CONSERVATION LAND USE AGREEMENT

BETWEEN

U.S. ARMY CORPS OF ENGINEERS, CHARLESTON DISTRICT
AND
THE U.S. DEPARTMENT OF AGRICULTURE,
U. S. FOREST SERVICE
FRANCIS MARION AND SUMTER NATIONAL FORESTS

ARTICLE I – PURPOSE AND AUTHORITY

This Conservation Land Use Agreement ("Agreement") is entered into by and between the U.S. Army Corps of Engineers, Charleston District ("Corps"), and the Department of Agriculture, U.S. Forest Service ("Forest Service"), for the purpose of establishing a mutual framework whereby compensatory mitigation requirements associated with Department of the Army (DA) permits may be used: (1) to restore or enhance aquatic resources located on suitable lands comprising the National Forest System; and/or (2) to contribute suitable lands to be incorporated within the National Forest System. The Forest Service and the Corps are collectively referred to as the "Parties".

The Corps is charged with carrying out the Department of the Army permitting authority under Section 404 of the Clean Water Act (CWA), 33 U.S.C. § 1344; Sections 9 and 10 of the Rivers & Harbors Act of 1899 (RHA), 33 U.S.C. §§ 401, 403; and the associated implementing regulations at 33 C.F.R. §§ 320-332. Under its permitting authority, the Corps may require of applicants for Department of the Army permits ("DA permits") what is known as "compensatory mitigation" to offset unavoidable adverse impacts to waters of the United States, including wetlands, that remain after all appropriate and practicable avoidance and minimization has been achieved. Compensatory mitigation projects include the restoration, enhancement, and/or in certain circumstances, the preservation of aquatic resources implemented through a permittee-responsible mitigation plan, or by a mitigation bank or an in-lieu fee program.

The Forest Service is charged with the administration of lands and interests in lands comprising the National Forest System, which is defined by law as follows:

> Congress declares that the National Forest System consists of units of federally owned forest, range, and related lands throughout the United States and its territories, united into a nationally significant system dedicated to the long-term benefit for present and future generations, and that it is the purpose of this section to include all such areas into one integral system. The "National Forest System" shall include all national forest lands reserved or withdrawn from the public domain of the United States, all national forest lands acquired through purchase, exchange, donation, or other means, the national grasslands and land utilization projects administered under title III of the Bankhead-Jones Farm Tenant Act, and other lands, waters, or interests therein which are administered

by the Forest Service or are designated for administration through the Forest Service as a part of the system. Notwithstanding the provisions of the Act of June 4, 1897, no land now or hereafter reserved or withdrawn from the public domain as national forests pursuant to the Act of March 3, 1891, or any act supplementary to and amendatory thereof, shall be returned to the public domain except by an act of Congress. 16 U.S.C. § 1609(a).

Components of the National Forest System are subject to various laws and regulations further defined herein. As a lead Federal agency in natural resource conservation, the Forest Service provides leadership in the protection, management, and use of the Nation's forest, rangeland, and aquatic ecosystems. Through implementation of land and resource management plans, the Forest Service ensures sustainable ecosystems by restoring and maintaining species diversity and ecological productivity that helps provide recreation, water, timber, minerals, fish, wildlife, wilderness and aesthetic values for current and future generations of people.

ARTICLE II – RESTORATION OR ENHANCEMENT OF AQUATIC RESOURCES ON EXISTING FOREST SERVICE PROPERTY / ACQUISITION OF PROPERTY BY THE FOREST SERVICE

At the discretion of the Corps, compensatory mitigation requirements associated with DA permits may be satisfied by cooperating third-parties, including but not limited to DA permit holders, by: (1) restoring or enhancing aquatic resources located on suitable lands comprising the National Forest System; and/or (2) contributing to the National Forest System by conveying to the Forest Service suitable lands within and adjacent to the boundaries of units of the National Forest System. Suitable land(s) serving as compensatory mitigation for DA permits are referred to herein as "Property" and/or "Properties".

