

# REQUEST FOR LETTERS OF INTENT

## Maine Natural Resource Conservation Program

### Letter of Intent Package

June 1, 2020

Maine Department of Environmental Protection



The Nature Conservancy in Maine



US Army Corps of Engineers  
New England District



**US Army Corps  
of Engineers®**

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<http://mnrcp.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 a map of regions and Appendix B for a listing of funds available in each region). These funds are administered by The Nature Conservancy in Maine (TNC). Public agencies, tribes, non-profit conservation organizations, and municipalities in Maine 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 resources and wetland functions and values that were impacted in that region. 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 on Tuesday, June 30, 2020.** Detailed instructions are available online. The Letter of Intent is comprised of: 1) an online 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 C) and applicants will be notified by July 22, 2020, of whether they will be invited to submit a full proposal. Full proposals will require more detailed information including preliminary designs, where applicable. For the complete timeline for the upcoming grant cycle, see Appendix D. A list of frequently asked questions is provided in Appendix E.

**NOTE:** In Southern Maine, Central Interior & Midcoast, and Downeast Maine regions, projects with a coastal wetland component are strongly encouraged during the 2020 funding round. MNRCP is in need of projects that restore, enhance, or preserve coastal wetland resources (e.g., salt marsh, mud flats, eelgrass, sub-tidal habitats, etc.) in order to compensate for recent impacts to these resources.

## Review Process

Letters of Intent are screened by staff from DEP and the U.S. Army Corps of Engineers (Corps). If a project meets the criteria to be eligible for MNRCP funds, the applicants are invited to submit full proposals. 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 (MDIFW), Maine Department of Marine Resources (MDMR), Maine Department of Transportation (MDOT), Maine Natural Areas Program (MNAP), Maine

Audubon, and the Maine Municipal Association. Full proposals that meet or exceed the MNRCP Review Criteria may be recommended for funding 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, MDIFW, MDMR, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and the USDA Natural Resources Conservation Service. TNC administers the review process and is responsible for ensuring that approved funds are awarded and that projects are executed after award. TNC does not vote as part of either committee on which proposals are considered or approved for funding. For more information, please visit <http://mnrcp.org/about/> or contact [bryan.emerson@tnc.org](mailto:bryan.emerson@tnc.org).

## 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:

- **Restoration and enhancement projects continue to be strongly encouraged.** Preservation-only projects are eligible for MNRCP funding but must preserve aquatic resources that contribute significantly to the ecological sustainability of the watershed and must clearly show the potential threat of degradation to these resources 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 considered under threat. Consultation with a qualified professional is recommended for restoration projects to appropriately scope the feasibility of a project and to accurately estimate project costs.
- **Invasive species management** to protect aquatic resources is eligible for MNRCP funding as part of a project's long-term management costs but is generally not 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. Note that projects proposing no conservation activities other than invasive species management are not likely to be invited to submit a full proposal.
- **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 F. 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. Active management generally is not allowed in aquatic resource areas and an upland buffer is required between actively managed areas and resource areas. Projects proposing less active management will generally be more competitive. Refer to the MNRCP

