



**DEPARTMENT OF THE ARMY**  
KANSAS CITY DISTRICT, CORPS OF ENGINEERS  
700 FEDERAL BUILDING  
KANSAS CITY, MISSOURI 64106-2896

March 7, 2006

REPLY TO  
ATTENTION OF:

Regulatory Branch  
(200202330)

Mr. Jim E. Michael  
Chief Executive Officer  
Sunflower Land Trust  
4835 North Hillcrest Street  
Bel Aire, Kansas 67220

Dear Mr. Michael:

Enclosed please find the final Kansas In-Lieu-Fee Mitigation Agreement between the U.S. Army Corps of Engineers (Corps) and the Sunflower Land Trust (SLT). It is our expectation that this agreement will provide an additional means for those seeking Section 404 permits from the Corps to successfully meet mitigation requirements associated with their project proposals.

We wish to clarify our interpretation of the language regarding mitigation site selection found in paragraph VI.B. (page 7) of this agreement, as suggested by stakeholders to this agreement. This paragraph states that "SLT should select a mitigation site as close as possible to the known and anticipated permitted impacts within the HUC 4 (hydrologic sub-regions) watershed management unit... The order of preference for mitigation site selection is within the 1) same drainage basin, 2) the same HUC 8 (hydrologic cataloging unit) watershed management unit..." We intended the first preference to mean the watershed unit smaller in area and size than the HUC 8 within which the authorized impact occurred.

We appreciate your dedication to the pursuit of this agreement to its successful conclusion. We are confident that highly qualified personnel will be utilized to provide technical and design elements to your mitigation proposals. This will enhance and streamline the review and approval of your proposals by the Mitigation Bank Review Team.

If you have any questions or further clarifications concerning this matter, please feel free to write me or call Stephen H. Penaluna at 316-322-8247 (FAX 316-322-8259). Copies of this letter were furnished, without the enclosure, to Mr. J. Michael Hayden, KDWP; Mr. Michael J. LeValley, USFWS; Ms. Margaret Stockdale, EPA; and Mr. Donald Snethen, KDHE.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Rossi".

Michael A. Rossi  
Colonel, Corps of Engineers  
District Engineer

Enclosure

**IN-LIEU-FEE MITIGATION TRUST FUND**

An

IN-LIEU-FEE PROGRAM

AVAILABLE IN

KANSAS

By agreement between

**SUNFLOWER LAND TRUST**

and

**THE U.S. ARMY CORPS OF ENGINEERS, KANSAS CITY DISTRICT  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
U.S. FISH AND WILDLIFE SERVICE  
NATURAL RESOURCES CONSERVATION SERVICE  
KANSAS DEPARTMENT OF WILDLIFE AND PARKS  
KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT**

**September 2005**

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This is a Memorandum of Agreement (MOA) between the Sunflower Land Trust (SLT), the U.S. Army Corps of Engineers, Kansas City District (Corps), the U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Kansas Department of Wildlife and Parks (KDWP), Kansas Department of Agriculture Division of Water Resources (KDWR), and the Kansas Department of Health and Environment (KDHE) to implement the establishment of the In-Lieu-Fee Mitigation Trust Fund (Fund), as described below. The Corps and SLT agree to follow the procedures set forth in this agreement.

## **I. PREAMBLE:**

### **A. PURPOSE AND SCOPE:**

This MOA outlines procedures for the establishment, development and operation of the In-Lieu-Fee Mitigation Trust Fund as a compensatory mitigation alternative in Kansas. One goal of the Fund is to provide an additional compensatory mitigation option for impacts to wetland and aquatic resources of Kansas authorized under Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act (RHA). The Fund will be used in permit actions involving activities initiated under the Corps' permit process only after the applicant has complied with Corps regulations and policy regarding avoidance and minimization. The program can also provide mitigation for supplemental environmental projects (SEPs) for unauthorized activities.

