



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

PUBLIC NOTICE

Comment Period Begins: November 22, 2022
Comment Period Ends: December 23, 2022
File Number: NAE-2007-02926
In Reply Refer To: Katelyn Rainville
Phone: (978) 318-8677
E-mail: Katelyn.M.Rainville@usace.army.mil

SUBJECT: This notice announces a request to modify the Commonwealth of Massachusetts In-lieu Fee ("ILF") Program Instrument with the addition of three projects located in Brookfield, Wareham, and Pepperell, 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 "USACE"). 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>

Three 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 the ILF mitigation sites.

The Massachusetts ILF Program accrued funds from USACE 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: These proposed projects would provide compensatory wetland mitigation for permitted impacts in the Quabbin/Worcester Plateau and Coastal-South ILF service areas.

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

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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 USACE. 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 USACE. The approval of the use of the ILF program for specific projects is the decision of the USACE pursuant to Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act (CWA). The USACE provides no guarantee that any particular individual or general permit proposing to use the ILF program for compensation mitigation will be authorized.

PROJECT DESCRIPTION: The sponsors each submitted a prospectus and map showing the project locations, which are listed below.

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 an 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 fulfill 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 USACE authorization.

ENDANGERED SPECIES CONSULTATION: The USACE has reviewed the list of species protected under the Endangered Species Act of 1973, as amended, that might occur at the project sites. Additional review and consultation to fulfill requirements under the Endangered Species Act of 1973, will be ongoing as part of the proposal review process and the permit review process for those requiring USACE authorization.

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

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production, mineral needs, considerations of property ownership, and in general, the needs and welfare of the people.

The USACE 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 USACE 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. Katelyn M. Rainville at (978) 318-8677 or Katelyn.M.Rainville@usace.army.mil.

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 USACE 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.

Paul Maniccia

Paul Maniccia
Chief, Permits and Enforcement Branch
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.

Red Brook In-Lieu Fee (ILF) Project Prospectus

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

The project proposes to restore approximately 50 acres of wetlands and 50 acres of pitch pine-scrub oak barrens habitat and to re-naturalize and enhance close to 7,000 linear feet of stream/riparian habitat within a former cranberry bog complex on the Red Brook Wildlife Management Area (WMA) in Wareham MA. The project will benefit a host of State-listed rare and endangered species and enhance habitat for sea run brook trout, river herring and American eels within a globally rare and threatened pine barrens ecosystem.
- (ii) How the ILF project will be established and operated.

The project was initiated in 2009 shortly after MassWildlife, a division of the MA Department of Fish and Game (DFG), purchased the Century Bog parcel and completed an effort that spanned decades to protect Red Brook from its headwaters at White Island Pond to its outlet in Buttermilk Bay. This incredible accomplishment occurred in large part due to key partnerships between MassWildlife and both Trout Unlimited and The Trustees. The proposed restoration site is part of the Red Brook WMA, which is state-owned and permanently protected. After acquisition of the property, MassWildlife worked with the MA DFG Division of Ecological Restoration (DER) to develop plans to reverse the impacts of over a decade of cranberry growing and restore natural upland and wetland habitats to benefit fish and wildlife. The proposed project has a fully completed 90% design plan set and has undergone all required permitting, however due to the delay in securing construction funding, some permits have lapsed and will need to be renewed. MassWildlife will manage the project and work with multiple project partners and a contracted engineering firm that specializes in wetland restoration to finalize the design and complete any additional permitting. In addition to the ILFP request, MassWildlife is requesting funds for completion of the project from federal grant sources. MassWildlife will hire additional contractors as needed to oversee and implement various aspects of the project.
- (iii) The proposed ILF service area). Coastal-South
- (iv) The general need for and technical feasibility of the proposed ILF project.

The upland, wetland and riverine habitats on this site have been drastically altered and degraded as a result of historic cranberry farming operations, and other prior land use activities. Most significantly, a large former wetland complex historically known as Bartlett Pond Marsh, has been completely eliminated by the former cranberry growing operation and virtually all natural surface and groundwater flows have been significantly altered by dikes, ditches, water control structures and the additional of sand typical of cranberry agriculture. Further, the channel of Red Brook has been unnaturally straightened and flows altered seasonally, negatively impacting the migration of

anadromous fish (river herring, American eels) and downstream habitat for a rare, sea-run population of native Eastern brook trout.

Project partners, working with a professional engineering firm, have designed a project that will remove virtually all the negative impacts and stressors on the site resulting from historic land uses and will restore a healthy, diverse mosaic of wetland and upland habitats that will provide benefits to many species of conservation concern within the globally rare pine barrens ecosystem. Further, project partners and contractors have learned a great deal about restoring former cranberry bogs over the past 5+ years and will be putting that knowledge to work to further refine the project design to ensure maximum benefit to the environment.

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

As stated above, MA DFG MassWildlife is the fee simple owner of the proposed project site, which is part of the much larger overall Red Brook Wildlife Management Area totaling ~655 acres.

- (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.

