



**U S Army Corps of
Engineers**

Buffalo District
Huntington District
Pittsburgh District

Public Notice

In reply refer to Public Notice No. 17-15
**LRH-2017-00094; LRP-2017-00257;
and LRB-2017-00118**

Issuance Date:
March 10, 2017

Stream:
Jefferson Creek

Closing Date:
April 10, 2017

Please address all comments and inquiries to:
U.S. Army Corps of Engineers, Huntington District
ATTN: CELRH-RD-E Public Notice No. (*reference above*)
502 Eighth Street
Huntington, West Virginia 25701-2070

Phone: (304) 399-5610

TO WHOM IT MAY CONCERN: The district engineer has received a prospectus to establish a stream and wetland umbrella mitigation banking instrument (UMBI) and an associated mitigation bank site(s) in the State of Ohio, proposed under the UMBI to provide compensatory mitigation for Federal and State permits. Issuance of a public notice regarding proposed mitigation banks is required pursuant to the “Compensatory Mitigation for Losses of Aquatic Resources; Final Rule,” (Rule) as published in the April 10, 2008, Federal Register, Vol. 73, No. 70, Pages 19594-19705 (33 CFR Parts 332). In addition, the proposed mitigation bank site(s) have been submitted for authorization under the provisions of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. This notice serves as the United States (U.S.) Army Corps of Engineers’ (Corps) request to the Ohio Environmental Protection Agency (OEPA) to act on the Section 401 Water Quality Certification for the following Application. 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 this proposal.

INTERAGENCY REVIEW TEAM: As indicated in the Corps regulations (33 CFR 332.8(b)), the district engineer will establish an Interagency Review Team (IRT) to review documentation for the establishment and management of mitigation banks and in-lieu fee (ILF) programs. The primary role of the IRT is to facilitate the establishment of mitigation banks and/or ILF programs through the development of mitigation banking or ILF program instruments. The IRT reviews draft prospectuses, prospectuses, instruments, and other documents and provides comments to the Corps. The Ohio IRT consists of the following federal and state resource agencies: Corps, Buffalo, Huntington, and Pittsburgh Districts, U.S. Environmental Protection Agency (USEPA), U.S. Fish and Wildlife Service (USFWS), U.S. Department of Agriculture’s Natural Resources Conservation Service, OEPA, and Ohio Department of Natural Resources. The Huntington District Regulatory Division is the lead district for the State of Ohio and chairs the Ohio IRT on all statewide or multiple District prospectuses. Buffalo District and Pittsburgh District may serve as chair when reviewing/processing prospectuses within their geographic area of regulatory responsibility.

BANK SPONSOR: EIP III Credit Co, LLC
2002 Clipper Park Road
Suite 201
Baltimore, Maryland 21211

LOCATION: The Bank Sponsor is proposing the development of an UMBI to cover the State of Ohio. The Bank Sponsor proposes the establishment and management of two (2) initial mitigation banks known as the Tuscarawas Mitigation Bank and the Upper Ohio Mitigation Bank.

The approximately 321-acre Tuscarawas Mitigation Bank would be located within the Corps, Huntington District regulatory boundary in the Tuscarawas River watershed (8-digit Hydrologic Unit Code (HUC): 05040001), near Germano, Harrison County, Ohio (latitude 40.39360, longitude -80.95558). The approximately 134-acre Upper Ohio Mitigation Bank would be located within the Corps, Pittsburgh District regulatory boundary in the Upper Ohio watershed (8-digit HUC: 05030101) is located near Germano, Harrison County, Ohio (latitude 40.40997, longitude -80.93661). These proposals have been assigned Department of the Army (DA) file numbers LRH-2017-00094, LRP-2017-00257, and LRB-2017-00118.

DESCRIPTION OF THE PROPOSED ACTIVITY: The Bank Sponsor has submitted a prospectus to the Corps, Buffalo, Huntington and Pittsburgh Districts to establish a stream and wetland UMBI in the State of Ohio with two (2) initially proposed mitigation banks known as the Tuscarawas Mitigation Banks and the Upper Ohio Mitigation Bank. A complete copy of the Prospectus is available for review upon request.

