



In-Lieu Fee Mitigation: Review of Program Instruments and Implementation Across the Country

ENVIRONMENTAL LAW INSTITUTE

INSTITUTE FOR BIODIVERSITY LAW
AND POLICY, STETSON UNIVERSITY
COLLEGE OF LAW

About ELI

eli.org

eli.org/wetlands-program

The screenshot shows the top navigation bar of the Environmental Law Institute (ELI) website. It includes a search bar, a search button, and links for 'ADVANCED SEARCH', 'MEMBERS', 'ENVIRONMENTAL LAW 101', 'RECOGNIZING EXCELLENCE', 'BLOG', and 'DONATE'. Below the navigation bar is a dark green banner with the ELI logo and the tagline 'ELI makes law work for people, places, and the planet'. A secondary navigation bar contains links for 'WHO WE ARE', 'EXPLORE OUR PROGRAMS', 'ACCESS OUR RESOURCES', 'ATTEND AN EVENT', and 'GET INVOLVED'. The main content area features a breadcrumb trail: 'You are here > Home > Explore Our Programs > Wetlands'. A left sidebar menu is titled 'Wetlands' and includes links for 'MAIN PROGRAM PAGE', 'CONFERENCES, TRAININGS, & SEMINARS', 'PUBLICATIONS', and 'CONTACT US'. The main heading is 'ELI's Wetlands Program'. The introductory text states: 'The Environmental Law Institute's Wetlands Program provides professionals and the public with timely, balanced information on wetlands law, policy, science, and management in order to prevent wetland losses and achieve an overall gain of wetlands across the United States.' A 'NEW!' announcement encourages joining the 'Wetlands and Waters' e-mail list. The 'Featured Areas of Expertise and Resources' section includes: 'Education and Outreach to promote the best in wetlands protection.'; 'National Wetlands Awards: The National Wetlands Awards honor people who have contributed in an extraordinary way, through science, education, land stewardship, land development, or program development, to the conservation of the nation's wetlands resources.'; 'National Wetlands Newsletter: The National Wetlands Newsletter was published for nearly 38 years, providing key information and analysis to people engaged in protection and management of wetlands, watersheds, floodplains, and coastal resources. ELI members can access the complete online archives, illustrating the progression of wetlands law and policy from 1978-2016.'; 'Convening Experts and Stakeholders to develop and identify model approaches:'; 'Wetlands Training, Seminars, and Workshops'; and 'Research and Policy Analysis on cutting edge issues.'; 'Clean Water Act Jurisdiction: ELI works to support protection for wetlands and waters no longer protected by the federal Clean Water Act in the wake of two pivotal Supreme Court decisions.'; and 'Compensatory Mitigation Research: ELI is the leading research institution to evaluate compensatory mitigation required to offset adverse impacts to wetlands. ELI has conducted multiple studies of all compensatory mitigation mechanisms, including mitigation banking, in-lieu fee mitigation, and permittee-responsible mitigation, and done foundational work on the magnitude of compensatory mitigation and new approaches to improve its effectiveness.'



Our Study

- Goals
 - Transfer of knowledge
 - Improved effectiveness
 - Improved protection and restoration
- Methods
 - Document Review
 - Program Instruments
 - Other relevant documents and appendices
 - Interviews
 - Phone interviews
 - 41 of 58 currently approved programs
- Funded by EPA Wetland Program Development Grant



Results

- Program Administration
 - Stakeholder participation
- Watershed Approach
- Service Areas
- Credits
- Fees
- Mitigation Projects
 - Project Approval
 - Project Prioritization
- Financial Assurances
- Project Monitoring
- Long-Term Management
- Data Management
- Audits

