



Public Notice

**U S Army Corps
of Engineers**
Huntington District
Pittsburgh District
Buffalo District

In reply refer to Public Notice No.

LRH-2012-00259

Issuance Date:

November 28, 2012

Applicant: The Nature Conservancy

Closing Date:

December 28, 2012

All written comments should reference the above application and be addressed to:

U.S. Army Corps of Engineers, Huntington District

CELRH-RD-E Attn: Sheila Newman

4969 Dillon Dam Road

Zanesville, Ohio 43701

Phone: (740) 454-2225 ext. 5

Interested parties are hereby notified that a prospectus has been received pursuant to 33 CFR 332 proposing the establishment of an In Lieu Fee Program (ILFP) to provide mitigation for impacts to waters of the United States (U.S.) under Section 404 of the Clean Water Act (Section 404) and/or Sections 9 and 10 of the Rivers and Harbors Act of 1899 within forty four (44) eight digit hydrologic unit code (HUC) watersheds within the State of Ohio. The purpose of this public notice is to solicit comments from the public regarding the establishment of the proposed ILFP.

This is not an application for work in federally regulated waters; however, authorization under Section 404 may be required for implementation of particular mitigation sites later proposed under the ILFP, if approved. Such sites would be advertised under separate public notices. No decision has been made as to whether this ILFP will be approved.

SPONSOR: The Nature Conservancy in Ohio, 6375 Riverside Drive, Suite 100, Dublin, Ohio 43017-5045

PURPOSE: The Nature Conservancy has provided a prospectus to initiate the development of an ILFP to meet compensatory mitigation requirements for future permits issued under Section 404. The purpose of the prospectus is to establish guidelines, responsibilities, and standards for the establishment, use, operation, and maintenance of the program in a way that complies with the regulations governing compensatory mitigation for activities authorized by Department of Army (DA) permits granted by the U.S. Army Corps of Engineers (Corps). If approved by the State of Ohio, the proposed ILFP could also be used as compensatory mitigation for activities authorized under Ohio Revised Code (ORC Chapter 611 – Isolated Wetlands and/or Ohio Administrative Code (OAC 3745-1) authorized by the Ohio Environmental Protection Agency.

IN-LIEU FEE PROGRAM DEFINITION: An ILFP is a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for DA permits. Similar to a mitigation bank, an ILFP sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the ILFP sponsor.

DESCRIPTION OF PROPOSED ACTIVITY: Information required for a complete ILFP prospectus is outlined in 33 CFR 332.8(d)(2). A complete copy of the prospectus is posted on the Huntington, Pittsburgh and Buffalo Corps Districts' web sites public notices page. The web

addresses for each District are listed on Attachment A. The prospectus is also available for review in each of the offices listed on Attachment A. Optimal times to review the prospectus would be between the hours of 9:00 AM and 3:00 PM, Monday through Friday. Please call the respective point of contact listed on Attachment A to make arrangements.

Establishment/operation of the ILFP: Under Section 404, applicants for DA permits to discharge dredged or fill material into waters of the U.S., including wetlands, are often required to mitigate for permitted wetland losses by creating, restoring, enhancing, or in exceptional circumstances, preserving wetland or streams. Authorized ILFPs provide the Corps and the regulated public with additional options for compensatory mitigation of aquatic resource losses. The establishment and implementation of an ILFP must be in accordance with an ILFP instrument approved by the Interagency Review Team (IRT). The IRT is presently comprised of the Corps, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the U.S. Department of Agriculture-Natural Resources Conservation Service, the Ohio Department of Natural Resources and the Ohio Environmental Protection Agency.

If the prospectus is deemed sufficient, the ILFP program will be established through the development of an ILFP instrument to be signed by the sponsor, the Corps, and other IRT members who choose to do so. The process will follow 33 CFR 332, Compensatory Mitigation for Losses of Aquatic Resources (“Mitigation Rule”). The Mitigation Rule was published in the Federal Register on April 10, 2008. The ILFP program would provide an alternative to permittee-responsible mitigation if it is deemed appropriate during the review process for proposed unavoidable impacts to waters of the U.S. authorized under Section 404. It may also provide an alternate type of mitigation for Civil Works projects requiring compensation for impacts to aquatic resources as well as providing a resource for use in resolving enforcement cases under Section 404.

