Status of Indiana’s In Lieu Fee Mitigation Program

Laura Hilden
Director of Environmental Services, INDOT
Many thanks to...

Carl Wodrich
Director of Ecological Services
Indiana Department of Natural Resources
What is an In-Lieu Fee Program?
I know some of you have to look this up right now, so...

www.in.gov/dnr/heritage/8340.htm
Permits Proposed for the Program

- **Army Corps of Engineers** – regulations under:
  - Section 10 Harbors Act
  - Section 404 of Clean Water Act (CWA)

- **Indiana Dept of Environmental Management** – regulations under:
  - Section 401 Water Quality Certifications (CWA)
  - Indiana Isolated Wetlands Law

- **Indiana DNR Division of Water**: For construction in a floodway, public freshwater lake or navigable waterway
Mitigation Process

1. Mitigation Bank Credits
2. In-Lieu Fee Credits
3. Permittee Responsible

Proposed Compensatory Mitigation Plan

Permit Decision

Compensatory Mitigation

Mitigation Ratio

Proposed Impact

Permitted Impact

Minimize

Avoid

Proposed Impact

Indiana Department of Natural Resources
In-Lieu Fee Mitigation

• *In-lieu fee program*: restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or nongovernmental natural resource management organization.

• *Permittee purchases credits from ILF sponsor*

• Sponsor builds and maintains larger mitigation projects than permittee-responsible mitigation projects *after impacts are authorized*.
  
  — MUST FOLLOW 2008 Federal Mitigation Rule
What will the ILF program **NOT** do?

- **ILF DOES NOT** change the permitting process
- Permitting agency staff will still be using their best professional judgment, discretion, and adhering to the regulations in determining the amount of mitigation required for your permit(s).
- **NO guarantee** IN SWMP (ILF) will be acceptable or available.
ILF PROGRAM DEVELOPMENT PROCESS
Program Development Components

• Prospectus
  – Provides a summary of the information regarding the in-lieu fee program at a sufficient level of detail to support informed public and IRT comment

• Instrument
  – Describes processes of IN SWMP
  – Legally binding document
  – Program must operate within the context of the Instrument

• Compensation Planning Framework (CPF)
  – Project selection screening process
ILF Program Development Process

Compensatory Mitigation Rule
Timeline for Bank or ILF Instrument Approval*

Phase I

<table>
<thead>
<tr>
<th>Event</th>
<th># of Days**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Optional Preliminary Review of Draft Prospectus</td>
<td>30</td>
</tr>
</tbody>
</table>

DE provides copies of draft prospectus to IRT and will provide comments back to the sponsor within 30 days.

Sponsor Prepares and Submits Prospectus
~DE must notify sponsor of completeness within 30 days of submission~

Phase II

<table>
<thead>
<tr>
<th>Event</th>
<th># of Days**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Day 1** Complete Prospectus Received by DE</td>
<td>30</td>
</tr>
<tr>
<td>Public notice must be provided within 30 days of receipt of a complete prospectus</td>
<td>30</td>
</tr>
<tr>
<td>Phase II 30-Day Public Comment Period</td>
<td>30</td>
</tr>
<tr>
<td>Day 60 DE must provide the sponsor with an initial evaluation letter within 30 days of the end of the public comment period</td>
<td>30 15</td>
</tr>
<tr>
<td>Day 90 Sponsor Considers Comments, Prepares and Submits Draft Instrument</td>
<td>30</td>
</tr>
</tbody>
</table>

DE distributes comments to IRT members and sponsor within 15 days of the close of the public comment period.
ILF Program Development Process

**Phase III**

**Day 1**

30-day IRT comment period begins 5 days after DE distributes draft instrument to IRT members

**Day 30**

DE discusses comments with IRT and seeks to resolve issues

*# of days variable*

**Phase IV**

**Day 30**

Remainder of time for initiation of dispute resolution process by IRT members

**Day 45**

INSTRUMENT APPROVED/NOT APPROVED, or DISPUTE RESOLUTION PROCESS INITIATED
INDIANA STREAM & WETLAND MITIGATION PROGRAM DETAILS

In-Lieu Fee Program Draft Instrument for Indiana Stream & Wetland Mitigation Program

AUG. 4, 2015

Prepared for:
INDIANA DEPARTMENT OF NATURAL RESOURCES
AND
INDIANA NATURAL RESOURCES FOUNDATION
402 W. Washington St., W216
Indianapolis, IN 46204

