

Oregon's In-Lieu Fee Program: 2008-2016



Dana Hicks, Mitigation Policy Specialist
Oregon Department of State Lands
dana.hicks@state.or.us



Department of State Lands Aquatic Resource Management

- Carries out Removal-Fill Law and requires people who plan to remove or fill material in waters of the state to obtain a permit
- Separate but complementary to federal CWA Section 404 regulations
- Corps and DSL typically serve as co-chairs of the Interagency Review Team



ILF Program Goals and Objectives

Provide an alternative to permittee-responsible wetland mitigation in areas of Oregon not served by private mitigation banks.

- Level of accountability commensurate with mitigation banks
- Ecologically significant projects
- Pilot for new policies and processes
- Do not discourage the establishment or operation of mitigation banks



Program in 2009

- First ILF program approved under the new Federal Mitigation Rule.
- Worked within existing state in-lieu fee program and statutes
- Set up like an umbrella banking instrument
- No advance credits requested initially
 - Allowed state/Corps to test processes and procedures
 - Addressed public comments received
 - Minimized risk



Unknowns

- Could we find projects? Would our model of an open grant process generate applications?
- Would grant agreements with third parties work for the ILF program?
- How would the IRT process function with the state as the sponsor?
- How would the market respond? Would this interfere with the establishment of new mitigation banks?
- What would public perception of the program be?



Results 2009-2012

- Three projects approved and implemented
- Open grant solicitation process not efficient
 - Majority of inquiries did not qualify as mitigation
 - Required a more active role from staff to develop projects than anticipated
- Grant agreement model worked well but some issues:
 - Conservation organizations sought additional restoration dollars that needed to be accounted for by adjusting ILF credits
 - Delays in getting information from grantees caused delays in responding to the Corps
 - Budgets needed to include time for grantee engagement with IRT



Results 2009-2012

IRT process went smoothly

- Separate DSL staff responsible for banks and ILF program
- Oregon Department of Transportation serves as an IRT member
- Corps and DSL vision and requirements consistent; fewer negotiation points = quicker approval process
- Piloted a project with multiple-credit types

Half Mile Lane

Credit Zones

NAME

-  Area 1-Channel + Riparian
-  Area 2- Wetland
-  Area 3- Upland
-  Area 4- Agriculture
-  Tax lot Boundary (approx.)





Results 2009-2012

Few effects on the market

- Existing statute interpreted as allowing no competition with private mitigation banks, so few conflicts
- Banks later established where ILF projects were located
- Built trust that DSL was directing sales to private banks appropriately
- DSL adapted guidance, practices and rules where conflicts arose



Results 2009-2012

Positive public response to the ILF program

- Building local partnerships was positive
 - Local entities serve as the liaison with local constituents
 - University of Oregon, Ecosystem Workforce Program report (2010) on Oregon Watershed Enhancement Board investments
- Fewer permittee-responsible compensatory projects in areas where ILF credits are available
- Applicants can reserve credits for 180-days while working through permitting process



Program Modification 2012

- Advance credits process and procedures
- Advance credits for six priority areas
- Incorporates changes to state statutes and rules since 2009
- Process to allow use of ILF funds to get information necessary to develop a project proposal
- Changed Instrument language to be more flexible to future changes in state statute and rule

Modification process took 8 months.



Results 2012-present

- Identified projects in 2 advance credit areas
 - Preliminary review by IRT
 - Subsequently began selling credits
 - Currently working through IRT approval process.
- Began selling credits in one area prior to locating a project
 - First credit sold in June 2014
 - No solid project found to date
 - Releasing request for proposals soon
 - Working early with IRT
- No advance credit sales available in the other 3 advance credit areas until a project is found



Legislative role—Pricing

State Statute: Payment equals the average cost of mitigation credits available in the state.