A. ACQUISITION BY THE FOREST SERVICE

The Forest Service has an active land acquisition program for the purpose of acquiring lands and interests in lands within and adjacent to National Forest boundaries. Such lands are acquired by purchase, donation or exchange, using appropriated or donated funds when applicable. The purpose of acquisition is to acquire lands for national forest purposes, which will contribute to the scenic and natural values of the national forests, provide for public recreation, and will preserve and protect wildlife species and habitats. Properties may be donated, or sold in whole or part, to the Forest Service under existing Forest Service land acquisition authorities including: the Weeks Act of 1911 (16 U.S.C. § 515); the Wilderness Act of 1964 (16 U.S.C. § 1134); the Wild and Scenic Rivers Act (16 U.S.C. § 1277); the National Trails System Act (16 U.S.C. § 1246); and the Act of August 3, 1956 (7 U.S.C. § 428a).

The Parties agree that the Forest Service is an appropriate recipient of Properties acquired in whole or part as compensatory mitigation associated with the Corps' issuance of DA permits. The Parties also agree that the conveyance of such Properties to the Forest Service may be used to satisfy compensatory mitigation to offset unavoidable impacts to waters of the United States authorized through the Corps' issuance of DA permits pursuant to CWA

Section 404 and/or RHA Sections 9 or 10. The Parties further agree that in any land acquisition, the Forest Service will utilize its existing laws, regulations and policies regarding land valuation, acceptable title, survey and land descriptions, and closing and financing procedures. Nothing in this Agreement is intended to affect normal Forest Service acquisition policies and procedures.

B. RESTORATION OR ENHANCEMENT

The Parties agree that the Forest Service is an appropriate land manager/owner of Properties that are restored or enhanced as compensatory mitigation associated with the Corps' issuance of DA permits. The Parties agree that the restoration or enhancement of aquatic resources located on Properties comprising the National Forest System may be used to satisfy compensatory mitigation to offset unavoidable impacts to waters of the United States authorized through the Corps' issuance of DA permits pursuant to CWA Section 404 and/or RHA Sections 9 or 10.

ARTICLE III – PROPERTIES IDENTIFIED AS COMPENSATORY MITIGATION PROPERTY

The Parties agree that Properties acquired by the Forest Service and set aside as compensatory mitigation pursuant to DA permits shall be managed for the purposes of preserving streams, creeks, wetlands and their buffers to the extent consistent with all laws rules and regulations applicable to the administration and management of National Forest System lands. Further, that upon acquisition, Properties shall not be utilized again as mitigation for any future DA permit.

Similarly, the Parties agree that Properties associated with the restoration or enhancement of aquatic resources as compensatory mitigation pursuant to DA permits shall be managed for the purposes of preserving streams, creeks, wetlands and their buffers to the extent consistent with all laws rules and regulations applicable to the administration and management of National Forest System lands. Further, that upon acquisition, Properties shall not be utilized again as compensatory mitigation for any future DA permit.

ARTICLE IV – MANAGEMENT OF COMPENSATORY MITIGATION PROPERTIES BY THE FOREST SERVICE

For any Properties conveyed to the United States for administration and management by the Forest Service, the Forest Service agrees that:

(a) The Property will be administered and managed as "National Forest System lands" subject to all the laws, rules, and regulations applicable thereto including, but not limited to: the Weeks Act of 1911, the Multiple Use Sustained Yield Act of 1960, the National Forest Management Act of 1976, the Endangered Species Act, the Clean Water Act, and the National Environmental Policy Act.

(b) The Property will be administered and managed as an area of multiple use as

defined by the Multiple Use Sustained Yield Act of 1960 (16 U.S.C. §§ 528-531), and that Act defines watershed and wildlife and fisheries as among the several National Forest uses.

(c) The Property will be administered and managed in accordance with all applicable Executive Orders, including Executive Order 11988 pertaining to floodplain management, and Executive Order 11990 pertaining to protection of wetlands.

(d) The Property will be administered and managed pursuant to a National Forest Land and Resource Management Plan, which, among other things:

(1) provides for coordination of watersheds, wildlife and fish, 16 U.S.C. § 1604(e)(1);

(2) ensures consideration of watersheds, wildlife, and fish, 16 U.S.C. § 1604(g)(3)(A);

(3) ensures that timber harvests, if any, will not irreversibly damage soil, slopes, or other watershed conditions, 16 U.S.C. § 1604(g)(3)(E)(i);

(4) provides that streams, stream banks, shorelines, lakes, wetlands, and other bodies of water will be protected from detrimental changes in water temperatures, blockages of water courses, and deposits of sediment due to timber harvests, 16 U.+S.C. § 1604(g)(3)(E)(iii).

