

Cover Sheet
In-Lieu Fee Program Proposal Procedures
Draft Prospectus/Prospectus
March, 2011

Section I - General Information

This package provides procedures and information to initiate the development of In-Lieu Fee (ILF) proposals in the states of California and Arizona. This package contains two checklists with requirements for submitting an ILF Draft Prospectus and Prospectus. **Please follow the instructions carefully.** The review and approval of ILFs is a multi-agency process that may involve but is not limited to any or all of the following federal and state agencies: the U.S. Army Corps of Engineers (“USACE”), Region IX of the U.S. Environmental Protection Agency (“USEPA”), the U.S. Fish and Wildlife Service (“USFWS”), NOAA Fisheries (“NOAA”), Natural Resource Conservation Service (“NRCS”), the Arizona Game and Fish Department (“AGFD”), the Arizona Department of Environmental Quality (“ADEQ”), the California Department of Fish and Game (“CDFG”), and the California Water Resources Control Board (“CWRCB”). These agencies, and others which may be added, comprise and are referred to jointly as the Interagency Review Team (“IRT”).

Prior to submitting a Prospectus, the IRT agencies strongly encourage the ILF Sponsor to submit a Draft Prospectus to the IRT agencies for comment and consultation. This process is intended to identify potential issues early so the ILF Sponsor may attempt to address those issues prior to the formal review process. A Prospectus must be submitted by the ILF Sponsor, then reviewed, and evaluated by the IRT and public prior to the ILF Sponsor’s submittal of a draft ILF Enabling Instrument. The following must also be followed for amendments to existing ILF Programs.

The following steps shall be utilized from the Prospectus stage forward:

- 1) Check the Corps’ website or the Corps’ Regional ILF and Bank Information Tracking System (RIBITS) website to obtain the most current ILF information and templates before beginning the Prospectus preparation;
- 2) Check with your IRT for meeting dates and times. Chair and IRT member contact information is provided at the end of this cover sheet;
- 3) Submit a preliminary jurisdictional determination for review and approval by the USACE;

- 4) Submit a Prospectus for completeness review by the IRT Chair(s);
- 5) Once the Prospectus has been deemed complete by the Chair(s), the Prospectus is reviewed by the IRT agencies and the public; and
- 6) Upon completion of review of the Prospectus by the IRT agencies and the public, the USACE will coordinate with the other Chairs (if applicable) and will provide a letter to the ILF Sponsor informing the ILF Sponsor whether or not they may begin development of the draft ILF Enabling Instrument.

Section II - Definitions

Draft Prospectus (optional but strongly encouraged) – A brief, concept level proposal submitted when scoping the concept of an ILF program, contemplating pursuing an ILF proposal, or for those new to the ILF process.

Prospectus (required) – Should be submitted when an ILF Sponsor has a definite ILF proposal.

Draft ILF Enabling Instrument– The complete ILF Enabling Instrument and all Exhibits submitted for IRT review and approval.

Section III - IRT

Arizona ILFs: Please contact Marjorie Blaine at the Los Angeles District of the USACE at (520)584-1684 or Marjorie.E.Blaine@usace.army.mil.

North Coast California ILFs (counties of San Bernardino, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Kern, Inyo, and Mono): Please contact John Markham at the Los Angeles District of the USACE at (805) 585-2150 or John.W.Markham@usace.army.mil.

South Coast California ILFs (counties of San Diego, Imperial, Orange, and Riverside): Please contact Peggy Bartels at the Los Angeles District of the USACE at (760) 602-4832 or Peggy.Bartels@usace.army.mil.

The IRT meetings are held as needed. In order to receive a time slot on the IRT agenda for a Draft Prospectus or a Prospectus, the ILF Sponsor must provide each IRT participant listed below with 1 hard copy and 1 compact disc (CD) of the proposal at least **14 days prior to the**

scheduled meeting with the IRT (Please note that some California IRTs may request more than one copy; please check with the appropriate California contact above). In addition to the quantities listed above, please bring 3 extra hard copies and CDs of the completed information for a Prospectus to the IRT meeting at the scheduled time. The IRT may also request additional information if the Prospectus raises additional questions or issues.

Time slots for IRT meetings will be filled as the proposals are received and ILF Sponsors will be notified of the time slot and the meeting location. If all slots are full when the proposal is received, the ILF Sponsor will be notified and offered a time slot at the next IRT meeting.

