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# Public Notice

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**US Army Corps  
of Engineers**

Huntington District  
Buffalo District  
Pittsburgh District

**SPECIAL NOTICE Ohio Interagency Review Team Guidelines-  
Service Areas (No. 2015-2)**

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## **The Ohio Interagency Review Team Initiatives and Guidelines for the State of Ohio in the U.S. Army Corps of Engineers' Huntington, Buffalo, and Pittsburgh Districts**

**JOINT PUBLIC NOTICE:** This joint public notice is distributed on behalf of the Ohio Interagency Review Team (IRT), which consists of the following federal and state resource agencies: U.S. Army Corps of Engineers (Corps) Huntington, Buffalo, and Pittsburgh Districts, U.S. Environmental Protection Agency (USEPA), U.S. Fish and Wildlife Service, U.S. Department of Agriculture's Natural Resource Conservation Service, Ohio Environmental Protection Agency, and the Ohio Department of Natural Resources.

**AUTHORITY:** The initiatives and guidelines described below are administered by the Ohio IRT in accordance with the mitigation procedures derived from the Corps and USEPA final rule on Compensatory Mitigation for Losses of Aquatic Resources (mitigation rule), published April 10, 2008 in the Federal Register (Vol. 73, No. 70). The federal regulations associated with this final rule include 33 CFR 325 and 33 CFR 332 (federal regulation for the Corps) and 40 CFR 230 (federal regulation for the USEPA). The mitigation rule became effective June 9, 2008 and may be referenced in its entirety at:  
<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/FederalRegulation.aspx>

**PURPOSE:** The purpose of this public notice is to advise applicants, sponsors, consultants, industry, and the general public of updated mitigation banking and in-lieu fee (ILF) program geographical service area description guidelines developed by the Ohio IRT. The updated service area description language will be inserted into the March 2011 "Guidelines for Wetland Mitigation Banking in Ohio," and December 2014 "Guidelines for Stream Mitigation Banking and In-Lieu Fee Programs in Ohio, version 1.0," which were developed by the Ohio IRT and established as living documents to be updated as science, regulation, and current practice warrants.<sup>1</sup>

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<sup>1</sup> The March 2011 "Guidelines for Wetland Mitigation Banking in Ohio," and December 2014 "Guidelines for Stream Mitigation Banking and In-Lieu Fee Programs in Ohio, version 1.0," were developed by the Ohio IRT in accordance with 33 CFR 332, and provide impact and mitigation recommendations (via ratios) applicable to all forms of compensatory mitigation (mitigation banks, ILF programs, permittee responsible mitigation).

The Corps' authority to regulate waters of the United States is based on the definitions and limits of jurisdiction contained in 33 CFR 328 and 33 CFR 329. Section 404 of the Clean Water Act requires a Department of the Army permit be obtained prior to discharging dredged or fill material into waters of the United States, including wetlands. Section 10 of the Rivers and Harbors Act of 1899 requires a Department of the Army permit be obtained for any work in, on, over or under a navigable water.

The purpose of compensatory mitigation is to offset environmental losses resulting from unavoidable impacts to waters of the United States authorized by Department of the Army permits. The Corps determines what compensatory mitigation is required based on the practicability of replacing the aquatic functions lost as a result of the permitted activity. Permit applicants are responsible for proposing an appropriate compensatory mitigation option commensurate with the amount and type unavoidable impacts. Compensatory mitigation may be performed using methods of restoration, enhancement, establishment, and in certain cases preservation in order to successfully improve aquatic resource functions.

**INTERAGENCY REVIEW TEAM:** As indicated in the Corps' regulations (33 CFR 332.8(b)), the district engineer will establish an IRT to review documentation for the establishment and management of mitigation banks and ILF programs. The primary role of the IRT is to facilitate the establishment of mitigation banks and/or ILF programs through the development of mitigation banking or ILF program instruments. The IRT reviews draft prospectus, prospectus, instruments, and other documents and provide comments to the Corps. The Huntington District Regulatory Division is the lead district for the State of Ohio and chairs the Ohio IRT on all statewide or multiple District prospectuses. Buffalo District and Pittsburgh District may serve as chair when reviewing/processing prospectuses within their geographic area of regulatory responsibility.

