

**State of New Jersey**  
**In-Lieu Fee Mitigation Program**  
**Final Instrument**

**August 31, 2015**

Submitted to:

EPA Region 2

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# State of New Jersey In Lieu Fee Program

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# State of New Jersey In Lieu Fee Program

## 1. Introduction

This In-Lieu Fee (ILF) Instrument establishing the New Jersey In-Lieu Fee Mitigation Program (ILF Program) is made and entered into by and among the New Jersey Department of Environmental Protection (NJDEP), Region 2 of the U.S. Environmental Protection Agency (USEPA), and the Wetlands Mitigation Council (Council or Program Administrator). This ILF Instrument is a binding agreement among the parties and incorporates all attachments to the ILF Instrument as a part hereof.

This ILF Instrument sets forth guidelines and responsibilities for the establishment, use, operation, protection, monitoring, and maintenance of the ILF Program to assure the work associated with the ILF Program produces the necessary compensatory mitigation credits to compensate for unavoidable impacts to waters of the United States, including wetlands, that result from activities authorized under New Jersey Freshwater Wetlands Protection Act (FWPA), N.J.S.A.13:9B-1 et seq., Freshwater Wetlands Protection Act Rules (FWPA rules), N.J.A.C. 7:7A, Coastal Zone Management Rules (CZM rules), N.J.A.C. 7:7E, and Coastal Permit Program Rules (CPP rules), N.J.A.C. 7:7. The ILF Program will accomplish these objectives by creating, restoring, enhancing, and preserving in perpetuity both freshwater and coastal wetlands habitats throughout New Jersey within the ILF Program service area.

Compensatory mitigation for activities authorized under New Jersey FWPA's rules, CZM rules, and CPP rules was previously provided through the New Jersey Wetlands Mitigation Council. The New Jersey Wetlands Mitigation Council will continue the management of this ILF Program as directed by the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-14, as the Program Administrator. Upon approval of this document, the type and amount of habitat to be provided by future ILF Program projects will be determined on a case-by-case basis.

## 2. Goals and Objectives

The goals and objectives of New Jersey's ILF Program are as follows:

- To provide a third-party compensatory mitigation option for unavoidable impacts to waters of the United States and waters of the State approved by the State of New Jersey;
- To provide a third-party compensatory mitigation option for enforcement actions approved by the State of New Jersey; and
- To ensure New Jersey's mitigation program is as stringent as the Federal In Lieu Fee rules (33 CFR Part 332).

## 3. State Regulatory Authorities

The establishment, use, and operation of the ILF Program is carried out in accordance with the following authorities:

- Waterfront Development Law, N.J.S.A. 12:5-1 et seq. and implementing rules;
- Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. and implementing rules;
- Wetlands Act of 1970, N.J.S.A. 13:9A;
- Coastal Area Facility Review Act, N.J.S.A. 13:19 et seq. and implementing rules; and
- Highlands Water Protection and Planning Act, N.J.S.A. P.L. 2004, c.120.

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### 4. Qualifications of NJDEP

The NJDEP is an agency of New Jersey State government with its core mission being the protection of the air, waters, land, and natural and historic resources of the State to ensure continued public benefit. The NJDEP's mission is advanced through effective and balanced implementation and enforcement of environmental laws to protect these resources and the health and safety of New Jersey's residents. The New Jersey Legislature charged the NJDEP with the protection of wetlands, coastal areas, and flood plains. The NJDEP's Division of Land Use Regulation administers three land use permitting programs, each with its own chapter of rules.

The FWPA authorized the State of New Jersey to establish a program for the systematic review of activities in and around freshwater wetland areas designed to provide predictability in the protection of freshwater wetlands. The Act provides that it is the policy of the State to preserve the purity and integrity of freshwater wetlands from random, unnecessary or undesirable alteration or disturbance. To implement the FWPA, the Department promulgated the FWPA rules, N.J.A.C. 7:7A. These rules require the compensation of unavoidable wetlands losses. Compensation, commonly referred to as mitigation, may include the restoration, enhancement, creation, or preservation of an area. In order to achieve compensation, the regulations require that compensation be in the form of credit purchased from an approved wetland mitigation bank, implementation of a permittee-responsible mitigation project, preservation of uplands or a donation of wetlands as mitigation. The regulations also allow for a monetary contribution to the Wetlands Mitigation Bank<sup>1</sup> as an alternative compensation method under specific circumstances, such as a taking or when all other mitigation alternatives have been determined by the NJDEP to be impractical or not feasible. The NJDEP retains all authority on regulatory decisions.

New Jersey's coastal permitting program is implemented through the CPP and CZM rules. These regulations establish the procedures by which the NJDEP reviews permit applications and appeals from permit decisions under the CAFRA, the Wetlands Act of 1970 and the Waterfront Development Law. These procedures also govern the reviews of Federal Consistency Determinations issued pursuant to the Federal Coastal Zone Management Act, 16 U.S.C. 1451 et seq., and Water Quality Certificates issued pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. 1251 et seq. Under New Jersey's coastal permitting program, compensation for the loss or degradation of a natural resource, including wetlands, may include the restoration, enhancement, creation, or preservation of an area. As with freshwater wetlands, in order to achieve compensation for the loss of coastal wetlands, the regulations require that compensation be in the form of credit purchased from an approved wetland mitigation bank, implementation of a permittee-responsible mitigation project, preservation of uplands or a donation of wetlands as mitigation. The regulations also allow for a monetary contribution to the Wetlands Mitigation Bank as an alternative compensation method under specific circumstances, such as a taking or when all other mitigation alternatives have been determined by the NJDEP to be impractical or not feasible.

Once the NJDEP has determined that a monetary contribution is an acceptable form of mitigation, the applicant will then be directed to the Wetland Mitigation Council, who, as specified in the Act, has the legal authority for the collection and disbursement of the monetary

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<sup>1</sup> Established at N.J.S.A. 13:9B-15 and commonly referred to as the Wetlands Mitigation Fund.

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contributions received. As the Council disburses the funds, any applicant that receives funding from the Council for a creation, restoration, or enhancement project will require a permit from the NJDEP. The type of permit required will be dependent on the type of work proposed and the location of the project. The permit required may be a general permit or an individual permit. All permits shall meet the standards of the applicable rule. In the event that the proposed project does not meet the standards of the FWPA, CPP, CZM or FHA rules, the NJDEP will not issue a permit. During the permitting review process, the NJDEP maintains the ability to enforce all provisions and conditions within the permit to ensure compliance and to ensure that the project is constructed as approved. In addition, if the Program Administrator does not perform in accordance with the ILF Program, including ensuring the timely completion of mitigation projects, the NJDEP may not authorize any permittees to make a monetary contribution as an acceptable form of mitigation. During this suspension of authorization, the NJDEP would reevaluate the effectiveness of the ILF Program and make any necessary changes.

