

REQUEST FOR LETTERS OF INTENT

Maine Natural Resource Conservation Program

Letter of Intent Package

June 2015

The Nature Conservancy in Maine



Maine Department of Environmental Protection



US Army Corps of Engineers



**US Army Corps
of Engineers**®

New England District

The Nature Conservancy in Maine

Fort Andross

14 Maine Street, Suite 401

Brunswick, ME 04011

<http://mnrcp.org/>

Contact: Alex Mas

Email: maineresources@tnc.org

Maine Natural Resource Conservation Program

Background

The Maine Natural Resource Conservation Program (MNRCP) was created to help compensate for unavoidable impacts to protected aquatic resources in the State of Maine by funding the restoration, enhancement, preservation, and creation of similar resources to maintain ecological benefits. The program manages the allocation of funds collected through the State's In-Lieu Fee Compensation Program, a voluntary program that allows entities impacting natural resources, primarily wetlands, to make a payment directly to the Maine Department of Environmental Protection (DEP) as an alternative to the traditional mitigation process. Fees collected by DEP are deposited into funds based on the biophysical regions in which the impacts occurred (see Appendix A for map). These funds are administered by The Nature Conservancy in Maine (TNC). Public agencies, non-profit conservation organizations and municipalities can then apply, through a competitive process, for funding to complete appropriate projects in these biophysical regions. Preference is given to projects that restore, enhance, preserve, or create resources that best match the natural characteristics and values that were impacted. The focus of the program is to maximize the ecological benefits of compensatory mitigation. Projects benefiting habitat areas of statewide conservation significance, or other natural resource priority areas, are preferred.

Application Process

To be eligible to receive MNRCP funding, a project applicant must first submit a Letter of Intent. **All Letters of Intent must be submitted online at <http://mnrcp.org/> and all submissions must be received by 5:00 pm EST on July 15, 2015.** Detailed instructions are available online. The Letter of Intent is comprised of: 1) a Summary Form to outline the proposed project and determine if it meets MNRCP's core requirements; and 2) a map of the project location. Letters of Intent will be evaluated based on the MNRCP Review Criteria (see Appendix B) and applicants will be notified of whether they will be invited to submit a Full Proposal by July 31, 2015. Full Proposals will require more detailed information including engineering designs, where applicable. For the complete timeline for the upcoming grant cycle, see Appendix C. For a listing of the funds available for award in each biophysical region, see Appendix D.

Review Process

Letters of Intent are screened by staff from DEP and the U.S. Army Corps of Engineers (Corps). Invited Full Proposals are then evaluated by a multi-agency Review Committee, chaired by DEP, that includes representatives from the Corps, Maine Department of Inland Fisheries and Wildlife, Maine Department of Marine Resources, Maine Department of Transportation, Maine Natural Areas Program, Maine Audubon, and the Maine Association of Conservation Commissions. Full Proposals that meet or exceed the MNRCP Review Criteria may be recommended by the Review Committee to the Approval Committee, or Interagency Review Team, which makes final allocation decisions. The Approval Committee, co-chaired by DEP and the Corps, includes representatives from the Maine Department of Agriculture, Conservation and Forestry, Maine Department of Inland Fisheries and Wildlife, Maine Department of Marine Resources, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration. TNC administers the review process and is responsible for ensuring that approved funds are awarded and that projects are executed. TNC does not vote as part of either committee on which proposals are approved for funding. For more information, please visit: <http://mnrcp.org/about/>.

