

# In-Lieu Fee Programs

## *Program Establishment and Operation*



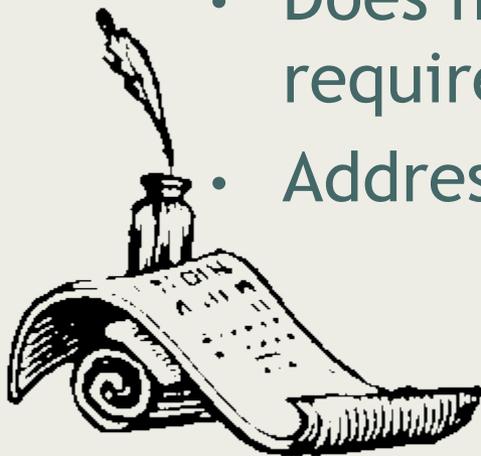
Presented by  
Suzanne Tomassi, Senior Biologist  
The Watershed Company

# Regulatory Background

Discharge to Waters of the U.S.  
require Corps permit under Section  
404 of the Clean Water Act

**Final Rule 33CFR Part 332, April 10, 2008**

- Consolidates existing regulations
- Does not change WHEN mitigation is required
- Addresses all compensation mechanisms



# ILF Compensatory Mitigation

**Differs from traditional permittee-responsible mitigation:**

- Not applicant's responsibility
- Collects and pools fees
- Takes a watershed approach
- Draws from a rosters of prioritized projects

**Differs from mitigation banking:**

- Sites may not be constructed prior to impacts
- Mitigation project may occur throughout a watershed

**Still requires *mitigation sequencing***

# Benefits to the Applicant

- Removes applicant's responsibility for mitigation
- Streamlines permitting process
- More predictability



# Benefits to the Sponsor

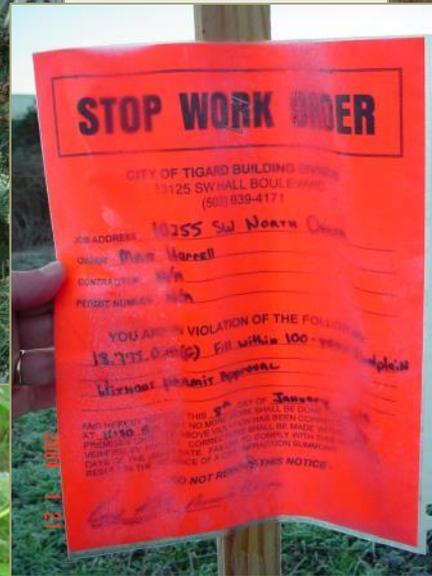
- Streamlines permitting
- Enables accomplishment of bigger, higher quality projects



# Environmental Benefits

- **More organized approach**
  - Greater expertise in planning and implementation
  - Collaborative approval process
  - Pooled funds
- **Less risk**
  - Appropriate, prioritized sites
  - Better design and construction techniques
  - Guaranteed maintenance and monitoring
  - Perpetuity
- **Watershed approach**
  - Targets functions in greatest need
  - Utilizes existing studies, plans, and rosters

