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NAO-2014-00851 (Wetland and Stream Replacement Fund In Lieu Fee Program, Richmond, Virginia)

U.S. ARMY CORPS OF ENGINEERS NORFOLK DISTRICT

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FEDERAL PUBLIC NOTICE

The Norfolk District of the U.S. Army Corps of Engineers (USACE) has received proposal from the Virginia Department of Environmental Quality (DEQ), for a proposed In-Lieu Fee Compensatory Mitigation Program (ILF) referred to as "Wetland and Stream Replacement Fund In-Lieu Fee Mitigation Program"(WSRF) pursuant to Title 33 Code of Federal Regulations, Section 332. The purpose of this notice is to solicit comments and recommendations from the public, Federal, state, and local agencies and officials, Indian tribes, and other interested parties concerning the development of the ILF program.

SPONSOR:

Commonwealth of Virginia
Department of Environmental Quality
1111 East Main Street, Suite 1400
Richmond, Virginia 23219

ACTIVITY: Wetland and Stream Replacement Fund In Lieu Fee Program Prospectus

WATERWAY: Waters within the Commonwealth of Virginia, Chesapeake Bay, and Atlantic Ocean

LOCATION: As proposed, WSRF would provide third party compensatory mitigation options for unavoidable impacts to aquatic resources in the following watersheds, or as defined in state statute, river basins, which are delineated by 8-digit Hydrologic Unit Codes:

- Potomac River Basin
- Shenandoah River Basin
- James River Basin

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- Tennessee River Basin/Big Sandy River Basin Complex

PURPOSE AND PROPOSED WORK:

Under Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act, applicants applying for the Department of the Army permits to discharge dredge or fill material into waters of the United States, including wetlands, are often required to provide compensatory mitigation for permitted unavoidable wetland losses by creating, restoring, enhancing, and preserving wetlands or streams. Authorized ILF Programs provide the USACE and the regulated public with additional options for compensatory mitigation of aquatic resource losses. As per the Final Mitigation Rule (33 CFR Parts 325 and 332), there are three mechanisms for providing compensatory mitigation (listed in order of preference as established by the regulations): mitigation banks, in-lieu fee programs, and permittee-responsible mitigation.

The purpose of WSRF to provide off-site compensatory mitigation for projects that result in unavoidable impacts to waters of the U.S. and waters of the State.

The DEQ proposes to manage the WSRF to provide a compensatory mitigation backstop throughout the Commonwealth. To do so, DEQ proposes to screen applicants for WSRF credits and use the funds received for WSRF credits to: (1) buy credits from mitigation banks as they become available; (2) purchase released credits from other in-lieu fee programs if available; or (3) solicit requests for proposals for one or more WSRF-funded mitigation projects if no mitigation bank credits are available within two years of DEQ receiving WSRF credit funds. DEQ has stated that they would avoid competition with existing mitigation credit providers by pricing WSRF credits at levels above existing mitigation bank and in-lieu fee program prices and by applying a credit purchase eligibility policy. This framework is stated to advance the Commonwealth's no net loss policy and still provide mitigation credits in watersheds with limited mitigation options while avoiding ILF competition for mitigation credits in those watersheds with sufficient supply.

The WSRF's objectives:

- Ecological Objective. The WSRF would support the Commonwealth and the Federal Mitigation Rule's shared goal of "no net loss" of wetland area and stream and wetland function in any Virginia river watershed.
- Public Service Objective. The WSRF would provide a public service to the people of the Commonwealth by ensuring that a high-quality compensatory mitigation option is available for important economic development, public infrastructure projects, and other authorized activities in watersheds with shortages of mitigation bank and in-lieu fee program credits.

INTERAGENCY REVIEW TEAM:

A group of federal and state regulatory and resource agency representatives known as the Interagency Review Team (IRT) would oversee the establishment and management of the WSRF. **To avoid any perceived conflicts of interest, the DEQ would recuse its designated representative to the IRT from participating in recommendations or decisions of the IRT related to the approval of the Prospectus, Program Instrument, or any subsequent modifications thereto—except to the extent that such participation would be normal and appropriate for any Sponsor with business before the IRT.**

The USACE, the DEQ, and the Virginia Marine Resources Commission provide no guarantee that any individual or general permit will be granted authorization to use the WSRF to compensate for unavoidable wetland and stream impacts associated with a permit verified, authorized, or issued by the USACE, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), and/or by the DEQ pursuant to Section 401 of the Clean Water Act and Title 62.1 of the Code of Virginia and/or the Virginia Marine Resources Commission pursuant to Title 28.2 of the Code of Virginia.