Special Considerations

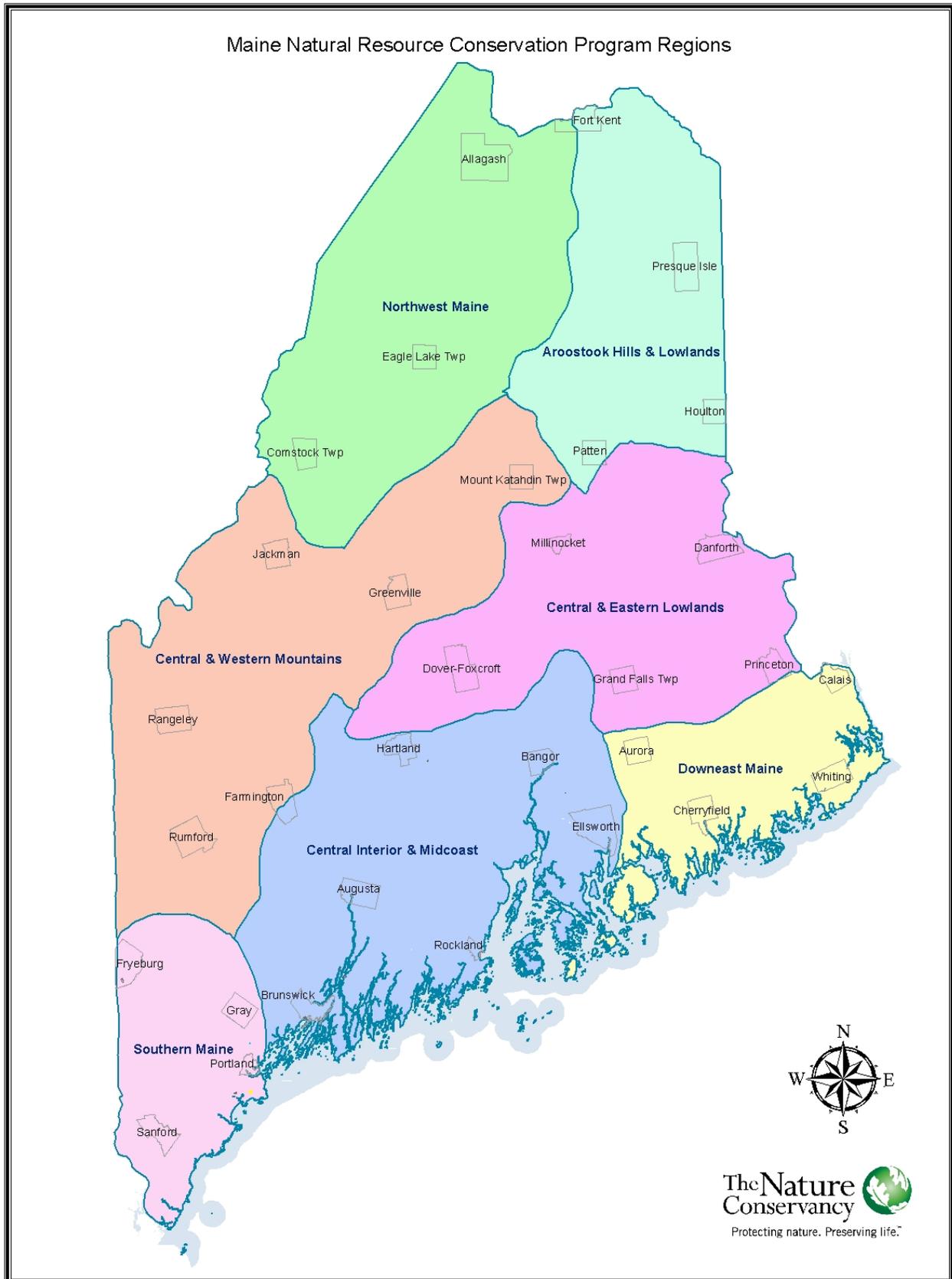
While MNRCP is designed to review and approve prospective projects through a process similar to other state and federal grant programs, *it remains a compensatory mitigation program that must comply with relevant state and federal regulations*. As such, there are several aspects of this program that should be considered fully before a potential applicant submits a Letter of Intent:

