

## APPENDIX A

### GUIDANCE ON PREPARING A COMPENSATION PLANNING FRAMEWORK

The ten elements of a compensation planning framework (“CPF”) include:

- 1) Service area (watershed-based);
- 2) Threats to aquatic resources in service area and how threats are addressed;
- 3) Historic aquatic resource loss in service area;
- 4) Current aquatic resource conditions in service area (w/ field verification);
- 5) Aquatic resource goals and objectives for service area;
- 6) Prioritize mitigation projects;
- 7) Use of preservation;
- 8) Description of stakeholder involvement;
- 9) Long-term protection and management; and,
- 10) Evaluation and reporting.

In summary, the first four elements involve the gathering, dissemination, and review/filtering of data that should lead to development of a set of aquatic resource goals and interim objectives (the fifth element in the list). These goals and objectives will, in turn, lead to the sixth element in the list, the prioritization of mitigation projects within the service area. Stakeholder involvement (e.g., those outside of the IRT), the eighth element, will be important in further narrowing down the list. The seventh (preservation), ninth (long-term protection and management), and tenth (evaluation and reporting) elements, are related to successful management and accounting.

The commitment of other participating agencies and stakeholder groups will be critical in allowing us to meet our mission and in demonstrating compliance with the CPF, particularly in assessing the existing threats, existing aquatic conditions, and in identifying and prioritizing potential restoration sites. Such agencies or groups often have resources (e.g., GIS) as well as institutional knowledge on a basin, watershed, or subwatershed scale.

Each element of a CPF is described in more detail below. The definitions and examples provided have resulted from discussions held among Corps managers of ILF programs, supervisory staff, and legal staff within the Los Angeles District of the Corps.

- 1) **Service area** (watershed-based): This describes the size and physical boundaries of the area in which we allow impacts to jurisdictional waters be mitigated through the use of a given ILF program, the watercourses included in the service area, and a brief description of their commercial or ecologic importance. In general, current service areas are based upon watershed boundaries (e.g., 8 digit hydrologic unit codes), but may be based on different scales dependent upon the needs of a given watershed. The service area may be based on watershed, ecoregions, physiogeographic regions, or other types of geographic area deemed

appropriate by the DE after consulting with the IRT. See 33 C.F.R. §§ 332.8(d)(6)(ii)(a) and 332.8(c)(2)(i).

**2) Threats to aquatic resources in service area and how threats are addressed:**

General topics to discuss include water quality (including type of pollutant(s)), habitat loss trends, large-scale water extractions (present and future), flooding issues, and rapid population changes. This requirement, as well as the following 6 requirements, may be easier to fulfill for the ILF programs operating in watersheds that are currently heavily urbanized or under significant developmental pressure.

Agencies and stakeholder groups may have the following information available:

- land uses and land use projections;
- vegetation maps (including USFWS National Wetlands Inventory and habitat trend analyses);
- high level pollutants (e.g., TMDL standards, data obtained by Regional Water Quality Control Boards);
- ESA hotspots and wildlife movement corridors (including HCPs, NCCPs, and in California CNDDDB maps);
- flood control hotspots (e.g., data from FEMA maps, County flood control);
- USGS topo maps;
- NRCS soil maps; and,
- potential restoration/preservation sites within their sphere of influence.

For watersheds with less information available, a good start would involve review of an aerial series (e.g., over a 10 year period), topographic maps, soil maps, CNDDDB maps, NWI maps, FEMA maps, and any other resources currently available through the Corps, other IRT members, or stakeholder parties.

**3) Historic aquatic resource loss in service area:** Such an analysis would involve a breakdown of impacts to jurisdictional waters and associated mitigation (acres of wetlands and non-wetland waters of the U.S.) by habitat or wetland class (HGM or Cowardin) and, if available, a comparison with present day acreage (or percentage of watershed) estimates of these classes of resources. This can be achieved by reviewing recent individual permit environmental assessment (EA) documents and by performing cumulative impact analysis calculations on a watershed or subwatershed scale. These efforts are assumed to involve database (i.e., ORM2, RAMSII) searches, and in reference to the next requirement, will only be fulfilled at the time that the Corps or another entity field verifies the current aquatic resource conditions, particularly at prospective mitigation sites. RAMSII has a search tool (i.e., “Impacts/Mitigation by HUC”) for this purpose (Michelle Luu is the Corps POC), and provides data up to December 22, 2006. The ORM2 team currently is working on a similar reporting tool for their system, and should be complete in the near future. Once compiled, this information will also serve a critical role in the cumulative impact analyses required for individual permits, nationwide permit program reissuance, and Special Area Management

Plans (SAMPs). The Corps, in combination with the other involved Regulatory agencies (Regional Board, Department of Fish and Game) will assist with this assessment, as well as with the following requirement (#4) regarding current aquatic resource conditions.

