In-Lieu Fee Programs – A Status Update

David Olson
Headquarters, U.S. Army Corps of Engineers
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Approved in-lieu fee programs

- Oregon Department of State Lands Statewide Fee-In-Lieu Instrument (2008)
  - Sponsor - Oregon Department of State Lands
  - Wetlands
  - Service areas – 8-digit Hydrologic Unit Codes

- Living River Restoration Trust (2009)
  - Sponsor – Living River Restoration Trust
  - Restoration of the Elizabeth River (near Hampton, Virginia)
  - Service area – Elizabeth River watershed
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- North Carolina Department of Environment and Natural Resources’ Ecosystem Enhancement Program (2010)
  - Sponsor – North Carolina Department of Environment and Natural Resources
  - Wetlands, streams, and buffers
  - Service areas – 8-digit Hydrologic Unit Codes

- Coastal Mississippi In-Lieu Fee Program (2010)
  - Sponsor – Land Trust for the Mississippi Coastal Plain
  - Wetlands
  - Service areas – watersheds within the 6 coastal counties of Mississippi
Approved in-lieu fee programs

- Vermont In-Lieu Fee Program (2010)
  - Sponsor – Ducks Unlimited
  - Wetlands, streams, and buffers
  - Service areas – Four 6-digit hydrologic unit codes in Vermont
- Mississippi Delta In-Lieu Fee Program (2010)
  - Sponsor – Ducks Unlimited
  - Wetlands
  - Service area – portion of the Yazoo River Basin 6-digit hydrologic unit code within the Mississippi Alluvial Plain Level III Ecoregion in the Vicksburg District
In-lieu fee program challenges

- Mitigation hierarchy
- Compensation planning framework
- Advance credits
- In-lieu fee program accounts
- Financial assurances
- Establishing credit costs
Mitigation hierarchy

- A framework for evaluating compensatory mitigation options
  - Mitigation bank credits
  - In-lieu fee program credits
  - Permittee-responsible mitigation using a watershed approach
  - On-site/in-kind permittee responsible mitigation
  - Off-site/out-of-kind permittee responsible mitigation
- This framework does not mandate a particular outcome
  - Corps makes case-specific decision
Mitigation hierarchy

- Factors the Corps considers when selecting a compensatory mitigation option:
  - What compensation would be environmentally preferable?
    - Likelihood of ecological success and sustainability
    - Location of the compensation site relative to the impact site
    - Compensatory mitigation project costs
    - Relationships to water sources (water availability)
    - Habitat connectivity
    - Compatibility with adjacent land uses
  - Permit applicants are responsible for submitting an initial compensatory mitigation proposal
Compensation planning framework

- Compensation planning framework
  - Used to select, secure, and implement in-lieu fee projects
  - Support watershed approach
  - Justify advance credits
- Submitted with prospectus
- May be changed during the review process and after instrument approval
- Key component for approval of in-lieu fee program instrument by Corps
- Level of detail at district engineer’s discretion
  - Characteristics of the service area(s)
  - Scope of the in-lieu fee program
Compensation planning framework

- Geographic service area
  - Watershed, ecoregion, physiogeographic province, other
- Description of threats to aquatic resources
- How the in-lieu fee program will address those threats
- Analysis of historic aquatic resource loss
- Analysis of current aquatic resource condition
- Statement of aquatic resource goals and objectives
- Prioritization strategy for in-lieu fee projects
- How preservation will be used
- Description of public and private stakeholder involvement
- Long-term protection and management strategies
- Strategy for periodic evaluation and reporting for achieving goals and objectives
- Any other information determined by Corps to be necessary
Advance credits

- Limited number of credits that can be sold or transferred before in-lieu fee projects implemented
- Based on:
  - Compensation planning framework
  - Sponsor’s past performance on mitigation projects
  - Projected financing necessary to initiate mitigation projects
- Allocated by service area
- As released credits are produced by in-lieu fee projects, more advance credits become available
In-lieu fee program accounts

- Sponsor required to establish an in-lieu fee program account
  - Fees collected from permittees to provide compensatory mitigation
  - Retain interest/earnings
- Must be separate from accounts funding sponsor’s other activities
- Sponsor must provide annual reports to the Corps and IRT
  - Fees collected, funds expended
  - List of permits using the in-lieu fee program
  - Credit balances, by service area
Financial assurances

- **Purpose**: To ensure a high level of confidence that the compensatory mitigation will be successfully completed.
- Some forms of financial assurances (e.g., performance bonds) may not be feasible for in-lieu fee programs.
- Contingency funding is more common practice.
  - A percentage from each credit sale is put into an account.
  - Funding source for alternative compensatory mitigation or additional work on an in-lieu fee project.
Credit costs

- Determined by sponsor
- Cost per unit credit based on expected costs of aquatic resource restoration, establishment, enhancement, and/or preservation in a service area
  - Land acquisition,
  - Project planning and design
  - Construction costs and plant materials
  - Legal fees
  - Monitoring
  - Remediation or adaptive management
  - Contingency funding
  - Long-term management
  - Administration of the in-lieu fee program
In-lieu fee program instrument modifications

- If there an in-lieu fee program isn’t working, request an instrument modification
  - Compensation planning framework
  - Advance credit allocation
  - Other aspects of in-lieu fee program operations