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January 28, 2010

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Craig Litteken, Chief  
Regulatory Division  
U.S. Army Corps of Engineers  
Mobile District  
PO Box 2288  
Mobile, AL 36628

Dear Chief Litteken,

The Land Trust for the Mississippi Coastal Plain is pleased to provide the attached In Lieu Fee Program Instrument for your approval and signature. All Inter-agency Review Team (IRT) comments have been addressed and incorporated. Please sign and return the original signature page of the document as indicated. Once all IRT signatures are compiled, a fully executed copy will be sent to you for your files.

Thank you for your support in this program. We look forward to working with the Mobile District Corps of Engineers on future projects.

Sincerely,

Judy Steckler  
Executive Director

JS/lb

cc: Mike Moxey

RECEIVED  
FEB 02 2010

Per *[Signature]*

**COASTAL MISSISSIPPI  
IN LIEU FEE PROGRAM INSTRUMENT**

SPONSORED BY  
LAND TRUST FOR THE MISSISSIPPI COASTAL PLAIN



Submitted to  
U.S. Army Corps of Engineers, Mobile District, Regulatory Program



January 2010



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## **1.0 INTRODUCTION / NEED**

The following instrument outlines the circumstances and manner in which the Land Trust for the Mississippi Coastal Plain (LTMCP) will sponsor an In Lieu Fee (ILF) program for the six coastal counties of Mississippi. This ILF Program will provide a compensatory mitigation option to permit applicants under permit programs administered by the U.S. Army Corps of Engineers (Corps), Mississippi Department of Environmental Quality (MDEQ) and/or Mississippi Department of Marine Resources (DMR); Corps Civil Works projects; and as an option for resolution of enforcement cases.

Permits are required by the Corps through the Clean Water Act Section 404 for discharge of dredge or fill materials within “waters of the U.S.”, through the Rivers and Harbors Act Section 10 for structures or work in or affecting navigable water of the U.S., by MDEQ under Section 401 of the Mississippi Water Quality Certification Program, and by DMR Wetland Permitting Rules. These regulatory agencies require that aquatic resource functions and services lost due to impacts be replaced through compensatory mitigation.

In accordance with 33 CFR 332, compensatory mitigation is a requirement for replacing lost wetland functions for both the Corps and the Environmental Protection Agency (EPA). To date, mitigation banks and permittee-responsible mitigation are the only options available in coastal Mississippi. However, federal regulations recognize that ILF programs may be an environmentally preferable mitigation option based on several factors. ILF programs consistently include thorough scientific analysis, planning, implementation, and monitoring for each project. The structure of an ILF program facilitates up-front site selection, mitigation plan development, and provides scientific expertise and financial assurances that translate to a reduction in temporal loss of aquatic resource function and reduction in project success uncertainty.



## **2.0 ILF PROGRAM**

### **2.1 Goals and Objectives**

The goals and objectives of the Coastal Mississippi ILF Program are as follows:

- a) Provide an alternative to permittee-responsible and mitigation bank compensatory mitigation that will effectively replace functions and services lost through permitted impacts;
- b) Minimize the temporal loss of wetland functions and services by gaining approval of mitigation sites in advance of mitigation needs as funds allow;
- c) Create a program that has a level of accountability commensurate with mitigation banks as specified in 33 CFR Part 332;
- d) Provide projects to meet current and expected demand for credits; and
- e) Achieve ecological success on a watershed basis by providing wetland types and functions that are appropriate to the service area, and by integrating ILF projects with other conservation activities whenever possible.

### **2.2 Qualifications of Sponsor**

Established in 1999, LTMCP is a nonprofit 501(c)(3) corporation and a recognized leader of land conservation and preservation in the coastal Mississippi area. LTMCP holds over 2,074 acres of land in permanent conservation in its six-county service area including Jackson, George, Harrison, Stone, Hancock and Pearl River.

All LTMCP land management, habitat conservation and restoration efforts are coordinated and facilitated by an experienced staff as well as several experienced consultants. Approximately 926 acres of our conserved properties have been identified as various quality wetlands, 700 of which have been or are in the process of undergoing restoration or enhancement. Each restoration project includes the development of a management plan that establishes baseline conditions (including wetland delineation and functional assessment), habitat restoration /



enhancement and long-term monitoring. The wetland projects specifically provide restoration of hydrologic function, invasives removal followed by native replanting, hurricane debris removal, illegal dump site cleanup and prescribed burn. As part of each project's management plan, LTMCP performs perpetual monitoring, funded by interest earned from endowments that accompany the acquisition of each property. Long-term management includes invasives removal, reforestation and controlled burn as necessary and/or prescribed.

LTMCP has a proven track record of building and maintaining successful relationships with landowners. By demonstrating effective land management, and sustainable restoration efforts, landowners recognize that LTMCP is dedicated to local conservation and has the means to achieve conservation/restoration results. LTMCP has tremendous community support as demonstrated by our numerous agency partnerships with EPA Region IV, EPA Gulf of Mexico Program, Mobile District Corps, MDEQ, DMR, Mississippi Secretary of State's Office, Mississippi Department of Archives and History, Mississippi Department of Wildlife, Fisheries and Parks, and the Mississippi Coastal Plains Resource, Conservation & Development Council. In addition, LTMCP is well-known for community improvement programs as demonstrated by several successful region-wide projects facilitated by LTMCP, including the Replant South Mississippi program; five active Community Watershed Forums, and occasional conservation easement workshops for landowners, Certified Public Accountants, and attorneys.