- 4) **Current aquatic resource conditions in service area (w/ field verification):**  
We are seeking discussion of hydrologic regime, dominant habitat types, dominant geomorphologic forms, and unique aquatic features (e.g., backwaters, seeps, vernal pools). See discussion under #2 (“Threats”) for likely sources of available information. Corps staff and other IRT members may also provide input based on their experience and training in a particular geographic area. To satisfy the field verification requirement, we will require a functional assessment (e.g., California Rapid Assessment Method (CRAM) or other acceptable methodology subject to IRT approval) of each prospective mitigation site to determine baseline conditions and restoration potential, and may require functional assessment at several additional locations within the watershed (e.g., at different stream orders), based upon the amount of available data. Additional functional assessment data may be available within existing Corps Regulatory files (e.g., final actions occurring within a watershed within the last five years) and, for California, CRAM testing site(s) within the watershed of interest. Corps project managers are expected to assist to some degree in this data collection effort. Once compiled, this information will also serve a critical role in the cumulative impact analyses required for individual permits, nationwide permit program reissuance, and Special Area Management Plans (SAMPs).
- 5) **Aquatic resource goals and objectives for service area, including a description of the general amounts, types and locations of aquatic resources the program will seek to provide:** Once established, these long-term goals and interim objectives will drive the prioritization of prospective mitigation sites. The general focus will be upon the current threats to a given watershed (e.g., water quality, listed species, flood water retention, groundwater pumping), and the priority aquatic resource types (e.g., freshwater marsh, emergent aquatic, intertidal mudflats, riparian “buffers), as well as critical stakeholder needs (e.g., listed species habitat, flood water retention, groundwater or surface water diversion).
- 6) **Prioritize mitigation projects within a given service area:** This describes the strategy that the program sponsor will use in order to select the most appropriate mitigation projects for a given watershed or subwatershed. It is generally based upon a suite of qualification and prioritization criteria, and may, but is not required to, describe several candidate sites.
  - a. As an example, the Portland District Department of State Lands (DSL) In-Lieu Fee Umbrella ILF program uses the following six criteria:
    - likelihood of success;
    - multiple objectives (functions and services);

- regional support, including compatibility with the surrounding landscape;
- capabilities of the sponsor;
- fund leveraging and itemized project costs; and,
- long-term management and stewardship.

This element of the CPF does not require site selection nor preparation of site-specific mitigation plans, but rather lays the groundwork for selecting the most appropriate sites within a watershed or subwatershed based upon the information gathered in the other CPF elements, including existing land uses, threats to aquatic resources, and overall restoration goals. When the sponsor has identified a prospective mitigation site, then they will contact the Corps and other IRT members to schedule a site visit and to present existing biological and land use data, as well as to discuss restoration opportunities.

- 7) **Use of preservation:** Pursuant to 33 C.F.R. § 332.3(h), and consistent with previous guidance on this topic, preservation as mitigation for Corps impacts is acceptable only where we can demonstrate that the resources to be preserved provide important functions for the watershed, “contribute significantly to the ecological sustainability of the watershed,” and are under threat of destruction or adverse modification. To the extent appropriate and practicable, preservation shall be performed in conjunction with active improvements; i.e., restoration/re-establishment, creation/establishment, and enhancement. This requirement may be waived by the DE only where preservation has been identified as a high priority using a watershed approach described in 33 C.F.R. § 332.3(c), but compensation ratios shall be higher.
- 8) **Description of stakeholder involvement:** The sponsor shall discuss any involvement and coordination with public and private stakeholders, which may include, but not limited to, the general public, property owners, federal, state, tribal, local resource management and regulatory authorities. In general, these (non-IRT) parties would be engaged once a potential site is identified and following DE approval. Efforts of the IRT and the ILF sponsors to reach a broad audience are important, as many of the prospective mitigation sites are on or adjacent to private property, County flood control facilities, and/or RCD-managed land. Examples of such outreach efforts include public notices, informational flyers, or stakeholder meetings.
- 9) **Long-term protection and management:** In general, the Rule requires long-term protection of mitigation sites (33 C.F.R. § 332.8(t) and 332.7(a)). Long-term protection often consists of real estate instruments or “other available mechanisms.” Reference existing ILF program instruments to determine if in-perpetuity protection is currently required, and if not, how this additional requirement may affect the program in terms of cost per acre/functional units. SPL usually requires the use of a conservation easement deed, which includes the following exhibits:

- Surveyed metes and bounds of mitigation area (legal description);
- Legal depiction (map of surveyed area over parcel map);
- Current title report;
- A map depicting all relevant and plottable property lines, easements, dedications, etc on the mitigation site;
- Recent, high resolution color aerial photograph of mitigation area;
- Recent, labeled on-the-ground color photographs of all human-made structures within the mitigation area;

Exceptions to this requirement may apply, and are at the discretion of the DE, in consultation with the IRT.

Long-term mitigation site management involves the identification of the entity responsible for the duties referenced in the real estate instruments, as well as the establishment of an endowment or separate endowments for periodic site inspections, trash cleanup/maintenance of signage, and initial enforcement.

- 10) **Evaluation and reporting:** Evaluation consists of an assessment of the progress of a program by the ILF program sponsor in regards to the terms and conditions of its instrument, as well as the performance of the mitigation site(s). Reporting addresses a host of requirements, including the submission of annual fund and credit accounting ledgers (including changes to credit availability), annual performance reports for each active mitigation site, and (at DE's discretion) may require annual reporting upon the accounts providing funds for financial assurances and long-term management.