

ARTICLE 9.5. IN-LIEU FEE MITIGATION

Rule 1. Purpose and Administration

312 IAC 9.5-1-1 Purpose of in-lieu fees

Authority: IC 14-10-2-4

Affected: IC 14-26-2; IC 14-28-1; IC 14-29-1

Sec. 1. (a) This article establishes an option to request an in-lieu fee to mitigate adverse impacts to fish, wildlife, or botanical resources if a permit is required under any of the following:

(1) IC 14-26-2 and 312 IAC 11.

(2) IC 14-28-1 and 312 IAC 10.

(3) IC 14-29-1 and 312 IAC 6.

(b) Mitigation under subsection (a) is made through the payment of funds to:

(1) establish;

(2) restore; or

(3) establish and restore;

habitat for fish or wildlife resources. *(Natural Resources Commission; 312 IAC 9.5-1-1; filed Aug 22, 2014, 11:01 a.m.: 20140917-IR-312130528FRA; readopted filed Sep 16, 2020, 8:16 a.m.: 20201014-IR-312200410RFA)*

312 IAC 9.5-1-2 Administration of in-lieu fees

Authority: IC 14-10-2-4

Affected: IC 14-26-2; IC 14-28-1; IC 14-29-1

Sec. 2. The department's division of fish and wildlife shall administer this article. *(Natural Resources Commission; 312 IAC 9.5-1-2; filed Aug 22, 2014, 11:01 a.m.: 20140917-IR-312130528FRA; readopted filed Sep 16, 2020, 8:16 a.m.: 20201014-IR-312200410RFA)*

Rule 2. Definitions

312 IAC 9.5-2-1 Applicability

Authority: IC 14-10-2-4

Affected: IC 14-26-2; IC 14-28-1; IC 14-29-1

Sec. 1. The definitions in 312 IAC 1 and this rule apply throughout this article. *(Natural Resources Commission; 312 IAC 9.5-2-1; filed Aug 22, 2014, 11:01 a.m.: 20140917-IR-312130528FRA; readopted filed Sep 16, 2020, 8:16 a.m.: 20201014-IR-312200410RFA)*

312 IAC 9.5-2-2 "In-lieu fee" defined

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-26-2; IC 14-28-1; IC 14-29-1

Sec. 2. "In-lieu fee" means a payment to the Indiana Natural Resources Foundation to satisfy mitigation requirements under this article. *(Natural Resources Commission; 312 IAC 9.5-2-2; filed Aug 22, 2014, 11:01 a.m.: 20140917-IR-312130528FRA; readopted filed Sep 16, 2020, 8:16 a.m.: 20201014-IR-312200410RFA)*

312 IAC 9.5-2-3 "Mitigation" defined

Authority: IC 14-10-2-4

Affected: IC 14-26-2; IC 14-28-1; IC 14-29-1

Sec. 3. "Mitigation" means action to eliminate, lessen, or replace the loss of environmental benefits and ecological functions if those benefits and functions are disturbed by human activities. *(Natural Resources Commission; 312 IAC 9.5-2-3; filed Aug 22,*

2014, 11:01 a.m.: 20140917-IR-312130528FRA; readopted filed Sep 16, 2020, 8:16 a.m.: 20201014-IR-312200410RFA)

312 IAC 9.5-2-4 "Mitigation plan" defined

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-26-2; IC 14-28-1; IC 14-29-1

Sec. 4. "Mitigation plan" means a document that provides mitigation through any of the following:

- (1) The establishment, restoration, or a combination of the establishment and restoration of habitat for fish or wildlife resources.
- (2) The use of an approved mitigation bank.
- (3) Payment of an in-lieu fee.

(Natural Resources Commission; 312 IAC 9.5-2-4; filed Aug 22, 2014, 11:01 a.m.: 20140917-IR-312130528FRA; readopted filed Sep 16, 2020, 8:16 a.m.: 20201014-IR-312200410RFA)

Rule 3. Processing In-Lieu Fee Mitigation Requests

312 IAC 9.5-3-1 Requests for in-lieu fee

Authority: IC 14-10-2-4

Affected: IC 14-26-2; IC 14-28-1; IC 14-29-1

Sec. 1. (a) A person that applies for a permit under IC 14-26-2, IC 14-28-1, or IC 14-29-1 may request to use an in-lieu fee under this article.

(b) A person must submit the request on a departmental form to the division of fish and wildlife.

(c) To qualify for approval, the terms proposed in a request must be commensurate with the amount and type of impact that is associated with the project authorized by the permit and must include the following information:

- (1) Steps taken to avoid and offset or minimize impacts at the project site.
- (2) The reasons for a request to use an in-lieu fee compared to other mitigation, including an explanation of the inability to do mitigation on-site or within the same 8-digit hydrologic unit code area.
- (3) A floristic quality assessment of the project site.

(Natural Resources Commission; 312 IAC 9.5-3-1; filed Aug 22, 2014, 11:01 a.m.: 20140917-IR-312130528FRA; readopted filed Sep 16, 2020, 8:16 a.m.: 20201014-IR-312200410RFA)

312 IAC 9.5-3-2 Department evaluation of in-lieu fee request

Authority: IC 14-10-2-4

Affected: IC 14-26-2; IC 14-28-1; IC 14-29-1

Sec. 2. (a) The department shall review a request for an in-lieu fee based on the following:

- (1) The size and location of a project.
- (2) Steps the permit applicant proposes to avoid and minimize or offset impacts to fish, wildlife, or botanical resources.
- (3) Quality or rareness of habitat to be impacted.
- (4) The level of impact to fish, wildlife, or botanical resources.
- (5) The fee is an amount approved by the commission.

(b) The department shall not approve in-lieu fee mitigation if any of the following applies:

- (1) At the project site, an endangered, threatened, or rare species exists that is listed in the "Roster of Indiana Animals, Insects, and Plants that are Extirpated, Endangered, Threatened, or Rare (also described as Special Concern)", Information Bulletin #2 (Eleventh Amendment), published in the Indiana Register at 20201125-IR-312200601NRA.
- (2) A rare natural community in the region would be adversely affected.
- (3) The project site has a floristic quality assessment score of at least:
 - (A) thirty-five (35); or
 - (B) a mean C-value of three and one-half (3 1/2).

IN-LIEU FEE MITIGATION

(4) Use of in-lieu fee mitigation is denied by a federal agency or by another state agency for the same project.

(5) The director determines successful mitigation is not feasible as a result of the financial impact or the location of the project.

(c) The department may recommend modifications to a request for an in-lieu fee. *(Natural Resources Commission; 312 IAC 9.5-3-2; filed Aug 22, 2014, 11:01 a.m.: 20140917-IR-312130528FRA; readopted filed Sep 16, 2020, 8:16 a.m.: 20201014-IR-312200410RFA; errata filed Mar 11, 2021, 11:55 a.m.: 20210317-IR-312210113ACA)*

312 IAC 9.5-3-3 Department action on in-lieu fee request

Authority: IC 14-10-2-4

Affected: IC 14-26-2; IC 14-28-1; IC 14-29-1

Sec. 3. The department may approve, approve with conditions, or deny a request for in-lieu fee mitigation based on the evaluation described in section 2 of this rule. *(Natural Resources Commission; 312 IAC 9.5-3-3; filed Aug 22, 2014, 11:01 a.m.: 20140917-IR-312130528FRA; readopted filed Sep 16, 2020, 8:16 a.m.: 20201014-IR-312200410RFA)*

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