



PUBLIC NOTICE

Comment Period Begins: October 22, 2024

Comment Period Ends: November 22, 2024

File Number: NAE-2005-01143

In Reply Refer to: Mr. Taylor Bell

Phone: (978) 318-8952

Email: Taylor.m.bell@usace.army.mil

SUBJECT:

This notice announces a request to modify the State of Maine – In Lieu Fee Program (ILF) Instrument for the addition of three individual projects.

ILF PROGRAM SPONSOR:

Maine Department of Environmental Protection
17 State House Station
28 Tyson Drive
Augusta, Maine 04333-0017

BACKGROUND:

The Maine Department of Environmental Protection is the sponsor of the Maine ILF Program which serves as an alternative form of compensatory mitigation for impacts to aquatic resources. The Maine ILF program is authorized by the New England District, U.S. Army Corps of Engineers (Corps). A copy of the signed ILF agreement titled “State of Maine-In Lieu Fee Program Instrument,” dated “August 17, 2011,” includes details about the ILF Program goals and objectives in general and can be found at the following here: <https://www.nae.usace.army.mil/Missions/Regulatory/Mitigation/In-Lieu-Fee-Programs/ME/NRCP/>

The Maine ILF program received proposals for three projects submitted as proposed additions to the ILF Instrument pursuant to 33 CFR 332, Compensatory Mitigation for Losses of Aquatic Resources (Federal Register: April 10, 2008, effective June 9, 2008). Pursuant to 33 CFR 332.8(d), USACE will provide public notice of the proposed addition of ILF program mitigation sites.

The Maine ILF Program accrued funds from the sale of compensatory mitigation credits resulting from USACE and Maine Department of Environmental Program-permitted impacts in the State of Maine. The funds were made available through a competitive grant process for the preservation, restoration, and enhancement of wetland and watercourse resources with associated upland buffers in the State of Maine.

GENERAL INFORMATION:

An ILF program involves the restoration, establishment, re-establishment, enhancement, rehabilitation, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for Department of the Army permits. Similar to a mitigation bank, an ILF program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the ILF program sponsor. The operation and use of an ILF program are governed by an ILF program instrument. A group of federal and state regulatory and resource agency representatives known as the Interagency Review Team (IRT) oversees the establishment and management of the program. The IRT is chaired by the Corps and the primary role of the IRT is to facilitate the establishment of the ILF program through the development of an ILF Instrument. The IRT also reviews ILF mitigation proposals and provides comments to the Corps. The approval of the use of the ILF program for specific projects is the decision of the Corps pursuant to Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act (CWA). The Corps provides no guarantee that any individual or general permit proposing to use the ILF program for compensatory mitigation would be authorized.

PROJECT DESCRIPTION: Detailed project descriptions consistent with a Prospectus are located here:

https://ribits.ops.usace.army.mil/ords/f?p=107:378:11924998040689:::P378_PROGRAM_ID:261

ESSENTIAL FISH HABITAT:

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires all federal agencies to consult with the National Marine Fisheries Service on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). EFH describes waters and substrate necessary for fish to spawn, breed, feed, or grow to maturity.

The District Engineer has made a preliminary determination that site-specific adverse effects will not be substantial, if there is any impact at all. Further consultation with the National Marine Fisheries Service regarding EFH recommendations is being conducted and will be concluded prior to the final decision.

NATIONAL HISTORIC PRESERVATION ACT:

Based on our initial review, the proposed activity would not affect historic properties. Additional review and consultation to fulfill requirements under Section 106 of the National Historic Preservation Act of 1966, as amended, will be ongoing as part of the review process.

ENDANGERED SPECIES CONSULTATION:

The USACE is reviewing the applications for the potential impact on Federally listed threatened or endangered species and their designated critical habitat pursuant to section 7 of the Endangered Species Act as amended. Our review will be concluded prior to the final decision.

OTHER GOVERNMENT AUTHORIZATIONS:

The states of Connecticut, Maine, Massachusetts, New Hampshire, and Rhode Island have approved Coastal Zone Management Programs. Where applicable, the applicant states that any proposed activity will comply with and will be conducted in a manner that is consistent with the approved Coastal Zone Management Program. By this public notice, we are requesting the state concurrence or objection to the applicant's consistency statement.

The following authorizations have been applied for, or have been, or will be obtained:

- (X) Permit, license or assent from State.
- (X) Permit from local wetland agency or conservation commission.
- (X) Water Quality Certification in accordance with Section 401 of the Clean Water Act.

COMMENTS:

The Corps is soliciting comments from the public, federal, state, and local agencies and officials, Native Tribes, and other interested parties to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition, or deny a permit if needed for these proposals. 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 the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act, and to determine the need for a public hearing and gauge the overall public interest of the proposed activity.

