Indiana Stream & Wetland Mitigation Program (IN SWMP)

Indiana’s In-Lieu Fee Mitigation Program

Carl Wodrich
Brad Baldwin
David Carr

IDNR - Division of Land Acquisition
ACEC IDNR Committee
January 25, 2018
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 Plan

Mitigation Ratio

Proposal

Permitted Impact

Minimize

Avoid

Proposed Impact
Indiana Stream and Wetland Mitigation Program

- Reduce Public’s Regulatory Burden
- Shortens project timeframes
  - Finding suitable mitigation sites
- 11 Statewide, Watershed-Based Service Areas
- Integrate into other Conservation Efforts
- Consolidate Mitigation
  - Gain Efficiencies
    - Consolidate w/other conservation
  - Increase Ecological Significance
  - Prioritization of potential projects using Compensation Planning Framework (CPF)
HOW WILL THE PROGRAM WORK?
Credit Sales

Developer Wants To Use Credits
- See if Credits are Available in USACE 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
- Purchase Request Form

Final Permit
- Developer Submits Credit Sale Letter
- Mitigation Fulfilled

An additional 20% will be required by Corps due to temporal loss
## Credit Price Components

<table>
<thead>
<tr>
<th>Project Component</th>
<th>% of Credit Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Acquisition/Protection</td>
<td>up to 50%</td>
</tr>
<tr>
<td>Engineering Design/Plan Development/PM</td>
<td>up to 20%</td>
</tr>
<tr>
<td>Financial Assurances</td>
<td>up to 20%</td>
</tr>
<tr>
<td>Construction</td>
<td>up to 60%</td>
</tr>
<tr>
<td>Monitoring / Adaptive Management</td>
<td>up to 20%</td>
</tr>
<tr>
<td>Long Term Management</td>
<td>up to 20%</td>
</tr>
<tr>
<td>Contingencies</td>
<td>up to 15%</td>
</tr>
<tr>
<td>IN SWMP Administration Costs</td>
<td>up to 15%</td>
</tr>
</tbody>
</table>
### Advanced Credits Available

<table>
<thead>
<tr>
<th>Service Area</th>
<th>Wetland Credits</th>
<th>Stream Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calumet-Dunes</td>
<td>90</td>
<td>45,000</td>
</tr>
<tr>
<td>St. Joseph River (Lake MI)</td>
<td>90</td>
<td>45,000</td>
</tr>
<tr>
<td>Maumee</td>
<td>90</td>
<td>45,000</td>
</tr>
<tr>
<td>Kankakee</td>
<td>90</td>
<td>45,000</td>
</tr>
<tr>
<td>Upper Wabash</td>
<td>90</td>
<td>45,000</td>
</tr>
<tr>
<td>Middle Wabash</td>
<td>90</td>
<td>45,000</td>
</tr>
<tr>
<td>Upper White</td>
<td>120</td>
<td>60,000</td>
</tr>
<tr>
<td>Whitewater-East Fork White</td>
<td>90</td>
<td>45,000</td>
</tr>
<tr>
<td>Lower White</td>
<td>90</td>
<td>45,000</td>
</tr>
<tr>
<td>Upper Ohio</td>
<td>90</td>
<td>45,000</td>
</tr>
<tr>
<td>Ohio-Wabash Lowlands</td>
<td>115</td>
<td>50,000</td>
</tr>
</tbody>
</table>

* Credit exceedance allowance
# Planning Minimum Project Size

*This is based upon our business model and historical mitigation data from the Corps.*

