



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

PUBLIC NOTICE

Comment Period Begins: March 14, 2023

Comment Period Ends: April 14, 2023

File Number: NAE-2010-02215

In Reply Refer To: Taylor Bell

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SUBJECT: This notice announces a request to modify the Audubon Connecticut In-Lieu Fee (ILF) Program (“ILF”) Program Instrument to allow for greater flexibility in project selection and will define a standard operating procedure for transferring funds within service areas.

ILF PROGRAM SPONSOR: National Audubon Society – CT Chapter
185 East Flat Hill Road
Southbury, Connecticut 06488

BACKGROUND: The Connecticut ILF program is authorized by the New England District, Army Corps of Engineers (Corps). A copy of the signed ILF agreement entitled “*Final Instrument for the Audubon Connecticut In-Lieu Fee Program Sponsored by National Audubon Society, Inc.*” dated August 21, 2013, and 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/CT%20ILF%20Reports/CTILFProgramInstrument.pdf>

PURPOSE: The modifications to the Program Instrument will allow the sponsor to fund projects outside of their Request for Proposals process. Additionally, the modification will define a SOP for funds to be transferred from one service area to another.

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) oversee the establishment and management of the program. The IRT is chaired by the 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 would be authorized.

ESSENTIAL FISH HABITAT: This ILF instrument modification will have no direct effect on essential fish

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habitat, however, all individual projects that are created as a result of this modification will be evaluated on an individual project scenario.

NATIONAL HISTORIC PRESERVATION ACT: This ILF instrument modification will have no direct effect on historic properties, however all individual projects that are created as a result of this modification will be evaluated on an individual project scenario.

ENDANGERED SPECIES CONSULTATION: This ILF instrument modification will have no direct effect on endangered species, however all individual projects that are created as a result of this modification will be evaluated on an individual project scenario.

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 modification. 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 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 Mr. Taylor Bell at (978) 318-8952, (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.


Robert DeSista
Deputy Chief
Regulatory Division

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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: _____

Proposed Modification to Instrument:

Addition of Appendix H – Special Project Assistance

The process for identifying and proposing sites to the Corps and IRT will be initiated by the Sponsor when there are sufficient funds to pursue development of a mitigation project or when action is required to initiate a project after funds have remained in a Service Area more than three years from deposit. In recognition of Audubon's extensive experience, restoration projects that may arise outside of the RFP process may be considered for special assistance funding. Projects submitted in this fashion will follow all procedures noted in 33 CFR 332.8(d)(2)-(8) of the 2008 Mitigation Rule.

Consistent with project selection under the RFP process, Audubon will consider watershed-scale wetland and stream losses and the beneficial effects to offset functional loss achieved through restoration. This process will prioritize restoration projects to improve conditions of former aquatic habitats with adequate site protection measures to be achieved.

All proposals reviewed under special project assistance must contain the ability to result in a successful and sustainable net gain of wetland or stream functions and meet the following criteria:

- Restoration proposals are in watersheds that have sustained significant loss through wetland or stream permit decisions, are in areas of high development pressure, or have had a lack of restoration projects achieved over time.
- The budget request must achieve completion of the project.

Proposals for Special Project Assistance will be submitted to the ILF PAC and IRT in adherence with the yearly grant application forms and materials in use at the time. A complete project proposal form and required grant materials are reviewed by the Sponsor for completeness and circulated to the PAC within 30 calendar days of receipt, and IRT within 45 days of receipt. Eligible projects are advertised for public comment in a 30-day Public Notice issued by the Corps. An on-site review by the PAC and IRT may be conducted to confirm site conditions and proposed restoration design. The Sponsor will convene a meeting to evaluate the proposals based on the scoring criteria, site suitability, likelihood of mitigation project success, maximizing the environmental benefit of ILF funds expended, relative value of the natural resource type(s) involved, and the inclusion of adequate site protection measures.

The PAC recommendations for funding are forwarded to the IRT for approval. The Corps, in coordination with the IRT, will provide a final recommendation on the merits of the proposal to Audubon.

Audubon can contract all work as necessary, as long as consistent with procedures in the 2008 Federal Mitigation Rule. The program account may only be used for the selection, design, acquisition, implementation, and management of the project.

Proposed Modification to Instrument:

Addition of Appendix G – Project Implementation Flexibility

In the event that only a small number of credits sell in a service area, Audubon Connecticut may make a request to the IRT to satisfy mitigation obligations in an adjacent service area subject to the approval of the District Engineer. In addition, Audubon CT may also transfer monies from one service area to an adjacent service area for project creation that will generate credits. If an insufficient number of credits are sold in a given service area and not enough funds accrue to implement a project, this will not be considered by itself a default of the terms set forth in the Instrument. Credits generated from the use of the transferred funds will be used to offset the debits incurred from the impacts in the original service area. Audubon Connecticut understands that credit transfer may be subject to a multiplier factor for the transfer of credits.

The amendment will operate within the procedures in the attached Standard Operating Procedures (SOP). The SOP may be updated from time to time by agreement between Audubon Connecticut and the Corps, therefore this amendment will operate within the most recently dated SOP.

1) Two scenarios are proposed as to how this amendment would be utilized. Scenario one is that monies be transferred out of a service area as a result of the small credit sales generated. Scenario two is that the monies obtained from credit sales be transferred into a service area that does not have enough funds to create a project.

2) In scenario one the following SOP would be adhered to:

- The funds from advanced credits sold in a SA would stay in that SA for a minimum of three growing seasons after the sale of credits.
- Funds to transfer out would not exceed 100,000 dollars or the equivalent number of credits.
- Credits produced from a project that was a result of transferred monies will then be transferred back to the SA at a ratio greater than 1-1.
- Evidence must be provided that a thorough search for projects has taken place and submitted with the transfer request to the IRT.

3) In scenario two the following SOP would be adhered to:

- Monies utilized from the sale of “released credits” may be transferred to adjacent service areas for projects. Funds utilized from the sale of “advanced credits” may be used on a case by case scenario.