

In Lieu Fee Programs

A Case Study:

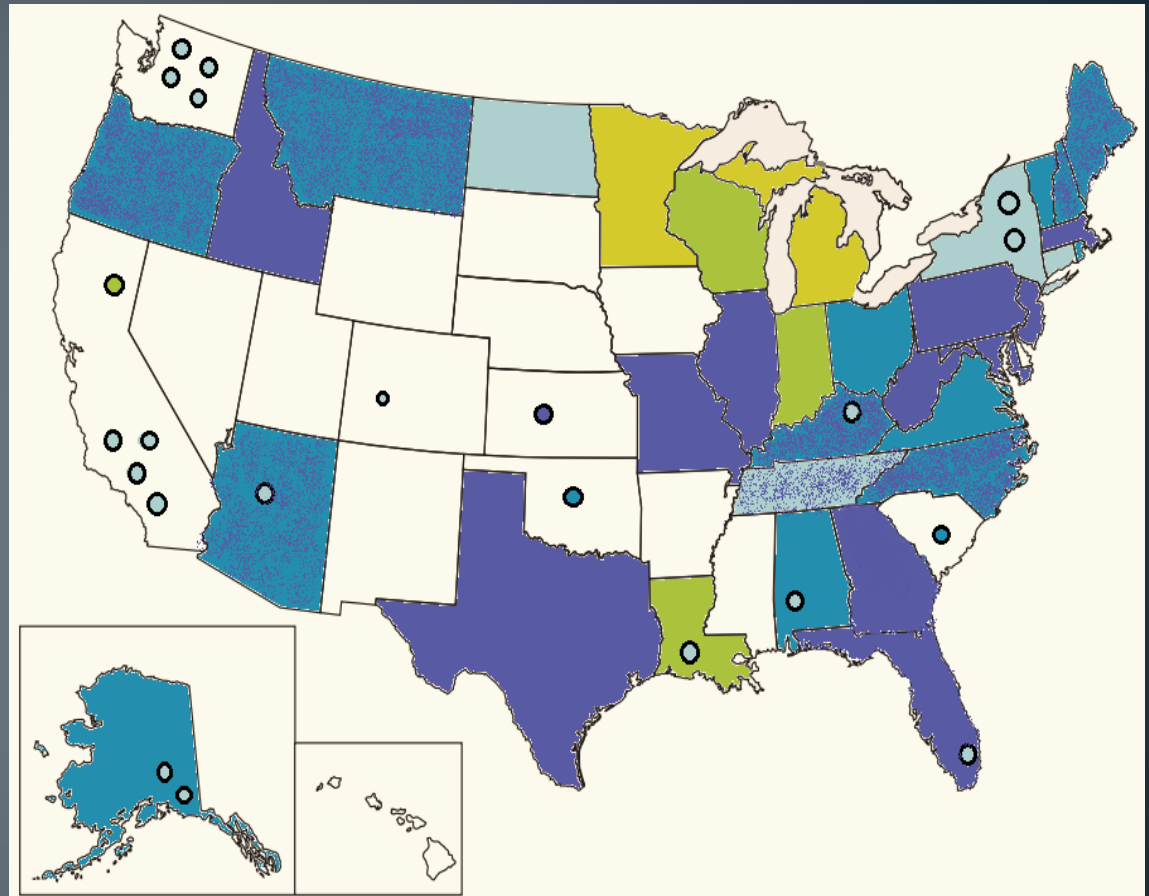
North Carolina's Ecosystem
Enhancement Program (EEP)

Habitat Conservation Planning Branch

October 7, 2014

Snapshot of US In-Lieu Fee Programs

- 28 statewide programs
- 17 statewide programs developed since 2008
- 3 pending statewide programs
- 6 states with NPO-run ILF programs
- ILF programs for wetlands are approved by USACOE through the In-Lieu Fee instrument (similar to the BEI)



North Carolina Ecosystem Enhancement Program (EEP)

- Why Focus on North Carolina's EEP?
- Critical Differences between NC and CA
- The EEP - By the Numbers
- ILF Programs' Overview (Focus on NC DoT)
- Advice from EEP Director (M. Ellison)

Why Focus on NC's EEP?