**ARIZONA IRT
March, 2011**

Name	Agency	Email Address	Mailing Address	Phone
Marjorie Blaine IRT Chair	USACE	Marjorie.E.Blaine@usace.army.mil	U.S. Army Corps of Engineers Tucson Resident Office 5205 E. Comanche Street Tucson, AZ 85707	(520) 584-1684
Bob Broscheid	AGFD	BBroscheid@azgfd.gov	Wildlife Management Division Arizona Game and Fish Department 5000 W. Carefree Highway Phoenix, AZ 85086-5000	(623) 236-7276
Chris Cawein	Pima County RFCD	chris.cawein@rfcd.pima.gov	Pima County Regional Flood Control District 97 E. Congress Street, 3rd Floor Tucson, AZ 85701	(520) 243-1882
Julia Fonseca	Pima County	Julia.Fonseca@pima.gov	Office of Conservation Science & Environment 201 N. Stone Ave. 6th floor Tucson, AZ 85701	(520) 740-6460
Elizabeth Goldmann	USEPA	Goldmann.Elizabeth@epamail.epa.gov	EPA, Region IX WTR-8 75 Hawthorne Street San Francisco, CA 94105	(415) 972-3398
Mike Martinez	USFWS	Mike_Martinez@fws.gov	US Fish and Wildlife Service Arizona Ecological Services Field Office 2321 W. Royal Palm Road, Suite 103 Phoenix, AZ 85021	(602) 242-0524 x224
Bob Scalamera	ADEQ	Scalamera.Robert@azdeq.gov	Arizona Department of Environmental Quality Mailstop 5415A-1 1110 W. Washington Phoenix, AZ 85007	(602) 771-4502
Wendy Wonderley	City of Phoenix	wendy.wonderley@phoenix.gov	City of Phoenix Office of Environmental Programs 200 W. Washington Street 14th Floor Phoenix, AZ 85003	(602) 534-1775

NORTH COAST CALIFORNIA IRT

March, 2011

Name	Agency	Email Address	Mailing Address	Phone
John Markham IRT Chair	USACE	John.W.Markham@usace.army.mil	U.S. Army Corps of Engineers 2151 Alessandro Drive, Suite 110 Ventura, CA 93001	(805) 585-2150
Tom Cavanaugh	USACE, SPD	Thomas.J.Cavanaugh@usace.army.mil	U.S. Army Corps of Engineers South Pacific Division CESPD-PDS-O, 2042B 1455 Market Street, San Francisco, California 94103-1399	(415) 503-6574
Eric Raffini	USEPA	Raffini.Eric@epa.gov	U.S. Environmental Protection Agency 600 Wilshire Boulevard, Suite 1460 Los Angeles, CA 90017	(213) 244-1830
Colleen Mehlberg	USFWS	Colleen_Mehlberg@fws.gov	U.S. Fish and Wildlife Service 2493 Portola Road, Suite B Ventura, CA 93003	(805)644-1766 x221
Daniel Blankenship	CDFG	DSBlankenship@dfg.ca.gov	PO Box 221480 Newhall, CA 91322-1480	((661) 259-3750

Checklist
Draft Prospectus for In-Lieu Fee Programs
March, 2011

Please refer to the Cover Sheet dated March, 2011 for procedures related to the submission of an ILF proposal. Please provide the following information and a copy of this checklist with the submittal of a Draft Prospectus:

- Proposed ILF Name - Use a short name based on a geographic feature or ILF Sponsor's name and include "In-Lieu Fee Program" in the name;
- ILF contacts - include the name, address, phone, fax, and email for: ILF Sponsor, Property Owner, Consultants, etc.;
- Color aerial and on-site photographs that reflect current conditions of the proposed ILF mitigation project site(s) and surrounding properties;
- Explanation of the general need for the ILF program and basis for such determination;
- ILF mitigation project site conditions description. This should include a BRIEF description of:
 - site conditions of at least one proposed ILF mitigation project site;
 - habitats and species known or potentially present;
 - description and acreage of existing wetlands and other waters of the U.S.;
 - hydrology;
 - methods for establishing, restoring, rehabilitating, and/or preserving wetlands and other waters of the U.S., and habitat for federal, and state listed species; and
 - site history, including past and present land uses, surrounding land uses and zoning along with the anticipated future development in the area;
- Explain how the proposed ILF mitigation project site(s) would contribute to connectivity and ecosystem function. Also discuss potential conflicts and compatibility with any conservation plans, conceptual area plans, or other land use plans, policies, or regulations;

- Has the proposed ILF mitigation project site(s) been:
 - Used as mitigation for a previous project(s);
 - Already designated or dedicated for passive park or open space use, where that use is generally compatible with sustaining biological values;
 - Designated for purposes which are inconsistent with habitat preservation (i.e., lands purchased for roads, landfills, etc.); and
 - Acquired by a public entity (e.g., with State Bond Act funds) or provided to a jurisdiction for park or natural open space purposes;