Another goal of the Fund is to promote more effective restoration, enhancement, maintenance and conservation of self-sustaining wetland and stream ecosystems through cooperative efforts among private, nonprofit and public entities throughout Kansas. The Fund would support larger, more easily managed mitigation sites that provide greater functions and values than numerous small mitigations sites would provide.

### **B. SPONSOR QUALIFICATIONS:**

Whereas, SLT has extensive experience in negotiating land transactions, formulating conservation easements, planning mitigation, maintaining land, and protecting properties. SLT Board Members provide a wide range of expertise regarding land use issues. In addition to the Board Members, the Chief Executive Officer has experience with mitigation banks, mitigation plans, mitigation credits, has an extensive soils background, and possesses a considerable amount of multi-state experience on watershed and land conservancy issues (see section Appendix A). SLT will also hire a qualified local contracting firm to do much of the project planning and construction.

### **C. MITIGATION BANK REVIEW TEAM (MBRT):**

Whereas, the MBRT members consist of representatives from:

- U.S. Army Corps of Engineers, Kansas City District (team Chair)
- U.S. Fish and Wildlife Service (USFWS)
- U. S. Environmental Protection Agency (USEPA)

- Natural Resources Conservation Service (NRCS)
- Kansas Department of Wildlife and Parks (KDWP)
- Kansas Department of Health and Environment (KDHE)

#### ***D. DISCLAIMER:***

Whereas, this MOA does not, in any manner, affect statutory authorities and responsibilities of the signatory parties.

## **II. AUTHORITIES:**

The establishment, use and operation of the Fund will be carried out in accordance with all applicable statutes, regulations and policies, including the following:

- Clean Water Act (33 USC 1251)
- Clean Water Act, Section 404 (33 USC 1344)
- Rivers and Harbors Act of 1899 Section 10 (33 USC 403)
- Regulatory Programs of the Corps of Engineers, Final Rule (33 CFR Parts 320-331)
- Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 FR 58605)
- Federal Guidance on the use of In-Lieu-Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (65 FR 66914)
- Army Corps of Engineers Regulatory Guidance Letter (RGL) 02-2, Guidance on Compensatory Mitigation Projects for Aquatic Resource Impacts Under the Corps Regulatory Program Pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899
- National Environmental Policy Act (42 USC 4321), including the Council on Environmental Quality's implementing regulations (40 CFR Parts 1500-1508)
- Environmental Protection Agency, Section 404(b)(1) Guidelines (40 CFR Part 230) - Guidelines for Specification of Disposal Sites for Dredged or Fill Material
- Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act, Section 404 (b)(1) Guidelines (February 6, 1990)
- Fish and Wildlife Coordination Act (16 USC 661)
- Fish and Wildlife Service Mitigation Policy (46 FR pages 7644-7663, 1981)
- Endangered Species Act (16 USC 1531)
- National Historic Preservation Act, Section 106 (16 USC 470)
- Title XII Food Security Act of 1985 as amended by the Food, Agriculture, Conservation Trade Act of 1990 (16 USC 3801)
- Federal Agricultural Improvement and Reform Act of 1996, Public Law 104-494. (16 USC 3801)
- Federal Executive Order 11990 (42 FR 26961)

### **III. NOW, THEREFORE, THE PARTIES AGREE TO THE FOLLOWING:**

#### **IV. SLT RESPONSIBILITIES:**

SLT agrees that by accepting the mitigation fee, it accepts the legal responsibility of satisfying the mitigation requirements of the eligible Corps permit on behalf of the applicant. SLT agrees to perform all necessary work, in accordance with this MOA, to re-establish, restore, enhance, create, or preserve aquatic resources and maintain and protect the mitigation sites until it is demonstrated to the satisfaction of the MBRT that the projects comply with all conditions contained herein.

