

# In-Lieu Fee Programs

## *Program Establishment and Operation*



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# Regulatory Background

Discharge to Waters of the U.S.  
require Corps permit under Section  
404 of the Clean Water Act

**Final Rule 33CFR Part 332, April 10, 2008**

- Consolidates existing regulations
- Does not change WHEN mitigation is required
- Addresses all compensation mechanisms





# ILF Compensatory Mitigation

**Differs from traditional permittee-responsible mitigation:**

- Not applicant's responsibility
- Collects and pools fees
- Takes a watershed approach
- Draws from a rosters of prioritized projects

**Differs from mitigation banking:**

- Sites may not be constructed prior to impacts
- Mitigation project may occur throughout a watershed

**Still requires *mitigation sequencing***

# Benefits to the Applicant

- Removes applicant's responsibility for mitigation
- Streamlines permitting process
- More predictability





# Benefits to the Sponsor

- Streamlines permitting
- Enables accomplishment of bigger, higher quality projects

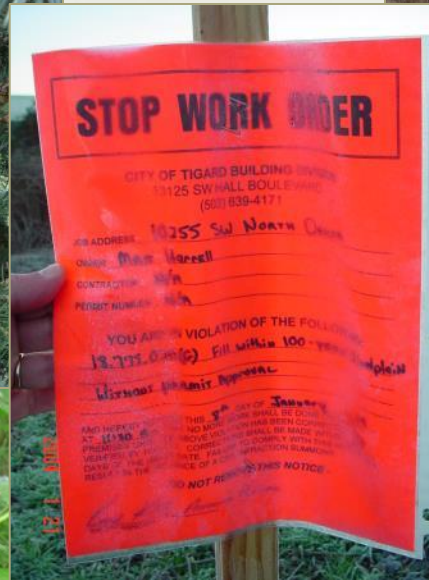


# Environmental Benefits

- **More organized approach**
  - Greater expertise in planning and implementation
  - Collaborative approval process
  - Pooled funds
- **Less risk**
  - Appropriate, prioritized sites
  - Better design and construction techniques
  - Guaranteed maintenance and monitoring
  - Perpetuity
- **Watershed approach**
  - Targets functions in greatest need
  - Utilizes existing studies, plans, and rosters



# (The importance of *in perpetuity*)





# The Players

**Co-Chairs:** Corps, Ecology

**Interagency Review  
Team (IRT):** Other  
stakeholders

**Sponsor:** Local  
government or other public  
agency, nonprofit

**Applicant:** Private or  
public





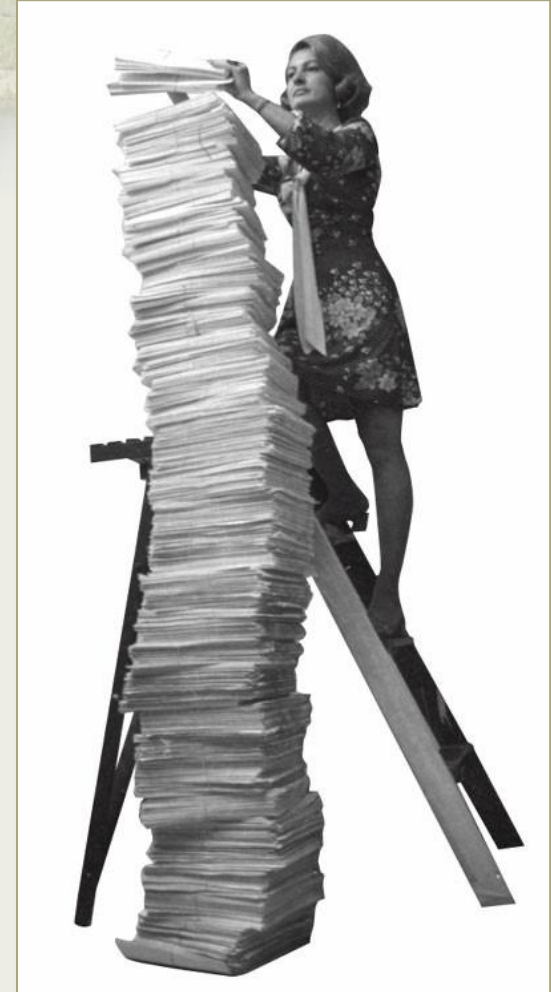
# Program Elements

Prospectus

Instrument

Certification

*By co-chairs and other  
signatories*



# Prospectus

1. Objectives
2. Establishment and operation procedures
3. Service area(s)
4. Need and feasibility
5. Ownership arrangement and long-term management strategy
6. Sponsor qualifications
7. Compensation Planning Framework
8. Description of program account



