



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-2024-01081-EBR
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", sponsored by GreenVest, 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 72.01-acre site, if approved. No decision has been made as to whether this proposed mitigation bank will be approved.

SPONSOR: GreenVest, LLC
Attn: Brian Cramer
35A Kennedy Road
P.O. Box 200
Tranquility, New Jersey 07879

ACTIVITY: Upper Penhorn Creek Mitigation Bank Prospectus

WATERWAY: Penhorn Creek, a tributary of the Hackensack River

LOCATION: East of I-95 and south of SR-495, Township of North Bergen, Hudson County, New Jersey

LATITUDE AND LONGITUDE: 40.773884, -74.050333

PURPOSE AND PROPOSED WORK: The sponsor proposes to design, construct, establish, and operate the Upper Penhorn Creek Mitigation Bank (PCMB or Bank). 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. 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

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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 proposed Mill Creek Point Mitigation Bank Prospectus is described in the documents entitled “**Upper Penhorn Wetland Mitigation Prospectus**”, dated November 2022, last revised October 2024. 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 sponsor proposes to enhance 72.01 acres of degraded tidal wetlands dominated with invasive common reed *Phragmites australis* within a highly urbanized portion of WMA 5.

PROPOSED SERVICE AREA: The proposed service area is depicted in the enclosed prospectus Figure 1.4: Service Area Map. The service area includes the Hackensack Meadowlands District (HMD), within New Jersey Department of Environmental Protection's (NJDEP) Watershed Management Area 5 (WMA-5) and is inclusive of four (4) Hydrologic Unit Codes-11 (HUC) watershed numbers of the common HUC-6, listed below:

020-30-103-170
020-30-101-170
020-30-103-180
020-30-104-010 (portion)

INTERAGENCY REVIEW TEAM: 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).

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 72.01 acres of habitat utilized in the establishment of the proposed mitigation bank will be categorized as enhancement pursuant to 33 CFR 332. The Sponsor is proposing an approximately 3:1 ratio for enhancement of common reed-dominated wetland habitat to credits.

ENDANGERED SPECIES CONSULTATION: Our preliminary determination for the “Upper Penhorn 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

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(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 "Upper Penhorn 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 and/or the NJSEA.

EVALUATION: 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, 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

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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 Jeffrey.J.Branham@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 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