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New England District

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PUBLIC NOTICE

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This public notice is to share with the public the **“Ducks Unlimited Vermont In-Lieu Fee Program Annual Report – January 1, 2022 – June 30, 2022” dated “October 31, 2022”**. The In-lieu Fee (ILF) program serves as an alternative form of compensation for impacts to aquatic resources authorized by the United States Army Corps of Engineers (USACE) New England District and/or the State of Vermont Department of Environmental Conservation.

Compensatory mitigation occurs in circumstances where a permittee is required to compensate for the functions and values of aquatic resources lost as a result of the authorization after all efforts are made to avoid and minimize impacts. ILF is an option available to the applicant instead of completing permittee-responsible mitigation. Use of the ILF program is contingent upon USACE and/or State approval.

All ILF agreements in New England are available on the Corps’ website:
<https://www.nae.usace.army.mil/Missions/Regulatory/Mitigation/In-Lieu-Fee-Programs/>

Frank J. DelGiudice
Chief, Permits and Enforcement Branch
Regulatory Division

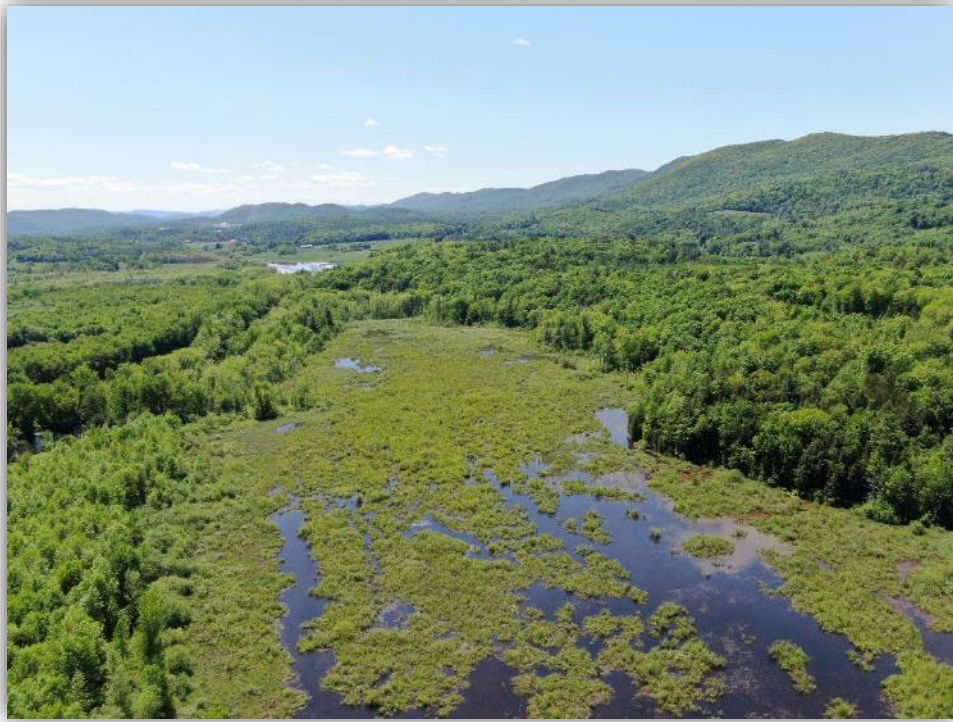
If you would prefer not to continue receiving Public Notices, please contact Ms. Tina Chaisson at (978) 318-8058 or e-mail her at bettina.m.chaisson@usace.army.mil. You may also check here () and return this portion of the Public Notice to: Bettina Chaisson, Regulatory Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751.

NAME: _____

ADDRESS: _____

Ducks Unlimited Vermont In-Lieu Fee Program

Annual Report – January 1, 2022– June 30, 2022



Otter Creek (Twin Oaks) Brandon, Vermont 2022.



**GREAT LAKES &
ATLANTIC REGION**

October 31, 2022

1. Executive Summary

The Ducks Unlimited (DU) Vermont In-Lieu Fee Program (DU-VT-ILF) was established in 2011 as an option for compensatory mitigation in Vermont. The program has four Service Areas. The Program historically submitted annual financial and credit transaction reports on a calendar year basis, however the program is going to submit on a fiscal year basis to increase operating efficiency going forward. The majority of payments received to date have been in the Richelieu Service Area. This trend continued in 2022, with one credit transaction in the Connecticut River and 4 credit transactions in the Richelieu Service Area.