# Instrument

1. Detailed service area description
2. Detailed accounting
3. Statement of Special Responsibility
4. Default
5. Rev
6. Rev
7. Adv
8. Credit
9. Mitigation
10. Force

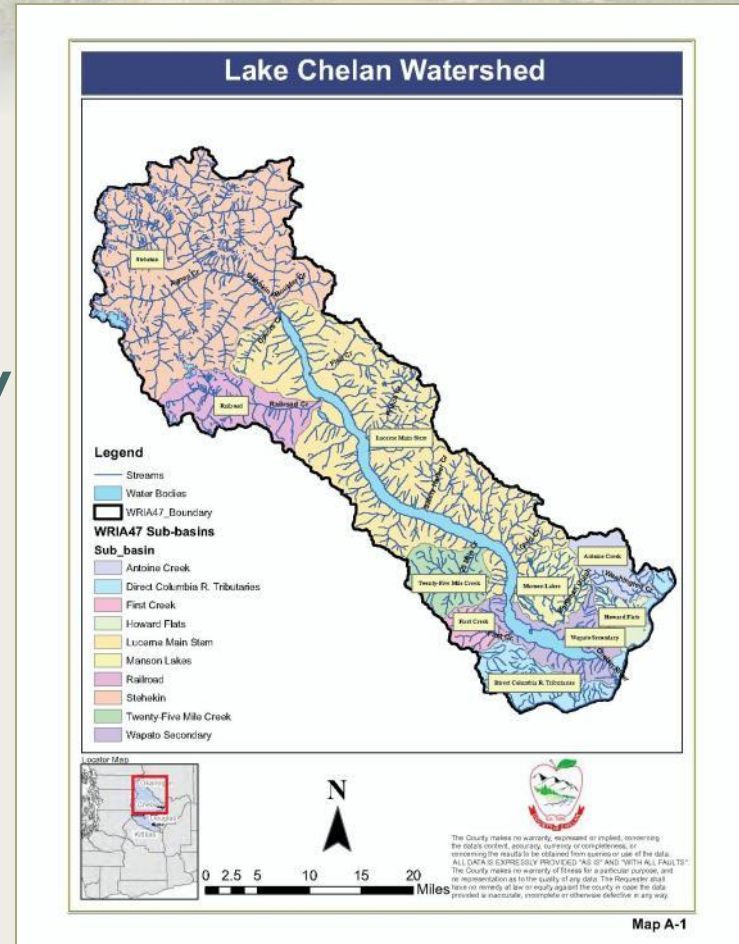
**Onerous: Definition**

• burdensome; difficult; wearing; tiring

# Instrument elements

## Service Area(s)

- *Basis for choosing the area*
- *Scale - appropriately sized”*
- *Watershed, ecoregion, physiographic or geographic region*





# Instrument elements

## Detailed Accounting Procedures

- *Establishment of the program account*
- *Separately tracked for each mitigation project*

