

IN-LIEU FEE AGREEMENT BETWEEN
THE STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION,
THE NEW ENGLAND DISTRICT U.S. ARMY CORPS OF ENGINEERS,
and
THE NATURE CONSERVANCY

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A. Introduction

Mitigating adverse environmental impacts is an integral part of Maine's Natural Resources Protection Act (NRPA) (38 M.R.S.A. § 480 A – BB), a regulatory program administered by the Maine Department of Environmental Protection (Department), and the federal Clean Water Act (CWA) and Rivers and Harbors Act (RHA) (33 CFR Parts 320-330), addressed through the regulatory program administered by the U.S. Army Corps of Engineers, New England District (Corps). In general, mitigation is a sequential process of avoiding adverse impacts, minimizing impacts that cannot be practicably avoided, and then compensating for those impacts that cannot be further minimized. Both state and federal agencies administering resource protection regulations may require appropriate and practicable compensatory mitigation as a condition of their permit approvals and authorizations.

Compensation is required to off-set an adversely affected wetland function with a function of equal or greater value as determined on a biophysical region basis. The goal of compensation is to achieve no net loss of wetland functions and values. The Department and/or the Corps may require that the compensation include the design, implementation, and maintenance of a compensation project or, in lieu of such a project, may allow the applicant to purchase credits from a mitigation bank or to pay a compensation fee (Corps guidance located in November 7, 2000 Federal Register, pp. 66914-66917). Therefore, under the NRPA and/or the CWA and RHA, when on-site compensation is not available, practicable, or ecologically appropriate, an applicant may be allowed to pay an in-lieu compensation fee (ILF) of a value equivalent to the compensation value to be used for the purpose of restoring, enhancing, creating or preserving other wetland functions or values that are environmentally equal or preferable, on a biophysical region basis to the functions and values of impacted aquatic resources, as determined by the Department (38 M.R.S.A. § 480-Z) and/or the Corps.

Payment of an ILF must be approved by the Department and/or the Corps. If the Department and/or the Corps determine that an ILF is appropriate in a particular instance, the Department and/or the Corps shall determine the amount of the compensation fee, based upon the compensation that would be necessary to restore, enhance, create or preserve aquatic resources with functions or values similar to the aquatic resources impacted by the activity. This agreement describes the process by which the Department will administer an ILF compensation program, and the role of the Corps and TNC in that process. This MOU is an agreement between the Corps, the Department, and TNC, and it is not intended, nor can it be relied upon, to create any rights or a cause of action for third parties against the United States, the State of Maine, and/or The Nature Conservancy.

B. Purpose and Goals

1. **Purpose:** This ILF Agreement establishes a connection between the State of Maine ILF program and the Federal wetland permitting process and allows the Department to receive ILF compensation funds for inclusion into the "Natural Resources Mitigation Fund" in accordance with the Agreement for services between the Department and TNC dated December 12, 2007, and further outlined below.
2. The Department and TNC, by agreement have established the "Natural Resource Mitigation Fund" to finance activities that will compensate for adverse impacts to significant wildlife habitats, wetlands and other waters of the State of Maine resulting from activities authorized under the NRPA and/or the CWA and RHA. It is understood that, although the funds to be held pursuant to this agreement may be referred to herein as the "Natural Resource Mitigation Fund," the parties do not intend to set up a fund that would qualify as a trust under state or federal law.
3. **Goals:** The ILF program is intended to:
 - a. Substantially increase the extent and quality of restoration, enhancement, creation, and protection of protected natural resources over that typically achieved by other forms of compensatory mitigation for activities that impact wetlands and other waters of the State of Maine;
 - b. Reduce the extent of cumulative adverse impacts to aquatic resources that are considered protected natural resources under the NRPA and /or the CWA and RHA; and
 - c. Provide DEP, NRPA and Corps permit applicants greater flexibility in compensating for adverse impacts to protected natural resources.

C. Roles and Responsibilities

1. Role of the Department:

- a. The Department shall develop and maintain a "DEP Fact Sheet", (Appendix A) on the ILF Program for distribution to permit applicants, explaining the in-lieu fee program and specifically outlining the cost structure to participate in the program.
- b. The Department shall determine, at the time of state permitting, if the ILF program is an appropriate method of compensating for resource impacts associated with a specific activity.
 1. Wetland mitigation fees will be assessed at a 1:1 ratio based on the amount of wetland area altered as part of the permitted activity except for the following wetland types, which will be assessed at a 2:1 ratio:
 - a. Wetland areas containing at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation, or open water, except for artificial ponds or impoundments;
 - b. Peatlands dominated by shrubs, sedges, and sphagnum moss;
 - c. Coastal wetlands; and
 - d. Significant wildlife habitats.

- c. The Department shall establish average per square foot costs for restoring, creating and preserving protected natural resources. The per square foot cost will include reasonable costs associated with mitigation project planning, design and construction; selection and acquisition of land or easements; and long-term monitoring, operations, stewardship and maintenance. The per square foot costs will be established on a county by county basis and will be adjusted once during each biennial state budget.
- d. The Department will establish a database to identify the locations (by town), area, and types of protected natural resources being impacted within each biophysical region by each permitted project participating in the ILF program. The resource data will be made available to the review committee and the approval committee and will be used by these committees to determine the type and extent of resource gain required from an appropriate ILF-funded mitigation project in a given biophysical region.
- e. The Department shall receive all natural resource mitigation fees paid into the in-lieu-fee program prior to the issuance of any federal permit and shall remit to The Nature Conservancy (TNC) the natural resource mitigation fee within 30 days of receipt of the natural resource mitigation fee.
- f. The Department shall develop and maintain a "DEP Fact Sheet", (Appendix B) on the Natural Resource Mitigation Fund for distribution to the general public, explaining the process and format for submitting a "Request for Funding from the Natural Resource Mitigation Fund".
- g. The Department shall convene a meeting of the "Review Committee" and the "Approval Committee" twice a year or as necessary to review requests for funding in all biophysical regions in which funding is available in the Natural Resource Mitigation Fund.
- h. The Department shall be granted "Third Party" enforcement rights on all conservation easements entered into as part of an approved wetland mitigation plan funded by the "Natural Resource Mitigation Fund." All conservation easements executed under this program must be in conformance with the sample "Deed of Conservation Easement" contained in (Appendix C) unless otherwise authorized by the Department.
- i. Should TNC be unable or unwilling to ensure that approved projects are completed as approved, the Department shall do so using appropriate enforcement tools.

2. Role of the Corps of Engineers, New England District

- a. The Corps shall develop and maintain a "Fact Sheet: Maine's In-Lieu Fee Natural Resource Mitigation Program" (Appendix F) on the ILF Program on the New England District website explaining the in-lieu fee program and referring those interested to the Department for additional information
- b. The Corps shall determine, at the time of federal permitting, if the ILF program is an appropriate method of compensating for resource impacts associated with a specific activity.
- c. The Corps shall determine, at the time of federal permitting, if the state-required fee amount is adequate to ensure compensation for direct, indirect, and cumulative impacts to aquatic resources. This will be communicated to the applicant by the Corps.
- d. The Corps shall include the ILF amount in a special condition of the permit or PGP authorization. Applicants will be required to submit the check for the ILF amount to the Corps prior to issuance of the authorization. The Corps project manager will forward the check, with a worksheet identifying the project, to the Department.
- e. The Corps shall participate in the review and approval committees as outlined in section C (4) below.

- f. The Corps shall review all projects involving restoration, creation, and/or enhancement using the current Mitigation Plan Checklist and Guidance.
- g. The Corps will consult with the National Marine Fishery Service under the Magnuson-Stevens Act on a case-by-case basis on Federal actions not meeting the established criteria of the MEPGP to ensure use of the ILF program is appropriate

3. Role of TNC:

- a. TNC shall establish a "Natural Resource Mitigation Fund" subdivided by biophysical regions, as more specifically provided in D.1. TNC shall use the biophysical regions as established by the Department of Conservation's Natural Areas Program and the Maine Department of Inland Fisheries and Wildlife (Appendix D). The Department deems these regions large enough to generate funds sufficient to conduct meaningful mitigation activities in a variety of habitat types, yet limited enough to provide compensatory mitigation as close to the adversely impacted areas as practicable given Maine's ecological variability. Priority in initial establishment of a trust fund for a specific biophysical region shall be based on the amount of ongoing permitting activity, availability of mitigation banks and other third-party mitigation projects, need for a trust fund, and other appropriate factors. Generally, regions that contain aquatic ecosystems of special value, a large amount of ground disturbance, or the highest level of permitting activity will have the highest priority.
- b. TNC shall develop a project portfolio which identifies specific mitigation projects for restoring, enhancing, creating and/or preserving aquatic resources as soon as practicable after a fund for a particular biophysical region has been established.
- c. In creating a project portfolio for a biophysical region, TNC shall identify the type of aquatic systems, their current and potential functions and values to the extent practicable, and suitable mitigation areas and activities.
- d. TNC shall develop and submit proposals for implementing identified mitigation projects to the Department for review by the Review Committee. In developing a proposal, TNC shall give primary consideration to providing compensation commensurate with the type(s) and extent of adverse protected natural resource impacts for which ILFs have been or are likely to be paid.
- e. Mitigation projects sponsored by a government agency, individual, or other organization, including mitigation projects on public land, may be considered but must be submitted for consideration through TNC. Mitigation projects may require Corps authorization under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. Mitigation projects may also require separate authorization from landowners or other regulatory agencies.
- f. Upon authorization by the Approval Committee and prior to the expenditure of any "Natural Resource Mitigation Fund" proceeds, TNC shall enter into a "Wetland Mitigation Project Agreement" with the mitigation project sponsor. The "Wetland Mitigation Project Agreement" shall be in general conformance with the sample "Agreement" (Appendix E) unless otherwise authorized by the Department and the Corps.
- g. TNC shall be responsible for ensuring that approved projects are completed as approved.