Proposed Service Area: The ILFP is proposed to include the entire state of Ohio as the geographic area for which mitigation can be provided. Ohio encompasses 44, 8-digit HUC (Hydrologic Unit Code, a designation for the watershed drainage area encompassed) regions: 04100001(Lake Erie tributaries below Detroit River [Michigan] to above Maumee River), 04100002 (Raisin River), 04100003 (St. Joseph River), 04100004 (St. Mary’s River), 04100005 (Maumee River), 04100006 (Tiffin River), 04100007 (Auglaize River), 04100008 (Blanchard River), 04100009 (Maumee River), 04100010 (Lake Erie tributaries and Portage River), 04100011 (Sandusky River and Sandusky Bay tributaries), 04100012 (Huron River and Vermilion River), 04110001 (Black River and Rocky River), 04110002 (Cuyahoga River), 04110003 (Chagrin and Ashtabula Rivers and Lake Erie tributaries), 04110004 (Grand River), 04120101 (Conneaut Creek and Lake Erie tributaries), 04120200 (Lake Erie Islands), 05030101 (Little Beaver, Yellow, and Cross Creeks), 05030102 (Shenango River), 05030103 (Mahoning River), 05030106 (Ohio River tributaries-Short, Wheeling, and McMahan Creeks), 05030201 (Little Muskingum River), 05030202 (Shade River and Leading Creek), 05030204 (Hocking River), 05040001 (Tuscarawas River), 05040002 (Mohican River), 05040003 (Kokosing River, Walhonding River, and Killbuck Creek), 05040004 (Muskingum River), 05040005 (Wills Creek), 05040006 (Licking River), 05060001 (Scioto River-headwaters to below Big Darby Creek), 05060002 (Scioto River-below Big Darby Creek to Ohio River, except Paint Creek), 05060003 (Paint Creek), 05080001 (Great Miami River -headwaters to below Mad River), 05080002 (Great Miami River (below Mad River to Ohio River, except Whitewater R.), 05080003 (Whitewater River), 05090101 (Raccoon Creek, Symmes Creek and other Ohio River

tributaries), 05090103 (Little Scioto River and other Ohio River tributaries), 05090201 (Ohio Brush Creek, Whiteoak Creek, and other Ohio River tributaries), 05090202 (Little Miami River), 05090203 (Mill Creek and Ohio River tributaries), 05120101 (Wabash River), and 05120103 (Mississinewa River) within the State of Ohio. The service areas are within the regulatory boundaries of the Corps Huntington, Buffalo, and Pittsburgh Districts.

PUBLIC INTEREST REVIEW: The Corps is soliciting comments from the public; Federal, state, and local agencies and officials; Federally-recognized Tribes; and other interested parties in order to consider and evaluate the proposed ILFP. Any comments received will be considered by the Corps in determining whether to allow the sponsor to proceed to develop a draft ILFP instrument. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

PUBLIC HEARING: Any person may request, in writing, within the comment period specified in this notice that a public hearing be held to consider this prospectus. Requests for a public hearing shall state, with particularity, the reason for holding a public hearing. The District Engineer will determine if the issues raised are substantial and whether a hearing is needed for making a decision.

COMMENTS OR REQUEST FOR ADDITIONAL INFORMATION: Comments or questions pertaining to this prospectus should reference the Application Number (LRH-2012-00259) and be directed to the attention of Sheila Newman, who can be contacted at the above address, by calling (740) 454-2225 ext 5, or by email at Sheila.M.Newman@usace.army.mil. Comments submitted in response to this notice will be fully considered during the review for this prospectus. All written comments will be made part of the administrative record which is available to the public under the Freedom of Information Act. The administrative record or portions thereof may also be posted on a Corps internet website. Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to individual letters of comment. Copies of comments received will be forwarded to the sponsor and to the members of the Interagency Review Team.

This notice is promulgated in accordance with Title 33, Code of Federal Regulations, parts 320-332. Any interested party desiring to comment on the work described herein may do so by submitting their comments in writing so they are received no later than the expiration date of this notice.

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Attachment A:

The Nature Conservancy's Ohio Stream and Wetland In-Lieu-Fee Mitigation Program Prospectus "Prospectus" is available for review at the following web sites:

Buffalo District Web site:

<http://www.lrb.usace.army.mil/Missions/Regulatory/ActionsandNotices/PublicNotices.aspx>

Huntington District Web site:

<http://www.lrh.usace.army.mil/Missions/Regulatory/PublicNotices.aspx>

Pittsburgh District Web site:

http://www.lrp.usace.army.mil/or/or-f/public_notice.htm

Individuals may also make arrangements to review the Prospectus at the following office locations:

Cincinnati Field Office, 10557 McKelvey Road, Cincinnati, Ohio 45240

POC: Sheila Newman, 740-454-2225 ext. 5, Sheila.M.Newman@usace.army.mil

Dillon Lake Field Office, 4969 Dillon Dam Road, Zanesville, Ohio 43701

POC: Sheila Newman, 740-454-2225 ext. 5, Sheila.M.Newman@usace.army.mil

Dover Field Office, 5336 SR 800, NE, Dover, Ohio 44622

POC: Sheila Newman, 740-454-2225 ext. 5, Sheila.M.Newman@usace.army.mil

Oak Harbor Field Office, 240 Lake Street, Oak Harbor, Ohio 43449

POC: Mark Gronceski, 440-437-5847, Mark.E.Gronceski@usace.army.mil

Orwell Field Office, 33 Grand Valley Avenue, Orwell, Ohio 44076

POC: Mark Gronceski, 440-437-5847, Mark.E.Gronceski@usace.army.mil

Pittsburgh District Office, 1000 Liberty Avenue, Pittsburgh, PA 15222

POC: Nicole Marisavljevic, 412-395-7592, Nicole.Marisavljevic@usace.army.mil

Stow Field Office, 1100 Graham Road Circle, Stow, Ohio 44224

POC: Mark Gronceski, 440-437-5847, Mark.E.Gronceski@usace.army.mil