

# PUBLIC NOTICE

## U.S. Army Corps of Engineers

Buffalo District, CELRB-TDR  
1776 Niagara Street  
Buffalo, New York 14207

New York District, CENAN-OP-RU  
Upstate Regulatory Field Office  
1 Buffington Street, Bldg. 10, 3<sup>rd</sup> Fl. North  
Watervliet, New York 12189-4000

### **In replying refer to:**

Public Notice Number: NAN-2021-00247-UCA  
LRB-2010-00963

Issue Date: **April 5, 2021**

Expiration Date: **May 5, 2021**

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### To Whom It May Concern:

The Buffalo and New York Districts, Corps of Engineers have received a proposal pursuant to 33 CFR 332 requesting the expansion of an In-lieu Fee (ILF) program sponsored by The Wetland Trust (TWT) in a new service area encompassing the Hudson-Hoosic 8-digit hydrologic unit code (HUC) 02020003. TWT currently provides mitigation for impacts to waters of the United States under Section 404 of the Clean Water Act with an In-lieu fee program within fifteen service areas encompassing thirteen separate HUCs within the State of New York. 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 of the request described below and determine whether 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:** The Wetland Trust  
4729 State Route 414  
Burdett, New York 14818

**ACTIVITY:** Amending In-lieu Fee Instrument by adding a new Service Area

**WATERWAY:** Hudson River

**LOCATION:** The proposed service area encompasses the 8-digit Hudson-Hoosic HUC watershed within the area of regulatory responsibility of the New York District in parts of Saratoga, Warren, Washington and Rensselaer Counties.

**DESCRIPTION OF PROPOSED ACTIVITY:** Under Section 404 of the Clean Water Act (CWA), applicants for Department of the Army permits to discharge dredge or fill material into waters of the United States, including wetlands, are often required to mitigate for permitted wetland losses by creating, restoring, enhancing, or in exceptional circumstances, preserving wetlands or streams. Authorized ILF programs provide the US Army Corps of Engineers (Corps) and the regulated public with additional options for compensatory mitigation of aquatic resource losses.

The modification of the instrument must be in accordance with previously approved ILF instrument approved by the Interagency Review Team (IRT) in October 2013. The IRT is presently 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 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 “**Amendment Request to add Hudson-Hoosic Watershed (HUC 02020003) Susquehanna Basin Headwaters and Adjacent Basins In-Lieu Fee Program Instrument**”, 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. TWT’s stated purpose of this project is to provide compensatory mitigation in specific areas of the Hudson River Basin through the expansion of TWT’s Susquehanna Basin Headwaters and Adjacent Basins In-Lieu Fee Program.

The decision whether to modify the TWT 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.

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 REQUEST MUST BE PREPARED IN WRITING AND MAILED TO THE ATTENTION OF George D. Casey of the New York District or Susan L. Baker of the Buffalo District AT THE ABOVE ADDRESS, OR SENT VIA ELECTRONIC MAIL TO [george.d.casey@usace.army.mil](mailto:george.d.casey@usace.army.mil) or [susan.l.baker@usace.army.mil](mailto:susan.l.baker@usace.army.mil) TO REACH THE RESPECTIVE 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 request. 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 decision process and bears the same weight as that furnished at a public hearing.

If the TWT ILF 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 TWT ILF 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 TWT ILF 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 the New York District (518) 266-6361 or Susan L. Baker of the Buffalo District (716) 879-4363.

For more information on New York and Buffalo Districts Corps of Engineers programs, visit our website at <http://www.nan.usace.army.mil> or <https://www.lrb.usace.army.mil> .



