



PUBLIC NOTICE

**U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT**

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AVAILABILITY OF PROSPECTUS FOR IERCD In-lieu Fee Program

Public Notice/Corps File No.: SPL-2016-00013-PKK
Project: IERCD ILF
Comment Period: April 29, 2016 through May 29, 2016
Project Manager: Pam Kostka

Bank Sponsor

Inland Empire Resource Conservation
District
25864-K Business Center Drive
Redlands, California 92374

Contact

Mandy Parks
District Manager
Inland Empire Resource Conservation
District
25864-K Business Center Drive
Redlands, California 92374

Location

The proposed in-lieu fee program (ILF) would conduct mitigation projects within the Santa Ana River Watershed (HUC-8 18070203) in San Bernardino County and Riverside County, California. The ILF would conduct mitigation work within the IERCD District boundaries (see attached map) which encompass 602,198 acres or 83% of the Santa Ana River Watershed. The proposed service area for the mitigation bank would encompass the Santa Ana River Watershed (HUC-8 18070203). The total size of the proposed service area is approximately 1,817,600 acres and encompasses portions of San Bernardino County, Riverside County, Los Angeles County, and Orange County.

Activity

As presented in its Prospectus, dated March 2016, the ILF Program Sponsor proposes to establish, use, and operate a wetlands and other waters of the United States (U.S.) ILF program for projects and activities that would result in unavoidable adverse impacts to waters of the U.S. authorized by Department of the Army (DA) permits. This public notice is requesting comments on the Prospectus. For more information see the Additional Information section below (pages 2 through 5 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 establish an ILF program for the purpose of providing compensatory mitigation for unavoidable impacts to waters of the United States (U.S.) authorized by the Corps, or enforcement actions resolved under Section 404 of the Clean Water Act. Interested parties are invited to provide their comments on the proposed ILF program, which will become a part of the administrative record and will be considered by the Corps in making its determination whether there is potential for the ILF program to provide compensatory mitigation.

Comments should be mailed to:

Los Angeles District, U.S. Army Corps of Engineers
Regulatory Division
ATTN: Pam Kostka
Los Angeles and San Bernardino Counties Section (CESPL-RGL)
915 Wilshire Boulevard, Suite 930
Los Angeles, California 90017

Alternatively, comments can be sent electronically to: pamela.k.kostka@usace.army.mil

Additional Information

Background

Inland Empire Resource Conservation District (IERCD) is a public agency formed under Division 9 of the State of California Public Resources Code to provide soil, water, and wildlife resource management within its jurisdictional area. The main areas of District focus are habitat restoration, open space preservation, and public outreach and education focusing on water conservation, wildlife support, and stormwater pollution prevention. The District has field staff that conduct active restoration, identify and control local population of invasive species, monitor and manage conservation easements, conduct classroom programming and school field trips, and partner with local water providers to facilitate a variety of conservation education opportunities for local residents.

The Sponsor has submitted a Prospectus to the Corps for the establishment of the IERCD ILF Program. If authorized, this ILF would receive monies from individuals or entities (“project proponent”) receiving Corps authorization under Section 404 of the Clean Water Act and, when appropriate, to provide compensatory mitigation credit as part of Section 404 enforcement actions within the proposed service area (see attached map). Additionally, the proposed mitigation bank may be utilized to offset unavoidable impacts to waters of the State that are regulated by the Regional Water Quality Control Board under Section 401 of the Clean Water Act.

The Mitigation Rule (“Rule”) established a process and defined requirements for the establishment and management of mitigation banks, in-lieu fee (ILF) programs, and Permittee-responsible mitigation (33 C.F.R. § 332). In addition, the Rule established a public review process and timeline for the development of mitigation banks and in-lieu fee

programs. This ILF establishment process will include the following: 1) public review and comment on the Prospectus, 2) Interagency Review Team (IRT)¹ coordination on the Prospectus and the ILF Program Instrument, 3) development of a compensation planning framework, 4) development of an advance credit release schedule and crediting framework, and 5) development of a program account. Once the ILF is established the Sponsor will submit development plans to the IRT regarding proposed mitigation sites. The IRT will then determine the following: 1) site feasibility 2) mitigation credit production potential, 3) long-term site protection and management measures, and 4) amount and type of required financial assurances.

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 compensatory mitigation proposal to the Corps that describes the proposed use of an ILF Program or Mitigation Bank. Per the Mitigation Rule, preference is first given to use of Mitigation Banks over ILF Programs and Permittee-responsible mitigation types, as Bank credits are usually in place prior to the permitting of a proposed project. ILF programs are given preference over Permittee-responsible mitigation. However, if an ILF program has released credits remaining after all sold advanced credits are fulfilled, those remaining released credits are considered equal with the credits of mitigation banks on the preference hierarchy.