- **NEW: Restoration and enhancement projects are strongly encouraged this round.** Preservation projects are still eligible for MNRCP funding but will be less competitive. In addition, preservation-only projects must clearly show the potential threat of degradation to the aquatic resources on the project site over the next 20 years without conservation. Sites that are mostly or all wetland need to pay especially close attention to these requirements as those sites are usually protected by current laws, and not under threat.
- **NEW: Invasive species management** to protect aquatic resources is eligible for MNRCP funding as part of a project's long-term management costs but it will no longer be considered as restoration or enhancement. Projects requesting MNRCP funds for invasive species management will be required to complete an invasive species control plan as part of their long-term management plan.
- **MNRCP-funded projects must be conserved in perpetuity.** Applicants awarded funds from MNRCP are required to sign a Project Agreement and to record a Notice of that agreement with the land records for the property where the funded project takes place. For samples of these documents, see Appendix E. Also, MNRCP funds may not be used to preserve property that is currently owned by a conservation entity or to reimburse the costs of prior acquisitions.
- **Active property uses, including forest management, habitat management or recreational activities,** must not compromise the health or function of the natural resources that MNRCP is charged to protect. Projects that contemplate active forest or habitat management, recreational activities, or other active property uses will be asked to describe these proposed activities as part of a Full Proposal, and indicate where they will occur on a map, so their compatibility can be evaluated as part of the review process. Projects proposing less active management will generally be more competitive.
- **Conservation easements** funded through MNRCP must prohibit any activities that would adversely affect the protected natural resources, and must provide third party enforcement rights for DEP and the right of entry for DEP and the Corps. The specific provisions required for inclusion in conservation easements are described in Appendix E.
- **MNRCP funds may not be eligible to match federal funding sources.** According to the federal Mitigation Rule [33 CFR 332.3(j)(2)], “federally-funded aquatic resource restoration or conservation projects undertaken for purposes other than compensatory mitigation, such as the Wetlands Reserve Program (NRCS), Conservation Reserve Program (NRCS), and Partners for Wildlife Program (USFWS), cannot be used for the purpose of generating compensatory mitigation credits.” Please follow up if you are uncertain about the matching requirements for a particular grant program.
- **Projects involving multiple parcels must submit multiple Letters of Intent.** MNRCP does not accept single proposals for multiple parcels under different ownership unless a clear and convincing case can be made for why the different transactions are linked (e.g., one landowner formally negotiating on behalf of two separate owners).

To discuss how any of these program elements may affect a potential project, or any other questions related to MNRCP, please contact maineresources@tnc.org.

Appendix A

Map of Biophysical Regions



Appendix B

MNRCP Review Criteria

1. Potential to Meet MNRCP Goals (30%)

Assesses the extent to which the proposal meets the core program requirement that a project sustainably restores, enhances, preserves, or creates wetlands or other resources determined by the Maine Natural Resource Conservation Program to be Priority Resource Types.

Considerations include:

- The sustainability of the proposed conservation action (restoration, enhancement, preservation, creation) and the acreage affected. Projects focused on restoration or enhancement will be strongly preferred.
- The resource types restored, enhanced, preserved or created and the degree to which the proposed project replaces the functional benefits of impacted resources in the Biophysical Region based on a functional assessment of the project.
- The proximity of the proposed project to impacted resources in the Biophysical Region. To fully meet this criterion, projects must occur within the same ecoregional sub-section as a permitted impact. Please contact us for maps to help assess proximity to permitted impacts.
- For preservation projects, the threat of destruction or adverse modification to the aquatic resources on the site over the next 20 years, if the property is not protected.
- The inclusion of upland areas sufficient to protect, buffer, or support identified resource functions on the property as well as on adjacent conservation areas or undeveloped large blocks of habitat.
- The current and proposed condition of the property, and the “functional lift” provided by the project (e.g., the proposed change in habitat quality, the contribution to functioning biological systems, water quality and the level of degradation).

2. Landscape Context (20%)

Assesses the extent to which the proposal meets the core program requirement to consider the location of a potential project relative to statewide focus areas for land conservation or habitat preservation identified by a state agency, or other regional or municipal plans. Considerations include:

- Presence within or adjacent to habitat areas of statewide conservation significance (Beginning with Habitat Focus Area) or other natural resource priority areas.
- Presence within or adjacent to public or private conservation lands to preserve habitat connectivity, and/or presence within a watershed-based conservation plan.
- Presence of natural resources of significant value and/or rarity within the project site boundaries.

3. Project Readiness/Feasibility (20%)

Assesses the extent to which the proposal meets the core program requirement to demonstrate project readiness and likelihood of success, where success is defined by the ability of the project to meet MNRCP goals as stated in the proposal. Considerations include:

- Documentation of the willingness of the landowner and a qualified, long-term management entity to participate in proposed project, including conveying the property or a conservation easement with respect to the property (for projects not on public/private conservation lands).

- Level of project urgency (e.g., area of rapid development or on-going site degradation, other available funding with limited timing, option to purchase set to expire, etc.)
- Degree to which the proposal demonstrates an understanding of resource conservation issues and needs.
- Soundness of the technical approach of the conceptual plan presented in the application.
- Initial progress (e.g., planning, fundraising, contracting, site design, etc.).
- Likelihood that the project will meet proposed schedule and/or required deadlines.
- Likelihood that the proposed actions will achieve the anticipated ecological benefits and results.
- Completeness and feasibility of the long-term stewardship and monitoring plan, including endowment.
- Potential for adverse impacts (such as flooding or habitat loss) associated with the project.
- Conformance with any applicable Army Corps of Engineers and state mitigation policy, guidance and permitting requirements, including appropriate financial assurances for any construction activity.

