



DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325

REPLY TO
ATTENTION OF:

Office of the Chief
Regulatory Branch

**AGREEMENT FOR ESTABLISHMENT AND ADMINISTRATION OF
THE LOS ANGELES COUNTY AQUATIC RESOURCE IN-LIEU FEE MITIGATION
PROGRAM**

Between
the U.S. Army Corps of Engineers, Los Angeles District
and
the Santa Monica Mountains Conservancy

Background and Purpose

The U.S. Army Corps of Engineers, Los Angeles District (Corps) and the Santa Monica Mountains Conservancy (SMMC) recognize the ecological importance of wetlands and other aquatic resources. The Corps also recognizes the potential for direct, indirect, and cumulative adverse impacts, which may occur to these resources as a result of projects authorized by Corps permits. In accordance with Clean Water Act Section 404(b)(1) Guidelines and the Corps' "no net loss" policy, the Corps often requires compensatory mitigation to offset adverse impacts associated with permitted projects. To facilitate compensatory mitigation, the Corps and SMMC hereby propose to establish the Los Angeles County Aquatic Resource In-lieu Fee Mitigation Program, hereinafter, the "In-lieu Fee Program." The purpose of the In-lieu Fee Program is to provide a voluntary, alternative compensatory mitigation option that will result in better designed and managed aquatic resource restoration projects. The In-lieu Fee Program is designed to facilitate a holistic approach to aquatic resource management in Los Angeles County, allocating money to where there is the greatest opportunity for long-term ecological benefit. This approach compares favorably to the creation of small, isolated mitigation projects managed by developers, homeowners associations, or other permittee-designated managers, as occurs under the traditional permitting approach. Permittees will be allowed to pay monies into the In-lieu Fee Program fund to satisfy Corps mitigation requirements only after avoidance and minimization of project-related impacts to wetlands have been accomplished to the maximum practicable extent, and onsite mitigation opportunities have been evaluated and determined infeasible or otherwise undesirable. The In-lieu Fee Program will generally be limited to mitigation for unavoidable, small or minor impacts to aquatic resources resulting from permitted projects or unauthorized activities in Los Angeles County and the Ventura County portion of the Santa Monica Mountains. Exceptions to allow mitigation for projects which have more than small impacts would be mutually agreed upon by SMMC and the Corps on a case-by-case basis.

The In-lieu Fee Program funds will be used to accomplish the following objectives:

- Meet the Corps' goal of "no net loss" (in terms of functions and values) to the nation's aquatic resources;
- Provide a compensatory mitigation alternative to Corps permit applicants, particularly in those instances where onsite mitigation is infeasible or otherwise undesirable;
- Provide for more efficient use of Corps staff resources vis-à-vis review of mitigation plans, monitoring reports, and compliance inspections; and
- Improve the overall effectiveness of compensatory mitigation required by Corps permits and enforcement actions.

In-lieu Fee Program Establishment and Administration

Project Eligibility

The In-lieu Fee Program fund will receive monies from individuals or entities receiving Corps Section 404 permits and, when appropriate, resolving Section 404 enforcement actions. Typically, the In-lieu Fee Program shall be limited to mitigation for impacts to aquatic resources of one (1) acre or less, and shall not be used to mitigate for impacts to unique aquatic resources such as vernal pools or tidal/estuarine wetlands. SMMC retains full authority to review projects on a case-by-case basis and approve or deny acceptance of mitigation monies into the In-lieu Fee Program fund.

The In-Lieu Fee Program shall cover all portions of Los Angeles County and the Ventura County portion of the Santa Monica Mountains in which SMMC or a SMMC joint powers authority (e.g. Mountains Recreation and Conservation Authority, Santa Clarita Watershed Recreation and Conservation Authority, Whittier/Puente Hills Conservation Authority) is actively involved. To avoid spatial discrepancies between project-related impacts and mitigation, aquatic resource creation, restoration, and enhancement projects (hereinafter, "mitigation projects") shall be undertaken in the same general area as the projects mitigated via in-lieu fees whenever practical. The Corps shall work with SMMC to maximize spatial proximity between mitigation project and projects mitigated via in-lieu fees. To avoid temporal losses of aquatic functions and values, SMMC shall work with the Corps to identify potential projects in advance, and shall implement mitigation projects in a timely manner.

The Corps retains full authority to approve or deny the expenditure of any In-lieu Fee Program monies and to approve proposed project sites and mitigation plans. Written approval from the Corps will be required, on a project-by-project basis for the mitigation projects, prior to expenditure of In-Lieu Fee Program funds. All projects in the Calleguas Creek watershed shall be reviewed and approved by the Calleguas Creek Watershed Habitat and Recreation

Subcommittee prior to implementation.

