



Can money compensate for ecological losses?

IN-LIEU PAYMENTS AND FEES AS A MECHANISM OF ENVIRONMENTAL COMPENSATION

OVERVIEW OF THE PROJECT

The subject of this study is in-lieu payments or fee systems for environmental compensation.

METHODOLOGY: The study examined the design and operation of In-Lieu Payment (ILP) systems within nine offset systems in four North American jurisdictions: British Columbia; Alberta; New Brunswick; and The United States (federal domain). Research was conducted by document review and interviews with those involved in the projects.

GOAL: To tackle questions of authority to establish ILP programs and the best design elements to recommend a new option for Alberta stakeholders. The inquiry is grounded in the prospect of formalized ILP programs in both Alberta and British Columbia.

PAVING THE WAY FOR MORE EFFECTIVE IN-LIEU PAYMENT PROGRAMS

In examining different programs, there is dramatic room for improvement to increase transparency of operations to limit skepticism about offset programs and engage stakeholder, expert, community and First Nations input.

We suggest any new ILP system build in robust mechanisms to assure transparency and accountability, including the use of general government accountability tools, and public reporting.

Further, program design should include extensive stakeholder and expert involvement, and not simply in the design stages. Any person, whether in government or in the general public, ought to be able to determine, with small degree of effort, whether an offset program, including an ILP program, is delivering on its objectives, and how it is doing so.

Such transparency will either foster confidence in the program and its underlying systems or it will stimulate reform as warranted.

OFFSETTING THE ENVIRONMENTAL COSTS OF DEVELOPMENT

Offset benefits may be delivered directly by the developer (project-specific offsetting), by offset credit banking (where ecological benefits are produced in advance of development and recognized as credits, often transferable), or by in-lieu payments or fees (ILPs).

CHALLENGES IMPLEMENTING ILP PROGRAMS

AUTHORITY TO COLLECT PAYMENTS

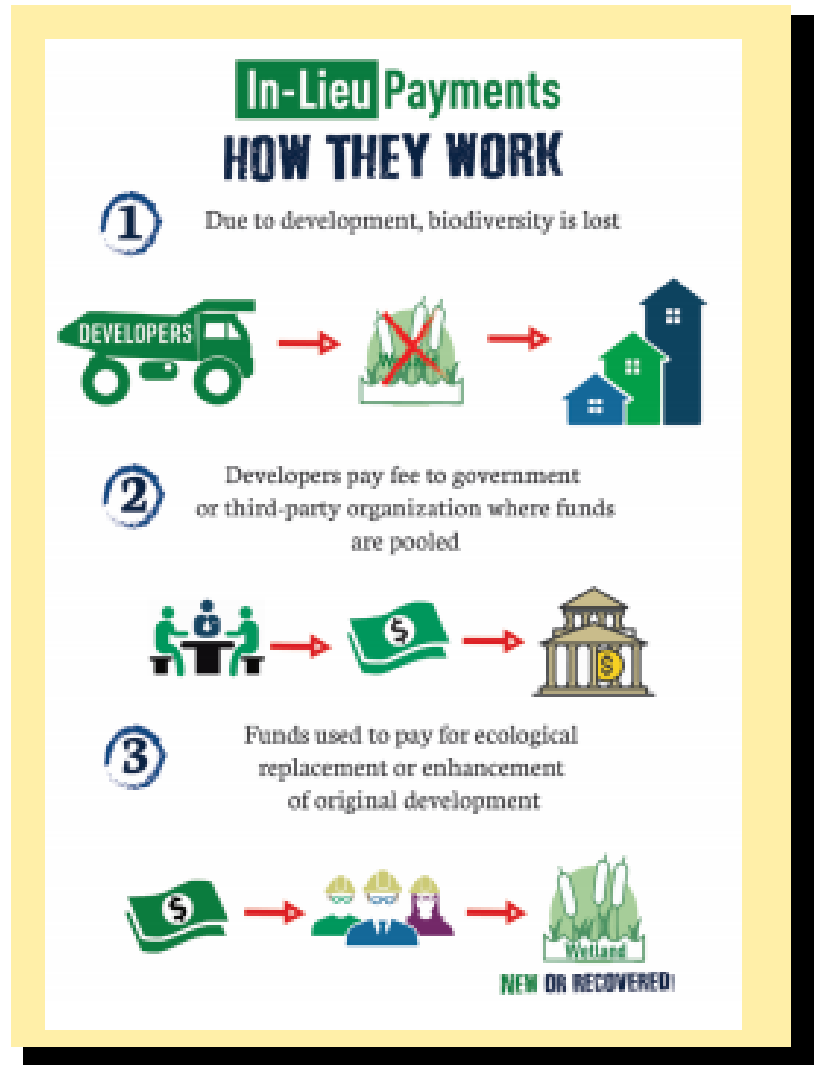
- Decision makers within provincial legislatures often have broad discretion when it comes to imposing conditions on the development or use of natural resources. This likely includes the discretion to require offsetting and ILPs.
- Collecting these ILP funds requires a high level of accountability and transparency.
- It is possible, through legislation, and authority of Cabinet, to develop legally separate funds.