4. **Project Sponsor Capacity** (15%)

Assesses the extent to which the proposal meets the core program requirement to provide for long-term management and/or stewardship by a responsible state or federal resource agency, or conservation organization. Considerations include:

- Presence of a qualified, capable conservation entity willing to sponsor and/or maintain the project.
- Level of support and involvement of other relevant agencies, organizations, and local community.
- Degree to which the project sponsor, and any associated partners, demonstrate the financial, administrative, and technical capacity to undertake and successfully complete the project.
- Adequacy of long-term stewardship to ensure that the project is sustainable over time and presence of a funding mechanism for the associated costs (e.g., endowment or trust).
- Legal and financial standing of the project sponsor.
- Quality and completeness of proposal materials.

5. **Cost Effectiveness** (10%)

Assesses the extent to which the proposal meets the program requirement that a project represent an efficient use of funds expended given the condition, location and relative appraised values of the property. Considerations include:

- Clarity and detail of the budget submitted.
- Sufficiency of funds available in the applicable biophysical region.
- Availability and source of matching funds necessary to complete the project.

6. **Other Benefits** (5%)

Assesses the potential for this project to support economic activity, job creation, recreational access, scenic enhancements or other contributions to “Quality of Place” in the town or region where the project is located.

Appendix C
2015 MNRCP Proposal & Award Timeline

Stage	Deadline
Request for Letters of Intent released	June 15, 2015
Letter of Intent deadline	July 15, 2015
Letter of Intent review	July 17-29, 2015
Full Proposals requested	July 31, 2015
Project site visits	July-August, 2015
Full Proposal deadline	September 15, 2015
Review Committee evaluates proposals	September-October, 2015
Review Committee meeting (<i>internal calibration</i>)	October 6, 7, or 8, 2015
Review Committee meeting (<i>public invited</i>)	November 3, 4, or 5, 2015
Review Committee finalizes recommendations	early November, 2015
Approval Committee meeting (<i>public invited</i>)	November 17, 18, or 19, 2015
Awards announced and grant process begins	early December, 2015

Appendix D

Funds Available by Biophysical Region

The funds listed below are those available in each biophysical region at the time of this notice (with the addition of pending funds shown in parentheses). Also included are the Priority Resource Type(s) in each region. Available funds may differ at the time of awards. For a current listing of funds available, please visit: <http://mnrcp.org>.

<u>MNRCP Region</u>	<u>Amount</u>	<u>Priority Resource Type</u>
Aroostook Hills and Lowlands	\$153,727	Freshwater wetland Forested; Freshwater wetland Scrub-Shrub; Freshwater wetland Unconsolidated Bottom
Central and Eastern Lowlands	\$304,182	Freshwater wetland Emergent; Vernal pool critical terrestrial habitat
Central and Western Mountains	\$727,218	Freshwater wetland Emergent; River/Stream; Vernal pool critical terrestrial habitat
Central Interior and Midcoast	\$809,929 (\$841,090*)	Vernal pool; Vernal pool critical terrestrial habitat [†] ; Coastal wetland Estuarine subtidal; Coastal wetland Marine subtidal; Freshwater wetland Emergent; River/Stream
Downeast Maine	\$96,352 (\$210,191*)	Coastal wetland Estuarine subtidal; Coastal wetland Marine intertidal; Coastal wetland Marine subtidal; Vernal pool critical terrestrial habitat
Northwest Maine	\$0	
Southern Maine	\$ 974,144 (\$1,156,285*)	Coastal wetland Estuarine intertidal; Freshwater wetland Emergent; Freshwater wetland Unconsolidated Bottom; Lake, Littoral; River/Stream
TOTAL	\$3,065,552 (\$3,333,687*)	

* Amounts in parentheses include funds currently available as well as pending In-Lieu Fee contributions. Applicants are encouraged to check the MNRCP website for updated listings or to contact maineresources@tnc.org.

[†] Vernal pool critical terrestrial habitat remains a high priority resource for MNRCP compensation in the Central Interior and Midcoast region. Proposed projects that include vernal pool critical terrestrial habitat will be more competitive for MNRCP funding in the 2015 round.

