



US Army Corps
of Engineers®
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division
450 Golden Gate Ave., 4th Floor
San Francisco, CA 94102-3406

PUBLIC NOTICE

PROJECT: Ducks Unlimited San Francisco Bay In-Lieu Fee Program

PUBLIC NOTICE NUMBER: SPN-2018-00345

PUBLIC NOTICE DATE: January 13, 2021

COMMENTS DUE DATE: February 12, 2021

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1. **INTRODUCTION:** Ducks Unlimited, Inc. (POC: Mr. Jeff McCreary, 3074 Gold Canal Drive, Rancho Cordova, California 95670, 916-851-5360, jmccreary@ducks.org), has submitted an In-Lieu Fee Prospectus to the U.S. Army Corps of Engineers (USACE), San Francisco District, and other members of the Interagency Review Team¹ (IRT) for the establishment of the Ducks Unlimited San Francisco Bay In-Lieu Fee Program. If approved, this In-Lieu Fee Program would receive money from permittees receiving USACE authorization under Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 *et seq.*), and Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*), when appropriate, to provide compensatory mitigation credit as part of Section 404, Section 10, 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: Establishment of the Ducks Unlimited San Francisco Bay In-Lieu Fee Program (ILF) Program pursuant to the requirements of the USACE-Environmental Protection Agency Compensatory Mitigation Rule² (33 CFR 332.8(d)) (Mitigation Rule). Additional details are provided in the prospectus, available online through the RIBITS website:

https://ribits.ops.usace.army.mil/ords/f?p=107:378:::NO::P378_PROGRAM_ID:2884

Location: The proposed ILF Program and Service Area encompasses the majority of the San Francisco Bay HUC-6 watershed, including the following HUC-8 sub-watersheds: San Francisco Bay (18050004), San Pablo Bay (18050002), Suisun Bay (18050001), and Coyote Creek (18050003).

ILF Program Description: The purpose of the ILF Program is to provide a watershed-scale compensatory mitigation option that contributes to established regional wetland conservation plans' goals and objectives. Two credit types would be offered by the ILF Program within the Service Area: estuarine wetland credit and a freshwater wetland credit.

The ILF Program's goals are to establish a compensatory mitigation option in the San Francisco Bay Watershed, develop and implement successful ecologically and regionally significant projects, and advance the pace and scale of wetland conservation in the watershed. Objectives include the utilization of regional conservation plans to guide project development and implementation, providing economies of scale and sufficient funding for ecologically significant projects, engaging conservation partners in development and implementation of mitigation projects, and finally, producing a net gain of wetland acres.

¹ The IRT consists of member Agencies, and may include, but is not limited to, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, California Department of Fish and Wildlife, 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.

3. OTHER GOVERNMENT APPROVALS:

IRT Review: The IRT is responsible for review and potential approval of the proposed ILF Program, and includes representatives from the USACE, Environmental Protection Agency, National Marine Fisheries Service, U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, and the Regional Water Quality Control Board. Any of the projects which involve the discharge of fill into waters of the U.S. or that require federal, state, or local permits or authorizations would be sought individually and are not described in this notice.

4. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

Endangered Species Act (ESA): Section 7(a)(2) of the ESA of 1973, as amended (16 U.S.C. § 1531 *et seq.*), requires Federal agencies to consult with either the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) to ensure actions authorized, funded, or undertaken by the agency are not likely to jeopardize the continued existence of any Federally-listed species or result in the adverse modification of designated critical habitat. As the Federal lead agency for this project, USACE will initiate Section 7 consultation with the appropriate agencies, as appropriate.

Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA): Section 305(b)(2) of the MSFCMA of 1966, as amended (16 U.S.C. § 1801 *et seq.*), requires Federal agencies to consult with the NMFS on all proposed actions authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat (EFH). EFH is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EFH is designated only for those species managed under a Federal Fisheries Management Plan (FMP), such as the *Pacific Groundfish FMP*, the *Coastal Pelagics FMP*, or the *Pacific Coast Salmon FMP*. As the Federal lead agency for this project, USACE will initiate EFH consultation, as appropriate.

National Historic Preservation Act (NHPA): Section 106 of the NHPA of 1966, as amended (16 U.S.C. § 470 *et seq.*), requires Federal agencies to consult with the appropriate State Historic Preservation Officer to take into account the effects of their undertakings on historic properties listed in or eligible for listing in the *National Register of Historic Places*. Section 106 of the Act further

requires Federal agencies to consult with the appropriate Tribal Historic Preservation Officer or any Indian tribe to take into account the effects of their undertakings on historic properties, including traditional cultural properties, trust resources, and sacred sites, to which Indian tribes attach historic, religious, and cultural significance. As the Federal lead agency for this project, USACE will initiate Section 106 consultation with the appropriate agencies, as appropriate.

5. CONSIDERATION OF COMMENTS: USACE is soliciting comments from the public; Federal, State, and local agencies and officials; Native American Nations or other tribal governments; and other interested parties in order to consider and evaluate the impacts of this proposed activity. All comments received by USACE will be considered to determine whether the proposal has the potential to provide compensatory mitigation opportunities for project proponents (permittees) authorized to impact waters of the U.S. under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act or as a means of resolving Section 404 and/or Section 10 enforcement actions.

6. SUBMITTING COMMENTS: During the specified comment period, interested parties may submit written comments to Bryan Matsumoto by email at Bryan.T.Matsumoto@usace.army.mil; comments should cite the project name, applicant name, and public notice number to facilitate review by the Regulatory Permit Manager. All substantive comments will be forwarded to the applicant. 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 Permit Manager by telephone or e-mail (cited in the public notice letterhead). An electronic version of this public notice may be viewed under the *Public Notices* tab on the USACE website: <https://www.spn.usace.army.mil/Missions/Regulatory>.