



## Getting Started on an ILF Program: Perspective from a Non-Profit Sponsor

# The Decision Is Not Easy!

## Very Vanilla Fruit Salad

RATING ★★★★★

● Low Calorie ● Low Fat ● Low Sodium

Refreshing fruit salad is welcome anytime -- serve at brunch, at dessert or snack time, or bring to a potluck.

Makes 10 (1/2-cup) servings.

Prep Time: 15 minutes

Refrigerate: 1 hour



### INGREDIENTS

2 cups strawberries, halved  
1 cup blueberries  
1 cup fresh or canned pineapple chunks  
1 cup cantaloupe chunks  
2 kiwis, peeled and sliced  
1/4 cup confectioners' sugar  
2 teaspoons McCormick® Pure Vanilla Extract

### DIRECTIONS

1. Mix fruit, confectioners' sugar and vanilla in large bowl. Cover.
2. Refrigerate 1 hour or until ready to serve.

### TIPS

**Raspberry Fruit Salad:** Prepare as directed. Use McCormick® Raspberry Extract in place of the vanilla.

<http://fruitsaladrecipephotos.blogspot.com/2014/06/simple-fruit-salad-recipe-fruit-salad.html>

# ELI has Great Resources

## Establishing In-Lieu Fee Mitigation Programs: Identifying Opportunities and Overcoming Challenges

Rebecca Kihlsinger, Patrick Woolsey, & Lynsey Gaudioso  
National Wetlands Newsletter, 2014, Vol. 36, No. 4

<http://www.wetlandsnewsletter.org/articles/establishing-lieu-fee-mitigation-programs-identifying-opportunities-and-overcoming-challeng>

Wetland and Stream Mitigation:  
A Handbook for Land Trusts,  
Environmental Law Institute, (2012)  
[http://www.eli.org/sites/default/files/eli-pubs/d22\\_04.pdf](http://www.eli.org/sites/default/files/eli-pubs/d22_04.pdf)

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### Establishing In-Lieu Fee Mitigation Programs: Identifying Opportunities and Overcoming Challenges

Following the 2008 introduction of federal rules governing the operation of wetland compensatory mitigation programs, existing and new in-lieu fee (ILF) mitigation programs were compelled to comply with a series of new requirements. The Environmental Law Institute (ELI) asked ILF program sponsors across the country to identify the most pressing challenges associated with developing and implementing ILF programs under the new regulations. This article reviews the findings and identifies steps that may be helpful in the process of establishing and implementing ILF programs in the future.

By REBECCA KIHLSINGER, PATRICK WOOLSEY, AND LYNSEY GAUDIOSO

**I**n-lieu fee (ILF) programs exist, establish, enhance, and/or restore aquatic resources through funds paid by permittees to satisfy compensatory mitigation requirements. In selling compensatory mitigation credits to permittees, the obligation to provide compensation is transferred to the ILF program sponsor. Federal regulations, finalized in 2008, establish standards for the operation of ILF programs.<sup>1</sup> The regulations require ILF programs to use a "standardized approach" in selecting project locations, develop measurable ecological performance standards, and conduct regular monitoring for all types of compensation. They also specify the components of a complete compensatory mitigation plan, including assurance of long-term protection of compensation sites, financial assurance, and identification of the parties responsible for specific project tasks.

To identify the issues that pose the greatest challenges in developing ILF instruments under the new regulations, ELI evaluated ILF practitioners, program sponsors, and regulators at the state and federal levels. We asked respondents to identify the types of program concerns from among a detailed list of ILF program elements, processes, and other considerations. Participants included ILF practitioners, program sponsors, and regulators affiliated with a diverse range of state and federal programs. Based on the results of the evaluation, we identified the top 10 challenges common to many program sponsors in the use of ILF programs. Responses from both sponsors and regulators provide a range of perspectives on the importance of meeting key regulatory requirements, plus, while the handbook for developing advance credit fees.

