



SPECIAL PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

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APPLICATION FOR PERMIT Coachella Valley In-Lieu Fee Program

Public Notice/Application No.: SPL-2013-00324-TOB

Project: Coachella Valley In-Lieu Fee Program

Comment Period: October 3, 2013 through November 2, 2013

Project Manager: Therese O'Rourke Bradford; 760-602-4850; Therese.O.Bradford@usace.army.mil

Applicant

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Contact

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Location

The proposed in-lieu fee program would be located at various sites in the Coachella Valley, Riverside and Imperial Counties, California.

Activity

The review of a prospectus prepared by the Coachella Valley Conservation Commission (CVCC), the Sponsor, associated with the development of the Coachella Valley In-Lieu Fee Program (ILFP) for compensatory mitigation for Department of the Army (DA) permits. Additional details are provided in the Prospectus, available in the Cyber Repository (library) for the Coachella Valley ILFP on Los Angeles District's list of pending ILF Programs under ILF Programs on the Corps' Regulatory In-lieu Fee and Bank Information Tracking System (RIBITS) site:

https://rsgisias.crrel.usace.army.mil/ribits/f?p=107:25:3442037920625313::NO::P25_REPORT_ID,P3_LOCATION,P3_LOCATION_ID:5414,PROGRAM,1021.

Interested parties are hereby notified that a prospectus has been received from the CVCC for a proposed in-lieu fee program to provide compensatory mitigation for DA permits. We invite you to review today's public notice and provide views on the proposed mitigation bank. By providing substantive, site-specific comments to the United States (U.S.) Army Corps of Engineers (Corps) Regulatory Division, you provide information that support the Corps' decision-making process. All comments received during the comment period become part of the record and will be considered and will be considered in the decision to authorize or not authorize the proposed ILFP. Comments should be mailed to:

LOS ANGELES DISTRICT, ARMY CORPS OF ENGINEERS
REGULATORY DIVISION, CARLSBAD FIELD OFFICE
ATTN: SPL-2013-00324
5900 LA PLACE COURT, SUITE 100
CARLSBAD, CA 92008

Alternatively, comments can be sent electronically to: Therese.O.Bradford@usace.army.mil

The mission of the Corps Regulatory Program is to protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions. The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands. The Regulatory Program in the Los Angeles District is executed to protect aquatic resources by developing and implementing short- and long-term initiatives to improve regulatory products, processes, program transparency, and customer feedback considering current staffing levels and historical funding trends.

Corps permits are necessary for any work, including construction and dredging, in the Nation's navigable water and their tributary waters. The Corps balances the reasonably foreseeable benefits and detriments of proposed projects, and makes permit decisions that recognize the essential values of the Nation's aquatic ecosystems to the general public, as well as the property rights of private citizens who want to use their land. The Corps strives to make its permit decisions in a timely manner that minimizes impacts to the regulated public.

During the permit process, the Corps considers the views of other federal, state and local agencies, interest groups, and the general public. The results of this careful public interest review are fair and equitable decisions that allow reasonable use of private property, infrastructure development, and growth of the economy, while offsetting the authorized impacts to the waters of the U.S. The permit review process serves to first avoid and then minimize adverse effects of projects on aquatic resources to the maximum practicable extent. Any remaining unavoidable adverse impacts to the aquatic environment are offset by compensatory mitigation requirements, which may include restoration, enhancement, establishment, and/or preservation of aquatic ecosystem system functions and services.

Evaluation Factors

The decision whether to authorize the ILFP will be based on an evaluation of the probable impact, 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 reasonably 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. Factors that will be considered include conservation, economics, 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 production and, in general, the needs and welfare of the people. In addition, if the proposal would discharge dredged or fill material, the evaluation of the activity will include application of the Environmental Protection Agency (EPA) Guidelines (40 CFR Part 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps 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 impacts of this

proposed activity. The District Engineer (DE) will review the comments received in response to this notice and make a written initial evaluation as to the potential of the proposed ILFP to provide compensatory mitigation. 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, if applicable, of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. In addition, all comments will be distributed to the members of the Interagency Review Team (IRT) and the sponsor within 15 days of the close of the comment period. The DE and the IRT members will also have the opportunity to comment to the sponsor. After considering comments from the DE, the IRT, and the public, if the Sponsor chooses to proceed with establishment of the ILFP, the Sponsor will prepare a draft In-Lieu Fee Enabling Instrument and submit it to the DE.