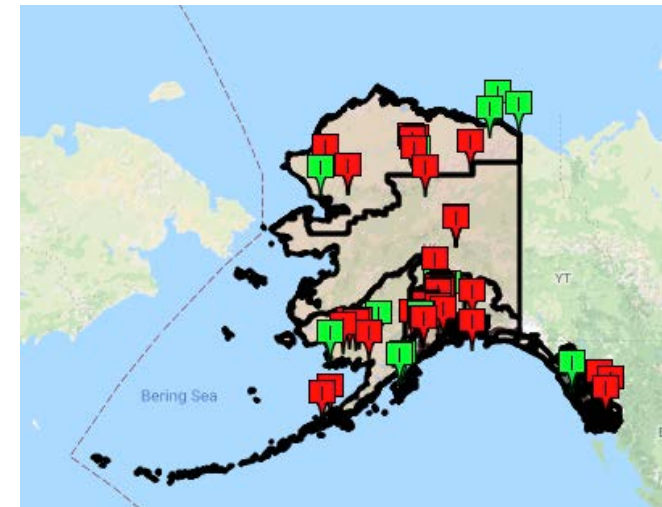
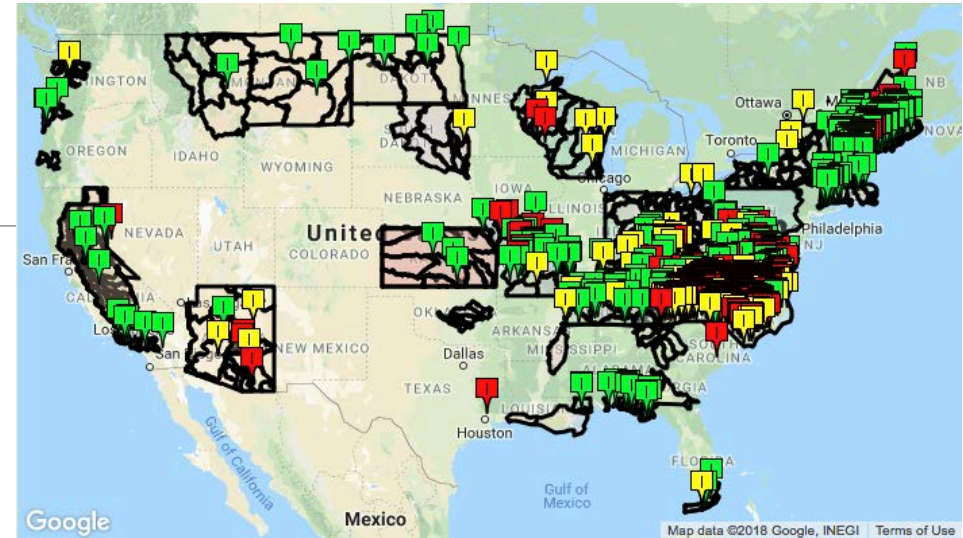


Results

- Program Administration
 - Stakeholder participation ✓
- Watershed Approach ✓
- Service Areas ✓
- Credits
- Fees
- Mitigation Projects
 - Project Approval
 - Project Prioritization ✓
- Financial Assurances
- Project Monitoring
- Long-Term Management
- Data Management
- Audits ✓

ILF Mitigation

- 58 currently approved programs (1 terminated)
 - 56% administered by non-profits
 - 44% by public agencies
- about 17% of compensatory mitigation annually



Program Name	Credits Offered
Arizona Game and Fish Department ILF Mitigation Program	Riparian, Wetland
California State Coastal Conservancy - Calleguas Creek ILF Program	Tidal influence aquatic resource and buffer, Non-tidal influence aquatic resource and buffer
Coachella Valley ILF Program	Wetland, Stream
Connecticut ILF Program	Emergent wetlands, Scrub-shrub wetlands, Forested wetlands, Open water, Submerged aquatic vegetation, Stream, Mudflat, Upland
Ducks Unlimited New York ILF Program	Wetland, Stream
Ducks Unlimited Vermont ILF Program	Wetland, Stream
Georgia-Alabama Land Trust ILF Program	Wetland, Stream
Great Land Trust	Wetland (Slope/Flat, Riverine, Tidal/Marine Palustrine, REV)
Everglades National Park	Wetland (Palustrine Emergent)
Hood Canal Coordinating Council	Wetlands (Habitat, Hydrology, Water Quality, Marine/Nearshore)
Kentucky Department of Fish and Wildlife Resources ILF Program	Wetland, Stream
Keys Restoration Fund ILF Program	Tidal wetlands (mangrove and salt marsh), Non-tidal (Freshwater) wetland, Seagrass

Credits

- Advance Credits
- Released Credits

- Types of Credits
- Number of Credits

Program	Fee Category	Pricing Per Unit
Coachella Valley ILF Program	Restoration/Rehabilitation	\$224,500.00/acre
	Enhancement	\$187,450.00/acre
	Buffer	\$144,900/acre
Connecticut ILF Program	Housatonic River	\$7.56
	Southwest Coastal	\$9.12
	Southcentral Coastal	\$7.45
	Connecticut River	\$10.11
	Thames River	\$10.80
Georgia-Alabama Land Trust ILF Program	Thames River North of I-95 and Southeast Coastal	\$7.97
	Upper Savannah, Upper Coosa, Etowah, and Tennessee Wetlands	\$44,000.00/CR
	Upper Chattahoochee Wetlands	\$55,000.00/CR
	Upper Oconee and Upper Ocmulgee Wetlands	\$49,500.00/CR
	Withlacoochee Streams	\$104.50/CR
	Tennessee and Lower Flint: Middle Flint/Lake Blackshear Streams	\$121.00/CR
Hole in the Donut ILF Mitigation Product, Everglades, FL	Satilla: St Mary's River Non-Tidal Streams	\$88.00/CR
	Federal UMAM	\$32,500.00/CR
Keys Restoration Fund ILF Program	State Acre	\$12,759.61/CR
	Wetlands	\$217,800.00/CR
	Seagrasses	\$1,089,000/CR
Maine Natural Resources Conservation Program ILF Program	Calculator for all	Varies