#### **V. FUND MANAGEMENT:**

##### ***A. CORPS AUTHORIZATION:***

The Fund is available to applicants only after the Corps has followed the Section 404(b)(1) guidelines and determined that the Fund is an acceptable compensatory mitigation option for the impacts proposed for authorization. Under the guidelines, compensatory mitigation is required to offset wetland losses after all appropriate and practicable steps have been taken to first avoid and then minimize wetland impacts. When available and practicable, compensatory mitigation on-site or in an established mitigation bank will be preferred unless compensatory mitigation through the Fund is determined to be environmentally preferable by the Corps. The Fund may also be used for compensatory mitigation or Supplemental Environmental Projects (SEPs) in enforcement cases at the discretion of the Corps and EPA. SLT will not play any role in the Corps' decision to approve, deny, or determine whether compensatory mitigation is a necessary condition of any permit or if the Fund may be used to satisfy that condition.

##### ***B. IMPACT ASSESSMENT:***

The Corps will be solely responsible for assessing the aquatic resource impacts proposed for authorization and determining the mitigation requirement. The assessment will consider a functional analysis provided by the applicant or his consultant using a method approved by the Corps. The mitigation requirement will provide a minimum of one-for-one replacement of the lost aquatic functions and values, including the temporal loss of functions due to the lag time between the authorized impacts and the mitigation project. The mitigation requirement will be specified in the proposed permit conditions in terms of the number of acres and Cowardin Class of impacted aquatic resources and the number and Cowardin Class of mitigation credits required. The number of mitigation credits required may significantly differ from the number of acres impacted due to various reasons including but not limited to the type, degree, and duration of impact; and the aquatic resource type, location, and condition.

##### ***C. COMPENSATORY MITIGATION FEE ASSESSMENT:***

SLT will be solely responsible for assessing a one-time fee required to provide the compensatory mitigation specified by the Corps in the proposed permit conditions. The compensatory mitigation fee will be based on the actual cost of an appropriate mitigation project that has been

proposed and approved or the hypothetical cost when a mitigation project has not yet been approved. The mitigation project cost includes real estate market costs of acquiring a replacement site; cost of the mitigation project, including establishment, restoration, enhancement, re-establishment, rehabilitation and/or preservation of wetland or stream resource; maintenance, monitoring, reporting, and protection of the mitigation project; contingency costs or financial assurance for the projects success; overhead costs; and the administrative costs associated with the maintenance of the Fund. The overhead and administrative costs will be limited to 10 % of the total fee.

#### ***D. COMPENSATORY MITIGATION FEE PAYMENT:***

SLT will provide their compensatory mitigation fee assessment to the applicant in writing. The applicant is not obligated in any way to pay the fee and may use any other mitigation options approved by the Corps to meet the compensatory mitigation requirement. However, failure to fulfill the mitigation requirement would be a violation of the permit condition punishable by law. Upon acceptance of the terms, the applicant will deliver the mitigation monies to SLT by a certified check. When the Corps has received a copy of the certified check and a receipt from SLT, the applicant's mitigation responsibilities will be considered fulfilled.

#### ***E. FINANCIAL CONTROLS:***

##### **1. Banking Arrangements:**

SLT shall deposit and hold any compensatory mitigation fees paid to the Fund in a federally insured interest-bearing trust account, so as to earn interest, while maximizing safety and preservation of the principal amount of funds until they are spent. Interest earned through the investments and funds left over from mitigation projects will remain with the Fund for future mitigation projects and administrative costs in accordance with the ILF mitigation process.

##### **2. Appropriate Use of Funds:**

ILF program funds shall be used solely for activities directly related to specific aquatic resource mitigation projects to include exclusively the following activities: land acquisition, the purchase of permanent conservation easements, the purchase of water rights, the development of mitigation and monitoring plans, permit fees, the implementation of mitigation and monitoring plans, long term management of mitigation parcels, and administrative costs as defined below. At the time funds are deposited in the Fund, the SLT Executive Director shall receive an overhead and administrative reimbursement for these actual administrative costs, which may be up to 10% of the fee (see section V.C). The overhead and administrative reimbursement will be used for expenses directly related to the day-to-day management of the ILF program and the Fund. Compensatory mitigation fees should not be used to finance non-mitigation programs and priorities such as education projects, research, or public awareness. The Fund should not substitute, duplicate, or interfere with funding that would currently exist or is reasonably obtainable through the normal State or Federal appropriations process or existing programs.