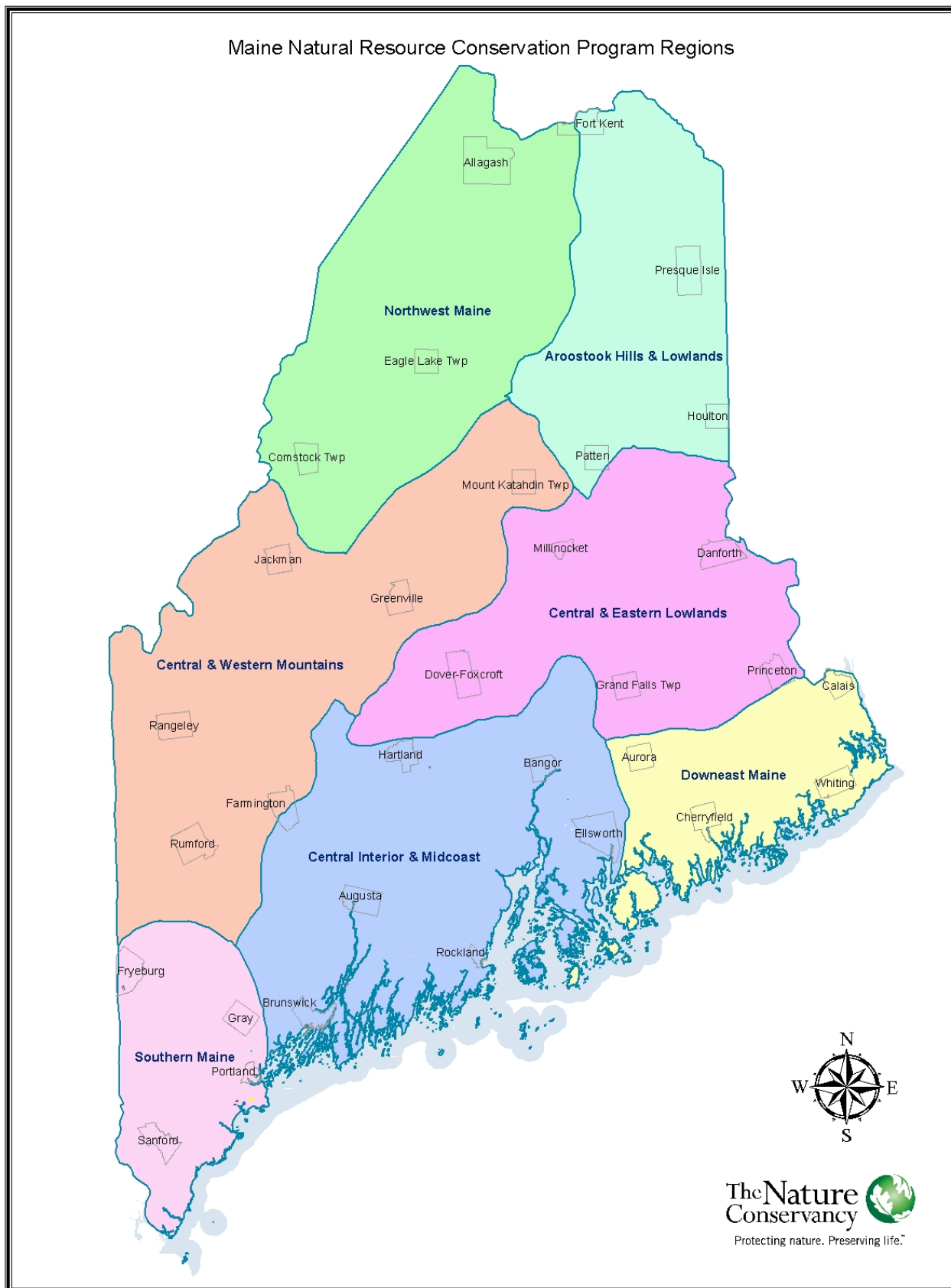
Property Use Guidelines document available at <http://mnrcp.org/about> for additional information.

- **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 F.
- **MNRCP funds may not be eligible to match federal funding sources.** According to the federal Mitigation Rule, federally-funded aquatic resource restoration or conservation projects undertaken for purposes other than compensatory mitigation 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).

Please review the Frequently Asked Questions provided in Appendix E for additional guidelines and considerations for MNRCP projects.

## Appendix A

### Map of Biophysical Regions



## Appendix B

### Funds Available by Biophysical Region

The funds listed below are those available in each biophysical region at the time of this notice. Also included are the Priority Resource Type(s) in each region, which are the resources that have been prioritized for restoration, enhancement, and preservation within each region. Available funds may increase as the funding round progresses. For a current listing of funds available, please visit: <http://mnrcp.org>.

