Washington State Interagency Review Team Guidance Paper

Using Credits from In-Lieu Fee Programs:

Guidance to Applicants on Submittal Contents for In-Lieu Fee Use Plans

The Interagency Review Team (IRT) for Washington State includes standing members representing the U.S. Army Corps of Engineers (Corps), U.S. Environmental Protection Agency (EPA), and Washington State Department of Ecology (Ecology). The IRT is issuing this paper to provide guidance to permit applicants who wish to use in-lieu fee (ILF) credits to compensate for unavoidable impacts to wetlands and other aquatic resources, including buffers, associated with their projects. Aquatic resources include but are not limited to freshwater wetlands, rivers, streams, lakes, estuaries, marine environments, and their buffers. The types of impacts to aquatic resources that are eligible to meet mitigation needs through the purchase (or transfer) of ILF credits will vary depending on the ILF program. This paper does not replace or modify any of the existing laws and policies enforced by the IRT member agencies. The IRT reserves the right to make exceptions to or modify this guidance when doing so would benefit the public interest, the aquatic environment, and/or authorized ILF programs operating in Washington State.

This paper consists of an annotated outline for a report that would serve as the mitigation plan for projects proposing to use an ILF program. Since the applicant is proposing to use ILF credits as mitigation, standard mitigation plans are not appropriate, nor are they required. However, some of the same components occur in both. For the purposes of this guidance, we will refer to this submittal as an *ILF Use Plan*.

The purpose of the ILF Use Plan is to provide permit decision-makers at the regulatory agencies with sufficient information to decide whether project applicants have:

1) Avoided and minimized aquatic resource impacts to the maximum extent practicable,
2) Considered all available mitigation opportunities,
3) Provided sufficient compensation for unavoidable impacts to aquatic resources, and
4) Demonstrated how purchasing credits from a certified ILF program meets compensatory mitigation requirements.

The ILF Use Plan has two parts: Part A asks applicants to describe impacts as completely as possible. Part B asks applicants to explain why the use of credits from an ILF program is the best choice for mitigating the proposed impacts.

Project managers and wetland specialists at the Corps, Ecology, EPA, and other regulatory agencies typically have general knowledge of ILF programs in the regions they cover. However, it is up to permit applicants to provide enough information in their application package to demonstrate how the use of an ILF program adequately compensates for their specific project's impacts. Following this outline will help applicants to do so.

The following outline summarizes the type of information the IRT recommends for inclusion in an ILF Use Plan. If applicants have questions about what to include in the plan or on the process of

permitting mitigation using ILF credits, they should contact the project manager designated for their region (see http://www.nws.usace.army.mil/PublicMenu/documents/REG/PM_county_assignment_list.pdf for a list of Corps project managers and http://www.ecy.wa.gov/programs/sea/wetlands/contacts.htm for Ecology wetland specialists). General guidance on wetland mitigation is available online in *Wetland Mitigation in Washington State* (Part 1: http://www.ecy.wa.gov/biblio/0606011a.html, Part 2: http://www.ecy.wa.gov/biblio/0606011b.html).

Important Notes to Applicants:

- *For information on authorized ILF programs in Washington State, refer to the Corps' RIBITS website at: https://rsgis.crrel.usace.army.mil/ribits/f?p=107:2:136943704396553 or Ecology's website at: http://www.ecy.wa.gov/mitigation/ilf.html. Permit applicants should contact the ILF program sponsor (sponsor) directly for information on the functions targeted by the ILF program, credit availability, and the process for purchasing credits.*

- *Location of an impact project within an ILF program's service area does not guarantee that federal, state, or local regulatory agencies will approve use of ILF credits as mitigation. As with all mitigation, approval of a specific mitigation plan is decided on a case-by-case basis. The permit application should demonstrate that potential impacts to aquatic resources have been avoided and minimized to the maximum extent practicable and that the ILF program proposed for use has the ability to target appropriate compensation for project impacts. In some cases, agencies may decide that impacts would be better mitigated on or closer to the project site. One agency may require that more ILF credits be used, or one or more agencies may determine that the ILF program will not compensate for the loss of certain functions, and therefore, mitigation for those functions must be provided separately. Applicants should communicate with all permitting agencies early in the permit process and show due caution when considering early purchase of ILF credits. Agencies cannot guarantee that an applicant will be approved to use ILF credits prior to review of the complete application package and a permit decision.*

