



# Public Notice

## US Army Corps of Engineers

Louisville, Nashville,  
Memphis and Huntington  
Districts ®

Public Notice No.  
LRL-2010-325  
LRN-2011-709  
MVM-2011-521

Open Date:  
30 July 2020

Closing Date:  
31 August 2020

Please address all comments and inquiries to:  
U.S. Army Corps of Engineers, Louisville District  
ATTN: Patricia Grace-Jarrett, Ph.D., CELRL-RDE, Rm 752  
P.O. Box 59  
Louisville, Kentucky 40201-0059

Phone: 502-396-992

The Louisville, Nashville, Memphis and Huntington Districts of the U.S. Army Corps of Engineers, in accordance with 33 CFR 332 “Compensatory Mitigation for Losses of Aquatic Resources” (“Mitigation Rule”), announce a request to modify an existing In-Lieu Fee Program Instrument:

**SPONSOR:** Kentucky Department of Fish and Wildlife Resources  
#1 Sportsman’s Lane  
Frankfort, Kentucky 40601

**LOCATION:** The Commonwealth of Kentucky

**PURPOSE:** To modify the existing In-Lieu Fee Instrument to accept the Kentucky, resource-based, predefined service areas, as described in “Notice Announcing the Issuance of Resource-Based, Predefined Service Areas for Third Party Mitigation within Kentucky” (LRL-2018-1040), announced on August 23, 2019.

**DESCRIPTION OF WORK:** On December 6, 2011, the Corps of Engineers approved the Kentucky Department of Fish and Wildlife Resources’ (KDFWR) In-Lieu Fee (ILF) Program Instrument (“Agreement Concerning In-Lieu Mitigation Fees Between: U.S. Army Corps of Engineers & Kentucky Department of Fish and Wildlife Resources”, dated 2011, I.D. Nos. LRL-2010-325, LRN-2011-709, MVM-2011-521). The ILF Instrument established procedures for the operation of the KDFWR ILF Program, which provides compensatory mitigation for losses to “waters of the United States” authorized by DA permits pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the River and Harbors Act of 1899 (33 U.S.C.401, 403). Specific mitigation projects are authorized separately. Four U.S. Army Corps of Engineers Districts (Louisville, Nashville, Memphis and Huntington) were signatory to the Instrument.

On May 4, 2018, the Corps announced modification of the KDFWR In-Lieu Fee instrument to add a new service area, the Northern Kentucky Service Area. Since this time, the KDFWR In-Lieu Fee Program has operated within 11 Service Areas. On August 23, 2019, the Corps announced the issuance of resource-based, predefined service areas for third party mitigation

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within Kentucky. The announcement included procedures for use of these service areas for proposed and existing third party mitigation. This proposal is consistent with the procedures outlined in the announcement, including modification of the In-Lieu Fee Instrument in accordance with 33 CFR 332.8 (g)(1). The proposal includes modification of the instrument and the compensation planning framework.

**AVOIDANCE, MINIMIZATION, AND MITIGATION MEASURES:** This proposal does not include a request for authorization to discharge dredged or fill material into “waters of the U.S.”; therefore, no avoidance, minimization or mitigation measures are proposed.

**REVIEW PROCEDURES:** This proposal will be reviewed in accordance with the procedures found at 33 CFR 332, “Compensatory Mitigation for Losses of Aquatic Resources”, as well as for consistency with the announcement issued on August 23, 2019 (LRL-2018-1040).

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. The Endangered Species Act (ESA, 87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.) requires federal agencies to consult with the U.S. Fish and Wildlife Service (USFWS) pursuant to Section 7(a) 2 of the ESA on all actions that may affect a species listed (or proposed for listing) under the ESA as threatened or endangered, or any designated critical habitat. A copy of this notice is being furnished to the USFWS for their review. Per this notification, we request comments from the USFWS concerning potential impacts to threatened and/or endangered species that may occur within the project area. After receipt of comments, the USACE will evaluate the potential impacts to proposed and/or listed species and their designated critical habitat and initiate consultation with USFWS, if required.

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

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 332. It is presumed that all interested parties and agencies will wish to respond; therefore, a lack of response will be interpreted as meaning that there is no objection to the proposed modification. Any comments received will be considered by the Corps of Engineers to determine whether to approve the instrument modification. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

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 the determination regarding approval of this modification. Any objections which are received during this period will be forwarded to the sponsor for possible resolution before the determination is made whether to approve or deny the requested instrument modification. The instrument modification will be approved unless its approval is found to be contrary to 33 CFR 332.

Information pertaining to this proposal is available for public examination during normal business hours upon prior request. A copy of the proposal is available on Louisville District's Internet site at <http://www.lrl.usace.army.mil/Missions/Regulatory/Public-Notices/>. All comments regarding this proposal should be addressed to Patricia Grace-Jarrett, Ph.D., CELRL-

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RDE at the address noted above and should refer to the Public Notice Numbers LRL-2010-325, LRN-2011-709 and MVM-2011-521.

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 Nos. LRL-2010-325, LRN-2011-709 and MVM-2011-521.

Example:

Subject: ID Nos. LRL-2010-325, LRN-2011-709 and MVM-2011-521

b) Provide your physical mailing address and telephone number.

c) Send your email to: [patti.g.jarrett@usace.army.mil](mailto:patti.g.jarrett@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.



### Legend

#### Service Area Number

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- 2
- 3
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