### **2.3 Establishment and Operation**

This ILF Program Instrument establishes LTMCP as a qualified ILF sponsor for Corps and MDEQ/DMR authorizations, Civil Works projects, and enforcement needs in coastal Mississippi. As a nonprofit conservation organization, LTMCP will work with the Corps to assure their requirements for resource compensation are being met.

The structure of the ILF Program is outlined in this Instrument and includes a compensation planning framework detailing program elements, such as service area determination, watershed priorities and needs, project selection criteria, implementation, credit/debit accounting, and



reporting requirements. This Instrument serves as the “umbrella” beneath which mitigation projects in the six coastal counties will be individually proposed and implemented. It is a living document that will be reviewed on an annual basis and updated as necessary to comply with the most current ILF guidance and regulations.

Mitigation projects submitted for approval as part of the ILF Program will consist of creation, restoration, enhancement or preservation, or a combination thereof. Each project will have a separate mitigation plan reviewed and signed by LTMCP and the Corps, and included as an amendment to this ILF Instrument. Mitigation plans will be developed and implemented in accordance with 33 CFR 332.4 (c) and the Mobile District Corps guidelines. Mitigation plans will include the following twelve elements:

1. Project objectives
2. Site selection factors
3. Site protection instrument
4. Baseline information
5. Determination of credits
6. Mitigation Work plan
7. Maintenance plan
8. Performance standards
9. Monitoring requirements
10. Long-term management plan
11. Adaptive management plan
12. Long-term funding mechanism

Wetland delineations and functional assessments will be completed using Mobile District Corps-approved techniques before and after project implementation to help guide mitigation plan development and evaluate success. LTMCP will remain responsible for the implementation of mitigation plans under the ILF Program. LTMCP will act as program manager and report to the Corps on the work conducted programmatically (see Section 4.0, Reporting).





LTMCP assumes all legal responsibility for satisfying the mitigation requirements of the Corps/State permit for which fees have been accepted (i.e., implementation, performance and long-term management of the compensatory mitigation project(s) approved under this agreement and subsequent mitigation plans). The transfer of liability is established by: (1) the approval of this ILF Instrument; (2) receipt by the district engineer of a credit sale form/letter/certificate that is signed by LTMCP and the permittee and dated; and (3) the transfer of fees from the permittee to LTMCP.

## **2.4 Inter-agency Review Team (IRT)**

An inter-agency review team (IRT) advises the Corps on the establishment and management of the ILF Program as well as approval of proposed ILF mitigation projects. The Corps of Engineers will chair the IRT and may include representatives of the following entities:

- U.S. Army Corps of Engineers – Mobile District, Regulatory Division
- U.S. Environmental Protection Agency – Region IV, Wetland and Marine Regulatory Section
- U.S. Fish and Wildlife Service – Mississippi Ecological Services Office
- Mississippi Department of Environmental Quality – Office of Pollution Control
- Mississippi Department of Marine Resources – Coastal Ecology Division
- Mississippi Department of Wildlife, Fisheries and Parks

The Corps may designate different representatives of the agencies listed above, and may invite additional members to serve on the IRT for individual mitigation projects. The IRT will meet at least annually to review planned and implemented mitigation projects, more often if compliance inspections are requested for proposed credit releases. The IRT will review project proposals and provide recommendations to the respective district engineer. In reviewing and recommending project proposals, the IRT should use a watershed approach to the extent possible. Additionally, all selected project mitigation management plans must be reviewed and approved by the IRT prior to transfer of funds. IRT recommendations will ensure a careful consideration of the ecological suitability of compensatory mitigation sites and the long-term protection and maintenance of restoration sites funded under the ILF Instrument.



## **2.5 Compensation Planning Framework**

### **2.5.1 ILF Program Service Areas**

As part of the ILF Program, LTMCP will facilitate mitigation projects in the coastal Mississippi region that provide appropriate compensatory mitigation for impacts to the waters of the U.S. and state waters within that mitigation project's service area using a watershed approach. This approach considers watershed needs, and how locations and types of mitigation projects address those needs. The nature of permitted impacts along with watershed priorities and landscape position will guide project design to achieve compensation, maximize benefits to the watershed, and improve project success and sustainability. Demand for mitigation credits will be determined using Corps permit authorization trends and coastal Mississippi population and economic growth information.