<b>MNRCP Region</b>	<b>Amount</b>	<b>Priority Resource Type</b>
Aroostook Hills and Lowlands	\$423,249	Freshwater wetland Emergent; Freshwater wetland Forested; Freshwater wetland Scrub-Shrub; Vernal pool critical terrestrial habitat
Central and Eastern Lowlands	\$573,991	Freshwater wetland Emergent; Vernal pool critical terrestrial habitat
Central and Western Mountains	\$32,401	Freshwater wetland Emergent; Freshwater wetland Forested; Freshwater wetland Scrub-Shrub; Inland waterfowl & wading bird habitat
Central Interior and Midcoast	\$204,514	Coastal wetland Estuarine subtidal; Coastal wetland Marine subtidal
Downeast Maine	\$12,570	Coastal wetland Marine intertidal; Coastal wetland Marine subtidal; Vernal pool critical terrestrial habitat
Northwest Maine	\$34,247	Freshwater wetland Scrub-shrub
Southern Maine	\$4,401,775	Coastal wetland Marine intertidal; Freshwater wetland Emergent; Freshwater wetland Scrub-Shrub; Freshwater wetland Unconsolidated Bottom
<b>TOTAL:</b>	<b>\$5,682,746</b>	

## **Appendix C**

### **MNRCP Review Criteria**

#### **1. Potential to Meet MNRCP Goals (35%)**

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 in priority resource areas will be strongly preferred, assuming they have adequate funds in their budget to ensure successful attainment of project goals. Project budgets may include fees for restoration design by qualified professionals (i.e., consultant fees), provided the application includes funding for both project design and implementation.
- 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 and their associated buffers 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 or federal agency, or other regional or municipal plans.

Considerations include:

- Presence within or adjacent to habitat areas of statewide conservation significance 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 (30%)**

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

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

- 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 plan for long-term stewardship and monitoring, including endowment funding. Please refer to the Long-term Management Plan template available at [mnrcp.org](http://mnrcp.org) to accurately estimate the level of effort to complete this task.
- 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.
- Presence of a qualified, capable conservation entity willing to sponsor and/or maintain the project.
- For restoration projects, inclusion of a qualified professional capable and experienced completing the technical aspects of the project. Please refer to the Restoration Guidance template available at [mnrcp.org](http://mnrcp.org) to accurately estimate the level of effort to complete the required restoration work plan.
- 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.

#### **4. 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, and estimated costs deemed to be reasonable.
- Sufficiency of funds available in the applicable biophysical region.
- Availability and source of matching funds necessary to complete the project. (Note that while matching funds are not required, they generally increase the competitiveness of a proposal.)
- Land acquisition or conservation easement costs must be based on an appraisal completed within one year of the expected closing date in accordance with the Uniform Standards of



Professional Appraisal Practice (USPAP) and meeting the requirements of the Uniform Relocation and Real Property Acquisition Policy Act (Public Law 91-646). A copy of the final appraisal must be provided prior to closing. MNRCP cannot pay more than fair market value for a property.

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

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

## Appendix D

### 2020 MNRCP Proposal & Award Timeline

Stage	Deadline
Request for Letters of Intent released	June 1, 2020
Letter of Intent deadline	<b>June 30, 2020</b>
Letter of Intent review	July 1-22, 2020
Full Proposals invited	July 22, 2020
Project site visits	July-August, 2020
Full Proposal deadline	<b>September 10, 2020</b>
Review Committee evaluates proposals	September-October, 2020
Review Committee meeting ( <i>internal calibration</i> )	<b>October 6, 7, or 8, 2020</b>
Review Committee meeting ( <i>public invited</i> )	<b>November 3, 4, or 5, 2020</b>
Review Committee finalizes recommendations	Mid November, 2020
Approval Committee meeting ( <i>public invited</i> )	<b>November 17, 18, or 19, 2020</b>
Awards announced and grant process begins	<b>Late-November 2020</b>

## **Appendix E**

### **Frequently Asked Questions**

**Q. Can MNRCP funding be used to cover stewardship and long-term monitoring costs?**

A. Yes, but the funds need to be restricted to the parcel/project relevant to the MNRCP application and award and must be deemed reasonable by MNRCP reviewers.

**Q. Is forestry allowed on parcels protected with MNRCP funds?**

A. Yes, but with conditions ensuring wetland habitat protections. Forestry may be permitted on certain properties protected using MNRCP funds, provided the forestry is done in a sustainable manner and avoids protected natural resources and their associated buffers. Timber harvesting within forested wetlands, within 100' of any mapped wetland or stream, or within 250' of mapped vernal pools is not allowed on MNRCP properties. Forestry may be allowed within large areas of upland forest that are accessible without impacting protected natural resources. A forest management plan is required and will be reviewed by MNRCP reviewers.