DU performed adaptive management at the first ILF site, Three Mile Bridge in the Richelieu Service Area, consisting of control of reed canary grass. In 2022, DU continued invasive species control and has planned a supplemental tree planting to address attrition of planted stock under moderate drought conditions the last couple of years. DU also purchased approximately 170 acres at the Twin Oaks Site along Otter Creek in Brandon, Vermont. DU is developing a mitigation plan for the restoration of the property shortly thereafter.

DU has acquired and initiated projects in all Service Areas except for the Upper Hudson Service Area where only 1.08 credits have been sold. In the fall of 2022, DU identified a potential project along the Battenkill River in the Upper Hudson Service Area and will be bringing the potential project to the IRT for consideration following securing an option to purchase or a purchase agreement. The potential project includes thousands of feet of stream frontage, and dozens of acres of wetland protection opportunity – appearing suitable for meeting outstanding credit obligations in this watershed. DU will continue to work with the Corps and the IRT to see that credit obligations are met, including utilizing a recent ILF program amendment that allows the transfer of funds from the Richelieu Service Area to the Upper Hudson Service Area.

DU has begun updating the original program instrument to incorporate past program amendments, modernize the compensation planning framework, incorporate a site selection flowchart among other edits. DU anticipates submittal of the updated instrument in 2023. DU is beginning to report annual programmatic finances and transactions on a fiscal year as opposed to calendar year basis. To convert from calendar to fiscal year reporting basis, this report includes

information transaction details from January 1, 2022 to June 30, 2022. Next years' report for fiscal year 2023 will be for full period from July 1, 2022 to June 30, 2023. This aligns with DU's annual financial accounting period and will lead to increased efficiency in producing financial information required by the ILF program as it will align with year-end processes, reducing the need for duplication of efforts.

The following sections describe program mechanics, funds collected, and progress towards implementation in each Service Area. In sum DU has protected four properties in three service areas (Richelieu, Connecticut River, St. Francois) totaling 734.24 acres, and DU anticipates being able to deliver approximately 72 credits. Through June 2022, a total of 44.639 credits have been sold through the DU-VT-ILF Program.

2. Introduction

The Ducks Unlimited Vermont In-Lieu Fee Program (DU-VT-ILF) is an option for compensatory mitigation for unavoidable impacts to waters of the United States (U.S.) in the State of Vermont, and portions of New York within the Lake Champlain watershed. Permits are required by the U.S. Army Corps of Engineers ("Corps") for the discharge of dredged or fill material into waters of the U.S. under Section 404 of the Clean Water Act (CWA); for work and structures in or affecting navigable waters of the U.S. under Section 10 of the Rivers and Harbors Act; and by the Vermont Department of Environmental Conservation (DEC) under Section 9 of the Vermont Wetland Rules. These regulatory agencies require that aquatic resource functions and services lost due to impacts be replaced through compensatory mitigation after addressing avoidance and minimization of impacts. The DU-VT ILF program contains four service areas that cover the entire state of Vermont, and three 8-digit Hydrologic Unit Code watersheds that extend into New York (Figure 1). This report outlines the DU-VT ILF program activities from January 1, 2022 through June 30, 2022.

3. Impacts and Fees Received

During the period of this annual report, six (6) total In-Lieu Fee (ILF) payments were received across two (2) Service Areas. The tables that follow provide information on ILF payments, impact types and amounts, and funds available for future ILF projects.

- Table 1 provides a full list of the permitted impacts that have generated ILF payments from January 1 – June 30, 2022. Included in this table is the applicant, date the payment was received, project name, permit numbers, town of impact, habitat type impacted, required amount of compensatory mitigation and the amount of the payment. This table is sorted by service area.
- Table 2 shows the financial account ledger for the DU-VT-ILF program. Included in this table is the starting balance, payments received, administration fees collected, interest earned, disbursements made and the remaining account balance. This table is broken down by service area.
- Table 3 is the credit ledger for the DU-VT-ILF program. This table shows the authorized advance credits, advance credits sold, credits released, released credits sold (in excess of satisfied advance credits), and the total credits available, broken down by service area.