- *If other mitigation for aquatic resource impacts is proposed for a project in addition to purchasing ILF credits, this should be described in detail in a separate standard mitigation plan. Please note: brief mention of the additional mitigation and the citation for the mitigation plan should be included in Part B, Section 1 of the ILF Use Plan.*

- *Be aware that sponsors are not authorized to sell credits that have not yet been advanced or released by the IRT. Before deciding on a mitigation path, check with Corps or Ecology project managers to confirm that a particular ILF program will likely have adequate credit available at the time your project is expected to be permitted. It is reasonable for prospective buyers to request an updated credit ledger from the sponsor prior to committing to credit purchase.*

In-Lieu Fee Use Plan Outline

PART A: IMPACT PROJECT DESCRIPTION

1. Project Description

Provide a brief description of the development project and the types of activities that will impact aquatic resources including buffers. If a more detailed project description is available in other documents in the application package, this section should just summarize the project description and cite the more detailed document(s).

2. Existing Conditions of Aquatic Resources

Provide a brief description of the aquatic resources and buffers on the development site. Include the location, landscape position, size, vegetation, soils, hydroperiod, source of water, surrounding land uses, and functions. Also include the hydrogeomorphic (HGM) classification and wetland rating as determined by the eastern or western Washington State rating systems (documents are located at: http://www.ecy.wa.gov/programs/sea/wetlands/ratingsystems/index.html). Information should also be summarized in a table format as shown in Example Tables 1 and 2 below. This section is intended to be a summary of existing conditions and the more detailed documents cited here, such as any wetland delineation or other aquatic resource assessment reports. Cite corresponding drawings and maps showing the existing conditions and aquatic resource boundaries including buffers.

Example Table 1
Existing Conditions of Wetlands and Buffers

Resource Identifier	Wetland area (acres)	Buffer area (acres)	Ecology rating	Local jurisdiction rating	Cowardin classification	HGM classification
Wetland A	1.01	2.25	IV	4	PEM	Depressional
Wetland B	0.53	1.2	III	3	PSS	Slope
TOTALS	**1.54 ac**	**3.45 ac**				

Example Table 2
Existing Conditions of Rivers, Streams, and Buffers

Resource Identifier	Water course area (linear feet)	Buffer area (acres)	Classification System Used	Water Type	Local Jurisdiction Rating	State Water Quality Standards
Stream A	300	0.7	WDNR	Non-fish perennial	4	Good
Stream B	500	1.72	WDNR	Fish	2	Fair
TOTALS	**800 lf**	**2.42 ac**				

3. Avoidance and Minimization of Impacts to Aquatic Resources

Describe how adverse impacts from the project, both direct and indirect, to aquatic resources will be avoided and minimized to the maximum extent practicable. This should include consideration of project location, surrounding land uses, design, construction practices, monitoring efforts and/or other relevant factors. If other sites were considered and rejected based on aquatic resource impacts, mention that information in this section. If a Clean Water Act section 404(b)(1) Alternatives Analysis was prepared for the project, cite that document here. Further information is available online at: http://www.epa.gov/owow/wetlands/regs/mitigate.html.

Describe the type and expected acreage of unavoidable impacts. Cite corresponding drawings showing the impact area boundaries including buffers.

Provide the avoidance, minimization, and expected impact information using a table format as in Example Tables 3 and 4 below.

Example Table 3
Avoided, Minimized, and Expected Impacts to Wetlands and Buffers

Resource identifier	Impact area before* (acres)	Impact area after** (acres)	Temporarily impacted area (acres)	Buffer impact area (acres)	Indirect impact area (acres)	Avoidance and minimization steps taken
Wetland A	0.08	0.01	0.02	0.05	0	Stormwater outfall designed to minimize impacts to wetland and buffer.
Wetland B	0.53	0.08	0.1	0.07	0	Access road rerouted and retaining wall used to minimize footprint
TOTALS	**0.61**	**0.09**	**0.12**	**0.12**	**0**	

*before = prior to any avoidance and minimization measures implemented.
**after = expected impact after avoidance and minimization measures implemented.