### **5. Qualifications of the Program Administrator**

The FWPA at N.J.S.A. 13:9B-14, established a Wetlands Mitigation Bank, an early version of an ILF Program. The Wetlands Mitigation Bank is governed by the Wetlands Mitigation Council. The Council, as required by the FWPA, is comprised of seven members: the Commissioner of NJDEP, who serves ex officio; and six members of the general public appointed by the Governor with the advice and consent of the Senate, two of whom are recommended by recognized building and development organizations; two of whom are recommended by recognized environmental and conservation organizations; and two of whom are recommended from institutions of higher learning in the State. Each of the members appointed from the general public serve for a term of three years and until a successor is appointed and qualified, except that of the members first appointed, two serve terms of one year, and two serve two years. All vacancies, except those created through the expiration of term, are filled for the unexpired term only, and in the same manner, and with a member having the same class, as the original appointment. Each member is eligible for reappointment, but may be removed by the Governor for cause.

New Jersey's ILF Program benefits from the experience of the Program Administrator.

The Wetlands Mitigation Bank, commonly referred to as the Wetlands Mitigation Fund, is a repository for monetary contributions made for mitigation purposes. The Wetland Mitigation Fund is governed by the Program Administrator. The Program Administrator may accept monetary contributions as a form of mitigation when the NJDEP has determined that an applicant has no reasonable alternative wetland mitigation options (See N.J.S.A. 13:9B-14 and 15). The Wetlands Mitigation Fund and the Council were intended to function like the current Federal "in lieu fee" mitigation programs. Since 1989, the Program Administrator has received monetary contributions in lieu of alternative forms of mitigation. Beginning in 1993, the Program Administrator has tracked all projects for which monetary contributions were accepted, the watershed in which the impact occurred which resulted in the monetary contribution, and the total area of wetlands for which the monetary contribution was collected. This instrument is intended to ensure New Jersey's Wetland Mitigation Fund complies with EPA's 2008 regulations governing in-lieu fee programs. See 40 C.F.R. § 230.98.

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Section 15 of the FWPA, N.J.S.A. 13:9B-15, states that the Council is responsible for disbursements of funds from the Wetlands Mitigation Bank to finance mitigation projects. Specifically, the Wetland Mitigation Council, in consultation with USEPA may transfer any funds or lands restricted by deed, easement or other appropriate means for mitigation and freshwater wetlands conservation purposes, to a state or federal conservation agency that consents to the transfer, to expand or provide for: Freshwater wetlands preserves; transition areas around existing freshwater wetlands to preserve freshwater wetland quality; future mitigation sites for freshwater wetlands enhancement, restoration, or other mitigation efforts, or research to enhance the practice of mitigation. The Council's duties are further enunciated in N.J.A.C. 7:7A-15.20, which sets forth that the Council's duties and functions include the review of: proposed monetary contributions, proposed land donations, advising the Department on mitigation issues; buying land in order to conduct mitigation, or to preserve wetlands, transition areas, uplands, and/or State open waters; contracting with a charitable conservancy or appropriate agency to carry out its responsibilities; conducting research to monitor the success of mitigation as part of a Council-funded and approved creation, restoration, or enhancement project; enhancing or restoring wetlands on public lands; and disbursing funds from the Wetland Mitigation Fund to finance the activities listed above. To carry out these functions, the Wetland Mitigation Council may contract with a government agency, nonprofit organization, or other appropriate agency to carry out its responsibilities as set forth by N.J.A.C. 7:7A-15.20(e).

As the Program Administrator, the Council will continue to have the ability to collect monetary contributions and undertake projects to provide for compensatory mitigation under this ILF Instrument and will do so in consultation with the USEPA and in accordance with N.J.A.C. 7:7A-15.20(e).

The Program Administrator has implemented and carried out to completion many projects throughout the State of New Jersey since its inception in July 1988 and will continue to achieve no net loss of wetlands under this ILF Program. A historical comparison of monetary contributions received and credits established by projects funded by the Program Administrator is located in Appendix A. This comparison shows that the Program Administrator has provided full compensation for all wetland impacts received through monetary contributions. The Program Administrator will continue to operate the ILF Program in accordance with this document. Consistent with 40 C.F.R. 230.98, the Program Administrator will integrate the Compensation Planning Framework into its site-selection process and will ensure that land acquisition and initial physical and biological improvements be completed by the third full growing season after the first advance credit in that service area is secured by a permittee. See 40 CFR 230.98(c), (n)(4).

### **6. Provision of Legal Responsibility**

Acceptance of a monetary contribution into the ILF Program is an acknowledgement by NJDEP that the Program Administrator, and not the permittee, is responsible for satisfying the compensatory mitigation requirements of a NJDEP permit.

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A monetary contribution into the ILF Program must occur prior to the start of any construction of the permitted project, including site preparation. Permit conditions authorizing the use of New Jersey's ILF Program shall stipulate the dollar amount to be paid or how the permittee shall calculate the dollar amount to be paid.

A list of the projects and payments made into the ILF Program will be maintained by the Program Administrator. A list of all funded projects and credits generated will be available to the public on the NJDEP's website, <http://www.nj.gov/dep/landuse/mitigate.html>.

### **7. New Jersey ILF Program**

#### **7.1 Establishment and Operations**

The ILF Program outlined herein includes a description of the program structure and program operating procedures. The provisions outlined serve as the framework within which ILF mitigation projects in New Jersey will be proposed, implemented, and maintained. This ILF instrument will be reviewed periodically and updated as necessary through amendments agreed to by all signatories to the ILF Instrument.

Upon approval by the NJDEP, a permittee may make a monetary contribution into the ILF Program in lieu of other forms of mitigation. Approval by the NJDEP ensures that the mitigation complies with all applicable laws, regulations, and policies of the State of New Jersey. It is understood that the permittee may elect to conduct other appropriate and practicable mitigation provided the proposed mitigation project complies with all NJDEP laws, rules, regulations, and policies.

The NJDEP shall determine whether a monetary contribution is appropriate compensation for permitted impacts to protected natural resources. The NJDEP will have the final authority to determine the acceptability of a monetary contribution as a form of wetland mitigation.

