



US Army Corps
of Engineers®
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division
1455 Market Street, 16th Floor
San Francisco, CA 94103-1398

PUBLIC NOTICE

Availability of Prospectus: Santa Clara Valley Habitat Plan In-Lieu Fee Program

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COMMENTS DUE DATE: August 11, 2017

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1. **INTRODUCTION:** Santa Clara Valley Habitat Agency (Sponsor) (POC: Edmund Sullivan, 535 Alkire Avenue, Suite 100, Morgan Hill, CA 95037, 408-779-7261) has submitted a prospectus to the U.S. Army Corps of Engineers (Corps) and other members of the Interagency Review Team¹ (IRT) for the establishment of the Santa Clara Valley Habitat Plan Regional General Permit In-Lieu Fee Program. If authorized, this In-Lieu Fee Program would receive monies from permittees receiving Corps authorization under Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 *et seq.*), when appropriate, to provide compensatory mitigation credit as part of Section 404 or enforcement actions within the proposed service area. Additionally, the proposed In-Lieu Fee Program may be utilized to offset unavoidable impacts to waters of the State that are regulated by the Regional Water Quality Control Board under Section 401 of the Clean Water Act or Section 13260 of the Porter-Cologne Act.

2. PROPOSED IN-LIEU FEE PROGRAM:

Activity: To establish the Santa Clara Valley Habitat Plan Regional General Permit In-Lieu Fee (ILF) Program pursuant to the requirements of the Corps-EPA Compensatory Mitigation Rule² (33 CFR 332.8(d)) (Mitigation Rule). Additional details and project plans are provided in the prospectus, available online through the RIBITS website:

https://ribits.usace.army.mil/ribits_apex/f?p=107:378:11739960782312::NO::P378_PROGRAM_ID:2840.

Additionally, the prospectus is also available at the Corps⁷

San Francisco District Office and may be reviewed by appointment.

ILF Mitigation Site Locations: The ILF mitigation sites would be located within the ILF Program Area, which is located in Santa Clara County and includes all of the Uvas, Llagas, and Pajaro watersheds within Santa Clara County, all of the Coyote Creek Watershed except for the San Francisco Baylands (Baylands), and a large portion of the Guadalupe River subwatershed except for the Baylands. (See Figure 1).

ILF Mitigation Site Selection: The selection of potential mitigation sites/projects would focus on large scale restoration, establishment and preservation projects within the Program area. Sites would be strategically selected and co-located with the Santa Clara Valley Habitat Plan conservation lands to address watershed needs and to attain a goal of no net loss in the areal extent and function of aquatic resources within the Program area. Mitigation projects would be prioritized on the basis of anticipated impact to resources within the Program area. Potential mitigation sites would be required to have the ecological suitability to support aquatic resources, and appropriate water and land rights. Each mitigation site would be evaluated for its potential to provide appropriate compensatory mitigation for aquatic resources based on the following criteria: likelihood of success, achieves multiple objectives, land use compatibility, funding leverage, capacity of the agency, and long term management. The IRT would review documentation and approve mitigation proposals for inclusion in the ILF Program.

¹ The IRT consists of member Agencies, and may include U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, California Department of Fish and Game, and the Regional Water Quality Control Board(s).

² The mitigation rule was promulgated by the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency at 33 C.F.R. Part 332 and 40 C.F.R. Part 230, respectively.

ILF Program Description: The Santa Clara Valley Habitat Agency proposes to establish an ILF Program that would provide compensatory mitigation for projects affecting waters of the United States, including wetlands, waters of the state, and riparian areas and associated upland riparian buffer habitats. The Santa Clara Valley Habitat Plan ILF Program would capitalize on the mitigation program envisioned as part of the Santa Clara Valley Habitat Plan (Habitat Plan) and build upon regional and watershed-planning that has been done to date.

The ILF Program would operate over a regionally and watershed-based Service Area covering 508,669 acres of Santa Clara County.

The ILF Program mitigation projects would result in establishment (creation), reestablishment and rehabilitation (restoration), and preservation of aquatic resources in Santa Clara County, including wetlands, riverine systems, and other aquatic resources. ILF Programs provide up-front identification, design, and approval of large-scale mitigation sites that are implemented to fulfill wetland mitigation associated with the Corps' permits and the Habitat Plan. The goal is to provide a watershed approach to mitigation by providing large, higher-functioning mitigation lands.