### **3. Geographic Service Area:**

Each compensatory mitigation fee should be spent within the U.S.G.S. Hydrologic Unit Code 4 (HUC4) watershed management unit in which the authorized impacts occurred. The ten HUC4 units in Kansas are: Missouri-Nishnabotna 1024, Republican 1025, Smoky Hill 1026, Kansas 1027, Gasconade-Osage 1029, Lower Missouri 1030, Middle Arkansas 1103, Upper Cimarron 1104, Arkansas-Keystone 1106, and Neosho-Verdigris 1107 (see [http://water.usgs.gov/wsc/map\\_index.html](http://water.usgs.gov/wsc/map_index.html)). In exceptional instances, the MBRT may authorize the use of mitigation funds outside the HUC4.

### **4. Fund Use Schedule:**

Site acquisition and initial physical and biological improvements should be completed by the first full growing season following collection of the compensatory mitigation fees. However, where initiation by the first full growing season is not practicable, initial physical and biological improvements may be completed no later than the second full growing season if approved by the Corps in advance. In those cases, the Corps would require more mitigation to compensate for the increased temporal losses of aquatic resource functions and values. In recognition of initial funding and planning challenges, the Corps approves in advance that compensatory mitigation fees collected in the first and second year of the Fund's existence shall be obligated and initial physical and biological improvements shall be completed no later than the third full growing season of the Fund's existence.

### **5. Accounting:**

#### ***a) Financial Ledger:***

SLT shall establish and maintain a ledger or financial management system that will track the collected fees, investment income, investment expense, interest, and expenses paid during the mitigation process. The ledger will be subject to audit by the Corps at their discretion. The SLT shall provide the Corps with a summary accounting statement annually, which includes the compensatory mitigation fees collected, a list of mitigation projects approved, funds obligated, funds expended, investment income earned, and the balance of the Fund.

#### ***b) Mitigation Ledger:***

SLT shall establish and maintain a ledger to document mitigation credits and debits of the Fund. The ledger will record the assumed mitigation requirements by the fee received, the date it was received, and the Cowardin Class, HUC4 watershed management unit, the size in acres of the impacted wetland or aquatic resource, and the number of credits required, on the debit side of the ledger. On the credit side of the ledger will be recorded the number of credits by Cowardin Class, HUC4 watershed management unit, mitigation type (restoration, enhancement, creation, or preservation) of mitigation projects. The system will also record the development status of each mitigation project (funds obligated, real estate interest acquired, constructed, planted, certified successful), the number of credits produced by each mitigation project, and the debit/credit balance for each Cowardin Class and HUC4 watershed management unit. SLT shall provide the Corps with a copy of this ledger annually.

## **6. Fund Default:**

In the event SLT becomes non-existent or fails to perform its obligations under this agreement, the monies collected and held in the Fund will transfer to a mitigation bank, a similar in-lieu-fee program, or a conservation organization that would take over the management of the Fund. Such transfers would occur only under the approval of the Corps. Mitigation lands would also transfer to a similar organization after the Corps' approval of the transfer.

## **VI. MITIGATION SITE ESTABLISHMENT:**

### **A. GEOGRAPHIC SERVICE AREA:**

The goal of the Fund is to provide in-kind mitigation as close to the impacts as possible within the HUC4 watershed management unit.