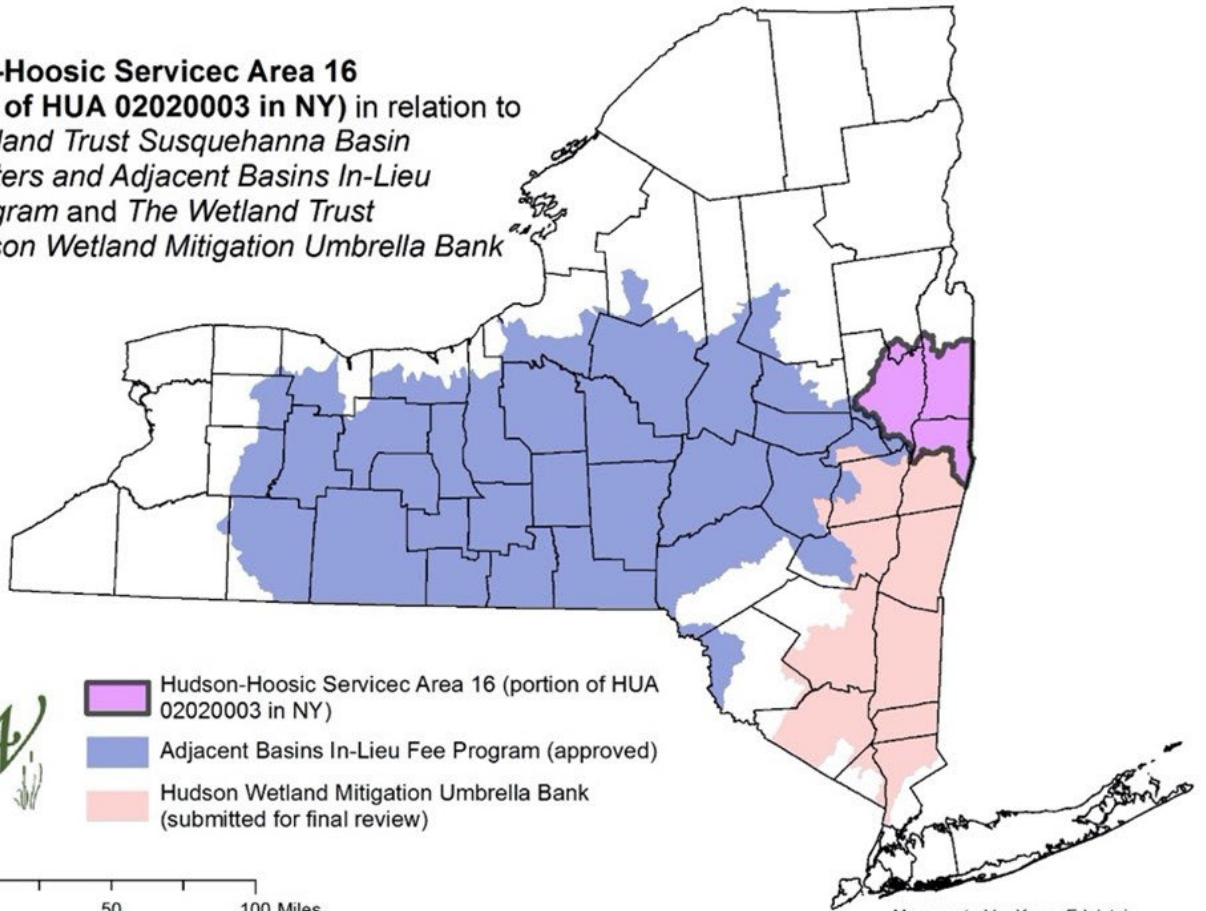
FOR AND ON BEHALF OF  
Mark Scalabrino  
Acting Chief Regulatory Branch  
Buffalo District






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

Enclosures

**Hudson-Hoosic Service Area 16**  
**(portion of HUA 02020003 in NY)** in relation to  
*The Wetland Trust Susquehanna Basin*  
*Headwaters and Adjacent Basins In-Lieu*  
*Fee Program and The Wetland Trust*  
*NY Hudson Wetland Mitigation Umbrella Bank*



-  Hudson-Hoosic Service Area 16 (portion of HUA 02020003 in NY)
-  Adjacent Basins In-Lieu Fee Program (approved)
-  Hudson Wetland Mitigation Umbrella Bank (submitted for final review)

Map created by Karen Edelstein  
4 February 2020