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Nashville &
Memphis
Districts

Special Public Notice

Public Notice No. 21-12

Date: March 25, 2021

Application No. LRN-2011-00771, MVM-2002-00309

For more Information contact: Nashville District Corps of Engineers
Regulatory Division,
3701 Bell Road
Nashville, TN 37214-2660

SUBJECT: Announcement regarding the Termination of the Tennessee Stream Mitigation Program (TSMP) In-Lieu Fee (ILF) agreement.

PURPOSE: The purpose of this public notice is to announce to Department of the Army (DA) permit applicants, sponsors, consultants, industry, and the general public that the U.S. Army Corps of Engineers Nashville District and Memphis District terminated the ILF agreement with the Tennessee Stream Mitigation Program (TSMP) on January 22, 2021 due to continued non-compliance with the 2008 Mitigation Rule and their in-lieu fee instrument. The TSMP ILF is no longer available as a compensatory mitigation option in Tennessee.

IN-LIEU FEE PROGRAM DEFINITION: An ILF program involves the restoration, establishment, reestablishment, enhancement, rehabilitation 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 ILF program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the ILF program sponsor. The operation and use of an ILF program are governed by an ILF program agreement, also known as an instrument. The instrument is the legal document for the establishment, operation, and use of an ILF program, and in accordance with the 2008 Mitigation Rule, all mitigation banks and ILF programs must be in compliance with all terms of the instrument in order to sell compensatory mitigation credits.

BACKGROUND INFORMATION: The TSMP is one of the 28 ILF Programs and Mitigation Banks that operate across the state of Tennessee to replace environmental functions that are lost because of permitted activities in aquatic areas. Between 2003 and 2018, the TSMP sold 308,000 advance credits. Projects were developed from 2005 through 2013, providing approximately 139,000 credits. No credit was delivered between 2014 and 2020, and the total unsatisfied liability older than 3 full growing seasons is currently approximately 136,000 credits, with an overall total unsatisfied liability of approximately 169,000 credits.

COMPENSATORY MITIGATION OPTIONS: If you will be applying for a Department of the Army permit and you anticipate compensatory mitigation will be required for your proposed project, please visit <https://ribits.usace.army.mil> or contact the Corps to determine if your project is within an active stream or wetland compensatory mitigation bank or ILF service area.

If stream or wetland credits are not available for your proposed project, please contact the Corps to schedule a pre-application meeting to discuss alternative compensatory mitigation options. The early coordination of projects potentially needing permittee-responsible mitigation will aid in the development and review of ecologically successful and sustainable compensatory mitigation.

CONTACT INFORMATION: This is an informational public notice, therefore, the corps is not seeking public comments. However, requests for additional information can be directed to Nashville District Corps of Engineers, Regulatory Division, Attention: Mr. Joshua Frost at the above address or by email: joshua.w.frost@usace.army.mil.

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Todd N. Tillinger
Chief, Technical Services Branch
Regulatory Division