



U.S. Army Corps  
of Engineers  
Buffalo District

# Public Notice

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Applicant: Wetlands  
Resource Center

Published: December 17, 2021  
Expires: January 17, 2022

Congress Lake Wetland Mitigation Bank

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Application No: LRB-2021-01011  
Section: OH

All written comments should reference the above Application No. and be addressed to:  
**US Army Corps of Engineers, Buffalo District**  
**Regulatory Branch (Attn:) Susan L. Baker**  
**1776 Niagara Street**  
**Buffalo, NY 14207**

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THIS NOTICE ANNOUNCES A PROSPECTUS THAT HAS BEEN SUBMITTED FOR THE PROPOSED DEVELOPMENT OF A WETLAND MITIGATION BANK (CONGRESS LAKE WETLAND MITIGATION BANK) SERVICING THE CUYAHOGA RIVER WATERSHED, PURSUANT TO 33 CFR 332, COMPENSATORY MITIGATION FOR LOSSES OF AQUATIC RESOURCES (FEDERAL REGISTER: APRIL 10, 2008, EFFECTIVE JUNE 9, 2008). DEPARTMENT OF ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT WOULD BE REQUIRED FOR PROPOSED WETLAND MITIGATION ACTIVITIES THAT WOULD RESULT IN A DICHARGE OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES.

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## GENERAL INFORMATION

**PURPOSE:** The U.S. Army Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; American Indian Tribes; and other interested parties in order to consider and evaluate the proposed Congress Lake Wetland Mitigation Bank.

**COMMENT PERIOD:** Comments submitted within 30 days from the date of this notice will be fully considered during the review of this proposal.

**DISCLAIMER:** All written comments will be made a part of the administrative record which is available to the public under the Freedom of Information Act. The Administrative Record, or portions thereof, may also be posted on a Corps internet web sites. A lack of response will be interpreted as meaning that there is no objection to the work as proposed. **Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to individual letters of comment.**

**CONTACT:** Comments or questions pertaining to the work described in this notice should reference the Application Number and be directed to the attention of Susan L. Baker, who can be contacted at the above address, by calling (716) 879-4474, or by e-mail at: Susan.L.Baker@usace.army.mil.

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## **BACKGROUND**

The Corps has the authority to issue permits under Section 404 of the Clean Water Act for discharges of dredged or fill material into waters of the United States, including jurisdictional wetlands, and for structures or work in navigable waters under Section 10 of the Rivers and Harbors Act of 1899. Permittees may be required to provide “compensatory mitigation” for unavoidable impacts to aquatic resources.

One such option for providing compensatory mitigation is through the purchase of credits from a mitigation bank. “Mitigation bank” means a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits. Mitigation banks are operated by third-party sponsors that assume legal responsibility for providing the required compensatory mitigation of multiple permittees at one or more off-site locations. The operation and use of a mitigation bank are governed by a mitigation banking instrument.

As indicated in the Corps regulations (33 CFR 332.8(b)), the district engineer will establish an Interagency Review Team (IRT) to review documentation for the establishment and management of mitigation banks. The IRT facilitates the establishment of mitigation banks through the development and review of mitigation banking instruments. The Ohio IRT consists of the following federal and state resource agencies: Corps - Buffalo, Huntington, and Pittsburgh Districts, U.S. Environmental Protection Agency (USEPA), U.S. Fish and Wildlife Service (USFWS), U.S. Department of Agriculture’s Natural Resources Conservation Service, Ohio Environmental Protection Agency (OEPA), and Ohio Department of Natural Resources.

Approval to use an approved mitigation bank to offset impacts associated with a specific permit is the decision of the Corps. The Corps provides no guarantee that any particular general or individual permit would be granted authorization to use an approved mitigation bank to compensate for unavoidable impacts.

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## **PROPOSAL UNDER REVIEW**

**BANK SPONSOR:** Wetlands Resource Center, 3970 Bowen Road, Canal Winchester, Ohio 43110

**BANK LOCATION:** The 86-acre Congress Lake Wetland Mitigation Bank (“Bank”) is located north of Pinedale Street NE, in Marlboro Township, Stark County, Ohio (40.983872, -81.284301)

**PROPOSAL:** The Bank Sponsor has submitted a prospectus to the Corps-Buffalo District to establish the Congress Lake Wetland Mitigation Bank (“Bank”) for the Cuyahoga River Watershed (USGS 8-digit Hydrologic Unit Code HUC 04110002).