All monetary contributions shall be made payable to the New Jersey Natural Lands Trust. Along with the payment (in the form of a check or money order), the applicant must include a letter explaining that it is a monetary contribution to the Wetlands Mitigation Fund for NJDEP File # (INSERT FILE NUMBER) issued to (INSERT PERMITTEE). The monetary contribution and letter shall be sent to the attention of Mr. Bob Cartica, New Jersey Natural Lands Trust, Mail Code 501-04, PO Box 404, Trenton, NJ 08625. A copy of the payment and letter must also be sent to Ms. Jill Aspinwall, NJDEP Staff to the Council, P.O. Box 420, Mail Code: 401-07B, Trenton, New Jersey 08625-0420.

The Program Administrator shall act as the recipient of all monetary contributions into the ILF Program and shall play no role in any regulatory decision made by the NJDEP determining the nature and extent of any required compensatory mitigation, or determining the appropriateness of any specific monetary contribution.



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### **7.2 Service Area**

Historically, the Program Administrator operated within one service area, the entire State of New Jersey. While the Program Administrator attempted to fund projects within specific watersheds of the State, it was not required to do so. Projects were funded by the Program Administrator based on the project and not location.

Moving forward, as set forth in this ILF Instrument, the Program Administrator will divide the State into both a primary and secondary service area. The primary service area will be the service area in which the monetary contribution was collected in, and where the impact occurs. The service areas will include both freshwater and tidal waters as the ILF Program covers the entire State as explained in further detail by Appendix B. The primary service areas will include the five water regions of the State. These will include the following:

- Northeast Water Region: Watershed Management Areas 3, 4, 5, and 6
- Northwest Water Region: Watershed Management Areas 1, 2, and 11
- Raritan Water Region: Watershed Management Areas 7, 8, 9, and 10
- Atlantic Water Region: Watershed Management Areas 12, 13, 14, 15 and 16
- Delaware Water Region: Watershed Management Areas 17, 18, 19, and 20.

The secondary service area, will be the adjacent water region where the impact may be mitigated for, in the event that after three years there are no credits available within the primary service area. When a monetary contribution has been collected and cannot be assigned to an approved project within the primary service area after 3 years, the Program Administrator shall utilize a secondary service area in order to provide compensation.

### **7.3 Determining the amount of a monetary contribution**

The amount of a monetary contribution shall be determined based on the type of authorization or permit received by the permittee. The amount shall be determined in accordance with N.J.A.C. 7:7A-15.21 or N.J.A.C. 7:7E-3.15 or 3.27.

### **7.4 Determining the amount of credits for each ILF project**

The total number of credits that will be generated from an ILF Program project will be determined by the Program Administrator. The recipient of any funding for a ILF project from the Program Administrator will herein be referred to as the grantee. The Program Administrator shall calculate the number of credits in accordance with the FWPA, CZM, or CPP rules, as appropriate.

### **7.5 Advance Credits**

To implement the ILF Program, the Program Administrator is authorized to sell advanced credits to provide compensatory mitigation for impacts authorized by the NJDEP within each service area. As detailed within Appendix A, the Program Administrator has historically collected monetary contribution for 48.6755 acres of wetland impacts. At the same time the Program Administrator has funded wetland enhancement, creation, restoration and preservation projects that generated 148.497 credits. The Program Administrator therefore has 99.8215 credits to

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carry forward into this ILF Program. In addition, the Program Administrator will utilize any funds that were received by the Program Administrator from interest earned on the account or from enforcement settlements to establish additional advance credits within each service area.

The Program Administrator has divided the 99.8215 acres of advance credit into the following water regions:

ILF Service Area	Advance Credits Available
Northwest	0
Northeast	30.74
Raritan	14.639
Lower Delaware	13.141
Atlantic Coastal	41.3015
Total:	99.8215

The Program Administrator will collect monetary contributions only in those regions where credits are available. As monetary contributions are collected, the appropriate amount of credits will be debited from available credits, and the money will be placed into the fund. The amount of money in the fund each year will help determine where the Program Administrator will set forth a request for proposal to identify projects to establish credits in a water region.

In addition, to ensure this ILF Program runs successfully and all impacts are fully mitigated, the NJDEP will only consider contributions to the Council to be a feasible alternative for mitigation if the Council maintains a minimum balance of 10 advance credits. These advance credits will serve as a contingency to help ensure that all impacts are mitigated. In the event that a project funded by the Council fails to result in mitigation, and the Council fails to timely fund an alternative mitigation project, the Council must deduct the outstanding mitigation obligations from its pool of advance credits.

The NJDEP will only consider the Council to be a feasible alternative for mitigation if the Council maintains a minimum balance of 10 advance credits and the NJDEP is satisfied the Council is accurately accounting for its mitigation obligations and advance credits.

### 7.6 Credit Release Schedule

Credit releases (indicating satisfaction of responsibility) must be approved by the Program Administrator and will be reviewed upon submittal of quarterly and annual reports to the Program Administrator by each grantee. To be considered for a release, quarterly and annual reports must demonstrate that all milestones and performance standards have been successfully achieved.

Credits may be released by the Program Administrator as milestones are achieved in the credit release schedule approved for each grant. Credits shall not be released for a project until the Program Administrator has acknowledged that project milestones have been satisfactorily

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achieved. The Program Administrator shall maintain a separate ledger for each grant that will depict all credit releases and credit withdrawals associated with each grant.

Credit release schedules may vary by project and the type of mitigation proposed (creation, restoration, enhancement or preservation). As projects are implemented any credits generated as a result of meeting ecological performance standards will first be used to provide mitigation for any outstanding mitigation obligation. The credit release schedule will follow N.J.A.C. 7:7A-15.23(e).

The grantee will complete the approved project within the timeframe required within the ILF grant agreement. If the grantee fails to meet this deadline, the Program Administrator, in consultation with the NJDEP, must determine how to proceed. The Program Administrator may make a determination that more time is needed to implement the grant and modify and extend the grant agreement. Or if no work has begun within one year of from the date of the grant agreement, the Program Administrator may terminate the grant agreement. If a grant agreement has been terminated, the Program Administrator may redirect funds to another ILF grant to provide compensatory mitigation.