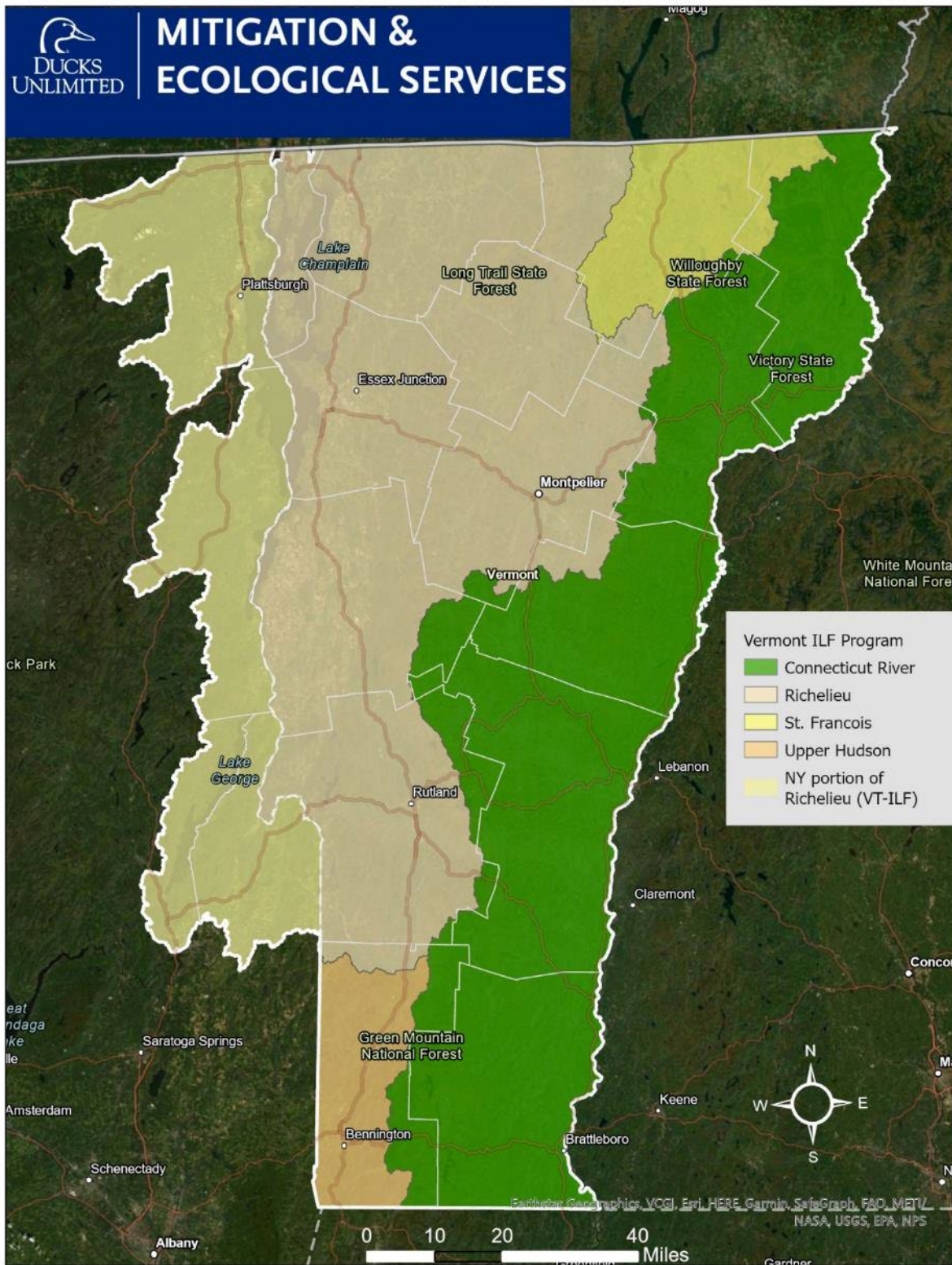


Figure 1. Service Area Map. The DU-VT-ILF program consists of 4 Service Areas. The Richelieu Service Area extends into New York – payments into the VT-ILF program for New York Impacts must be satisfied in the Vermont portion of the Richelieu Service Area.

