The goal of the WV ILF program is to achieve, through compensatory mitigation, no net loss of existing stream and wetland acreage and functions in West Virginia through effective restoration, enhancement, replacement, and preservation of aquatic resources. The program utilizes watershed and landscape based planning to identify and assess potential mitigation opportunities that maximize the ecological benefits of aquatic resources within the same geographic service areas as the impacts. By consolidating the mitigation requirements stemming from multiple impacts, large scale watershed efforts can be focused within priority watersheds.  

APRIL 2014
West Virginia Department of Environmental Protection
Division of Water and Waste Management
In Lieu Fee Program
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Charleston, WV 25304

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Telephone: 304-926-0495

http://www.dep.wv.gov/WWE/Programs/Pages/In-Lieu-Fee.aspx
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I) INTRODUCTION

The West Virginia In Lieu Fee Program (WV ILF) utilizes a grants process to fund construction of mitigation projects to obtain stream and wetland functional credits. The Program model accomplishes mitigation project delivery in four Phases: Phase 1 – Site Acquisition; Phase 2 – Pre-Construction; Phase 3 – Construction; Phase 4 – Monitoring & Maintenance.

Project Development

- Qualified Applicant submits a Site Evaluation Form (SEF) to WV ILF for review.
- WVDEP ILF Site Selection Committee Review. Possible Site Visit.
- Invitation to Applicant to Submit Professional Qualifications with References.
- Qualified Applicants of approved SEF receive a Grant ($5K) to develop/perform:
  - Conceptual Mitigation Plan (CMP)
  - Preliminary WV SWVM (V2.1)
  - Planning Budget
  - Property Owner Letter of Intent
  - IRT Project Presentation
  - IRT Site Visit
- WV ILF applies for U.S Army Corps of Engineers (CORP) Phase 1 & 2 Notice to Proceed.
- WV ILF & Sub-grantee develop:
  - Detailed work plan for Phase 1 & 2
  - Grant Budget (time-plus-expense)
  - WV ILF prepares Grant Agreement for signature by Sub-grantee and WV ILF.
- WV ILF submits Final Mitigation Plan (FMP) to CORP for Public Notice – Comments – Revisions.
- WV ILF applies to CORP for Phase 3 & 4 Notice to Proceed.
- WV ILF & Sub-grantee develop:
  - Detailed plan of work for Phase 3 Construction.
  - Detailed plan of work for Phase 4 Monitoring & Maintenance of the Project.
  - Grant Budget (time-plus-expense)
  - WV ILF prepares Grant Agreement for signature by Applicant and WV ILF.
- Sub-grantee bids, awards, and manages Project to completion.
- Sub-grantee monitors and maintains Project to Closeout. (7 to 10 years)
- WV ILF applies to CORP for Project Closeout.
- WV ILF obtains credit release in RIBITS to satisfy debits.
II) ELIGIBLE APPLICANTS

The applicant must demonstrate that they have sufficient capacity and expertise to perform the required work. The project team must have the necessary expertise and capacity to carry out pre-implementation planning, restoration construction, follow-up monitoring and remediation of project problems. The project team will be required to demonstrate and provide at a minimum:

- Photographs and reports of similar completed wetland and natural channel design projects;
- References for similar past projects; and
- Experienced and qualified person(s) assigned to work on the project with 5 years of relevant project experience and Rosgen Level IV certification or completion of comparable training; or a MS in Fluvial Geomorphology; or 10 years relevant project experience without Rosgen Level IV or equivalent certification or MS in Fluvial Geomorphology

III) PROPOSING A PROJECT

Applicants submit a Site Evaluation Form (SEF) for a proposed stream and/or wetland mitigation project in targeted watersheds.