### 7.7 Grant Funding Procedures

The Program Administrator will meet on a bimonthly basis as necessary to review the status of all existing grant agreements and monetary contribution proposals. The Program Administrator shall maintain minutes of all meetings. The minutes of the Program Administrator shall be a public record and maintained at the offices of the NJDEP, 401 E. State Street, Mail Code 401-07D, Trenton, NJ 08625, and open for review in accordance with the Open Public Records Act. No recommendation of the Program Administrator shall be binding or valid unless adopted by the affirmative vote of a majority of the members of the Program Administrator.

The Program Administrator must disclose any interest in a proposed ILF grant or any adjacent properties affected by a grant and recuse themselves from voting on those matters if they have a conflict of interest. This provision does not prevent a department or agency from officially supporting any specific request.

On an annual basis the Program Administrator shall publish a request for grant proposals for the water regions in which funding is available in the Wetland Mitigation Fund. Grant proposals will be evaluated in accordance with the FWPA, CZM or CPP rules. In addition, the Program Administrator will further evaluate proposals based on the amount of monetary contributions received within the each water region. The Program Administrator will utilize Table 1, when processing grants applications.

<b>Action</b>	<b>Responsibility</b>	<b>Deadline</b>
Request for Proposals (RFP)	Program Administrator	TBD
Submit conceptual ILF grant proposal	Applicant	In accordance with RFP

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Administrative review (Staff comments)	Program Administrator staff	15 calendar days prior to Program Administrator meeting
Program Administrator review of conceptual wetlands mitigation grant proposal	Program Administrator	Program Administrator meeting
Submittal of Full Proposal	Applicant	Within 90 days of approval of conceptual proposal
Administrative Review (Staff Comments)	Program Administrator staff	15 calendar days prior to Program Administrator meeting
Presentation to Program Administrator	Applicant	Program Administrator meeting
Decision by Program Administrator	Program Administrator	Program Administrator meeting
EPA Consultation	EPA	Within 15 business days of receipt of project from Program Administrator
Contract Agreement	Program Administrator	Shall begin immediately upon conclusion of EPA consultation

The following sections describe the activities listed in the preceding table.

### **Request for Proposals (RFP)**

On an annual basis, the Program Administrator will put forth a request for proposals (RFP). The request for proposal will set forth the guidelines for submission of conceptual ILF proposals. The request for conceptual proposals will identify the water regions where proposals are being sought as well as the amount of money available and total amount of mitigation required.

The request for proposals shall state that the Program Administrator may contract with nonprofit organizations, county, state, and federal agencies or other appropriate agencies to carry out its responsibilities, subject to review and approval of the EPA, and may aggregate mitigation actions to achieve economies of scale. It may also, in consultation with EPA, transfer funds or lands restricted by deed, easement or other appropriate means for mitigation and freshwater wetlands conservation purposes, to a state or federal conservation agency that consents to the transfer to expand or provide for:

- Freshwater wetland preserves;
- Transition areas around existing freshwater wetlands to preserve freshwater wetland quality;

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- Future mitigation sites for freshwater wetlands enhancement, restoration, or other mitigation efforts;
- Research to enhance the practice of mitigation; and/or
- Establish tidal wetlands.

### **Submit Conceptual ILF Grant Proposal**

In order to be eligible for funding under this program, interested applicants must submit a Conceptual ILF Grant Proposal in response to the request for proposals. A conceptual proposal shall at a minimum stipulate the location of the project (including service area, county and municipality), the amount of wetlands to be preserved, enhanced, created or restored, the amount of money requested for the project, a detailed explanation of the proposed budget, and the amount of proposed credits to be generated, and a summary of the proposal.

### **Administrative Review of Conceptual Proposals**

The Program Administrator or its staff will review the Conceptual ILF grant proposal to ensure that it complies with the guidelines set forth in this document and all applicable state regulations, and to ensure that the project costs and proposed credits are reasonable. The Program Administrator or its staff will conduct a site inspection. If the conceptual proposal does not comply with the guidelines set forth in this document, the applicant will be notified of reasons and the project will no longer be eligible for funding for the applicable funding cycle. If the conceptual proposal complies with the guidelines set forth in this document, the Program Administrator's staff will prepare staff comments and will include the conceptual proposal on the appropriate Program Administrator's meeting agenda. Program Administrator agendas are published two weeks prior to any meeting pursuant to New Jersey's Open Public Meeting Act's requirements, N.J.A.C. 10:4-6 et seq.

### **Program Administrator Review of Conceptual Mitigation Proposal**

The Program Administrator will review the Conceptual ILF proposal and accompanying staff comments and will provide the applicant with any initial comments or recommendations and will make a determination if the project is eligible to submit a full proposal. If the Program Administrator determines that the proposed conceptual project should not be funded, the applicant may not submit a full proposal. At this point, any approved conceptual projects shall be forwarded to the USEPA for consultation.

### **Submittal of Full Proposal**

All full proposals submitted should follow the NJDEP's checklist entitled "Creation, Restoration, or Enhancement for a Freshwater Wetlands Mitigation Proposal" or "Creation, Restoration, or Enhancement for a Coastal Wetlands Mitigation Proposal" depending on the type of project approved. These checklists can be found online at: <http://www.nj.gov/dep/landuse/forms.html>. Any proposals not following these guidelines will be returned to the applicant. All full proposals shall be submitted within 90 days after conceptual approval. In addition to the NJDEP checklists, all full proposals shall include detailed budget narratives justifying all proposed expenses. The full proposal shall include:

#### **1.1 Cover Page**

The cover page must identify all of the following information:

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- Project Title
- Identification of Block and Lot
- Identification of Municipality
- Identification of County
- Identification of Watershed Management Area
- Applicant's name, address, phone number, and email
- Funding Amount Requested from Council
- Total Project Cost

### 1.2 Scope of Work

#### 1.2.1 Background Information

This section must describe why the project is needed, current condition of the wetlands, and the benefit that will be achieved by the completion of this project (environmental improvements). This section must include a detailed description of the grant request, including how much creation, restoration, or enhancement is proposed on the site both in acreage and as a percentage of the site.

#### 1.2.2 Goals, Objectives, and Approach

The main goals, objectives, and tasks of the project should be identified within this section. This section is extremely important as it outlines both the major projects and deliverables within the proposal.

The goals of the project section should identify the desired outcomes of the project and serve as the general statement of the project's intended results. The objectives should specify how the results to be achieved by the project will be measured and the time frame for achieving the objectives. Tasks are the statements of activities that will occur to achieve the goals of the project. For each task, determine who the responsible party is that will complete the task and identify the roles of each responsible party in achieving the objectives.

Example:

Goal I: No net loss of wetlands

Objective A: Increase the amount of wetlands on project site by 25%, which is equal to X acres.