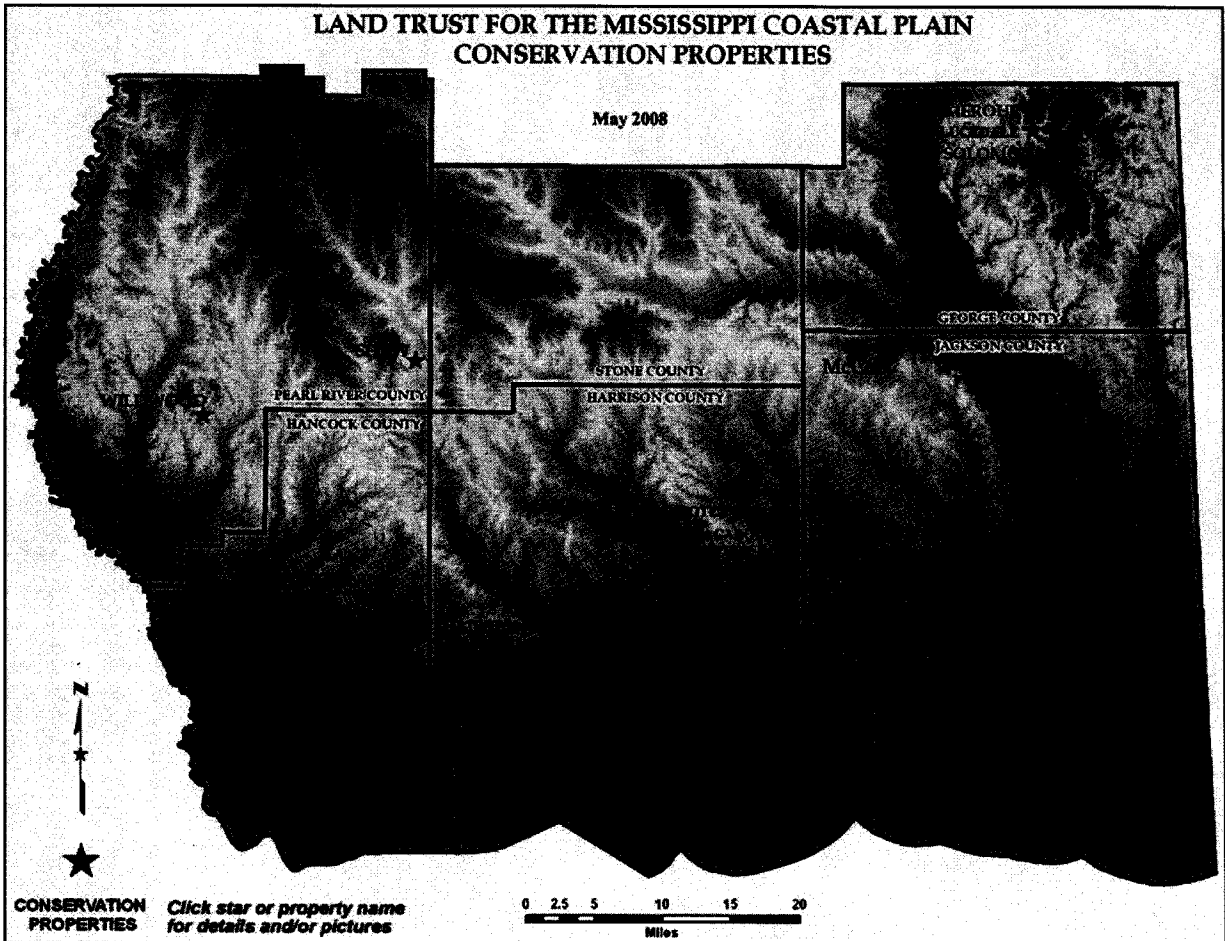
The Proximity Factor Method will be used to establish a service area for each individual mitigation plan. The Coastal Mississippi ILF Program service areas include the following watersheds of the six coastal county area of Mississippi (Jackson, George, Harrison, Stone, Hancock and Pearl River) with no multiplier (Figure 1):

- Coastal and Independent Streams (HUC 03170009),
- Lower Pascagoula River Basin (HUC 03170006, 03170007 and 03170009)
- Lower Pearl River Basin (HUC 03180004).

These are consistent with MDEQ's basin coordination efforts as well as other resource conservation strategies in Mississippi.



**Figure 1. Coastal Mississippi ILF Program Service Areas.** The following figure illustrates the six coastal counties of Mississippi identified as service areas for the Coastal Mississippi ILF Program.





In accordance with 33 CFR 332.3 (d), mitigation site selection will be based on watershed needs and the following factors will be used to determine where in each service area an ILF project is sited:

- a) Past mitigation needs in the watershed based on historical permitted impacts;
- b) Future need for mitigation in the watershed based on projected growth and development trends;
- c) Aquatic resource conservation need and opportunity;
- d) Lack of private mitigation banks suitable to meet the demand for the mitigation need in the service area; and
- e) Stakeholder input.

Specific watershed conditions and mitigation needs of the service areas will be detailed in project-specific mitigation plans.

## **2.5.2 Mitigation Goals and Objectives**

Once watershed conditions and mitigation needs are evaluated and documented in the project-specific mitigation plan, watershed stressors and specific resource goals for the project can be identified. Project-specific mitigation plans will identify management strategies for stressors and identified problem areas. Strategies will include stream and wetland restoration, enhancement and preservation; best management practices; and institutional measures undertaken by federal, state, and local governments to improve and protect wetland resources.

## **2.5.3 Prioritization Strategy**

Certain sub-watersheds in the ILF Program service areas may be identified to be of heightened concern based on data and resource information from state and federal agencies (i.e., Turkey Creek in the Coastal and Independent Streams Basin). Upon designation by and approval of the IRT, LTMCP will mitigate impacts in these sub-watersheds within the same sub-watershed. Also, to accelerate protection and restoration efforts within the degraded sub-watersheds, mitigation for impacts outside the degraded areas may be proposed to be located within the



degraded sub-watersheds, as long as there are no mitigation opportunities within the 8-digit watershed of the impact site.

As a non-profit organization whose primary mission is conservation, LTMCP will not seek compensation for impacts to tidal marshes and areas below Mean High Tide, except for those projects that serve a higher public purpose as determined by the Mobile District Corps of Engineers.