4. Project Implementation

Richelieu Service Area

Three Mile Bridge is the first ILF site in the Richelieu Service Area. It was constructed in 2018, and an as-built report was submitted on March 21, 2019. The site was planted with shrubs and trees in the spring of 2019. Based on site conditions at the as-built stage, the site is expected to produce approximately 22.809 wetland credits. The Third monitoring report was submitted on December 31, 2021. No monitoring report was required in 2022.

DU donated the property to the State of Vermont as an addition to Cornwall Swamp Wildlife Management area in 2020. A Corps-approved long-term management plan was filed to the deed at the time of transfer to the State. DU provided \$100,000 in long-term stewardship endowment funds to the state for perpetual management of the site.

The project at Three Mile Bridge Road adds flood storage to the Middlebury River floodplain through installation of ditch plugs and contouring along old swale features. Additionally, there is an extensive vegetation management component at the site, whereby DU is controlling reed canary grass and using a combination of tilling, herbicide application, and seeding/planting to steer the community toward a native wetland plant community. Herbicide applications were performed in 2019, 2020, 2021, and 2022 to control reed canary grass, and DU will continue invasive species management in 2023. In 2022 efforts have shifted to tree-replanting and maintenance mowing. A combination of drier than average conditions and competition from forbs and grasses hindered establishment of the trees planted at the site. A large-scale replanting is scheduled for November 2022, with DU slated to perform semi-annual maintenance mowing around trees to help free them from competition. DU will be hiring a seasonal technician to perform tree maintenance (e.g., weeding and mowing around tubes, pruning, re-staking, watering)

DU closed on the 169-acre property at the Twin Oaks Site along the Otter Creek in Brandon, Vermont in 2022. In the summer of 2022, a delineation was performed in the summer 2022. DU staff will be verifying the delineation with USACE in the fall and developing the initial

mitigation plan over the winter. This site, with 3 Mile Bridge, is anticipated to meet current credit obligations.

Connecticut River Service Area

In 2018, DU closed on a 183.39-acre (+/-) property in the Connecticut River Service Area. DU submitted a final mitigation plan for the Connecticut River site in 2019 which was approved by the Corps on March 5, 2020. The site protects a rare plant community (northern white cedar swamp), big game species (moose, deer, bear), and a beaver ponded wetland provides habitat for waterfowl (e.g., mallard, black, and wood ducks). DU donated the property to the Northeast Wilderness Trust (NEWT) for long-term stewardship and management. A Corps-approved long-term management plan was filed to the deed at the time of transfer to NEWT. DU provided \$56,371.00 in long-term stewardship endowment funds to NEWT which was placed in a non-wasting, interest-bearing account managed by a third-party fiduciary. The site produced 11.11 credits. DU retained a conservation easement on the property and placed \$51,345 in an internal non-wasting endowment account to support CE monitoring and enforcement. All requirements of the mitigation plan have been fulfilled. DU continues to monitor the easement on this property and the property was in compliance with the terms of the easement in 2022.

St. Francois Service Area

DU closed on a 243.90-acre property in the St. Francois Service Area in early 2019; planning work including: wetland delineation, topographic survey, soil data collection, engineering design, were completed in 2020. A revised mitigation plan was submitted on August 24, 2020, and following discussion and response to agency comments, a final mitigation plan for the site was submitted on March 10, 2021 and approved on April 9, 2021. The project will be phased as funding levels permit construction. DU estimates the site will produce 23.394-credits. DU is exploring options to gain a long-term owner of the property, DU is in discussions with the Abenaki Tribe as a potential owner. There have been no credit sales in this watershed in recent years, which hinders opportunities to fund construction.

Upper Hudson Service Area

Only two credit sales totaling 1.08-credits have occurred in the Upper Hudson River Service Area. In 2020 an Instrument Amendment was approved to enable the District Engineer to consider a DU request to transfer associated funds to an adjacent Service Area where they can be more readily satisfied. DU is currently pursuing a preservation project along the Battenkill River in Manchester Vermont. DU is in the process of securing internal board approval to forward a purchase agreement to the owners, following which DU plans to advance the project for IRT consideration.