(e) Regarding access to Properties, because the Properties will have National Forest status upon acquisition by the Forest Service, it is understood that the Properties will be generally open to the public and available for inspection by the Corps, at reasonable times and upon notice. It is understood that Properties are always subject to Forest Service rules and regulations, including the right of the Forest Service to close the Properties to public access in emergency situations.

(f) If changes in statute, regulation, or agency needs or mission of the Forest Service result in an incompatible use on the Property, the Forest Service is responsible for providing alternative compensatory mitigation that is acceptable to the Corps for any loss in aquatic resource functions and services resulting from the incompatible use.

ARTICLE V – FUTURE DISPOSITION OF THE COMPENSATORY MITIGATION PROPERTY BY THE FOREST SERVICE

It is the expectation of the Forest Service that the Properties acquired, restored, or enhanced pursuant to this Agreement as compensatory mitigation for DA permits will be perpetually managed for National Forest purposes. Similarly, it is the expectation of the Forest

Service that compensatory mitigation involving the restoration or enhancement of aquatic resources located on Properties comprising the National Forest System will result in such restored or enhanced Properties being perpetually managed for National Forest purposes.

As of the effective date of this Agreement, the Forest Service has no general sale authority, and a very limited authority to sell less than 10 acres under the Small Tracts Act solely to resolve encroachments under color of title (16 U.S.C. §§ 521c-521i). Another authority to dispose of the Properties would be by exchange. For exchanges, the Forest Service would have to determine that the land is suitable for transfer out of federal ownership (43 U.S.C. § 1716(b)), and that lands acquired in exchange would become part of the National Forest System. It is the intent of the Forest Service that the value of any land conveyed by exchange would be offset by lands acquired.

In the unlikely event that the Forest Service sells, conveys, disposes of, transfers, and/or exchanges a Property, the Forest Service will use its best efforts to ensure that such Property is protected by Corps-approved deed restrictive covenants or conservation easements that are consistent with this Agreement. The Forest Service agrees to provide 60-day advance notification to the Corps before any action is taken to sell, convey, dispose of, transfer, and/or exchange a Property. To the extent the Forest Service is unable to execute Corps-approved deed restrictive covenants or conservation easements prior to the incompatible use (*e.g.*, sale, conveyance, disposal, transfer, and/or exchange of a Property), the Forest Service agrees to provide and/or arrange for alternative compensatory mitigation, for any loss in aquatic resource functions and services resulting from the incompatible use, that is acceptable to the Corps prior to taking such action. In addition, the Forest Service must consider the preservation of aquatic resources on the lands or substitution of such resources consistent with Executive Orders 11988 and 11990. These objectives may be accomplished by reservation of a conservation easement, the imposition of restrictive covenants, or acquiring like resources to offset any loss of aquatic resources on the Property.

ARTICLE VI – GENERAL PROVISIONS

This Agreement is an interagency agreement that may be amended, terminated or revoked by mutual agreement of the Parties. Where such aforementioned action is initiated and/or proposed by the Forest Service, a 60-day advance notification shall be provided to Corps.

Any disagreement over the interpretation or implementation of this Agreement shall be discussed between the Forest Supervisor, Francis Marion and Sumter National Forests and the Commander, U.S. Army Engineer District, Charleston. If the disagreement remains unresolved, it may be elevated to the next higher-level line officer within the organizational structure of each of the Parties and may ultimately be referred to the Chief of the U.S. Army Corps of Engineers and the Chief of the Forest Service for resolution.

Nothing herein shall be construed to obligate the expenditure of funds not already appropriated.

Nothing herein shall be construed as conferring rights or causes of action on any third-party.

This Agreement may be executed in multiple counterpart originals, each of which shall constitute one and the same instrument, provided that each of the Parties hereto signs at least one of the counterpart originals.

This Agreement shall be effective on the date of the last signatory thereto.

U. S. ARMY CORPS OF ENGINEERS

Date 10 JUL 13

EDWARD P. CHAMBERLAYNE, P.E.
Lieutenant Colonel, EN
Commander, U.S. Army Engineer District, Charleston

DEPARTMENT OF AGRICULTURE
U.S. FOREST SERVICE

Date 7/10/2013

JOHN RICHARD LINT
Forest Supervisor
Francis Marion and Sumter National Forests