#### **2.5.4 Project Selection Criteria**

Each ILF Program mitigation project will be submitted to the IRT for review and will be evaluated for its potential to provide appropriate compensatory mitigation for impacts to aquatic resources based on the following criteria:

- a) **Likelihood of success:** Funded projects must predict a high likelihood of success through a sound wetland restoration, creation, and/or enhancement design. This includes documented presence of hydrology, soils, and other conditions conducive to aquatic resource development. Threats from invasive species or vandalism should be low or manageable. The project will be evaluated for its ability to result in successful and sustainable net gain of aquatic resource area and/or function.
- b) **Multiple objectives:** Projects will first be evaluated on their ability to provide wetland functional replacement, and secondly, based on their potential to address multiple functions and services which may include improvement of fish and wildlife habitat, support for rare species, flood attenuation, water quality improvement, and recreation or education values. Projects that can utilize native plant community diversity and natural processes will yield greater functional gains and will be given preference.
- c) **Supports regional conservation initiatives and is compatible with the surrounding landscape:** Projects should be located where they compliment adjacent land uses, meet regional conservation priorities, address limiting factors in watersheds, increase habitat diversity, support state wildlife action plans, reduce fragmentation, establish corridors, and enhance the function of existing natural areas. Use of the land will be restricted as



detailed in the conservation easement; however uses compatible with the mitigation method may be specifically authorized at the discretion of the IRT.

- d) Capacity of the applicant and the project team: The applicant must demonstrate that they have sufficient capacity and expertise to manage the project. The project team must have the necessary expertise and capacity to carry out pre-implementation planning, restoration construction, follow-up monitoring and remediation of project problems.
- e) Project costs: The project budget should identify all sources of funding and in-kind services, and an itemized list of components to be funded including expenses for land acquisition, project planning and design, construction, materials, labor, legal fees, monitoring, remediation or adaptive management strategies and administration of the ILF Program as appropriate. Projects with high aquatic resource functional gain per dollar will be given preference. In no way will other funding sources act to subsidize required mitigation.
- f) Long term management: Sponsor must have the capacity and ability for long-term management and stewardship of proposed projects.

### **2.5.5 Use of Preservation**

Compensation requirements can be met through the methods of creation, restoration and enhancement, and in certain circumstances, preservation. Because preservation offers fewer potential gains as compared to restoration, its use is limited; however, it may be used when all of the following criteria are met:

- 1) The resources to be preserved provide important physical, chemical or biological functions for the watershed.
- 2) The resources to be preserved contribute significantly to the ecological sustainability of the watershed
- 3) Preservation is determined by the IRT to be appropriate and practicable.
- 4) The resources are under threat of destruction or adverse modifications.
- 5) The preserved site will be permanently protected through an appropriate legal instrument.



### **2.5.6 Stakeholder Involvement**

As the ILF Program sponsor, LTMCP will optimize compensatory mitigation efforts under the ILF Program by working closely with interested agencies, community partners or organizations, and private landowners to identify stream and wetland mitigation opportunities and develop mitigation plans and methods for inclusion in the ILF instrument following IRT project review and Corps approval. Methods for assessing aquatic resource functions pre- and post-project implementation will be coordinated with the IRT as well as ongoing regional efforts by MDEQ and MDMR. This will allow ILF Program efforts to dovetail with ongoing inventory and monitoring efforts.

### **2.5.7 Long Term Management**

LTMCP will monitor completed ILF projects for a minimum of five years or until success criteria is achieved in accordance with Mobile District Corps requirements. An IRT-approved standard mitigation monitoring protocol will be used to provide consistency and predictability in methods and measurements among habitat types. The frequency and duration of monitoring and specific monitoring requirements will be defined in each individual mitigation plan. In general, monitoring reports will include plans, maps, and photographs to illustrate site conditions, a narrative summarizing actions performed and planned for the upcoming year, the condition, monitoring results as compared to performance standards, and recommendations for contingency or adaptive management if needed. The monitoring duration designated in the mitigation plan maybe extended by the Corps if performance standards have not been met. The Corps District Engineer may also reduce or waive monitoring requirements upon determination that performance standards have been achieved.

ILF projects will be designed to the maximum extent practicable, to require minimal long-term management efforts once performance standards have been achieved. LTMCP shall be responsible for maintaining ILF projects consistent with the mitigation plan to ensure long-term viability as functional aquatic resources. LTMCP shall retain responsibility unless and until the



long-term management responsibility is formally transferred to a long-term manager with Corps approval. The long-term management plan developed for each ILF project will include a description of anticipated management needs with annual cost estimates and an identified long-term maintenance funding mechanism (such as a non-wasting escrow account).

For long-term protection and management, a conservation easement shall be submitted to the Corps and the IRT for review and approval prior to the initial release of mitigation project credits. In addition, upon achieving its performance standards and approved transfer of the project for long-term protection and management, LTMCP will request that the Corps issue written “closure certification.”

#### **2.5.8 Evaluation and Reporting**

LTMCP will include in its annual report to the IRT updates on the progress of program implementation as detailed in Section 4.0, Reporting. This annual report will address the need for Compensation Planning Framework revisions, as necessary.

### **3.0 ACCOUNTING PROCEDURE**

#### **3.1 ILF Program Account**

Upon IRT approval of this ILF Program Instrument, LTMCP will create an escrow account to serve as the LTMCP ILF Program Account. The Program Account will be an interest-bearing account maintained separately from LTMCP’s general operating budget and will be held at a financial institution that is a member of the Federal Deposit Insurance Corporation. The Account will collect deposits from the sale of credits and will be used only for the direct replacement and management of wetlands or aquatic resources, including selection, design, acquisition, implementation, monitoring, management and protection of ILF projects, and administrative costs for LTMCP. This may include fees associated with securing a permit for conducting mitigation activities, activities related to the restoration, enhancement, creation, and/or





preservation of wetlands, maintenance and monitoring of mitigation sites and the purchase of credits from mitigation banks. Administrative costs may include bank charges associated with the ILF Program Account, staff time and expenses for day to day management, bookkeeping, mailing, printing, copying, office supplies, computer hardware and/or software, training, travel and hiring private contractors or consultants. All interest and earnings from the Program Account will remain in that account for the purpose of providing compensatory mitigation. ILF Program funds are explicitly prohibited from uses such as upland preservation (other than for buffers), research, education and outreach, or implementation of best management practices except for those used as a component of restoration or enhancement activities.