Table 1: Payments Received in 2022 by Service Area

DU-VT ILF Service Area	Applicant	Date Payment Received	Project Name	Permit Numbers	Town	Acres of Impact	Habitat Type Impacted	Required Compensatory Mitigation (Acres)	Amount of Payment
Connecticut	VT Transco, LLC	6/30/2022	K-32 Transmission Line	NAE-2022-01009	Mt Holly	0.72	PEM, STREAM	0.715	\$126,758.67
Richelieu	Vermont AOT	3/31/2022	Knapp State Airport	DEC: 2021-1099	Berlin	0.131	PFO	0.02	\$3,603.89
Richelieu	Vermont AOT	2/23/2022	Franklin County State Airport	DEC:2017-551.01	Barre		PFO	2.754	\$496,255.76
Richelieu	City of Burlington	5/27/2022	Champlain Parkway	NA-2010-01705	Burlington	0.957	PEM, PFO, STREAM	0.957	\$172,446.17
Richelieu	Green Mountain Power	4/12/2022	Molly's Falls Reservoir	NAE-2018-00983	Colchester	0.56	PEM, PFO	0.307	\$55,319.72
Richelieu	Velco	4/7/2022	Florence Substation Project	NAE-2021-02766	Rutland	0.84	PFO, PEM	0.358	\$64,509.65
Totals								<u>5.111</u>	<u>\$918,893.86</u>

Table 2: 2022 Financial Account Ledger

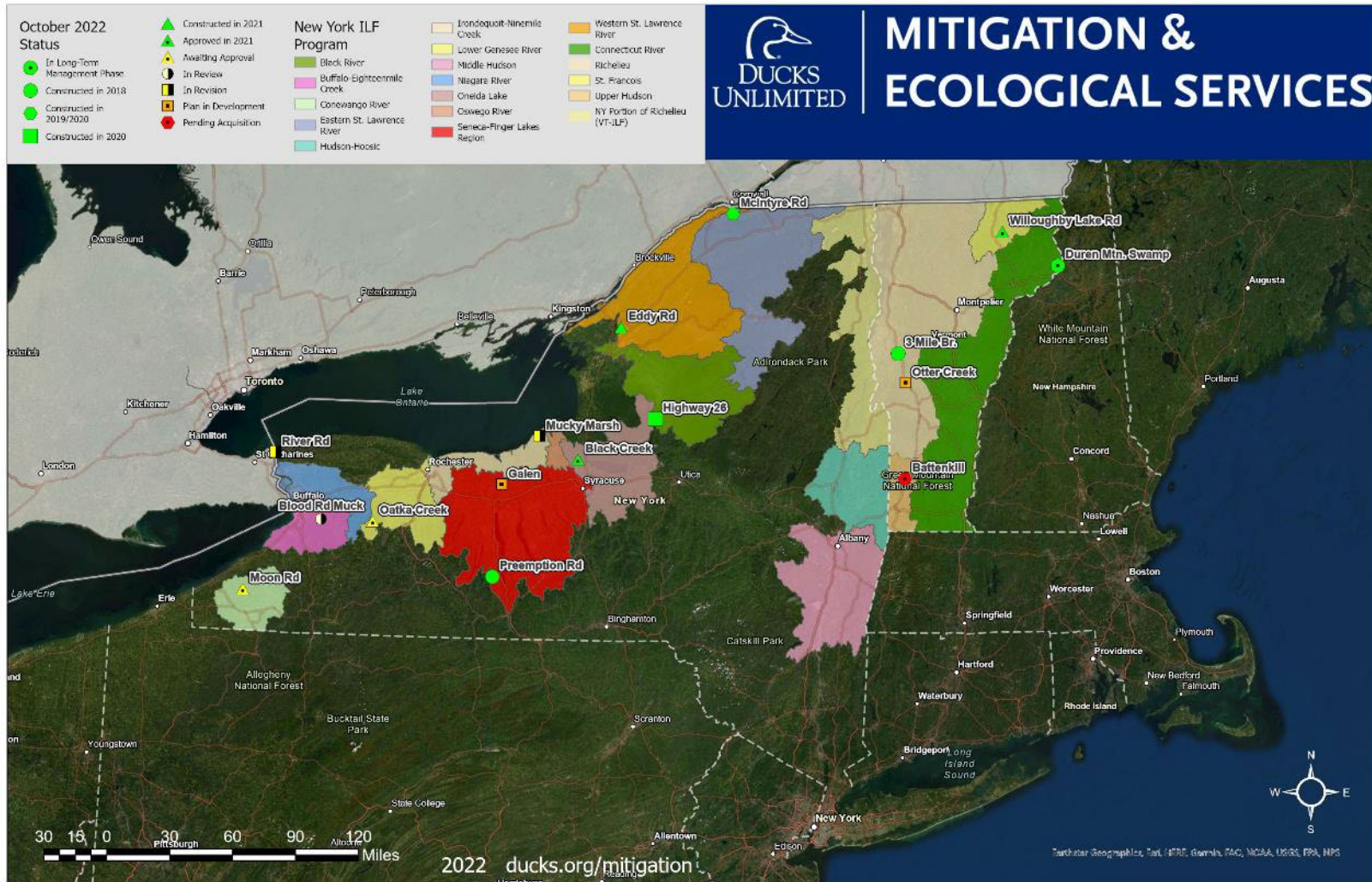
As project implementation costs exceeded Service Area Funds in the Connecticut River Watershed, DU has been providing financial support to the Service Area in the form of a no-cost loan from the administrative account. As credit sales occur, the administrative account is replenished and the debt load of the watershed reduced. Currently the watershed owes the administrative account \$29,585.08. Ducks Unlimited, periodically reviews past reporting and transactions for accuracy. During reviews it was discovered that some expenses had been reported erroneously in more than one reporting year, balances have been updated to reflect actual program expense which was less than reported for all watersheds with the exception of the Connecticut River watershed, which had underreported \$69.90 in expenditures. Expenses reflect all costs incurred within a watershed; funds are only disbursed from the ILF bank account following receipt of approval to disburse funds.