Example Table 4
Avoided, Minimized, and Expected Impacts to Rivers, Streams, and Buffers

Resource Identifier	Impact area before* (acres/linear ft)	Impact area after** (acres/linear ft)	Temporarily Impacted Area (acres/linear ft)	Buffer Impact Area (acres/linear ft)	Indirect Impact Area (acres/ linear ft)	Avoidance and Minimization Steps Taken
Stream A	0.07 ac	0.02 ac	0	0.1 ac	0	Bridge used for crossing, bridge abutments in stream
Stream B	0.06 ac	0	0	0.5 ac	0	Design altered to avoid stream altogether. Road path chosen to minimize need for clearing large conifers. Temporary road will be decommissioned and replanted at end of project.
Totals	**0.13 ac**	**0.02 ac**	**0 ac**	**0.6 ac**	**0 ac**	

*before = prior to any avoidance and minimization measures implemented.
**after = expected impact after avoidance and minimization measures implemented.

Note: Examples of impact avoidance and minimization for several types of development include:

- *Commercial Facility: Minimizing new impervious surface, using pervious surfaces for parking lots, using infiltration to treat stormwater, enhancing buffers, providing appropriate water quality treatment, reducing the project footprint from the original proposal, using native landscape plants, using integrated pest management techniques, using other low-impact development measures.*

- *Road Widening: Widening asymmetrically to avoid wetlands or streams, widening toward the road median, using retaining walls to reduce side slopes, minimizing new impervious surface by lane re-striping, using road shoulder-installed filters for water quality treatment, locating stormwater treatment facilities outside of aquatic resources.*

- *Residential Development: Retaining native vegetation where possible, infiltrating roof runoff, using pervious surfaces for driveways, using other low-impact development measures, enhancing buffers. Required Best Management Practices (BMPs) will not count as avoidance measures, but implementation of additional voluntary BMPs may result in reduced mitigation requirements.*

4. Impacts to Aquatic Resource Functions

Describe how the functions below are expected to be lost or altered due to your project. Also, include a discussion of the potential indirect and/or temporary impacts to the remaining aquatic resource(s).

- Water quality: briefly describe characteristics of aquatic resources relative to water movement, extent of vegetation as it relates to potential for slowing and filtering water (e.g., extent of grazing), extent and duration of ponding, opportunity to improve water quality, and so on.

- Hydrologic: briefly describe characteristics of aquatic resources relative to the ability and opportunity of the aquatic resource to store water.

- Habitat: briefly describe characteristics of aquatic resources relative to habitat functions such as interspersion of habitats, corridor connectivity, plant species richness, buffer condition, and so on.

If a more detailed function description is available in other documents in the application package, this section should simply summarize the functions that will be affected and cite the more detailed document(s). If a 'Debit Worksheet' was prepared for the impact project, cite that document here. (See western and eastern versions of *Calculating Credits and Debits for Compensatory Mitigation in Wetlands at http://www.ecy.wa.gov/mitigation/creditdebit-comments.html.)*

Notes:
All applicants should use the Washington State Wetland Rating System or equivalent and submit the rating forms and accompanying maps/drawings for all wetlands. Rating methods for both western and eastern WA are available at http://www.ecy.wa.gov/programs/sea/wetlands/ratingsystems/index.html). Ecology's Focus Sheet Using the Wetland Rating System in Compensatory Mitigation *(Ecology Publication 08-06-009, found at http://www.ecy.wa.gov/biblio/0806009.html) provides a method for using the rating system to compare wetland functions under existing conditions with those after impacts or mitigation. Applicants may use other wetland function assessments, at their discretion, but they do not substitute for the rating system.*

For freshwater wetland impacts proposed to be mitigated using ILF credits, Ecology recommends that applicants calculate "debits" of impact using the method Calculating Credits and Debits for Compensatory Mitigation in Wetlands, available online at http://www.ecy.wa.gov/mitigation/creditdebit-comments.html.

It is essential that an applicant use the method described in the ILF Instrument to determine debits and credits, but debits and credits for some types of impacts (e.g., impacts to streams) will be determined on a case-by-case basis.