**Q. How much wetland and/or upland is required on a preservation project? All wetland? All upland? A combination?**

A. There is no set rule, but successful projects generally protect both wetlands and an upland buffer. Projects that protect areas under demonstrable threat (i.e., accessible from roads, within potential development areas, are under threat from some activity other than development, etc.) will score higher. A parcel that is almost all wetland may not be scored as well by MNRCP reviewers since wetlands have a level of protection under state and federal law and the threat of direct impact to them is less. Additionally, upland buffers are important to maintain the integrity of aquatic resources by providing protection from secondary and indirect impacts and are considered an important part of preserving these resources.

**Q. Is public access/recreation allowed on parcels obtained with MNRCP funds?**

A. Yes, access for low-impact recreational uses such as hiking, hunting and fishing is allowed, as long as the recreational uses, trails and any other infrastructure do not negatively impact natural resources or significantly disturb associated upland buffers being protected with MNRCP funds. Overnight camping, however, is generally not allowed.

**Q. Is vehicle access allowed on MNRCP parcels?**

A. Vehicle access for maintenance or other uses is generally allowed, as long as it is on existing roads and no new roads are proposed. Access for snowmobile use may be allowed depending on the location of designated trails. Access for ATVs is generally not allowed.

**Q. Can MNRCP funds be used for culvert replacements or fishways to improve fish passage?**

A. Fishway projects and projects involving only culvert replacement alone are no longer supported by MNRCP. While MNRCP has provided funding in the past for a limited number of fish passage projects, the Corps and DEP have determined that, moving forward, all such projects must restore broader ecological benefits to river and stream systems (beyond passing fish), and provide some measures to ensure the permanence of the work (not necessarily

requiring preservation). As a compensatory mitigation program, MNRCP must award funds to projects that result in conservation outcomes for aquatic resources that have been impacted by permitted development activities. The program has a surplus of compensation credits for streams and rivers in some regions and stream impact projects paying into the program are uncommon, so projects that address resources where there is a deficit of compensation credits, such as wetlands, are the focus for reviewers. Culvert replacement projects as enhancement, included as part of a larger preservation project, may receive funding if benefits to a larger suite of aquatic resources can be documented. Dam removal and culvert removal are eligible for funding.

**Q. Does MNRCP require matching funds?**

A. No, matching funds are not required. Applicants can apply for up to 100% of project funding from MNRCP. However, additional funds from applicants and other partners are viewed favorably and may help projects score better in the review process.

**Q. Can MNRCP funds be used as non-federal match?**

A. It depends on the federal program. Some federal funding programs (such as North American Wetlands Conservation Act [NAWCA], Community Forest Program, and National Coastal Wetland Conservation Grants) do not allow the use of mitigation funds as non-federal match. MNRCP funds are considered mitigation funds and are therefore not allowed to be used as non-federal match for some programs. MNRCP funds may also be considered federal funds, depending on the source of the funds paid into the program. We recommend you contact the federal grant program you are considering for more information.

**Q. Can MNRCP funds be combined with Land for Maine's Future (LMF) funds?**

A. It is possible to combine MNRCP funds with LMF funds, but the ability to do this will be project-specific. Both programs have different goals and requirements and some projects may not be compatible with both funding sources. If a project sponsor is contemplating requesting funding from both programs, we recommend talking with representatives from each program before the funding rounds begin to identify potential incompatibilities early on.

**Q. Can fees for consultants to prepare project plans/designs be included in the budget?**

A. Yes, however, the design fees must be for a project for which you are currently seeking funding. You cannot apply for MNRCP funding for the design phase of a project only. The design and implementation costs must be included in the same application.

**Q. Can costs to obtain state and federal permits for restoration work be included in the budget?**

A. Yes. Federal, state, and/or local permits may be required for certain restoration and enhancement projects and costs to prepare permit applications can be included in the MNRCP project budget. Please note, however, that MNRCP restrictions may be different than what is allowed by permit; therefore, consultation with MNRCP is recommended prior to seeking permits from regulatory agencies.

