



**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-2007-02926  
**In Reply Refer To:** Katelyn Rainville  
**Phone:** (978) 318-8677  
**E-mail:** Katelyn.M.Rainville@usace.army.mil

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**SUBJECT:** This notice announces a request to modify the Commonwealth of Massachusetts In-lieu Fee ("ILF") Program Instrument with the addition of one project located in Hampden, 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>

A 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 the 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 Massachusetts ILF Program announced the availability of funds remaining after a previous grant process to eligible entities that work on the preservation, restoration and enhancement of wetland and watercourse resources and associated upland buffers in the State of Massachusetts.

**PURPOSE:** This proposed project would provide 1.718 wetland credits and 178 stream credits as compensatory mitigation to offset permitted impacts in the Connecticut River 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 (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 sponsor submitted a prospectus and map showing the project location.

**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 project will have no adverse effect on EFH because there is no EFH habitat present.

**NATIONAL HISTORIC PRESERVATION ACT:** Based on his initial review, the District Engineer has determined the project will have no potential to cause effects to historic properties eligible, or potentially eligible for listing in, the National Register of Historic Places.

**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 project is situated or will be operated/used in such a manner that it will have no effect on 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 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

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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 Rainville at (978) 318-8677 or [Katelyn.M.Rainville@usace.army.mil](mailto: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**

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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](mailto:bettina.m.chaisson@usace.army.mil).

## Laughing Brook In-Lieu Fee (ILF) Project Prospectus

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

The purpose of this project is to protect 59 acres of land in perpetuity, much of it bordering the Scantic River in Hampden, MA and located adjacent to the Mass Audubon Laughing Brook Wildlife Sanctuary. This land is adjacent to a proposed development that includes an 11-acre parcel on which Mass Audubon will hold a Conservation Restriction. Three of the proposed frontage lots will have a Declaration of Restriction to protect the rear portion of the lots. Three will have a Conservation Restriction area to protect the rear portion of the lots. The lots and the 11-acres abut the 59-acres to be acquired by Mass Audubon. The entire property maps as suitable habitat for the Eastern Box Turtle.

- (ii) How the ILF project will be established and operated. Mass Audubon has a contract with the owner of the land and proposes to purchase the land in fee, adding it to the Wildlife Sanctuary. The landowner planned to build a house on the 59 acres but is willing to sell the property to Mass Audubon for conservation instead. Once the owner has complied with Natural Heritage and Endangered Species (NHESP) conditions for his development, Mass Audubon can purchase and protect the 59 acres along the Scantic River, behind the development.

