



# 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-2024-01064-EMI**  
**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 "Evergreen Whale Creek Mitigation Bank", sponsored by Evergreen Environmental, LLC. 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 concerning the work as described below.

**AUTHORITY:** Issuance of public notices regarding proposed compensatory mitigation sites is required pursuant to Compensatory Mitigation for Losses of Aquatic Resources; Final Rule as published April 10, 2008, in the Federal Register, Vol. 73, No. 70, pages 19,594-19,705 (33 CFR 325 and 332 and 40 CFR 230). **This is not an application for work in federally regulated waters;** however, authorization under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act may be required for implementation of the proposed 18.68-acre site, if approved. No decision has been made as to whether this proposed mitigation bank will be approved.

**SPONSOR:** Evergreen Environmental, LLC  
Attn: Mark Renna  
709 Natures Way  
Franklin Lakes, New Jersey 07417

**ACTIVITY:** Whale Creek Mitigation Bank Prospectus

**WATERWAY:** Whale Creek, a tributary of Raritan Bay

**LOCATION:** Old Bridge Township, Middlesex County, New Jersey

**LATITUDE AND LONGITUDE:** 40.446178, -74.23084

**PURPOSE AND PROPOSED WORK:** 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.

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The sponsor proposes to design, construct, establish, and operate the Whale Creek Mitigation Bank (Bank). The proposed Whale Creek Mitigation Bank Prospectus is described in the documents entitled “**Evergreen Whale Creek Mitigation Bank Prospectus**”, last revised January 2025. A detailed description and plans of the Sponsor's proposed Mitigation Bank activities has been published on the New York District, USACE website in the Prospectus document. The purpose of the bank is to provide off-site, third-party compensatory mitigation for projects that result in unavoidable impacts to waters of the United States, including wetlands, within the bank's specified service areas.

The proposed site is approximately 18.68 acres and the sponsor proposes to restore approximately 5.85 acres of invasive-dominated degraded tidal wetlands. The approximately 10.02 acres of existing wetlands would be placed under preservation and the remaining 2.81 acres of upland area would remain, including the approximately 0.02 acres which is under an existing easement.

**PROPOSED SERVICE AREA:** The proposed service area is depicted in the enclosed prospectus Figure 1.4: Service Area and Watershed Map. The service area includes Raritan, Bay, the Arthur Kill, Newark Bay and the Atlantic Coastal Region of Middlesex County or Watershed Management Area 12 (WMA-12). The service area is inclusive of fourteen (14) Hydrologic Unit Codes-11 (HUC) watershed numbers of the common HUC-6, listed below:

020-30-104-010  
020-30-104-020  
020-30-104-030  
020-30-104-050  
020-30-104-060 (Bank Location)  
020-30-104-070  
020-30-104-080  
020-30-104-090  
020-30-104-100  
020-30-104-910  
020-30-104-920  
020-30-104-930  
020-30-105-120  
020-30-105-160

**INTERAGENCY REVIEW TEAM:** The establishment, management, and use of a Mitigation Bank must be in accordance with a Mitigation Banking Instrument approved by the Interagency Review Team (IRT). 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), and the New Jersey Department of Environmental Preservation (NJDEP).

**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 18.68 acres of habitat utilized in the establishment of the proposed mitigation bank will be categorized as restoration pursuant to 33 CFR 332. The Sponsor is requesting 3.79 credits for the proposed activities.

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**ENDANGERED SPECIES CONSULTATION:** Our preliminary determination for the “Evergreen Whale Creek Mitigation Bank Prospectus”, is that the proposed activity 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.

**ESSENTIAL FISH HABITAT:** The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act (Public Law 104-267), requires all Federal agencies to consult with the National Oceanic and Atmospheric Administration Fisheries Service (NOAA/FS) on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). The proposed work, fully described in the enclosed prospectus, could cause the disruption of habitat for various lifestages of some EFH-designated species as a result of a temporary increase in turbidity during construction. However, the New York District has made the preliminary determination that the site-specific adverse effects are not likely to be substantial because it is expected that fish populations would avoid the small area of disturbance. Further consultation with NOAA/FS regarding EFH impacts and conservation recommendations is being conducted and will be concluded prior to the final decision.

**NATIONAL HISTORIC PRESERVATION ACT:** 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 “Evergreen Whale Creek Mitigation Bank Prospectus”. Presently unknown archeological, scientific, prehistorical, or historical data may be lost by work accomplished under the required permit.

**COASTAL ZONE MANAGEMENT ACT:** Pursuant to Section 307 (c) of the Coastal Zone Management Act of 1972 as amended [16 U.S.C. 1456 (c)], for activities under consideration that are located within the coastal zone of a state which has a federally approved coastal zone management program, the applicant has certified in the permit application that the activity complies with, and will be conducted in a manner that is consistent with, the approved state coastal zone management program. By this public notice, we are requesting the state's concurrence with, objection to, or waiver of the applicant's certification. No permit decision will be made until one of these actions occurs. For activities within the coastal zone of New Jersey State, the applicant's certification and accompanying information is available from the New Jersey Department of Environmental Protection, Coastal Management Program, P.O. Box 418, 401 E. State Street, Trenton, NJ, 08625, Telephone (609) 633-2201. Comments regarding the applicant's certification, and copies of any letters to this office commenting upon this proposal, should be so addressed.

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

**OTHER AUTHORIZATIONS:** 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 NJDEP.

**EVALUATION:** The decision whether to issue a permit will be based on an evaluation of the

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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, 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. For activities involving the discharge of dredged or fill materials in waters of the United States, the evaluation of the impact of the activity on the public interest will include application of the Environmental Protection Agency's 404(b)(1) guidelines.

**SUBMITAL OF COMMENTS:** The Corps of Engineers 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 this proposed activity. 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 and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

All comments regarding this prospectus should be submitted via email to [Christopher.W.Minck@usace.army.mil](mailto:Christopher.W.Minck@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 can also be submitted through the USACE Regulatory Request System (RRS) at <https://rrs.usace.army.mil/rrs/public-notices>.

Comments submitted in response to this notice will be fully considered during the public interest review for this permit application. 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. 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.

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. Evergreen Whale Creek Mitigation Bank Prospectus (with plans), last revised January 2025