The proposed UMBI would provide compensatory mitigation for projects resulting in unavoidable impacts to streams and wetlands within service areas where a mitigation bank is located. Each mitigation bank proposed under the UMBI would include a corresponding service area. The Tuscarawas Mitigation Bank would include a primary service area consisting of the Tuscarawas watershed (8-digit HUC 05040001) and a secondary service area consisting of the Muskingum watershed (6-digit HUC 050400) within the State of Ohio. The Upper Ohio Mitigation Bank would include a primary service area consisting of the Upper Ohio watershed (8-digit HUC 05030101) and a secondary service area consisting of the Upper Ohio-Beaver watershed (6-digit HUC 050301) within the State of Ohio.

The objective of the proposed mitigation banks is to generate compensatory mitigation credits to offset unavoidable adverse effects to stream channels within the mitigation bank service areas. Stream credits would be generated through the restoration and/or enhancement of stream channels and the restoration of riparian buffers within the boundaries of the mitigation banks. The Bank Sponsor proposes to generate stream credits at the Tuscarawas Mitigation Bank through the restoration and/or enhancement of approximately 27,837 linear feet of stream channel, the restoration of 50-foot riparian buffer along 27,837 linear feet of stream channel, and the restoration of 51-150-foot riparian buffer along 15,418 linear feet of stream channel.

The Bank Sponsor proposes to generate stream credits at the Upper Ohio Mitigation Bank through the restoration and/or enhancement of approximately 8,648 linear feet of stream channel, the restoration of 50-foot riparian buffer along 8,648 linear feet of stream channel, and the restoration of 51-150-foot riparian buffer along 8,597 linear feet of stream channel. Refer to Table I, below, for a summary of the proposed stream mitigation activities.

**Table I
Proposed Stream Mitigation Activities**

Mitigation Bank	USACE District	Mitigation Area	HUC	Stream Name	Mitigation (all lengths estimated in linear feet)		
					Stream Restoration or Enhancement	Buffer Rehabilitation (50')	Extra Buffer Reestablishment (51-150')
Tuscarawas	Huntington	1	05040001	Jefferson Creek	7,040	7,040	7,040
	Huntington	2	05040001	UT Jefferson Creek	3,846	3,846	1,632
	Huntington	3	05040001	UT Jefferson Creek	2,551	2,551	
	Huntington	4	05040001	Jefferson Creek	4,827	4,827	
	Huntington	7	05040001	UT Jefferson Creek	3,477	3,477	3,477
	Huntington	8	05040001	UT Jefferson Creek	3,508	3,508	2,557
	Huntington	9	05040001	UT Jefferson Creek	1,876	1,876	
	Huntington	10	05040001	UT Conotton Creek	712	712	712
Totals for Bank					27,837	27,837	15,418
Upper Ohio	Pittsburgh	5	05030101	North Branch Cross Creek	4,001	4,001	4,001
	Pittsburgh	6	05030101	Elk Lick	4,647	4,647	1,829
Totals for Bank					8,648	8,648	8,597

The submitted Prospectus states baseline functional conditions would be assessed using a variety of physical, habitat, biological, and/or chemical metrics specified by the Ohio IRT guidelines, as appropriate for the stream type and flow regime. Performance standards for the restored and enhanced ecosystems would be based on the same metrics. Performance standards for riparian buffer restoration would be consistent with the metrics and standards described in the Ohio IRT guidelines.

Upon approval of the proposed mitigation bank sites under the UMBI, the Bank Sponsor would encumber the proposed mitigation banks' acreage with a perpetual environmental covenant (along with an appropriate monitoring and enforcement endowment) held by a qualified conservation organization (e.g. land trust) or the State of Ohio. Once all credits generated have been released by the Ohio IRT, the lease areas would be maintained under an environmental covenant to which the Bank Sponsor, the landowner, and the OEPA would be signatory. A designated third party manager would be responsible for long-term maintenance after bank closure. The third party financial assurance designee would be identified in the final mitigation banking instrument. Revenues generated by the sale of mitigation credits would allow the Bank Sponsor to establish a long-term monitoring and maintenance fund for the mitigation banks to provide for the long-term quality and viability of the restored ecosystems.