Fees

- full cost accounting
 - Fixed fees
 - Formula
 - Calculator

- comparisons across programs are difficult

- fee evaluation and adjustment

Project Approval and the Three-Year Timeline

- Project Implementation
- Time to approval
 - 9 months to > 3 years
- Three-year Timeline
 - 16 programs not missing deadlines
 - 10 programs will likely miss three-year deadline soon
 - 9 programs have already missed deadlines

Financial Assurances

ILF programs generally approach financial assurances in one of three ways:

- Providing assurance of financial backing from the government entity (for programs sponsored by public agencies);
- Establishing a programmatic and/or project contingency fund (e.g., through a line item in the project budget and/or a percentage of credit sales going to a contingency fund); or
- A traditional financial assurance (e.g., bond, letter of credit, insurance).



Long-Term Management

- The long-term management plan
- Long-term management responsibilities
- Determining costs
 - Calculator
 - Past experience
 - Percentage

Instrument
Review Results

Watershed Approach

Service Areas

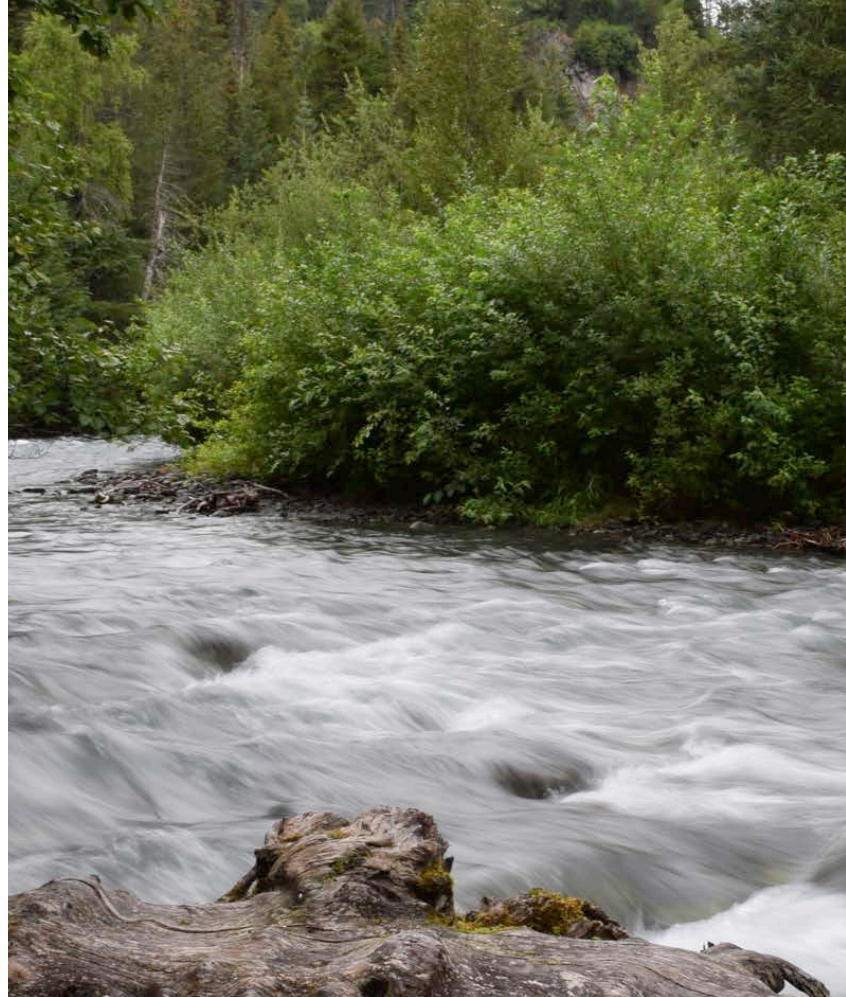
Prioritization Strategy

Audits

Stakeholder Involvement

Common Challenges and Information Needs

- Three-year growing season timeline
- Estimating future project costs and determining fees
- Long-term management and determining long-term management fees
- Responding to natural disasters
- Data management



Questions