The ILF Program is intended to support implementation of compensatory mitigation for Corps-authorized impacts to aquatic resources, and integration of the Corps' compensatory mitigation requirements with those of the Habitat Plan

Service Area: The proposed geographic Service Area for the ILF Program covers an area of 508,669 acres located entirely within Santa Clara County, and is proposed to be consistent with the geographic limits of the Habitat Plan. It is further divided into two watershed areas, the San Francisco Bay and the Monterey Bay. The Service Area includes all of the Uvas, Llagas, and Pajaro sub-watersheds within Santa Clara County, all of the Coyote Creek sub-watershed except for the San Francisco Baylands (Baylands), and a large portion of the Guadalupe River sub-watershed except for the Baylands. The Service Area also encompasses small areas outside these sub-watersheds.

3. ADDITIONAL INFORMATION/BACKGROUND:

Mitigation Rule: The Mitigation Rule established a process and defined requirements for the establishment and

management of mitigation banks, in-lieu fee agreements and permittee-responsible mitigation (33 CFR 332). In addition, the Mitigation Rule established a public review process and timeline for the development of mitigation banks and in-lieu fee agreements. This in-lieu fee development process would include the following: 1) public review and comment on the Prospectus, 2) IRT coordination on the Prospectus and the In-Lieu Fee Program Enabling Instrument (PEI), 3) development of a mitigation credit production approach and credit release schedule, 4) long-term site protection and management measures, and 5) financial assurances estimation approach.

Mitigation Approval and Permitting Processes: Under the proposed ILF Program, for impacts authorized under the Regional General Permit or possibly other project-specific Corps-authorized impacts within the Service Area, a project proponent would pay the Habitat Agency its wetland impact fee and the Habitat Agency would ensure that the wetland fees are used to fulfill the mitigation obligations of the permit, including restoring, establishing, enhancing, and preserving aquatic resources.

As part of the process of establishing a ILF Program, the IRT would determine the types and number of potential credits that may be generated. Upon meeting either administrative milestones (e.g., PEI completion, funding of long-term management endowment) or performance-based milestones (e.g., 1-year, 3-year, 5-year conditional assessments), potential credits then become released credits. In addition to the final IRT approvals of the ILF Prospectus and PEI, the sponsor would also need to obtain the appropriate federal, state, and local permits required to implement the ILF establishment, restoration, or enhancement activities. The ILF sponsor would use the RGP or submit an application for Corps permit(s) should the proposed mitigation activities involve a discharge of dredge or fill material within waters of the U.S. or work or structures within navigable waters of the U.S. The Corps would complete consultation, if appropriate, under the Endangered Species Act, the National Historic Preservation Act and other applicable laws, prior to any permit authorization.

Funds would be held in an account that tracks ILF Program and Habitat Plan obligations, and all credits would be tracked and reported by the ILF sponsor to the IRT on an annual basis, and also uploaded to the Corps' Regulatory In-lieu Fee and Banking Information Tracking System (RIBITS).

To ensure permanent protection of the mitigation site, in coordination with the IRT, the ILF sponsor would secure an in-perpetuity conservation easement and/or fee title transfer. An endowment would be managed by the ILF sponsor to fund long-term management of the properties.

To ensure a high level of confidence that the ILF Program would be successfully completed in accordance with applicable mitigation performance standards, the ILF sponsor in coordination with the IRT, would secure sufficient and appropriate financial assurances.

4. CONSIDERATION OF COMMENTS: The Corps is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to help inform the Corps and the IRT as to the overall merits of the proposed ILF Program, the scope of the proposed ILF Program, the delineation of the service area, the ecological suitability of the individual sites to achieve wetlands restoration, and to identify project aspects that should be addressed during the development of a draft PEI. Any comments received will be considered by the Corps to determine whether the proposal has the potential to provide mitigation opportunities for project proponents (permittees) authorized to impact waters of the U.S. under Section 404 of the Clean Water Act or as a means of resolving Section 404 enforcement actions.

5. SUBMITTING COMMENTS: Interested parties are hereby notified that a Prospectus has been received in order to authorize an ILF Program for the purpose of mitigating impacts to waters of the United States authorized, or enforcement actions resolved, under section 404 of the Clean Water Act.

During the specified comment period, interested parties may submit written comments to Danielle Mullen, San Francisco District, Regulatory Division, 1455 Market Street, 16th Floor, San Francisco, California 94103-1398, or by email cited in the public notice letterhead; comment letters should cite the ILF Program name, applicant name, and public notice number to facilitate review by the Regulatory Permit Manager. Additional project information or details on any subsequent project modifications of a minor nature may be obtained from the applicant and/or agent, or by contacting the Regulatory Project Manager by telephone or email. An electronic version of this public notice may be viewed under the *Public Notices* tab on the USACE website: <http://www.spn.usace.army.mil/Missions/Regulatory>.