The WVDEP ILF Site Selection Committee recommends proposed projects via review of the SEF utilizing the following 6 site selection criteria from the approved West Virginia In-Lieu Fee Mitigation Instrument: Appendix I: Compensation Planning Framework, Page 31, Section 6:

1. **Proximity of the proposed mitigation site to impact site:**
   The WV ILF will provide compensatory mitigation for permitted impacts within the same 8-digit HUC in which the impacts occur, or, with approval from the District Engineer upon consultation with the IRT, within the secondary geographic service area. In general, the secondary geographic service areas are defined as each 6-digit HUC. Exceptions may be made for impacts to main stem Ohio River, Kanawha River, Monongahela River or other large non-wadeable systems where the West Virginia Stream and Wetland Valuation Metric (WV SWVM) evaluation methodology is not applicable. Other exceptions may be made as recommended by the IRT and approved by the Chair.
2. **Likelihood of success:**
   Funded projects must demonstrate a high likelihood of success through a sound stream and wetland restoration, creation and/or enhancement concept. The water source for the site should be reliable. Threats from invasive species or vandalism should be low or manageable.

   The project will be evaluated for its ability to result in successful and sustainable net gain of stream and wetland acreage and/or function, with limited maintenance. Restoration projects will receive priority due to the higher lift in function that can be achieved, and the higher success rate of these types of projects.

3. **Multiple objectives:**
   The project will be evaluated for its ability to address multiple functions and services such as improvement of fish and wildlife habitat, support for rare species, flood attenuation, water quality improvement, and recreation or education values. The project should target native plant community diversity and natural processes. Greater functional gains will be given more preference.

4. **Supports regional conservation initiatives and is compatible with the surrounding landscape:**
   Projects should be located where they pose minimal conflicts with adjacent land uses and where they meet regional conservation priorities, address limiting factors identified in watershed assessments, provide habitat corridors, and/or add to the effectiveness of nearby protected natural areas.
5. **Long-term management:**
   Suitable projects must have a plan for long-term management and stewardship. Long-term stewardship could be provided by state/local government, a non-profit conservation organization, or other suitable constituency.

6. **Capacity of the applicant and the project team:**
   The applicant must demonstrate that they have sufficient capacity and expertise to manage the project. The project team must have the necessary expertise and capacity to carry out pre-implementation planning, restoration construction, follow-up monitoring and remediation of project problems.

### IV) CONCEPTUAL MITIGATION PLAN GRANT

Applicants of selected projects will be Awarded a **Conceptual Mitigation Plan Grant (CMP Grant)**. The successful applicant will deliver the following:

- Preliminary baseline assessment and potential functional lift of aquatic resources (i.e. SWVM)
- Planning Budget
- Conceptual Mitigation Plan – first 6 of the 12 elements of a Final Mitigation Plan as per the “2008 Rule”. (See Attachment 1)
- Project Presentation to the Interagency Review Team (IRT).
- Initial IRT Site Visit.

![Conceptual Mitigation Plan Grant diagram](attachment:1)
V) INTERAGENCY REVIEW TEAM (IRT) PROJECT APPROVAL

The IRT meets on a quarterly basis to review the WV ILF’s proposed Conceptual Mitigation Plans and Budgets for comment by the IRT and approval by the IRT Chair. The goal of the review process is to gain a Notice to Proceed from the CORP for the sponsored project.
VI) PROJECT PHASE 1 & 2 GRANT AGREEMENTS

PRELIMINARY DISCUSSION

This discussion is held to better understand the sub-grantee’s proposed work plan for mitigation credits. An example agreement will be provided to the sub-grantee, as well as any project specific information that is available. Discussions are held for what is expected of the sub-grantee, the criteria to be used, what the WV ILF will provide, and the format and preparation of the work plan. After this discussion, the sub-grantee is provided a draft plan of work for comments. The plan of work addresses the items of work as presented in the conceptual mitigation plan and planning budget. Following any needed revisions, the final plan of work and budget are incorporated into the grant agreement.

GRANT BUDGET PREPARATION

In general, the grant budget format is a listing of the various milestone activities with sub-tasks which are required for the completion of various portions of the work. This listing shall include the estimated hours for each classification of personnel expected to expend time on each task. Hours shall be totaled per each task and per each classification. The grant budget and detail estimated cost must be submitted in accordance with the criteria outlined herein:

- Unless otherwise generally specified, the method of payment for the grant shall be presented as a cost plus fixed fee (Direct Wage Expense x multiplier), subject to the WV ILF’s approval.

