



# In-Lieu Fee for Minnesota Fact Sheet

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October 23, 2014 Draft

This document is intended to clarify various aspects of an In-Lieu Fee (ILF) program as it relates to the current discussions on wetland mitigation in Minnesota. Additionally, it identifies how the Minnesota Board of Water & Soil Resources (BWSR), from the perspective of program staff, would propose an ILF.

## ILF Programs

Funds are paid to a government or nonprofit entity to satisfy the mitigation requirements of a U.S. Army Corps of Engineers (Corps) permit and/or a State Wetland Conservation Act (WCA) replacement plan. ILF credits are typically made available to project sponsors in advance of a completed mitigation project (and are thus referred to as “in-advance” credits). These credits can *only* be obtained if the program sponsor has a signed instrument (agreement) with the Corps that specifies how projects will be identified, selected, and completed utilizing a watershed approach.

ILF programs are completely separate from the substantive requirements for justifying wetland/aquatic resource impacts associated with Corps permits and WCA replacement plan approvals. Applicants must meet sequencing requirements (avoidance, minimization, etc.), and demonstrate that the proposed project is in compliance with Clean Water Act Section 404(b)(1) Guidelines and not contrary to the public interest *before* the use of an ILF program to satisfy any compensatory mitigation requirements can even be considered.

The use of in-advance ILF credits for compensatory mitigation is generally preferred over permittee-responsible (project-specific in WCA terminology) mitigation. However, in most cases the use of wetland bank credits is preferred over in-advance credits. An ILF is not intended to replace the use of wetland banks, but rather to supplement their use in situations where banking alone is insufficient to meet demand or achieve identified resource objectives.

## Why an ILF for Minnesota?

An ILF could potentially have benefits to all of Minnesota, but is particularly relevant to the northeastern part of the state. The challenge of obtaining quality compensatory mitigation in NE Minnesota is well-known and documented in recent agency reports. The relative lack of available opportunities under current rules/policies, combined with the challenges to applicants of effectively implementing a watershed approach, warrant an alternative mechanism for obtaining mitigation which a properly structured ILF can provide.

ILF program advantages:

- A comprehensive, interagency approach can be utilized to identify priority mitigation areas, evaluate potential projects, and ultimately select projects and sites that better replace lost wetland functions and address watershed needs.
- A properly structured ILF can improve the watershed planning and targeting of wetland mitigation opportunities that maximize resource outcomes.
- The program can more effectively identify and utilize alternative mitigation actions in NE watersheds (see Siting of Wetland Mitigation in NE MN Report, 3-7-14) than individual applicants.

- The program can be proactive by more effectively utilizing expertise in resource conservation and restoration through a coordinated approach that evaluates potential sites and projects before they are formally proposed and reviewed.

**What Would an ILF Program Look Like in Minnesota?**

The specifics of how an ILF program operates, including its prioritization and selection of projects and sites (AKA “Compensation Planning Framework”) are determined through an iterative review and approval process between the program sponsor, the Corps, and the Interagency Review Team (Corps, DNR, USFWS, PCA, EPA). However, BWSR program staff have developed some recommendations for how certain elements of the program would be implemented.

BWSR would likely be the sponsor, or at least the co-sponsor, of the ILF program. We already have considerable experience running a similar program - the Local Government Roads Wetland Replacement Program (LGRWRP) - that is currently in the final stage of obtaining Corps approval as an official ILF program. We also have dedicated technical and engineering staff with significant experience restoring wetlands under the LGRWRP and Reinvest in Minnesota programs.

Most existing ILF programs operate on the use of in-advance credits, which has several drawbacks. However, the appropriate funding and program structure can alleviate these drawbacks. We propose the program be developed with “start-up” funding to produce a pool of wetland credits (essentially wetland bank credits) prior to or concurrent with the collection of fees from applicants wishing to utilize the program. This funding would act like as a revolving loan within the program with the goal of maintaining a positive credit balance and reducing the potential need for in-advance credits. This structure would reduce risk and improve the targeting of mitigation, and is similar to how the LGRWRP currently functions. The program would essentially act as a “hybrid” between a wetland bank and an ILF.

In-advance credits would only be requested and used if appropriate advance credits are not available. In-advance credits would be allocated based on the certainty associated with project development and funding. The following is a generalized example of how in-advance credits would be allocated:

Project under construction/development	High % of potential credits approved as in-advance    Low % of potential credits approved as in-advance
Project approved and funded, but not under construction/development	
Project funded and under review	
Funding available, no project selected	

The program would initially focus on northeast Minnesota, utilizing both traditional and alternative mitigation actions. If deemed necessary, the program could be expanded in the future via an amendment to the Corps-approved ILF instrument.

The Compensation Planning Framework would be developed (and established in the ILF instrument) in cooperation with the Interagency Review Team and local government entities to prioritize sites, areas, and functions for project evaluation and selection using a watershed approach. A process of vetting potential ILF projects would be established that utilizes interagency expertise. Selected projects would be further vetted and evaluated through the wetland bank plan approval process at both the state and federal levels.

Mitigation siting would be accomplished within the context of the ILF program and the Compensation Planning Framework. Siting would generally follow the priorities currently established, but implementation of the criteria would necessarily differ do to the nature of ILF program responsibilities to replace multiple cumulative impacts.