- Provide details including ownership information on interest of surface and sub-surface mineral rights;

- Details regarding public funding received (if applicable) for restoration, acquisition or other purposes on all or a portion of the proposed ILF mitigation project site(s) (e.g., funding source, amount received, purpose, # of acres affected by each purpose, etc.);

- Preliminary jurisdictional determination (PJD) of on-site wetlands and other waters of the U.S for USACE review and approval¹; and

- Compensation Planning Framework to include:
 - Accurate current map of the proposed geographic service area of the ILF program on a 7.5-minute USGS map showing boundaries of the ILF service area and boundaries of any known areas where ILF mitigation project site(s) may be implemented;
 - A watershed-based rationale for the delineation of each service area(s);
 - A description of the threats to aquatic resources in the service area(s), including how the ILF program will help offset impacts resulting from those threats;
 - An analysis of historic aquatic resource loss in the service area(s);
 - An analysis of current aquatic resource conditions in the service area(s), supported by an appropriate level of field documentation;

¹ A PJD can only be used to determine that wetlands or other water bodies that exist on a particular site “may be” jurisdictional waters of the United States. For the purposes of this document, a PJD is one done in accordance with the requirements of USACE Regulatory Guidance Letter 08-02.

- A statement of aquatic resource goals and objectives for each service area, including a description of the general amounts, types and locations of aquatic resources the ILF program will seek to provide;
- A prioritization strategy for selecting and implementing compensatory mitigation activities;
- An explanation of how any preservation objectives addressed in the prioritization strategy satisfy the criteria for use of preservation in accordance with 33 C.F.R. § 332.3(h);
- A description of any public and private stakeholder involvement in plan development and implementation, including, where appropriate, coordination with federal, state, tribal and local aquatic resource management and regulatory authorities;
- A description of the long-term protection and management strategies for activities to be conducted by the ILF Sponsor;
- A strategy for periodic evaluation and reporting on the progress of the ILF program in achieving the goals and objectives of the program, including a process for revising the planning framework as necessary.

Following IRT review of this material, additional information may be requested for evaluating the proposal.

Checklist
Prospectus for In-Lieu Fee Programs
March, 2011

Please refer to the Cover Sheet dated March, 2011 for information and instructions related to the submission requirements for an ILF proposal.¹ Please provide the following information and a copy of this checklist with the submittal of a Prospectus:

- Proposed ILF Name - Use a short name based on a geographic feature or ILF Sponsor's name and include "In-Lieu Fee Program" in the name;²
- ILF contacts - Include the name, address, phone, fax, and email for: ILF Sponsor, Property Owner, Consultants, etc.;
- Color aerial and on-site photographs that reflect current conditions of the proposed ILF mitigation project site(s) and surrounding properties;
- Description of how the ILF program will be established and operated, including the proposed ownership arrangements and long-term management strategy for the ILF mitigation project site(s); include description of phases, boundaries, target habitat/species, and the number of credits associated with each ILF mitigation project site;
- Qualifications of the ILF Sponsor to successfully complete the type(s) of ILF mitigation project(s) proposed, including information describing any similar activities by the ILF Sponsor;
- Preliminary jurisdictional determination of on-site wetlands and other waters of the U.S for review and USACE approval;
- Explanation of the general need for and technical feasibility of the ILF program and basis for such determination;
- A map depicting other conserved lands in the service area of the proposed ILF program;

¹ Additional information may be requested to deem the Prospectus complete.

² A name change may be requested if the proposed ILF name is already being used.

- ILF Program Objectives/Conceptual Plan describing the objectives of the ILF program and activities and methods for establishing, restoring, rehabilitating and/or preserving wetlands and other waters of the U.S. and habitat for federal and state listed species at each ILF mitigation project site. Include maps detailing the anticipated location, acreages, and credits of wetlands and other waters of the U.S. within the proposed ILF mitigation project site(s). The plan should detail anticipated increases in functions and services of existing aquatic resources and their corresponding effect within the watershed (i.e., habitat diversity and connectivity, floodplain management, or other landscape scale functions). Describe ecological suitability of the site to achieve the objectives of the ILF program (i.e., watershed/hydrology analysis, soils, topography, compatibility with adjacent land uses, watershed management plans). If restoration is to occur at a proposed ILF mitigation project site, the plan should include historic aerial photographs and/or historic topographic maps, if available. Include proposed Performance Standards and monitoring methods for assessing how the objectives of the ILF program will be met;

- Explain how the proposed ILF mitigation project site(s) would contribute to connectivity and ecosystem function. Also discuss potential conflicts and compatibility with any conservation plans, conceptual area plans, or other land use plans, policies, or regulations;