MassWildlife and its project partners, DER, Buzzards Bay Coalition and Mass Audubon, all have diverse and highly trained and educated staffs with decades of experience in all aspects of the project including project management, design, implementation and post-implementation monitoring, as well as extensive experience restoring former cranberry operations. The project manager for MassWildlife, the Southeast District Supervisor, has a B.S. in Wildlife Management and M.S. in Zoology & Physiology and over 20 years of experience in habitat management and wetland permitting and restoration.

MassWildlife will be contracting with the same professional engineering firm that developed the 90% design plans to work with project partners on final design, updating any necessary permits and developing construction contracts and overseeing construction.



Burke's Pond In-Lieu Fee (ILF) Project Prospectus

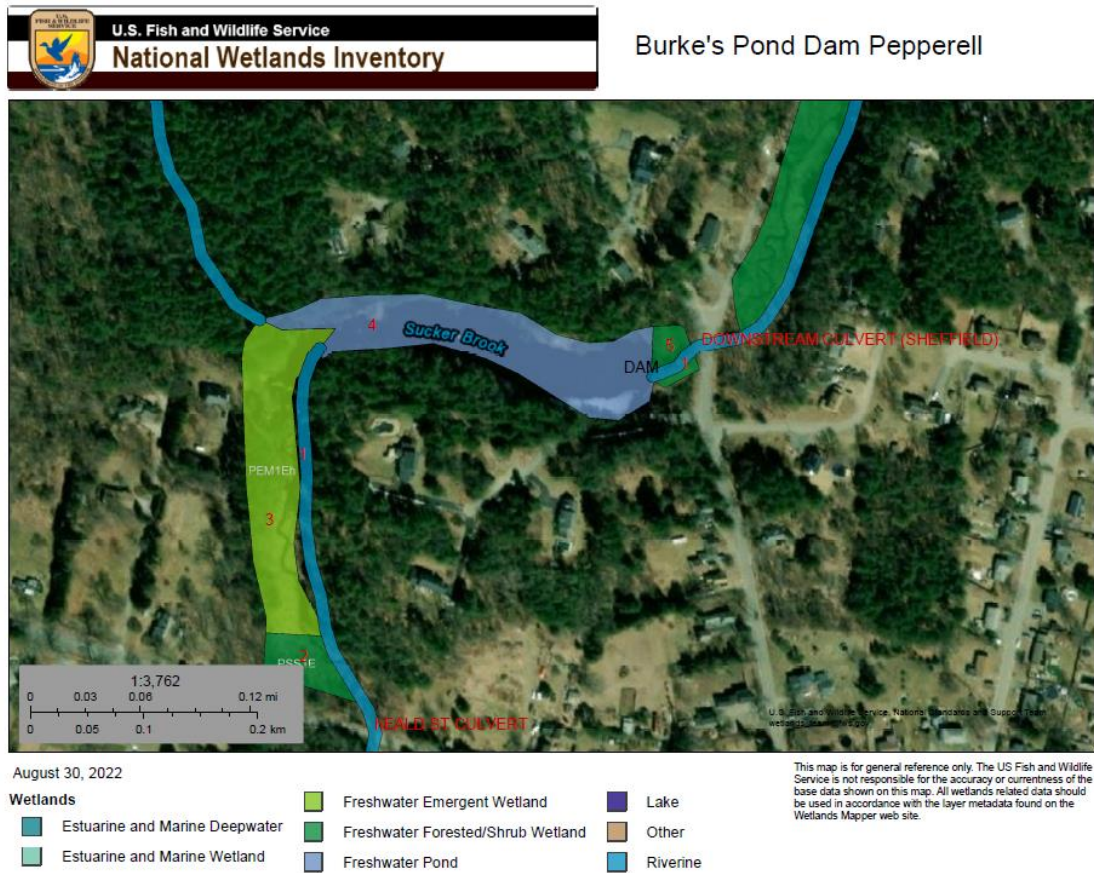
- (i) The objectives of the proposed ILF project.

The proposed ILF dam removal project at Burke's Pond will provide ecological benefits in a freshwater aquatic resource, Sucker Brook. The project will continue ongoing stream restoration efforts on Sucker Brook, which included a dam removal (Oct. 2021) and two culvert replacements (Nov. 2021 and current work on the second culvert replacement is underway) and which now includes data collection and engineering to replace two additional culverts downstream of the proposed dam removal that will meet MA River and Stream Crossing Standards. Sucker Brook, a coldwater fishery and known habitat for native brook trout, is recognized as an important tributary of the Nissitissit River in the Nashua, Squannacook, and Nissitissit Rivers Wild & Scenic Stewardship Plan. The dam removal will increase fish passage by improving stream connectivity as well as address safety concerns with a failing dam. The work is part of a focused effort on Sucker Brook to increase water quality not only because Sucker Brook provides recharge for a municipal wellhead but because it is critical habitat for three state-listed rare mussel species as well as a state-listed turtle species. The proposed dam removal is one of six restoration projects that have been completed or are currently underway in Sucker Brook. Restoration work in Sucker Brook, as well as Gulf Brook, both tributaries of the Nissitissit River have been a priority of State and local partners and volunteers for more than ten years.