After the end of the comment period, the district engineer will review all comments received and make a determination as to the potential of the proposed projects to provide compensatory mitigation for activities authorized by DA permits. That determination will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposals, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposals will be considered, including the cumulative effects thereof; among those are: conservation, economics, aesthetics, general environmental concerns, wetlands, cultural value, fish and wildlife values, flood hazards, flood plain value, land use, navigation, shoreline erosion and accretion,

recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people.

All comments received will be available for public review in their entirety and will be considered a matter of public record. In order to properly evaluate the proposal, we are seeking public comment. Anyone wishing to comment is encouraged to do so. Comments should be submitted in writing by the above date. If you have any questions, please contact Mr. Taylor Bell at taylor.m.bell@usace.army.mil, (978) 318-8952, (800) 343-4789, or (800) 362-4367.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the modification. Requests for a public hearing shall specifically state the reason(s) for holding a public hearing. The Corps holds public hearings for the purpose of obtaining public comments when that is the best means for understanding a wide variety of concerns from a diverse segment of the public.

The initial determinations made herein will be reviewed in light of facts submitted in response to this notice. Copies of letters of objection will be forwarded to the applicant. Typically, the Corps will request that the applicant contact objectors directly in an effort to reach an understanding.

THIS NOTICE IS NOT AN AUTHORIZATION TO DO ANY WORK.



Stephen V. Rochette
Acting Chief, Technical Support Branch
Regulatory Division

Please contact Ms. Tina Chaisson at bettina.m.chaisson@usace.army.mil or (978) 318-8058 if you would like to be removed from our public notice mailing list.

Maine Natural Resource Conservation Program
2024 Proposals

MNRCP Region	Project Name	Project Sponsor	Town	Total Cost	Funds Requested	Total Acres	Compensation Type
Central Interior and Midcoast	Center Point Road Tidal Enhancement	Kennebec Estuary Land Trust	Bowdoinham	\$502,807	\$468,807	0.1	Restoration, Enhancement
Southern Maine	Granite Point Marsh Enhancement	US Fish and Wildlife Service	Biddeford	\$506,176	\$367,520	51.2	Enhancement
Southern Maine	Smith Preserve Wetland Restoration	Kennebunkport Conservation Trust	Kennebunkport	\$232,200	\$218,000	3.5	Restoration

