

**A TRAINING COURSE FOR
MITIGATION BANKING AND IN-LIEU FEE PROGRAM
INTERAGENCY REVIEW TEAMS**



**Reference Document:
In-Lieu Fee Mitigation**

A. Regulations Governing ILF Programs

2008 Compensatory Mitigation for Losses of Aquatic Resources

§332.2 Definitions.

Advance credits

Fulfillment of advance credit sales of an in-lieu fee program

In-lieu fee program

In-lieu fee program instrument

Interagency Review Team (IRT)

Release of credits

Sponsor

§332.3 General Compensatory Mitigation Requirements

(b) Type and Location of compensatory mitigation.

(3) In-lieu fee program credits.

(f) Amount of Compensatory mitigation.

(3) If an in-lieu fee program will be used to provide the required compensatory mitigation, and the appropriate number and resource type of released credits are not available, the district engineer must require sufficient compensation to account for the risk and uncertainty associated with in-lieu fee projects that have not been implemented before the permitted impacts have occurred.

(g) Use of mitigation banks and in-lieu fee programs.

(l) Party responsible for compensatory mitigation

(2) For mitigation banks and in-lieu fee programs, the instrument must clearly indicate the party or parties responsible for the implementation, performance, and long-term management of the compensatory mitigation project(s).

(3) If use of a mitigation bank or in-lieu fee program is approved by the district engineer to provide part or all of the required compensatory mitigation for a DA permit, the permittee retains responsibility for providing the compensatory mitigation until the appropriate number and resource type of credits have been secured from a sponsor and the district engineer has received documentation that confirms that the sponsor has accepted the responsibility for

providing the required compensatory mitigation.

§332.8 Mitigation banks and in-lieu fee programs.

(a) General considerations.

(1) All mitigation banks and in-lieu fee programs must have an approved instrument signed by the sponsor and the district engineer prior to being used to provide compensatory mitigation for DA permits.

(c) Compensation planning framework for in-lieu fee programs.

(g) Modification of instruments.

(1) Approval of an amendment to an approved instrument.

Modification of an approved instrument, including the addition and approval of umbrella mitigation bank sites or in-lieu fee project sites or expansions of previously approved mitigation bank or in-lieu fee project sites, must follow the appropriate procedures in paragraph (d) of this section, unless the district engineer determines that the streamlined review process described in paragraph (g)(2) of this section is warranted.

(2) *Streamlined review process.* The streamlined modification review process may be used for the following modifications of instruments: changes reflecting adaptive management of the mitigation bank or in-lieu fee program, credit releases, changes in credit releases and credit release schedules, and changes that the district engineer determines are not significant...

(i) In-lieu fee program account.

(j) In-lieu fee project approval.

(n) Advance credits for in-lieu fee programs.

(an in-lieu fee project,

(o) Determining credits.

(5) Credit costs.

(i) The cost of compensatory mitigation credits provided by a mitigation bank or in-lieu fee program is determined by the sponsor.

(ii) For in-lieu fee programs, the cost per unit of credit must include the expected costs associated with the restoration, establishment, enhancement, and/or preservation of aquatic resources in that service area. These costs must be based on full cost accounting, and include, as appropriate, expenses such as land acquisition, project planning and design, construction, plant materials, labor, legal fees, monitoring, and remediation or adaptive management activities, as well as administration of the in-lieu fee program. The cost per unit credit must also take into account contingency costs

appropriate to the stage of project planning, including uncertainties in construction and real estate expenses. The cost per unit of credit must also take into account the resources necessary for the long-term management and protection of the in-lieu fee project. In addition, the cost per unit credit must include financial assurances that are necessary to ensure successful completion of in-lieu fee projects.

(8) *Credit release schedule.*

(i) *General considerations.*

(p) *Accounting procedures.*

(t) *Site protection.*

