



**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 CALLEGUAS CREEK WATERSHED (VENTURA COUNTY, CALIFORNIA)  
AQUATIC RESOURCE IN-LIEU FEE COMPENSATORY MITIGATION PROGRAM**

Between  
the U.S. Army Corps of Engineers, Los Angeles District  
and  
the California Coastal Conservancy

**Background and Purpose**

The U.S. Army Corps of Engineers, Los Angeles District (CORPS) and the California State Coastal Conservancy (CONSERVANCY) recognize the ecological importance of wetlands and other aquatic resources. The CORPS also recognizes the potential for direct, indirect, and cumulative adverse impacts that can occur to these resources as a result of projects authorized by CORPS permits or unauthorized pursuant to Section 404 of the Clean Water Act. In accordance with Clean Water Act Section 404(b)(1) Guidelines and the federal "no net loss" policy (White House Office on Environmental Policy, "Protecting America's Wetlands," August 24, 1994), the CORPS often requires compensatory mitigation to offset adverse impacts associated with permitted projects. The CONSERVANCY, pursuant to its authority under Division 21 of the California Public Resources Code, undertakes projects and awards grants to public agencies and nonprofit organizations for the restoration and enhancement of coastal resources, including in watershed resources that are partly outside California's coastal zone. To improve the compensatory mitigation process and to provide for the restoration and enhancement of wetlands and other aquatic resources in the Calleguas Creek watershed in Ventura County, California, the CORPS and the CONSERVANCY are entering into this Agreement to establish the Calleguas Creek Watershed Aquatic Resource In-lieu Fee Compensatory 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 the Calleguas Creek watershed, allocating money to where there is the greatest opportunity for long-term ecological benefit. In some cases, this approach is superior to the creation of small, isolated compensatory mitigation projects managed by developers, homeowners associations, or other permittee-designated managers, as occurs under the traditional permitting approach. Permittees will be approved by the CORPS to pay monies into the In-Lieu Fee Program fund to satisfy CORPS compensatory mitigation requirements only after avoidance and minimization of project-related impacts to wetlands have been accomplished to the maximum practicable extent, and onsite compensatory mitigation opportunities have been evaluated and determined impracticable or ecologically less desirable.

The In-Lieu Fee Program will generally be limited to compensatory mitigation for unavoidable, minor impacts to aquatic resources resulting from projects authorized under a CORPS General Permit or from unauthorized activities in the Calleguas Creek watershed. Exceptions to allow compensatory mitigation for projects that have more than minor impacts would be mutually agreed upon by the CONSERVANCY and the CORPS, in consultation with the resource agencies, on a case-by-case basis.

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

- Meet the federal policy of "no net loss" (in terms of functions and values) of the nation's aquatic resources;
- Provide a compensatory mitigation alternative to CORPS permit applicants and violators in cases when onsite compensatory mitigation is impracticable or ecologically less desirable;
- Provide more efficient use of CORPS staff resources vis-à-vis review of compensatory 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 be established by the CONSERVANCY in an interest-bearing account within the State Treasury administered by the CONSERVANCY to receive monies from individuals or entities receiving CORPS Section 404 permits and, when appropriate, resolving Section 404 enforcement actions. The CORPS shall retain full responsibility for the issuance of permits and resolution of enforcement actions under Section 404, and shall allow the payment of monies received as compensatory mitigation pursuant to these actions to the In-Lieu Fee Program fund as provided in this paragraph. Generally, the In-Lieu Fee Program shall be limited to compensatory mitigation for permanent impacts to aquatic resources of one-half (0.5) acre or less (i.e., generally those qualifying for authorization under a CORPS nationwide permit) and shall not be used to mitigate for impacts to unique aquatic resources, such as vernal pools and eelgrass. The CONSERVANCY retains full authority to review projects on a case-by-case basis and approve or deny acceptance of compensatory mitigation monies into the In-Lieu Fee Program fund where not consistent with this general rule.

The CONSERVANCY retains full authority to expend In-Lieu Fee Program monies on compensatory mitigation projects in the Calleguas Creek watershed, so long as proposed mitigation sites and compensatory mitigation plans have obtained written approval from the CORPS prior to expenditure of In-Lieu Fee Program funds at the mitigation site. In-Lieu Fee Program monies may be expended on the preparation of compensatory mitigation plans provided that the CORPS has approved the relevant proposed mitigation site. In-Lieu Fee Program funds should generally be allocated toward the restoration, enhancement,

and/or creation of riparian/freshwater wetland habitats. The CONSERVANCY may use In-Lieu Fee Program funds for aquatic habitat acquisition or preservation, provided the projects include an explicit restoration, enhancement, and/or creation component, or provided the proposed preservation area is under clear threat of direct loss to aquatic resource functions and values (i.e., a developer has all or most permits and entitlements to build, etc.). To ensure adherence to the federal "no net loss" policy referenced above, for proposed compensatory mitigation sites containing upland components In-Lieu Fee mitigation credit shall only be applied to waters of the United States, including wetlands, and associated vegetated buffers as approved by the CORPS with the following exception. In accordance with CORPS Guidance for the Establishment and Maintenance of Compensatory Mitigation Projects (Regulatory Guidance Letter No. 01-1), credit may be given for the inclusion of upland areas occurring within a compensatory mitigation project to the degree that the protection and management of such upland areas is an enhancement of aquatic functions and increases the overall ecological functioning of the mitigation project (e.g., vegetated buffers or a mix of habitats).

