



**US Army Corps
of Engineers®**
New England District
696 Virginia Road
Concord, MA 01742-2751

PUBLIC NOTICE

Comment Period Begins: May 3, 2022

Comment Period Ends: June 2, 2022

File Number: NAE-2007-02926

In Reply Refer To: Ruth Brien

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SUBJECT: This notice announces a request to modify the Commonwealth of Massachusetts In-lieu Fee ("ILF") Program Instrument for the addition of the Blackwater Memorial Swamp Restoration Project in Kingston, Massachusetts.

ILF PROGRAM SPONSOR: Department of Fish and Game
251 Causeway Street, Suite 400
Boston, Massachusetts 02114

BACKGROUND: The Department of Fish and Game is the sponsor of the Massachusetts ILF Program which serves as an alternative form of compensatory mitigation for aquatic resource impacts. The Massachusetts ILF program is authorized by the New England District, Army Corps of Engineers (the "Corps"). A copy of the signed ILF agreement entitled "Commonwealth of Massachusetts Final In-Lieu Fee Program Instrument" dated May 23, 2014, includes details about the ILF Program goals and objectives in general and can be found at the following link:

<https://www.nae.usace.army.mil/Portals/74/docs/regulatory/Mitigation/MA/MAILFInstrument.pdf>

The Blackwater Memorial Swamp Restoration Project has been submitted as a proposed addition 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), the District Engineer will provide public notice of the proposed addition of ILF program mitigation sites. As such, we are issuing a public notice to solicit comments for the instrument modification due to the proposed addition of an ILF mitigation site.

The Massachusetts ILF Program accrued funds from Army Corps of Engineers Department of the Army permitted impacts throughout the State of Massachusetts. The funds were made available through a competitive grant process for the preservation, restoration and enhancement of wetland and watercourse resources and associated upland buffers in the State of Massachusetts. The District Engineer has received a proposed project from an applicant who has applied for funding under the ILF Program.

PURPOSE: This proposed project would provide compensatory wetland mitigation for permitted impacts in the Coastal Central Service Area.

GENERAL INFORMATION: An ILF program involves the restoration, establishment, reestablishment, 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 U.S. Army Corps of Engineers (Corps). 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 particular individual or general permit proposing to use the ILF program for compensation mitigation will be authorized.

PROJECT DESCRIPTION: This project proposes to restore a 4-acre former agricultural cranberry bog and 8-acre partially impounded wetland back to natural wetland conditions off Winthrop Street in Kingston, Massachusetts (Latitude: 42°0'36.97"N, Longitude: -70°44'26.98"W) . The sponsor has submitted a map showing the location of the project with the enclosed prospectus.

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). Essential Fish Habitat describes waters and substrate necessary for fish for spawning, breeding, feeding or growth to maturity.

The District Engineer has made a preliminary determination that there is no effect to EFH.

NATIONAL HISTORIC PRESERVATION ACT: Based on his initial review, the District Engineer has determined that the project would not affect properties in, or eligible for listing in, the National Register of Historic Places. Additional review and consultation to fulfil requirements under Section 106 of the National Historic Preservation Act of 1966, as amended, will be ongoing as part of the proposal review process and the permit review process as the project will require Corps authorization.

ENDANGERED SPECIES CONSULTATION: The New England District, Army Corps of Engineers, has reviewed the list of species protected under the Endangered Species Act of 1973, as amended, that might occur at the project sites. It is our preliminary determination that the proposed projects are situated or will be operated/used in such a manner that they are not likely to adversely affect any federally listed endangered or threatened species or their designated critical habitat. By this Public Notice, we are requesting that the appropriate federal agency concur with our determination.

EVALUATION: After the end of the comment period, the District Engineer will review all comments received and make an initial 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 their reasonably foreseeable detriments. Factors relevant to the proposals will be considered including conservation, economics, aesthetics, general environmental concerns, wetlands, historical properties, fish and wildlife values, flood hazards, floodplain 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.

The Corps 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 activities. All comments received will be considered by the Corps during the formulation of the initial determination of potential for the proposed activities.

COMMENTS: 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 Ms. Ruth Brien at (978) 318-8054, (800) 343-4789 or (800) 362-4367, if calling from within Massachusetts.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the proposed projects. Requests for a public hearing shall specifically state the reasons 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. All comments will be considered a matter of public record.

THIS NOTICE IS NOT AN AUTHORIZATION TO DO ANY WORK.



Taylor Bell
Mitigation Program Manager
Regulatory Division

If you would prefer not to continue receiving Public Notices by email, please contact Ms. Tina Chaisson at (978) 318-8058 or e-mail her at bettina.m.chaisson@usace.army.mil.

Blackwater Memorial Swamp In-Lieu Fee (ILF) Project Prospectus

- (i) The objectives of the proposed ILF project.

This project proposes to restore a 4-acre former agricultural cranberry bog and 8-acre partially impounded wetland to a natural wetland condition.

- (ii) How the ILF project will be established and operated.

This project will be managed by the Kingston Conservation Department, overseen by the Conservation Agent. The project will be guided by a Corps-approved restoration plan to be developed by the Town and its contractor in consultation with the MA Department of Fish and Game (DFG) In-Lieu Fee Program. All funds will be handled by the Kingston Accounting Department under an account dedicated to this ILF project. The Town has already voted to approve purchasing the property for conservation under the Town's Chapter 61 right of first refusal, using Community Preservation Act funds and a grant from the Massachusetts Division of Conservation Services. The project takes advantage of the high level of public support for the purchase by leveraging volunteer labor as well as Town employee labor wherever possible, keeping costs lower than typical restoration projects. The Town will hire a consulting firm with experience in cranberry bog restoration for project design and permitting and a sub-contractor as needed for implementation of the restoration plan.

