



Public Notice

U.S. Army Corps
of Engineers

In Reply to Application Number
CENAB-OP-RPA 2014-00371 (Pennsylvania Integrated Ecological
Services Capacity Enhancement and Support)

Baltimore District

Philadelphia District

Pittsburgh District

SPN-14-24

Comment Period: April 11, 2014 to May 11, 2014

Subject: Special Public Notice to solicit comments from the public concerning the proposed development of an in-lieu fee (ILF) compensatory mitigation program by the Pennsylvania Department of Environmental Protection (PADEP).

This Public Notice is issued jointly by the Baltimore, Philadelphia, and Pittsburgh District of the U.S. Army Corps of Engineers.

The PADEP proposes to establish the Pennsylvania Integrated Ecological Services Enhancement and Support (PIESCES) ILF program under the provisions of 33 CFR Part 332.8. If approved, the proposed PIESCES ILF will replace the Pennsylvania Wetland Replacement Project (PWRP) ILF program and operate in compliance with the 2008 Mitigation Rule providing a third-party compensatory mitigation option for Department of the Army (DA) authorizations and/or violations under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. This ILF program would potentially provide permit applicants a joint State/Federal option for meeting aquatic resource mitigation needs in compliance with both State and Federal regulations. The proposed ILF program would be applicable for use in providing compensatory mitigation of aquatic resources impacts throughout the Commonwealth of Pennsylvania, within the regulatory boundaries of the Baltimore, Philadelphia, and Pittsburgh Districts of the U.S. Army Corps of Engineers. This notice is to inform interested parties of the proposal and to solicit comments.

SPONSOR: Mr. Kenneth Murin
Pennsylvania Department of Environmental Protection
Bureau of Waterways Engineering and Wetlands
Division of Wetlands, Encroachments, and Training
Rachel Carson State Office Building
P.O. Box 8460
Harrisburg, Pennsylvania 17105-8460

A copy of the proposed PIESCES prospectus is attached to this Special Public Notice. This prospectus provides a summary of the information regarding the PADEP proposed PIESCES ILF program in accordance with the Department of Defense/Environmental Protection Agency Final Rule on Compensatory Mitigation for Losses of Aquatic Resources (33 CFR Parts 325 and 332 and 40 CFR Part 230). In addition, a copy of the prospectus is available online in the Regulatory In-Lieu Fee and Bank Information Tracking System (RIBITS) at <http://ribits.usace.army.mil>

The proposed PIESCES ILF program seeks to:

1. Provide aquatic resource compensatory mitigation that offsets compensatory mitigation requirements for PADEP authorized impacts, DA authorized impacts, Corps of Engineers Civil Works project impacts, and/or to satisfy requirements of non-compliance issues or unauthorized activities (i.e., enforcement) to ensure a no net loss of acreage and/or functions of wetlands, streams, floodplains and other bodies of water.
2. Ensure "no net loss" of acreage and/or functions of wetlands, streams, floodplains, and other bodies of water through establishment, enhancement, and restoration of aquatic resources.
3. Provide a means to ensure that adequate compensatory mitigation of effected aquatic resources occurs within a framework that integrates the Commonwealth's watershed planning and prioritization processes to the maximum extent practicable.

The PADEP previously established the PWRP (Technical Guidance #363-0200-003), an ILF program, which became effective on February 11, 1997, to provide compensatory mitigation for wetland impacts in the Commonwealth of Pennsylvania. In 2008, the Corps published new regulations at 33 CFR 332.8 (2008 Mitigation Rule), establishing procedures for the implementation of ILF agreements. In accordance with 33 CFR Part 332.8 (v)(2), the PWRP was grandfathered until June 9, 2013, after which, the PWRP expired and was no longer an acceptable form of compensatory mitigation for DA authorizations. On May 10, 2013, Special Public Notice SPN-13-28 was issued jointly by the Baltimore, Philadelphia and Pittsburgh Districts of the U.S. Army Corps of Engineers (Corps) informing the public of the PWRP expiration and requirement for project-specific Corps review of Pennsylvania State Programmatic General Permit-4 (PASPGP-4) permit applications when use of the PWRP was proposed to satisfy compensatory wetland mitigation requirements. If approved, the proposed PIESCES ILF program will replace the PWRP for use to satisfy compensatory mitigation requirements for impacts associated with Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act authorizations.