# (The importance of *in perpetuity*)



# The Players

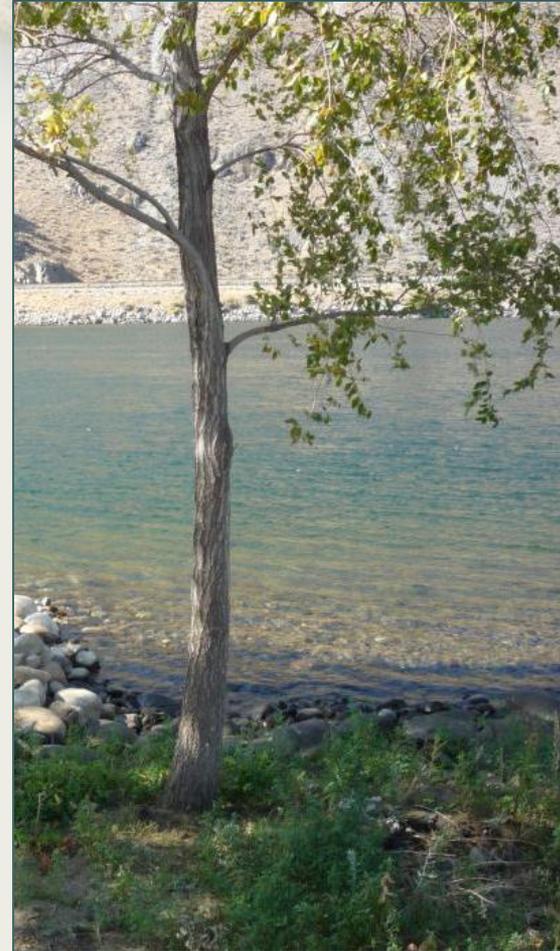
**Co-Chairs:** Corps, Ecology

**Interagency Review**

**Team (IRT):** Other stakeholders

**Sponsor:** Local government or other public agency, nonprofit

**Applicant:** Private or public



# Program Elements

**Prospectus**

**Instrument**

**Certification**

*By co-chairs and other signatories*



# Prospectus

1. Objectives
2. Establishment and operation procedures
3. Service area(s)
4. Need and feasibility
5. Ownership arrangement and long-term management strategy
6. Sponsor qualifications
7. Compensation Planning Framework
8. Description of program account

# Instrument

1. Detailed service area description
2. Detailed accounting procedures
3. Statement of Special Responsibility
4. Default and non-payment
5. Revenue
6. Revenue
7. Advanced
8. Credit
9. Mitigation
10. Force majeure

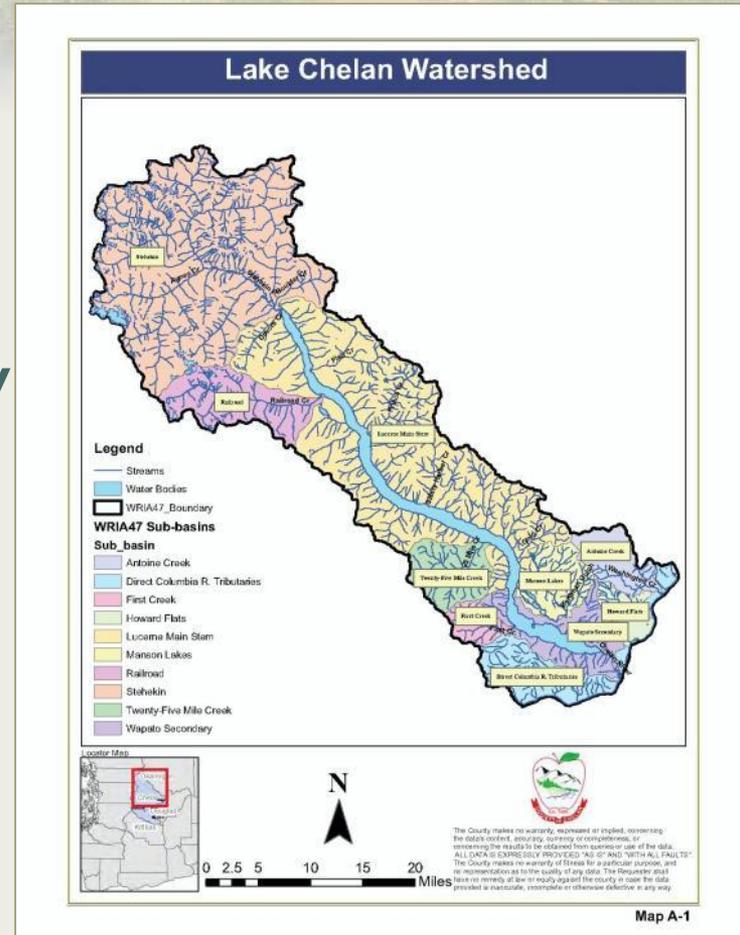
**Onerous: Definition**

burdensome; difficult; wearing; tiring

# Instrument elements

## Service Area(s)

- *Basis for choosing the area*
- *Scale - appropriately sized”*
- *Watershed, ecoregion, physiographic or geographic region*



