

Public Notice

US Army Corps of Engineers

Louisville, Nashville,
Memphis and
Huntington Districts ®

Public Notice No.
LRL-2018-01040-pgj

Open Date:
31 Dec 2018

Closing Date:
30 Jan 2018

Please address all comments and inquiries to:
U.S. Army Corps of Engineers, Louisville District
ATTN: P. Grace-Jarrett, CELRL-RDE, Rm 752
P.O. Box 59
Louisville, Kentucky 40201-0059

Phone: 502-315-6687

NOTICE OF INTENT TO ESTABLISH RESOURCE-BASED, PRE-DEFINED SERVICE AREAS FOR THIRD PARTY MITIGATION WITHIN KENTUCKY

The Louisville, Nashville, Memphis and Huntington Districts of the U.S. Army Corps of Engineers (Districts), in accordance with 33 C.F.R 332, “Compensatory Mitigation for Losses of Aquatic Resources” (Mitigation Rule), announce the intent to establish resource-based, pre-defined service areas for third party mitigation within Kentucky. The proposal would: 1) set equivalent standards for all third party mitigation regarding service area, 2) streamline the approval process, 3) provide consistency, predictability and transparency to Sponsors and the public regarding the approval of service areas for mitigation bank and in-lieu fee projects within the Commonwealth of Kentucky, and 4) ensure compliance with 33 C.F.R. 332.

COVERAGE AREA: All “waters of the United States” (U.S.) within the Commonwealth of Kentucky.

PURPOSE: To implement resource-based, pre-defined service areas within Kentucky, available for all third party mitigation proposals.

DESCRIPTION OF THE SERVICE AREAS: The Mitigation Rule set equivalent standards for all third party mitigation and defined service area in the context of mitigation banks and in-lieu fee programs. A service area is “the watershed, ecoregion, physiographic province, and/or other geographic area within which the mitigation bank or in-lieu fee program is authorized to provide compensatory mitigation required by Department of Army permits” (33 C.F.R. 332.8). In accordance with ((33 C.F.R. 332.8(d)(6)(ii)(A)):

- “The service area must be appropriately sized to ensure that the aquatic resources provided will effectively compensate for adverse environmental impacts across the entire service area”.
- “Delineation of the service area must also consider any locally-developed standards and criteria that may be applicable.”

- “The economic viability of the mitigation bank or in-lieu fee program may also be considered in determining the size of the service area.”

The proposed service areas have been delineated based on these requirements and are depicted on the attached figures titled: “Kentucky Resourced-Based, Pre-Defined Service Areas for Third Party Mitigation, LRL-2018-01040”.

The Districts used mostly publically available, state and federal data as the basis for the service area delineation, including various databases maintained by the Commonwealth of Kentucky, as well as data maintained by the following federal agencies: the U.S. Geological Survey, the U.S. Fish and Wildlife Service, the U.S. Forest Service, the U.S. Environmental Protection Agency, and the U.S. Department of Agriculture.

Because of the diversity and distribution of the state’s aquatic resources and the need for appropriately-sized areas that would facilitate aquatic resource compensation throughout the entire service area, the type and distribution of aquatic resources as a function of ecological, state-wide, landscape- and watershed-scale factors were considered. Specifically, the proposed service areas are based on aggregation of level IV ecoregions, watershed boundaries, District boundaries, stream crediting protocols and distribution of aquatic species of greatest conservation need (including state and federally-listed and endemic taxa). Hydrology, topography, soil texture and chemistry, geology, distribution of mineral resources, land-use, habitat connectivity, and wetland and stream type and distribution were considered when determining the service area boundaries. The Districts also considered the potential need for mitigation associated with Corps’ authorizations, economic viability and environmental justice issues when delineating these service areas.

A copy of the paper documenting the method for determining the resource-based service areas is available by making a request, in writing, to the address listed above.

IMPLEMENTATION PROCEDURES: For new mitigation bank and in-lieu fee proposals, the Sponsor may request the resource-based, predefined service area where the mitigation site resides. Previously approved mitigation banks or in-lieu fee programs may continue to operate in accordance with the approved instrument or may request, in writing, modification of the instrument to utilize the resource-based service areas. In the event of a requested modification, the Districts will process the request in accordance with 33 C.F.R. 332.8 (g)(1). This proposal is considered guidance; as such, mitigation banks and in-lieu fee programs can continue to propose other service areas and the Districts will undertake case-specific determinations, consistent with 33 C.F.R. 332.8(d)(6)(ii)(A)).

REVIEW PROCEDURES: The Districts are soliciting comments regarding the proposed pre-defined service areas in accordance with the three factors listed above. Additionally, the Districts are soliciting input regarding the use of secondary service areas, proximity factors, or other measures to discourage resource export.

Regulatory Division
Mitigation/Compliance/Enforcement Branch
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This proposal will be reviewed in accordance with 33 C.F.R. 332. The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian tribes; the Interagency Review Team, and other interested parties in order to consider and evaluate the impacts of this proposal. It is presumed that all interested parties and agencies will wish to respond; therefore, a lack of response will be interpreted as meaning that there is no objection to the proposal. Any comments received will be considered by the Districts to determine whether to implement, modify, or take no action associated with this proposal. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposal.