- 4. Role of resource agencies:** The Department, the Corps, and TNC encourage the resource agencies involved in the development of these procedures to continue their participation during the implementation of this trust fund program. Their involvement in such aspects of the program as determining and prioritizing geographic regions and evaluating mitigation project proposals, including initial site visits and assessing the feasibility and ecological benefit of specific proposed projects, will enhance the effectiveness of the program.

5. Roles and responsibilities of Review and Approval Committees:

Review Committee: The "Natural Resource Mitigation Fund Review Committee" (Review Committee) will be comprised of representatives from the Department, the Corps, Maine Department of Inland Fisheries and Wildlife (MDIFW), Maine Department of Conservation (DOC), Maine State Planning Office (SPO), Maine Department of Transportation (DOT), Maine Department of Marine Resources (DMR), and TNC. In addition, two seats will be made available on staggered three-year terms to representatives from other quasi-government or non-governmental organizations. TNC's seat on the review committee shall be ex-officio, nonvoting. The Review Committee shall be chaired by the Agreement Administrator or their designee.

Procedure:

(1) Meetings: The Review Committee shall meet twice a year or as necessary to review requests for funding in all biophysical regions in which funding is available in the Natural Resources Mitigation Fund. All meetings shall be public.

(2) Rules and Journal: The Review Committee shall determine its own rules and order of business and shall provide for keeping a journal of its proceedings. This journal and verbatim record of the Review Committee meetings shall be a public record maintained at the offices of TNC open for inspection at the request of the Department.

(3) Voting: Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. The journal shall indicate the vote cast by each individual Review Committee member on each roll call vote. A majority of the Review Committee shall constitute a quorum. No recommendation of the Review Committee shall be binding or valid unless adopted by the affirmative vote of a majority of the members of the Review Committee present.

(4) Conflict of Interest: Review Committee members must disclose any interest in a proposed ILF project or any adjacent properties affected by an ILF project and recuse themselves from voting on those matters if they have a conflict of interest as defined pursuant to 5 M.R.S.A. § 18. This provision does not prevent a department or agency from officially supporting any specific request.

(5) Requests for Funding: All requests for funding from the "Natural Resource Mitigation Fund" shall come through TNC for consideration by the Review Committee. If a request is submitted to a department or agency, it will be forwarded to TNC for reviewed under this Agreement. Project sponsors, in coordination with TNC, shall be available at each meeting of the Review Committee to provide detailed technical information regarding their project proposal and to answer question with regard to project need, design and environmental benefit.

(6) Review Criteria: The Review Committee will evaluate proposals based on 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, in the case of preservation, the relative threat of development of the proposed site. Proposals accepted by the Review Committee will be forwarded to the Approval Committee for consideration.

- b. **Approval Committee:** The "Natural Resource Mitigation Fund Approval Committee" (Approval Committee) will be comprised of the Commissioners or their designees from the Department, DMR, DOC, MDIFW, and designated representatives from the Corps, U.S. Fish and Wildlife Service (USF&WS), and the Environmental Protection Agency (EPA). The Department Commissioner or designee shall chair the approval committee and shall not vote unless necessary to break a tie of voting members. In addition to considering whether the proposed project meets criteria described in Section D.3, the Approval Committee will accept and prioritize projects based on state-wide resource protection priorities and level of threat.

Procedure:

(1) **Meetings:** The Approval Committee shall meet as necessary at such times and places as the Department may prescribe. All meetings shall be open to the public.

(2) **Rules and Journal:** The Approval Committee shall determine its own rules and order of business and shall provide for keeping a journal of its proceedings. This journal and verbatim record of the Approval Committee meetings shall be maintained at the offices of TNC and shall be a public record open to inspection at the request of the Department.

(3) **Voting:** Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. The journal shall indicate the vote cast by each individual Approval Committee member on each roll call vote. A majority of the Approval Committee shall constitute a quorum. No action of the Approval Committee shall be binding or valid unless adopted by the affirmative vote of a majority of the members of the Approval Committee.

(4) **Conflict of Interest:** Approval Committee members must disclose any interest in a proposed ILF project or any adjacent properties affected by an ILF project and recuse themselves from voting on those matters if they have a conflict of interest as defined pursuant to 5 M.R.S.A. § 18. This provision does not prevent a department or agency from officially supporting any specific request.

(5) **Project Approval:** All decisions by the Approval Committee to grant approval to a proposed mitigation project shall be documented in writing and signed by the chair of the Approval Committee presiding at the meeting approving the project. The written decision to accept a proposed "Natural Resource Mitigation Fund" project proposal constitutes approval for the expenditure of Trust Fund assets on that mitigation project.

D. General Procedures for Developing and Managing the Trust Funds

1. Geographic applicability:

A "Natural Resource Mitigation Fund", subdivided by biophysical regions, shall be established to cover activities subject to the jurisdiction of the NRPA, CWA, and and/or RHA subject to the requirements of this agreement. A Department and/or Corps permit applicant whose proposed activity or project lies within the service area of the established fund is potentially eligible to pay an ILF that will become part of the fund, subject to applicable Department laws, regulations, policies, and ILF requirements. ILF compensation projects can occur in any biophysical region pursuant to any applicable local, state, or federal approvals.

2. Project review, selection and prioritization:

- a. **Project screening:** As part of their consideration, the Review Committee may consider the need for the specific activities in a location proposed, the correlation between the proposed activities and the adverse impacts to natural resources that are protected under NRPA, CWA, and/or RHA and are represented by the activities of the applicant that would fund the proposed mitigation project through the ILF program, the environmental costs and benefits of the mitigation project, and all comments received.
- b. **Source of project proposals:** Potential ILF-funded mitigation projects may be submitted to TNC by any member of the Review or Approval Committees, any state or federal agency, non-government organization, or member of the public provided that the mitigation proposal includes all of the requirements described in Sections D.2.c and D.3.
- c. **Project criteria:** Projects developed and selected for funding shall:

1. To the extent appropriate and practicable, restore, enhance, preserve, or create wetlands of equal or greater value on a biophysical region basis as those wetlands that have been impacted by the projects serving as sources of ILF funds;
 2. To the extent appropriate and practicable, include upland areas sufficient to protect, buffer, or support identified wetland functions and ecological connectivity to other conservation areas or undeveloped large block habitats;
 3. Have provisions for long-term management or stewardship by a responsible state or federal resource agency, conservation organization, or other private landowner. Conservation easements or fee on private lands shall be able to be purchased or otherwise acquired. Habitat projects on public lands or lands owned by TNC other non-profit conservation organizations are assumed to be protected and managed in perpetuity by the managing agency or organization;
 4. Demonstrate landowner willingness to participate in the proposed project, including entering into conservation easements or conveying fee title to property;
 5. Represent an efficient use of funds expended reasonably given the condition, location and relative appraised values of properties;
 6. Consider the location of a potential ILF proposal relative to statewide focus areas for land conservation or habitat preservation identified by a state agency;
 7. Demonstrate project readiness and likelihood of success.
 8. To the extent appropriate and practicable, restore, enhance, create, and preserve wetlands or other natural resources in accordance with Corps and State mitigation policy and guidance.
- d. **Approval process:** Before granting approval, the Department may require public notice to solicit public comment on a proposal if the Department determines that issuance of a public notice is necessary to serve the public interest or is otherwise appropriate.

The Approval Committee will allocate funds to specific mitigation projects at such time as there are adequate funds to meet all costs necessary to complete a project that will meet or exceed the mitigation requirements that generated the fees. Only the Approval Committee can authorize TNC to expend funds and that decision will be made at its sole and absolute discretion.

The Approval Committee is committed to authorizing projects, where possible, to provide compensatory mitigation for wetland impacts within a reasonable time frame from the receipt of funds in a particular biophysical region. However, this effort will be limited by the availability of funding within each biophysical region. Accordingly, the Approval Committee will endeavor to authorize the expenditure of funds towards projects that will be initiated within not more than 2 years from the receipt of funds in each biophysical region. For purposes of this agreement, the term "initiate" shall mean that a site has been identified with protection secured, and a contract has been issued for the development and implementation of the mitigation project. A construction completion date, not to exceed two years from the date of contract issuance shall be required for each project.

In exceptional circumstances the Approval Committee shall be allowed to deviate from this time frame for reasons including inadequate funds, funds slow to accumulate, or lack of suitable projects within a biophysical region where fees are generated. If fund accumulation in a given biophysical region is inadequate for timely implementation of projects, monies can be transferred to another biophysical region upon the recommendation of the Review Committee and at the sole discretion of the Approval Committee. The Approval Committee may identify up to five projects at one time to be considered as wetland mitigation projects of statewide priority, enabling those projects to receive funds designated

for any biophysical region that have been held for two or more years without expenditure within that region.

4. Content of mitigation proposals. Mitigation proposals forwarded by TNC to the Review Committee shall include the following, as appropriate, depending on whether the scope of the proposed project includes restoration, creation, enhancement, or preservation.

- a. A detailed description of the mitigation project area, consisting of vicinity and site maps, spatial coordinates of the project area, any available aerial photographs, land use history, and a determination of protected natural resources based on either aerial photo interpretation or, if available, a wetland delineation conducted in accordance with the Corps of Engineers 1987 Delineation Manual or subsequent USACE-approved method;
- b. A detailed concept plan of the project and, if the project includes areas consisting solely of preservation, include a description of the size, type and value of wetlands being protected, and their adjacency to other conservation lands. This description may include road closures or other activities needed to support the project. For projects including restoration and enhancement, the description should be as detailed as practicable and include the type and location of all soil disturbing activities and structures; a construction schedule; and a planting plan that includes a list of non-invasive, native species to be used; planting density; planting methods and schedule; and planting plan success criteria.
- c. When restoration, creation, or enhancement is proposed, there should be a description of the local hydrology, assessment of likely mitigation project-related changes to local hydrology, and demonstration that local hydrology would be sufficient to support the proposed mitigation project;
- d. A description of any potential adverse impacts to any protected natural resource, such as upstream or downstream aquatic resources, ecologically sensitive areas and wildlife habitat, as a result of ILF project implementation, and of how such impacts will be avoided and minimized;
- e. A discussion of any potential effect the mitigation project may have on any species either federal or state-listed as threatened or endangered that may be found in the vicinity of the project;
- f. When restoration, enhancement or creation is proposed, a plan for monitoring the development and success of the proposed mitigation project, regularly reporting on the status and success of the mitigation project to the Department, and addressing contingencies.
- g. Information demonstrating the technical and professional qualifications required for implementation of the project. List specific contacts and qualifications, if available.
- h. If the project will involve the acquisition of a conservation easement, an explanation of what the easement will accomplish and who will monitor and enforce it. If the proposed conservation easement does not follow the Department's template (Appendix C), provide a draft for review by the Office of the Attorney General.
- i. A description of the projected costs, including: design, construction, monitoring, land or easement acquisition, long-term operation and maintenance, and contingencies.

