

# Mitigation Banks & In-lieu Fee Programs

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# Benefits

- Reduces risk & uncertainty
- Potential for multiple agency credits
- Emphasizes regional planning efforts & best available science.
- More efficient compliance
- May streamline permitting, by reducing evaluation efforts on mitigation proposals
- Ensures predictability



# Drawbacks

- Failure may result in substantial loss of aquatic resource function
- Migration of functions and services
- Extensive time & effort in instrument development & oversight
- Development driven
- Differing goals for each agency/sponsor



# Benefits of Each

- **Both**

- ▶ Compensation for a range of resources
- ▶ Sponsor interest in conservation

- **ILFs**

- ▶ Mitigation when/where a bank is not available
- ▶ More thorough evaluation of the needs of the watershed
- ▶ Consideration of appropriate locations and mitigation types to sustain and enhance the watershed

- **Banks**

- ▶ Advance site identification
- ▶ Credit release linked to performance
- ▶ Compensation in advance of impacts





# Drawbacks of Each

- **Mitigation Banks**

- ▶ Site location preference by sponsor, driven by land cost
- ▶ Less likely to be developed in a small or weak market

- **In-lieu fee programs**

- ▶ Risk of mitigation not being implemented
- ▶ Temporal lag between permitted impacts and project implementation
- ▶ Inadequate compensation for impacts



# Difference Between Banks & ILF's

- **In-lieu Fee Program:**

- ▶ Gov't or non-profit conservation organization
- ▶ Fees often received before mitigation construction
- ▶ Corps approves funding disbursements from the ILF program account for ILF projects

- **Mitigation Banks:**

- ▶ Public or Private sponsor
- ▶ Site secured & project initiated in advance of debits
- ▶ Corps does not control credit cost



# Mitigation bank instrument must include:

1. Service area
2. Accounting procedures
3. Assumption of legal responsibility
4. Default and closure provisions
5. Reporting protocols
  - **Plus 2 additional elements**
6. Mitigation Plan (with 12 key elements)
7. Credit release schedule



# ILF instrument must include:

1. Service area(s)
2. Accounting procedures
3. Assumption of legal responsibility
4. Default and closure provisions
5. Reporting protocols
  - **Plus 4 additional elements**
6. Compensation planning framework
7. Specification of initial allocation of advance credits
8. Methodology for determining project-specific credits and fees
9. Description of ILF program account





# ILF Program Advance Credits

- Approved instrument required
- A cap on advanced credits per each service area
- # advance credits based on:
  - ▶ Compensation planning framework
  - ▶ Sponsor's past performance/qualifications
  - ▶ Financing needed for mitigation implementation
- As projects produce released credits, advance credits are fulfilled and available again



# ILF Program Advance Credits

- *Land acquisition and improvements* must be initiated by the **3<sup>rd</sup> growing season** after first advance credit is acquired



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# Example (NC EEP) ILF Program Schedule

Fee Category	Unit	Fee per Unit - Higher Fee HU	Fee per Unit - Lower Fee HU
Riparian Buffer	Sq.ft	\$0.96	\$0.96
Stream	Lin.ft	\$344	\$260
Non-riparian wetland	Acre	\$45,752	\$23,528
Riparian wetland	Acre	\$63,414	\$35,853
Coastal wetland	Acre	\$155,998	\$155,998



(High fee factors include: urban constraints, higher land costs, and limited restoration opportunities.)



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# Credit Release Schedule Example

- Wetland Establishment
  - 30% Initial Release
  - 20% Release for meeting hydrology
  - 20% Release planting completion
  - 30% release when all performance standards are met



# More information

## HQUSACE

[http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/mitig\\_info.aspx](http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/mitig_info.aspx)

## USACE Sacramento District

<http://www.spk.usace.army.mil/Missions/Regulatory/Mitigation.aspx>

## USEPA

[http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation\\_index.cfm](http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm)

## RIBITS

<https://rsgisias.crrel.usace.army.mil/ribits/>



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