The overall objective of the Bank is to generate compensatory wetland mitigation credits to offset unavoidable adverse impacts to wetlands in the Service Area, as described below. Credits would be generated through the re-establishment and rehabilitation of wetlands within the boundaries of Bank.

Location and details of the proposed Bank are shown on the attached documents. The entire prospectus for the Bank may be found on the Buffalo District’s website along with this Public Notice: <http://www.lrb.usace.army.mil/Missions/Regulatory/Public-Notices/>

**SERVICE AREA:** Service area means the geographic area within which impacts can be mitigated at a specific mitigation bank. The proposed service area is as follows:

For impacts to federally jurisdictional wetlands, the project’s proposed service area will be Cuyahoga 8- digit HUC watershed (04110002). For impacts to isolated Category 1 wetlands of any size and isolated Category 2 wetlands of 0.5 acre or less, the service area includes the entire Ohio portion of the Buffalo Corps District (Ohio Revised Code [ORC] 6111.022). For impacts to isolated Category 2 wetlands greater than 0.5 acres, isolated Category 3 wetlands of any size, the service area will encompass the Cuyahoga (04110002) 8-digit HUC.

**BANK MITIGATION PLAN:** The Bank contains 5.134 acres of emergent wetlands and approximately 3,493 linear feet of perennial stream (Congress Lake Outlet). The majority of the Bank has been cleared and drained for agriculture. The stated objectives of the Bank are as follows:

- Re-establish high-quality forested and non-forested wetlands: Re-establishment of high-quality wetlands will take place across the majority of the project’s active restoration area. To accomplish this objective, hydrology restoration, micro-topography restoration, and installation of native trees, shrubs, and seed mixes will take place. Forested, scrub/shrub, and emergent marsh plant communities are anticipated to develop across the site. In accordance with 33 CFR §332.2, re-establishment of wetlands in these areas will result in rebuilding a former aquatic resource and will result in a gain of aquatic resource area and functions.
- Rehabilitate 5.134 acres of existing wetlands: Areas of degraded farmed wetlands are located in the existing agricultural field. The degraded farmed wetlands within the agricultural field will be rehabilitated through hydrology restoration, microtopography restoration, and installation of native trees, shrubs, and seed mixes. Non-native invasive vegetation growing in this area will be controlled through appropriate physical or chemical means (e.g. mowing, herbicide applications). In accordance with 33 CFR 332.2, rehabilitation of these areas will result in a gain in aquatic resource function but will not result in a gain of aquatic resource area.
- Re-establish high-quality forested uplands: Portions of the site’s active restoration area in the existing agricultural field may not convert to wetland. These areas will become restored upland and will be interspersed within and around the wetlands and provide

valuable habitat adjacent for wildlife. The restored upland will be planted and seeded with native species at similar densities to the re-established wetlands; however, species planted in these areas will be better suited for mosaic habitat conditions. These restored uplands will consist of forested or non-forested vegetation communities, dependent on their location on the site.

Credits are proposed to be generated in accordance with the following table:

Wetland Re-establishment	Ratio	Area (ac)	Credits		
			Non-forested	Forested	Total
Non-forested wetlands	1:1	9.43	9.43		9.43
Non-forested wetlands (setback <sup>1</sup> )	1:2	0.28	0.14		0.14
Forested wetlands	1:1	37.80		37.80	37.80
Forested wetlands (setback <sup>1</sup> )	1:2	5.87		2.94	2.94
Non-forested wetlands/uplands mosaic	W=1:1	2.80	W= 1.4		1.75
	U=1:4		U= 0.35		
Non-forested wetlands/uplands mosaic (setback <sup>1</sup> )	W=1:2	0.30	W= 0.07		0.11
	U=1:4		U= 0.04		
Forested wetlands/uplands mosaic	W=1:1	6.44		W= 3.22	4.02
	U=1:4			U= 0.8	
Forested wetlands/uplands mosaic (setback <sup>1</sup> )	W=1:2	0.49		W= 0.12	0.18
	U=1:4			U= 0.06	
Uplands	1:4	17.06	0.41	3.85	4.27
<b>Re-establishment Totals</b>		<b>80.47</b>	<b>11.84</b>	<b>48.79</b>	<b>60.63</b>
Initial Release		20%	2.37	9.76	12.13
Wetland Rehabilitation	Ratio	Area (ac)	Credits		
			Non-forested	Forested	Total
Farmed Wetlands (3.99 ac. - 0.01 ac. fill for berm construction)	3:4	3.98		2.99	2.99
Farmed wetlands (setback <sup>1</sup> )	3:8	1.13		0.42	0.42
<b>Rehabilitation Totals</b>		<b>5.11</b>		<b>3.41</b>	<b>3.41</b>
Initial Credit Release		20%	0	0.68	0.68
TOTAL		Area (ac)	Credits		
			Non-forested	Forested	Total
<b>Wetland Project Total</b>		<b>85.6</b>	<b>11.84</b>	<b>52.19</b>	<b>64.04</b>
Initial Credit Release		20%	2.37	10.44	12.81