# Instrument elements

## Detailed Accounting Procedures

- *Establishment of the program account*
- *Separately tracked for each mitigation project*

Exhibit 11 - Part 1

Project Name	HGM	Type	Acres of Treatment	Base Credits*			Risk Factor**	Earned Credits*			Total Function Credits / credits	Credits / Acre	Site Selection, Planning, Permitting & Design	Construction & Materials	Maintenance & Monitoring	Contingency	Conting %	Large Project Contractor Upcharge	Long-term M & M	MRP Admin	Total Project Budget	CPI Scaling Factor	2010 Adjusted (Using CPI)	Cost / "Universal Credit"
				Wq	Hy	Ha		Wq	Hy	Ha														
Project 1	Riverine	Enhancement	14.85	0	0	44.55	0.9	0	0	40.1	40.1	2.7	\$161,062	\$322,624	\$196,278	\$97,495	15%	\$64,525	\$13,345	\$64,996	\$890,325	100%	\$890,325	\$22,205
Project 2	Depressional	Enhancement	1.36	0	0	5.52	0.9	0	0	5.0	5.0	3.6	\$85,253	\$86,860	\$75,920	\$49,607	20%	\$17,372	\$2,108	\$24,803	\$341,923	100%	\$341,923	\$68,825
Project 3	Riverine	Enhancement	5.85	5.85	0	11.7	0.9	5.265	0	10.5	15.8	2.7	\$370,852	\$265,642	\$44,944			\$59,126		\$770,566	100%	\$770,566	\$48,785	
Project 4	Depressional	Enhancement	6.14	5.53	11.05	11.05	0.9	5.0	9.9	9.9	24.9	4.1	\$72,079	\$123,395	\$37,509	\$46,597	20%	\$24,679	\$12,280	\$23,296	\$339,837	118%	\$401,008	\$16,126
			<b>28.22</b>					<b>16.2</b>	<b>8.3</b>	<b>65.3</b>	<b>85.7</b>													\$2,453,821

\*Acre-point calculations subject to change as the tool is revised

\*\* Risk Factor values are policy-based.

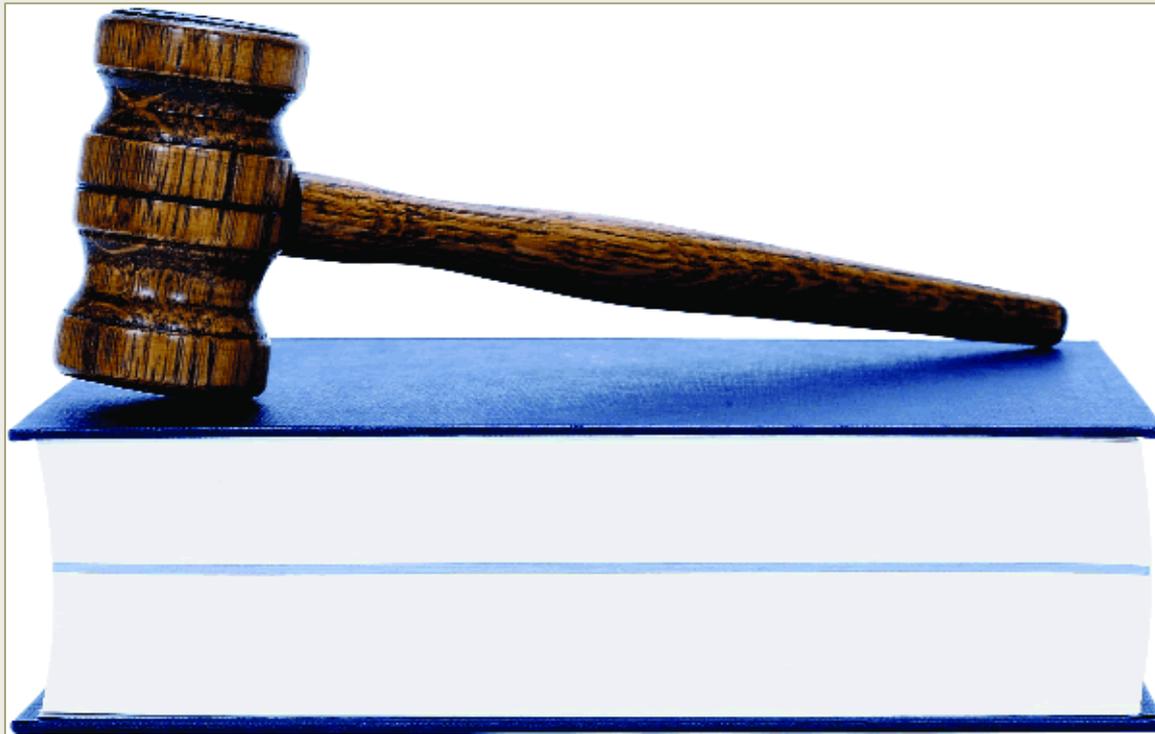
Weighted Average cost per credit **\$29,041**  
(Subject to change based on further analysis before first credit sale)