Background

On April 10, 2008, the Corps and the EPA published the Final Rule on Compensatory Mitigation for Losses of Aquatic Resources ("Mitigation Rule") that went into effect on June 9, 2008. The Mitigation Rule replaced most previous guidance concerning compensatory mitigation.

Consistent with the requirements of the rule at 33 CFR 332.8(d), the Sponsor has submitted a prospectus to the Corps for the purpose of establishing and managing the ILFP consistent with the mitigation rule. The Corps seeks comments from interested parties on the prospectus. This public notice provides a summary of the ILFP prospectus submitted by the Sponsor. The full prospectus may be obtained from the Corps by contacting Therese O'Rourke Bradford at 760-602-4850 or Therese.O.Bradford@usace.army.mil, or by viewing the prospectus at the following website: https://rsgisias.crrel.usace.army.mil/ribits/f?p=107:25:3442037920625313::NO::P25_REPORT_ID,P3_LOCATION,P3_LOCATION_ID:5414,PROGRAM,1021.

Need for the In-Lieu Fee Program

The proposed ILFP would provide high quality compensation for impacts to wetlands, non-wetland waters, and federal and state listed species. Based on CVCC's research, there appears to be a strong market for wetland and non-wetland mitigation credits from various public and private projects.

Objectives

The Coachella Valley ILFP would be established to compensate for unavoidable impacts to waters of the U.S. and waters of the State.

Service Area

The proposed primary service area for the ILFP is located entirely in the Whitewater River watershed in Riverside County and northern Imperial County, as encompassed by the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) boundaries and the watersheds adjoining the Salton Sea (Figure 1). The proposed secondary service area would include all of Imperial County and Riverside County east of Coachella Valley (Figure 2). To the maximum extent practicable, compensatory mitigation projects should be in the same watershed (at a 10-digit HUC scale) as any impacts to the waters of the U.S. However, given the difficulty of finding mitigation sites that are both proximate and ecologically commensurate with impacts in the desert ecology of the Coachella Valley, the Corps will also have the discretion to allow mitigation in another 10-digit HUC in the service area in order to maximize the ecological value of mitigation sites. Generally, Corps permitted projects with impacts in the secondary service area will only be allowed to purchase

compensatory mitigation through this ILFP if the permittee can demonstrate that no other reasonable mitigation options are available in the watersheds more proximate to the impact site.

Establishment and Operation of the Program

CVCC has successfully acquired and is managing conservation lands throughout the Coachella Valley. CVCC also administers and implements the CVMSHCP. All mitigation governed by this ILFP will be above and beyond conservation measures already required of CVCC through the permit issued to it under the CVMSHCP. However, by supporting the conservation work governed by the CVMSHCP, this ILFP will help maximize the ecological benefit of any compensatory mitigation that might be required by the Corps and other agencies for land development projects with impacts within the specified service areas.

Corps permittees whose projects impact waters of the U.S. or waters of the State in the specified service area will have the option of purchasing mitigation credits issued under the ILFP to satisfy permit requirements for compensatory mitigation. Upon purchasing the credits, the permittee's obligation for mitigation will be considered met, and the responsibility for mitigation will be transferred to CVCC. CVCC will provide the required mitigation, either by deducting an appropriate number of credits from pre-approved and completed mitigation projects, or selling advance credits and then restoring, enhancing, establishing, or preserving mitigation sites in order to provide the required mitigation.

The responsible agency will be the CVCC, which will own lands acquired under this ILFP or will secure appropriate conservation easements for mitigation sites. Compensatory mitigation may also be sited on lands already owned by public agencies or other conservation organizations [e.g., Bureau of Land Management (BLM) land], provided compensatory mitigation projects on public land are based solely on aquatic resource functions provided by the compensatory mitigation project, over and above those provided by public programs already planned or in place [33 CFR 332.3(a)(3)].