4. Method of payment and other provisions.

- a. Use and operation of funds:

A Department and/or Corps permit applicant may at any time request to pay a compensation fee to the Department in lieu of other forms of compensatory mitigation for the applicant's proposed project (a "Development Project"). However, to receive any mitigation credit from the Department and/or the Corps for paying a compensation fee, the applicant must receive prior approval from the Department and/or the

Corps and comply with all applicable laws, regulations, and policies concerning avoidance, minimization, and compensation of adverse project impacts to protected natural resources.

For Development Projects not requiring agency coordination during the permit application review process, the Department may determine without resource agency coordination whether payment of an ILF is appropriate compensation for likely adverse Development Project impacts to protected natural resources. For Development Projects requiring coordination with such agencies as MDIF&W, DMR, or USACE, the Department shall fully consider each agency's comments regarding the use of the ILF before making its determination.

If the Department and/or the Corps determines that payment of an ILF constitutes appropriate compensatory mitigation, in whole or in part, for the adverse impacts of a Development Project, the Department shall be responsible for determining the amount of the ILF, according to the established per square foot fee schedule and the number of square feet that the Department and/or the Corps deems are required to compensate for the adverse impacts to resource functions and values, both temporary and permanent. The Department shall in all cases have the final authority in determining the appropriate number of square feet. It is understood that the applicant may elect to conduct other appropriate and practicable mitigation if it complies with all Department and/or Corps laws, regulations, and policies and receives Department and/or Corps approval. The Department shall also be responsible for collecting each ILF from the permit applicant, and shall keep a written record of each ILF paid that includes the Department permit number; Corps permit number, if applicable; permittee's name and address; location and water bodies affected by the permitted activity; biophysical region in which the project is located; type, quality, and extent of each type of protected natural resource for which ILF compensation is being made; and the amount of the ILF. The Department shall transfer all ILFs collected to TNC for deposit into the Natural Resource Mitigation Fund. For each ILF, the Department shall designate the appropriate sub account where each ILF is to be held by TNC, based on the biophysical region within which the Development Project is located, as more particularly described in Section B below. TNC shall act as the passive recipient from the Department of all ILFs, and shall play no role in any Department or Corps regulatory decision, determining the nature and extent of any required compensatory mitigation, or determining the appropriateness of any specific ILF. This contract does not preclude TNC from publicly commenting on matters pending before the Department and/or the Corps.

b. Financial controls and reporting:

TNC shall hold and invest ILFs received from the Department pursuant to this agreement in a manner consistent with TNC's policies and procedures for the investment of its own funds. TNC will establish a separate internal sub account for each biophysical region identified pursuant to this Agreement and will credit each sub account with its share of the net investment income earned. These funds will be invested so as to maximize the safety of the principal amount held by TNC. TNC shall account for the funds so held in accordance with generally accepted accounting principles and provide the Department and the Corps with an itemized annual statement that includes a list of the account(s) in operation, and, for each account, the beginning and ending annual balances, investment income earned, and authorized expenditures. The annual statement shall be made available to the public. Reporting requirements and compliance procedures for specific compensatory mitigation projects accomplished with ILF trust fund monies shall be developed as appropriate on a project-by-project basis. Generally, any specific compensatory mitigation project agreement entered into between TNC and the entity responsible for the long-term management of a particular mitigation project should include a provision to submit annual or biennial mitigation project-specific progress reports during the term of this Agreement.

c. Fund income and expenditures:

No trust fund assets may be expended by TNC without prior written Department approval, except that TNC may be reimbursed for reasonable expenses it incurs in administering and developing the regional ILF trust funds, as described in the last paragraph of this section. Each regional trust fund may be charged for reasonable and appropriate expenses associated with the acquisition of land and conservation easements, design and implementation of mitigation projects, and long-term operation and maintenance of projects.

These expenses shall be included in the overall cost of each mitigation project. Project-specific expenses shall be included in each project proposal submitted to the Department by TNC and debited from a regional trust fund as follows:

1. **IMPLEMENTATION COSTS:** The costs of implementing a mitigation project, such as the purchase price of the land, payment for a conservation easement, construction activities, appraisals, EHA, closing costs, and establishment of vegetation, may be debited directly from the trust fund.

The administrative costs to TNC or other project sponsor of developing and implementing a mitigation project may be debited from the trust fund and paid to TNC or other project sponsor at a cost rate of 3% on a project-specific basis. If a regional trust fund contains insufficient funds to compensate TNC or other project sponsor for these general administrative expenses, TNC may, upon receiving the Department's approval, borrow necessary funds from another regional trust fund, which would be repaid as soon as practicable. Payments are subject to the TNC's compliance with all items set forth in this Agreement and subject to the availability of funds.

2. **LONG-TERM MAINTENANCE AND OPERATION COSTS:** The costs of long-term operation and maintenance of a mitigation project may be debited from the trust fund and paid to the entity responsible for the long-term management of the mitigation project and monitoring of a permanent easement
3. **ADMINISTRATIVE COSTS:** In addition, TNC shall be entitled to charge overhead costs in the amount of 5% of all fees entering the fund, at the time the funds are received, to defray such ordinary expenses involved in administering the program as: processing of checks, communications with partners, financial management and accounting, costs associated with coordinating project proposals as well as the management and presentation of proposals and coordination with those seeking proposal information.

E. Periodic review of program

The Department, in cooperation with the Review Committee, shall regularly review the status of the fund accounts, delineation of regions, per-square foot fee schedules, and other components of the ILF program. Changes in fees, boundaries, and other program components shall be made to each regional fund as appropriate to further the intended purposes of the program and to increase program efficiency and effectiveness. Collected ILFs that have not been expended in two years may, at the discretion of the Department, be expended on other mitigation projects that would serve the same basic purpose as the trust and meet a state-wide project priority as established by the Approval Committee. An extension of time may be granted by the Department on a case-by-case basis.

F. Good faith agreement

The Department, the Corps, and TNC hereto agree to exercise their rights and responsibilities as contained in this agreement in good faith as much as their mutual desire under this agreement is to protect, restore and enhance the aquatic environment.

G. Amendment and termination

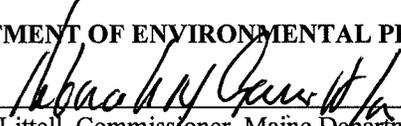
This agreement may be amended or terminated by any party by giving ninety days written notice of their intention to the other parties. Any amendment requires the mutual agreement of the parties. Prior to any termination of this agreement, TNC shall provide the Department and the Corps an accounting of funds in the trust and documentation that the TNC has met its financial obligations. Upon termination of this agreement, the Department will work with the Approval Committee to determine how the remaining trust funds will be expended. The trust funds can be transferred to a newly established 3rd party if this contract is terminated or,

alternatively, upon termination and after payment of all outstanding obligations as provided in Section 8 above, the remaining funds in the Trust can be paid to not more than 10 different entities.

IN WITNESS WHEREOF, the Department, the Corps and TNC, by their representatives duly authorized, have executed this agreement in three original copies on this 31st day of JANUARY, 2008.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By:


David A. Littell, Commissioner, Maine Department
Of Environmental Protection

and

**U.S. ARMY CORPS OF ENGINEERS, NEW ENGLAND
DISTRICT**

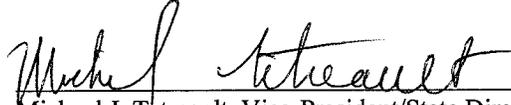
By:


Curtis L. Thalken
Colonel, Corps of Engineers
Commander, New England District

and

THE NATURE CONSERVANCY

By:


Michael J. Tetreault, Vice-President/State Director

APPENDIX A



DEP FACT SHEET In Lieu Fee Compensation Program

Revised: June, 2008

contact: See back page for nearest
DEP address & phone number

Mitigating adverse environmental impacts is an integral part of Maine's Natural Resources Protection Act (NRPA) (38 M.R.S.A. § 480 A – BB), a regulatory program administered by the Maine Department of Environmental Protection (DEP). In general, mitigation is a sequential process of avoiding adverse impacts, minimizing impacts that cannot be practicably avoided, and then compensating for those impacts that cannot be further minimized. Both State and federal agencies administering resource protection regulations may require appropriate and practicable compensatory mitigation as a condition of their permit approvals and authorizations.

Compensation is required to off-set an adversely affected resource function with a function of equal or greater value. **The DEP encourages applicants to mitigate for lost resource functions**

Table 1 Resource Compensation Rates 7/1/07 thru 6/30/09
(revised 5/6/08)

County	Wetland Creation/sq. ft.	Assessed Land Value/sq. ft.*	Assessed Coastal Land Value/sq. ft.*
Androscoggin	\$3.28	\$0.11	N/A
Aroostook	\$2.74	\$0.01	N/A
Cumberland	\$3.28	\$0.53	\$1.47
Franklin	\$2.74	\$0.03	N/A
Hancock	\$2.74	\$0.13	\$0.22
Kennebec	\$3.28	\$0.09	\$0.13
Knox	\$3.28	\$0.26	\$0.36
Lincoln	\$3.28	\$0.23	\$0.43
Oxford	\$3.28	\$0.04	N/A
Penobscot	\$2.74	\$0.04	\$0.24
Piscataquis	\$2.74	\$0.02	N/A
Sagadahoc	\$3.28	\$0.20	\$0.27
Somerset	\$3.28	\$0.03	N/A
Waldo	\$3.28	\$0.06	\$0.16
Washington	\$2.74	\$0.02	\$0.04
York	\$3.28	\$0.37	\$1.04

* Figures based on 2005 MRS statistical summary

and values on the project site to the maximum extent practicable.