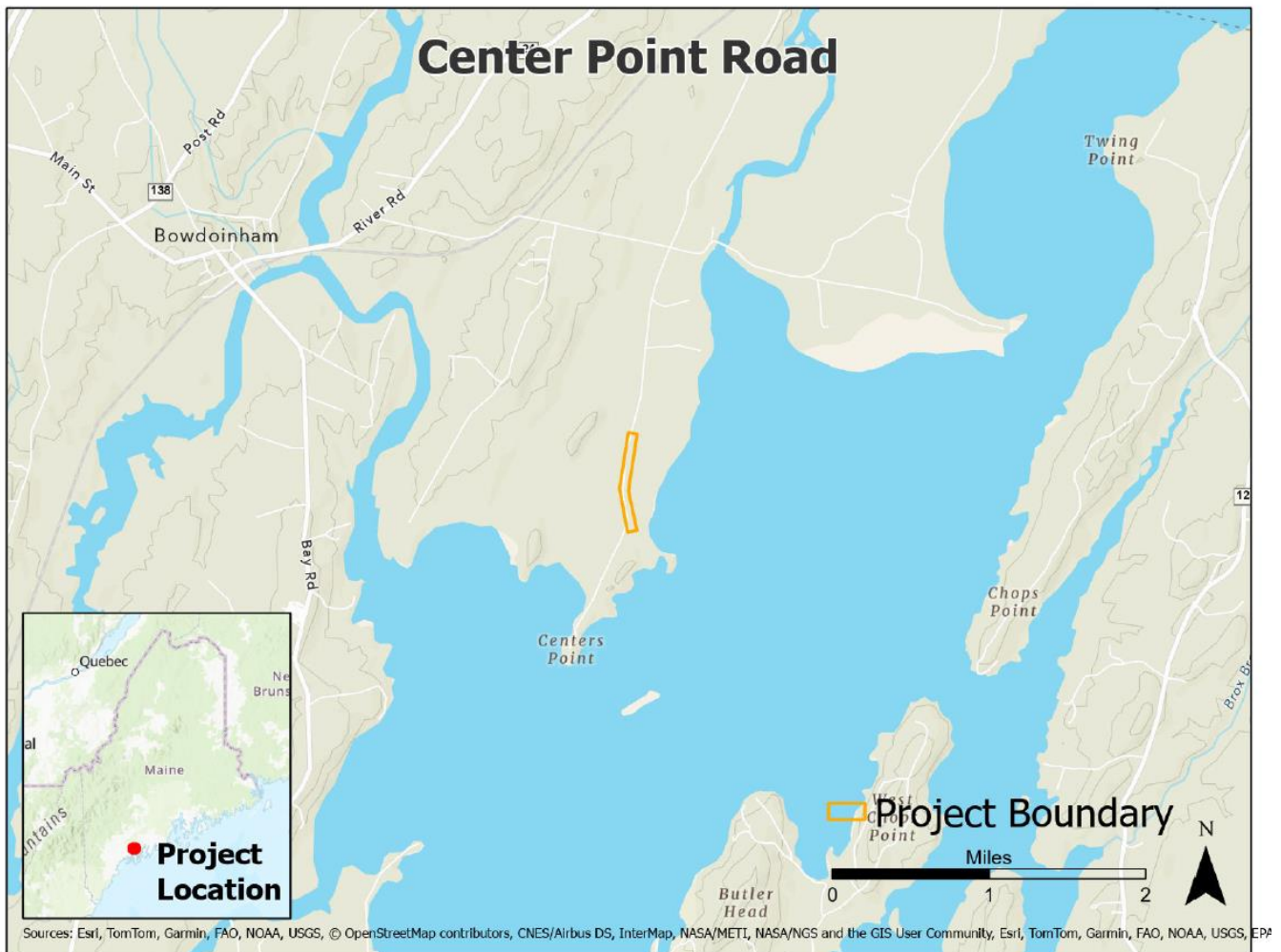
Central Interior & Midcoast Region

Project: Center Point Road Tidal Enhancement

Applicant: Kennebec Estuary Land Trust

Location: Bowdoinham, Sagadahoc County, Latitude 43.994161°, Longitude -69.860677°

Center Point Road has three undersized and incorrectly placed culverts that are preventing the freshwater tidal waters of Merrymeeting Bay from freely flowing in and out of a large freshwater tidal wetland system. This limits the sediment supply to the upstream wetlands, causes flooding by trapping water upstream for extended periods of time, and diminishes the resilience of the tidal wetland system. The new structures will facilitate unrestricted tidal flow in and out of the upstream wetlands, increasing the health and resilience of the upstream tidal wetland system. It will also directly restore a small area of scrub-shrub wetlands (~0.02 acres) by removing fill at the sites of the existing, degraded crossings. The wetlands around Center Point Road have been identified as Inland Waterfowl and Wading Bird Habitat by the Maine Department of Inland Fisheries and Wildlife. The project area is part of the Kennebec Estuary Focus Area of Statewide Ecological Significance.