- Recognized at state and federal level as an innovative program
- Modified three times since its inception (1996)
- Proven to be financially sustainable and efficiently implemented
- Mitigation implementation prior to fee collection (eliminated lag time)
- Science-based mitigation development
- High-quality mitigation with compliance rate of 99%

Source: NCDENR, 2014

<http://portal.ncdenr.org/web/eep>

Context: Critical Differences between North Carolina and California

- Wetland, stream, and water quality mitigation (no species)
- NCDOT required to fulfill mitigation through the EEP
- NCDOT responsible for all roads in state (delegate to local partners, cities and counties)
- NCDOT receives 100% of FHWA funds

EEP - By the Numbers:

- **580+** projects statewide
- **630+** miles of streams
- Nearly **30,000** acres of wetlands and **680** acres of buffers conserved, restored, or enhanced
- **50,100+** acres of natural areas preserved for future generations
- **\$500** million in contract awards to private sector
- **Zero** NCDOT project delays for mitigation reasons since 2003
- **100** percent customer-satisfaction rate

EEP Overview

- Program situated within Department of Environment and Natural Resources
- Seed money from legislature (a few million dollars)
- Grew out of the Wetlands Restoration Program (WRP) which was legislated in 1996, implemented in 1997
- Small program with financial, science, DoT coordinator positions (34 total)
- Administrative fees are between 8 – 15% of total program cost; average is under 10%

EEP Overview (continued)

- Includes **four** In-Lieu Fee Programs
- Program and projects approved by IRT
- All mitigation is offsite
- Science-based prioritization of mitigation sites by watershed (8- and 16-HUC units) and Eco-Regions
- Selection process allows mitigation to be fulfilled out of impacted watershed

Selection process = mitigation projects sited for highest potential for ecological lift by watershed

EEP's NCDOT-Dedicated In-Lieu Fee Program (1st ILF program)

- NCDOT required to supply a 7-year plan, updated every year
- NCDOT supplies planning-level assessment and conservative mitigation estimates
- EEP continuously updates its planning and procurement (RFP) process to fulfill NCDOT's mitigation needs in advance of impacts.
- EEP assumes responsibility for NCDOT mitigation; supplies letter of responsibility to NCDOT to submit to permitting agencies
- EEP invoices NCDOT quarterly

Advice from EEP Director (M. Ellison)

- Start small, expand program over time
- Ensure seed money does not need to be paid back
- Prioritize mitigation projects by watershed and eco-regions. Keep it science-based
- Engage the private sector early in program development
- Utilize the full-delivery, competitive-bid process
- Develop a rigorous tracking system (credits and financials)
- Do not underestimate the cost of developing mitigation if/when setting fees by type and location

Questions

- What are our Department's experience with (existing) in-lieu fee programs in California?
 - the good, bad
- How could a CDFW statewide ILF program benefit our Department?
- Additional concerns and questions

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CA DWR GGS Bulk Credit RFP	EEP Full-Delivery RFP Process
RFP - bulk credits to be developed within specified service area (San Joaquin valley)	RFP lists types of credits by 8- or 16- HUC unit
Assigned total contract dollar amount and identified funding source (Prop 1E bond money, Delta Levees Program). Contract award: upfront lump sum	Does not assign cost for requested credits only location and type; payment aligns with credit release schedule
Stipulates mitigation bankers to use CDFW's fee-based banking process, assume endowment/financial assurances and success criteria	Stipulates credits must be approved through IRT's bank enabling instrument
Contractual bill of sale for 180 GGS credits, establishes credit amount for service area	Contractual bill of sale, competitive bid process sets market value for credits, by type and location

Web Resources:

- Environmental Law Institute's ILF training webinar series: <http://www.eli.org/events/2013-in-lieu-fee-mitigation-training-webinar-series>
- The Nature Conservancy and Environmental Law Institute's **The Next Generation of Mitigation: Linking Current and Future Mitigation Programs with State Wildlife Action Plans and Other State and Regional Plans (Report)**: <http://www.eli.org/research-report/next-generation-mitigation-linking-current-future-mitigation-programs-state-wildlife>
- North Carolina's Ecosystem Enhancement Program website: <http://portal.ncdenr.org/web/eep/home>
- NC's EEP agreements, rules, and laws: <http://portal.ncdenr.org/web/eep/agreements-rules-laws>
- Memorandum of Understanding, Mitigation and Conservation banking and in-lieu fee programs in California

Web Resources (continued):

- EEP Conference Presentations:

<http://portal.ncdenr.org/web/eep/conference-presentations>

- EEP Forms, Templates, Guidance Documents:

<http://portal.ncdenr.org/web/eep/forms>

- EEP Mitigation Fees:

<http://portal.ncdenr.org/web/eep/stream-wetland-buffer-fee-info>

- EEP RFP/bid list:

<https://www.ips.state.nc.us/ips/BidList.aspx?x=3%2bl%2fX3b%2bZ6HYVoph%2fc173fe9vskJnnkg0ckaFKc6X7Ab1CgxmDslgeHiOaY5T6%2f1kh9T2hDA+GKIrdL58L5UgQ%3d%3d>