



PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

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Proposed Re-Authorization of an
Existing In-Lieu Fee Program

Public Notice/Application No.: SPL-2000-01063-JWM

Program: California State Coastal Conservancy In-Lieu Fee Program

Comment Period: December 5, 2012 to January 3, 2013

Project Manager: John Markham; 805-585-2150; John.W.Markham@usace.army.mil

Program Sponsor

Peter Brand

California State Coastal Conservancy

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Location

The Program service area would encompass the Calleguas Creek watershed (Hydrologic Unit Code 18070103), and is located entirely within Ventura County, California.

Activity

To modify the existing California State Coastal Conservancy In-Lieu Fee ("ILF") Program ("Program") pursuant to the requirements of the Corps-EPA Compensatory Mitigation Rule¹ (33 CFR 332.8(d)) ("Mitigation Rule") (see attached map). For more information refer to the following pages of this notice. Supporting documents are available online or at the address below.

Interested parties are hereby notified that a Prospectus has been received in order to re-authorize an existing ILF Program for the purpose of mitigating impacts to waters of the United States authorized, or enforcement actions resolved, under section 404 of the Clean Water Act. Interested parties are invited to provide their comments on the proposed re-authorization of this Program, which will become a part of the record and will be considered as part of this proposal.

¹ The mitigation rule was promulgated by the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency at 33 C.F.R. Part 332 and 40 C.F.R. Part 230, respectively.

Comments should be mailed to:

U.S. Army Corps of Engineers
Los Angeles District, Regulatory Division
Attn: John W. Markham, Project Manager
Ventura Field Office
2151 Alessandro Drive, Suite 110
Ventura, CA 93001

Alternatively, comments can be sent electronically to: john.w.markham@usace.army.mil.

Background

The California State Coastal Conservancy (“Conservancy”) has requested the Corps re-authorization of this Program. If re-authorized, this Program would continue to receive monies from individuals or entities (“project proponent”) receiving Corps authorization under section 404 of the Clean Water Act and, when appropriate, to resolve Section 404 enforcement actions within the proposed service area (see attached map).

The Conservancy (<http://scc.ca.gov/>) was established in 1976, as a state agency that uses entrepreneurial techniques to purchase, protect, restore, and enhance coastal resources, and to provide public access to the shore. The Conservancy, pursuant to its authority under Division 21 of the California Public Resources Code, undertakes projects and awards grants to public agencies and nonprofit organizations for the restoration and enhancement of coastal watersheds.

Program funds would provide for restoration, establishment, and enhancement activities, preservation, in-perpetuity protection, long-term maintenance, and monitoring on Conservancy-owned and managed lands protected under Corps-approved conservation easements or deed restrictions.

The In-Lieu Fee Program for the Calleguas Creek watershed formally began in 2003, when the Corps and the Conservancy signed the *Agreement for Establishment and Administration of the Calleguas Creek Watershed (Ventura County, California) Aquatic Resource In-Lieu Fee Compensatory Mitigation Program* (dated March 17, 2003) Pursuant to the Mitigation Rule, all existing ILF programs are required to comply with the Rule in order to continue operating beyond the June 9, 2010 deadline specified in the Rule.

Program objectives include but are not limited to the following:

- To facilitate a holistic approach to aquatic resource management in the Calleguas Creek watershed, allocating money where there is the greatest opportunity for long-term ecological benefit;
- Meet the federal policy of “no net loss” (in terms of functions/services and/or acreage) of the nation's aquatic resources;
- Provide a viable alternative to compensatory mitigation for Corps permit applicants and alleged violators;
- Provide more efficient use of Agencies’ staff resources with respect to review of compensatory mitigation plans, monitoring reports, site protections, and compliance inspections; and
- Improve the overall effectiveness of compensatory mitigation required by the Agencies’ permits and enforcement actions, and Habitat Conservation Plans.