In-Lieu Fee Program funds should generally be allocated toward the creation, restoration, and enhancement of riparian/wetland habitats. SMMC may use In-Lieu Fee Program funds for aquatic habitat acquisition or preservation provided the projects comprise an explicit creation, restoration, or enhancement component.

Cost-Per-Acre

The Corps shall determine the required mitigation acreage for the Corps-permitted projects. SMMC shall determine the cost-per-acre for the required mitigation in consultation with the Corps. To meet the Corps' goal of "no net loss" to the nation's aquatic resources, the cost-per-acre must be sufficient to cover the actual costs of mitigation. Accordingly, the cost-per-acre should be based on a reasonable estimate of funds needed for land acquisition, project planning, construction, monitoring, and maintenance.

Use of Funds

In-lieu Fee Program funds shall be used solely for activities directly related to aquatic habitat creation, restoration, or enhancement, to include exclusively the following activities: land acquisition; purchase of easements; purchase of water rights; development of mitigation and monitoring plans; permit fees; implementation of mitigation and monitoring plans; administrative costs; and long-term management of mitigation parcels. Administrative costs shall be limited to a maximum of 10% of the mitigation fees accepted for any given project. Administrative costs include, but are not limited to, bookkeeping, mailing expenses, printing, office supplies, bank fees, training, travel, and staff time directly related to supporting these expenses and similar activities. SMMC shall pay for property appraisals.

Mitigation Planning and Monitoring

SMMC shall obtain qualified wetland and aquatic resource restoration expertise and use aggregated monies from the In-lieu Fee Program fund to implement selected aquatic resource creation, restoration, or enhancement projects. SMMC shall obtain all federal, state and local permits required for implementation of the restoration projects carried out under the In-lieu Fee Program.

SMMC shall prepare mitigation and monitoring plans to guide project implementation. The plans shall be prepared by a qualified restoration ecologist with experience in Southern California riparian/wetland ecosystems, and shall be consistent the "Los Angeles District Riparian Habitat Mitigation and Monitoring Guidelines," dated August 1998.

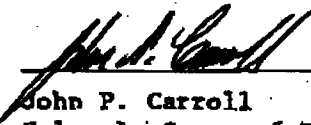
Record Keeping

SMMC shall maintain accurate records of In-Lieu Fee Program fund expenditures and mitigation projects, including location, date of project implementation, and number of acres

created, restored, or enhanced. SMMC shall provide the Corps with an annual report containing a detailed account of fees received from the In-Lieu Fee Program, an allocation of funds expended and projects funded, and an evaluation of project success. The format and content of the report shall be subject to change at the Corps' request. This report shall be submitted to the Corps by April 30th of each year.

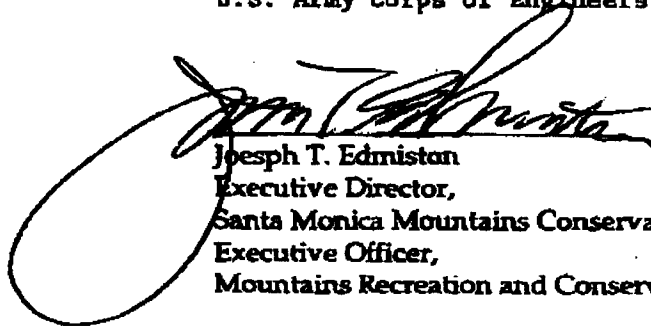
General

This agreement shall become effective on the date of signature by both parties. Either party to the agreement may terminate the agreement within 60 days of written notification to the other party. SMMC may discontinue receiving funds upon written notification to the Corps. However, without written approval from the Corps, SMMC shall not be relieved of its obligations under this agreement to complete restoration and maintain mitigation sites at which restoration has been initiated or for which some funds have already been expended. If SMMC or the Corps cancel the agreement, any unused In-lieu Fee Mitigation Program fund monies received, but not expended, would be diverted to the Corps or another entity approved in writing by the Corps, and used for implementation of aquatic habitat restoration.



John P. Carroll
Colonel, Corps of Engineers
District Engineer
Los Angeles District
U.S. Army Corps of Engineers

100522
Date



Joseph T. Edmiston
Executive Director,
Santa Monica Mountains Conservancy
Executive Officer,
Mountains Recreation and Conservation Authority

4-27-00
Date