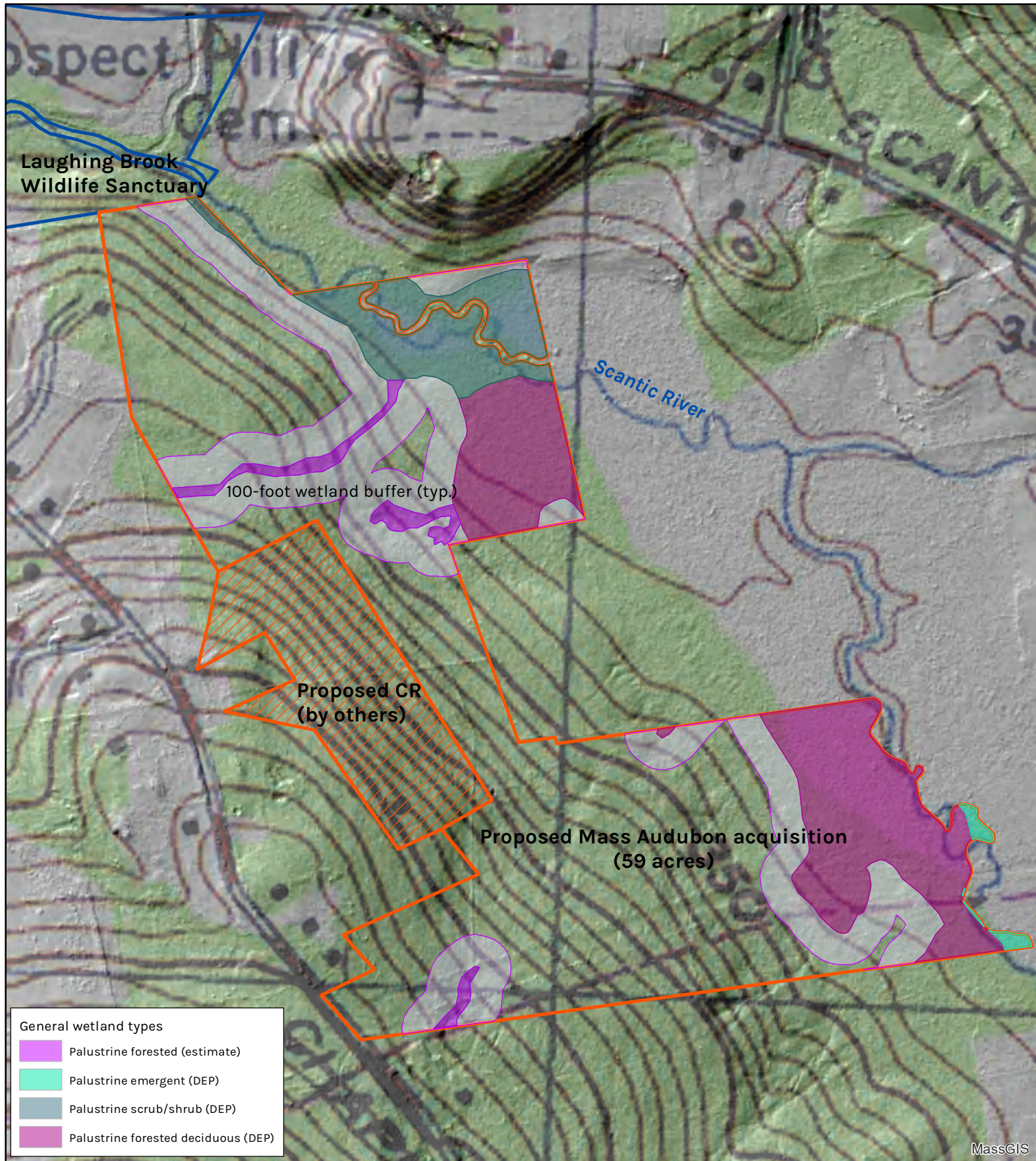
- (iii) The proposed ILF service area. The project is in the Connecticut River Service Area.

- (iv) The general need for and technical feasibility of the proposed ILF project. The project site contains important wetland and stream resources that are at risk of degradation if the property is developed. The area is also deemed to be good, forested habitat for the Eastern Box Turtle. Protecting this habitat will support the viability of the Eastern Box Turtle. The owner's development plan included an estate lot on the 59-acres that is now proposed for permanent protection. Acquisition of this property is feasible as the owner is willing to work with Mass Audubon and to sell the land for conservation.

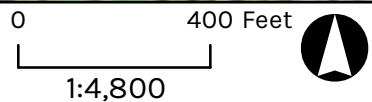
- (v) The proposed ownership arrangements and long-term management strategy for the In-Lieu Fee project site(s). Mass Audubon will own the 59 acres and protect the flood plain in perpetuity. Long term management will include restoration of the flood plain including removal of invasive plants and replanting with native species.

- (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. Mass Audubon has successfully completed hundreds of land acquisition and restoration projects. Mass Audubon has the capacity to complete the acquisition (pending sufficient grant funding), and to initiate and complete restoration projects, subject to available grant funding.





Proposed ILF project site  
Chapin Road, Hampden MA



USGS basemap, LiDAR shading, and DEP wetlands from MassGIS.  
Property lines are approximate and are not intended as a legal description.  
Wetland boundaries have not been verified in the field.