**Q. Are complete design/engineering plans required for the proposal phase for restoration projects?**

A. No, but proposals should include at least a conceptual or preliminary plan to describe the proposed work.

**Q. Can MNRCP provide a list of qualified consultants for wetland restoration work?**

A. MNRCP cannot specifically recommend a consultant or contractor. You can find a Directory of Environmental Consultants on the Maine Association of Wetland Scientists website ([www.mainewetlands.org](http://www.mainewetlands.org)). A link to the directory is provided in the “Quick Links” section of the home page. A list of consultants is also available on the Maine Land Trust Network website (<https://www.mlttn.org/resources/consultants/>).

## Appendix F

### 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 H, 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 (for projects with restoration or enhancement activities):** 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.

Any additional project costs above the MNRCP award are 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 \_\_\_\_\_, 2020 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/or 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. 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.

**D. 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 (“DEP”) 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 DEP does not, by this provision, take on any obligation to enforce this easement. The Holder agrees that, if DEP shall determine that the Holder is failing in such enforcement, DEP 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, DEP may exercise, in its own name and for its own account, all the rights of enforcement granted to the Holder under this Easement.”

**E. 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.

**F. 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).

**G. 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.

**H. 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 1<sup>st</sup> of each year, to: (a) the ILF Administrator, Bureau of Land Resources (DEP), at State House Station 17 Augusta, Maine 04333; (b) the Policy 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.

**I. 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.

**J. 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.

**K. 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.

**L. 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.

**M. 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.

**N. 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 (\_\_\_\_%).

**O. 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.

**P. 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. Any signage or advertisement of the Project shall reference the contribution of the Maine Natural Resource Conservation Program and shall be subject to review and comment by DEP, the Corps, and TNC.