### **B. MITIGATION SITE SELECTION:**

The Fund will be used to re-establish, restore, enhance, create, or preserve aquatic resources throughout Kansas. Because a mitigation project will mitigate impacts from various permitted activities, SLT should select a mitigation site as close as possible to the known and anticipated permitted impacts within the HUC4 watershed management unit (see section V.E.5.b). The Corps has already considered the feasibility of on-site or immediately adjacent mitigation sites. The order of preference for mitigation site selection is within the 1) same drainage basin, 2) the same HUC 8 watershed management unit, 3) a priority restoration or conservation area inside the same HUC 4 watershed management unit, 4) the same HUC 4 watershed management unit. SLT will list those known impacts being mitigated in the mitigation project proposal. SLT should utilize the aquatic and terrestrial components of the Kansas Gap Analysis Project produced by Kansas State University, the Kansas State Comprehensive Wildlife Plan being developed by KDWP, local watershed management plans, and other KDWP resources to identify priority wetland restoration and conservation areas. Wetland functions and values, linkage to larger consolidated natural areas, adjacency to other public lands and riparian restoration capability are all factors to be considered in the selection of mitigation sites with the greatest potential for successful improvement to the aquatic resource.

To avoid last minute delays, SLT is encouraged to submit conceptual plans for potential bank sites to the MBRT and natural resource organizations prior to submitting detailed mitigation proposals to the Corps for the public notice. The agencies will advise SLT if permits may be required, identify concerns, and evaluate potential for mitigation credit. SLT will evaluate and prioritize potential projects based on regional resource needs, maximum return on expended monies, level of threat to replacement resources and overall anticipated benefit to resources. In an effort to devote more funds to the mitigation process, SLT will promote systems that will require a minimum of management and maintenance duties and are relatively self-sustaining, rather than incurring long-term management costs.

### **C. MITIGATION PLAN:**

SLT will prepare a detailed mitigation plan for each proposed mitigation site in accordance with the National Research Council's Mitigation Guidelines, the Multi-Agency Compensatory Mitigation Checklist (both found at <http://www.nwk.usace.army.mil/regulatory/regulatory.htm>) and Federal Guidance on mitigation banking and in-lieu-fee arrangements (see section II). The mitigation plan must be sufficiently detailed to clearly describe and show current condition, proposed actions, and proposed final condition of the site to someone with no prior knowledge of the site. Plans should include but not be limited to:

- Mitigation site goals and objectives including the mitigation requirements anticipated to be mitigated at the site listed by Cowardin Class and where they occur;
- Site selection justification;
- Ownership and real estate protection provisions of the site;
- Baseline functional assessment using a Corps approved method and an approved delineation of special aquatic sites;
- Work plans
- Area, Cowardin Class, and final functional assessment of wetland and/or stream habitat proposed for restoration, creation, or enhancement at the site;
- Performance standards;
- Proposed mitigation credits from the Bank based on the size and the degree of environmental gain resulting from the whole mitigation project. Environmental gain will be the difference between the restored condition and the baseline condition of the aquatic resource determined by functional assessment. Based on this assessment, the Corps in consultation with the MBRT will determine the actual number of potential credits. A wetland credit will be equivalent to restoration or creation of an acre of fully functioning wetland habitat from a condition providing few or no wetland functions. A stream credit will be equivalent to restoration or creation of an acre of fully functioning stream and riparian habitat from a condition providing few or no stream or riparian functions;
- Site protection and maintenance plans;
- Monitoring plans;
- Adaptive management plans; and
- Financial assurances;
- Permit application if applicable.