Written statements received in this office on or before the closing date will become a part of the official record and will be considered in the determination of this proposal.

Information pertaining to this proposal is available for public examination during normal business hours upon prior request. Drawings are available on Louisville District's Internet site at <https://www.lrl.usace.army.mil/Missions/Regulatory/Public-Notices/>. All comments regarding this proposal should be addressed to Dr. Patricia A. Grace-Jarrett, CELRL-RDE at the address noted above and should refer to the Public Notice Number LRL-2018-01040-pgj.

If you desire to submit your comments by email, you must comply with the following:

- a) In the subject line of your email, type in **ONLY** the Public Notice ID No. LRL-2018-01040

Example:

Subject: LRL-2018-01040-pgj

- b) Provide your physical mailing address and telephone number.
- c) Send your email to: lrl.regulatorypubliccomment@usace.army.mil
- d) If you are sending attachments greater than 1 Mb in size with your email, you must send a hard copy (CD or paper) to the Corps' physical address as well.

Kentucky Resource-Based, Pre-Defined Service Areas for Third Party Mitigation

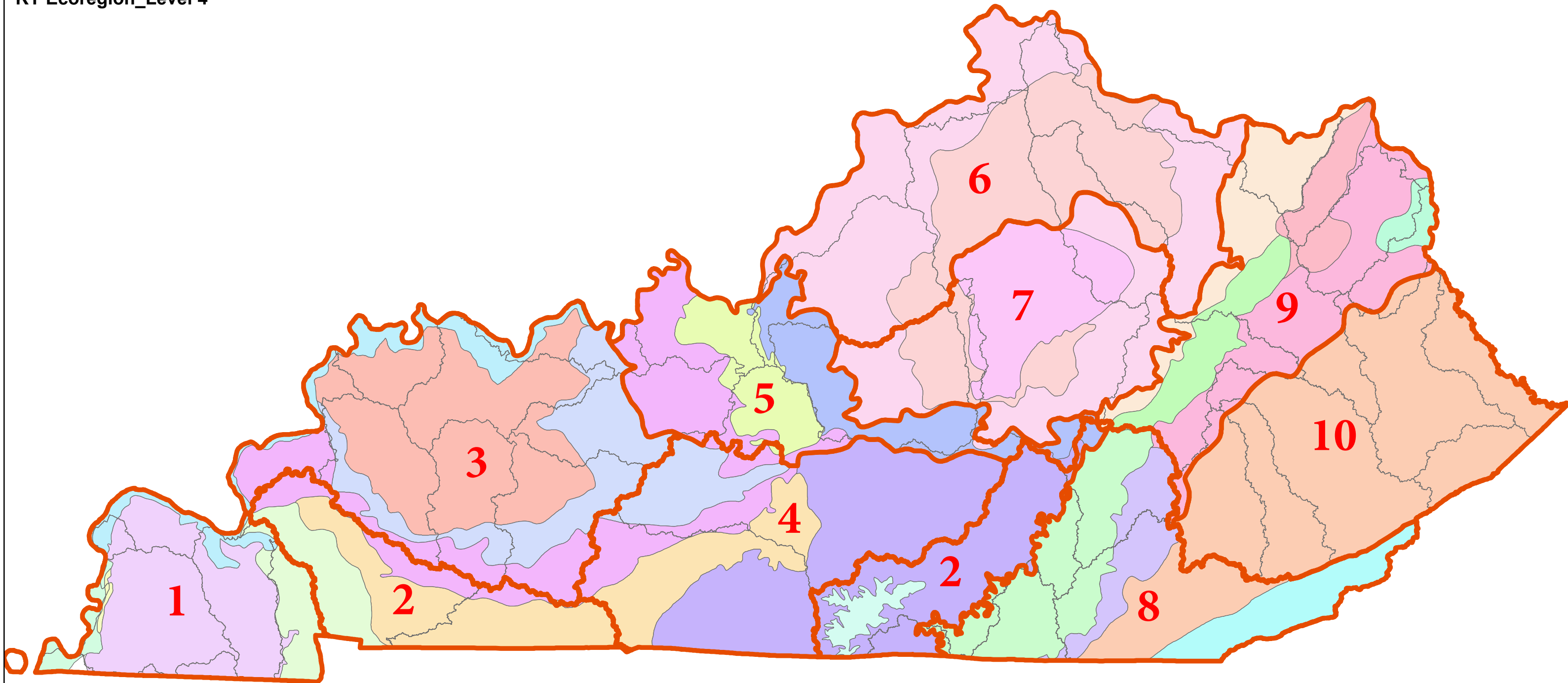
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Legend

 Service Areas

 HUC 8



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Kentucky Resource-Based, Pre-Defined Service Areas for Third Party Mitigation

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Legend

-  Service Areas
-  Counties