Average price in 2012 was \$74,000 ; Range \$48K - \$225K

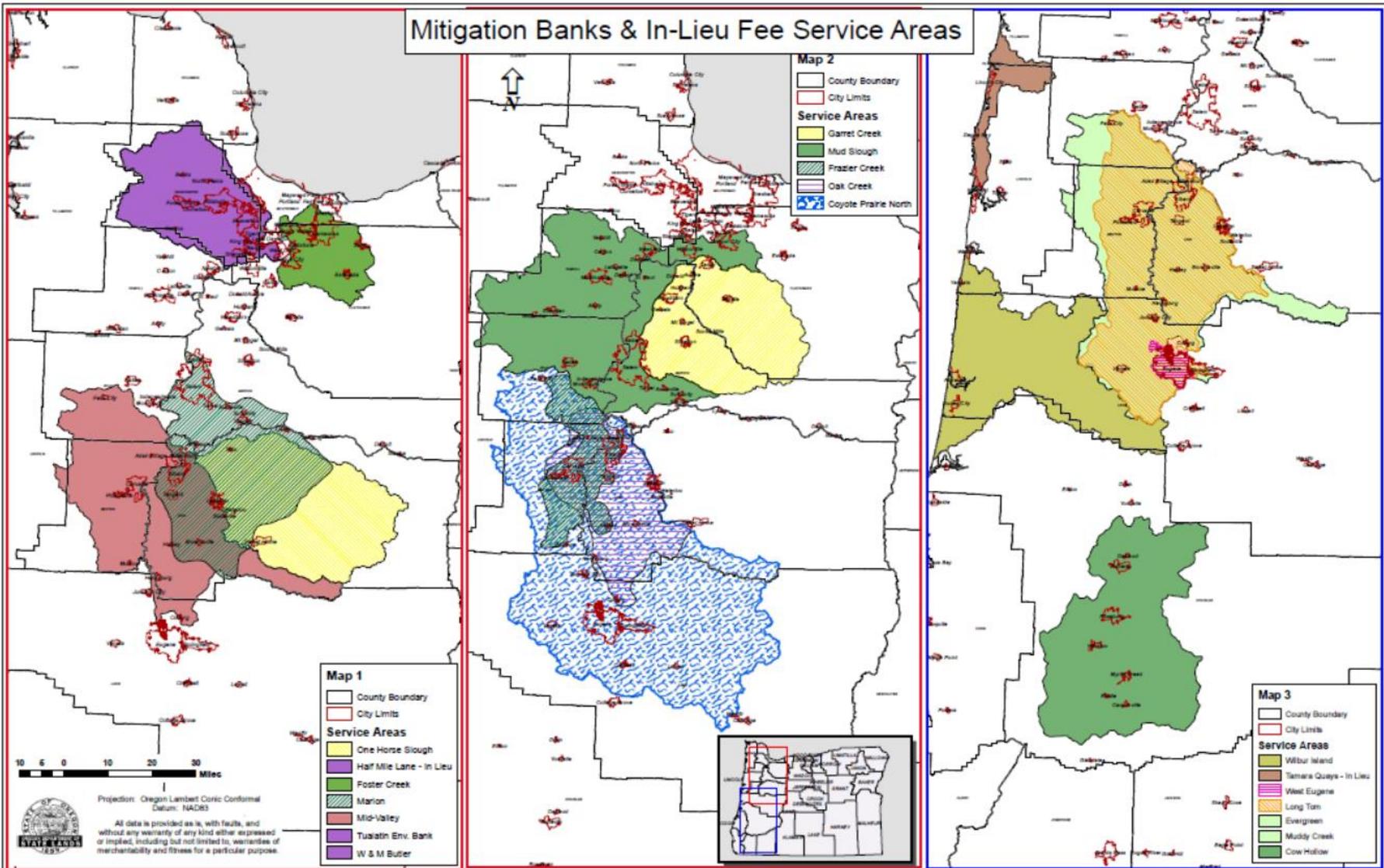
- Representative of full cost accounting?

Banks were primarily wetland projects in the central Willamette Valley; no banks east of Cascade Mountains

- Regional differences?
- Costs for streams?
- State moving toward more function-based credits and debits

Mitigation banks in 2013

Mitigation Banks & In-Lieu Fee Service Areas





Change

State statute changed in 2013 Legislative Session

Payments “must be sufficient to cover the costs and expenses of land acquisition, project design and engineering, construction, planting, monitoring, maintenance, long-term management and protection activities, administration and other costs and expenses related to the off-site compensatory mitigation, which may vary depending on the region of the state where the off-site compensatory mitigation is conducted. . . .”

- Reflect project costs when they are known
- Use payment formula if actual project costs are unknown*

*More in Session IV: Establishing Fee Schedules



Legislative role—Competition with banks

State Statute: Payments to fund only allowed when appropriate private mitigation credits are unavailable

ILF project established 2010

2 private mitigation banks subsequently approved in 2011 and 2012

- Wetland credit sales stopped-same classes as private banks
- Stream credits are unique and can still be sold
- Unable to recover over \$500K



Changes

State statute changed in 2015 Legislative Session

Allows competition with a private mitigation bank when:

- Credits from an approved mitigation bank in a region were not available at the time the first payment for ILF credits was made; and
- Expenses associated with a DSL project in the region have not been fully recovered.

State approach to avoid competition

- Exploring partnerships
- Can purchase credits from a mitigation bank—initial customer
- Targeting smaller, more unique projects



Final thoughts

- Identify program goals and objectives upfront. Identify levels of risk your organization is willing and able to take on.
- Work with the IRT often and find common goals. We need each other for compensatory mitigation program success.
- It is more efficient to take more than one site through the modification process at a time.
- Lower your risk by having projects selected ahead of selling advance credits.
- Lower your risk by targeting small, but still ecologically significant projects.



Final thoughts

- Target something unique or more complex than a banker may be willing to try. Help avoid not being able to sell your ILF credits.
- Keep the Instrument flexible to program adaptations. Put language that may change frequently into exhibits/appendices.
- Be open and transparent. Share your results, mistakes, and what you learn.
- Be creative and adaptable.