SLT will submit a copy of the permit application and proposed mitigation plan in digital format (PDF) to the Corps. Within 10 days, the Corps will determine if the proposal and application are complete and what type of permit is required if any, and will notify SLT accordingly. If it is incomplete, the Corps will request the required information. If the Corps determines that the proposed mitigation project does not need a permit or may be authorized by a regional or nationwide general permit, they will notify SLT that they will distribute the proposal to the MBRT with a 15 day review period and make a decision within 45 days from receiving the complete proposal and permit application. If the Corps determines that the proposed mitigation project will require an individual permit, they will notify SLT that they will publish a 21-day public notice and make a decision within 120 days from the date the public notice is published. During the review period the MBRT agencies may review the mitigation plan and submit their comments to the Corps or convene a MBRT meeting or teleconference with SLT to discuss any

concerns they have with the mitigation plan. If the Corps decides to deny approval of the mitigation plan, request modifications to the mitigation plan, or extend the review period, they will notify SLT in writing within the applicable 45 or 120-day period. If SLT has not received a written response within 30 days after the Corps has notified them that the permit application and/or project proposal are complete and that the project does not need a permit or may be authorized by a regional or nationwide general permit, they may implement the mitigation plan as proposed.

## **VII. MAINTENANCE AND MONITORING OF SITES:**

### ***A. LONG-TERM MANAGEMENT:***

SLT is responsible for insuring that the mitigation practices are performed as designed and that the sites are maintained, managed, and protected as outlined in the mitigation plans. SLT will insure that the properties remain protected in perpetuity by fee simple ownership, or conservation easements, held by SLT or a natural resource conservation agency or organization approved by the MBRT. If a natural resource agency or organization can't be found to hold a conservation easement on SLT owned land, SLT will place a deed restriction on the property because they can't hold a conservation easement on their own land. When the land is owned by a state or federal natural resource conservation agency, that agency must agree and sign the mitigation project proposal and copies of the approved plan must be filed with that agency's offices that are responsible for site management.

### ***B. MONITORING PROVISIONS:***

SLT is responsible for monitoring each mitigation site in accordance with each site's mitigation plan. SLT will annually submit a monitoring report addressing the vegetation, hydrology, soils, and wildlife condition for each individual mitigation site for 5 years. The monitoring reports should also include site and area maps, a summary of the general condition and maintenance activities, and recommendations for remedial actions and modifications to the monitoring plan. If any of the performance criteria have not been met after MBRT review of the five-year report, the Corps may require further monitoring.

### ***C. CONTINGENCY PLANS/REMEDIAL ACTIONS:***

Should the Corps determine after consulting the MBRT that remedial action is necessary because a mitigation site has failed to achieve the success criteria specified in its mitigation plan, SLT shall develop and implement such remedial action plans in coordination with the MBRT. In the event SLT fails to implement necessary remedial actions at a mitigation site within 90 calendar days or other time-period agreed to by the Corps, the Corps may terminate this Agreement or take other appropriate actions.

## **VIII. REPORTING:**

SLT will submit an annual ILF program report in digital format to the Corps by January 31 following each year. The report will include a copy of the financial ledger (see section V.E.5.a) and the mitigation ledger (see section V.E.5.b). Monitoring reports for individual mitigation

sites may be submitted when completed but must be submitted by December 31 each year (see section VII.B). The Corps will report all payments to and mitigation projects completed by the ILF program by public notice on an annual basis.

## **IX. RESPONSIBILITIES OF THE MBRT:**

- The agencies represented on the MBRT intend to provide appropriate input to the Corps in carrying out provisions of this Agreement.
- The agencies represented on the MBRT intend to review and provide any comments on project plans, contingency plans, and necessary permits for mitigation projects in a timely manner.
- The agencies represented on the MBRT intend to review and comment on the annual reports in a timely manner. The Corps will post each annual report summary to their website.
- The agencies represented on the MBRT intend to participate in periodic compliance inspections and recommend any corrective measures until the terms of the Agreement have been satisfied.

## **X. OTHER PROVISIONS:**

### ***A. DISPUTE RESOLUTION:***

Resolution of disputes about application of this Agreement shall be in accordance with those stated in the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 F.R. 58605). The Corps will seek consensus with the MBRT but has the responsibility of making final decisions for this ILF agreement when consensus cannot be reached between MBRT members and/or SLT.