Prepared by:
Ducks Unlimited
Great Lakes/Atlantic Region
1120 Main Street Plaza
Ann Arbor, MI 48108
p 734.633.3000
f 734.633.2033
Indiana Stream & Wetland Mitigation Program

• Reduce Public’s Regulatory Burden – finding suitable mitigation sites takes time

• 11 Proposed Statewide Watershed-Based Service Areas

• Increase Ecological Significance of Mitigation

• Consolidate Mitigation
  • Gain Efficiencies
  • Integrate into other Conservation Efforts
Program Management

- Indiana DNR
  - Program Administration, Tracking & Reporting
  - Credit Sales
  - Mitigation Projects
  - IN NRF Fiscal Agent
    - Planning/Approval
    - Restoration
    - Monitoring/Reporting
- Admin Fee
- Project Funds

Indiana DNR / Consultants
How will credit sales work?
Credit Sales

- **Developer Wants To Use Credits**
  - See if Credits are Available in RIBITS
  - Contact DNR IN SWMP to confirm credit availability

- **Permit Application**
  - Mitigation Plan
  - ILF Credits
  - Avoid Minimize Mitigation Reqmt

- **Contingent Permit Approval**
  - Developer Purchases Credits
  - DNR Issues Credit Sale Letter

- **Final Permit**
  - Developer Submits Credit Sale Letter
  - Mitigation Fulfilled
Credit Sales

- In-lieu fee programs sell **Advance Credits**
  - Each service area will have a specific allotment of advance wetland and stream credits available

- ILF projects will generate **Released Credits** to fulfill Advance Credits that have been sold
# Requested Advance Credit Allocation

<table>
<thead>
<tr>
<th>Service Area</th>
<th>Stream Credits</th>
<th>Wetland Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calumet-Dunes</td>
<td>37,500</td>
<td>125</td>
</tr>
<tr>
<td>St. Joseph River (Lake MI)</td>
<td>37,500</td>
<td>75</td>
</tr>
<tr>
<td>Maumee</td>
<td>37,500</td>
<td>75</td>
</tr>
<tr>
<td>Kankakee</td>
<td>37,500</td>
<td>75</td>
</tr>
<tr>
<td>Upper Wabash</td>
<td>50,000</td>
<td>75</td>
</tr>
<tr>
<td>Middle Wabash</td>
<td>60,000</td>
<td>75</td>
</tr>
<tr>
<td>Upper White</td>
<td>60,000</td>
<td>200?</td>
</tr>
<tr>
<td>Whitewater-East Fork White</td>
<td>37,500</td>
<td>75</td>
</tr>
<tr>
<td>Lower White</td>
<td><strong>125,000</strong></td>
<td>125</td>
</tr>
<tr>
<td>Upper Ohio</td>
<td>37,500</td>
<td>75</td>
</tr>
<tr>
<td>Ohio-Wabash Lowlands</td>
<td>60,000</td>
<td>100</td>
</tr>
</tbody>
</table>

*Stream credits = linear feet; Wetland credits = acres*
# Credit Price Components

## Project Component

<table>
<thead>
<tr>
<th>Component</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Acquisition</td>
<td>10 – 35%</td>
</tr>
<tr>
<td>Plan Development / Proj. Mgm’t</td>
<td>2 – 16%</td>
</tr>
<tr>
<td>Permanent Protection</td>
<td>up to 10%</td>
</tr>
<tr>
<td>Restoration</td>
<td>12 – 30%</td>
</tr>
<tr>
<td>Monitoring / Adaptive Mgm’t</td>
<td>up to 10%</td>
</tr>
<tr>
<td>Long Term Management</td>
<td>15%</td>
</tr>
<tr>
<td>Contingencies</td>
<td>7 – 10%</td>
</tr>
<tr>
<td>Administration Fee</td>
<td>15%</td>
</tr>
</tbody>
</table>
### Draft Credit Pricing