Task 1: Create the hydrology needed for a functioning wetland

Task 2: Plant wetland species on site

#### 1.2.3 Partners

This section should state the partners involved in the project as well as their contribution towards achieving the desired goals and objectives of the projects. For example Partner X supports this project and will be contributing 10 hours of technical review, Partner Y supports this project and will be conducting the grading on site.

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### 1.2.4 Project Implementation Schedule

This section should include a detailed schedule of main goals and tasks associated with the project as well as the responsible party for each task. An example implementation schedule is shown in Table 2.

	<b>Anticipated Start Date</b>	<b>Anticipated End Date</b>	<b>Responsible Party</b>	<b>Deliverable</b>
Objective 1	January 2015	August 2024	Grantee, Partner X	Completed Site Design
Task 1	January 2015	May 2015	Grantee, Partner X	Grading design Complete
Task 2	June 2015	August 2015	Grantee, Partner Y	Planting Design

### 1.3 Budget

The proposed project budget should be detailed and identify the costs associated with each task. A detailed budget justification for select items will enhance the review process and is required. Indirect Cost: The overhead rate should be identified and it should be clearly stated what the rate is applied to. The Council will pay Indirect Costs totaling no more than 10% of the total project cost. Indirect costs include those costs that are not directly accountable to a cost objective. Indirect costs may include: indirect management and administrative salary and non-salary costs, applicable fringe benefits, building rent and lease construction.

### 1.4 Appendix

The appendix should include the following information:

- Copies of any prior permits or Letters of Interpretations issued for the property.
- A road map showing the location of the property.
- A copy of a tax map for the property with the property outlined on the map.
- An aerial photograph showing the location of the project site.
- At least four photographs of the property including proposed restoration or enhancement areas.
- A plan or drawing identifying the potential restoration or enhancement areas on the site.
- A map of known contaminated sites in the HUC 11 area. This information can be found at <http://www.nj.gov/dep/srp/kcs-nj/>.
- A copy of the landscape map for the project area.

### Administrative Review

The Program Administrator or its staff will review the full proposal submitted to ensure that the proposed project complies with the guidelines set forth in this document and any applicable state regulations. The Program Administrator staff will also review and provide staff comments that

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will be made available at the Program Administrator's Meeting. If the staff has questions or concerns about the project, staff will schedule a meeting with the applicant prior to the Program Administrator's meeting, in order to work out the questions or concerns of staff.

### **Presentation to Program Administrator**

The applicant will have the opportunity to present his or her proposal to the Program Administrator at the appropriate Program Administrator's meeting. During this meeting the applicant will have the opportunity to address any concerns or issues raised by the Program Administrator.

### **Program Administrator Decision**

The Program Administrator will render a decision during their meeting.

### **EPA Consultation**

Pursuant to N.J.S.A. 13:9-15(b) and N.J.A.C. 7:7A-15.20(e), once the Program Administrator approves a full proposal for funding, the Program Administrator shall send all approved proposals to EPA for review and consultation. The consultation shall take place prior to the Program Administrator and the grantee, entering into a contract. The grantee must address any comments or concerns raised by the EPA. The EPA shall have 15 business days to review the proposed project. The EPA may or may not issue comments on the project. If no response is received by the Program Administrator from the EPA, the Program Administrator will assume that EPA has no objections to the project and will proceed with the contracting process.

### **Contract Agreement**

Once the Program Administrator receives approval from EPA, the Program Administrator will enter a standard contract agreement. This contract shall be the same contract as currently used by the NJDEP, with the Council substituted for the NJDEP. A copy of the standard contract can be found in Appendix C. The grantee and the Program Administrator shall be held to the terms and the conditions of the contract. The purpose of this contract is to ensure that the Council funded project proceeds as envisioned and approved by the Council. At any point during the contract, if the grantee fails to perform in accordance with the proposal, the contract, or the permit, the Council can take the steps necessary to terminate the contract and return any unused money back to the Wetland Mitigation Fund to be reallocated to another wetland mitigation project.

### **7.8 Financial Controls and Accounting Procedures**

The Wetlands Mitigation Fund is the repository for all monetary contributions received from permittees, as well as penalties, fines, and interest received by the ILF Program. The Program Administrator will maintain a separate bank account for the ILF program account. Any monetary contributions accepted by the Program Administrator from entities other than permittees shall be tracked in separate accounting ledgers.

The Wetlands Mitigation Fund will collect monetary contributions from permittees and these funds will be used for all activities and program management related to the selection, design, acquisition, implementation, monitoring, management, and long-term protection of ILF Program



## State of New Jersey In Lieu Fee Program

projects. Disbursements from the Wetlands Mitigation Fund will only be made upon receipt of written authorization from the Program Administrator of approval of activities requiring the disbursement of funds. The Program Administrator must authorize each individual disbursement from the account. Once the project is authorized, funds disbursed from the account must be spent for the project in a manner consistent with the approved project mitigation plan and the grant agreement between the Program Administrator and the grantee.

The Program Administrator will provide an Annual Accounting Report for the ILF Program to the NJDEP. The Annual Report shall include:

- All money received, disbursements, and interest earned by the Wetlands Mitigation Fund;
- A list of all NJDEP permits for which monetary contributions were accepted. This list shall include: the NJDEP permit number, the watershed management area in which the authorized impacts are located; the amount of authorized impacts and monetary contribution; the date the funds were received from the permittee; and the grant to which the impacts were assigned to;
- A description of ILF Program expenditures from the Wetlands Mitigation Fund, including a list of all projects funded and any administrative costs;
- The balance of credits at the end of the reporting period for the ILF Program service area; and
- The annual monitoring report described in Element 10 of the Compensation Planning Framework discussed in Section 8 below.

The ILF Program account will be held at a financial institution that is a member of the Federal Deposit Insurance Corporation. All interest accruing from the account will be used to fund the ILF Program to provide compensatory mitigation for impacts to wetlands authorized by NJDEP permits. Upon prior notice, the NJDEP shall have the right to audit the Program Administrator's records pertaining to the ILF Program account. Monetary contributions paid into the ILF Program account may only be used for the restoration, creation, enhancement, or preservation of wetlands and associated buffers. Specifically, funds may be used for the selection, design, land acquisition (i.e., appraisals, surveys, title insurance, etc), implementation, and management of in-lieu fee compensatory mitigation projects. This may include fees associated with securing a permit for conducting mitigation activities, activities related to restoration, enhancement, creation, and/or preservation of wetlands and associated buffers, maintenance and monitoring of mitigation sites, or any other fee related to the mitigation process contemplated by this ILF Program.