A copy of the Prospectus can be found on the USACE Regulatory In-lieu Fee and Bank Information Tracking System (RIBITS) website [WSRF Prospectus](#).

FEDERAL EVALUATION OF APPLICATION:

USACE is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties to consider and evaluate this proposed Project. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, conservation, economics, aesthetics, general environmental concerns, wetlands, fish and wildlife values, flood hazards, flood plain values, land use classification, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, and consideration of property ownership. If the Sponsor is advised and/or chooses to submit a draft In-Lieu Instrument USACE will use the comments received on this public notice to inform 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. Anyone may request a public hearing to consider this Project by writing to the District Commander within 30 days of the date of this notice, stating specific reasons for holding the public hearing. The District Commander will then decide if a hearing should be held.

This is not an application for work in waters of the United States.

ENDANGERED SPECIES: Pursuant to Section 7(c) of the Endangered Species Act of 1973 (as amended), the District Engineer's final determination relative to site specific project impacts associated with individual site development plans would be subject to review by and coordination with the USFWS and/or the NOAA/FS, as appropriate. Consultation with USFWS and/or NOAA/FS would be conducted for each individual site development plan prior to any USACE authorizations, or approvals. Each mitigation site proposed under the ILF would be placed on public notice and consultation requirements of Section 7(c) of the Endangered Species Act of 1973 (as amended) would be met prior to any USACE authorizations, or approvals.

HISTORIC AND CULTURAL RESOURCES: In accordance with the National Historic Preservation Act (NHPA), the District Engineer's final eligibility and effects determination for individual site development plans would be based upon coordination with the SHPO and/or THPO, as appropriate and with full consideration given to the proposed undertaking's potential direct and indirect effects on historic properties within the USACE-identified permit area.

Each mitigation site proposed under the ILF would be placed on public notice and consultation requirements of the NHPA would be met prior to any authorizations, or approvals.



US Army Corps of Engineers Norfolk District Website

Stevens Fishery Conservation and Management Act, the District Engineer's final determination relative to site specific project impacts and the need for mitigation measures associated with individual site development plans would be subject to review by and consultation with the NOAA/FS. Each mitigation site proposed under the ILF would be placed on public notice and consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act would be met prior to any Corps authorizations, or approvals.

VIRGINIA'S SECTION 401 WATER QUALITY CERTIFICATION PROGRAM: Reviews of activities pursuant to Section 404 of the Clean Water Act will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 (b) of the Clean Water Act and the applicant will obtain a water quality certificate or waiver from the appropriate state agency in accordance with Section 401 of the Clean Water Act prior to a permit decision, where applicable.

NOTE: This public notice is being issued based on information furnished by the Sponsor. This information has not been verified or evaluated to ensure compliance with laws and regulation governing the regulatory program.

COMMENT PERIOD: Comments on this Project should be in writing and can be sent by email to CENAO_REG_MitigationTeam@usace.army.mil, or to the following link <https://rrs.usace.army.mil/rrs/public-notice> or by regular mail, addressed to the Norfolk District, Corps of Engineers (ATTN: CENAO-WRR), 803 Front Street, Norfolk, VA 23510-1011, and should be received by the close of business on July 28, 2025.

PRIVACY AND CONFIDENTIALITY: Comments and information, including the identity of the submitter, submitted in response to this Public Notice may be disclosed, reproduced, and distributed at the discretion of the USACE. Information that is submitted in connection with this Public Notice cannot be maintained as confidential by the USACE. Submissions should not include any information that the submitter seeks to preserve as confidential.

If you have any questions about the development of this In-Lieu Fee Program, contact:

Mr. Taylor Bell

CENAO_REG_MitigationTeam@usace.army.mil

978-318-8952

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