At this time, no decision has been made as to whether or not the proposed PIESCES ILF program will be approved for use to provide compensatory mitigation for activities authorized by DA permits. On April 10, 2008, the federal rule for "Compensatory Mitigation for Losses of Aquatic Resources; Final Rule" (Mitigation Rule) was published in the Federal Register, and became effective on June 9, 2008. The implementing regulations for the Mitigation Rule are found in Department of the Army, Corps of Engineers 33 CFR Parts 325 and 332, and the U.S. Environmental Protection Agency in 40 CFR Part 230.

The Corps will evaluate the submitted PIESCES prospectus in accordance with all requirements of the Mitigation Rule in 33 CFR Parts 325 and 332; in consultation with the Pennsylvania Interagency Review Team (IRT); and in consideration of comments received from the general public in response to this Special Public Notice, to determine the potential of the proposed ILF program to provide compensatory mitigation for activities authorized by DA permits within the Commonwealth of Pennsylvania. The utilization of approved and established mitigation banks with available credits, and approved ILF programs, is given preference to other forms of

compensatory mitigation in the hierarchy of potential mitigation options as contained in the Mitigation Rule (33 CFR 332.3(b)(1)-(6)). A final approved ILF instrument does not provide DA authorization for specific future projects impacting waters of the United States; exclude such future projects from any applicable statutory or regulatory requirements; or preauthorize the use of credits from the ILF program for any particular project. The Corps provides no guarantee that any particular individual or general permit will be granted authorization to use the ILF program to compensate for unavoidable aquatic resource impacts associated with a proposed permit, even though compensatory mitigation may be available within the defined service area.

Oversight of the PIESCES ILF program will be undertaken by the Pennsylvania IRT, which is comprised of Federal and State regulatory and resource agencies. The Baltimore District, U.S. Army Corps of Engineers serves as chair of the IRT, and the PADEP serves as co-chair the IRT.

The decision whether to approve this ILF program will be based on an evaluation of the probable impacts, including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonable may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are conservation, economic, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, 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 and in general, the needs and welfare of the people.

ESSENTIAL FISH HABITAT: The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 04-267), requires all Federal agencies to consult with the National Marine Fisheries Service (NMFS) on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). A preliminary review of the proposed ILF program indicates that the program will not adversely affect EFH.

COASTAL ZONE MANAGEMENT PROGRAMS: Where applicable, the applicant has indicated in their ILF program prospectus that the proposed activity complies with and will be conducted in a manner consistent with the approved Coastal Zone Management (CZM) Program.

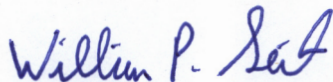
A preliminary review of this prospectus indicates that the proposed program will not affect Federal listed threatened or endangered species or their critical habitat, pursuant to Section 7 of the Endangered Species Act, as amended. As the evaluation of this prospectus continues, additional information may become available which could modify this preliminary determination.

A preliminary review of this prospectus indicates that the proposed program will not affect historic properties listed in latest published version of the National Register of Historic Places, including properties listed as eligible for inclusion therein. As the evaluation of this prospectus continues, additional information may become available which could modify this preliminary determination.

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 potential of the proposed PIESCES ILF program to provide compensatory mitigation for activities authorized by DA permits. Any comments received will be considered by the Corps of Engineers for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments provided will become part of the public record for this action. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. Written comments concerning the proposal described above, and related to the factors listed above or other pertinent factors, must be received by the District Engineer, U.S. Army Corps of Engineers, Baltimore District, Carlisle Regulatory Field Office, 401 East Louthier Street, Suite 205, Carlisle, Pennsylvania, 17013, within the comment period specified above to receive consideration. All comments should make reference to Special Public Notice 14-24.

It is requested that you communicate this information concerning the proposed work to any persons know by you to be interested and not being known to this office, who did not receive a copy of this notice.

If you have any questions concerning this matter, please contact Mr. Wade B. Chandler, Chief, Pennsylvania Section, Baltimore District, U.S. Army Corps of Engineers at (814) 235-0572 wade.b.chandler@usace.army.mil, or Mr. Michael Danko, Regulatory Project Manager, Pennsylvania Section, Baltimore District, U.S. Army Corps of Engineers at (717) 249-8730 mike.danko@usace.army.mil.



William P. Seib
Chief, Regulatory Branch
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