

# CALIFORNIA COUNCIL OF LAND TRUSTS

## In Lieu Fees

In lieu fees are another approach to fulfilling mitigation requirements and can be a source of funding to purchase conservation land or conservation easements. “In lieu” of the project proponent acquiring mitigation land or conservation easements, in lieu fees allow the project proponent to pay a specified fee to the lead agency or other designated agency. The in lieu fee is then intended to be used to acquire the required mitigation land or conservation easement. The acquisition is undertaken by a third party such as a land trust or government agency.

A nexus study should be prepared to defensibly establish the amount of an in lieu fee; provisions must be made so that the fee is regularly updated to ensure it is responsive to changes in real estate values. The in lieu fee should include all costs associated with providing the required mitigation including:

- Cost of the land or conservation easement
- All transaction costs including
  - Identifying and negotiating for the mitigation land or easement
  - Surveys, appraisals, title research
  - Legal review
  - Preparation of transaction documents
  - Other due diligence including environmental site assessment and mineral remoteness evaluation
- Preparation of baseline condition reports for the mitigation site
- Escrow costs and title insurance
- Staff time
- Funding for long term stewardship and monitoring of the mitigation site.

The use of in lieu fees shifts the mitigation responsibility from the project proponent to a third party such as a land trust or governmental agency. Because of this transfer of responsibility, it is essential to correctly calculate the entire cost of fulfilling the mitigation requirement to ensure that the actual number of acres is protected for mitigation purposes and the mitigation project is sufficiently funded for the long term. Any in lieu program should have a mechanism for assessing costs and adjusting the fee as needed on an annual basis. In lieu fee programs must not exceed the reasonable costs of providing the required mitigation and must meet the requirements of the 1987 Mitigation Fee Act (CA Gov. Code 66000 et seq).