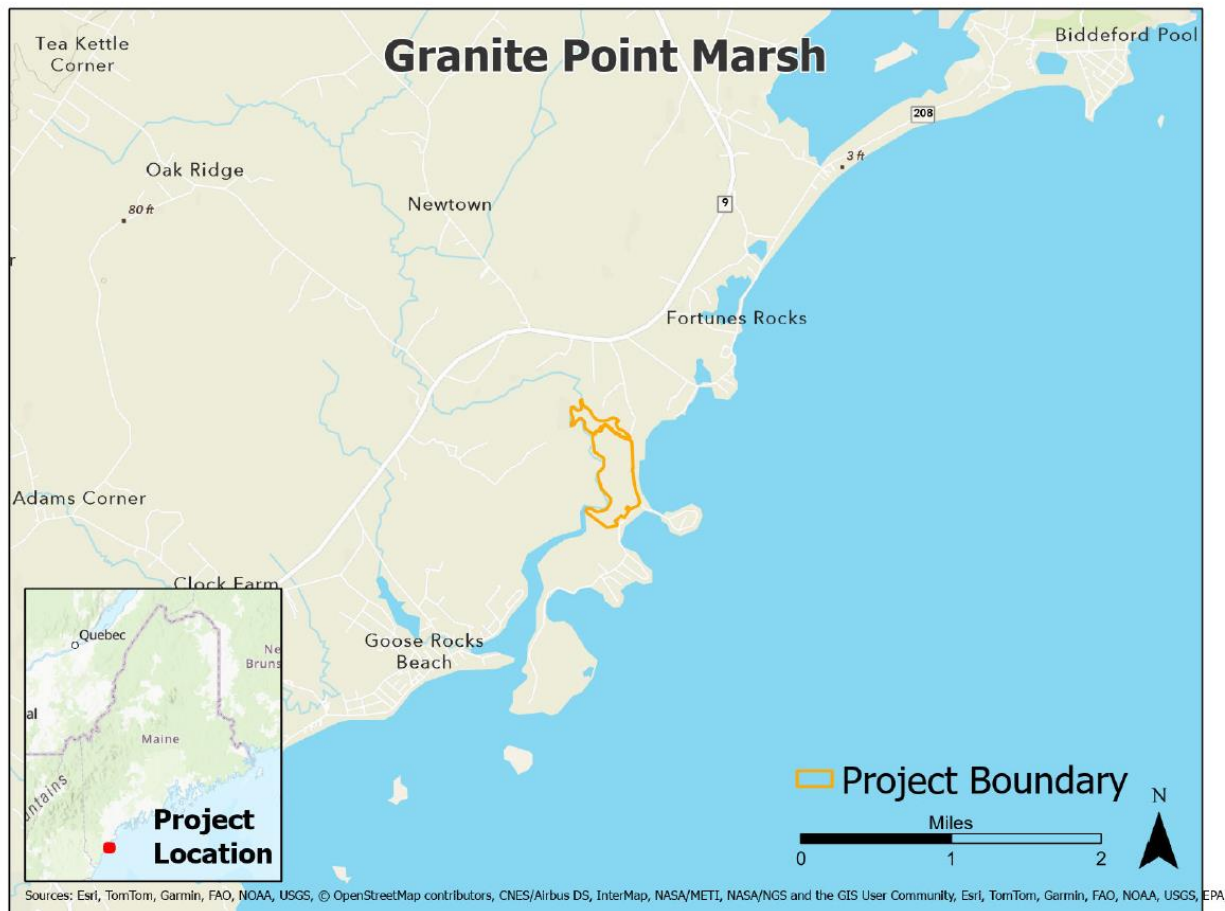
Southern Maine Region

Project: Granite Point Marsh Enhancement

Applicant: US Fish and Wildlife Service

Location: Biddeford, York County, Latitude 43.414905°, Longitude -70.389290°

USFWS proposes to enhance 51.2 acres of salt marsh (estuarine intertidal, high marsh) located on the Rachel Carson National Wildlife Refuge in Biddeford. The area is part of the Biddeford / Kennebunk Coastal Forest Focus area of Statewide Ecological Significance and contains state-mapped rare *Spartina* Salt Marsh, a rare plant population (*Agalinis maritima*), and breeding habitat for the State-Endangered Saltmarsh Sparrow. The site has two major types of alterations: prior farming history and a ditch plug project implemented in 2000. Because of these alterations, this marsh is currently experiencing secondary succession resulting in vegetation dieback, formation of megapools, and overall elevation loss. The project will proceed in 2 phases: Phase 1 involves remediating the effects of ditch plugging across 10.5 acres of the most intensively plugged section of marsh. The design-build costs of this area have already been funded by Rachel Carson NWR. Phase 2 involves restoration of single channel tidal networks to rectify marsh surface hydrology in the remaining acres. The project will be a significant “ecological lift” to the entire site through restoration of vigorous plant growth resulting in enhanced elevation gain and restoration of marsh habitat. This site is important in maintaining not only wildlife and habitat resiliency, but through that, increasing the resiliency of the entire estuary and local coastal community.



Project: Smith Preserve Wetland Restoration

Applicant: Kennebunkport Conservation Trust

Location: Kennebunkport, York County, Latitude 43.417406°, Longitude -70.461282°

The Kennebunkport Conservation Trust (KCT) will restore approximately 3.5 acres of freshwater scrub-shrub wetland within the Edwin L. Smith Preserve, adjacent to the Batson River. The area is part of the Biddeford / Kennebunk Coastal Forest Focus area of Statewide Ecological Significance. The site is currently a ditched hay field, with herbaceous wetland plants and hydric soil occurring in the drainage ditches. The hay field drains into a floodplain of the Batson River, which flows south along the eastern property boundary and runs through three different KCT preserves before reaching the ocean. Restoring the back portion of the hayfield to wetland would help mitigate the effects of the Batson River's flooding during heavy rain events, which are anticipated to be more frequent and severe due to climate change. Plus, scrub-shrub wetlands store four times more carbon in their soils than farmed wetlands. A scrub-shrub wetland would provide breeding and feeding habitat for many bird species and could be an important habitat for rare turtles that have been observed in the area. Site work will likely include reconnecting ditches and creating pit and mound microtopography to restore hydrology, exploring if tile drains are present, and managing invasives. Few invasive plants have been identified in the project area (reed canary grass), however bittersweet and shrubby honeysuckle occur along the back edge of the field, in an adjacent upland area. KCT is committed to assisting with long-term monitoring and adaptive management including management of invasive species.