<table>
<thead>
<tr>
<th>Service Area</th>
<th>Stream Credits</th>
<th>Wetland Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calumet-Dunes</td>
<td>$636</td>
<td>$50,000</td>
</tr>
<tr>
<td>St. Joseph River (Lake MI)</td>
<td>$545</td>
<td>$71,000</td>
</tr>
<tr>
<td>Maumee</td>
<td>$409</td>
<td>$59,000</td>
</tr>
<tr>
<td>Kankakee</td>
<td>$636</td>
<td>$71,000</td>
</tr>
<tr>
<td>Upper Wabash</td>
<td>$340</td>
<td>$59,000</td>
</tr>
<tr>
<td>Middle Wabash</td>
<td>$327</td>
<td>$59,000</td>
</tr>
<tr>
<td>Upper White</td>
<td>$306</td>
<td>$53,000?</td>
</tr>
<tr>
<td>Whitewater-East Fork White</td>
<td>$363</td>
<td>$59,000</td>
</tr>
<tr>
<td>Lower White</td>
<td>$294</td>
<td>$53,000</td>
</tr>
<tr>
<td>Upper Ohio</td>
<td>$363</td>
<td>$59,000</td>
</tr>
<tr>
<td>Ohio-Wabash Lowlands</td>
<td>$413</td>
<td>$59,000</td>
</tr>
</tbody>
</table>
Mitigation Project Selection:
Compensation Planning Framework
Mitigation Project Selection: Compensation Planning Framework

- CPF includes a “Statewide Prioritization Strategy” for project selection
  1) Must Replace Lost Functions & Services
  2) Re-establishment, Rehabilitation, Establishment, Enhancement, and Preservation.
  3) Location Within or Adjacent to “Hotspots” or other Priority Conservation Areas
  4) Projects that restore wetland types which differ from approved mitigation bank(s) if any exist within the SA

- Each Service Area has more specific priorities
- All projects will require real estate restrictions
IN SWMP Mitigation Projects

Sponsor/DNR will identify several potential mitigation projects for advance credits sold

1. Develop/submit a Conceptual Project Plan & JD
   – Corps & IRT review & approval

2. Develop/submit a Mitigation Project Plan & Design
   – Corps & IRT review & approval

3. Construction of project

4. Monitoring & Maintenance

❖ 2008 Mitigation Rule – Three (3) growing seasons

Each Mitigation Plan is an amendment to the Instrument
Upper Wabash Service Area
Hotspots of Potentially Restorable Streams and Wetlands

Prepared for: DNR Indiana Department of Natural Resources
Prepared by: DUCKS UNLIMITED

- Hotspots of Restorable Streams
- Hotspots of Restorable Wetlands
- Stream Priority Areas
- Wetland Priority Areas
- County Boundaries

Miles
0 12.5 25 50 75 100 125
Contractors & ILF

• Indiana Department of Administration Division of Public Works contract process
• Pre-certification required through IDOA PW
• Category: Wetland, Stream and Upland Restoration and Mitigation
• DNR will likely have on-call contractors
  – Jurisdictional determinations?
  – Monitoring?
Next Steps & Schedule

• 2 new Mitigation Specialists started Nov 23rd
  – David Carr and Brad Baldwin

• Address Corps & IRT comments and incorporate into Final Instrument

• Submit Final Instrument to Corps

• Corps & IRT Approval of Instrument
  – DNR can begin selling advance credits
• Construction in a Floodway – Flood Control Act
  (IC 14-28-1)
• Construction on a Public Freshwater Lake – Lake Preservation Act
  (IC 14-26-2)
• Construction in a Navigable Waterway – Navigable Waterways Act
  (IC 14-29-4)
DNR ILF Rules

• The Natural Resources Commission formally adopted 312 IAC 9.5 on July 15, 2014.

• Rule establishes an option for an in-lieu fee to mitigate for adverse impacts to fish, wildlife and botanical resources for construction in a floodway, public freshwater lake or navigable waterway
  – Permitting staff within the Division of Fish & Wildlife will determine appropriateness of proposed mitigation

• Gives applicants a third option for mitigation
DNR ILF Program Policy

• Non-rule policy is under development by DNR
  – Site specificity consideration
• Being developed in parallel with the in-lieu fee program for Section 404 and 401 permits
  – Funds will be kept separate in NRF
• Will include similar credit pricing and fee structure
  – Will account for full costs of mitigation project
Any Questions?

Carl Wodrich
Director of Ecological Services
Indiana Department of Natural Resources
Division of Land Acquisition
317-232-1291
cwodrich@dnr.IN.gov

IN SWMP Mitigation Specialists:
Brad Baldwin (North) – 317-234-9702 bbaldwin@dnr.IN.gov
David Carr (South) – 317-234-9703 dcarr@dnr.IN.gov

http://www.in.gov/dnr/heritage/8340.htm
Questions and Discussion!

Laura Hilden
Director of Environmental Services
Indiana Department of Transportation
lhilden@indot.in.gov