<table>
<thead>
<tr>
<th>Service Area</th>
<th>Wetland (AC)</th>
<th>Stream (LF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calumet-Dunes</td>
<td>20</td>
<td>2,000</td>
</tr>
<tr>
<td>St. Joseph River (Lake MI)</td>
<td>6</td>
<td>1,500</td>
</tr>
<tr>
<td>Maumee</td>
<td>20</td>
<td>4,000</td>
</tr>
<tr>
<td>Kankakee</td>
<td>10</td>
<td>3,000</td>
</tr>
<tr>
<td>Upper Wabash</td>
<td>20</td>
<td>9,000</td>
</tr>
<tr>
<td>Middle Wabash</td>
<td>15</td>
<td>10,000</td>
</tr>
<tr>
<td>Upper White</td>
<td>35</td>
<td>14,000</td>
</tr>
<tr>
<td>Whitewater-East Fork White</td>
<td>25</td>
<td>7,000</td>
</tr>
<tr>
<td>Lower White</td>
<td>20</td>
<td>9,000</td>
</tr>
<tr>
<td>Upper Ohio</td>
<td>20</td>
<td>7,000</td>
</tr>
<tr>
<td>Ohio-Wabash Lowlands</td>
<td>35</td>
<td>11,000</td>
</tr>
</tbody>
</table>
# Draft Credit Pricing Schedule

<table>
<thead>
<tr>
<th>Service Area</th>
<th>Stream Credit Price</th>
<th>Wetland Credit Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calumet-Dunes</td>
<td>$600</td>
<td>$95,000</td>
</tr>
<tr>
<td>St. Joseph River (Lake MI)</td>
<td>$600</td>
<td>$120,000</td>
</tr>
<tr>
<td>Maumee</td>
<td>$450</td>
<td>$80,000</td>
</tr>
<tr>
<td>Kankakee</td>
<td>$500</td>
<td>$95,000</td>
</tr>
<tr>
<td>Upper Wabash</td>
<td>$400</td>
<td>$80,000</td>
</tr>
<tr>
<td>Middle Wabash</td>
<td>$400</td>
<td>$80,000</td>
</tr>
<tr>
<td>Upper White</td>
<td>$400</td>
<td>$80,000</td>
</tr>
<tr>
<td>Whitewater-East Fork White</td>
<td>$400</td>
<td>$80,000</td>
</tr>
<tr>
<td>Lower White</td>
<td>$400</td>
<td>$80,000</td>
</tr>
<tr>
<td>Upper Ohio</td>
<td>$400</td>
<td>$80,000</td>
</tr>
<tr>
<td>Ohio-Wabash Lowlands</td>
<td>$400</td>
<td>$80,000</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 / Preservation.
  3) Within or Adjacent to Other Priority Conservation Areas
  4) Address identified threats within the watershed/SA

• Each Service Area has more specific priorities
• All projects will require real estate restrictions
Federal Mitigation Rule: 11 Elements

• (i) The geographic service area(s), including a watershed-based rationale for the delineation of each service area;

• (ii) A description of the threats to aquatic resources in the service area(s), including how the in-lieu fee program will help offset impacts resulting from those threats;

• (iii) An analysis of historic aquatic resource loss in the service area(s);

• (iv) An analysis of current aquatic resource conditions in the service area(s), supported by an appropriate level of field documentation;

• (v) A statement of aquatic resource goals and objectives for each service area, including a description of the general amounts, types and locations of aquatic resources the program will seek to provide;

• (vi) A prioritization strategy for selecting and implementing compensatory mitigation activities;
CPF Elements...

- (vii) An explanation of how any preservation objectives identified in paragraph (c)(2)(v) of this section and addressed in the prioritization strategy in paragraph (c)(2)(vi) satisfy the criteria for use of preservation in §332.3(h);

- (viii) A description of any public and private stakeholder involvement in plan development and implementation, including, where appropriate, coordination with federal, state, tribal and local aquatic resource management and regulatory authorities;

- (ix) A description of the long-term protection and management strategies for activities conducted by the in-lieu fee program sponsor;

- (x) A strategy for periodic evaluation and reporting on the progress of the program in achieving the goals and objectives in paragraph (c)(2)(v) of this section, including a process for revising the planning framework as necessary; and

