



PUBLIC NOTICE

Comment Period Begins: December 19, 2023

Comment Period Ends: January 18, 2024

File Number: NAE-2005-01142

In Reply Refer to: Mr. Taylor Bell

Phone: (978) 318-8952

Email: Taylor.m.bell@usace.army.mil

SUBJECT:

This notice announces a request to modify the Ducks Unlimited Vermont In Lieu Fee Program (ILF) Instrument.

ILF PROGRAM SPONSOR:

Ducks Unlimited Incorporated
1 Waterfowl Way,
Memphis, Tennessee 38120

BACKGROUND:

Ducks Unlimited is the sponsor of the statewide Vermont ILF Program which serves as an alternative form of compensatory mitigation for impacts to aquatic resources. The Vermont ILF Program is authorized by the New England District, U.S. Army Corps of Engineers (Corps). A copy of the signed ILF agreement titled, "Ducks Unlimited, Incorporated – Vermont In-leu Fee Program" and dated "12/07/10," includes details about the ILF Program goals and objectives in general and can be found at the following link: <http://www.nae.usace.army.mil/Portals/74/docs/regulatory/Mitigation/VT.pdf>

PURPOSE:

Ducks Unlimited has submitted an overall instrument revision. This document can be found here:

https://ribits.ops.usace.army.mil/ords/f?p=107:378:12414442646431::::P378_PROGRAM_ID:301.

This revision will incorporate the following updates:

- Adds two smaller watersheds in the State of New York, within the Richelieu Service area, outside of the Adirondack Park Agency jurisdiction
- Proposes the sale of *released* stream credits
- Contingencies for program default
- Clarifies force majeure and provides a path for resolution
- Updates and clarifies process for site selection
- Modernizes the Compensation Planning Framework

GENERAL INFORMATION:

An ILF program involves the restoration, establishment, re-establishment, enhancement, rehabilitation 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 Department of the Army permits. Similar to a mitigation bank, an ILF program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the ILF program sponsor. The operation and use of an ILF program are governed by an ILF program instrument. A group of federal and state regulatory and resource agency representatives known as the Interagency Review Team (IRT) oversee the establishment and management of the program. The IRT is chaired by the Corps and the primary role of the IRT is to facilitate the establishment of the ILF program through the development of an ILF Instrument. The IRT also reviews ILF mitigation proposals and provides comments to the Corps. The approval of the use of the ILF program for specific projects is the decision of the Corps pursuant to Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act (CWA). The Corps provides no guarantee that any individual or general permit proposing to use the ILF program for compensation mitigation would be authorized.

ESSENTIAL FISH HABITAT:

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires all federal agencies to consult with the National Marine Fisheries Service on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). EFH describes waters and substrate necessary for fish for spawning, breeding, feeding or growth to maturity.

This ILF instrument modification will have no direct effect on EFH, however all individual projects that are created as a result of this modification will be evaluated on an individual project scenario.

NATIONAL HISTORIC PRESERVATION ACT:

This ILF instrument modification will have no direct effect on historic properties, however all individual projects that are created as a result of this modification will be evaluated on an individual project scenario.

ENDANGERED SPECIES CONSULTATION:

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This ILF instrument modification will have no direct effect on endangered species, however all individual projects that are created as a result of this modification will be evaluated on an individual project scenario.

EVALUATION:

After the end of the comment period, the district engineer will review all comments received and make an initial determination as to the potential of the proposed modification. That determination will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. Factors relevant to the proposal will be considered including conservation, economics, aesthetics, general environmental concerns, wetlands, historical 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.

COMMENTS:

The Corps is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties to consider and evaluate the impacts of this proposed activity. 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. People submitting comments are advised that all comments received will be available for public review in their entirety and will be considered a matter of public record.

To properly evaluate the proposal, we are seeking public comment. Anyone wishing to comment is encouraged to do so. Comments should be submitted in writing by the above date. If you have any questions, please contact Mr. Taylor Bell at taylor.m.bell@usace.army.mil, (978) 318-8952, (800) 343-4789 or (800) 362-4367.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the application. Requests for a public hearing shall specifically state the reasons for holding a public hearing. The Corps holds public hearings for the purpose of obtaining public comments when that is the best means for understanding a wide variety of concerns from a diverse segment of the public.

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The initial determinations made herein will be reviewed in light of facts submitted in response to this notice. All comments will be considered a matter of public record. Copies of letters of objection will be forwarded to the sponsor who will normally be requested to contact objectors directly in an effort to reach an understanding.

THIS NOTICE IS NOT AN AUTHORIZATION TO DO ANY WORK.

C. Grace Moses

Grace Moses
Chief, Technical Support Branch
Regulatory Division

Pease contact Ms. Tina Chaisson at bettina.m.chaisson@usace.army.mil or (978) 318-8058 if you would like to be removed from our public notice mailing list.