### ***B. VALIDITY, MODIFICATION, AND TERMINATION OF THIS AGREEMENT:***

This Agreement will become valid on the date of the last signatory's signature. The signatory parties are the Sunflower Land Trust and the U.S. Army Corps of Engineers. The concurring parties to this MOA are the remaining agencies. This Agreement may be amended or modified with the written approval of both signatory parties. Any of the MBRT members may terminate their participation upon written notification to both signatory parties. Participation of an agency on the MBRT will terminate 90 days after written notification. Either the Corps or SLT may terminate these ILF mitigation procedures by giving a 90-day written notice to the other party and the MBRT. Prior to termination, SLT shall provide an accounting of funds and complete payment of existing project contracts and any expenses incurred on behalf of the Fund. Upon termination, the Corps will direct the remaining Fund account to any other mitigation type projects.

### ***C. CONTROLLING LANGUAGE:***

To the extent that specific language in this document changes, modifies, or deletes terms and conditions contained in those documents that are incorporated into the Agreement by reference, and that are not legally binding, the specific language within the Agreement shall be controlling.

***D. AUTHORITY TO SIGN:***

The signers of this MOA represent that they have the requisite authority to enter into this agreement on behalf of their respective organizations.

**XI. DEFINITIONS (TAKEN FROM RGL NO. 02-2)**

**Establishment (Creation):** The manipulation of physical, chemical, or biological characteristics present to develop a wetland on an upland or deepwater site, where a wetland did not previously exist.

**Enhancement:** The manipulation of the physical, chemical, or biological characteristics of a wetland (undisturbed or degraded) site to heighten, intensify, or improve specific functions or to change the growth stage or composition of the vegetation present.

**Preservation:** The removal of a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This term includes the purchase of land or easements and/or repairing water control structures or fences.

**Restoration:** The manipulation of the physical, chemical, or biological characteristics present with the goal of returning natural or historic functions to a former or degraded wetland.

**Re-establishment:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland.

**Rehabilitation:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded wetland.

### **XIII. APPENDIX A**

#### **A. WHO WE ARE**

The Sunflower Land Trust, Inc. (SLT) is a Not-for-Profit 501(c)(3) Kansas Corporation trust for land. Its purpose is to promote the acquisition; preservation; conservation; management of easements and related land areas as scenic, scientific, educational, historic and ecological; to encourage the wise use and preservation of natural areas, prairie and agricultural land, wetlands, wildlife habitat and open space which contributes to the character of the State of Kansas.

The founding Board Members, their professional representation and area of expertise are as follows:

|  |  |  |
|--|--|--|
| Bruce Frost, Vice President<br>INTRUST Bank, Agricultural Loans<br>Wichita, KS | President, SLT<br>Cattleman Association          | Specialized In<br>Agricultural<br>Markets            |
| Frank Smith,<br>Past Wichita Parks Director<br>Wichita, KS                     | Vice President, SLT<br>Wichita Botanical Gardens | Expertise In Native<br>KS Horticulture               |
| Bill Cather, Attorney<br>Cather Law Offices<br>Wichita, KS                     | Sierra Club                                      | Legal Counsel  |
| Henry Helgerson<br>Wichita, KS   | Past Representative<br>Kansas House              | Legislative Assistance                               |
| Suzanne Coin<br>Wichita, KS  | Secretary, SLT                                   | Public Relations                                     |
| John Coltis<br>Wichita, KS   | Sportsman  | Investments  |
| Keith Stevens<br>Wichita, KS   | Banker   | Investments  |
| Wilmer Freund*<br>Wichita, KS  | Soil Conservation<br>District – Sedgwick         | Licensed Engineer<br>Agricultural Land<br>Specialist |

\*no longer serves on Board of Directors

In addition to the above listed Founding Board members, SLT has as its Chief Executive Officer, Jim Michael. Jim's expertise is as follows:

- A.A - Real Estate and Business
- B.S. - Education with a specialty in Park Management and Recreation

- M.S. - Forestry with a specialty in Park Design and Watershed Management
- Real Estate Agent – Licensed in State of Kansas
- Certified Mediator – Certified State of Kansas
- Land Services, Inc. - President. A private consulting company that specializes in resolving issues related to land management and the technical aspects of legal cases involving land.