If ecologically appropriate on-site mitigation is not available, practicable or otherwise wholly or in part acceptable to off-set lost resource function and value, an applicant may look off-site to find appropriate compensation or may request to pay a fee in lieu of (ILF) a compensation project as outlined in the Natural Resources Protection Act 38 M.R.S.A. § 480 (Z).

The ILF compensation program was established to provide applicants with a flexible compensation option over and above traditional permittee-

responsible compensation projects. The applicant may choose which method of compensation is preferred for a given project.

The methods for resource mitigation are outlined further in the DEP Fact Sheet: *Natural Resource Compensation: Methods for Restoring Lost Function and Value.*

The ILF resource compensation rates for the period July 1, 2007 thru June 30, 2009 as revised on May 6, 2008 shall be as outlined, in Table 1. All resource compensation fees shall be calculated using the resource dependant formulas outlined below based on the rates provided in Table 1 and a

APPENDIX A

resource multiplier. The resource multiplier is an adjustment factor that reflects the significance of specific resources. The resource multiplier shall be 1 except as follows:

1. A resource multiplier of 2 shall be used for:
 - a. Wetlands areas containing at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments;
 - b. Peatlands dominated by shrubs, sedges and sphagnum moss;
 - c. Coastal wetlands;
 - d. Inland wading bird & waterfowl habitat (IWWH); and
 - e. Tidal wading bird and waterfowl habitat (TWWH); and
2. A resource multiplier of 4 shall be used for vernal pools and shorebird habitat

Note: Projects that choose to use the ILF natural resource mitigation program will be required to pay the compensation fee in full prior to the issuance of the DEP permit.

Wetland Compensation Formula:

Wetland compensation fee = (direct wetland degradation/s.f. x (wetland creation cost/s.f. + assessed land valuation/s.f.)) x (resource multiplier)

Vernal Pool Compensation Formula:

Vernal pool compensation fee = (direct wetland degradation/s.f. x (wetland creation cost/s.f. + assessed land valuation/s.f.)) + (upland vernal pool habitat degradation/s.f. x land valuation/s.f.) x (resource multiplier)

[Note: 250Any proposed project that must directly impact a portion of a vernal pool aquatic habitat must compensate for the entire significant vernal pool habitat area.]

Inland Wading Bird and Waterfowl (IWWH) Compensation Formula:

IWWH compensation fee = (direct wetland degradation/s.f. x (wetland creation cost/s.f. + assessed land valuation/s.f.)) + (upland IWWH habitat degradation/s.f. x land valuation/s.f.) x (resource multiplier)

Tidal Wading Bird and Waterfowl (TWWH) Compensation Formula:

TWWH compensation fee = (TWWH zone of influence/s.f. x land valuation/s.f.) x (resource multiplier)

[*Note: The “zone of influence” includes all mapped TWWH habitat area within 300’ of the proposed new pier, ramp and float. TWWH function and value is lost or highly degraded within the “zone of influence”.]

Shorebird Habitat Compensation Formula:

Shorebird habitat compensation fee = (upland buffer degradation or zone of influence impact/s.f. x land valuation/s.f.) x (resource multiplier)

[*Note: The “zone of influence” includes all mapped shorebird habitat area within 300’ of the proposed new pier, ramp and float. Shorebird habitat function and value is lost or highly degraded within the “zone of influence”.]

All compensation fee amounts could be directly reduced by decreasing the amount of habitat degradation associated with each project example.

APPENDIX A

For further information please contact your nearest DEP regional office, and ask to speak to the "on-call" person in the Land & Water Bureau, Division of Land Resource Regulation.

Central Maine Regional Office, 17 State House Station, Augusta, ME 04333-0017; Phone: 207-287-3901 (Bureau) or toll-free 1-800-452-1942 (Department).

Eastern Maine Regional Office, 106 Hogan Road, Bangor, ME 0440; Phone: 207-941-4570 or toll-free 1-888-769-1137.

Northern Maine Regional Office; 1235 Central Drive, Skyway Park; Presque Isle, ME 04769; Phone: 207-764-0477 or toll-free 1-888-769-1053.

Southern Maine Regional Office, 312 Canco Road, Portland, ME 04103; Phone: 207-822-6300 or toll-free 1-888-769-1036.

APPENDIX B



DEP FACT SHEET

Natural Resource Mitigation Fund

issued: August 1, 2007

See back page for nearest
DEP address & phone number

Mitigating adverse environmental impacts is an integral part of Maine's Natural Resources Protection Act (NRPA) (38 M.R.S.A. § 480 A – BB), a regulatory program administered by the Maine Department of Environmental Protection (DEP). Both State and federal agencies administering resource protection regulations may require appropriate and practicable compensatory mitigation as a condition of their permit approvals and authorizations.

If ecologically appropriate compensation is not available or otherwise practicable, a permit applicant may request to pay an in-lieu compensation fee of a value equivalent to the compensation value to be used for the purpose of restoring, enhancing, creating or preserving other resource functions or values that are environmentally equal or preferable to the functions and values of impacted resources and associated uplands, as determined by the DEP (38 M.R.S.A. § 480-Z). Upon authorization by the permitting agency the ILF will be paid directly to the DEP and will be placed in a "Natural Resource Mitigation Fund." The Natural Resource Mitigation Fund will be administered by The Nature Conservancy (TNC).

Natural resource mitigation project proposals may be submitted to: William Brune
The Nature Conservancy
14 Main Street, Suite 401
Brunswick, Maine 04011
Wbrune@tnc.org

for consideration by the Natural Resource Mitigation Fund Review and Approval Committees. All proposals to request funding from the "Natural Resource Mitigation Fund" submitted to TNC must be formatted in accordance with the attached guidance document entitled "Request for Funding from the Natural Resource Mitigation Fund.

Successful applicants will be required to enter into a Project Agreement with the DEP and TNC, to ensure that the project is implemented as agreed, and that the wetland is permanently managed and protected. (Sample agreement form attached)

For further information please contact your nearest DEP regional office, and ask to speak to the "on-call" person in the Land & Water Bureau, Division of Land Resource Regulation.

Central Maine Regional Office, 17 State House Station, Augusta, ME 04333-0017; Phone: 207-287-3901 (Bureau) or toll-free 1-800-452-1942 (Department).

Eastern Maine Regional Office, 106 Hogan Road, Bangor, ME 0440; Phone: 207-941-4570 or toll-free 1-888-769-1137.

Northern Maine Regional Office; 1235 Central Drive, Skyway Park; Presque Isle, ME 04769; Phone: 207-764-0477 or toll-free 1-888-769-1053.

Southern Maine Regional Office, 312 Canco Road, Portland, ME 04103; Phone: 207-822-6300 or toll-free 1-888-769-1036.

Note: Wetland Mitigation Funds do not generally qualify as non-federal match.

Request for Funding from the Natural Resource Mitgation Fund

Date Submitted to The Nature Conservancy: _____

1. PROJECT & PROPONENT INFORMATION CHECKLIST

A. Project Sponsor

Name
Project Manager
Address
Phone Numbers
Email

B. Project Specifics

Project Name
Landowner
Project Type (Wetland Preservation, Wetland Restoration, Other (explain below))
Township/County
Town Map & Lot Number
Wetland System
Biophysical Region
Beginning with Habitat Focus Area
(if applicable)

Total project acres (ac)

Wetland Restoration/enhancement (ac)
Wetland Preservation (ac)
Wetland Creation (ac)
Wetland Buffer up to 100' (ac)
Upland exceeding 100 from wetland (ac)
Shoreline/Riparian area (feet)

C. General Project Information

Provide any additional general information deemed necessary including other party involvement, other sources of funding, and any in-kind contributions.

D. Current Site Conditions

Provide a summary of the current site conditions. Include stream / wetland / buffer conditions including the deficiencies to be restored, general property use, site constraints / problems, etc. Refer to

attached maps and photographs depicting the current conditions. Confirm any previous wetland impacts in this system. Add wetland classification information from Maine Geological Information System (MEGIS). Information regarding MEGIS is available here:
<http://megisims.state.me.us/metadata/nwi.htm>

E. Compensation Potential

Describe the proposed project in detail as relates to compensation. If the scope of work includes restoration/enhancement, include the compensation measures to be employed. If preservation, state the reasons why the system should be preserved. Accurate field delineated/verified information is preferable. Note if acreage / linear feet are estimates from maps or field delineated/verified.

Be sure to include in the text the following information (as appropriate):

Wetland/Habitat Details

Total acreage (entire parcel/project area)

Existing wetland/habitat (acres; type; indicate if mapped NWI, estimated, or delineated)

Wetland/habitat buffer up to 100' (width and acreage)

Potential restoration

Preservation acreage

Adjacent upland

Upland management (agriculture, home site, timber, livestock, etc.)

F. Compensation Protection

Short-Term Monitoring

For restoration/enhancement projects, summarize the anticipated monitoring (preservation projects do not require short-term monitoring). Always include the following statement: "Please note that if the project is approved for funding, a detailed monitoring plan with success criteria will be submitted prior to receipt of funding."

Long-Term Monitoring

Provide information on who will own the site, general easement protection and exemptions, and who will hold/monitor the easement.

G Conservation Targets and Environmental Benefits and Threats

- a. Describe the level and type of threats to aquatic resources, including buffers.
- b. Describe the general environmental benefits resulting from the restoration measures (e.g., reduce sedimentation, buffer functions, wetland functions, in-stream habitat improvement, etc.)
- c. Discuss the adjacency / proximity to other protected properties and how this project will enhance overall conservation (e.g., refuges, management areas, preservation, parks, conservation organization properties, mitigation banks or private sites, other protected restoration sites).
- d. Describe the proximity / benefits to rare/endangered natural resources (e.g., Maine Natural Area Program (MNAP) element occurrences, Beginning with Habitat Focus Area, habitat for State or federally listed species).
- e. Describe improvements to impaired systems or added protection to large aquatic resource system.