CONSERVATION OFFSETS- SETTING THE PAYMENT AMOUNT

- Several factors need to be taken into account when establishing a payment amount: land values, the cost of required restoration activities, and the future costs of monitoring and management.

OVERSIGHT & ACCOUNTABILITY

- For ILP programs to be successful, industry, developers, and the wider public need to be assured the funds collected are being used effectively to meet conservation offset targets.
- Compliance monitoring, verifies that an offset project has been carried out.
- Effectiveness monitoring is a review to ensure that an offset project is on track to deliver the ecological benefits expected.
- Oversight agencies, such as an Auditor General's office, can further analyze whether the program is meeting its targets as set out by the government.



CASE STUDIES OF IMPLEMENTATION

Examination of nine case studies across four regions (British Columbia, Alberta, New Brunswick and the United States) revealed the following:

- The case studies exhibited various approaches to the segmentation of funds for particular purposes. Some aggregated funds from several sources to fund conservation programs, while others aimed to keep funds within the same region or focused on the same environmental media where the impact occurred which gave rise to the payment.
- The case studies also revealed three means by which funds may be paid out to achieve the intended offset work.
 - The government itself may access the funds to conceive of and carry out projects.
 - A single or designated group of service providers may be solicited for project ideas and contracted to do the work.
 - Fund administrators may issue a request for proposals to draw on ideas and expertise of a more extended group of potential service providers. Several of the case studies have either guidance or requirements respecting the timing of the use of funds, so as to avoid monies languishing unused.

CASE STUDIES OVERVIEW

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CASE STUDY #1: BRITISH COLUMBIA ENVIRONMENTAL MITIGATION POLICY

- Has been approved by the provincial government for use in the natural resource context and its application is anticipated to become standard practice for provincial regulators.
- Relies on general statutory authority to put conditions on approvals.
- Proposes a mitigation hierarchy whereby offsets should be considered only after having considered and applied all feasible measures to avoid, minimize and restore impacts on-site.
- In contrast to most other ILP programs, including the others reviewed in this study, the British Columbia Policy and Procedures set out a system whereby an ILP is simply a step in the matching of a specific development proposal and permit with a specific known offset proposal.

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CASE STUDY #2: BRITISH COLUMBIA HABITAT CONSERVATION TRUST FOUNDATION (HCTF)

- The HCTF attempts to match funding to the ecological value corresponding to the source of the revenues, so that, for example, funds from surcharges on angling licenses tend to go to aquatic projects.
- The only exception to the granting model set out above is the HCTF's support of educational programs to connect children with nature.

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CASE STUDY #3: BRITISH COLUMBIA HYDRO FISH & WILDLIFE COMPENSATION PROGRAM (FWCP)

- The FWCP is mainly a single-source ILP program, with the stated mandate of "compensat[ing] for the impacts to fish, wildlife and their supporting habitats affected by the BC Hydro owned and operated generation facilities".
- The FWCP is one of few cases where the permittee holds the money rather than making payments to a legally separate entity.
- Another distinctive feature of the FWCP is its ongoing and adaptive nature. This is in response to an expressed premise that large projects including dams and reservoirs create significant changes to the environment that are not immediately apparent but rather evolve over time.
- An arrangement with First Nations is described as unique within the FWCP and it is probably unique within the case studies in this report. In general, the FWCP provides more attention to roles and functions than most ILP systems.



CASE STUDIES OVERVIEW

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CASE STUDY #4: SKEENA REGION MOOSE OFFSET PROGRAM

- This offset program was established as a condition on the permitting of two open-pit mines in the Skeena region of northwestern British Columbia.
- The environmental assessment of each of the mines showed that moose population in the region was vulnerable, and that traffic on the proposed mine roads posed a threat of moose-vehicle collisions.
- The mine regulator at the time required the establishment of offset funds to compensate for residual losses to the moose population from the combined impact of the two mines.
- Once a final total figure was arrived at and included in the mine permit conditions, an offset fund was established as a notional account on the proponents' books.