Location and details of the proposed initial mitigation bank projects are shown on the attached documents (Exhibits 1 through 4).

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification may be required from the OEPA in conjunction with the proposed establishment of mitigation sites.

HISTORIC AND CULTURAL RESOURCES: This undertaking (proposed mitigation banks) must be reviewed to determine any potential effect to properties that may be eligible for or listed on the National Register of Historic Places (NRHP), in accordance with Section 106 of the National Historic Preservation Act. The NRHP has been consulted, and it has been determined there are no historic properties currently listed on the NRHP within the area to be affected by the proposed mitigation bank projects. 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 potential effects on historic properties. If you wish to provide comments or objections regarding the effect of the proposed mitigation bank projects on historic properties, please provide this information to our office prior to the close of the comment period.

THREATENED & ENDANGERED SPECIES: This Public Notice will serve as coordination with the USFWS concerning threatened or endangered species, pursuant to Section 7 of the Endangered Species Act of 1972 (as amended). One (1) federally-listed endangered species (the Indiana bat (*Myotis sodalis*)) and one (1) federally-listed threatened species (the northern long-eared bat (*Myotis septentrionalis*)) may occur within the proposed project areas. The proposed mitigation banks would involve restoration and/or enhancement of stream channels and the restoration of riparian buffers within the boundaries of the mitigation banks. The proposed activities would be expected to result in riparian corridor improvements. Based on the nature of the proposed project, this office has determined the proposed project may affect, but would not likely adversely affect the Indiana bat or the northern long-eared bat.

This Public Notice serves as a request to the USFWS for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the areas which would be affected by the activities, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the approval of this UMBI and/or the two (2) initially proposed mitigation banks may request a public hearing. The request must be submitted in writing to the district engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activities. This proposal will be reviewed in accordance with 33 CFR 320-332, the Regulatory Program of the Corps, and other pertinent laws, regulations, and executive orders. Interested parties are invited to state any objections they may have to the proposed work. A DA permit may be required under Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act for activities in conjunction with the establishment of mitigation banks under the UMBI. If required, the proposal would be evaluated for compliance with the terms and conditions of Nationwide Permit No. 27 for Aquatic Habitat Restoration, Establishment, and Enhancement Activities or, if determined necessary, an individual DA permit pursuant to the procedures outlined at 33 CFR 325.2 would be required. For individual DA permits, the decision whether to approve mitigation banks under the UMBI will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activities on

the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposals must be balanced against their reasonably foreseeable detriments. All factors that may be relevant to the proposals will be considered including the cumulative effects thereof; of 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. Any person may submit cumulative impact information, which is substantive and specifically associated with the proposed actions. In addition, the evaluation of the impact of the activities on the public interest will include application of the guidelines promulgated by the Administrator, USEPA, under the authority of Section 404(b) of the Clean Water Act. Written statements on these factors received in this office on or before the expiration date of this Public Notice will become a part of the record and will be considered in the final determination.

SOLICITATION OF COMMENTS: 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 proposed UMBI and two (2) initially proposed mitigation banks. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the Corps to determine whether to approve, modify, condition or deny these proposals. 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 the 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.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to:

United States Army Corps of Engineers
Huntington District
ATTN: CELRH-RD-E (Public Notice No. LRH-2017-00094; LRP-2017-00257; and
LRB-2017-00118)
502 Eighth Street
Huntington, West Virginia 25701-2070.

Please note comments in response to this Public Notice become part of our administrative record and, as such, are available to the public under provisions of the Freedom of Information Act. Thank you for your interest in our Nation's water resources. If you have any questions

concerning this public notice, please contact Mr. Cory Wilson at the above address, by telephone at (330) 365-4271, or by email at cory.l.wilson@usace.army.mil.