H. Schedule

Summarize any deadlines regarding acquisition or constraints on when the restoration can be initiated. Outline the basic steps of the required project activities with identified milestones. Include the earliest date in which the project could be initiated and the anticipated project time length.

I. Project Maps and Photographs

Attach photographs depicting the current site conditions, including any deficiencies requiring restoration. Attach a map and aerial photographs of the project site at an appropriate scale (e.g. USGS 7.5 Minute Quadrangle) that show the proposed project's boundaries. Attach a map depicting the different resource types including wetlands (creation, enhancement/restoration, preservation), streams (creation, enhancement, preservation), buffer (riparian and wetland with transects depicting width of buffer), open water areas, and uplands. Provide locational latitude/longitude or GIS coordinates.

2. **PROPOSED OR ESTIMATED COSTS:**

The project Sponsor is requesting the allocation of \$_____ from the Wetland Mitigation Fund for this project. This equates to \$_____ per acre of restored wetland and \$_____ per acre of wetland acquired. Clarify what other funding and in-kind contributions the project sponsor is providing.

Acquisition and Associated Costs

Acquisition:

Legal/Closing:

Appraisal:

Phase I EHA:

Boundary Survey:

Title Insurance:

Taxes:

Acquisition and Associated Costs Subtotal:

Restoration Costs:

Project Management:

Delineation (indicate GPS or full survey):

Permits (USACE, DEP, and Town):

Topographical Survey:

Assessment and Design:

Stake-Out Survey:

Construction Oversight and Monitoring:

Construction (includes as-built survey):

Other Activities (list):
Success Monitoring and Reporting:
Restoration Costs Subtotal:

Corrective Action and Reporting (reserved)

Corrective Action (20% Construction Cost):
Corrective Action and Reporting Subtotal:

Long-Term Monitoring and Management

Stewardship Start-Up:
Stewardship Endowment:
Long-Term Monitoring and Management Subtotal:

3. **MONITORING REPORTS:** Monitoring reports should be submitted electronically on the approved schedule to The Nature Conservancy, which will compile and forward them on to the Department of Environmental Protection and Army Corps of Engineers.
4. **PERFORMANCE BOND:** The “Wetland Mitigation Fund” review and/or approval committees may require that the project sponsor retain a performance bond for an approved project.

APPENDIX C

CONSERVATION EASEMENT

This **DEED OF CONSERVATION EASEMENT** made this _____ day of _____, 200__.

WITNESSETH:

WHEREAS, _____, residing at _____, hereinafter called the Grantor, is the owner in fee simple of certain real property, hereinafter called the "Protected Property," which has ecological, scientific, educational and aesthetic value in its present state as a natural area which has not been subject to development or exploitation, which property is located in [Town, County, State] and is more particularly described in Exhibit A attached hereto and incorporated by this reference.

WHEREAS, THE NATURE CONSERVANCY, hereinafter called the Grantee, is a nonprofit corporation incorporated under the laws of the District of Columbia as a tax exempt public charity under Section 501(c)(3) and 509(a)(1) of the Internal Revenue Code, qualified under section 170(h) of the Internal Revenue Code to receive qualified conservation contributions, and having its headquarters at 4245 North Fairfax Drive, Arlington, Virginia 22203-1606 and a local address at [_____], whose purpose is to preserve natural areas for scientific, charitable, educational and aesthetic purposes; and

WHEREAS, the Protected Property is a significant natural area which qualifies as a "...relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended, and in regulations promulgated thereunder; specifically the Protected Property is habitat for [elaborate];

[If applicable, WHEREAS, the Protected Property provides land areas for outdoor recreation by, or the education of, the general public, specifically [elaborate];]

[If applicable, WHEREAS, preservation of the Protected Property is for the scenic enjoyment by the general public and will yield a significant public benefit, specifically [elaborate];] and

[If applicable, WHEREAS, preservation of the Protected Property is pursuant to federal, state and local governmental conservation policy and will yield a significant public benefit, specifically [elaborate];] and

WHEREAS, the specific conservation values of the Protected Property are documented in an Easement Documentation Report, prepared by Grantee and signed and acknowledged by the Grantor, establishing the baseline condition of the Protected Property at the time of this grant and including reports, maps, photographs, and other documentation; and

WHEREAS, the Grantor and Grantee have the common purpose of conserving the above-described conservation values of the Protected Property in perpetuity; and

WHEREAS, the State of _____ has authorized the creation of Conservation Easements pursuant to **[insert statutory reference]** and Grantor and Grantee wish to avail themselves of the provisions of that law;

NOW, THEREFORE, the Grantor, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions and restrictions herein contained and as an absolute and unconditional gift, does hereby give, grant, bargain, sell and convey unto the Grantee a Conservation Easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth.

1. Purpose. The purposes of this Conservation Easement are as follows: to permit the restoration and enhancement of aquatic resources by the Maine Wetland Mitigation Fund through the Conservancy; to assure that the Protected Property will be retained forever predominantly in its **[e.g. natural, scenic, forested, and/or open space]** condition; to protect any rare plants, animals, or plant communities on the Protected Property; and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values or interests of the Protected Property described above. Grantor intends that this Conservation Easement will confine the use of the Protected Property to such activities as are consistent with the purpose of this Conservation Easement.

2. Prohibited Uses. Any activity on or use of the Protected Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited except as provided in paragraph 3 below:

2.1 There shall be no constructing or placing of any building, tennis or other recreational court, landing strip, mobile home, swimming pool, fence or sign (other than those required by Grantee for appropriate management), asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, sodium vapor light or any other temporary or permanent structure or facility on or above the premises.

2.2 There shall be no ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, nor any building of roads or change in the topography of the land in any manner.

2.3 There shall be no removal, destruction or cutting of trees, shrubs or plants, planting of trees, shrubs or plants, use of fertilizers, introduction of non-native animals, grazing of domestic animals, or disturbance or change in the natural habitat in any manner.

2.4 There shall be no use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, and no use of devices commonly known as “bug-zappers”.

[RESERVE THE RIGHT TO USE PESTICIDES AS MANAGEMENT TOOL IF APPLICABLE]

2.5 There shall be no storage or dumping of ashes, trash, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste, nor any placement of underground storage tanks in, on, or under the Protected Property; there shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, nor shall activities be conducted on the Protected Property or on adjacent property if owned by Grantor which could cause erosion or siltation on the Protected Property.

2.6 There shall be no pollution, alteration, depletion or extraction of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies, nor shall there be activities conducted on the Protected Property or on adjacent property if owned by Grantor, which would be detrimental to water purity, or which could alter natural water level and/or flow in or over the Protected Property EXCEPT: (a) as necessary to accommodate the activities expressly permitted under this Conservation Easement, and (b) any such activities that are necessary or expedient for the restoration or construction of surface features and hydrologic systems required for a aquatic resource restoration project approved by the Conservancy, Maine Department of Environmental Protection (MDEP) and the U.S. Army Corps of Engineers (“USACE”).

2.7 There shall be no operation of mountain or other bicycles, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, hang gliders, aircraft, jet skis, motorized boats or any other types of mechanized vehicles, nor shall the Protected Property be used for any commercial recreational activity.

2.8 The Protected Property may not be divided, partitioned, or subdivided, nor conveyed except in its current configuration as an entity.

2.9 The Protected Property and any portion thereof shall not be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferrable development rights scheme or cluster development arrangement or otherwise; provided, however, that with prior written permission of the Grantee, this paragraph shall not preclude such transfer of development rights resulting from the destruction or demolition of any existing residential building on the Protected Property.

2.10 Ecological Restoration Activities. If Grantee reasonably determines that such activities are consistent with the purposes of this Conservation Easement, Grantee may, subject in any event to Grantor’s prior written consent, not to be unreasonably withheld, engage, and permit others to engage, in restoration activities pertaining to aquatic resources, streams, wetlands, riparian areas, or invasive plants.

3. Grantor’s Reserved Rights. The Grantor hereby reserves the following rights:

3.1 The right to undertake or continue any activity or use of the Protected Property not prohibited by this Conservation Easement. Prior to making any change in use of the Protected Property, the Grantor shall notify the Grantee in writing allowing Grantee to determine whether such change would violate the terms of this Conservation Easement.

3.2 The right to sell, give, mortgage, lease, or otherwise convey the Protected Property, provided such conveyance is subject to the terms of this Conservation Easement and written notice is provided to Grantee in accordance with paragraph 13 below.

3.3 The right to maintain such structures as currently exists on the Premises (which may be repaired or replaced, but not expanded, on the same site, in whole or in part by like structures used for the same or similar purposes).

3.4 The right to cut and remove diseased trees, shrubs, or plants and to cut firebreaks, subject to the prior written approval of Grantee pursuant to paragraph 4.5 below, except that such approval shall not be required in the case of emergency firebreaks.

3.5 Grantor and Grantee acknowledge that the exercise of any reserved right enumerated herein by the Grantor shall not relieve Grantor from complying with or obtaining any permit from any applicable governmental authority prior to the exercise thereof.

4. Grantee's Rights. To accomplish the purpose of this Conservation Easement, the following rights are conveyed to Grantee by this Conservation Easement:

4.1 The right to preserve and protect the conservation values of the Protected Property.

4.2 Right of Entry. The right to enter the Protected Property at all reasonable times and with prior notice and, if necessary, across other lands retained by the Grantor, for the purposes of: (a) inspecting the Protected Property to determine if the Grantor is complying with the covenants and purposes of this Conservation Easement; (b) enforcing the terms of this Conservation Easement; (c) taking any and all actions with respect to the Protected Property as may be necessary or appropriate, with or without order of court, to remedy or abate violations hereof; (d) making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Protected Property by the Grantor; and (e) monitoring and management as described below, and (f) performing activities associated with an aquatic resource restoration project approved by the Conservancy, MDEP and USACE;

4.3 Monitoring and Management. The right, but not the obligation, to monitor the condition of the rare plant and animal populations, plant communities, and natural habitats on the Protected Property, and to manage them, if necessary, to ensure their continued presence and viability on the Protected Property. Such activities shall be in accordance with management practices of Grantee, which may include but not be limited to mowing, fencing, trapping, prescribed burning, etc. Any such management activities shall be set forth in a written management plan to be reviewed by the Grantor.