The Program Administrator, Pursuant to 40 CFR 230.98(i)(1) will propose through rulemaking to receive an administrative fee of not more than 10 percent of each monetary contribution when contributions are deposited into the ILF Program account. In the event of installment payments, the administrative fee will be available for use by the Program Administrator upon receipt of final payment, and will be calculated based on the total monetary contribution. The administrative fee will come from the deposited fees and is deemed to represent and reimburse reasonable overhead and related costs of administering the ILF Program to accomplish the mitigation projects described herein in an area with a high cost of living and high construction costs. In general, these fees will be used to defray such ordinary expenses involved in administering the ILF Program, including but not limited to:

## **State of New Jersey In Lieu Fee Program**

- Office expenses, rent, computer equipment, transportation costs, and office equipment and supplies related to program administration;
- Phone, internet, and other communications expenses;
- Site selection leading to project identification;
- Fee and credit accounting for the ILF Program account and ILF Program project accounts, including accounting services as needed: Legal services, Data management, Reporting regarding the program, Correspondence and meetings with IRT and other regulatory agencies, including negotiation of modifications to this Instrument;
- ILF Program development;
- Other program administration duties as necessary; and
- Bank and other fees associated with operation of the ILF Program.

### **7.9 Grant Performance Standards**

The Program Administrator will apply the same performance standards to the grant sites that are currently used for wetlands mitigation banks and permittee- responsible mitigation projects under the FWPA, CPP, and CZM rules. In addition, the grant will be required to meet any performance standard identified within the permit that authorized the mitigation activities, as well as the grant agreement document.

## **8. Additional Provisions**

### **8.1 Catastrophic Events**

The NJDEP, Program Administrator or a grantee will not be responsible for grant failure that is attributed to natural catastrophes such as flood, fire, drought, or regional pest infestation that the Program Administrator determines is beyond the reasonable control of the grantee to prevent or mitigate. The grantee shall bear the burden of demonstrating that the cause of the failure was due to a natural catastrophe.

### **8.2 Dispute Resolution**

Resolution of disputes related to overall program management or as it pertains to individual ILF projects, for example, satisfaction of performance standards, will be resolved between the Program Administrator and grantee, with assistance from the NJDEP as necessary.

Resolution of disputes between the Program Administrator and the NJDEP shall be resolved with assistance from USEPA Region 2. In the event of this type of dispute, the NJDEP shall request assistance from USEPA to informally advise the NJDEP on the issue in dispute.

### **8.3 Default**

If the NJDEP determines that the Program Administrator is not performing in accordance with the ILF Program, including ensuring the timely completion of mitigation projects, maintaining 10 advance credits, and accurately accounting for its advance credits, the NJDEP may not authorize any permittees to make a monetary contribution as an acceptable form of mitigation.

## **State of New Jersey In Lieu Fee Program**

During this suspension of authorization, the NJDEP would reevaluate the effectiveness of the ILF Program and make any necessary changes.

### **8.4 ILF Program Closure Provisions**

In the event that the Council is not performing in accordance with this ILF document, its enabling statute, or its implementing regulations, the NJDEP will reevaluate whether using the Council is a feasible means of ensuring mitigation. If NJDEP determines the Council is no longer a feasible alternative for mitigation, prospective permittees will be directed to other forms of mitigation.

If the NJDEP determines it is necessary to stop referring permittees to the Council, the NJDEP will assume responsibility for fulfilling any remaining obligations for credits sold prior to closure, minus any outstanding advance credits held by the Council that can be deducted to fulfill the outstanding obligations. Outstanding obligations may also be transferred to another entity upon agreement between the NJDEP and the Program Administrator.

Pursuant to N.J.S.A. 13:9B-15, excess funds remaining in the ILF Program account are only authorized to be used to finance mitigation projects. Therefore, the NJDEP shall request reimbursement from the ILF program account for all costs incurred in fulfilling the remaining obligations.

### **8.5 Modifications of ILF Program**

The ILF Program may not be modified except by written agreement between the Program Administrator, the NJDEP, and the USEPA.

### **8.6 Validity of the ILF Program**

New Jersey's ILF Program will become valid on the latter date of the signature of the NJDEP, Program Administrator, and USEPA.

### **8.7 Invalid Provisions**

In the event that one or more of the provisions contained in this ILF Program were developed inadvertently or with malicious intent and found to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions hereof, and this ILF Program shall not be construed as invalid, illegal, or unenforceable.

### **8.8 Liability of Regulatory Agencies**

The NJDEP administers programs to protect wetlands and serve the public's interest and will not guarantee the availability of credits to any entity, or ensure the financial success of the ILF program, specific individuals, or entities. The public should not construe this ILF Program as a guarantee in any way that the NJDEP will approve a monetary contribution to the ILF program,

## **State of New Jersey In Lieu Fee Program**

or that the regulatory agencies will forgo other mitigation options that may also serve the public interest.

# State of New Jersey In Lieu Fee Program

## State of New Jersey In Lieu Fee Program

### 9. Signatures

IN WITNESS WHEREOF, the NJDEP, the USEPA, and the Wetlands Mitigation Council, by their duly authorized, have executed this agreement in four original copies.

New Jersey Department of Environmental Protection

By: Virginia Kopkash Date: 8/21/2015  
Assistant Commission, Virginia Kopkash

New Jersey Wetlands Mitigation Council

By: Claudia Rocca Date: 8/31/2015  
Acting Chair, Claudia Rocca

United States Environmental Protection Agency Region 2

By: J. J. Matthews Date: 6/5/2015  
Director, Clean Water Division, Joan Leary Matthews