Exhibit 11 - Part 1

|              |              |             |                    |      |       |       |               |                 |     | 007  |                        | 003          |   | 009                      |                          |             |           |                                   |                 |           |                      |                    |                           |                         |
|--------------|--------------|-------------|--------------------|------|-------|-------|---------------|-----------------|-----|------|------------------------|--------------|---|--------------------------|--------------------------|-------------|-----------|-----------------------------------|-----------------|-----------|----------------------|--------------------|---------------------------|-------------------------|
|              |              |             | Base Credits*      |      |       |       |               | Earned Credits* |     |      |                        |              |   |                          |                          |             |           |                                   |                 |           |                      |                    |                           |                         |
| Project Name | HGM          | Type        | Acres of Treatment |      |       |       | Risk Factor** |                 |     |      | Total Function credits | Credits/Acre | Site Selection, Planning, Permitting & Design | Construction & Materials | Maintenance & Monitoring | Contingency | Conting % | Large Project Contractor Upcharge | Long-term M & M | MRP Admin | Total Project Budget | CPI Scaling Factor | 2010 Adjusted (Using CPI) | Cost "Universal Credit" |
|              |              |             |                    | Vg   | Hy    | Ha    |               | Vg              | Hy  | Ha   |                        |              |   |                          |                          |             |           |                                   |                 |           |                      |                    |                           |                         |
| Project 1    | Riverine     | Enhancement | 14.85              | 0    | 0     | 44.55 | 0.9           | 0               | 0   | 40.1 | 40.1                   | 2.7          | \$181,062                                     | \$322,824                | \$196,278                | \$97,495    | 15%       | \$64,525                          | \$13,345        | \$64,996  | \$890,325            | 100%               | \$890,325                 | \$22,205                |
| Project 2    | Depressional | Enhancement | 1.36               | 0    | 0     | 5.52  | 0.9           | 0               | 0   | 5.0  | 5.0                    | 3.6          | \$85,253                                      | \$86,860                 | \$75,920                 | \$49,607    | 20%       | \$17,372                          | \$2,108         | \$24,803  | \$341,923            | 100%               | \$341,923                 | \$68,825                |
| Project 3    | Riverine     | Enhancement | 5.85               | 5.85 | 0     | 11.7  | 0.9           | 5.265           | 0   | 10.5 | 15.6                   | 2.7          | \$370,852                                     | \$295,642                | \$44,944                 |             |           |                                   | \$59,126        |           | \$770,566            | 100%               | \$770,566                 | \$48,785                |
| Project 4    | Depressional | Enhancement | 6.14               | 5.53 | 11.05 | 11.05 | 0.9           | 5.0             | 9.9 | 9.9  | 24.9                   | 4.1          | \$72,079                                      | \$123,395                | \$37,509                 | \$46,597    | 20%       | \$24,679                          | \$12,280        | \$23,296  | \$339,837            | 118%               | \$401,008                 | \$16,126                |
|              |              |             | 28.22              |      |       |       |               | 16.2            | 9.9 | 65.5 | 85.7                   |              |   |                          |                          |             |           |                                   |                 |           |                      |                    |                           | \$2,495,821             |

\*Acre-point calculations subject to change as the tool is revised

\*\* Risk Factor values are policy-based.

Weighted Average cost per credit \$29,041  
(Subject to change based on further analysis before first credit sale)

#### PRESERVATION CREDITS

| Project Name | Acres Preserved | Preservation Credits | Land Cost Surcharge | Cost / Preservation Credit |
|--------------|-----------------|----------------------|---------------------|----------------------------|
| Project 1    | 18.67           | 4.2                  | \$96,949            | \$23,083                   |
| Project 2    | 3.9             | 0.6625               | \$242,296           | \$355,012                  |
| Project 3    | 9               | 1.1                  | \$344,761           | \$313,419                  |
| Project 4    | N/A             |                      |                     |                            |

# Instrument elements

## Statement of Sponsor's Legal Responsibility





# Instrument elements

## Default and Closure Provisions:

*Sponsor fails to provide required mitigation*

- *Performance standards not met*
- *Monitoring reports not submitted*
- *Report ledger not maintained*
- *Credit transactions not reported*
- *Long-term management funding report not submitted*
- *Missed 3<sup>rd</sup>-growing-season deadline*

# Instrument elements

## Reporting



1. *Annual program ledger report*
2. *Monitoring reports*
3. *Financial assurances report*
4. *Fee ledgers*
5. *Program performance report*



# Instrument elements

## Compensation Planning Framework

### *From the Prospectus:*

- *watershed approach*
- *description of aquatic resources in the service area(s)*
- *resources needs in service area(s)*
- *receiving sites and rosters*
- **advance credits**
- *mitigation details*



# Instrument elements

## Advance Credits and Release Schedule

| Lake, Shoreline, and Riparian Buffer Mitigation Type and Amount | Linear Credits        |                    | Area Credits    |       |
|---|-----------------------|--------------------|-----------------|-------|
| Shoreline Riparian Enhancement ( $\leq 25'$ from OHWM)          | 50,000                |                    | N/A             |       |
| Riparian Enhancement ( $> 25'$ from OHWM)                       | N/A                   |                    | 50,000          |       |
| Other (fish passage, upper tributary restoration)               |                       |                    | 200,000         |       |
| Total   | 50,000                |                    | 250,000         |       |
| Wetland Mitigation Type and Amount                              | Water Quality Credits | Hydrologic Credits | Habitat Credits | Total |
| Wetland Enhancement and Creation                                | 20                    | 20                 | 20              | 60    |