#### *Cost-Per-Acre*

The CORPS shall determine the required compensatory mitigation acreage for CORPS permitted projects and for resolution of CORPS enforcement actions. The CONSERVANCY shall determine the cost-per-acre for the required mitigation. To meet the federal policy of "no net loss" of the nation's aquatic resource functions and values, the cost-per-acre must be sufficient to cover the expected costs of compensatory 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. Land acquisition and initial physical and biological improvements should be completed by the first full growing season following collection of funds from each CORPS permittee. However, because site improvements associated with in-lieu-fee mitigation may take longer to initiate, physical and biological improvements may be completed later than the first full growing season where 1) initiation by the first full growing season is not practicable and 2) mitigation ratios are raised to account for increased temporal losses of aquatic resource functions and values and 3) the delay is approved in advance by the Corps.

#### *Use of Funds*

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

### *Compensatory Mitigation Planning and Monitoring*

The CONSERVANCY shall obtain qualified wetland and aquatic resource restoration expertise and use aggregated monies from the In-Lieu Fee Program fund to implement, maintain and monitor selected aquatic resource restoration, enhancement, and/or creation projects in accordance with compensatory mitigation plans approved by the CORPS. The Conservancy shall obtain all federal, state and local permits required for implementation of the restoration projects carried out under the In-Lieu Fee Program. The CONSERVANCY, or a qualified organization designated by the CONSERVANCY and approved by the CORPS, shall maintain and monitor each compensatory mitigation site for a minimum of five years following completion of compensatory mitigation site construction and shall be fully responsible for compensatory mitigation success, in accordance with the performance criteria established in the approved compensatory mitigation plan for each site.

Prior to the expenditure of In-Lieu Fee Program monies for physical improvements at any project site, the CONSERVANCY shall prepare a compensatory mitigation plan for that site for the review and written approval of the CORPS. Compensatory mitigation plans shall describe the project area and the restoration and enhancement activities to be carried out, and shall include a delineation of existing waters of the United States prepared for the mitigation site in accordance with the Corps' 1987 Wetland Delineation Manual. The plans shall be prepared by a qualified restoration ecologist with experience in southern California riparian/wetland ecosystems and shall be consistent with the "Los Angeles District Riparian Habitat Compensatory mitigation and Monitoring Guidelines," dated June 1993, or any subsequent version in effect as of the date of preparation. Compensatory mitigation plans providing for the acquisition or preservation of aquatic habitat shall demonstrate compliance with the requirements of this paragraph. Implementation of mitigation plans for approved In-Lieu Fee Program mitigation sites shall not be initiated until the Corps has provided written approval of the site-specific mitigation plan.

### **In-Perpetuity Protection**

To ensure permanent protection of these compensatory mitigation sites, the CONSERVANCY or a qualified organization designated by the CONSERVANCY and approved by the CORPS shall obtain, and record at the Ventura County Registry of Deeds, in-perpetuity conservation easements or deed restrictions on each compensatory mitigation site prior to compensatory mitigation site construction. The CONSERVANCY shall immediately forward to the CORPS copies of the recorded conservation easements or deed restrictions.

### *Record Keeping*

The CONSERVANCY shall maintain accurate records of In-Lieu Fee Program fund expenditures and compensatory mitigation projects, including location, date of project implementation, and types of habitat and number of acres restored, enhanced, and/or created. The CONSERVANCY shall provide the CORPS with an annual report containing a detailed account of monies received into the In-Lieu Fee Program fund, an allocation of monies



expended and projects funded, and an evaluation of the success of each implemented compensatory mitigation project. 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 September 1st of each year.

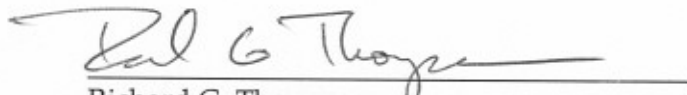
*General*

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. The CONSERVANCY may discontinue receiving monies upon written notification to the CORPS. However, without written approval from the CORPS, the CONSERVANCY shall not be relieved of its obligations under this agreement to complete and maintain compensatory mitigation sites at which restoration, enhancement, and/or creation has been initiated or for which some monies have already been expended. If the CONSERVANCY or the CORPS cancel the agreement, any unused In-lieu Fee Compensatory mitigation Program fund monies received, but not obligated or expended, shall be returned to the CORPS or another entity approved in writing by the CORPS, and used for implementation of aquatic resource restoration, enhancement, and/or creation in the Calleguas Creek watershed.


*Provisions*

This Agreement shall automatically terminate, and all In-Lieu Fee Program Funds received by the CONSERVANCY shall be returned to the CORPS as provided above unless by February 28, 2003, the CONSERVANCY has submitted its first annual report to the CORPS.

Acceptance of the terms of this Agreement as outlined herein is indicated by signing two originals of this letter. This Agreement shall not be in effect until signed by all parties hereto.

  
Richard G. Thompson  
Colonel, US Army  
District Engineer

20 FEB 2003  
Date

  
Samuel Schuchat  
Executive Officer,  
California Coastal Conservancy

3/17/03  
Date