4.4 Enforcement. The right to prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Conservation Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use, pursuant to paragraph 10.

4.5 Discretionary Consent. Grantee's consent for activities otherwise prohibited under paragraph 2 above, or for any activities requiring Grantee's consent under paragraph 3 above, may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the activities listed in paragraph 2 are deemed desirable by Grantor and Grantee, Grantee may, in its sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission, and permission for activities requiring Grantee's consent under paragraph 3, shall be in writing

and shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purpose of this Conservation Easement. Grantee may give its permission only if it determines, in its sole discretion, that such activities (1) do not violate the purpose of this Conservation Easement and (2) either enhance or do not impair any significant conservation interests associated with the Protected Property. Notwithstanding the foregoing, the Grantee and Grantor have no right or power to agree to any activities that would result in the termination of this Conservation Easement or to allow any residential, commercial or industrial structures or any commercial or industrial activities not provided for above.

4.6 Riparian Area and Aquatic Resource Restoration Activities. The right, but not the obligation, of the Grantee, its officers, employees, contractors, subcontractors and agents, including representatives of the MDEP and USACE, to enter upon the Easement Area and engage in wetland, stream and riparian area restoration and preservation activities, including, without limitation, construction, removal, reshaping and/or reinforcing of the riparian area adjacent to protected natural resources and other earthworks, planting of native vegetation and trees, and redirecting of streams or other water bodies. The Grantee shall be responsible for obtaining all permits necessary for engaging in such activities, and the Grantor shall consent to, and cooperate with, all efforts to obtain such permits including, without limitation, execution of all permit applications. All such entries shall be by existing driveways, roads or lanes on the Property and adjacent lands of the Grantor, and the Grantee shall repair any road, driveway, lane, fence or gate damaged as a result of such access to its condition immediately prior to such access. Should access be required across areas where driveways, lanes or roads do not exist, the Grantee may access such riparian restoration sites across the Property and other lands of the Grantee as necessary to accomplish the purposes of this Conservation Easement. The Grantee shall repair any damages occasioned by such access. The Grantee shall keep the Grantor's interest in the Easement Area free of any liens arising out of any restoration work performed for, materials furnished to or obligations incurred by the Grantee. After restoration, riparian restoration sites may not be ditched, filled or diked, nor may the hydrologic systems of such restored riparian areas be altered in any way, except for alterations necessitated by additional restoration activities by the Grantee.

5. Access. Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon or to use the Protected Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Conservation Easement.

6. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Grantee's interest in the Protected Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Grantor. Grantor agrees to release, hold harmless, defend and indemnify Grantee from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which Grantee may suffer or incur as a result of or arising out of the

activities of Grantor on the Protected Property. Grantee agrees to release, hold harmless, defend and indemnify Grantor from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which Grantor may suffer or incur as a result of or arising out of the activities of Grantee on the Protected Property.

7. Taxes. The Grantor agrees to pay any real estate taxes or other assessments levied on the Protected Property. If the Grantor becomes delinquent in payment of said taxes or assessments, such that a lien created against the land is to be executed upon, the Grantee, at its option, shall, after written notice to the Grantor, have the right to purchase and acquire the Grantor's interest in said Protected Property by paying funds to discharge said lien or delinquent taxes or assessments, or to take such other actions as may be necessary to protect the Grantee's interest in the Protected Property and to assure the continued enforceability of this Conservation Easement.

8. Title. The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Protected Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement; that the Protected Property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this Conservation Easement, and that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Conservation Easement. **NOTE: If any mortgages exist, they must be subordinated.**

9. Hazardous Waste. The Grantor covenants and represents that no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or on the Protected Property, and that there are not now any underground storage tanks located on the Protected Property.

10. Grantee's Remedies. In the event that the Grantee becomes aware of a violation of the terms of this Conservation Easement, the Grantee shall give notice to the Grantor, at Grantor's last known post office address, of such violation via certified mail, return receipt requested, and request corrective action sufficient to abate such violation and restore the Protected Property to its previous condition at the time of this grant. Grantor agrees that the Easement Documentation Report shall be deemed to provide objective information concerning the Protected Property's condition at the time of this grant. Failure by the Grantor to cause discontinuance, abatement or such other corrective action as may be requested by Grantee within thirty (30) days after receipt of such notice shall entitle Grantee to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement; to require the restoration of the Protected Property to its previous condition; to enjoin such non-compliance by ex parte temporary or permanent injunction in a court of competent jurisdiction; and/or to recover any damages arising from such noncompliance. Such damages, when recovered, may be applied by the Grantee, in its sole discretion, to corrective action on the Protected Property. If such court determines that the Grantor has failed to comply with this Conservation Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorneys fees, in addition to any other payments ordered by such court.

10.1 Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Protected Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period for cure to expire.

10.2 Failure to Act or Delay. The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this Conservation Easement by any prior failure to act and Grantor hereby waives any defense of laches with respect to any delay by the Grantee, its successors or assigns, in acting to enforce any restriction or exercise any rights under this Conservation Easement.

10.3 Violations Due to Causes Beyond Grantor's Control. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes caused by fire, flood, storm, earthquake or the unauthorized wrongful acts of third persons. In the event of violations of this Conservation Easement caused by unauthorized wrongful acts of third persons, at Grantee's option, Grantor agrees to assign its right of action to Grantee, to join in any suit, and/or to appoint Grantee its attorney-in-fact for the purposes of pursuing enforcement action.

10.4 Standing. By virtue of Grantee's acquisition of rights under this Conservation Easement, it shall be entitled, at its option, to standing before appropriate courts of law to pursue remedies or other matters which are necessary or incidental to the protection of the property which is subject to this Conservation Easement.

11. Parties Subject to Easement. The covenants agreed to and the terms, conditions, and restrictions imposed by this grant shall not only be binding upon the Grantor but also its lessees, agents, personal representatives, successors and assigns, and all other successors to Grantor in interest and shall continue as a servitude running in perpetuity with the Protected Property.

12. Subsequent Transfers. The Grantor agrees that the terms, conditions, restrictions and purposes of this grant or reference thereto will be inserted by Grantor in any subsequent deed or other legal instrument by which the Grantor divests either the fee simple title or possessory interest in the Protected Property; and Grantor further agrees to notify Grantee of any pending transfer at least thirty (30) days in advance.

13. Merger. The Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Protected Property.

14. Assignment. The parties hereto recognize and agree that the benefits of this easement are in gross and assignable, and the Grantee hereby covenants and agrees that in the event it transfers or assigns the easement it holds under this indenture, the organization receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code, and Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the

transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the contribution was originally intended to advance.

15. Extinguishment. The Grantor hereby agrees that at the time of the conveyance of this Conservation Easement to the Grantee, this Conservation Easement gives rise to a real property right, immediately vested in the Grantee, with a fair market value of said Conservation Easement as of the date of the conveyance that is at least equal to the proportionate value that this Conservation Easement at the time of the conveyance bears to the fair market value of the Protected Property as a whole at that time. That proportionate value of the Grantee's property rights shall remain constant. When a change in conditions takes place which makes impossible or impractical any continued protection of the Protected Property for conservation purposes, and the restrictions contained herein are extinguished by judicial proceeding, the Grantee, upon a subsequent sale, exchange or involuntary conversion of the Protected Property, shall be entitled to a portion of the proceeds at least equal to that proportionate value of the Conservation Easement. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in and defined under P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended and in regulations promulgated thereunder.

16. Eminent Domain. Whenever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of the Grantee's and Grantor's interests, and Grantee's proceeds shall be used as specified above. All expenses incurred by the Grantor and the Grantee in such action shall be paid out of the recovered proceeds.

17. The conveyance of this Conservation Easement by the Grantor to the Grantee shall not relieve Grantor of the obligation and responsibilities to obtain any and all applicable federal, state, and local governmental permits and approvals, if necessary, to exercise Grantor's retained rights and uses of the Protected Property even if consistent with the conservation purposes of this Conservation Easement.

18. Miscellaneous Provisions.

18.1 Severability. If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

18.2 Successors and Assigns. The term "Grantor" shall include the Grantor and the Grantor's heirs, executors, administrators, successors and assigns and shall also mean the masculine, feminine, corporate, singular or plural form of the word as needed in the context of its use. The term "Grantee" shall include The Nature Conservancy and its successors and assigns.

18.3 Re-recording. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Easement; for such purpose, the Grantor appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any necessary instrument on its behalf. Without limiting the foregoing, the Grantor agrees to execute any such instruments upon request.

18.4 Captions. The captions herein have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no effect upon construction or interpretation.

18.5 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

18.6 Notices. Any notices required in this Conservation Easement shall be sent by registered or certified mail to the following address or such address as may be hereafter specified by notice in writing:

Grantor: _____ . Grantee: The Nature Conservancy, 4245 North Fairfax Drive, Arlington, Virginia 22203-1606 and **[insert TNC office local address]**.

18.7 Third Party Enforcement. The Grantors hereby grant to the Third Party the same inspection and enforcement rights as are granted to the Holder under this easement. However the Parties hereto intend that the Holder shall be primarily responsible for the enforcement of this easement and that the Third Party will assume such responsibility only if the Holder shall fail to enforce it. If the Third Party shall determine that the Holder is failing in such enforcement, the Third Party may give notice of such failure to the Holder and the Grantors, and if such failure is not corrected within a reasonable time thereafter, the Third Party may exercise, in its own name and for its own account, all the rights of enforcement granted the Holder under this Easement.

TO HAVE AND TO HOLD the said Conservation Easement unto the said Grantee forever. IN WITNESS WHEREOF, the Grantor has executed and sealed this document the day and year first above written.