## ***B. PROJECTS TO DATE***

Unlike other states, Kansas law did not recognize the creation of conservation easements as a legal form of ownership until 1993 when it passed the Uniform Conservation Easement Act (K.S.A. 58-3810). At that time, the Act paved the way for land trusts to be recognized as a legitimate organization within the state. Land trusts have been in existence in other parts of the United States for over 100 years. SLT was formed in 1997.

In the years that followed, SLT has reviewed several potential land offerings as a fee simple donation or conservation easement granting. The following is a list of the accomplishments to date:

### **1. 80-Acre Wildlife Preserve**

Created in 2000 as a result of a fee simple donation from the Satterthwaite family in Udall. The preserve contains 17 acres of prairie grass, 35 acres of pasture under renovation, and 23 acres of riparian adjacent to over a half mile of stream.

### **2. Cowley County Riparian Plan**

SLT combined forces with neighboring counties to write the Riparian Habitat Protection Plan for the Cowley County Conservation District. This plan was adopted by the County and State in 2000 and will help lay the foundation for financial assistance to landowners who wish to rehabilitate or protect their stream corridors.

### **3. Geoffrey Pegg's Memorial Trail**

Working with the Sierra Club, a trail was established on SLT property to create a memorial to a young man who died in a sky diving accident. The trail provides a unique opportunity for local schools to study the various aspects of a natural Kansas environment.

### **4. Stewart Creek Stream Bank Stabilization Demonstration Project**

SLT has teamed its stewardship capabilities with the Kansas State Conservation Commission and the Kansas Department of Health and Environment to create a stream bank stabilization project in south central Kansas. The project utilizes four different methods to stabilize a highly eroding stream channel. The project was completed in 2003 and serves as a demonstration site for anyone wanting to learn about the various stabilization methods.

## 5. Natural Resources Leadership Camp (NRLC)

Working with the Kansas Environmental Leadership Program, SLT has combined forces with representatives from the Kansas Natural Resource Council, Ft. Scott Community College, Kansas Pheasants Forever, Kansas Association of Conservation and Environmental Educators, Kansas Wildlife Federation and local residents. NRLC, is a Not-for-Profit organization dedicated to the creation of a leadership program for Kansas youth with an emphasis on natural resource stewardship. The first camp is scheduled for summer of 2004.

### *C. TECHNICAL TEAM*

In order to expedite the compensatory mitigation process and to provide additional expertise, SLT has formed a team of professional representatives to serve as “in house” experts on land issues. The experts will serve in an advisory capacity to implement the mitigation measures in a more effective manner. By combining efforts with others, SLT can extend its ability to increase the resource protection efforts in the State of Kansas. The advisory team actively supports the In-Lieu-Fee program and will provide professional assistance in the following areas:

- Agricultural Systems
- Native Habitat Management
- River Systems
- Wildlife Habitat Needs and Assessments
- Wetland/Riparian Assessments
- Easement/Mitigation/Real Estate Documentation
- Land Stewardship

Individual representatives have been selected for the majority of the above referenced categories. Since this document is being presented for public review and the names of the local representatives may change due to existing workloads, SLT has decided not to list each representative’s name. The intent is to focus on the mitigation process rather than the individuals involved in the program.

### *D. CONTACT POINT*

Sunflower Land Trust  
4835 North Hillcrest Street  
Bel Aire, KS 67220  
(316) 744-3550  
Contact: Jim E. Michael, C.E.O.  
**[jim.michael@sbcglobal.net](mailto:jim.michael@sbcglobal.net)**