- Has the proposed ILF mitigation project site(s) been:
 - Used as mitigation for a previous project(s);
 - Already designated or dedicated for passive park or open space use, where that use is generally compatible with sustaining biological values;
 - Designated for purposes which are inconsistent with habitat preservation (i.e., lands purchased for roads, landfills, etc.); and
 - Acquired by a public entity (e.g., with State Bond Act funds) or provided to a jurisdiction for park or natural open space purposes;

- Any other restrictions on the proposed ILF mitigation project site(s);

- Real Estate Records and Assurances:
 - Current (within one year of submittal) Preliminary Title Report indicating any easements or other encumbrances and a figure depicting all relevant property lines, easements, dedications, etc. on the proposed ILF mitigation project site(s). Note: any liens and easements on the proposed mitigation project sites that may affect a mitigation project's viability will need to be resolved before an ILF program can be approved. Provide a property assessment that summarizes and explains each recorded or unrecorded lien or encumbrance on, or interest in, the proposed ILF mitigation project site(s), including, without limitation, each exception listed in the Preliminary Title Report and describing the manner in which each encumbrance may affect the mitigation project's operation or habitat services;

- Assurance of sufficient water rights to support the long-term sustainability of the mitigation project;
 - Provide details including ownership information on interest of surface and sub-surface mineral rights;
 - Identification and description of access to the proposed mitigation project site(s); and
 - An affirmative statement that a conservation easement covering the proposed ILF mitigation project site(s) in perpetuity or fee title transfer of the proposed mitigation project site(s) to a specified and approved grantee will occur as part of the ILF program establishment. Include number of acres of the proposed ILF mitigation project site(s), excluding any easement areas that allow uses incompatible with conservation.
- Details regarding public funding received (if applicable) for restoration, acquisition or other purposes on all or a portion of the proposed ILF mitigation project site(s) (e.g., funding source, amount received, purpose, # of acres affected by each purpose, etc.);
- ILF mitigation project site conditions description. This should include a detailed description of:
- site conditions of at least one proposed ILF mitigation project site;
 - habitats and species known or potentially present;
 - description and acreage of existing wetlands and other waters of the U.S.;
 - hydrology;
 - methods for establishing, restoring, rehabilitating, and/or preserving wetlands and other waters of the U.S., and habitat for federal, and state listed species; and
 - site history, including past and present land uses, surrounding land uses and zoning along with the anticipated future development in the area;
- Compensation Planning Framework to include:
- Accurate current map of the proposed geographic service area of the ILF program on a 7.5-minute USGS map showing boundaries of the ILF service area and boundaries of any known areas where ILF mitigation project site(s) may be implemented;
 - A watershed-based rationale for the delineation of each service area;

- A description of the threats to aquatic resources in the service area(s), including how the ILF program will help offset impacts resulting from those threats;
 - An analysis of historic aquatic resource loss in the service area(s);
 - An analysis of current aquatic resource conditions in the service area(s), supported by an appropriate level of field documentation;
 - A statement of aquatic resource goals and objectives for each service area, including a description of the general amounts, types and locations of aquatic resources the program will seek to provide;
 - A prioritization strategy for selecting and implementing compensatory mitigation activities;
 - An explanation of how any preservation objectives addressed in the prioritization strategy satisfy the criteria for use of preservation in accordance with 33 C.F.R. § 332.3(h);
 - A description of any public and private stakeholder involvement in plan development and implementation, including, where appropriate, coordination with federal, state, tribal and local aquatic resource management and regulatory authorities;
 - A description of the long-term protection and management strategies for activities to be conducted by the ILF Sponsor;
 - A strategy for periodic evaluation and reporting on the progress of the ILF program in achieving the goals and objectives of the program, including a process for revising the planning framework as necessary; and
 - Any other information deemed necessary for effective compensation planning by the IRT.
- Description of the ILF program account, including:
- Establishment of the account at a financial institution that is a member of the Federal Deposit Insurance Corporation. All interests and earnings accruing to the program account must remain in that account for use by the ILF program for the purposes of providing compensatory mitigation;
 - A statement in the program account that the USACE has the authority to direct those funds to alternative compensatory mitigation projects in cases where the ILF Sponsor does not provide compensatory mitigation in accordance with the specified time frame;
 - A description of annual reporting requirements;
 - A statement that the USACE has the authority to audit all program accounts at any time.

- Specification of the initial allocation of advance credits and method of determination of future advance credits, and a draft fee schedule for these credits, by service area, including an explanation of the basis for the allocation and draft fee schedule;
- Methodology for determining future project-specific credits and fees.