Complete budgets for ILF projects will be approved as part of mitigation plans. If requested, the Corps will distribute the project credit statement to the other members of the IRT as credits are released. In addition, LTMCP shall submit ledgers to the Corps on January 15, May 15 and September 15 showing all transactions for the previous reporting period and a cumulative tabulation of all transactions to date. At a minimum, each transaction ledger must include the following

- permittee,
- permit number,
- type of permit,
- service area and locality,
- type of impacted system,
- amount of impacts,
- balance of advance credits and released credits
- amount of credits debited from the ILF program,
- number of remaining credits not yet allocated,
- Date of Transaction.

On the income side of the transaction ledger, the following items will be tracked:

- Fees and all other income received, source of the income (i.e., permitted impact, penalty fee, etc.) and any interest earned by the ILF Program Account



- List of permits for which ILF Program funds were accepted including the permit number, service area, amount of authorized impacts, resource type, amount paid to the ILF Program for each authorized impact and the date the funds were received.

Disbursements/expenditures will also be tracked as well as the nature of the disbursement (i.e., costs of land acquisition, planning, construction, monitoring, maintenance, contingencies, adaptive management, and administration).

Ledgers and transaction reports shall be submitted to the IRT as long as credits remain in the ILF Program Account. The Corps may review Program Account records with written notice and when so requested, LTMCP shall provide all books, accounts, reports, files and other records relating to the Program Account. If the Corps determines that the ILF Program has not provided compensatory mitigation by the third full growing season after the first advanced credit is sold, the agency may direct the funds to alternate compensatory mitigation projects, as directed by the IRT.

### **3.2 Generation of Credits**

LTMCP's ILF Program will generate compensatory mitigation credits via creation, restoration, enhancement or preservation or a combination of such. Generation of credits will be based on Mobile District Corps mitigation ratios using a qualitative approach, called the Ratio Method (RM). The RM utilizes base ratios set according to four considerations:

- (1) the different levels of functional lift associated with different types of mitigation,
- (2) the time required for the mitigation to reach target conditions,
- (3) the risk that the mitigation will not achieve functional replacement, and
- (4) an appropriate consideration of the loss of function over time.

In accordance with 33 CFR 332.8 (o)(5), the cost per unit of credit will be based on all the costs associated with the restoration, establishment, enhancement and/or preservation of wetlands or aquatic resources in that service area including, but not limited to, expenses for land acquisition,



project planning and design, construction, plant materials, labor, legal fees, monitoring, remediation or adaptive management strategies, as well as administration of the ILF Program. The cost per unit credit will also take into account contingency costs appropriate to the stage of project planning, including uncertainties in construction and real estate expenses as well as the resources necessary for the long-term management and protection of the proposed project. Finally, the cost per unit credit will include financial assurances that are necessary to ensure successful completion of proposed projects.

### **3.3 Credit Release and Sales**

In order for the ILF Program to be available as an option for meeting Corps mitigation requirements for permit authorizations within a given service area, a mitigation project must be identified and described in a mitigation plan that has been approved by the IRT. The number of credits available at any given time will be determined by the credit release schedule outlined in the mitigation plan.

For mitigation involving creation, restoration or enhancement, the credits will be released in accordance with the standard Mobile Corps credit release schedule. The incremental schedule will be associated with success criteria based on the following:

- (1) Execution of a conservation easement
- (2) Completion of construction / hydrologic manipulation
- (3) Incremental success criteria
- (4) Achievement of final success criteria

Percentages available at each increment will be determined by the Mobile Corps of Engineers standard credit release schedule based on habitat success criteria for specific habitat types. The habitat success criteria and associated credit release schedule will be identified in the project-specific approved mitigation plan.

For projects that propose a preservation component as part of the mitigation method, the project will demonstrate compliance with the requirements of the 33 CFR 332 regulations for ILF



Programs. Based on the cost of the credits, the credit release schedule will be tailored so that the appropriate number of credits to pay for the next required land management action would be sequentially pre-released. Therefore, projects that contain a preservation component would have a unique credit release schedule based on the appropriate land management requirements and will be identified in the project-specific approved mitigation plan.

The credit release schedule may also include advanced credits, as described in 33 CFR Part 332.8(n). At the request of the sponsor and the approval of the IRT, advance credits may be sold upon execution of the ILF Program Instrument to establish the initial phase of project development. The number of advanced credits allowed will be determined based on the projected financing necessary to begin planning and implementing the project but will not exceed 20% of the total number of credits that could be derived from the project. As an approved ILF project is implemented, advanced credit sales related to that project will be converted to released credits. All land acquisition and initial physical and biological improvements must be implemented by the third full growing season after the sale of advance credits for that project. If LTMCP fails to complete the land acquisition and initial improvements by the third full growing season, the Corps must direct the funds to be disbursed from the ILF Program Account to provide alternative compensatory mitigation to fulfill those compensation obligations.