- All costs related to the salaries of employees for time directly chargeable to the project are to be shown as an hourly rate. No rate shall exceed the maximum allowable rate as determined by WV ILF.

- Hourly labor rates per classification based on the Direct Wage Expense shall be provided. Computation for hourly rates per classification must be shown, if utilized. The rates shall be certified by an officer of the company. Any variance from the submitted rates must include an explanation and justification. (i.e., anticipated wage increases hazardous duty, etc.)

- The grant budget is to be based upon the sub-grantee’s base salaries plus overhead, applied on a percentage basis to the base salaries. The overhead percentage will be a composite rate to include payroll burden. All grant budget costs shall be completely documented with calculation of units, unit rates, etc. No lump sum amounts are to be included.
• For profit companies have a maximum allowable profit of 15% of the DWE plus overhead 
\[(\text{DWE} + \text{overhead}) \times (15\%) = \text{billing rate}.\]

• The proposed overhead rate shall not exceed the maximums as established by WV ILF. The 
current maximums are 160% for overhead.

• Subcontract costs such as boring or rental equipment used in fulfilling the terms of the 
contract shall be acquired on a bid basis and generally requires a minimum of three (3) bids. Copies 
of all bids or quotes shall be retained for an audit review. Estimates may be used for grant budget 
purposes.

• All subconsultants must be listed in the grant budget and are subject to the approval of 
WV ILF.

• The sub-grantee may change subconsultants following negotiations; however, no increase 
in the contract cost is permitted. Written approval must be obtained prior to engaging any 
subconsultant not previously presented in the original proposal or Letter of Interest.

• Subconsultant(s) costs used in fulfilling the terms of the contract must include all costs and 
show all supporting data using the same criteria as required of the sub-grantee.

• No portion of the contractual agreement between the sub-grantee and any sub-consultant is 
to be submitted nor included in the sub-grantee’s proposal presented to WV ILF.

• The sub-grantee cannot claim any fee on any of the work performed by the subconsultants 
or subcontractors. However, a maximum administration charge of 15% is allowable for all phases 
of the project with the exception of the construction phase (phase 3) of the project or construction 
related to maintenance within the monitoring phase (phase 4) of the project.

• The subconsultant’s fee proposal as well as any estimated subcontractor’s costs shall be 
included in a separate section of the sub-grantee’s grant budget.

• If the sub-grantee is requesting an overhead rate greater than 160%, a copy of the sub-
grantee’s and subconsultant’s most recent audited overhead rate shall be submitted with each 
proposal.

• All budget modifications shall be approved by WV ILF.

Cost for travel and subsistence shall generally be limited to that allowed by the U.S. General 
Services Administration as follows:

• Maximum meal allowance will be that as set forth by the U.S. General Services 
Administration per diem rates at the time of travel.
• Maximum mileage allowance for personal transportation type vehicles will be that as set forth by the U.S. General Services Administration per diem rates at the time of travel.

• Automobile rental costs will be allowed, if customary and reasonable. The most economical type car (compact or intermediate) is expected to be utilized.

• Other transportation costs such as toll bridge fees, turnpike toll fees, parking, etc., will be allowed, if customary and reasonable.

• Lodging costs will be allowed and will be expected to be at the least expensive lodging facility commensurate with location and satisfactory service and is not to exceed the U.S. General Services Administration per diem rates unless prior written approval of WV ILF is obtained.

• The above information shall also apply to subconsultants that are included in the sub-grantee’s budget submissions.

The WV ILF may, at its discretion, return the sub-grantee’s proposal, with comments, if the sub-grantee’s grant budget varies from the WV ILF’s independent estimate by more than 10% and request the consultant to re-evaluate the project and budget.

