



PUBLIC NOTICE

U.S. Army Corps
of Engineers

New York District, CENAN-OP-RU

Upstate Regulatory Field Office

1 Buffington Street, Bldg. 10, 3rd Fl. North

Watervliet, New York 12189-4000

In replying refer to:

Public Notice Number: NAN-2020-01218-UCA

Issue Date: **March 15, 2021**

Expiration Date: **April 14, 2021**

To Whom It May Concern:

The New York District, Corps of Engineers has received a proposal pursuant to 33 CFR 332 requesting the expansion of the existing In-lieu Fee (ILF) program (LRB-2010-00673) sponsored by Ducks Unlimited (DU) in two service areas encompassing parts of three 8-digit hydrologic units. Ducks Unlimited currently provides mitigation for impacts to waters of the United States under Section 404 of the clean water act through an In-lieu fee program in eleven Service areas encompassing nine separate 8-digit hydrologic unit code (HUC) service areas and two Service areas encompassing four and three 8-digit hydrologic unit codes in New York State. The purpose of this notice is to solicit comments and recommendations from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties so that we may consider and evaluate the impacts for the work described below and determine whether to issue, modify, condition, or deny the request to modify the ILF Instrument.

This is not an application for work in federally regulated waters; however, authorization under Section 404 of the Clean Water Act may be required for implementation of particular mitigation sites later proposed under the modification of the ILF instrument, if approved. Such sites would be advertised under separate public notices. No decision has been made as to whether this proposed expansion will be approved.

APPLICANT: Ducks Unlimited
North Atlantic Office
159 Dwight Park Cir.
Syracuse, New York 13209

ACTIVITY: Amending In-lieu Fee Instrument by adding Two New Service Areas

WATERSHED AREA: Hudson River

LOCATION: The proposed service areas encompass parts of three 8-digit HUC (Hydrologic Unit Code, a designation for the watershed drainage area encompassed) watersheds within the U.S. Army Corps of Engineers New York District as follows:

Hudson-Hoosic (02020003) within portions of Saratoga, Warren, Washington and Rensselaer Counties.

Mid-Hudson Basin (02020006), within portions of Schenectady, Albany, Rensselaer, Schoharie, Greene, Columbia, Dutchess and Ulster Counties. There is also an approximately 35 square section of the Housatonic River 8 digit HUC 01100005 that occurs within the political border of Columbia County that DU is requesting to include within this service area for the sake of simplicity. DU has chosen to exclude sections of the Mid-Hudson 8-digit HUC 02020006, due to it being within the New York City Watershed. These areas include portions of Greene and Ulster Counties within the Esopus Creek watershed that contribute to the Ashokan Reservoir.

DESCRIPTION OF PROPOSED ACTIVITY: Under Section 404 of the Clean Water Act (CWA), applicants requesting Department of the Army permits to discharge dredged or fill material into waters of the United States, including wetlands and streams, are often required to mitigate for permitted wetland and stream losses by creating, restoring, enhancing, or in exceptional circumstances, preserving wetlands and streams. Authorized ILF programs provide the U.S. Army Corps of Engineers (Corps) and the regulated public with an additional option for compensatory mitigation using a watershed approach, instead of permittee-responsible mitigation. The January 2012 DU ILF instrument was previously approved by the Interagency Review Team (IRT) and this proposed modification of the instrument would be in accordance with the process described in 33 CFR 332. The IRT is comprised of the Corps (Buffalo and New York Districts), the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, New York City Department of Environmental Protection, the U. S. Department of Agriculture-Natural Resource Conservation Service, the National Oceanic and Atmospheric Administration-National Marine Fisheries Service and the New York State Department of Environmental Conservation.

The proposed ILF expansion prospectus, is described in the document **“Ducks Unlimited—New York In-Lieu Fee Program Hudson River Service Area—Non-tidal Wetlands”**, attached to this Public Notice. This document contains all the information normally contained in a prospectus to allow for the for the modification of the ILF Instrument. If approved this modification would be incorporated as an amendment to the 2012 DU ILF program instrument.