- (xi) Any other information deemed necessary for effective compensation planning by the district engineer.
Credit Generation

• In general credits generated by IN SWMP mitigation projects will be calculated according to the following schedule:
  • Restoration (Re-establishment) – 1 to 1
  • Restoration (Rehabilitation) – 0.6 to 1 thru 1 to 1
  • Establishment – 1 to 1 (at the time all ecological performance standards are met)
  • Enhancement – 0.1 to 1 thru 0.6 to 1
  • Riparian Habitat Enhancement – 0.2 to 1 thru 0.5 to 1
  • Preservation – 0.1 to 1
  • The Corps and/or IDEM in consultation with the IRT may approve variances for specific projects
Credit Release Schedule

• 15% mitigation credit release after site protection and approved Section 404 permit;
• 5% additional mitigation credit release (20% cumulative) upon DE acceptance of “As Built” Report;
• 60% additional mitigation credit release (80% cumulative), divided equally for each year monitoring performance standards are met, not including final year of monitoring.
• 20% additional mitigation credit release (100 % cumulative) once the final performance standards have been met and when long term management plan and funding is in place and the DE has provided written release from monitoring to the Sponsor.
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
   – Land Acquisition or Conservation Easement

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

3. Construction of project

4. Monitoring & Maintenance (5-10+ yrs)
    2008 Mitigation Rule – Three (3) growing seasons

   *Each Mitigation Plan is an amendment to the Instrument*
**LOP Implementation Process**

**Early Coordination**
- Sponsor distributes Concept Plan & JD to IRT **30 days** prior to Pre-Application Site Visit.
- Pre-Application Site Visit

**IRT Conference Call**
- No
  - IRT comment consensus
  - **15 DAYS**
- Yes
  - Early Agency Comments Due

**Corps forwards to Sponsor ("Frwd Early Coord Comments")**

**Sponsor sends letter to Corps & IRT accepting conditions or dropping project ("Project Status" letter)**

**Project Design**
- Section 106 initiated & completed
- Project Designed
- Mitigation Plan drafted & finalized
- 401 & flood plain application submitted
- Mitigation Plan distributed to IRT
- Section 7 consultation completed

**Section 404 DA Permit Application**
- Complete application checklist
- 401WQC & Floodplain Permit
- Final Mitigation Plan
- Section106 clearance
- Section7 Clearance

**IRT Consultation & Public Notice**
- Notify IRT (email) of Intent to:
  - Use LOP
  - Modify Instrument
  - Issue PN

**30 DAYS**

**Intent to Approve/Disapprove Modification (email)**
- No
  - IRT Comments Due to Corps, IRT concerns?
- Yes
  - Corps Attempts to Resolve

**30 DAYS**

**Dispute Resolution**

**Unresolved concerns from IRT?**
- 15 days
  - YES
  - Dispute Resolution
- NO
  - 15 days

**Modification Approved/Disapproved (email)**

**Project Approved (LOP) & Modification (LOP letter, signature pg, Appendix B/D)**
IN SWMP Partnerships & Considerations

• Potential for ILF to partner with other conservation programs/funding sources

• ILF Program/Project Restrictions
  – Not likely on lands acquired with federal $$$
  – All projects will require real estate restrictions (CE)
  – Legal Drains will be a challenge

• Ownership of IN SWMP projects
  – DNR, land trusts, local gov’t parks dept., private
  – Long-term maintenance funding post-release
Contractors for IN SWMP

• IDOA Division of Public Works
  – Pre-certification required through IDOA PW for both “Consultant/Designer” and Construction
  – Category: Wetland, Stream and Upland Restoration and Mitigation

• Contractor tasks outside design/construction
  – Site Selection/Conceptual Plans (some in-house)
  – Possibly – RFQs, RFIs, RFPs
  – Maintenance contracts; Monitoring/assessment
Any Questions?

Carl Wodrich
Director of Ecological Services
IDNR – 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