<sup>1</sup>Perimeter setbacks have been included for on the project (see Appendix B for locations). If potential adverse effects from adjacent properties that are being buffered by the project can be adequately ameliorated in the future through appropriate means (e.g., recordation of a conservation easement/covenant, completion of a new mitigation project on adjacent properties), WRC may seek approval to cease the reduction of credits in the setback/buffer areas, as appropriate. This would lead to an associated increase in wetland mitigation credits to be generated by this project. Such a proposal would be reviewed by the Corps for approval.

If approved, the Bank Sponsor would provide long-term protection of the Bank through the recordation of a Deed of Conservation Easement and Right of Access. A designated third-party manager would be responsible for long-term management after bank closure. Financial assurances would be provided through a construction, management and maintenance (construction and monitoring) insurance policy.

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**WATER QUALITY CERTIFICATION:** A Section 401 Water Quality Certification may be required from the Ohio Environmental Protection Agency in conjunction with the proposed establishment of the Bank.

**HISTORIC AND CULTURAL RESOURCES:** Based on a review of the Ohio Historic Preservation Office (OHPO) Geocortex Viewer (Viewer), there do not appear to be any known properties listed in, or eligible for listing in, the National Register of Historic Places within the limits of the proposed Bank. Based on available information, the Corps has determined that the proposed bank will have no effect on any properties listed in, or eligible for listing in, the National Register of Historic Places. This notice constitutes initiation of consultation with OHPO as per Section 106 of the National Historic Preservation Act. Should any additional information concerning historic properties or cultural resources be submitted to the Corps before the end of the comment period of this notice, the Corps will forward the submitted information to the OHPO for their review.

**THREATENED & ENDANGERED SPECIES:** Pursuant to Section 7 of the Endangered Species Act (16 U.S.C. 1531), the Corps of Engineers is consulting with the USFWS to evaluate any potential impacts associated with Bank site to: Indiana bat (E), northern long-eared bat (T), and eastern massasauga (T), and to ensure that the proposed activity is not likely to jeopardize their continued existence or result in the destruction or adverse modification of critical habitat. The Corps has determined that the proposed activities will have no effect on Indiana bat (E), northern long-eared bat (T), and eastern massasauga (T).

**REQUEST FOR PUBLIC HEARING:** Any individual may request a public hearing by submitting their written request, stating the specific reasons for holding a hearing, in the same manner and time period as other comments.

Public hearings for the purposes of the Corps program will be held when the District Commander determines he can obtain additional information, not available in written comments, that will aid him in the decision-making process for this proposal. A Corps hearing is not a source of information for the general public, nor a forum for the resolution of issues or conflicting points of view (witnesses are not sworn and cross examination is prohibited). Hearings will not be held to obtain information on issues unrelated to the activities requiring approval or a permit, such as property ownership, neighbor disputes, or the behavior or actions of the public or applicant on upland property not regulated by the Department of the Army. Information obtained from a public hearing is given no greater weight than that obtained from written comments. Therefore, you should not fail to make timely written comments because a hearing might be held.

**EVALUATION:** The decision to approve or deny this proposal will be based on an evaluation of compliance with 33 CFR 332 (Compensatory Mitigation for Losses of Aquatic Resources, Federal Register: April 10, 2008, Effective June 9, 2008), and 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 benefits 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 these are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, 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 and fiber production, mineral needs, considerations of property ownership, and in general, the needs and welfare of the people. Comments are used in the preparation of an Environmental Assessment 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.

**SIGNED**

Steven V. Metivier  
Chief, Regulatory Branch

**NOTICE TO POSTMASTER:** It is requested that this notice be posted continuously and conspicuously for 30 days from the date of issuance.



### Location of Mitigation Site Within Watershed Cuyahoga River (HUC 04110002)