Witness: Grantor

Witness:

THE NATURE CONSERVANCY
Grantee

By:
Its:

Witness:

MAINE DEPARTMENT OF ENVIRONMENTAL
PROTECTION
Third Party

Director, Bureau of Land and Water Quality

STATE OF)
COUNTY OF) SS.

On this ____ day of _____, 200__, before me personally appeared
_____, to me personally known, who, being by me duly sworn, did depose and say
that _____ is the person named in the foregoing instrument, and acknowledged said instrument to be ____ free
act and deed.

Notary Public
My Commission Expires:

(or, if corporation)

STATE OF _____)
COUNTY OF _____) SS:

On this ____ day of _____, 200__, before me personally appeared _____, to me personally known, who, being by me duly sworn did say that ____ is the _____ of the corporation named in the foregoing instrument; that the seal affixed to said instrument is the corporation seal of said corporation; and acknowledged said instrument to be the free act and deed of said corporation.

Notary Public
My Commission Expires:

STATE OF _____)
COUNTY OF _____) SS:

On this ____ day of _____, 200__, before me personally appeared _____, to me personally known, who, being by me duly sworn did say that he/she is the _____ of The Nature Conservancy, the corporation named in the foregoing instrument; that the seal affixed to said instrument is the corporation seal of said corporation; and acknowledged said instrument to be the free act and deed of said corporation.

Notary Public
My Commission Expires:

PROPERTY CONDITION CERTIFICATION

This is to certify that _____, the Grantor, and _____ representing the Grantee, The Nature Conservancy, do accept and acknowledge the following attached report as an accurate description of the current land uses and physical features as of _____ on the _____ easement property. The report, which is attached hereto and made a part hereof, contains _____ pages (including appendices) beginning with this certification of condition; and including a summary sheet; a legal summary setting forth the easement's restrictions and retained rights; a description of and background information on the easement including acquisition, location, tract description, physical environment, ecological features, man-made structures/improvements and land uses affecting the easement; a state map showing the easement location; a road map showing legal access to the easement property; a portion of a USGS topographic map showing tract boundaries; and a tracing (reduced) of a survey map of the _____ easement property. The appendices include Appendix A: a copy of the recorded Easement; Appendix B: an aerial photograph of the easement area; Appendix C: a photostations map showing the location from which color slides or photos were taken; Appendix D: a photographic data sheet; Appendix E: slides or photos of the easement property; and Appendix F: an ecological and man-made features map of the _____ easement property.

The Grantor further certifies that to the best of his or her knowledge there are no structures thereon and that there has been no dumping or discharge of materials or other activities on the easement property which are inconsistent with the terms and covenants contained in the Conservation Easement, original granted by the Grantor to The Nature Conservancy recorded in the _____ County Deed Book, Volume _____, Page _____.

GRANTOR

GRANTEE

THE NATURE CONSERVANCY

By:
Its:

STATE OF _____)
COUNTY OF _____) SS:

On this _____ day of _____, 200__, before me personally appeared _____, to me personally known, who being by me duly sworn did say that he/she is the _____ of The Nature Conservancy, the corporation named in the foregoing instrument; that the seal affixed to said instrument is the corporation seal of said corporation; and acknowledged said instrument to be the free act and deed of said corporation.

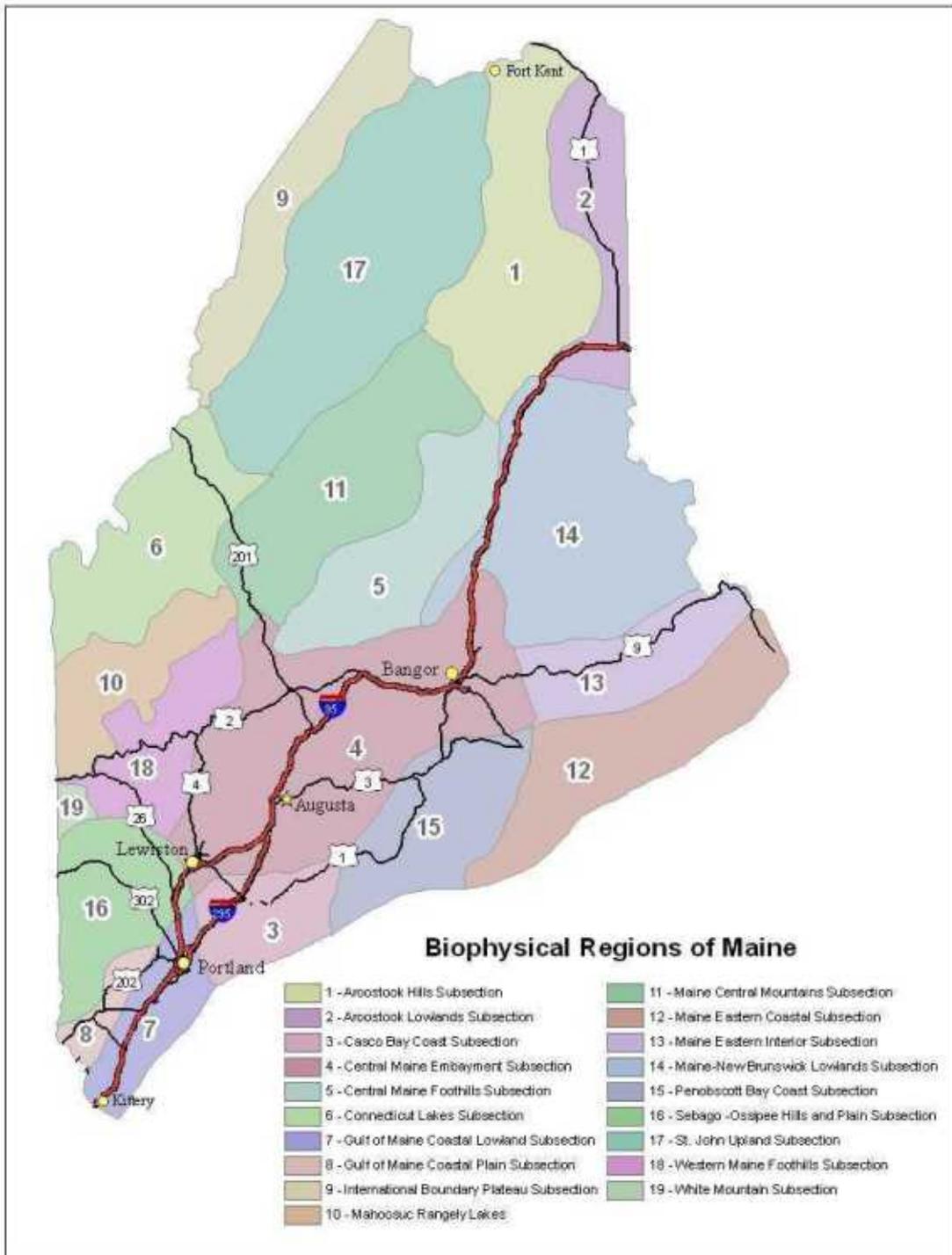
Notary Public
My Commission Expires:

STATE OF _____)
COUNTY OF _____) SS:

On this _____ day of _____, 200__, before me personally appeared _____, to me personally known, who, being by me duly sworn, did depose and say that he/she is the person named in the foregoing instrument, and acknowledged said instrument to be his/her free act and deed.

Notary Public
My Commission Expires:

APPENDIX D



APPENDIX E

NATURAL RESOURCE MITIGATION FUND PROJECT AGREEMENT

Cooperating Entity:

Project Name and Location:

Premises Covered by this Agreement:

Scope (Description of Project):

Project Cost:

Natural Resource Mitigation Fund Contribution:

Other Project Cost:

Term of Monitoring Obligations (for projects involving ecological restoration): _____
years, commencing on the date hereof (the "Monitoring Term")

The following are hereby incorporated into this Agreement:

1. General Provisions
2. Project Application and Attachments
3. Project Boundary Map
4. Payment Schedule
5. Other: _____

The Nature Conservancy (hereinafter TNC), and the State of Maine, Department of Environmental Protection, represented by its Commissioner, as the Designated State Agency (hereinafter DSA), and the Cooperating Entity, mutually agree to perform this Agreement in accordance with Title 5, Maine Revised Statutes Annotated, Section 6200 et seq., as amended, and augmented by P.L. 1999 c. 514, Sec. A-6, and with the terms, promises, conditions, plans, specifications, estimates, procedures, project proposals, maps, assurances, and certifications incorporated herein by reference and hereby made a part hereof.

Subject to the terms hereof and to the availability of funds for this purpose, TNC hereby promises, in consideration of the promises made by the Cooperating Entity herein, to pay to the Cooperating Entity the Natural Resource Mitigation Fund Contribution, subject to all of the terms and conditions of this Project Agreement. The Cooperating Entity hereby promises, in consideration of the promises made by the TNC herein, to implement the project described above in accordance with the terms of this Agreement.

This agreement is subject to the following special project terms and conditions:

[ADD ANY SPECIAL TERMS]

[DEPENDING ON THE PROJECT, A CONSERVATION EASEMENT TO ENSURE THE PERMANENT PROTECTION OF THE PROPERTY MAY BE REQUIRED BY TNC AND DSA.]

In witness whereof, the parties hereto have executed this Agreement as of the _____ day of _____, 200_.

THE NATURE CONSERVANCY

By: _____
Its Vice President and State Director

**STATE OF MAINE
Department of Environmental Protection**

By: _____
Print Name:
Its Commissioner

COOPERATING ENTITY:

By: _____
Print Name:
Title:

STATE OF MAINE

County of _____

Date: _____

Then personally appeared the above-named _____, duly authorized
_____ (title) of _____
(Cooperating Entity) and acknowledged the foregoing to be his/her free act and deed in his/her
capacity and the free act and deed of said _____.

