



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

PUBLIC NOTICE

Comment Period Begins: September 27, 2022
Comment Period Ends: October 27, 2022
File Number: NAE-2005-01142
In Reply Refer To: Ms. Lindsey Lefebvre
Phone: (978) 318-8295
E-mail: Lindsey.E.Lefebvre@usace.army.mil

SUBJECT: This notice announces a request to modify the New Hampshire Aquatic Resource Mitigation Fund In-Lieu Fee (“ILF”) Program Instrument for the addition of fourteen individual projects.

ILF PROGRAM SPONSOR: New Hampshire Department of Environmental Services
29 Hazen Drive
Concord, New Hampshire 0330

BACKGROUND: The New Hampshire Department of Environmental Services is the sponsor of the New Hampshire ILF Program which serves as an alternative form of compensatory mitigation for aquatic resource impacts. The New Hampshire ILF program is authorized by the New England District, Army Corps of Engineers (the “Corps”). A copy of the signed ILF agreement entitled “New Hampshire Aquatic Resource Mitigation Fund Final In-Lieu Fee Program Instrument” dated “May 2012”, 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/NHInstrument051812.pdf>.

Fourteen projects have been 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), 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 ILF mitigation sites.

The New Hampshire ILF Program accrued funds from the sale of compensatory mitigation credits resulting from Army Corps of Engineers and New Hampshire Department of Environmental Service permitted impacts in the State of New Hampshire. 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 New Hampshire.

PURPOSE: The fourteen proposed projects would provide compensatory wetland and stream mitigation for permitted impacts to the following service areas: Pemigewasset-Winnepesaukee River, Salmon Falls-Piscataqua River, Merrimack River, Lower Connecticut River, Contoocook River, and Middle Connecticut River Service Areas.

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

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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) oversee the establishment and management of the program. The IRT is chaired by the U.S. Army Corps of Engineers. 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 would be authorized.

PROJECT DESCRIPTION: Each project has a map showing the location of the project with a summary. Additionally, information consistent with a prospectus is located here:
https://ribits.ops.usace.army.mil/ords/f?p=107:378::NO::P378_PROGRAM_ID:21.

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 the site-specific adverse effect 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 the initial review, the District Engineer has determined that none of these projects may 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 for those requiring 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, situated or will be operated/used in such a manner that it is 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 project 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 proposal, must be balanced against its reasonably foreseeable detriments. Factors relevant to the proposal will be considered including conservation, economics, esthetics, general environmental concerns, wetlands, historical properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline

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

COMMENTS: In order to properly evaluate the proposals, 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. Lindsey Lefebvre at (978) 318-8295, (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 application. 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. Copies of letters of objection will be forwarded to the applicant who will normally be requested to contact objectors directly in an effort to reach an understanding.

THIS NOTICE IS NOT AN AUTHORIZATION TO DO ANY WORK.



Tammy R. Turley
Chief, 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. 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: _____
PHONE: _____