For ILFP compensatory mitigation land acquired under this ILFP or already owned by CVCC, oversight and long-term management will be the responsibility of CVCC, supported by the Reserve Management Oversight Committee (RMOC) and Reserve Management Unit Committees (RMUCs) as established under the CVMSHCP. The membership and duties of the RMOC and RMUCs are set forth in sections 6.1.3 and 6.1.4 of the CVMSHCP.

For ILFP compensatory mitigation sited on public lands or lands owned by other organizations, oversight and long-term management will be the responsibility of the organization specified in the mitigation plan for each compensatory mitigation project, in coordination with the RMOC and RMUCs, and with deference to any other superseding agreements (e.g., a memorandum of understanding between CVCC, Corps, and the owner and manager of the mitigation lands).

All compensatory mitigation land governed by this ILFP will be provided long-term protection through real estate instruments or other available mechanisms, as appropriate (e.g., conservation easements held by CVCC), and will include a provision requiring 60-day advance notification to the Corps DE before any action is taken to void or modify the instrument, management plan, or long-term protection mechanism, including transfer of title to, or establishment of any other legal claims over, the compensatory mitigation site. For compensatory mitigation on public lands, if changes in statute, regulation, or agency needs or mission results in an incompatible use on public lands originally set aside for compensatory mitigation, the public agency authorizing the incompatible use will be responsible for providing alternative compensatory mitigation that is acceptable to the Corps.

Long-term financing to fund monitoring and management for ILFP compensatory mitigation

projects must be specified in the mitigation plan for each project.

Qualifications of the Sponsor

CVCC is well qualified as a sponsor of the Coachella Valley ILFP. As the agency responsible for implementing the CVMSHCP, CVCC acquires land, conducts biological monitoring of conservation lands, and manages lands it acquires. In addition, as outlined above, CVCC has established a RMOC composed of representatives of all the major land management entities within the CVMSHCP Reserve System to ensure adequate monitoring and management of the Reserve System lands, and has established a RMUC for each of the various management units in the CVMSHCP. The RMOC is composed of representatives from BLM, California Department of Fish and Wildlife (CDFW), California Department of Parks and Recreation, CVCC, U.S. Fish and Wildlife Service (USFWS), National Parks Service (NPS), U.S. Forest Service (USFS), County, and up to five other private or public entities that hold land dedicated to conservation within the MSHCP Reserve System, and as appointed by CVCC. The duties and responsibilities of RMUCs are outlined in detail in Section 6.1.4 of the CVMSHCP, but essentially include managing land within the Reserve Management Units with the best available scientific data and coordinating work among agencies involved in lands management to ensure the best possible management outcomes. In short, CVCC has in place the management infrastructure and technical expertise required to manage this ILFP.

CVCC has achieved conservation goals outlined in the CVMSCHP. Since the implementation of the CVMSHCP in 2008, CVCC has acquired 6,544 acres of conservation land, much of it high-value, developable land in and around the valley floor of the Coachella Valley. In 2012, for example, CVCC acquired lands slated for what was to be the Indio Trails project, a 490-acre residential development to be sited at the base of the Indio Hills. In 2006, the County of Riverside, City of Indio, and Coachella Valley Association of Governments (CVAG) had signed a Memorandum of Understanding that would have allowed the City of Indio to receive a transfer of 220 acres of take from the County of Riverside for the Indio Trails project on the condition that the remaining 270 acres be permanently conserved. With the acquisition by CVCC in 2012, the entire 490-acre site is permanently conserved. In addition, another 314 acres were acquired in the Willow Hole conservation area northeast of Desert Hot Springs, and 350 acres were acquired in Morongo Wash on the West side of Desert Hot Springs, which functions as an important wildlife corridor.¹

CVCC will operate the ILFP, including the maintenance of site-specific ledgers and annual reporting requirements. CVCC staff has experience managing permit fees collected by the CVMSHCP program, experience working with multiple agencies, and this same staff will also be responsible for the ILFP accounting described in this prospectus. In addition, the CVCC will work with experienced mitigation providers/contractors to design, construct, monitor, and maintain the mitigation sites.

For additional information please call Therese O'Rourke Bradford at 760-602-4850 or via e-mail at Therese.O.Bradford@usace.army.mil .

¹ See CVMSHCP 2012 Annual Report, available at <http://www.cvmshcp.org/doc/CVMSHCPAnnualReport2012.pdf>