**HIERARCHY OF MITIGATION:** The mitigation rule establishes a hierarchy of mitigation preference for the Corps' regulatory program (33 CFR 332.3(b)(2) through (b)(6)). The compensatory mitigation preference hierarchy established in the mitigation rule is as follows: mitigation banks, ILF programs, permittee responsible mitigation under a watershed approach, permittee responsible mitigation through on-site and in-kind mitigation, and permittee responsible mitigation through off-site and/or out-of-kind mitigation. In general, compensatory mitigation for Corps permits should be located within the same watershed as the impact site and the size of the watershed should not be larger than is appropriate to ensure that aquatic resources provided through compensation activities will effectively compensate for adverse environmental effects resulting from authorized impacts. In the event a compensatory mitigation plan is proposed that deviates from the established hierarchy of options presented in 33 CFR 332.3(b)(2) through (b)(6), the applicant must demonstrate to the district engineer the mitigation plan (e.g. permittee-responsible) is more environmentally preferable than other available forms of compensatory mitigation provided through the traditional hierarchy of compensatory mitigation (33 CFR 332.3(a)(1)).

**MITIGATION BANKS:** Mitigation banks are sites where aquatic resources are restored, established, enhanced, and/or preserved for the purposes of providing compensatory mitigation for authorized impacts. Mitigation banks are reviewed and approved by the Ohio IRT and specific milestones associated with aquatic resource development are achieved prior to determining approved credits (for permittees to secure as compensatory mitigation). As of the

date of this public notice, twenty two mitigation banks have been approved by the Ohio IRT and are currently active within the State of Ohio. An approved mitigation bank does not necessarily have credits currently available or may only have a specific type of credit (e.g. stream credits or emergent wetland credits) available. Permit applicants may propose to use a particular bank to provide required compensatory mitigation, and are responsible for identifying credit availability. A mitigation bank sponsor is any public or private entity responsible for establishing, and in most circumstances, operating a mitigation bank. Information on approved mitigation banks, including the location of sites, available credits, and point of contacts, can be found on the Regulatory In-Lieu Fee and Banking Information Tracking System (RIBITS) at <https://ribits.usace.army.mil/>.

**MITIGATION BANK SERVICE AREAS:** A requirement of each approved mitigation bank instrument includes a geographical service area (33 CFR 332.8(d)(6)(ii)). The geographic service area is the watershed, ecoregion, physiographic province, and/or other geographic area within which the mitigation bank is authorized to provide compensatory mitigation. All impacts and compensatory mitigation must be accounted for by the service area, and service areas must be appropriately sized to ensure that aquatic resources provided will effectively compensate for adverse environmental impacts across the entire service area. The basis for the mitigation bank's service area is proposed by the sponsor and must be documented in the mitigation bank instrument, and must be approved by the Ohio IRT.

The Ohio IRT has evaluated and agreed upon service area recommendations for mitigation banks within the State of Ohio, as follows: The entire Ohio portion of the Corps District in which the bank is located is identified as a service area for all jurisdictional and isolated Category 1 wetlands of any size and isolated<sup>2</sup> Category 2 wetlands of 0.5 acre and less. For streams and all other wetlands, the service area is defined by a single 8 digit Hydrologic Unit Code (HUC) watershed unless the Ohio Wetland Water Quality Standards have combined multiple 8 digit HUCs into a single watershed, see enclosed map. Watersheds that would consist of more than one 8 digit HUC include:

04100001, 04100002, 04100009	Ottawa, Raisin, Lower Maumee
04100003, 04100005	St. Joseph, Upper Maumee
0411003 (minus the Chagrin River watershed), 04120101	Ashtabula, Conneaut
05080002, 05080003, 05090203	Lower Great Miami, Whitewater, Middle Ohio-Laughery
05120101, 05120103	Upper Wabash, Mississinewa

The Ohio IRT is establishing the above mitigation bank service area recommendations in order to promote a more consistent approach for geographical service area identification through a uniform watershed nomenclature. In addition, the Ohio IRT anticipates the recommendations will increase the likelihood for ecological success and sustainability of aquatic resources and ensure the mitigation banks effectively compensate for adverse environmental impacts across service areas.