The decision whether to issue modify the DU ILF Instrument 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; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.

The Corps of Engineers 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. Any comments received will be considered by the Corps of Engineers to determine whether modify the DU ILF Instrument for this proposed expansion. 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 preparation 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.

ALL COMMENTS REGARDING THE PERMIT APPLICATION MUST BE PREPARED IN WRITING AND MAILED TO THE ATTENTION OF George D. Casey AT THE ABOVE ADDRESS, OR SENT VIA ELECTRONIC MAIL TO george.d.casey@usace.army.mil, TO REACH THIS OFFICE BY THE EXPIRATION DATE OF THIS NOTICE, otherwise, it will be presumed that there are no objections to the activity. Due to COVID-19, and limited in-office mail processing procedures, it is highly recommended that comments be sent by Electronic Mail only to prevent delays.

Comments submitted in response to this notice will be fully considered during the public interest review for this instrument modification. Comments provided will become part of the public record for this instrument modification. All written comments, including contact information, will be made a part of the administrative record, available to the public under the Freedom of Information Act. The Administrative Record, or portions thereof, may also be posted on a Corps of Engineers internet web site. Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to individual letters of comment.

Any person may request, in writing, before this public notice expires, that a public hearing be held to collect information necessary to consider this application. Requests for public hearings shall state, with particularity, the reasons why a public hearing should be held. It should be noted that information submitted by mail is considered just as carefully in the permit decision process and bears the same weight as that furnished at a public hearing.

If the DU ILFP Instrument is modified for this expansion, the Corps expects that the activities associated with this modification are not likely to affect any federally endangered or threatened species or their critical habitat. However, pursuant to Section 7 of the Endangered Species Act (16 U.S.C. 1531), when a specific mitigation site is proposed under this instrument, the District Engineer would consult with the appropriate Federal agency to determine the presence of and potential impacts to listed species in the project area or their critical habitat.

If the DU ILFP Instrument is modified for this expansion, the Corps expects that the activities associated with this modification would avoid areas where known sites eligible for, or included in, the National Register of Historic Places. However, pursuant to Section 106 of the National Historic Preservation Act (36 CFR Part 800), when a specific mitigation site is proposed under this instrument, the Corps would consult with the appropriate Federal, State and Tribal Historic Preservation Officers to determine the presence of and potential impacts to known or eligible sites. Any authorization for work would include provisions for unknown archeological, scientific, prehistorical, or historical data that may be lost by work accomplished under the required permit.

If the DU ILFP Instrument is modified, reviews of activities for specific mitigation sites pursuant to Section 404 of the Clean Water Act would include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 (b) of the Clean Water Act and the applicant would obtain a water quality certificate or waiver from the appropriate state agency in accordance with Section 401 of the Clean Water Act.

In order for us to better serve you, please complete our Customer Service Survey located at:

<http://www.nan.usace.army.mil/Missions/Regulatory/CustomerSurvey.aspx>

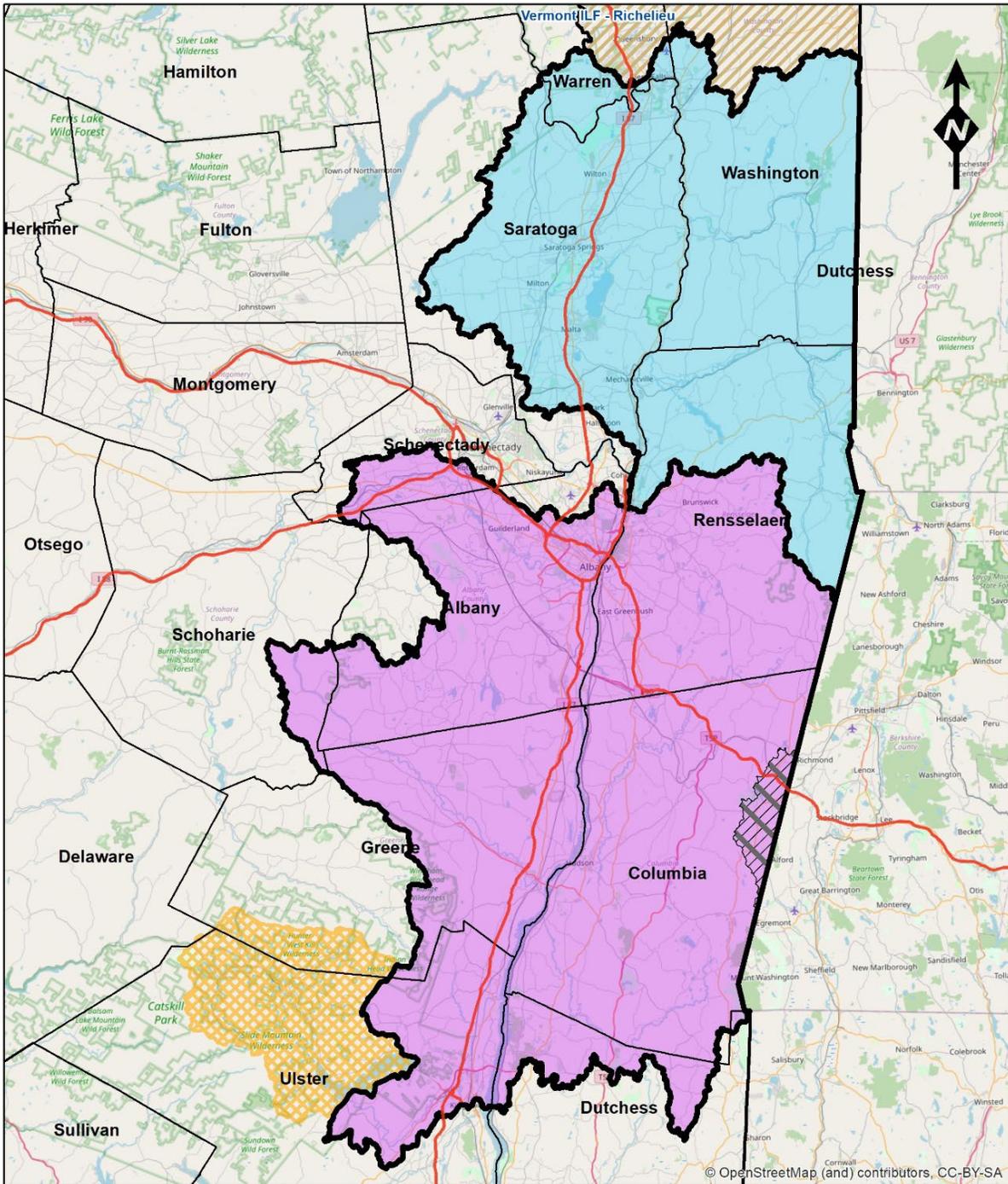
It is requested that you communicate the foregoing information concerning the activity to any persons known by you to be interested and who did not receive a copy of this notice. If you have any questions concerning this application, you may contact George D. Casey of this office at (518) 266-6361.

For more information on New York District Corps of Engineers programs, visit our website at <http://www.nan.usace.army.mil>

A handwritten signature in black ink that reads "Amy L. Gitchell". The signature is written in a cursive style with a large initial 'A'.

FOR AND ON BEHALF OF
Stephan A. Ryba
Chief, Regulatory Branch

Enclosures



-  Housatonic Watershed Inclusion
-  Hudson-Hoosic
-  Middle Hudson
-  NYC-Portion of Middle Hudson Excluded



Ducks Unlimited New York Hudson River ILF Service Areas.

The Hudson-Hoosic Service Area is comprised of an HUC-8: 02020003. The Middle Hudson Service Area is comprised of the majority of the Middle Hudson HUC-8: 02020006, excluding New York City Water-Supply portions of the watershed (Orange hatching). A small portion of the Housatonic watershed (HUC-8: 01100005) near the Massachusetts border (Gray hatching) is included in the Middle Hudson Service Area to extend coverage to the NY-MA border.