Appendix E
Sample MNRCP Project Agreement

Example for a Maine-based non-profit completing a project that includes acquisition of a conservation easement and subsequent restoration work.

Regulatory Entities: Maine Department of Environmental Protection (DEP) and U.S. Army Corps of Engineers, New England District (Corps).

Fund Administrator: The Nature Conservancy, a District of Columbia nonprofit corporation with a local office in Brunswick, Maine (TNC).

Cooperating Entity: _____, a non-profit corporation organized and existing under the laws of the State of Maine (Cooperating Entity).

Project Name and Location: _____ in the Town of _____, _____ County, Maine (Project).

Premises Covered by this Agreement: Certain property located at _____ in _____, Maine, containing _____ acres, more or less, and shown on the map attached as Exhibit B (Premises).

Description of Project: _____

Project Cost:

Maine Natural Resource Conservation Program (MNRCP) Contribution: \$ _____

Other Project Cost: \$ _____

Management and Use of Premises: No later than _____, the Cooperating Entity shall submit to TNC, for review and approval by TNC, DEP and the Corps, a long-term Management Plan for the Premises that includes a detailed description of long-term management needs, the annual cost estimates to address them, and a funding mechanism to meet those needs. The approved Management Plan, as it may be amended from time to time by Agreement of the Cooperating Entity, TNC, DEP and the Corps, shall be kept on file in the offices of TNC. All use of the Premises shall be in accordance with the Management Plan. Without limiting the generality of the foregoing, the Cooperating Entity agrees that *[proposed active property uses]* shall be conducted in such a manner as to avoid any disturbance to wetland habitat and buffers or habitat for sensitive species.

Term of Monitoring Obligations (for projects with restoration or enhancement activities):

The term of the Cooperating Entity's monitoring obligations, as more particularly described in General Provisions Section G, shall commence on the effective date of this Agreement and terminate six years following the completion of all restoration or enhancement activities set forth in the Work Plan, described below (the "Monitoring Term").

Work Plan: No later than _____, the Cooperating Entity shall submit to TNC, for review and approval by TNC, DEP and the Corps, a detailed restoration and enhancement Work Plan, which includes a monitoring plan, following guidelines to be provided by TNC (based on the Corps' Mitigation Guidance document). Upon such approval, the Cooperating Entity shall fully implement such plan.

Expiration of Funding Commitment: TNC's obligation to pay the MNRCP Contribution to

the Cooperating Entity shall expire, at TNC's option, on _____.

Payment: TNC shall pay the MNRCP Contribution as follows:

- a. \$_____ will be paid to the Cooperating Entity following TNC's receipt and approval of the documents listed in General Provisions Section C and closing on the acquisition of the Premises and
- b. \$_____ will be paid to the Cooperating Entity in accordance with a Payment Schedule to be provided to the Cooperating Entity by TNC following receipt and approval of the Work Plan and the Management Plan.

Contribution of the entire amount of the "Other Project Cost" is the sole responsibility of the Cooperating Entity.

TNC, DEP, and the Cooperating Entity, mutually agree to perform this Agreement in accordance with Title 38, Maine Revised Statutes, Section 480-Z, as amended, and with the terms, conditions, plans, and specifications of the Project, incorporated herein by reference.

Subject to the availability of funds for this purpose, TNC hereby agrees, in consideration of the agreements made by the Cooperating Entity herein, to pay to the Cooperating Entity the MNRCP Contribution amount set forth above. The Cooperating Entity hereby agrees, in consideration of the agreements made by TNC herein, to implement the Project in accordance with this Agreement.

Exhibits: The following exhibits are hereby incorporated into this Agreement:

- Exhibit A General Provisions
- Exhibit B Project Boundary Map
- Exhibit C Form of Notice of Project Agreement

In witness whereof, the parties hereto have executed this Agreement as of the _____ day of _____, 2015 by their duly authorized representatives.