**IN-LIEU FEE PROGRAM:** In-lieu fee is a form of compensatory mitigation where an applicant/permittee provides funds to an approved ILF program instead of purchasing credits from an approved mitigation bank or completing a specific compensatory mitigation project. The ILF sponsor (or recipient) uses these funds to restore, establish, enhance, and/or preserve aquatic

<sup>2</sup> Isolated wetlands are not subject to regulation under the Corps' regulatory authority pursuant to Section 404 of the Clean Water Act.

resources to satisfy compensatory mitigation requirements for Department of the Army permits. Sponsorship of ILF programs is specifically limited to governmental or non-profit natural resource management entities. As of the date of this public notice, four ILF programs have been approved by the Ohio IRT and are currently active within the State of Ohio. Information on approved ILF programs, including the location of sites, available credits, and point of contacts, can be found on the RIBITS at <https://ribits.usace.army.mil/>.

**IN-LIEU FEE PROGRAM SERVICE AREAS:** Approved ILF programs must have a geographic service area as a requirement of the approved ILF program instrument (33 CFR 332.8(d)(6)(ii) and (iv)). The geographic service area is the watershed, ecoregion, physiographic province, and/or other geographic area within which the ILF program is authorized to provide compensatory mitigation. All impacts and compensatory mitigation must be accounted for by the service area, and service areas must be appropriately sized to ensure that aquatic resources provided will effectively compensate for adverse environmental impacts across the entire service area. The basis for the ILF program's service area is proposed by the sponsor and must be documented in the ILF instrument, and must be approved by the Ohio IRT.

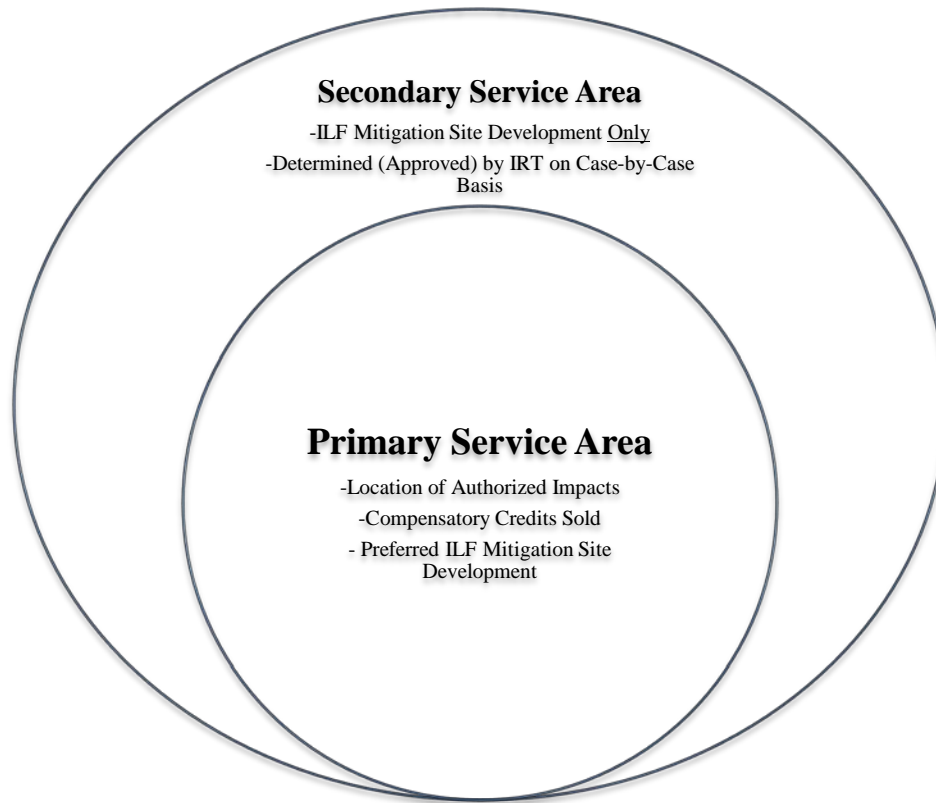
In order to establish a more consistent approach for geographical service area identification through a uniform watershed nomenclature and evaluating proposed, and accounting of approved compensatory mitigation to offset adverse environmental impacts across service areas through the hierarchy of mitigation and watershed approach, the Ohio IRT has evaluated and agreed upon the service area recommendation for ILF programs for the State of Ohio as designated below.