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<tr>
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<tr>
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</tr>
<tr>
<td>Technician, Surveying &amp; Mapping</td>
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**Phase 1 & 2 Deliverables**
• The phase I and II grant agreement will include the development of a Final Mitigation Plan (FMP) which will include
  
  • All of the items associated with the Conceptual Mitigation Plan found in section V.D.2.a
  
  • Maintenance plan. A description and schedule of maintenance requirements to ensure the continued viability of the resource once initial construction is completed.
  
  • Performance standards. Ecologically-based standards that will be used to determine whether the mitigation project is achieving its objectives.
  
  • Monitoring requirements. A description of parameters monitored to determine whether the mitigation project is on track to meet performance standards and if adaptive management is needed. A schedule for monitoring and reporting monitoring results to the CORP must be included.
  
  • Long-term management plan. A description of how the mitigation project will be managed after performance standards have been achieved to ensure the long-term sustainability of the resource, including long-term financing mechanisms and the party responsible for long-term management.
  
  • Adaptive management plan. A management strategy to address unforeseen changes in site conditions or other components of the mitigation project, including the party or parties responsible for implementing adaptive management measures.
  
  • Financial assurances. A description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the mitigation project will be successfully completed, in accordance with its performance standards.
  
• Submittal of FMP
  
  • WV ILF will submit the FMP to the IRT for public notice, comment and revisions. Once all of revisions have been made the sub-grantee will be notified to put the project out for bid.
  
• Construction bid
  
  • The sub-grantee will prepare all bid documents for review by WV ILF. The bid documents will cover all aspects of construction of the project.
  
  • The sub-grantee will bid out the project and award the contract. If the contract is not awarded to the lowest bidder the sub-grantee must provide justification.

VII) PROJECT PHASE 3 & 4 GRANT AGREEMENTS
• Phase 3
  ● Preliminary Discussion
    • Same as phase 1 and 2
  ● Budget Preparation
    • Same as phase 1 and 2
  ● Project management/Construction oversight
    • The sub-grantee will oversee the construction of the project with oversight by WV ILF. WV ILF will make periodic site visits during construction to ensure the project is being built as indicated in the FMP and is meeting budget and time schedules. Any change in schedules or budget must be approved by WV ILF prior to taking place.
  ● Project construction
    • Construction activities will be performed by the entity which was awarded the bid. All construction must follow the FMP with any field changes taking place being approved by both the sub-grantee and WV ILF prior to being implemented.
  ● Final inspection
    • A final inspection of ALL construction activities will take place by both the sub-grantee and WV ILF. A field meeting will be arranged between the WV ILF, sub-grantee and construction manager in order to perform a final walk through of the project prior to as-built surveys being conducted.
  ● As-Built Plans
    • As-built surveys and plans will be the responsibility of the sub-grantee with final approval by WV ILF prior to submittal.

• Phase 4
  ● Monitoring
    • The Project will be monitored for a period of time specified by the IRT in the Nationwide permit 27 approval.
    • Monitoring will consist of surveying and analyzing all aspects of the project with concerns to the success criteria as indicated in the approved FMP
  ● Reporting
    • A report will be generated annually and submitted to WV ILF no later than November 1 for review and comments. Once all comments have been
addressed the report will be submitted to the IRT. The annual monitoring report will be submitted for the period of time indicated in the approved FMP or until project release by the CORP.

- The report will outline the project’s condition as it relates to the success criteria indicated in the approved FMP.

  - Adaptive Management
  - If the mitigation project is found not to be meeting success criteria, the adaptive management plan will be followed as indicated in the approved FMP.

  - Maintenance
  - Maintenance will be performed as needed in areas where the project is found to not be meeting success criteria.
  - If maintenance is found to be unsuccessful in bringing the project back in compliance with the approved success criteria and it is determined that additional maintenance will not result in compliance then the project will be re-evaluated and amended as needed.
  - Any and all maintenance will be pre-approved by WV ILF and will require a grant agreement amendment in order to cover the costs of the proposed maintenance.