THE NATURE CONSERVANCY

COOPERATING ENTITY

By: _____
Print Name: _____,
Title: _____

By: _____
Print Name: _____,
Title: _____

STATE OF MAINE
Department of Environmental Protection

By: _____
Print Name: _____,
Commissioner

Sample MNRCP Project Agreement
EXHIBIT A
GENERAL PROVISIONS

The Cooperating Entity specifically recognizes that the Project creates an obligation to acquire, restore, use and maintain the Premises consistent with Title 38 M.R.S. Section 480-Z, and the following requirements:

A. AUTHORITY: The Cooperating Entity warrants and represents that: it possesses the legal authority to apply for the MNRCP Contribution and to otherwise carry out the Project in accordance with the terms of this Agreement; and that 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 DEP and to enter into this Agreement. If the Cooperating Entity is a non-governmental organization, it shall provide TNC with a current certificate of good standing and a copy of its bylaws and articles of incorporation. In addition, the Cooperating Entity shall notify TNC immediately of any change in its corporate or tax status or operations, or if any official judicial, legislative, or administrative proceeding is instituted against the Cooperating Entity that may affect the commitments and obligations agreed herein.

B. USE OF FUNDS: The Cooperating Entity shall use moneys received under this Agreement only for the purposes of accomplishing the Project.

C. PAYMENT: Payments shall be made to the Cooperating Entity and in accordance with a Payment Schedule to be developed by TNC upon receipt and approval of the detailed Work Plan, described above.

D. CLOSING PROCEDURES FOR PROJECT FUNDING AND ACQUISITION: No funds shall be disbursed under this Agreement prior to TNC receipt and approval of photocopies of the following:

1. The fully executed purchase and sale agreement for the Premises or conservation easement therein;
2. Current appraisal of the Premises or conservation easement;
3. Current environmental assessment of the Premises, evidencing no environmental factors which negatively affect the conservation or fair market value of the Premises;
4. Property survey showing:
 - a) that the boundaries of the Premises are not in dispute;
 - b) that there are no encroachments that would interfere with the use of the Premises for their intended purposes under this Agreement and
 - c) the coordinates for at least two corners of the Premises;
5. Current title insurance commitment;
6. For fee acquisition, the final deed draft; and for conservation easements, the final easement draft, together with a copy of the current owner's deed;
7. Executed Notice of Project Agreement, in the form attached hereto as Exhibit C;

8. An original counterpart of an escrow letter provided by TNC for receipt and disbursement of funds at closing, which has been countersigned by the Cooperating Entity's approved closing agent;
9. Draft settlement statement indicating proposed disbursement of funds.

Closing funds shall be delivered to an escrow agent approved by TNC prior to Closing to be disbursed in accordance with the settlement statement upon recording of the deed or conservation easement.

In addition, within 45 days following the recording of documents, the Cooperating Entity shall provide TNC and DEP with copies of the recorded deed or conservation easement, the recorded Notice of Project Agreement, the signed settlement statement, and the title insurance policy.

E. REQUIRED CONSERVATION EASEMENT LANGUAGE: If the Project includes the purchase of a conservation easement, such easement shall contain substantially the following provision:

“The Grantors hereby grant to the State of Maine, Department of Environmental Protection (“MEDEP”) the same inspection and enforcement rights as are granted to the Holder under this conservation easement. However, the Holder acknowledges that the Holder shall be primarily responsible for the enforcement of this easement, and understands that MEDEP does not, by this provision, take on any obligation to enforce this easement. The Holder agrees that, if MEDEP shall determine that the Holder is failing in such enforcement, MEDEP may, in its discretion, give notice of such failure to the Holder and the Grantors, and if such failure to enforce is not corrected by the Holder within 30 days thereafter, MEDEP may exercise, in its own name and for its own account, all the rights of enforcement granted to the Holder under this Easement.”

F. USE AND MAINTENANCE OF PREMISES: The Cooperating Entity agrees that the Premises shall be forever used, operated and maintained in its current undeveloped and open space condition, for the long-term protection of wetlands, conservation of wildlife and other natural resources, in accordance with all applicable laws, including without limitation Title 38 M.R.S. § 480-Z, and in accordance with the Management Plan for the Premises.

G. RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS: The Cooperating Entity agrees to maintain records, documents and other evidence pertaining to all costs and expenses incurred in sufficient detail to reflect all costs and expenses for which payment or reimbursement is claimed. These records shall be maintained for a period of three years after the end of the Monitoring Term, or if there is no Monitoring Term, for a period of three years after closing on the purchase of the Premises. The records of the Cooperating Entity pertaining to the Project shall at all times within such three year period be available for inspection, review and audit by DEP and TNC. Any expenditure of the MNRCP Contribution 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).