### PRESERVATION CREDITS

Project Name	Acres Preserved	Preservation Credits	Land Cost Surcharge	Cost / Preservation Credit
Project 1	18.67	4.2	\$96,945	\$23,083
Project 2	3.9	0.6625	\$242,296	\$355,012
Project 3	9	1.1	\$344,761	\$313,419
Project 4	NA			

# Instrument elements

## Statement of Sponsor's Legal Responsibility



# Instrument elements

## Default and Closure Provisions:

*Sponsor fails to provide required mitigation*

- *Performance standards not met*
- *Monitoring reports not submitted*
- *Report ledger not maintained*
- *Credit transactions not reported*
- *Long-term management funding report not submitted*
- *Missed 3<sup>rd</sup>-growing-season deadline*

# Instrument elements

## Reporting



1. *Annual program ledger report*
2. *Monitoring reports*
3. *Financial assurances report*
4. *Fee ledgers*
5. *Program performance report*

# Instrument elements

## Compensation Planning Framework

### *From the Prospectus:*

- *watershed approach*
- *description of aquatic resources in the service area(s)*
- *resources needs in service area(s)*
- *receiving sites and rosters*
- **advance credits**
- *mitigation details*



# Instrument elements

## Advance Credits and Release Schedule

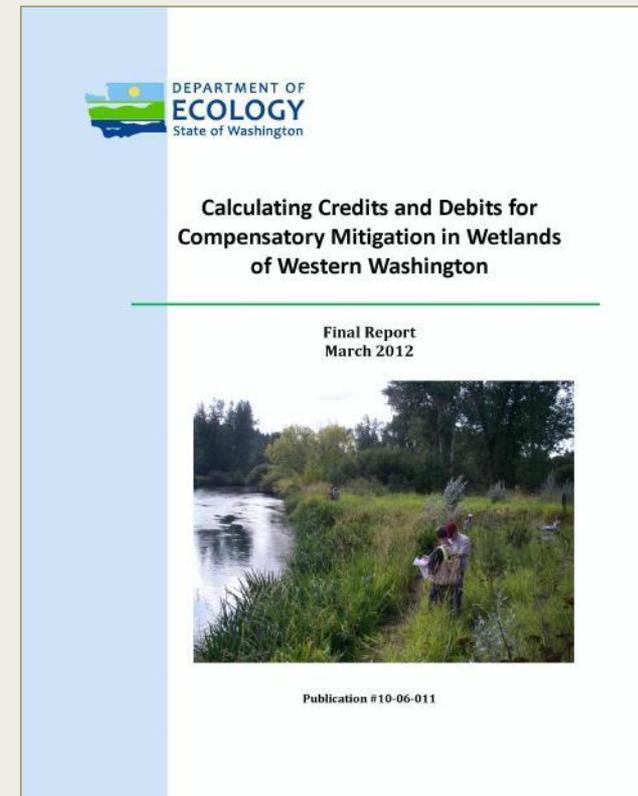
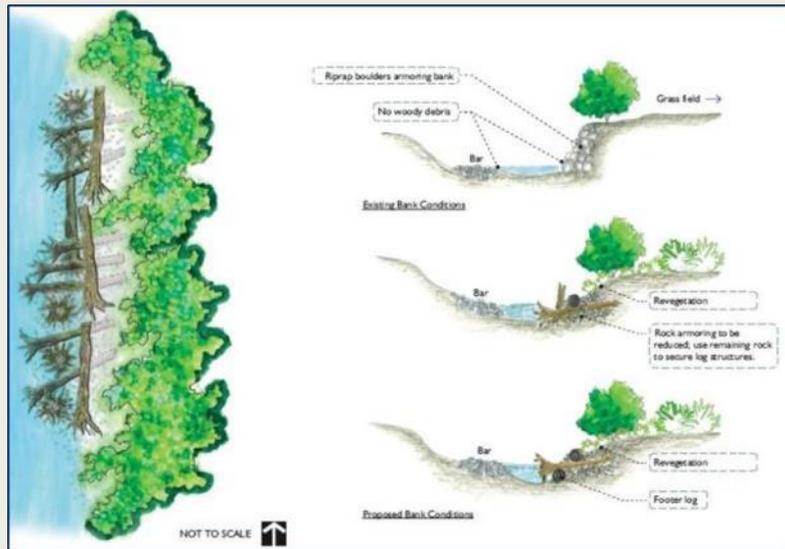
Lake, Shoreline, and Riparian Buffer Mitigation Type and Amount	Linear Credits		Area Credits	
Shoreline Riparian Enhancement ( $\leq 25'$ from OHWM)	50,000		N/A	
Riparian Enhancement ( $> 25'$ from OHWM)	N/A		50,000	
Other (fish passage, upper tributary restoration)			200,000	
<b>Total</b>	<b>50,000</b>		<b>250,000</b>	
Wetland Mitigation Type and Amount	Water Quality Credits	Hydrologic Credits	Habitat Credits	Total
Wetland Enhancement and Creation	20	20	20	60