Fill or clearing in a buffer may result in indirect impacts to aquatic resources that may also require mitigation. Even temporary clearing of forested or shrub areas in aquatic resources or buffers may have long-term indirect impacts that may require mitigation. The mitigation required depends on the nature of the impacts and the regulatory agencies involved.

PART B: JUSTIFICATION FOR USING AN IN-LIEU FEE PROGRAM

1. Description of Compensatory Mitigation Options Considered

Provide a brief description of the potential (or lack thereof) for each type of compensation listed below. The type of compensation proposed to mitigate for the project impact should be ecologically appropriate. In addition, the federal rule titled *Compensatory Mitigation for Losses of Aquatic Resources; Final Rule* (Federal Rule) 33 CFR Section 332.3(b) specifies that when considering options for successfully providing the required compensatory mitigation for federal permits, the Corps district engineer shall consider the type and location options in the following order:

a. Wetland mitigation banks,
b. In-lieu fee programs,
c. Permittee-responsible mitigation under a watershed approach,
d. Permittee-responsible mitigation through on-site and in-kind mitigation, and lastly
e. Permittee-responsible mitigation through off-site and/or out-of-kind mitigation.

If the impact project is within the service area of an approved wetland mitigation bank, document why the bank is not being used. Include information on whether bank use was discussed with agency project managers, and why the bank was determined to be inappropriate compensation. If the impact project will affect critical aquatic resource functions that should be replaced on site, describe the on-site mitigation opportunities that have been considered. If some on-site mitigation will also occur, cite the mitigation plan and explain why the full mitigation requirements cannot be met on site.

2. In-Lieu Fee Program Selection Rationale

Provide rationale for proposing the ILF program as mitigation. This section should provide appropriate detail to demonstrate how the ILF credits will provide adequate compensation for the aquatic resource habitat and functions impacted by the project. Identify which ILF program you intend to use, and confirm that your project is located within the service area for that ILF program and that credits are available for sale. Describe how the aquatic resource mitigation needs of the impact project correspond with the purpose, goals, and objectives of the ILF program. (A list of ILF programs is located on Ecology's website at: http://www.ecy.wa.gov/mitigation/ilf.html and the Corps' RIBITS website at: https://rsgis.crrel.usace.army.mil/ribits/f?p=107:2:136943704396553.)

3. Proposed Use of In-Lieu Fee Credits

Each ILF program will specify its method for determining credits in the ILF instrument and specify the method that impact projects shall use for determining debits. If a different method is proposed, supply a rationale for this decision. Compensation for impacts to streams and Category I wetlands will be determined by the regulatory agencies on a case-by-case basis.

Applicants need to coordinate with the ILF sponsor to ensure that credits are available. Applicants should consult with agency staff early in the permitting process to discuss credit use. Factors that may affect the number of credits needed to compensate for adverse impacts to aquatic resources include:

- Whether the impact is permanent or temporary,
- The extent to which the functions of an aquatic resource are reduced or eliminated when there are indirect impacts to consider,

- Whether some of the aquatic resource functions affected by a project are mitigated elsewhere.

ILF program credits are generally calculated one of two ways:

1. Using the Credit/Debit method for freshwater wetlands: the Credit/Debit Method is based on the Washington State Wetland Rating System. It also incorporates some recent refinements and updates in characterizing functions and values.
2. Using area and ratios: if the ratios proposed for determining the amount of credits needed differ from those suggested in the ILF Instrument, provide the rationale for this.

Show the number of ILF credits that are proposed to be purchased or transferred from the ILF program. If more than one aquatic resource is impacted, it is helpful to use a table.

4. Credit Purchase or Transfer Timing

This section should note the anticipated timing of purchase or transfer of the credits and any other details regarding credit use that may be relevant to the permit process. It is not necessary to disclose credit costs or specific financial arrangements made between the applicant and ILF program sponsor. When purchasing credits, the final sale should generally not occur until regulatory agencies have issued the permits relevant to the aquatic resource impacts. Prior to impacting aquatic resources, permit applicants must submit to the regulatory agency the proof of purchase (e.g., statement of sale) or transfer of credits.