ILF programs may only be sponsored by governmental or non-profit natural resource management entities. An ILF proposes to do work within a pre-determined service area, in this case within a HUC-8 watershed boundary, on lands which may be obtained after the ILF program instrument is approved. The lands obtained must contain wetlands, streams and/or other aquatic resources which can be restored, established, enhanced, or preserved. A part of each ILF's prospectus and eventually the ILF enabling instrument is the compensation planning framework (CPF). The CPF documents current and historic conditions and threats to aquatic resources within the programs service area. The CPF lays out the programs prioritization strategy for selecting mitigation sites and explains how the programs mitigation activities will address the existing aquatic resource threats within the programs service area. To ensure a high level of confidence in the Sponsor's ability to successfully complete proposed mitigation in accordance with applicable mitigation performance standards, the program Sponsor details their qualification to successfully complete mitigation projects and describes past activities the Sponsor conducted which resulted in successful mitigation in the ILF Prospectus. Examples of the Sponsor's previous mitigation success and a statement of the Sponsor's program stability are included as a part of the ILF prospectus and are taken into account when the IRT determines the amount of advanced credits available to the ILF program.

¹ 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 the Regional Water Quality Control Board(s).

As a part of the ILF Program development the IRT and Sponsor will develop the methodology for determining future project-specific credits which can be used to compensate for existing/future impacts to aquatic resources. The value of each ILF project site is determined by the IRT at the time of proposal by the Sponsor by quantifying the aquatic resource functions restored, established, enhanced, and/or preserved in terms of “credits.” If appropriate credits are available at an ILF site located within the service area, and the Corps determines that the ILF site is the most appropriate approach to mitigation implementation, then the project proponent would contact the Sponsor to discuss mitigation options. The 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 credits. Prior to acceptance of payment (“credit sale”), the Sponsor would also contact the Corps in order to verify the Corps’ compensatory mitigation requirements.

As part of the process of establishing an ILF, the IRT would determine the types and number of advanced credits available for each service area of the ILF program. The initial release of advanced credits would occur once the ILF program instrument is finalized. Advanced credits could then be sold by the Sponsor to provide funding to obtain a mitigation site, develop a mitigation plan, and begin implementing the IRT approved mitigation plan. Once the first advanced credit is sold the Sponsor has three full growing seasons to complete land acquisition and initial physical and biological improvements. Upon meeting performance-based mitigation milestones set during IRT review of the mitigation site development plan (e.g., 1-year, 3-year, 5-year conditional assessments), potential credits then become released credits and either go to reimburse the sold advance credits or turn into fulfilled credits available for sale.

In addition to the final IRT approvals of the Prospectus, the Corps determination of the potential for the ILF to provide compensatory mitigation, and completion of the final ILF Program Instrument, the Sponsor would also need to obtain the appropriate federal, state, and local permits required to implement the ILF restoration activities. The Sponsor would submit an application for Corps permit(s)² should the proposed ILF mitigation activities involve a discharge of dredge or fill material within waters of the U.S. The Corps would complete consultation, if appropriate, under the Endangered Species Act, the National Historic Preservation Act and other applicable federal laws, prior to any DA permit authorization.

ILF funds would be held in the ILF program account, and all credit sales would be tracked and reported by the 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).

To ensure permanent protection of all approved ILF mitigation sites, in coordination with the Corps, the ILF Sponsor would secure in-perpetuity conservation easements, to be recorded at the appropriate County’s Registry of Deeds following Corps approval. Each mitigation site conservation easement, as required by the Mitigation Rule, would be recorded

² The proposed mitigation activities may also require separate approvals from the Regional Water Quality Control Board and California Department of Fish and Wildlife.

by the ILF Sponsor prior to the fulfillment of any advanced ILF credits or release of any additional credits for the respective mitigation area. The ILF program account would be managed to provide funding for long-term management of the each approved mitigation property.

The Corps is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to help inform the Corps and the IRT as to the overall merits of the proposed ILF program, the scope of the proposed ILF program, the delineation of the service area, the ecological suitability of the compensation planning framework to provide the greatest benefit to aquatic resources within the project service area, and to identify program aspects that should be addressed during the development of a draft ILF program instrument. Any comments received will be considered by the Corps to determine whether the proposal has the potential to provide mitigation opportunities for project proponents (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 and project plans are provided in the Prospectus, available online at the following link: https://corpsmapz.usace.army.mil/ribits_apex/f?p=107:2:. After clicking on the link, please follow the below steps:

- Under the Navigation Heading, click on “Banks & ILF Sites”
- Using the yellow drop-down arrow under the Banks and ILF Sites heading, filter state to “CA”
- Scroll down the alphabetized listing and click on “Inland Empire Resource Conservation District (IERCD) ILF”
- Click on “Cyber Repository” located underneath the frog image
- Click on “Documents for Review”
- Both the Prospectus and associated support/technical documents are available in this folder. Please note that the Prospectus is a large file and may take several minutes to download.

Additionally, these documents are also available at the Corps' Los Angeles office at the address below. For additional information please contact Pam Kostka at (213) 452-3420 or via e-mail at pamela.k.kostka@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.

**DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
915 WILSHIRE BOULEVARD, SUITE 930
WWW.SPL.USACE.ARMY.MIL/MISSIONS/REGULATORY**