

**John T. Gontrum, Esq.**  
*Executive Secretary*

**William Morgante, PWS**  
*Wetlands Administrator*

TO: Governor Wes Moore, Comptroller Brooke Lierman, Treasurer Dereck Davis

FROM: Bill Morgante, Wetlands Administrator

DATE: December 22, 2023

SUBJECT: Adjustment to Rate Calculating In-Lieu-Fee (ILF) for Wetland Mitigation

The purpose of this memorandum is to report a change in my future recommendations for mitigation compensation per acre charged when tidal wetland license applicants are unable to self-mitigate for damage to wetlands from licensed activities. For decades, the Board's Wetlands Administrators have utilized one figure, \$75,000 per acre (\$1.72/square foot), as the rate for calculating any recommended compensation amount in lieu of mitigation self-performed by applicants. The amount of this in-lieu-fee (ILF) is meant to represent the cost to either:

1. Create new tidal wetlands as a result of dredging shallow water habitat
2. Create new tidal wetlands as a result of filling wetlands
3. Replace submerged aquatic vegetation (SAV) when removed

The current ILF rate was calculated in 1994 or 1995 and has not been adjusted since. Unless the specific circumstances of a license require otherwise, **I intend to increase this rate by 20% to \$90,000 per acre (\$2.07/square foot) beginning in January 2024.** All ILF recommendations on specific license applications will be made on a case by case basis, with this updated rate applied to the square footage of required mitigation as a starting point.

### **Background**

Following BPW Tidal Wetlands Regulation, COMAR 23.02.04.11, the Administrator may recommend "mitigation designed to replace the values and functions associated with the wetlands to be impacted" and "when mitigation is not feasible, monetary compensation in lieu of mitigation."

Because scientific data indicate that some wetland types are in greater need of conservation, the regulation stipulates that the acreage impact of a project is multiplied by a ratio determined by the type of wetland impacted and whether the recommendation is wetland restoration or wetland enhancement.<sup>1</sup> The result of this calculation gives the square footage for either direct performance of a mitigation project, or for calculating a recommended ILF amount. For decades, after finding that directly performing mitigation at each site where wetland impacts occur is not feasible, these ILF recommendations have been formed by multiplying that

<sup>1</sup> COMAR 23.02.04.11 Mitigation

mitigation acreage (in square feet) by a rate of \$75,000 per acre (\$1.72/square foot).

The collected in-lieu-fees are deposited into the Tidal Wetlands Compensation Fund and used by the Department of the Environment to perform wetland creation projects.

### **ILF Rate Evaluation**

Adjusting the current ILF rate for inflation alone (using the Bureau of Labor Statistics online inflation adjustment calculator for 1995), would move it to approximately \$151,000 per acre. Estimates from the practitioners on 39 wetland creation projects in 2021 confirm that it costs far more than \$75,000 per acre to create tidal wetlands. Costs for the 39 projects evaluated include project design, construction, and monitoring following construction. The two Counties where the largest number of wetland creation projects (from the 39 project sampling) were built include Anne Arundel County, listing 16 projects with an average cost per acre of \$692,556<sup>2</sup>, and Talbot County, listing five projects with an average cost per acre of \$870,778.<sup>3</sup>

Also, our neighbor Virginia does not directly collect an in-lieu-fee for mitigation in tidal wetlands. Instead, for tidal wetland impacts that would qualify for an ILF, the Virginia Department of Environmental Quality requires that tidal wetland credits be purchased through The Nature Conservancy. Virginia tidal wetland mitigation credit prices range from \$400,000 - \$600,00 per acre.<sup>4</sup>

### **Adjustment**

The true cost for wetland creation and for replacing SAV is far higher than the current ILF rate of \$75,000 per acre since that rate has not been adjusted for inflation in 28 years, and the cost to build wetland creation projects is significantly higher than \$75,000 per acre. An evaluation of recent wetland creation projects indicates a far higher number is more appropriate than the current ILF rate. Accordingly, **beginning in January 2024 I intend to make recommendations using a rate of \$90,000/acre (\$2.07/square foot)** to move closer to the true cost of wetland creation in Maryland, including wetland mitigation design, construction, and monitoring. I further intend to reassess the basis for my recommendations more regularly in the future.

### **Conclusion**

The in-lieu-fees collected to offset tidal wetland impacts go to wetland creation projects – the current low rate to calculate these fees greatly limits the wetland creation projects that can be initiated since the funding pool is low. The opportunity to offset tidal wetland impacts in Maryland is reduced by the current low rate, which does not accurately reflect current costs to create wetlands in Maryland. Since wetland creation should include wetland design, construction, and monitoring, the proposed rate of \$90,000/acre (\$2.07/sf) for tidal wetland projects is a step closer to the true cost of wetland creation.

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<sup>2</sup> Appendix 1a includes a DNR project in Anne Arundel County with a cost per acre of \$783,333

<sup>3</sup> Information source: Living Shoreline Allocation of Funds by MDE through FY 15

<sup>4</sup> Based on information from the Virginia Aquatic Resources Trust Fund, [Virginia Mitigation Prices](#)