Project Milestone	Portion of Credit Released	Cumulative Portion of Fulfillment
Installation	1/6	1/6
Year 1 performance standards achieved	1/6	1/3
Year 3 performance standards achieved	1/6	1/2
Year 5 performance standards achieved	1/6	2/3
Year 7 performance standards (if needed) achieved	1/6	5/6
Year 10 performance standards (if needed) achieved and transition to long-term stewardship (IRT sign-off on achievement of performance standards)	1/6	Credit fulfilled

# Instrument elements

## Credit and Debit Determination Methodologies

*DEBIT = unit of impact*  
*CREDIT = unit of lift*



# Instrument elements

## Mitigation Fees



- Land fee

*Covers land costs for mitigation areas*

- Credit fee

*True cost of mitigation: site selection, permitting, design, construction, short-term maintenance and monitoring, long-term stewardship, contingency funds*

# Instrument elements

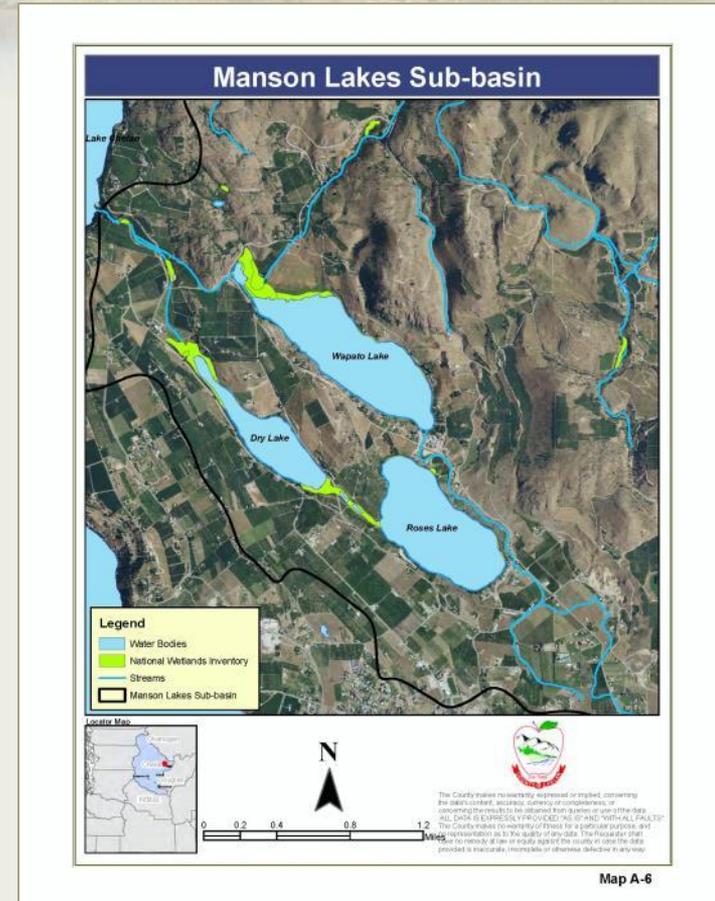