To help ILF programs address these top 10 challenges, ELI developed a series of webinars designed to share insights and best practices among practitioners and regulators from different states' ILF program sponsors, federal and state regulators, and others shared their experiences to aid other sponsors and regulators across the country on the following topics:

**ESTABLISHING IN-LIEU FEE MITIGATION PROGRAMS: TOP 10 CHALLENGES**

**1. Determining Advance Credits**  
The Compensatory Mitigation Regulations require that ILF program sponsors specify a limited number of advance credits that can be used to satisfy the program before specific stream and mitigation plan approval. Programs must come by land acquisition and initial physical and biological impairments by the final full project approval for the first advance credit in their service area to avoid a program. The number of advance credits that may be available to be sold by a program is based on the "compensation planning framework," the size of the service area, the resources available to the program, the sponsor's past project performance, and the financing needed for mitigation projects among other considerations. Some programs may require large numbers of advance credits (e.g., because when the program provides a type of compensation that no other party is capable or willing to undertake), others may not require any advance credits at all (e.g., Coastal Ministry Land Trust). In some



1. Wetland 2013 by-Lieu Fee Mitigation Training Webinar Series, available at [http://www.eli.org/sites/default/files/eli-pubs/d22\\_04.pdf](http://www.eli.org/sites/default/files/eli-pubs/d22_04.pdf).  
2. 40 C.F.R. 332.2 (2008).  
3. 40 C.F.R. 332.2 (2008).  
4. The compensation planning framework is a required component of the ILF program instrument that must specify the details of specific compensation projects and must support a standard approach to compensatory mitigation. 39 C.F.R. 332.2 (2008).

NATIONAL WETLANDS NEWSLETTERS

Wetland and Stream Mitigation:  
A Handbook for Land Trusts  
The Environmental Law Institute & Land Trust Alliance  
Funded by the U.S. Environmental Protection Agency



# Factors to Consider Before Getting Started

- Time Commitment
- Reputation and Public Perception
- Internal Capacity Required
  - Regulatory understanding, Legal expertise, Financial management, Accounting, Restoration ecology, Conservation planning
- This is NOT a revenue generating program
  - “Full Cost Accounting” and excess fund restrictions
- **Risk and Liability**

# Risk and Liability

- Ultimately you are guaranteeing to the IRT a 100% success rate
  - Corrective actions, financial assurances, default
- Required to find and initiate projects under a 3-year timeline
- Meet budgets
  - Feasibility analysis/Service Areas
  - Credit pricing – full cost accounting
- Balance credit ledger

# Why Would a Non-profit Organization Want to Sponsor an ILF Program?



# Why did TNC decide to Sponsor the Ohio ILF program?

- **Model**
  - Already sponsor ILF programs in Virginia and Maine
- **Capacity**
  - State, Regional, National Experts
  - Conservation by Design, Whole System Conservation
- **Pressing Need**
  - There is an average of 194,000 feet of stream and 314 acres of wetlands mitigated each year in Ohio.
  - Compensatory mitigation has seen ~60% failure.
  - When a project fails, there is a net loss of aquatic resources in Ohio.

# Challenges We Faced?

- **Decision to pursue Sponsorship was complicated and took a long time**
- **The approval process takes a long time**
  - **ILF Timeline x2, at least!**

Compensatory Mitigation Rule Timeline for ILF Program			
Approval			
Phase	Event	# of days	
Phase I	Optional Preliminary Review of Draft Prospectus	30	
	TNC Prepares and Submits Prospectus		
Phase II	Public Notice within 30 days of submittal	30	90
	30-day Public Comment Period	30	
	Corps provides TNC with an initial evaluation letter within 30 days of the end of public comment period	30	
TNC Considers Comments, Prepares and Submits Draft Instrument			
Phase III	Preliminary draft sent to Corps for review		
	Complete draft Instrument Submitted to IRT		
	30-day IRT comment period begins	30	90
	Corps discusses comments with IRT and seeks to resolve issues	60	
TNC Prepares Final Instrument			
Phase IV	TNC Submits Final Instrument to IRT		
	Corps notifies IRT members of intent to approve/deny Instrument	30	45
	IRT members may object to approval and initiate dispute resolution process	15	
Instrument Approved/Denied, or Dispute Resolution Process Initiated			



# Challenges We Faced?

- **Feasibility Analysis / Service Area Size**
- **Setting the Price**
  - **No Cost Accounting/Release from Liability/Balancing Budgets**
  - **Mitigation Ratios**
- **Severed Mineral Rights**
- **Research for Compensation Planning Framework (230 pages)**

# For More Information



[www.nature.org/ohiomitigationprogram](http://www.nature.org/ohiomitigationprogram)

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