**VIII) PROJECT CLOSEOUT**

**Closure Provisions:**

Within ninety (90) days following the end of the monitoring period (7-10 years) specified in the mitigation plan for each project site, or following a written request by WV ILF upon satisfaction of the success criteria for a project site, as determined by the CORP and IRT, the CORP shall issue a written certification of satisfaction to the WV ILF.

Prior to closure of a mitigation project site, the CORP and IRT may perform a final compliance inspection to evaluate whether all success criteria have been achieved. Upon the determination by the CORP and IRT that:

1. All applicable success criteria have been achieved;
2. All released Credits for that mitigation project site have been debited;
3. A Long-Term Management Plan is in place;
4. The CORP has received a GIS shapefile or similar exhibit depicting the location and extent of the mitigation project;
5. A long-term steward has been secured and provided with a management endowment
6. The mitigation project site has complied with the terms of this instrument and the mitigation plan.

Once the mitigation project site closes, and the period of long-term ownership and preservation commences, WV ILF responsibility and liability for the mitigation project ceases.
West Virginia In Lieu Fee Conceptual Mitigation Plan Template

1. Introduction/Mitigation Objectives.
A brief description of the location, type of restoration work, resource type(s) and amount(s) that will be provided, the method of compensation (restoration, establishment, preservation etc.), stream and/or wetland credits to be generated and how the anticipated functions of the mitigation project will address watershed needs.

2. Site selection.
A description of the factors considered during the site selection process. This should include consideration of watershed needs, onsite alternatives where applicable, and practicability of accomplishing ecologically self-sustaining aquatic resource restoration, establishment, enhancement, and/or preservation at the mitigation project site.

A description of the legal arrangements and instrument including site ownership that will be used to ensure the long-term protection of the mitigation project site. (i.e. ILF land purchase, Conservation Easement with Government Agency as third party land steward, Conservation Easement with Non-Profit Organization as third party land steward, Deed Restriction placed on landowner’s property). Letter of Intent from landowner outlining their understanding of the project and commitment of the property.

4. Baseline information.
A description of the ecological characteristics of the proposed mitigation project site. This may include descriptions of historic and existing plant communities, historic and existing hydrology, soil conditions, a map showing the locations of the mitigation site(s) and the geographic coordinates for those site(s), and other characteristics appropriate to the type of resource proposed as compensation. The baseline information should include a delineation of waters of the United States on the proposed mitigation project site.

STREAMS – Provide a map delineating each stream and include the stream type (EPH, INT, PER) and linear feet. Also include a brief narrative discussing current impacts/quality of each stream. Run SWVM for baseline for primary or indicative stream channel. If additional SWVMs may be beneficial to calculate an accurate WV Stream and Wetland Valuation Metric (SWVM) prediction of potential stream and wetland credits, WV ILF may approve an additional number of assessment sites at $2000/SWVM from In-Lieu Fee Project Funds for pre-agreement cost.
reimbursement. Reimbursement for these assessments would be made after receiving a Notice to Proceed from the CORP and entering a Phase I and II Agreement with WV ILF.

WETLANDS: Provide a map delineating each wetland which includes the wetland type (PEM, PSS, PFO) and acreage. Also include a brief narrative discussing current impacts/quality of each wetland.

5. Determination of credits.
A description of the number of credits to be provided including a brief explanation of the rationale for this determination.

WETLANDS:
Use WV Stream and Wetland Valuation Metric (WV SWVM)

STREAMS:
Use WV Stream and Wetland Valuation Metric (WV SWVM)

6. Mitigation work plan.
Descriptions for the mitigation project, including: the geographic boundaries of the project; construction methods, timing, and sequence; source(s) of water; methods for establishing the desired plant community; plans to control invasive plant species; conceptual grading plan; conceptual planting plan, soil management; and erosion control measures. Include watershed size and riparian area plantings and show conservation easement boundaries.

Attachments:
1. Conceptual Mitigation Plan Site Map/Photographs
2. Preliminary SWVM
3. Planning Budget
4. Letter of Intent from Property Owner