



**U.S. Army Corps  
of Engineers**  
Pittsburgh District

# Public Notice

In Reply Refer to  
Notice No. below

US Army Corps of Engineers, Pittsburgh District  
1000 Liberty Avenue  
Pittsburgh, PA 15222-4186

Application No. LRP-2012-1750

Date: January 18, 2013

Notice No. 13-04

Closing Date: February 19, 2013

1. **TO ALL WHOM IT MAY CONCERN:** A prospectus has been submitted 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 under Section 404 of the Clean Water Act (Section 404) and/or Section 10 of the Rivers and Harbors Act of 1899 within four eight-digit hydrologic unit code (HUC) watersheds in the State of Ohio, within the boundaries of the U.S. Army Corps of Engineers (Corps) Pittsburgh District. The purposed 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.

2. **SPONSOR:** Ohio Wetlands Foundation  
1220 Stone Run Court  
Lancaster, Ohio 43130
3. **PURPOSE:** Ohio Wetlands Foundation has submitted a prospectus to the Corps Pittsburgh District 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 permits granted by the 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.
4. **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.

5. DESCRIPTION OF PROPOSED ACTIVITY: Information required for a complete ILFP prospectus is outline in 33 CFR 332.8(d)(2). A complete copy of the prospectus is posted on the Pittsburgh Corps District's web site public notice page at [http://www.lrp.usace.army.mil/or/or-f/public\\_notice.htm](http://www.lrp.usace.army.mil/or/or-f/public_notice.htm).

*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 wetlands 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 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 would provide an alternative to permittee-responsible mitigation if it is deemed appropriate during the review process for proposed unavoidable impacts to water 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 state of Ohio within the Corps Pittsburgh District boundaries as the geographic area for which mitigation can be provided. The Corps Pittsburgh district covers four 8-digit HUC watersheds: the Shenango (05030102), Mahoning (05030103), Upper Ohio (05030101), and the Upper Ohio-Wheeling (05030106). The service areas will be split into two halves of the District. The north service area will include the Shenango and the Mahoning 8-digit HUC watersheds while the south service area will include the Upper Ohio and the Upper Ohio-Wheeling 8-digit HUC watersheds.

6. PUBLIC INVOLVEMENT: 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. Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this prospectus. The requests for public hearing shall state, with particularity, the reasons 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 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. 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 proposed prospectus described herein may do so by submitting their comments in writing so they are received no later than the closing date of this notice.

All responses to this notice should be directed to the Regulatory Branch, attn Nicole Marisavljevic at the above address, by telephoning (412) 395-7592, or by e-mail at [nicole.marisavljevic@usace.army.mil](mailto:nicole.marisavljevic@usace.army.mil). Please refer to CELRP-OP-F 2012-1750 in all responses.

FOR THE DISTRICT ENGINEER:

//SIGNED//

Nancy Mullen  
Chief, Northern Section  
Regulatory Branch