The primary service area for the stream and/or wetland ILF programs in Ohio is a single 8 digit HUC unless the Ohio Wetland Water Quality Standards have combined multiple 8 digit HUCs into a single watershed, see enclosed map. Primary services areas that would consist of more than one 8 digit HUC include:

04100001, 04100002, 04100009	Ottawa, Raisin, Lower Maumee
04100003, 04100005	St. Joseph, Upper Maumee
0411003 (minus the Chagrin River watershed), 04120101	Ashtabula, Conneaut
05080002, 05080003, 05090203	Lower Great Miami, Whitewater, Middle Ohio-Laughery
05120101, 05120103	Upper Wabash, Mississinewa

An ILF program's primary service area is the location where credits are sold to compensate for impacts authorized within the same primary service area. An ILF program's mitigation site provides mitigation within the primary service area where credits have been sold.

A secondary service area is only applicable to the ILF mitigation site development. Generally, the secondary service area is no larger than the 6 digit HUC containing the 8 digit HUC primary service area. Credits to compensate for impacts cannot be sold within a secondary service area. A secondary service area may be included in an ILF program instrument as the potential location of an ILF program's mitigation site only; the Ohio IRT would determine on a case-by-case basis if advanced credits sold in a primary service area can be fulfilled at an ILF mitigation site outside of the primary service area (i.e. elsewhere in the secondary service area). The diagram below illustrates the updated service area recommendation for ILF programs for the State of Ohio:



All of the 8 digit HUCs within a secondary service area may be specifically identified as individual primary service areas to facilitate compensatory credit sales and mitigation site development within the 8 digit HUCs identified. As described above, the Ohio IRT would determine on a case-by-case basis if credits from a primary service area(s) can be fulfilled at an ILF mitigation site in a secondary service area.

Impacts to Category 1 wetlands of any size and isolated Category 2 wetland impacts less than 0.5 acres should be mitigated in the primary service area of an ILF program where the authorized impacts occur.

The Ohio IRT is providing these recommendations to potential sponsors (as well as applicants/permittees) and, if appropriate, existing sponsors requesting a modification of their approved ILF program instrument(s). The aforementioned recommendations do not alter or replace any current regulations and do not alter in any way the mitigation sequence specified in the mitigation rule or in the Clean Water Act Section 404(b)(1) Guidelines. Any exceptions to the aforementioned recommendations will be evaluated on a case-by-case basis by the Ohio IRT.

**REQUEST FOR ADDITIONAL INFORMATION:** This public notice is for informational purposes and no comments are being requested. Questions pertaining to this public notice should be directed to the attention of Mr. Michael Hatten, who may be contacted at [Michael.e.hatten@usace.army.mil](mailto:Michael.e.hatten@usace.army.mil) or by calling 304-399-6918.

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Attachment: *Watersheds for Ohio Wetland Water Quality Standards*

Huntington District Web site:

<http://www.lrh.usace.army.mil/Missions/Regulatory/PublicNotices.aspx>

Buffalo District Web site:

<http://www.lrb.usace.army.mil/Missions/Regulatory/ActionsandNotices/PublicNotices.aspx>

Pittsburgh District Web site:

<http://www.lrp.usace.army.mil/Missions/Regulatory/PublicNotices.aspx>