Preservation", is that the activity for which authorization is sought herein is not likely to affect any federally endangered or threatened species or their critical habitat. However, pursuant to Section 7 of the Endangered Species Act (16 U.S.C. 1531), the District Engineer is consulting with the appropriate Federal agency to determine the presence of and potential impacts to listed species in the project area or their critical habitat.

Based upon a review of the latest published version of the National Register of Historic Places, there are no known sites eligible for, or included in, the Register within the permit area for the "Upper Penhorn Creek Mitigation Bank, Freshwater Wetlands Enhancement and Preservation". Presently unknown archeological, scientific, prehistorical, or historical data may be lost by work accomplished under the required permit.

Reviews of activities pursuant to Section 404 of the Clean Water Act will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 (b) of the Clean Water Act and the applicant will obtain a water quality

CENAN-OP-RW
PUBLIC NOTICE NO. NAN-2022-00979-WCO

certificate or waiver from the appropriate state agency in accordance with Section 401 of the Clean Water Act prior to a permit decision.

In addition to any required water quality certificate and coastal zone management program concurrence, the applicant has obtained or requested the following governmental authorization for the activity under consideration from the New Jersey Department of Environmental Protection.

In order for us to better serve you, please complete our Customer Service Survey located at <http://www.nan.usace.army.mil/Missions/Regulatory/CustomerSurvey.aspx>.

For more information on New York District Corps of Engineers programs, visit our website at <http://www.nan.usace.army.mil>.

FOR AND IN BEHALF OF
Stephan A. Ryba
Chief, Regulatory Branch

Enclosures

1. Upper Penhorn Creek Mitigation Bank Prospectus (with plans), revised February 2024
2. Attachment A