H. PROCUREMENT: The Cooperating Entity shall follow its own policies with regard to documentation of procurements and maintain documentation of such policies. If the Cooperating Entity does not have written procurement policies, it shall retain documentation for procurements (over US \$5,000 outside the U.S. or over \$10,000 in the U.S.). Such documentation shall

include sole source justification, if appropriate, or documentation of a competitive process or comparison shopping.

I. REPORTING AND ANNUAL MONITORING REQUIREMENTS:

1. For fee acquisition, no reports by the Cooperating Entity are required, other than the forwarding of a complete copy of the closing package within 45 days of closing.
2. For conservation easement projects, the Cooperating Entity shall submit a report detailing the status of the Premises, on or before one year from the date of the recording of the conservation easement.
3. For projects that require a Monitoring Term, the Cooperating Entity shall report to TNC, the DEP and the Corps on the status of the Project, and on the condition of the Premises, following guidance provided by TNC. The Cooperating Entity shall send the report annually, not later than December 1st of each year, to: (a) the Agreement Administrator of DEP, at State House Station 17 Augusta, Maine 04333; (b) the Policy Analysis and Technical Support Branch, Regulatory Division, New England District Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751; and (c) The MNRCP Manager, The Nature Conservancy, 14 Maine Street, Brunswick, ME 04011.

J. ASSIGNMENT: This Agreement may not be assigned by the Cooperating Entity in whole or in part without the prior written consent of TNC and the DEP.

K. LOBBYING AND POLITICAL CAMPAIGNING: The Cooperating Entity shall not use any portion of funds transferred under this Agreement to engage in any lobbying activities. The Cooperating Entity shall not use any portion of funds transferred under this Agreement to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to cause any private inurement or improper private benefit to occur, or to take any other action inconsistent with Section 501(c)(3) of the US Internal Revenue Code.

L. RIGHT OF ENTRY: The DEP, the Corps and TNC, their employees, agents and representatives, shall each have the right to enter the Premises to assure compliance with the terms of this Agreement, any conservation easement purchased pursuant to this Agreement and any applicable laws.

M. PRIOR NOTICE AND APPROVAL REQUIRED PRIOR TO TRANSFER OF PREMISES: Prior to any encumbrance, assignment, disposition or transfer, in whole or in part, of the Premises or any interest therein, or, if the interest being acquired is a conservation easement, any amendment or termination thereof, the Cooperating Entity shall provide at least sixty (60) days prior written notice of the same to the DEP and to the Corps, and shall obtain their written consent to such encumbrance, assignment, disposition, transfer, amendment or termination, as the case may be. Notice under this Section shall be in addition to any legal requirements imposed upon the Cooperating Entity under state or federal law.

N. NOTICE OF PROJECT AGREEMENT: Prior to payment of any funds hereunder, the Cooperating Entity shall submit to TNC, for its approval, a notice of project agreement, substantially in the form attached hereto, and shall record such notice with the local land records office.

O. CONDEMNATION: In the event of condemnation of any or all of the Premises, the DEP,

by and through its Maine Natural Resource Conservation Program or another fund designated by the DEP and TNC, shall receive a share of the proceeds of such condemnation received by the Cooperating Entity, based on the MNRCP proportion of the total cost of the Project, namely _____ percent (____%).

P. 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 DEP 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 DEP or a successor designated by the DEP under such terms and conditions as the court may require. In the event that the DEP exercises any of the rights available to it upon default of the Cooperating Entity, the Cooperating Entity shall reimburse the DEP for its costs of enforcement and collection, including reasonable attorney's fees.

Q. MEDIA ANNOUNCEMENTS: The DEP, TNC and the Cooperating Entity shall have the opportunity to review and comment on proposed media announcements concerning the Project prepared by any party to this Agreement.

R. INDEMNITY: The Cooperating Entity shall defend, indemnify, and hold harmless TNC and DEP against any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of the Cooperating Entity's employees or agents in connection with this Agreement or the Premises. No legal partnership or agency relationship is established by this Agreement. No party is authorized or empowered to act as an agent, employee or representative of the others.

S. TERMINATION: TNC shall have the right to terminate this Agreement for any reason upon 30 days prior written notice to the Cooperating Entity, DEP and the Corps, in which event payment for work satisfactorily completed by the Cooperating Entity will be adjusted accordingly. Without limiting the generality of the foregoing, the Cooperating Entity understands that TNC may terminate this Agreement in the event that the Cooperating Entity is not making sufficient progress towards the completion of the Project, including, without limitation, entering into a binding purchase and sale agreement to purchase the Premises or raising sufficient funding to pay the Other Project Costs. In addition, it is understood that TNC shall have no obligation to provide funding under this Agreement beyond the Expiration Date.