Credits generated through ILF mitigation projects may be sold to any private or public sector individual, organization, agency, or entity that is seeking mitigation credits as authorized by a Section 404 permit within an ILF Program service area. Use of, as well as the number and type of credits required as compensatory mitigation for activities authorized by Corps permits will be determined by the Corps District engineer. The cost of a credit will be determined annually by LTMCP as the average cost of credits available from all active mitigation banks in the service area. Upon sale of credits, LTMCP assumes legal responsibility for the requirements of the permit. These terms require LTMCP to submit a credit sale form/letter/certificate to the Corps. The document must be signed by LTMCP and the permittee and dated. It must include the permit number(s) for which LTMCP is accepting fees, the number of credits being purchased,



and resource type(s) of credits being purchased. LTMCP must submit the signed and dated credit transaction form/letter/certification to the IRT within 10 days of receiving the fees from the permittee. A copy of each credit transaction form/letter/certificate will be retained in both the Corps' and LTMCP's administrative and accounting records for the ILF Program.

The District Engineer will make decisions about the most appropriate compensatory mitigation on a case-by-case basis during evaluation of a permit application or during evaluation of a Civil Works project. Authority for approving use of the ILF Program for compensatory mitigation lies with the District Engineer. The MDEQ/MDMR may also use the ILF Program to offset state regulated impacts. Responsibility to provide compensatory mitigation remains with the permittee unless and until credits are purchased from the ILF Program. Upon Corps approval of purchase of credits, the permittee may contact LTMCP to secure the necessary amount and resource type of credits, as outlined in the permit conditions. Each Section 404 authorization that includes a special condition requiring purchase of credits from the ILF Program will include a requirement that LTMCP certify the transfer of responsibility via written communication to the permittee and the Corps. Certifications will outline the Corps permit number and state the number and resource type of credits that have been sold to the permittee. A copy of each certificate will be retained in the administrative and accounting records for the ILF Program. Credit debits will be reflected in annual accounting reports.

#### **4.0 REPORTING**

Each year, LTMCP will submit a summary report to the IRT that addresses the status of the following:

- 1) ILF Program Account Summary
- 2) Project-specific monitoring
- 3) Credit Transactions/Availability
- 4) Financial Assurance and Long-term Management Funding



The report will describe the conditions of the Program Account and relate those conditions to the success criteria for each project. Specifically, the annual report will also contain the following items:

- a) A ledger report of all permits for which ILF Program funds were accepted that includes the Corps permit number, service area, the amount of authorized impacts, the amount of required compensatory mitigation, the amount paid to the ILF Program and the date the funds were received from the permittee;
- b) An accounting of ILF Program expenditures/disbursements from the Program Account;
- c) The balance of advance credits and release credits at the end of the report period for each resource type, and any changes in credit availability (including additional credits released);
- d) The permitted impacts for each resource type;
- e) A comparison of the functions lost through authorized wetlands impacts in the service area with the functions accrued, or expected to accrue, at the mitigation project site;
- f) The annual monitoring report for each mitigation project;
- g) A description of any remedial action items implemented during the prior year at any of the mitigation projects;
- h) An explanation of why any mitigation projects are not meeting their performance standards and any adaptive management strategies undertaken in the last year, or planned for the upcoming year;
- i) Beginning and ending balances, including a listing of deposits and withdrawals, of individual project accounts providing funds for financial assurance or long-term management; and
- j) Status of required financial assurances; however, LTMCP will give the Corps 120 days advanced notice if financial assurances will be terminated or revoked.

## **5.0 ADAPTIVE MANAGEMENT**

The IRT accepts that all ecological restoration projects are site specific, that multiple endpoints are possible owing to the stochastic nature of ecological processes, and that human activities



offsite and beyond the control of the ILF Program may influence the course of restoration. For these reasons, the IRT and LTMCP may review the restoration strategy, objectives, and the performance standards and monitoring protocols at any time prior to full project release. Proposed changes to the ILF Instrument must be made in writing and must qualify as adaptive management in response to site-specific conditions and must be approved by the IRT. If approved, the conditions of the ILF Instrument may only be amended or modified with the written approval of all signatory parties. The ILF Program must demonstrate good-faith efforts to comply with restoration requirements.

## **6.0 FORCE MAJEURE**

Nothing herein shall be construed to authorize proceedings against LTMCP for any damages to the mitigation properties caused by acts of God such as earthquake, fire, flood, storm, war, civil disturbance, strike, or similar causes. In the event of a force majeure event, LTMCP will notify the members of the IRT and work with the IRT to resolve the damages, if any, caused by the event. However, if the force majeure events do not preclude LTMCP from resuming operations without unreasonable expense, then it shall not be relieved of its obligations under this document. Any impact to future credit releases or numbers of credits available for sale shall be discussed and determined by the IRT at that time.

## **7.0 DISPUTE RESOLUTION**

Resolution of disputes about application of this ILF Instrument shall be in accordance with those stated in the Federal Guidance for the Compensatory Mitigation for Aquatic Resources; Final Rule (33 CFR 332.8(e), dated April 10, 2008). Disputes related to satisfaction of Success Criteria may be subject to independent review from government agencies or academia that are not part of the IRT. The IRT will evaluate this input and determine whether the success criteria are met.



## **8.0 VALIDITY, MODIFICATION AND TERMINATION**

This ILF Instrument will become valid on the latter date of either the Sponsor's signature or the signature of the representative of the Corps. This ILF Instrument may only be amended or modified with the written approval of all signatory parties. Any of the IRT members may terminate their participation upon written notification to all signatory parties without invalidating this Instrument. Participation of the IRT member seeking termination will end 30 days after written notification.





*Moxey*

September 15, 2010

BOARD OF DIRECTORS

M.O. "Buck"  
Lawrence III—President

Jim Farrell—Vice President

Alice Duckett—Secretary

Jon Bond—Treasurer

Allison Anderson

Senator Deborah Dawkins

Charmel Gaulden

Linda Holden

Harold Holmes

Grant Larsen

William "Corky" Perret

Dr. Dayton Whites

Mike Moxey  
U.S. Army Corp of Engineers, Mobile District  
109 St. Joseph St.  
Mobile, AL 36602

Dear Mike,

Enclosed is my signature for the Coastal Mississippi In Lieu Fee Program Instrument.