- (iii) The proposed ILF service area (see Attachment A, Map of MA ILF Program Service Areas).

Coastal-Central

- (iv) The general need for and technical feasibility of the proposed ILF project.

General Need and Ecological Benefits

The wetlands on this site have been degraded as a result of historic cranberry farming operations, which have artificially controlled the movement and storage of water on the site. Initial site visits and design discussions with experienced cranberry bog restoration practitioners have identified this site as a feasible location for a relatively simple and cost-effective restoration design to restore a healthy freshwater wetland system. The proposed restoration approach could also serve as a model to be applied by bog owners elsewhere in southeastern MA who may otherwise take areas out of cultivation and leave sites fallow with degraded resources.

The need for this project is also driven by the importance of downstream resources and a development threat. The purchase of the site was driven by the Chapter 61 right of first refusal process, as the Town received a notice of intent to sell to a developer. The

restoration is important in many ways. The project area consists of the headwaters of a stream that feeds the Blackwater Swamp/Blackwater Pond complex, home of several rare habitat types, including Atlantic White Cedar Swamp, Atlantic White Cedar Bog, and Black Spruce Bog (the southernmost example of this habitat in New England). Keeping inputs to this system cool and clean is crucial to the overall health of these habitats.

The restoration will also improve connectivity for fish and invertebrates. As the natural bog is spring-fed, connectivity with a stream system will likely result in good fish nursery areas among the shrubs and emergent plants. This system connects to the ocean downstream of Blackwater Pond, through Stony Brook and the Jones River. The Jones and several tributaries have been designated as Coldwater Fisheries Resources, and all connected tributaries are part of important diadromous fisheries. Removal of the control structures at the project site should allow American eels into the system. The project may provide a public health benefit by increasing natural predation of mosquitoes and reducing mosquito habitat.

Proposed Restoration Approach

Currently, a man-made berm and water control structure retain excess water on the upstream end of the site while the fallow cranberry bog at the downstream end of the site has become drier and has been colonized by upland tree species. The proposed restoration approach is to reduce the impacts of historical hydrologic alterations of the site such that the site is able to sustain functional wetlands. Several methods may be used to achieve this objective. Baseline data will be collected to inform the project design and specific restoration goals. Topographic survey, water level loggers, and incremental manipulation of the water control structure will be used to develop an understanding of the hydrologic relationships between different parts of the site. Large wood may be installed in the partially impounded wetland if needed to maintain water levels in the upper wetland that currently support native wetland plant species such as water willow. The former cranberry bog may be temporarily flooded to initiate dieback of upland trees. The water control structure will be removed if that will allow natural wetlands to exist on both sides of the berm. The berm could be partially removed as well. To concentrate the flow of water along one pathway, upland trees that have grown along the perimeter of the retired bog will be cut and chipped, and the woodchips will be placed in the existing agricultural drainage ditches around the outside of the bog. The proposed strategy and ecological performance metrics will be detailed in a draft mitigation project plan that will be submitted to the Army Corps of Engineers and the In-Lieu Fee Program's Interagency Review Team.

- (v) The proposed ownership arrangements and long-term management strategy for the in-lieu fee project site(s).

The Kingston Conservation Department will own the property in fee simple. The Wildlands Trust has agreed to hold a conservation restriction. The Department has a

small land management budget, works closely with other Town departments to perform maintenance where necessary, and has a network of volunteer land stewards. This parcel has a particularly large following of supporters. Public access will be allowed via the existing perimeter trails and an unpaved parking area to be constructed on an adjacent property. Maintenance needs for the restoration project are expected to be minimal as the naturally sustaining hydrology of the site will be allowed to drive the ecological characteristics of the wetlands.

In addition, Dr. Thilina Surasinghe of Bridgewater State University has agreed to take the site on as a long-term monitoring location. The Surasinghe lab has been heavily involved in faunal survey of the bog restoration process in southeastern MA, with a focus on changes in herpetological use of the sites post-restoration. The Town's Conservation Department also has ties to researchers involved with ornithology, entomology and ichthyology, and will contribute to the long-term study of the ecological benefits of bog restoration.

- (vi) The qualifications of the Project Sponsor and any contractor/third-party to successfully complete the type of mitigation project proposed, including information describing any past such activities by the Project Sponsor and contractor/third-party.

The Town of Kingston's Conservation Agent has a background in ecology and habitat management, and extensive experience overseeing contractors on habitat restoration projects. The Town has received a quote from a qualified firm under the Massachusetts Department of Fish and Game's Ecological Restoration Technical Services Master Agreement for designing, permitting, and implementing a restoration project at this site. This firm has previous experience working on cranberry bog restoration projects in Massachusetts, and the Town intends to execute a contract with this firm if funding can be secured.

The Wildlands Trust, established in 1973, works throughout southeastern Massachusetts to permanently protect native habitats, farmlands and lands of high ecological and scenic value. The Wildlands Trust works in partnership with state and local agencies and other non-governmental organizations, and to date the Trust has helped ensure protection of 8,500 acres of land in MA.

Restoration Planning - future Blackwater Memorial Forest Winthrop St, Kingston, MA

