

**AMENDMENT #1
TO THE
STATE OF MAINE – IN LIEU FEE PROGRAM INSTRUMENT**

WHEREAS, the approved State of Maine – In Lieu Fee Program Instrument (“Instrument”) was signed by the Maine Department of Environmental Protection (“MDEP”) on September 21, 2011 and the New England District Corps of Engineers (“Corps”) on September 15, 2011.

NOW THEREFORE, the following changes shall be made to the Instrument:

Section 6 “Provision of Legal Responsibility” shall be modified to clarify process so that the third sentence reads:

MDEP will affirmatively acknowledge this transfer of obligation to the applicant in writing, with a copy sent to the Corps, upon the receipt of any funds.

Section 6 shall also be modified to change the link at the end of the second paragraph to <http://geo.usace.army.mil/ribits/index.html> and to add Section 6.1 “Status of Instrument” as follows:

6.1 Provision of Legal Responsibility

Corps approval of this Instrument constitutes the regulatory approval required for the State of Maine – In Lieu Fee Program to be used to provide compensatory mitigation for Department of the Army permits pursuant to 33 C.F.R. 332.8(a)(1). This Instrument is not a contract between the State and the Corps or any other agency of the federal government. Any dispute arising under this Instrument will not give rise to any claim for monetary damages by the Corps or the State against the other. This provision is controlling notwithstanding any other provision or statement in the Instrument to the contrary.

Section 7.4.3 shall be modified to reflect current practices for release of credits:

Restoration/Creation/Enhancement (Rehabilitation) with associated preservation:

Credits generated by preservation upon receipt of the signed and recorded preservation and long-term management documents.

Credits generated by restoration (reestablishment), rehabilitation, or creation (establishment) upon completion of construction and approval of the work by MDEP and the Corps, receipt of all required monitoring reports, and MDEP and the Corps determine the site is successful in meeting the goals and performance measures and concur with the release.

Restoration/Creation/Enhancement (Rehabilitation) without associated preservation:

Upon completion of construction and approval of the work by MDEP and the Corps, receipt of all required monitoring reports, and MDEP and the Corps determine the site is successful in meeting the goals and performance measures and concur with the release.

Section 7.5 “Grant Application Review Committee” shall be modified to reflect agency name changes: Maine Department of Conservation (MDOC) shall become “*Maine Department of Agriculture, Conservation, and Forestry (MDACF)*.”

Section 7.7.2 “Administrative Costs” shall be modified as follows to ensure adequate staffing for the MNRCP at MDEP:

MDEP shall be entitled to deduct administrative overhead costs in the amount of 15% of all fees entering the MNRCP, at the time the funds are received, 53% of which is for the contractual responsibilities of the Program Administrator, as defined in a separate Contract for Special Services, and for MDEP staffing expenses. The remainder will be retained by MDEP to pay for the salaries of staff working on MNRCP actions.

Section 7.7.4 “MNRCP Disbursal Procedures” shall be changed, to address a more practical process, from “MNRCP assets may not be expended by the Program Administrator without prior written approval from the IRT...” to “*MNRCP assets may not be expended by the Program Administrator without prior written approval, by email or letter, from the MDEP and the Corps...*”

Section 8.5 “Prioritization Strategy for Selecting and Implementing Projects (Element 6)” shall:

- 1) be modified to clarify how private individuals and businesses can participate:

MNRCP compensatory mitigation projects are selected using a competitive award approach. Each year, public agencies, non-profit conservation organizations and private individuals or businesses who/which work with a non-profit conservation organization are invited to submit a letter of intent...

- 2) Change the weight given to the **Potential to Meet MNRCP Goals** to 35%.
- 3) Change the weight given to the **Project Readiness/Feasibility** to 30% and incorporate the language from **Project Sponsor Capacity** as follows:

Assesses the extent to which the proposal meets the core program requirement to demonstrate project readiness and likelihood of success, where success is defined by the ability of the project to meet MNRCP goals as stated in the proposal. Assesses the extent to which the proposal meets the core program requirement to provide for long-term management and/or stewardship by a responsible state or federal resource agency, or conservation organization. Considerations include:

- a) Documentation of landowner willingness to participate in proposed project, including conveying a conservation easement or fee title, with conservation covenants, to the property (for projects not on public or private conservation lands).
- b) Level of project urgency (e.g., area of rapid development or on-going site degradation, other available funding with limited timing, option to purchase set to expire, etc.)
- c) Degree to which proposal demonstrates understanding of resource conservation issues and needs.
- d) Soundness of the technical approach of the conceptual plan presented in the application.
- e) Initial progress (e.g., planning, fundraising, contracting, site design, etc.).
- f) Likelihood that the project will meet proposed schedule and/or required deadlines.
- g) Likelihood that the proposed actions will achieve the anticipated ecological benefits and results.
- h) Completeness and feasibility of long-term stewardship and monitoring plan, including endowment.
- i) Potential for adverse impacts (such as flooding or habitat loss) associated with the project.
- j) Conformance with any applicable Army Corps of Engineers and state mitigation policy, guidance and permitting requirements, including appropriate financial assurances for any construction activity.
- k) Presence of qualified, capable conservation entity willing to sponsor and/or maintain the project.
- l) Level of support and involvement of other relevant agencies, organizations, and local community.
- m) Degree to which project sponsor, and any associated partners, demonstrate the financial, administrative, and technical capacity to undertake and successfully complete the project.
- n) Adequacy of long-term stewardship to ensure the project is sustainable over time and funding mechanism for the associated costs (e.g., endowment or trust).
- o) Legal and financial standing of the project sponsor.
- p) Quality and completeness of proposal materials

4) Eliminate ***Project Sponsor Capacity*** as a separate item.

Section 8.6 “Explanation of How Preservation Satisfies Criteria for Use of Preservation (Element 7)” modified to add wording of clarification on when to use the criteria for preservation:

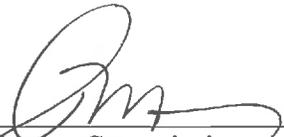
The federal Mitigation Rule (33 CFR 332) requires that goal setting for, and prioritization of, aquatic resources as required by Elements 5 and 6 above also satisfy the criteria for use of preservation without associated restoration (reestablishment), rehabilitation, and/or creation (establishment). In the rule, preservation-only may be used to provide compensatory mitigation for activities when the following criteria, among others, are met:

- a) *The resources to be preserved provide important physical, chemical, or biological functions for the watershed; and*
- b) *The resources to be preserved contribute significantly to the ecological sustainability of the watershed.*

Section 8.8 "Description of Long Term Protection and Management Strategies (Element 9)" shall be modified with the addition of the following language to clarify long-term stewardship funding requirements:

Funding for long-term stewardship will be provided as deemed appropriate by the IRT. Should such funding be required, it must be sufficient to provide funding in perpetuity, accounting for inflation.

IN WITNESS WHEREOF, the undersigned have caused this amendment to be duly executed.



Paul Mercer, Commissioner
Maine Department of Environmental Protection

Date: 2-23-2014



CHRISTOPHER I. BARRON
Colonel, Corps of Engineers
District Engineer

Date: 17 FEB 2016