



**US Army Corps
of Engineers**
Louisville ®

Public Notice

Public Notice No.

LRL-2010-326-pgj

Date:

5 Nov 10

Closing Date:

4 Dec 10

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Louisville District

ATTN: Patricia A. Grace-Jarrett, Ph. D., CELRL-OP-FS, Rm 752

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The Louisville District of the U.S. Army Corps of Engineers, in accordance with 33 CFR Part 332 "Compensatory Mitigation for Losses of Aquatic Resources" ("Mitigation Rule"), announce a request to modify an existing In-Lieu Fee Program Instrument.

IN-LIEU FEE SPONSORS: Northern Kentucky University Center for Applied Ecology
15 Clearview Drive
Highland Heights, Kentucky 41076

Northern Kentucky University Research Foundation, Inc.
Lucas Administrative Center Room 616B
Nunn Drive
Highland Heights, KY 41099

LOCATION: The following nine northern Kentucky counties: Boone, Kenton, Campbell, Carroll, Gallatin, Grant, Pendleton, Bracken, and Mason.

PURPOSE: To replace the existing In-Lieu Fee Program Instrument with a new Instrument to ensure compliance with the Mitigation Rule.

DESCRIPTION OF IN-LIEU FEE PROGRAM INSTRUMENT: The Sponsors, the Northern Kentucky University Center for Applied Ecology (NKU-CAE) and the Northern Kentucky University Research Foundation, Inc. (NKURF), jointly propose to replace the existing In-Lieu Fee (ILF) Instrument ("Agreement Concerning In Lieu Mitigation Fees Between Northern Kentucky University Research Foundation, Northern Kentucky Center for Applied Ecology, and the Louisville District of the U.S. Army Corps of Engineers" originally signed August 30, 1999, revised October 2006) and the Local Procedures ("Executive Correspondence-Local Procedures on the Functions of the Mitigation Review Team & Use of In-lieu fee Mitigation in Kentucky," dated June 4, 2003), Corps I.D. LRL-1999-780 and LRL-2003-27, with a new Instrument that is consistent with the "Compensatory Mitigation for Losses of Aquatic Resources" ("Mitigation Rule"), published in the Federal Register (FR) (FR Vol. 73 No. 70, p 19670-19705 (33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; and Pub. L. 108-136), by the Corps of Engineers and the U.S. Environmental Protection Agency on April 10, 2008. The new Instrument would be considered a

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modification to an existing ILF Program.

The Instrument would establish revised procedures for the operation of the NKU-CAE/NKURF ILF Program, which would provide compensatory mitigation for losses to "waters of the United States" authorized by DA permits pursuant to Section 404 of the Clean Water Act (33 USC 1344) and Section 10 of the River and Harbors Act of 1899 (33 U.S.C. 401, 403). Specific mitigation projects would be authorized separately, consistent with the Mitigation Rule.

The proposed ILF Instrument includes the following: a) a description of the proposed service areas, b) accounting procedures, c) legal responsibility for providing compensatory mitigation once a permittee secures credits from the Sponsor, d) default and closure provisions, e) reporting protocols, f) compensation planning framework, g) initial allocation of advance credits, draft fee schedule for the credits by service area, an explanation of the basis for the allocation, and draft fee schedule, h) methodology for determining project-specific credits and fees, and i) a description of the ILF program account.

A copy of the proposed ILF Instrument may be viewed at the Louisville District's Internet web site (<http://www.lrl.usace.army.mil/orf/listnotices.asp>) or by requesting in writing from the address listed below.

REVIEW PROCEDURES: This proposal will be reviewed in accordance with the procedures found at 33 CFR Part 332 "Compensatory Mitigation for Losses of Aquatic Resources".

Under Part 332, an Interagency Review Team (IRT) consisting of members of federal and state agency representatives, will review the proposed ILF Program Instrument and oversee its establishment, use and operation. The Louisville District will act as the chair for the IRT and will make all final decisions regarding the use and operation of the proposed ILF Program Instrument.

Copies of this notice are sent to the appropriate Federal and State Fish and Wildlife Agencies. Their views and comments are solicited in accordance with the Fish and Wildlife Coordination Act of 1956. Copies of this notice are also sent to the appropriate Indian tribes and state agencies soliciting views and comments in accordance with the National Historic Preservation Act of 1966 - Public Law 89-665 as amended (including Public Law 96-515).

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this ILF Instrument. A request for a public hearing must state the specific interest which might be damaged by approving the Instrument.

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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 proposal in accordance with 33 CFR Part 332. Any comments received will be considered by the Corps of Engineers to determine whether to approve this Instrument. Comments are also used to determine the need for a public hearing.

Written statements received in this office on or before the closing date will become a part of the official record and will be considered in determining whether to approve the Instrument. Any objections which are received during this period will be forwarded to the Sponsor for possible resolution before the determination is made regarding whether to approve the Instrument. The Instrument will be approved unless its issuance is found to be contrary to 33 CFR Part 332.

Information pertaining to this proposal is available for public examination during normal business hours upon prior request. A copy of the Instrument is available on Louisville District's Internet site at <http://www.lrl.usace.army.mil/orf/listnotices.asp>. All comments regarding this proposal should be addressed to Dr. Patricia A. Grace-Jarrett, Ph.D., CELRL-OP-FS at the address noted above and should refer to the Public Notice Number LRL-2010-326-pgj.

If you desire to submit your comments by email, you must comply with the following:

a) In the subject line of your email, type in **ONLY** the Public Notice ID No. LRL-2010-326-pgj

Example:

Subject: LRL-2010-326-pgj

b) Provide your physical mailing address and telephone number.

c) Send your email to: lrl.regulatorypubliccomment@usace.army.mil

d) If you are sending attachments greater than 1 Mb in size with your email, you must send a hard copy (CD or paper) to the Corps' physical address as well.