DU-VT ILF Service Area	Jan 1, 2022 Account Balance	Payments	Administration Fee	Interest Earned	Expenses	June 30, 2022 Remaining Account Balance	Explanation of Expenses incurred	Notes
Connecticut River	(\$134,160.99)	\$126,758.67	\$22,182.77	\$0.00	\$0.00	(\$29,585.08)		Expenses totaling \$69.60 were omitted in a prior report; starting balance was adjusted to reflect.
St. Francois	\$92,781.30	\$0.00	\$0.00	\$2.09	\$31,302.78	\$61,480.61	Garbage dump cleanup and exploration of long-term steward	Starting balance was adjusted upwards; as an expense straddling calendar years was reported in consecutive reports.
Richelieu	\$1,989,600.69	\$792,135.19	\$138,623.66	\$148.87	\$197,126.50	\$2,446,134.59	Adaptive management and spraying at 3 Mile Bridge; site id, conceptual plan at Twin Oaks.	Starting balance was adjusted upwards; as an expense straddling calendar years was reported in consecutive reports. Twin Oaks acquisition and closing were paid after this reporting period.
Upper Hudson	\$111,987.15	\$0.00	\$0.00	\$6.75	\$5,070.25	\$106,923.65	Site ID work	Starting balance was adjusted upwards; as an expense straddling calendar years was reported in consecutive reports.
Totals		\$918,893.86	\$160,806.43	\$157.71	\$233,499.53	\$2,584,953.76		

Table 3: 2021 Credit Ledger by Service Area

Service Area	Authorized Advance Credits	Previous Advance Credits Sold	Advance Credits Sold	Credits Released	Credits Available	Cumulative Credits Sold
Connecticut River	25	3.3080	0.7150	11.1100	33.517	4.023
St. Francois	25	8.0800	0.0000	5.0920	22.012	8.080
Richelieu	154	27.4160	4.3960	14.6690	145.649	31.812
Upper Hudson	25	1.0800	0.0000	0.0000	23.920	1.080
Totals	229.0000	39.8840	5.1110	30.8710	225.0980	44.9950

Appendix B. Project Status Map



Graphic includes both the VT-ILF and the Sister New York ILF Program with current status as of February 2022. DU is working to secure both Otter Creek Twin Oaks and the Pyle Farm in the Richelieu Service Area.