

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee

FROM: Ian Ghanavati, Water Resources Engineer

SUBJECT: Adoption of District Program 17.34 – In-Lieu Fee Program

DATE: July 9, 2024

Papio NRD staff have been working with HDR to establish an In-Lieu Fee Program (Program) for the District. Generally, the Program will:

- Provide additional mitigation options for Section 404 permitting of both Papio NRD projects and for other public/private projects within the District's boundary.
- Allow the District to sell advance credits, at a price set by the Board of Directors, to mitigate for approved impacts prior to a mitigation bank site being built.
- Fund the design, construction, operation, and maintenance of larger mitigation bank sites.

Further information is included on the attached program description. If approved, this description will be adopted as part of the Papio-Missouri River Natural Resources District Directors Policy Manual.

Staff recommends that the PPO Subcommittee recommend to the Board of Directors, that the District adopt District Program 17.34, In-Lieu Fee Program, in accordance with the proposed criteria and program guidelines and incorporate District Program 17.34 into the Papio NRD Directors Policy Manual.

17.34 District Programs – In-Lieu Fee Program. The In-Lieu Fee Program (ILF Program) is an authorized program of the District. The ILF Program is designed to provide compensatory mitigation in advance of authorized aquatic resource impacts. The program will provide funding for the construction of mitigation bank sites, which may further create wetland and stream credits for the District which can be sold to public/private entities to compensate for authorized aquatic resource impacts. The ILF Program will be administered by Management according to the U.S. Army Corps of Engineers (USACE) and Interagency Review Team (IRT) approved Banking Prospectus, General Banking Instrument and individually approved Site Development Plans.

A. Criteria for Assistance

1. Impacted or destroyed resources must be located within a supported District Geographic Service Area (GSA), as defined in the In-Lieu Fee Program Instrument (Instrument).
2. All impacts must be authorized by obtaining a permit under Section 404 of the Clean Water Act.

B. District Responsibilities

1. Establish a total price, as approved by the Board, for advance and created mitigation bank credits in each GSA.
2. Establish and maintain an ILF Program account and accounting procedure which is used exclusively for and documents the authorized sale of advance credit and the selection, design, acquisition, implementation, and management of in-lieu fee compensatory mitigation projects.
3. Make available, upon request for audit by the USACE, all books, accounts, ledgers, reports, files, and other records relating to the ILF Program account.
4. Establish and/or maintain aquatic habitat through restoration, creation, enhancement, and/or preservation of wetland and stream mitigation bank sites created, owned and managed by the District and approved by the IRT. Such sites will be established in a timely manner as defined by the Instrument and the District will maintain each site in accordance with the established criteria until requirements for closure of the site are met or it is determined that long-term maintenance is unnecessary.
5. Perform all necessary monitoring and prepare an annual summary report of the ILF Program activity as well as demonstration of compliance with success criteria established in the Site Development Plan for each wetland and stream mitigation bank site.
6. Obtain all appropriate environmental documentation, permits, or other authorizations needed to sell advance credits and ultimately establish and maintain mitigation banks within each GSA.
7. Provide to applicants proper documentation of credit transactions.
8. Periodically evaluate and report on the ILF Program's activities, accomplishments, and progress in meeting its goals to the USACE, the IRT, and other stakeholders.

C. Applicant Responsibilities

1. Submit an application on a form provided by the District and submit a 404 permit application which includes an initial identification and/or delineation of the wetlands proposed to be impacted or destroyed.
2. Provide funds in the amount and as specified by the District to pay for the credits applied for. These funds will be reimbursed to the applicant if the application is denied for any reason.
3. Receive approval from the USACE for the use of advance and/or created mitigation bank credit as compensatory mitigation prior to obtaining a Section 404 permit.
4. Provide District a copy of an approved 404 permit.

[July 11, 2024]