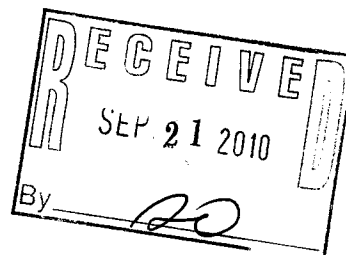
Please feel free to contact me should you have any questions.

Sincerely,

Judy Steckler  
Executive Director

mb

Enclosure



Mississippi Department of Environmental Quality

Mississippi Department of Marine Resources

Mississippi Department of Wildlife Fisheries and Parks

**Sponsor: Land Trust for the Mississippi Coastal Plain**

22



## 9.0 EXECUTION

Execution of this Coastal Mississippi ILF Program Instrument by the Mobile District, Corps of Engineers, in consultation with the sponsor, the Land Trust for the Mississippi Coastal Plain, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, and other appropriate agencies and the implementation of its terms evidences that the Mobile District, Corps of Engineers has afforded all cooperating parties an opportunity to comment on the undertaking and its effects on the aquatic resources in the six coastal counties of the State of Mississippi and that the Mobile District, Corps of Engineers has taken into account the comments provided by the IRT on the identified aquatic resources in order to complete this ILF Program Instrument.

### SIGNATORS

#### U.S. Army Corps of Engineers, Mobile District

   
\_\_\_\_\_  
Craig J. Litteken, Chief Date  
Regulatory Division  
U.S. Army Corps of Engineers

#### U.S. Environmental Protection Agency

\_\_\_\_\_  
Jennifer Derby, Chief Date  
Wetland and Marine Regulatory Section  
U.S. Environmental Protection Agency, Region 4

#### U.S. Fish and Wildlife Service

\_\_\_\_\_  
Stephen Ricks Date  
Field Supervisor-Jackson, MS Ecological Services Office



## 9.0 EXECUTION

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### SIGNATORS

#### U.S. Army Corps of Engineers, Mobile District

\_\_\_\_\_  
Craig J. Litteken, Chief  
Regulatory Division  
U.S. Army Corps of Engineers

\_\_\_\_\_  
Date

#### U.S. Environmental Protection Agency

\_\_\_\_\_  
Jennifer Derby, Chief  
Wetland and Marine Regulatory Section  
U.S. Environmental Protection Agency, Region 4

4-26-10

\_\_\_\_\_  
Date

#### U.S. Fish and Wildlife Service

\_\_\_\_\_  
Stephen Ricks  
Field Supervisor-Jackson, MS Ecological Services Office

\_\_\_\_\_  
Date



## 9.0 EXECUTION

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### SIGNATORS

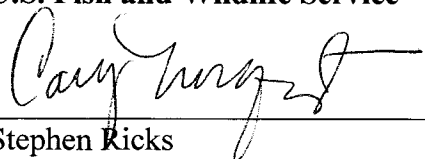
#### U.S. Army Corps of Engineers, Mobile District

\_\_\_\_\_  
Craig J. Litteken, Chief  
Regulatory Division  
U.S. Army Corps of Engineers  
Date

#### U.S. Environmental Protection Agency

\_\_\_\_\_  
Jennifer Derby, Chief  
Wetland and Marine Regulatory Section  
U.S. Environmental Protection Agency, Region 4  
Date

#### U.S. Fish and Wildlife Service

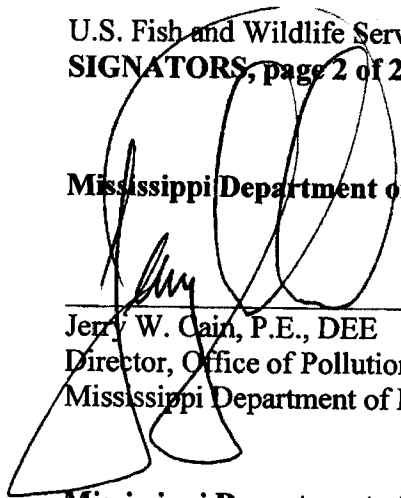
*for*  \_\_\_\_\_  
Stephen Ricks  
Field Supervisor-Jackson, MS Ecological Services Office  
Date 2-25-10

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Per PR



U.S. Fish and Wildlife Service  
**SIGNATORS, page 2 of 2**

**Mississippi Department of Environmental Quality**

  
\_\_\_\_\_  
Jerry W. Cain, P.E., DEE  
Director, Office of Pollution Control  
Mississippi Department of Environmental Quality

\_\_\_\_\_  
2/5/2010  
Date

**Mississippi Department of Marine Resources**

\_\_\_\_\_  
Dr. William Walker  
Executive Director  
Mississippi Department of Marine Resources

\_\_\_\_\_  
Date

**Mississippi Department of Wildlife Fisheries and Parks**

\_\_\_\_\_  
Dr. Sam Polles  
Executive Director  
Mississippi Department of Wildlife Fisheries and Parks

\_\_\_\_\_  
Date

**Sponsor: Land Trust for the Mississippi Coastal Plain**


\_\_\_\_\_  
Judy Steckler  
Executive Director  
Land Trust for the Mississippi Coastal Plain


\_\_\_\_\_  
Date

## Mississippi Department of Environmental Quality

Jerry W. Cain, P.E., DEE  
Director, Office of Pollution Control  
Mississippi Department of Environmental Quality

