

CENAO_REG_Mitigation Team
Attn: Taylor Bell

22 July 2025

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

Dear Mr. Bell,

I'm writing to provide comments on the public notice and prospectus for the proposed Virginia Wetland and Stream Replacement Fund In-Lieu Fee Program. The prospectus including the Compensation Planning Framework is generally well written. The proposed In-Lieu Fee (ILF) program appears to be potentially suitable to provide compensatory mitigation based on the prospectus however, there are some portions of the prospectus that appear to be at odds with the 2008 Corps-EPA Mitigation Rule (33 CFR 332) including portions of the following:

- Handling and Use of Funds
- Compensatory Mitigation Procurement
- WSRF Funded Projects
- Eligibility Criteria to Purchase and Use WSRF Credits (Section III, Part D on page 11)

Additionally, the prospectus does not clearly address whether the program would provide compensation for loss of tidal non-vegetated and sub tidal habitats.

The section on **Handling and Use of Funds** (Section III, Part B on page 7) states that funds may be used for any other purpose approved by the Corps in consultation with the IRT. This appears to conflict with the 2008 Mitigation Rule which clearly states that ILF program funds can only be used for mitigation projects and ILF program administration (33 CFR 332.8(i)(1)).

Item 1 in the section on **Compensatory Mitigation Procurement** (Section III, Part C on pages 8 & 9) indicates a preference for mitigation bank credits before considering released credits (credits generated by ILF projects meeting performance milestones) from other ILF programs (Item 2). Use of released credits from an ILF project are equivalent to mitigation bank credits. The 2008 mitigation rule indicates that a preference for bank credits can be overridden when an ILF program has released credits from a specific ILF project (33CFR 332.3(3)(b)(2)). In light of that, I recommend adding released ILF credits to Item 1 and relabeling it Mitigation Bank and Released ILF Credits.

The section on **WSRF Funded Projects** (Section III, Part C, Item 3 on page 10) should be revised to indicate that the Department may consider proposals from Third Party Mitigation Providers (Bank and ILF programs) offering to contract the sale of expected credits prior to release from a bank or ILF project.

Regarding the section on **Eligibility Criteria to Purchase and Use WSRF Credits** (Section III, Part D on page 11), it should be noted that funds received from SEPS (Supplemental

Environmental Projects) may need to be accounted for separately from mitigation proceeds in accordance with the 2008 Mitigation Rule (33 CFR 332.8(i)(1)).

Finally, the prospectus should clarify whether the program would provide compensation for loss of tidal non-vegetated areas including tidal flats (mud flats and sand flats) and shallow water tidal habitat (located below MLW but within the photic zone, generally within 6' below sea level). If so, then the program should provide in-kind compensation in accordance with general recommendations under the 2008 Mitigation Rule (334 CFR 332.3(e)(1)). Providing vegetated tidal wetlands does not generally offset losses of tidal flats, shallow water habitat, or subtidal waters.

I appreciate the opportunity to provide comments on this prospectus. Please let me know if you have any questions.

Sincerely,

Steven Martin, PWS
7025 Kirby Crescent
Norfolk, VA 23505
(757) 201-8660