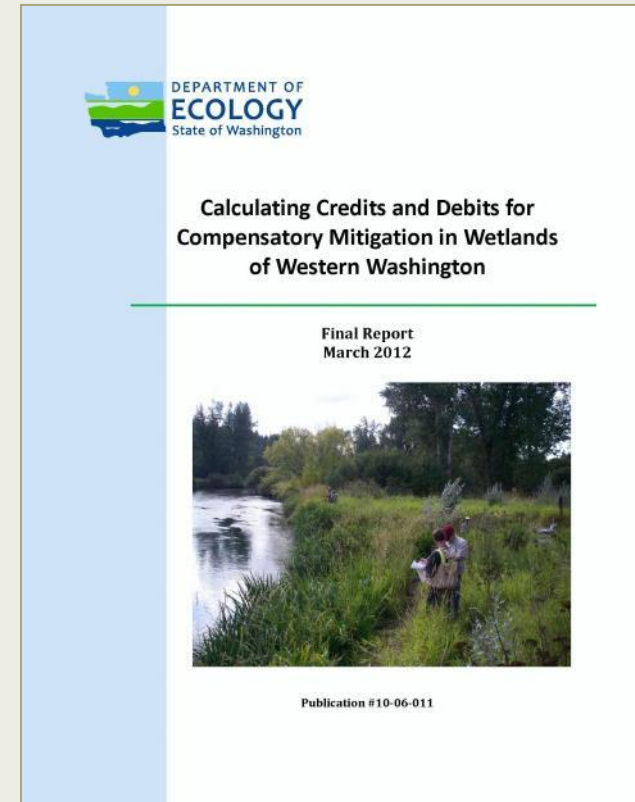
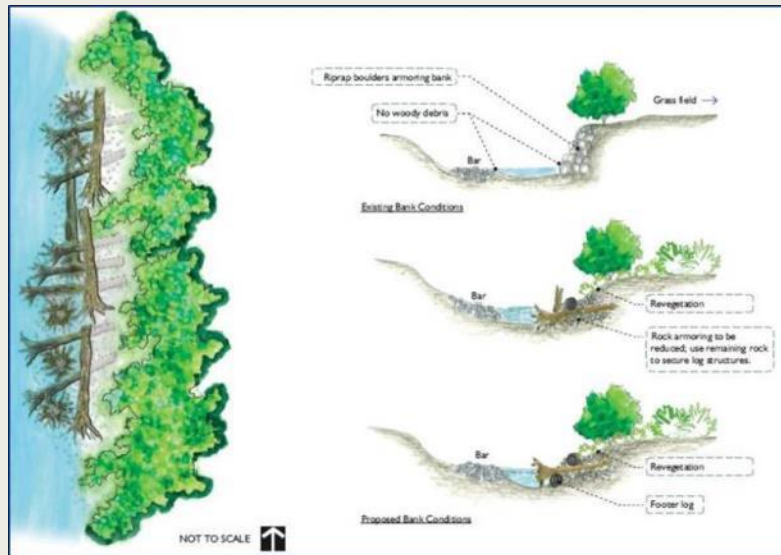
| Project Milestone   | Portion of Credit Released | Cumulative Portion of Fulfillment |
|---|----------------------------|-----------------------------------|
| Installation  | 1/6                        | 1/6                               |
| Year 1 performance standards achieved   | 1/6                        | 1/3                               |
| Year 3 performance standards achieved   | 1/6                        | 1/2                               |
| Year 5 performance standards achieved   | 1/6                        | 2/3                               |
| Year 7 performance standards (if needed) achieved   | 1/6                        | 5/6                               |
| Year 10 performance standards (if needed) achieved and transition to long-term stewardship (IRT sign-off on achievement of performance standards) | 1/6                        | Credit fulfilled                  |



# Instrument elements

## Credit and Debit Determination Methodologies

*DEBIT= unit of impact*  
*CREDIT=unit of lift*



# Instrument elements

## Mitigation Fees



- Land fee

*Covers land costs for mitigation areas*

- Credit fee

*True cost of mitigation: site selection, permitting, design, construction, short-term maintenance and monitoring, long-term stewardship, contingency funds*