## Mississippi Department of Marine Resources

  
Dr. William Walker  
Executive Director  
Mississippi Department of Marine Resources

  
Date

## Mississippi Department of Wildlife Fisheries and Parks

Dr. Sam Polles  
Executive Director  
Mississippi Department of Wildlife Fisheries and Parks

**Sponsor: Land Trust for the Mississippi Coastal Plain**

Judy Steckler  
Executive Director  
Land Trust for the Mississippi Coastal Plain

Mississippi Department of Environmental Quality

Mississippi Department of Marine Resources

Mississippi Department of Wildlife Fisheries and Parks

419/2010

**Sponsor: Land Trust for the Mississippi Coastal Plain**

Judy Steckler  
Executive Director  
Land Trust for the Mississippi Coastal Plain



## Mississippi Department of Environmental Quality

Jerry W. Cain, P.E., DEE  
Director, Office of Pollution Control  
Mississippi Department of Environmental Quality

## Mississippi Department of Marine Resources

Dr. William Walker	Date
Executive Director	
Mississippi Department of Marine Resources	

## Mississippi Department of Wildlife Fisheries and Parks

Dr. Sam Polles  
Executive Director  
Mississippi Department of Wildlife Fisheries and Parks

**Sponsor: Land Trust for the Mississippi Coastal Plain**

Judy Steckler  
Executive Director  
Land Trust for the Mississippi Coastal Plain



## 9.0 EXECUTION

Execution of this Coastal Mississippi ILF Program Instrument by the Mobile District, Corps of Engineers, in consultation with the sponsor, the Land Trust for the Mississippi Coastal Plain, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, and other appropriate agencies and the implementation of its terms evidences that the Mobile District, Corps of Engineers has afforded all cooperating parties an opportunity to comment on the undertaking and its effects on the aquatic resources in the six coastal counties of the State of Mississippi and that the Mobile District, Corps of Engineers has taken into account the comments provided by the IRT on the identified aquatic resources in order to complete this ILF Program Instrument.

### SIGNATORS

**U.S. Army Corps of Engineers,  
Mobile District**

---

Craig J. Litteken, Chief  
Regulatory Division  
U.S. Army Corps of Engineers

Date

**U.S. Environmental Protection Agency**

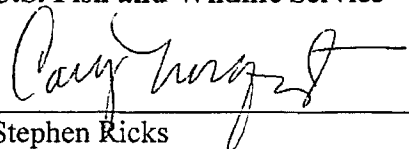
---

Jennifer Derby, Chief  
Wetland and Marine Regulatory Section  
U.S. Environmental Protection Agency, Region 4

Date

**U.S. Fish and Wildlife Service**

---

*for*  2-25-10  
Stephen Ricks  
Field Supervisor-Jackson, MS Ecological Services Office

Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

Atlanta Federal Center  
61 Forsyth Street S.W.  
Atlanta, Georgia 30303-8960

*moxey*

April 26, 2010

Mr. Mike Moxey  
Mitigation Banking Review Team, Chair  
U.S. Army Corps of Engineers – Mobile District  
P.O. Box 2288  
Mobile, Alabama 36628-0001

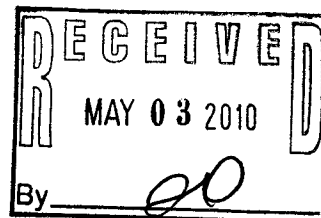
Dear Mr. Moxey:

Please find enclosed the Environmental Protection Agency's concurrence with the Coastal Mississippi In Lieu Fee Program Instrument. The instrument was submitted by the Land Trust for the Mississippi Coastal Plain. If you have any questions or concerns regarding this matter, please feel free to contact me at 404-562-9400.

Sincerely,

A handwritten signature in black ink, appearing to read "William B. Ainslie".

William B. Ainslie  
Wetlands Regulatory Section  
USEPA – Region IV  
61 Forsyth Street  
Atlanta, GA 30303





**MISSISSIPPI  
DEPARTMENT OF MARINE RESOURCES**

February 9, 2010

Mr. Mike Moxey  
Regulatory Division  
U.S. Army Corps of Engineers  
Mobile District  
P.O. Box 2288  
Mobile, AL 36628

Re: Land Trust for the Mississippi Coastal Plain In Lieu Fee Program Instrument

Dear Mr. Moxey:

Please find enclosed the Department of Marine Resources' signature for the Devil's Swamp Mitigation Bank - Phase II Mitigation Banking Instrument. If you have any questions, feel free to contact me at (228) 523-4111 or [Jennifer.wittmann@dmr.ms.gov](mailto:Jennifer.wittmann@dmr.ms.gov) or Greg Christodoulou (228) 523-4109 or [greg.christodoulou@dmr.ms.gov](mailto:greg.christodoulou@dmr.ms.gov).

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer C. Wittmann".

Jennifer C. Wittmann  
Coastal Resource Management Specialist


Enclosure


FEB 11 2010

## Mississippi Department of Environmental Quality

Jerry W. Cain, P.E., DEE  
Director, Office of Pollution Control  
Mississippi Department of Environmental Quality

## Mississippi Department of Marine Resources

  
Dr. William Walker  
Executive Director  
Mississippi Department of Marine Resources

  
Date

## Mississippi Department of Wildlife Fisheries and Parks

Dr. Sam Polles  
Executive Director  
Mississippi Department of Wildlife Fisheries and Parks

**Sponsor: Land Trust for the Mississippi Coastal Plain**

Judy Steckler  
Executive Director  
Land Trust for the Mississippi Coastal Plain

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Per *[Signature]*