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CASE STUDY #5: NORTHEASTERN BRITISH COLUMBIA CARIBOU RECOVERY PROGRAM

- Similar in its genesis to the moose offset program, the caribou recovery program for northeastern British Columbia arose as an offset condition on the development of new pipelines.
- In contrast to the moose offset program, the caribou recovery funds were to be paid to a third party (non-profit conservation group, Resources North) over several years.
- The use of the funds has been guided by a regional caribou recovery plan setting out particular activities to benefit caribou recovery.

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CASE STUDY #6: ALBERTA WETLAND POLICY

- Released in 2013, the Alberta Wetland Policy is the only provincially-regulated conservation offset program currently operating in Alberta.
- Anyone seeking an approval to permanently disturb a wetland must, after complying with the mitigation hierarchy, provide a replacement. This can take one of two forms. The first is "restorative replacement," which includes "restoration, enhancement, or construction of another wetland." The second is to pay into an in-lieu fund, which may be used for restorative replacement or for "non-restorative replacement."
- In the case of the in-lieu fee, the area-based offset obligation is converted to money based on rates prescribed for each "relative wetland value assessment unit" - a price per hectare for 21 delineated geographic regions across the province.

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CASE STUDY #7: ALBERTA CLIMATE CHANGE & EMISSIONS MANAGEMENT REGIME (CCEM)

- The CCEM regime provides one of the clearest examples of in-lieu fee systems within the subject jurisdictions. In the early years of the 2013 wetland policy, the GHG regime was considered to be a design precedent in Alberta and the past 10 years of experience with the model shows evidence of pros and cons.
- An emitter can come into compliance by one of:
 - Purchasing an offset credit produced by the actions of non-regulated sectors to reduce GHG outputs;
 - Purchasing emissions performance credits from other regulated emitters who have exceeded their own required GHG reduction; or,
 - Make a payment at a prescribed rate into the CCEM fund
- Alberta's Auditor General has expressed concern with insufficient measures to address risks in the offset system, including the lack of assurance the specific types of offsets were real and that offsets were only used once for compliance purposes.
- There is no limit on when operators may pay fees in-lieu of offsets.
- The CCEM regime is the only model in this study where payments into a fund are a compliance option for current operators rather than a condition on new project approvals.



CASE STUDIES OVERVIEW

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CASE STUDY #8: NEW BRUNSWICK WETLANDS POLICY

- The New Brunswick wetlands system offers proponents both project-specific offsetting and an ILP option for projects the impacts of which cannot be avoided or negated through minimization.
- The policy is framed in the language of no net loss, but on the policy's face contains no offset mechanism to produce the environmental positives that would yield that result.
- The policy has two broad objectives: 1) the maintenance of wetland function, 2) securement, stewardship, education, and awareness of wetlands. The first objective is distilled into two more detailed objectives and policy lines: no loss of Provincially Significant Wetland habitat, and no net loss of wetland function for all other wetlands.
- In practice the great majority of compensation obligations are met by direct payments to Ducks Unlimited Canada

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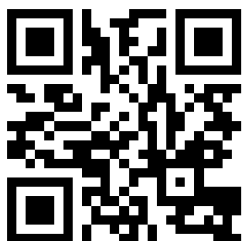
CASE STUDY #9: UNITED STATES FEDERAL WETLANDS SYSTEM

- The United States federal system of "compensatory mitigation" for impacts on wetlands is one of the most established examples of a conservation offset system.
- One of its distinctive features is the robust involvement of private third parties to assume offset obligations from developers. This involvement takes the form of both wetland credit banking and the private sponsorship of in-lieu fee programs.
- Much of the responsibility for ILF design and administration is allocated to private third party "in-lieu sponsors." Sponsors are subject to close government oversight, but also have the opportunity to customize program features to particular ecological, economic, or social conditions.
- Responsibility for the wetlands mitigation regime is split between two agencies. The program is administered by the US Army Corps of Engineers (USACE) through a network of regional offices which hold substantial discretion in considering permits. Policy and regulatory guidance, however, is provided by the EPA.

In-Lieu Payments and Fees as a Mechanism of Environmental Compensation was completed 2017.

Backgrounder V.01

Full paper can be found here



Alberta Land Institute

The Alberta Land Institute (ALI) is an independent research institute founded at the University of Alberta. We promote research to inform public debate and decision-making in the province.

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