# Instrument elements

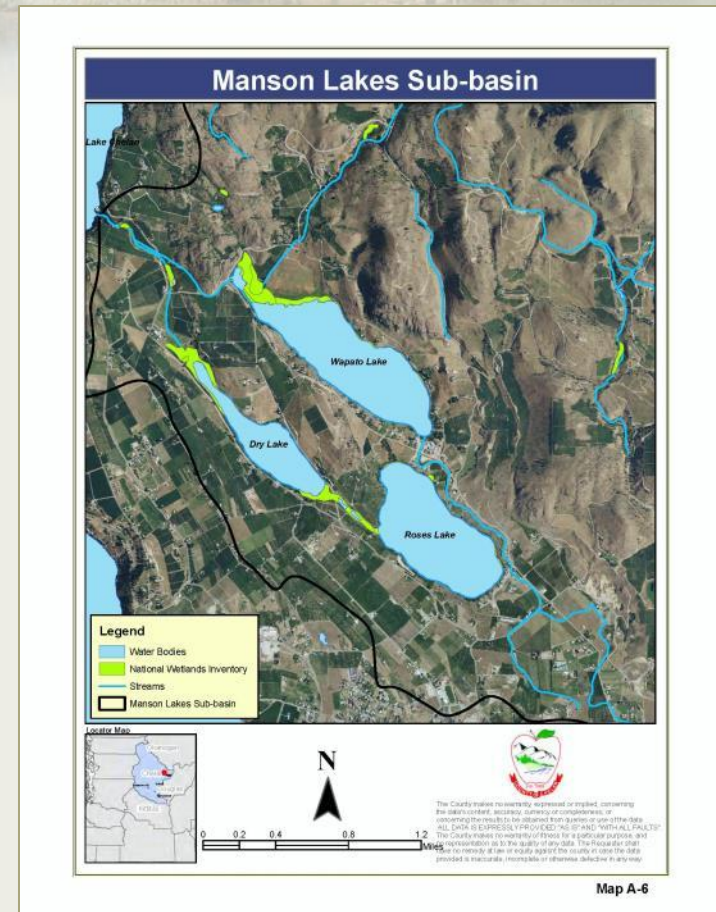
## *Force Majeure*

Program may fail to meet requirements and *not* be in default in cases of *force majeure*.



# Exhibits

- Service area map(s)
- Roster sites
- Assessment methodology
- Pricing analysis
- Ledgers
- Form/agreement templates





# Timeline

Optional preliminary review of Prospectus

30-day review

Submit Prospectus

30 to notify of completeness

JPN within 30 days of completeness determination

30-day public comment period

30 more days for DE to return with comments

Submit Draft Instrument to IRT

90 days for IRT and DE comments

Submit revised Final Instrument

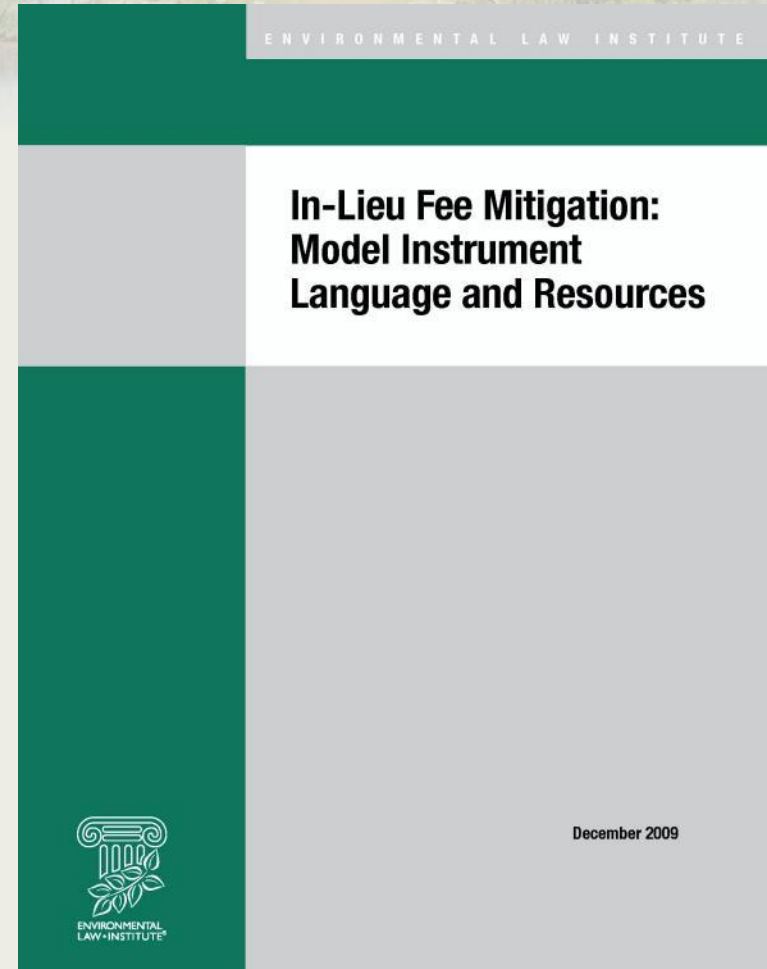
30 days for DE to approve/not approve,

15 days for IRT to object to approval

Instrument approved or dispute resolution initiated

# Guidance

1. In-Lieu Fee Mitigation: Model Instrument Language and Resources - Environmental Law Institute
2. In-Lieu Fee Program Instrument Template - US Army Corps of Engineers, Seattle





# Questions? Comments?