With the existing Program, between June 1997 to April 2006, the Corps has allowed the Program sponsor to accept fees from twenty-four project proponents associated with twenty-six, separate Corps permits. In summary, the Corps has required a total of 22.2 acres of compensatory mitigation for 10.4 acres of permanent impacts (losses) to waters of the U.S. To date, the Conservancy has implemented three restoration projects amounting to 10.64 acres, 2.14 acres of which has been credited by the Corps. At present, the current balance to be mitigated is 20.06 acres. The next planned mitigation project is the restoration and enhancement of streambed, freshwater wetland, riparian, and adjacent upland areas at Camarillo Regional Park. The Conceptual Mitigation Plan prepared by the Conservancy and approved in a July 2008 letter from the Corps, would result in the restoration, enhancement, and preservation of approximately 62.7 acres of aquatic resources, including streambed (~2 acres), deciduous riparian woodland (~24 acres), emergent freshwater wetlands (~2 acres) and riparian scrub (~35 acres). Additionally, up to 12 acres of Venturean coastal sage scrub could be re-established where fill dirt, removed from the wetlands, is proposed for placement on disturbed upland habitat on site. Based upon these initial estimates, upon satisfying the remainder of previously purchased mitigation credits (20.02 acres), the Conservancy estimates that this mitigation project would result in approximately 47 acres of aquatic resource mitigation. Upon reaching the final performance criteria, this project is expected to cover the balance of currently required mitigation, and to generate enough additional credits to cover a significant portion of the mitigation required by Corps Regulatory Division over the next five to ten years for the Calleguas Creek watershed. As described in the Prospectus, there are nine other additional sites that can be pursued for future restoration which would also result in substantial functional gain to the wetland and riparian areas of the Calleguas Creek Watershed.

Mitigation Approval and Permitting Processes

Mitigation requirements for a particular project are negotiated between the project proponent and the Corps. The project proponent must therefore first submit a mitigation proposal to the Corps that describes the proposed use of an ILF Program or Mitigation Bank. If appropriate credits are not available at a Mitigation Bank located within the service area, and the Corps determines that the Program is the most appropriate approach to mitigation implementation, then the project proponent would contact the Program sponsor to discuss mitigation options. The Program sponsor would review copies of all permits issued to the project proponent and then submit a proposal to the project proponent, including the estimated cost of the proposed mitigation work. Prior to acceptance of payment ("credit sale"), the Program sponsor would also contact the Corps in order to verify the Corps' requirements.

Upon receipt of payment, the Program sponsor becomes legally responsible for initiating the necessary mitigation and monitoring within three growing seasons of receipt of payment. During this time, the Program sponsor would submit a complete Mitigation Plan² to the Corps and Interagency Review Team (IRT)³ as well as an application for Corps permit(s)⁴ should the proposed in-lieu fee mitigation project activities involve a discharge of dredge or fill material within waters of the U.S. or work within navigable waters of the U.S. The Corps would complete consultation, as appropriate, under the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, the National Historic Preservation Act and other applicable laws, prior to any permit authorization.

² The content of a complete Mitigation Plan is described in the Mitigation Rule, at 33 CFR 332.4(c)(2-14).

³ The Interagency Review Team (IRT) consists of member Agencies, and may include U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, California Department of Fish and Game, and Los Angeles Regional Water Quality Control Board

⁴ The proposed mitigation activities may also require separate approvals from the Regional Water Quality Control Board and California Department of Fish and Game.

Program funds would be held in a Program account, and all credit sales would be tracked and reported by the Program sponsor to the Corps at a minimum on an annual basis, and also uploaded to the Corps' Regulatory In-lieu Fee and Banking Information Tracking System (RIBITS) (<http://geo.usace.army.mil/ribits/index.html>).

To ensure permanent protection of the Program mitigation sites, the Program sponsor would secure in-perpetuity conservation easements or grant deed restrictions to be recorded at the appropriate County's Registry of Deeds.

The Corps 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 impacts and benefits of the proposed re-authorization of the Program. Any comments received will be considered by the Corps to determine whether the proposal has the potential to provide mitigation opportunities for permittees authorized to impact waters of the U.S. under section 404 of the Clean Water Act or as a means of resolving Section 404 enforcement actions.

Additional details are provided in the Prospectus, available in the *Cyber Repository* for the *California State Coastal Conservancy ILF Program* on Los Angeles District's list of pending ILF Programs under *ILF Programs* on the Corps' Regulatory In-lieu Fee and Bank Information Tracking System (RIBITS) site: <http://geo.usace.army.mil/ribits/index.html>. The Prospectus is also available at the Corps' Ventura Field office at the address above.

For additional information please contact John Markham of my staff via phone at 805-585-2150 or via e-mail at John.W.Markham@usace.army.mil. This public notice is issued by the Chief, Regulatory Division.



Regulatory Program Goals:

- To provide strong protection of the nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.

U.S. ARMY CORPS OF ENGINEERS – LOS ANGELES DISTRICT
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VENTURA FIELD OFFICE
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Exhibit A: Service Area