Before me,

Notary Public/Attorney at Law

Print Name: _____

My Commission Expires:

Seal:

NATURAL RESOURCE MITIGATION FUND PROJECT AGREEMENT

GENERAL PROVISIONS

Part I – DEFINITIONS

1. The term “DSA” or “Agency” as used herein means the State of Maine, Department of Environmental Protection.
2. The term “Director” as used herein means the Commissioner of the Department of Environmental Protection or any representative lawfully delegated the authority to act for such Commissioner.
3. The term “Premises” as used herein means the lot or parcel or parcels of land as described and shown on Page 1 of the Project Agreement.
4. The term “Project” as used herein means a single project, a consolidated grant, a project element of a consolidated grant, or project stage which is subject to the Project Agreement, and as described on Page 1 of the Project Agreement.
5. The term “Cooperating Entity” as used herein means the entity referred to on Page 1 hereof, which may be a state or federal agency, non-governmental organization or member of the public, which will implement the Project as provided in this agreement.

Part II – CONTINUING ASSURANCES

The Cooperating Entity specifically recognizes that a Natural Resource Mitigation Fund assistance project creates an obligation to acquire, use and maintain the Premises consistent with Title 5, M.R.S.A., Section 6200 et seq., as amended and augmented by P.L. 1999 c. 514, Sec. A-6 and the following requirements:

A. LEGAL AUTHORITY: The Cooperating Entity warrants and represents that it possesses the legal authority to apply for the grant and to otherwise carry out the Project in accordance with the terms of this Agreement, and has either marketable title to the Premises or a binding agreement to acquire the same. A resolution or similar action has been duly adopted by the governing body of the Cooperating Entity authorizing the filing of the application and implementation of the Project, including all understandings and assurances contained herein, and directing and authorizing the person identified as the official representative of the Cooperating Entity to act in connection with the application and to provide such additional information as may be required by TNC or the DSA and to enter into this Agreement.

B. FINANCIAL ABILITY: The Cooperating Entity warrants and represents that it has the ability to provide all other costs of the Project, except the Natural Resource Mitigation Fund

share stated on the Page 1 of this Agreement.

C. USE OF FUNDS: The Cooperating Entity shall use moneys granted by TNC hereunder only for the purposes of accomplishing the Project, as provided for herein.

D. PAYMENT. Payments shall be made to the Cooperating Entity in accordance with the Payment Schedule attached hereto. If the Project costs include the purchase price of land, such payment shall be made to the attorney for the Cooperating Entity, as escrow agent, prior to the closing on the Cooperating Entity's purchase, to be disbursed directly to the seller of such land once the deed to the Cooperating Entity has been recorded.

If the Project includes the purchase of the Premises, no payment shall be made hereunder until the Cooperating Entity has provided copies of the following documents to TNC for its approval:

- current appraisal of the Premises;
- title insurance commitment, evidencing no title defect affecting the value of the Premises;
- environmental assessment of the Premises, evidencing no environmental factors which negatively affect the conservation or fair market value of the Premises;
- property survey, if necessary, in the judgment of TNC, to ensure that the boundaries of the Premises are clear, and there are no encroachments;
- fully executed purchase and sale agreement for the Premises;
- settlement statement for the purchase of the Premises.

E. USE AND MAINTENANCE OF PREMISES: The Cooperating Entity shall assure that the Premises shall be forever used, operated and maintained in its current undeveloped, **forested/wetland** and open space condition, for the long-term conservation of wildlife and other natural resources, and **remains open for public outdoor recreational use** [?], and in accordance with all applicable laws, including without limitation Title 5, M.R.S.A. Section 6200 et seq., as amended and augmented by P.L. 1999 c. 514, Sec. A-6. Permits and licenses necessary for the implementation of this Agreement or use of the Premises shall be obtained and complied with by the Cooperating Entity. All costs of acquisition or implementation of the Project and ownership and management of the Premises shall be paid by the Cooperating Entity, except for the Natural Resource Mitigation Fund Contribution to be provided by TNC as specified herein.

F. RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS: The Cooperating Entity agrees to maintain books, records, documents and other evidence pertaining to all costs and expenses incurred and revenues acquired hereunder to the extent and in such detail as will properly reflect all costs and expenses for which payment or reimbursement is claimed. These records shall be maintained for a period of one year after the end of the Monitoring Term, or if there is no Monitoring Term, for a period of one year after closing on the purchase of the Premises. The books and accounts, files and other records of the Cooperating Entity pertaining to the Project shall at all times be available for inspection, review and audit by DSA and TNC, which shall also be permitted to monitor and evaluate the Project activities Grant through on site visits and/or discussions with the Cooperating Entity and its staff. Any expenditure of Grant funds by the Cooperating Entity that TNC determines, in its sole reasonable

discretion, are not permitted hereunder shall be promptly repaid by the Cooperating Entity (or deducted from any subsequent payments hereunder by TNC).

G. ANNUAL REPORTING REQUIREMENTS: On each anniversary of this Agreement, during the Monitoring Term, if applicable, the Cooperating Entity shall report to TNC and the DSA on the status of the Project and the condition of the Premises, on a monitoring form approved by TNC. The form shall be sent to: 1) the Agreement Administrator of the DSA, at State House Station 17 Augusta, Maine 04333; and (2) The Maine State Director of TNC, at 14 Maine Street, Brunswick, ME 04011.

H. RIGHT OF ENTRY: The DSA or TNC, its employees, agents and representatives, shall have the right to enter the Premises at all times and in all manners without prior notice to assure compliance with the terms of this Agreement and any applicable laws.

I. PRIOR NOTICE AND APPROVAL REQUIRED PRIOR TO TRANSFER OF PREMISES: In the event of any sale or transfer, in whole or in part, of the Premises or any interest therein, the Cooperating Entity shall provide at least sixty (60) days prior written notice of the same to the DSA and shall obtain written consent from the same prior to such transfer.

J. NOTICE OF PROJECT AGREEMENT: At the request of DSA or TNC, the Cooperating Entity shall record on the land records a notice of the Cooperating Entity's obligations under this agreement that relate specifically to the Premises. Such notice shall include a statement to the effect that the Premises has been acquired with Natural Resource Mitigation Fund assistance and that it shall not be converted to other than conservation and public outdoor recreational use, as specifically provided in this Agreement, without the prior written approval of the Director of the DSA. Such notice shall be on a form satisfactory to TNC and DSA.

K. CONDEMNATION: In the event of condemnation of any or all of the Premises, the State of Maine, by and through its Natural Resource Mitigation Fund or another fund designated by TNC, shall receive a share of the proceeds of such condemnation based on the proportion of the total cost of the Project that is paid by the Natural Resource Mitigation Fund Contribution.

L. ENFORCEMENT ALTERNATIVES: In the event that the Cooperating Entity does not meet one or more of its obligations under this Agreement, or in the event of dissolution of the Cooperating Entity, the DSA may exercise, in its sole discretion, any of the following remedies following written notice and thirty (30) days opportunity for the Cooperating Entity to cure the default: (a) the right to require specific performance on the part of the Cooperating Entity; and (b) any other rights or remedies available at law or in equity including, but not limited to, the right to require that the Cooperating Entity transfer title to the Premises to the DSA or a successor designated by the DSA under such terms and conditions as the court may require. In the event that the DSA exercises any of the rights available to it upon default of the Cooperating Entity, the Cooperating Entity shall reimburse the DSA for its costs of enforcement and collection, including reasonable attorney's fees.

M. SUCCESSORS AND ASSIGNS: Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. In

the event that TNC or the DSA ceases to exist, the rights and responsibilities of that party shall automatically be vested in any successor agency designated by the Legislature. Failing legislative designation, the successor agency shall be as determined by the Governor.

N. AMENDMENT: This Agreement may not be amended, in whole or in part, except with the written consent of all of the parties hereto.

Appendix F



US Army Corps
of Engineers®
New England District

FACT SHEET

Maine's In Lieu Fee Wetland Mitigation Program

issued: December 28, 2007

contact: Ruth Ladd, 978-318-8818, ruth.m.ladd@usace.army.mil

Mitigating adverse environmental impacts to aquatic resources is an integral part of the U.S. Army Corps of Engineers' (Corps) regulatory program under the Clean Water Act and the Rivers and Harbors Act. In general, mitigation is a sequential process of avoiding adverse impacts, minimizing impacts that cannot be practicably avoided, and then compensating for those impacts that cannot be further minimized. In Maine, both federal and state agencies administering resource protection regulations may require appropriate and practicable compensatory mitigation as a condition of their permit approvals and authorizations.

Compensation is required to offset an adversely affected aquatic resource function with a function of equal or greater value. The goal of compensation is to achieve no net loss of wetland functions and values. If ecologically appropriate compensation is not available onsite, an applicant may look offsite to find appropriate compensation. If project-specific mitigation is not available, practicable, or ecologically appropriate, the applicant may request to pay an "in lieu fee" (ILF). The Corps will determine if an ILF is appropriate for a proposed project. The Maine Department of Environmental Protection (DEP), working with the Corps and other state and federal resource agencies, will develop a fee structure. This does not preclude the Corps from requiring additional fees to address indirect/secondary and cumulative impacts from a project.

The In-Lieu Fee Agreement signed by the Corps, DEP, and The Nature Conservancy is posted on the Corps' website: <http://www.nae.usace.army.mil/reg/index.htm> under "Mitigation."

For additional information on the fee structure for Maine's Natural Resource Mitigation Fund, their ILF program, contact James Cassida at (207) 287-7691 or James.Cassida@maine.gov; go to DEP's website at <http://www.maine.gov/dep/blwq/wetlands>; or contact a DEP regional office and ask to speak to the "on-call" person in Land & Water.

Central ME Regional Office, 17 State House Station, Augusta, ME 04333-0017; Phone: 207-287-3901 (bureau) or 1-800-452-1942 (department).

Eastern ME Regional Office, 106 Hogan Road, Bangor, ME 0440; Phone: 207-941-4570 or 1-888-769-1137.

Northern ME Regional Office; 1235 Central Drive, Skyway Park; Presque Isle, ME 04769; Phone: 207-764-0477 or 1-888-769-1053.

Southern ME Regional Office, 312 Canco Road, Portland, ME 04103; Phone: 207-822-6300 or 1-888-769-1036.