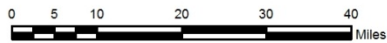
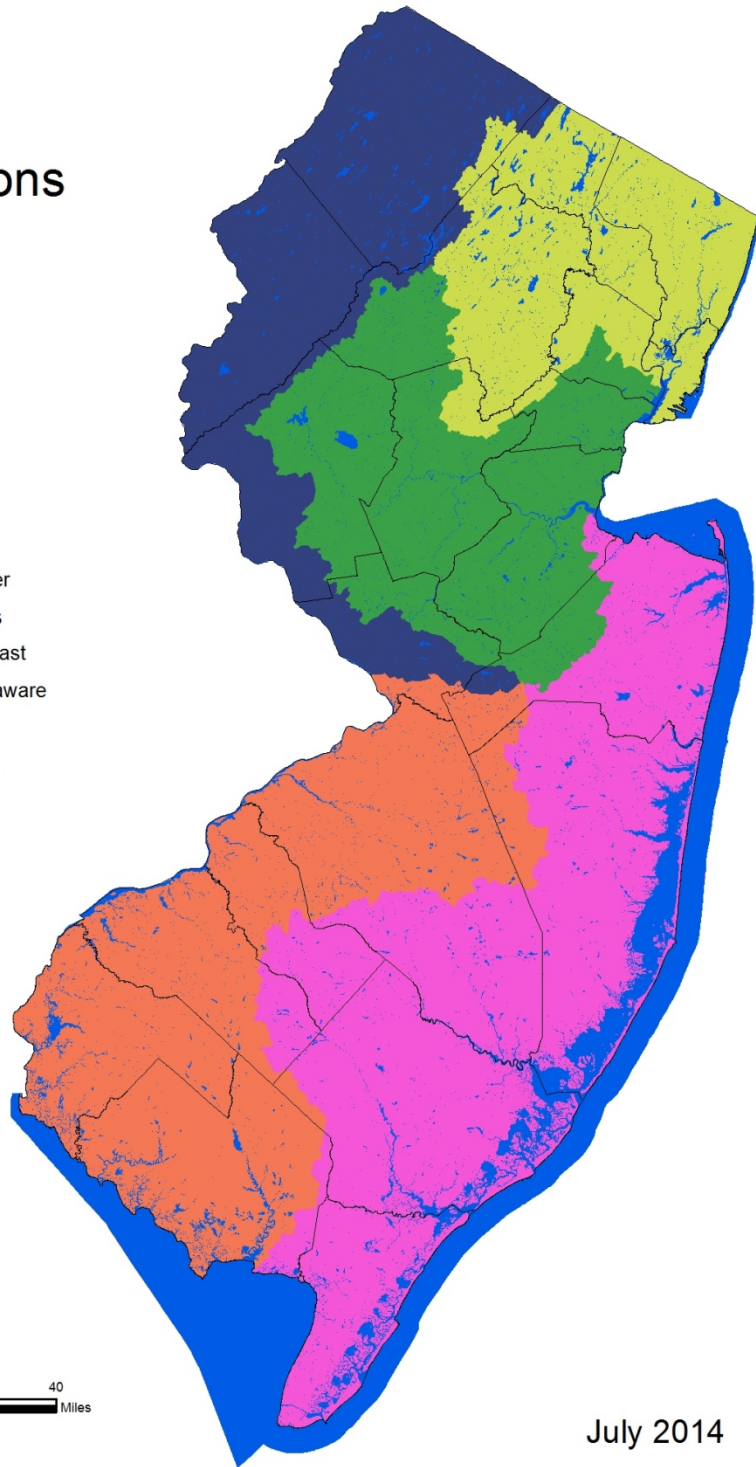
EPA's signature on this instrument is meant solely to indicate that EPA has found that the in lieu fee program, as set forth in this agreement and in ancillary documents, is at least as stringent as the federal requirements, as set forth at 40 C.F.R. 233.16 and within the Memorandum of Agreement governing the administration of New Jersey's assumed Section 404 program, signed by USEPA and NJDEP.

# State of New Jersey In Lieu Fee Program

## Water Regions



-  Counties
-  Major Water
- Water Regions**
-  Atlantic Coast
-  Lower Delaware
-  Northeast
-  Northwest
-  Raritan



1:1,094,219

July 2014

This map is to be used for informational purposes only.

## **State of New Jersey In Lieu Fee Program**

# **State of New Jersey In Lieu Fee Program**

## **APPENDIX A**

Historical comparison of monetary contributions received and credits established



State of New Jersey In Lieu Fee Program

As of June 23, 2014

WMA	Amount Contributed	Wetland Impact	Projects Funded & date approved	Land Preserved	Restoration/ Enhancement	Other	Ratio	Total Credits
1	Transco-Marketlink Clinton Loop \$6,252.00 Garrigan \$8,816.00  <b>Total: \$15,068.00</b>	0.04 0.23  <b>Total: 0.27</b>	Kittatinny-Kenco (6/3/14) \$2,093,000 <b>TOTAL: \$2,093,000.00</b>		90.47		3:1/ 10:1	30.59
2	Total: \$0.00	N/A	\$ 0.00	N/A	N/A	N/A	N/A	N/A
3	Bedrin \$20,742.75 NJ Transit \$188,075 McLoughlin \$7,600  <b>Total: \$216,417.75</b>	0.09 0.85 0.232  <b>Total: 1.17</b>	\$ 0.00	N/A	N/A	N/A	N/A	N/A
4	Federico \$9,500.00  <b>Total: \$9,500.00</b>	0.25  <b>Total: 0.25</b>	\$ 0.00	N/A	N/A	N/A	N/A	N/A
5	NJ Transit \$1,263,006.00 LCL Builders \$11,270.00 Orange and Rockland \$107,593.00 Port Authority \$189,361.00 Valente \$9,424.00  <b>Total: \$1,580,654</b>	12.31 0.07 0.062  0.38 0.248  <b>Total: 13.07</b>	Teaneck Creek (6/24/04) \$300,000.00  Liberty State Park \$1,533,444.00 <b>Total: \$1,833,444.00</b>	N/A	6 acres  28.6 acres	Research	2:1  3:1	3  9.53
6	Lockhern Associates \$54,000.00 Roger Slack \$12,960.00 AT&T \$230,230.00 Antonio Scanella \$560.00 Turner Engineering Inc.	0.665 0.36 1.43 0.02 0.67  0.0115 0.1 0.15 0.073	Hudsonia Brook (8/5/11) \$ 350,000.00  <b>Total: \$350,00.00</b>	N/A	6.5 acres	N/A	2:1	3.25