T. CONFLICTS OF INTEREST: Prior to the commencement of any work under this Agreement, the Cooperating Entity shall have executed and delivered to TNC a Disclosure Form regarding potential conflicts of interest, in a form provided to the Cooperating Entity by TNC. If any material misrepresentation in the Disclosure Form is discovered during the term hereof, TNC may elect to declare this Agreement null and void and any payments hereunder not yet expended shall be promptly returned to TNC.

U. 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 the DEP 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. In the event that TNC ceases to exist, the rights and responsibilities of that party shall vest in an entity designated by the DEP.

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

Sample MNRCP Project Agreement
EXHIBIT B
PROJECT MAP

Sample MNRCP Project Agreement
EXHIBIT C
Form to be used for NOTICE OF PROJECT AGREEMENT

MAINE NATURAL RESOURCE CONSERVATION PROGRAM
“_____ PROJECT”

The COOPERATING ENTITY (the “Holder”) is the holder of a certain Conservation Easement over certain lands located in the Town of _____, County of _____, State of Maine, which certain lands are more particularly described in the **Exhibit A** and depicted on the **Exhibit B** to which this Notice is attached (the “**Protected Property**”).

The Holder acquired the Conservation Easement in part with funds received from The Nature Conservancy pursuant to a Maine Natural Resource Conservation Program Project Agreement between The Nature Conservancy (“TNC”), the State of Maine, Department of Environmental Protection (“DEP”), and the Holder, dated _____ (the “Project Agreement”), a copy of which is kept at the offices of TNC, 14 Maine Street, Suite 401, Brunswick, Maine 04011 and the offices of DEP, State House Station 17, Augusta, Maine 04333.

The purpose of the Project Agreement is to provide funding to the Holder, pursuant to an In-Lieu Fee Program Instrument between The State of Maine, Department of Environmental Protection, and the New England District U.S. Army Corps of Engineers (the “Corps”), dated September 21, 2011 (the “In Lieu Fee Program Instrument”). By acceptance of funding and acquisition of the Conservation Easement, Holder agrees that the terms and conditions of the Project Agreement shall be a covenant running with the Conservation Easement, and shall be binding upon the Holder, its successors and assigns as Holder of the Conservation Easement.

The purpose of the In Lieu Fee Program Instrument is to acquire, restore and/or enhance, and to permanently protect, properties that will compensate for unavoidable adverse impacts to significant wildlife habitats, wetlands and other waters of the State of Maine resulting from activities authorized under the Maine Natural Resources Protection Act, the federal Clean Water Act and/or the federal Rivers and Harbors Act.

The Holder has executed and recorded this Notice as notification and confirmation of its obligations, as set forth in the Project Agreement, to: 1) ensure the long-term conservation of the Protected Property, in accordance with the terms of the Project Agreement; 2) refrain from converting any portion of the Protected Property to uses other than conservation; and 3) obtain the written consent of DEP and the Corps prior to encumbrance, assignment or disposition of any interest in the Conservation Easement on the Protected Property.

The Conservation Easement on the Protected Property may not be conveyed, transferred, or further encumbered without including a specific reference to the terms and conditions of this Project Agreement, including the Book and Page of recording of this Notice. Notice under the Section shall be in addition to any legal requirements imposed upon the Cooperating Entity under state or federal law. In addition, the Easement Holder confirms that in the event of condemnation of any or all of the Protected Property, it shall pay to the DEP, by and through its

Maine Natural Resource Conservation Program, _____-tenths percent (_____%) of the eminent domain proceeds paid to the Holder.

* * * * *

IN WITNESS WHEREOF, the Holder has caused these presents to be executed in its name and behalf by _____, its _____, hereunto duly authorized, this ____ day of _____, 2015.

COOPERATING ENTITY

By: _____

Its: _____

State of Maine
County of Cumberland

On this ____ day of _____, 2015, before me personally appeared _____, the _____ and authorized representative of the above-named Holder, _____, and acknowledged the foregoing instrument to be her/his free act in her/his said capacity, and the free act and deed of said corporation.

Printed Name: _____
Notary Public/Maine Attorney of Law
My Commission Expires: _____