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Nashville District
Memphis District

Public Notice

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Please address all comments to:
Nashville District Corps of Engineers, Regulatory Branch
3701 Bell Road, Nashville, TN 37214-2660

AUTHORITY: This notice announces the proposed modification of an existing statewide In-Lieu Fee mitigation program for the state of Tennessee pursuant to 33 CFR 332, Compensatory Mitigation for Losses of Aquatic Resources (Federal Register: April 10, 2008, [Volume 73, Number 70] Pages 58605-58614)

SPONSOR: Tennessee Wildlife Resources Foundation, Inc.
5000 Linbar Drive, Suite 275
Nashville, Tennessee 37211

PURPOSE: The Tennessee Wildlife Resources Foundation, Inc. (TWRWF) currently operates an in-lieu fee program under a Memorandum of Agreement with the U.S. Army Corps of Engineers (USACE) and other Federal and state resource agencies, dated August 16, 2002. In order to bring their current agreement into compliance with the 2008 Mitigation Rule found at 33 CFR 332, TWRWF has provided a draft in-lieu fee program instrument for the Tennessee Stream Mitigation Program (TSMP). The TSMP would be used to meet compensatory mitigation requirements for permits issued under Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the River and Harbors Act of 1899 (33 U.S.C. 403). The TSMP would also be used to meet mitigation requirements for Aquatic Resources Alterations Permits authorized by the Tennessee Department of Environment and Conservation Division of Water Pollution Control (TDEC).

IN-LIEU FEE PROGRAM DEFINITION: An in-lieu fee program involves the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for DA permits. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor. The operation and use of an in-lieu fee program are governed by an in-lieu fee program instrument. The instrument is the legal document for the establishment, operation, and use of an in-lieu fee program.

LOCATION: The sponsor's program would continue to operate throughout the entire state of Tennessee, including areas in the Nashville and Memphis Districts of the U.S. Army Corps of Engineers.

DESCRIPTION OF WORK: Requirements for a complete in-lieu fee program instrument are outlined in 33 CFR 332.8(d)(6)(ii). The TWRP's stated primary objectives are to provide effective compensatory mitigation for unavoidable impacts resulting from activities authorized under Sections 404 and 401 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899; provide an alternative to permittee-responsible compensatory mitigation; implement ecologically substantial restoration/enhancement projects that sustain aquatic resource functions and services; minimize the temporal loss of aquatic services and functions; maintain accountability for all program transactions; and work with public and private stakeholders at both statewide and watershed levels on ongoing water quality initiatives.

The proposed instrument describes the services areas, accounting procedures, legal responsibilities, reporting protocols, compensation planning framework, fee and credit methodologies, default and closure provisions, and long term management.

OPERATION OF THE IN-LIEU FEE PROGRAM: An Interagency Review Team (IRT) composed of representatives from various Federal and state resource agencies would advise the Corps and TDEC on the establishment and management of the in-lieu fee program. The TSMP would identify and develop site-specific plans to satisfy compensatory mitigation requirements. Plans would be submitted to the IRT for review prior to development and implementation of the mitigation project. Specific projects would be treated as modifications to the program instrument and would be processed in accordance with the provisions at 33 CFR 332.8 (g).

PUBLIC INTEREST REVIEW: This in-lieu fee instrument will be reviewed in accordance with the procedures found at 33 CFR 332. The Corps is soliciting comments from the public, Federal, state, and local agencies and officials, Federally-recognized Tribes, and other interested parties to assist in the evaluation. Any comments received will be considered by the Corps to determine whether to approve the instrument. A complete copy of the proposed instrument is posted on the Nashville and Memphis Districts' web sites.

Nashville District <http://www.lrn.usace.army.mil/cof/> or
Memphis District <http://www.mvm.usace.army.mil/regulatory/public-notice/pn.asp>

The proposed instrument is also available for review in both District offices between the hours of 8:00 AM and 3:00 PM, Monday through Friday.

COMMENTS OR REQUEST FOR ADDITIONAL INFORMATION: Comments or request for additional information can be directed to Marty Tyree (615) 369-7514, U.S. Army Corps of Engineers, Nashville District, 3701 Bell Road, Nashville, Tennessee 37214. Copies of all comments will be coordinated with the Memphis District and will be distributed to the sponsor and the IRT members for full consideration prior to a decision by the Corps. Comments should be provided by June 30, 2012.