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

The Conservation Administrator for the Town of Pepperell will act as the Project Manager, overseeing and documenting all contracted work as well as all in-kind work and donations. The Town of Pepperell, working with the MA Division of Ecological Restoration and the Squan-A-Tissit Chapter of Trout Unlimited, have "kicked off" the dam removal project with funding from the State Hazard Mitigation and Climate Adaptation Program that was used to hire Horsley Witten Group to prepare a dam removal feasibility study for the Burke's Pond dam. With a completed study, the Town of Pepperell is now ready to move the project forward with the Squan-A-Tissit Chapter of Trout Unlimited and an engineering firm by bringing the preliminary dam removal to the permit level design stage and submitting permit applications. ILF funding currently requested would be sufficient to support permit level design and permitting. The Town intends to follow a project approach similar to what they did for the removal of another dam on Sucker Brook in 2021, using a combination of in-kind services provided by the Town and Trout Unlimited and applying for additional funding from state programs as needed to complete the project. The dam is owned by a private abutter who will grant a conservation restriction for the project site, to be held by either the Pepperell Conservation Department or the Nashoba Conservation Trust, to protect the site from potential future impacts and to secure access for the Town or its designee to monitor the site.

- (iii) The proposed ILF service area - The proposed Burke's Pond dam removal on Sucker Brook on Blood Street in Pepperell is located within the Quabbin/Worcester Plateau Service Area.



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

The removal of the dam, which acts as a barrier to fish and wildlife passage, is a critical component of ongoing efforts to restore stream connectivity but it will also eliminate an impoundment of 12.36 acre-feet of water, which is void of a protective tree canopy, which creates an impoundment of much warmer temperatures in a coldwater fishery. The feasibility study completed in June of 2022 included hydrologic and hydraulic analysis as well as sediment assessment. Study results were used to produce preliminary design plans including existing conditions, construction access and material staging from Sheffield Street and Blood Street, and demolition and site stabilization plans as well as a preliminary cost estimate for the removal of the dam.

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

The site will remain under ownership of the current or future owners of 2 Blood Street with a conservation restriction and long-term management plan allowing ongoing monitoring of the site.

- (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 Pepperell will serve as the Project Sponsor with the Conservation Administrator overseeing the project. The Conservation Administrator also works part-time for the Department of Public Works' Highway Division and is able to leverage the department's expertise and resources. The current Conservation Administrator has served as the Town of Pepperell's liaison between state agencies, partners, volunteers, town staff, and engineering firms. She has also secured grants for Town projects and assumed responsibility for all aspects of each grant including contracts, reimbursements, and reporting. The Town has previously worked with the Department of Fish and Game on two dam removal projects and three culvert replacement projects. The culvert replacement on Heald Street includes funding from the MA Municipal Vulnerability Preparedness Program, with construction costs alone at \$898,000. For these projects, the Conservation Administrator has been involved in field data collection, assisting with the preparation of the many permits required, and post-construction monitoring. The Department of Public Works provided labor and equipment for the removal of another dam on Sucker Brook in 2021.

Salmon Brook Dam In-Lieu Fee (ILF) Project Prospectus

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

This project includes a dam removal, the removal of a rock obstruction (and bank restoration), and a stream crossing removal or replacement. This project will result in the restoration of 34.9 acres of forested wetlands and 5,249 linear feet of stream habitat. Restoring this habitat segment to its natural condition will reduce stream temperatures and improve water quality in the Quaboag River downstream, as well as increase climate resiliency to support aquatic species. This project will increase flood resiliency by eliminating the potential for a dam failure, thereby protecting downstream infrastructure and the receiving waters of the Quaboag River.

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

Steven Mattocks (MassWildlife) will oversee the project. Steven will work with local, state, and federal agencies to complete project components and will work directly with contractors (Tighe and Bond) for other portions of the project.

- (iii) The proposed ILF service area: Quabbin/Worcester Plateau (*see Figure 1. site location map below*)

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

This project is needed to improve fish passage, stream flow, and overall aquatic connectivity of a protected tributary to the Quaboag River. Reducing stream temperatures and increasing climate resiliency is a priority for enhancing and protecting fish populations.

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

MassWildlife owns the parcel surrounding the proposed restoration project (Quaboag WMA) and plans to monitor and manage the property according to state long-term habitat goals. In general, the goal is to restore the stream to its natural condition and improve the flow regime and water quality to downstream habitats.

- (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.

Massachusetts Division of Fisheries and Wildlife (MassWildlife) is the state agency responsible for managing and protecting wildlife in Massachusetts. Since the agency's

inception in 1866, MassWildlife has understood the importance of stream restoration and improved connectivity as a priority for improving fish habitat and population health. Tighe and Bond is a consultant with years of experience and currently is contracted by MassWildlife to oversee the agency’s dam repair projects. MassWildlife has successfully completed four aquatic resource preservation projects with the ILF Program.

Figure 1. Salmon Brook Dam – Site Location Map