**Q. 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.

**R. 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.

**S. 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.

**T. 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.

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

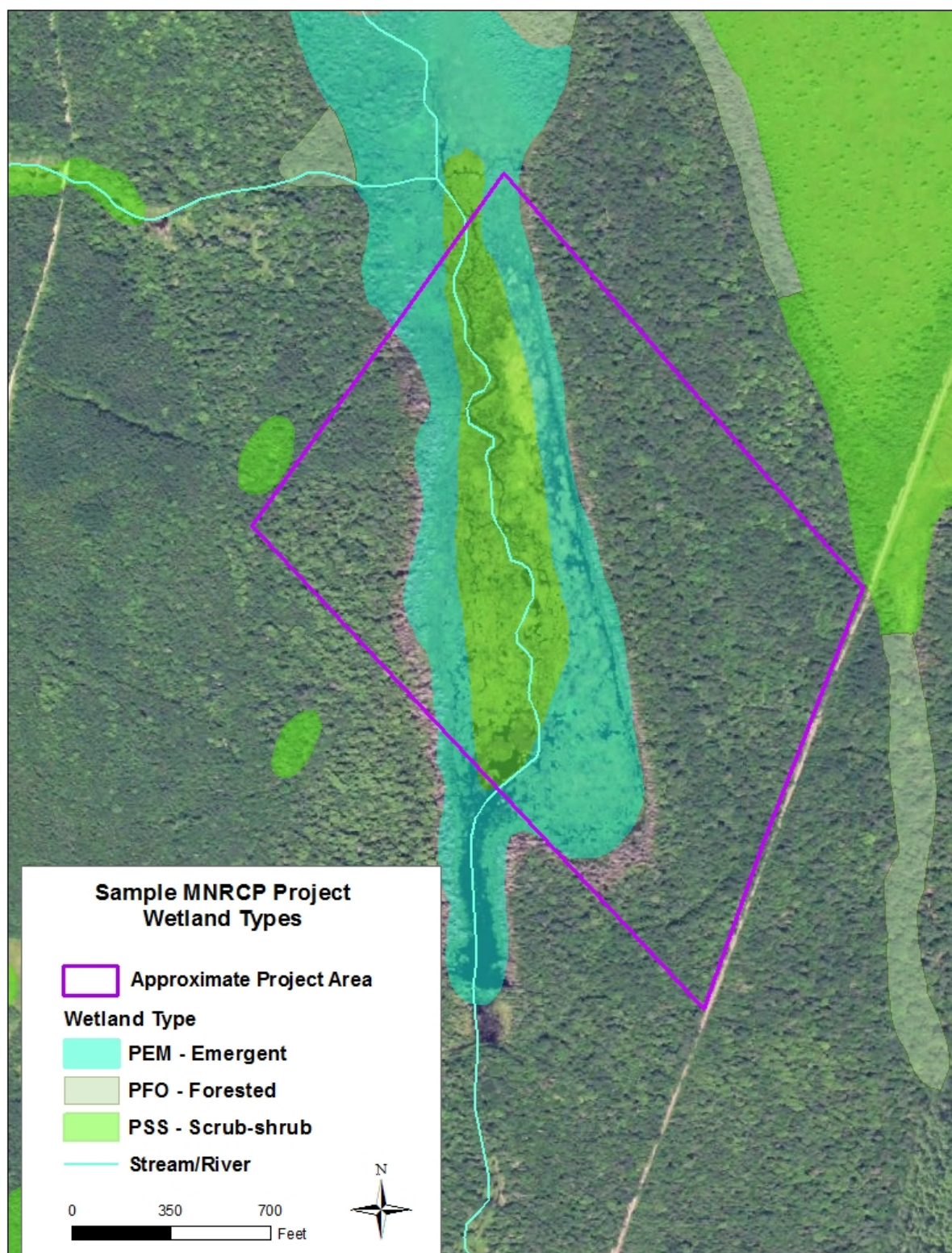
**V. COUNTERTERRORISM, ANTI-MONEY LAUNDERING AND ECONOMIC**

**SANCTION LAWS:** Cooperating Entity certifies that, to the best of its knowledge, Cooperating Entity and its subsidiaries, principals and beneficial owners, if any:

1. are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any government agency;
2. (i) are not included on the Specially Designated Nationals and Blocked Persons lists maintained by the U.S. Treasury's Office of Foreign Assets Control, the United Nations Security Council Consolidated List, or similar lists of proscribed entities identified as associated with terrorism, and (ii) will not engage in transactions with, or provide resources or support to, any such individuals or organizations or anyone else associated with terrorism;
3. are not a person or entity with whom transacting is prohibited by any trade embargo, economic sanction, or other prohibition of law or regulation; and
4. have not conducted, and will not conduct, their operations in violation of applicable Money Laundering Laws, including but not limited to, the U.S. Bank Secrecy Act and the money laundering statutes of any and all jurisdictions to which the Seller or any Seller subsidiary, principal or beneficial owner is subject, and no action or inquiry concerning money laundering by or before any authority involving the Seller or any Seller subsidiary, principal or beneficial owner is pending.

Should Cooperating Entity become aware that it or any of its subsidiary, principal or beneficial owner is subject to any of the above conditions during the term of this Agreement, Cooperating Entity must notify TNC, DEP, and the Corps immediately. If TNC or DEP determine, in their sole discretion, that Cooperating Entity or any such subsidiary, principal or beneficial owner is subject to any of the above conditions, payment under this Agreement shall not be made. The terms of this Section must be included in all permitted assignments of the Agreement.

*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 “Owner”) is the owner of certain real property located in the Town of \_\_\_\_\_, County of \_\_\_\_\_, State of Maine, more particularly described in the **Exhibit A** to which this Notice is attached (the “**Protected Property**”).

The Owner has acquired the Protected Property 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 Owner, 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 Owner, 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 Protected Property, the Owner agrees that the terms and conditions of the Project Agreement shall be a covenant running with the land, and shall be binding upon Owner, its successors and assigns as owner of the Protected Property.

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 Owner 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 Protected Property.

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 Owner 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, presently estimated at \_\_\_\_\_ and \_\_\_\_\_-tenths percent (\_\_\_\_.\_\_\_\_%) of the eminent domain proceeds paid to the Owner.

**IN WITNESS WHEREOF**, the Owner has set its hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2020.

COOPERATING ENTITY

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF  
COUNTY OF

On this \_\_\_\_ day of \_\_\_\_\_, 2020, 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: \_\_\_\_\_