### State of New Jersey In Lieu Fee Program

10	West Windsor Township \$318,627.00 <b>Total: \$318,627.00</b>	1.486  <b>Total: 1.486</b>	Skillman Lake (3/4/14) \$56,500  Thompson Park (6/3/14) \$930,339.00  <b>Total: \$986,839.31</b>	N/A  N/A	2.92  16.57	N/A  10.19	10:1  3:1/10:1	0.292  6.539
11	Total: \$0.00	N/A	Cadwalader Creek Park (6/18/09)\$60,000 <b>Total \$ 60,000.00</b>	N/A	0.84	3.82 acres of riparian buffer	2:1	0.42
12	PVC Container Corp \$88,550.00 Fahmie \$9,819.61 Walter MacGowan \$2,632.00 Pascale \$1,400.00 Keyport Landings \$9,675.00 Sheldon Cross Realty \$58,035.00 Global Landfill \$550,693.00  <b>Total: \$720,804.61</b>	0.55  0.05 0.094 0.05 0.034 0.68  2.01  <b>Total: 3.468</b>	Manasquan Wildlife Management Area (12/4/01) \$125,912.16  <b>Total \$ 125,912.16</b>	N/A	75 acres	N/A	3:1	25
13	JCP& L \$25,868.00 Leone \$49,000 Otto Builders Inc \$18,794.00 Joseph McDermott \$3,500 Rivas \$1,319.04 Lakeside Village \$178,450.00 Gertner \$ 4,200.00 JCP & L \$60,136.00 Ludlum \$ 5,264.00 John Fitzgerald \$ 3,080.00 Pio DeMatteo \$ 4,200.00 DeKoff \$ 2,520.00	0.37 0.11 0.07 0.21 0.05 0.65 0.15 0.23 0.188 0.11 0.15 0.09 0.10 0.0625 0.1 0.103 5.528 0.097 0.1 0.01 0.1 0.02 0.11	Ocean County Land Trust (1/14/00) \$ 200,000.00  Ocean County (4/28/04) \$ 2,000.00  <b>Total: \$202,000.00</b>	N/A  N/A	6 acres  N/A	N/A  Reimbursement for soil/erosion sediment permit	2:1	3

**State of New Jersey In Lieu Fee Program**

	Rodrigues \$2,800	0.1 0.027						
	Walter Klink \$1,750.00	0.1 0.1						
	Netzer \$2,800.00	0.0931						
	O'Brien \$2,884.00	0.1 0.027						
	ACE \$424,011.00	0.1 0.209						
	Hess \$2,716.00	0.092						
	R. Morris \$2,800.00	0.287 0.0164						
	Erkoboni \$380.00	<b>Total: 9.96</b>						
	Rottenburg \$1520.00							
	Fenimore \$3800.00							
	ACE \$341.00							
	Marren \$ 3,800.00							
	Woodford \$ 1,026.00							
	Jagielski \$ 3,800.00							
	Post \$3,800.00							
	Aceto \$3537.80							
	Robertson \$3,800.00							
	Oliveri \$1026.00							
	Pinzino \$3,800.00							
	Madden \$39,710.00							
	Fall \$3,496.00							
	NJDOT \$193,649.00							
	Calderon \$632.00							
	<b>Total: \$1,064,200.84</b>							
14	Lenox China \$28,297.50	0.065	\$ 0.00	N/A	N/A	N/A		
	<b>Total: \$28,297.50</b>	<b>Total: 0.065</b>						
15	Atlantic City MUA \$174,044.00	1.12	Lenape Farms \$851,649.92	N/A	15.04	2.39 acres upland restoration	3:1/13:1	5.19
	Seider \$1,200.00	0.04						
	<b>Total: \$175,244.00</b>	<b>Total: 1.16</b>						

### State of New Jersey In Lieu Fee Program

16	Hamm \$2,800.00 Prinz \$4,180 Ocean Abstract Company \$4,160.00  <b>Total: \$11,140.00</b>	0.1 0.11 0.09  <b>Total: 0.3</b>	Shaw Farm (7/11/03) \$385,000.00  Shaw Farm Restoration (2/20/04) \$54,432.00  Braddock Properties \$1,000,000.00  <b>Total: \$ 1,439,432.00</b>	143 acres  N/A  437 acres	N/A  8 acres  N/A	N/A  N/A  N/A	27:1  2:1  27:1	5.296  4  16.185
17	NJ American Water Co. \$131,215.00  City of Millville \$35,420  <b>Total: \$166,635.00</b>	1.63 0.44  <b>Total: 2.07</b>	Nature Conservancy (7/12/94) \$4,189.00  Nature Conservancy (10/21/99) \$ 131,215.00  Heislerville Wildlife Management Area (12/4/01) \$134,000.00 <b>Total: \$ 269,404.00</b>	N/A  63.4 acres  N/A	N/A  N/A  40 acres	Survey  N/A  N/A	N/A  27:1  3:1	0  2.348  13.33
18	Sun Pipe Line Co. \$54,902.00  <b>Total: \$54,902.00</b>	0.25  <b>Total: 0.25</b>	Strawbridge Lake (9/14/96) \$ 200,000.00 <b>Total: \$200,000</b>	N/A	0.7 acres	restore 5240 ft of bank	3:1	0.233
19	James Wherty \$3,500  <b>Total: \$3,500.00</b>	0.35  <b>Total: 0.35</b>	\$ 0.00	N/A	N/A	N/A		
20	T. Danecki \$6,500.00  <b>Total: \$6,500.00</b>	0.14  <b>Total: 0.14</b>	\$ 0.00	N/A	N/A	N/A		
<b>TOTAL (Assumed)</b>	<b>\$7,653,760.17</b>	<b>48.6755</b>		<b>643.40</b>	<b>355.84</b>	<b>18.19</b>		<b>148.497</b>
TA Impacts	Primak \$14,421 Berger \$1,400.00  <b>Total: \$15,821.00</b>	0.063 0.05  <b>Total: 0.113</b>						
Enforcement	Wakulik \$5,244 Brinamen \$2,015.00 Clark \$2,280 Perone \$2,850 Koch \$1,234 Woodhaven Village \$1,350,000.00 Division of	0.046 ? 0.02 0.016 0.441 54.09  <b>Total: 54.613</b>	Raritan Drainage Study (12/12/95) \$2,880.00					

### State of New Jersey In Lieu Fee Program

	Criminal Justice \$150,000.00 <b>Total: \$1,513,623.00</b>							
Non- Assumable	Atlantic City Electric \$837,527 Calderon \$623.00  <b>Total \$838,150.00</b>	13.75  0.0164  <b>Total: 13.7664</b>	Natural Lands Trust (2/20/04) \$1,000,000.00  <b>Total: \$ 1,000,000.00</b>	504	N/A	N/A	27:1	18.666
<b>TOTAL (Non- Assumable)</b>	<b>\$2,367,594.00</b>	<b>68.4924</b>		<b>504</b>				<b>18.666</b>

# **State of New Jersey In Lieu Fee Program**

## **APPENDIX B**

Compensation Planning Framework for New Jersey's In-Lieu Fee Program