## *Force Majeure*

Program may fail to meet requirements and *not* be in default in cases of *force majeure*.



# Exhibits

- Service area map(s)
- Roster sites
- Assessment methodology
- Pricing analysis
- Ledgers
- Form/agreement templates



# Timeline

Optional preliminary review of Prospectus

30-day review

Submit Prospectus

30 to notify of completeness

JPN within 30 days of completeness determination

30-day public comment period

30 more days for DE to return with comments

Submit Draft Instrument to IRT

90 days for IRT and DE comments

Submit revised Final Instrument

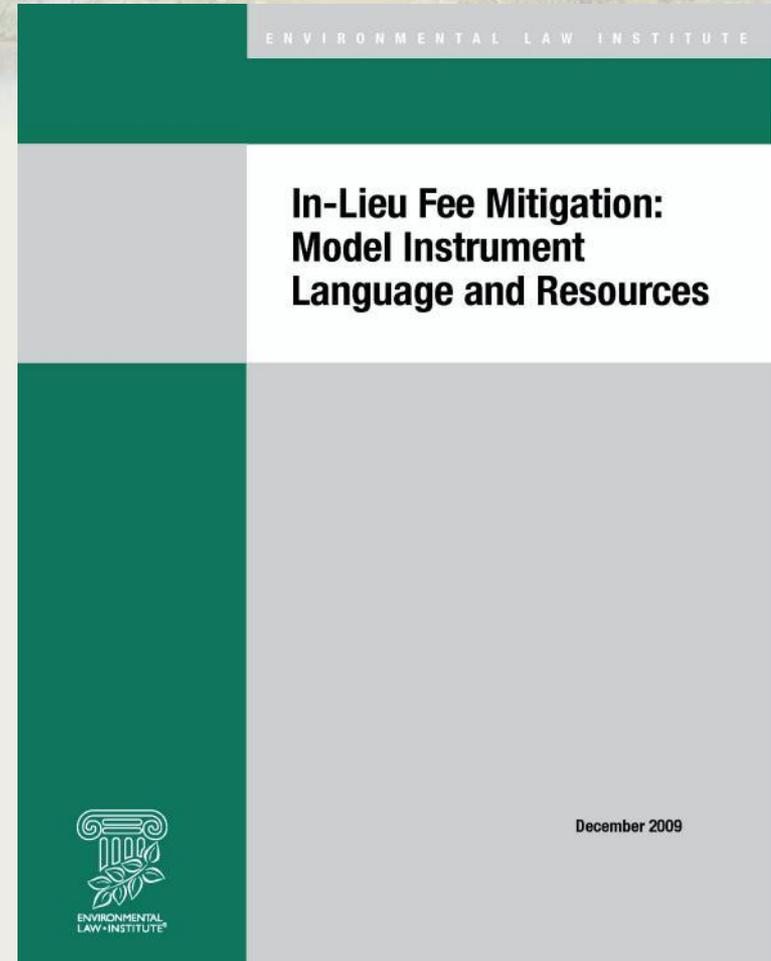
30 days for DE to approve/not approve,

15 days for IRT to object to approval

Instrument approved or dispute resolution initiated

# Guidance

1. In-Lieu Fee Mitigation: Model Instrument Language and Resources - Environmental Law Institute
2. In-Lieu Fee Program Instrument Template - US Army Corps of Engineers, Seattle



# Questions? Comments?

