

# Indiana Stream & Wetland Mitigation Program (IN SWMP)

*Indiana's In-Lieu Fee Mitigation Program*



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Division of Land Acquisition

**Operation Stay Afloat  
March 15, 2016**

# Indiana's In-Lieu Fee Program

- **Goal:** An approved ILF program
- **Challenges:** Time-consuming and technical
  - MUST follow 2008 federal mitigation rule
- **Solution:** Consultant-led effort
  - Experience with ILF programs
  - Time and technical resources
- **Funding:** FHWA grant & INDOT funds
- **Project Team:** DNR, NRF, IDEM, INDOT, FHWA

# 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\*

	Event	# of Days**	
Phase I	Optional Preliminary Review of Draft Prospectus	30	DE provides copies of draft prospectus to IRT and will provide comments back to the sponsor within 30 days.
	<b>Sponsor Prepares and Submits Prospectus</b> ~DE must notify sponsor of completeness w/in 30 days of submission~		
<b>Day 1** Complete Prospectus Received by DE</b>			
Phase II	Public notice must be provided within 30 days of receipt of a complete prospectus	30	
	30-Day Public Comment Period	30	
	DE must provide the sponsor with an initial evaluation letter within 30 days of the end of the public comment period.	30	15 DE distributes comments to IRT members and sponsor within 15 days of the close of the public comment period.
<b>Sponsor Considers Comments, Prepares and Submits Draft Instrument</b> ~DE must notify sponsor of completeness w/in 30 days of submission~			
<b>Day 1 Complete Draft Instrument Received by IRT Members</b>			



# ILF Program Development Process

## Sponsor Considers Comments, Prepares and Submits Draft Instrument

~DE must notify sponsor of completeness w/in 30 days of submission~

Day 1		Complete Draft Instrument Received by IRT Members			
Phase III		30-day IRT comment period begins 5 days after DE distributes draft instrument to IRT members	30	90	Within 90 days of the receipt of a complete draft instrument by IRT members, the DE must notify the sponsor of the status of the IRT review.
		DE discusses comments with IRT and seeks to resolve issues ~ # of days variable~	60		
Day 90					



## Sponsor Prepares Final Instrument

~Sponsor provides copies to DE and all IRT members~

Day 1		Final Instrument Received by DE & IRT			
Phase IV	Day 30	DE must notify IRT members of intent to approve/not approve instrument within 30 days of receipt.	30	45	IRT members have 45 days from submission of final instrument to object to approval of the instrument and initiate the dispute resolution process.
		Remainder of time for initiation of dispute resolution process by IRT members	15		
Day 45		INSTRUMENT APPROVED/NOT APPROVED, or DISPUTE RESOLUTION PROCESS INITIATED			

# 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

# Existing Compensatory Mitigation Options in Indiana

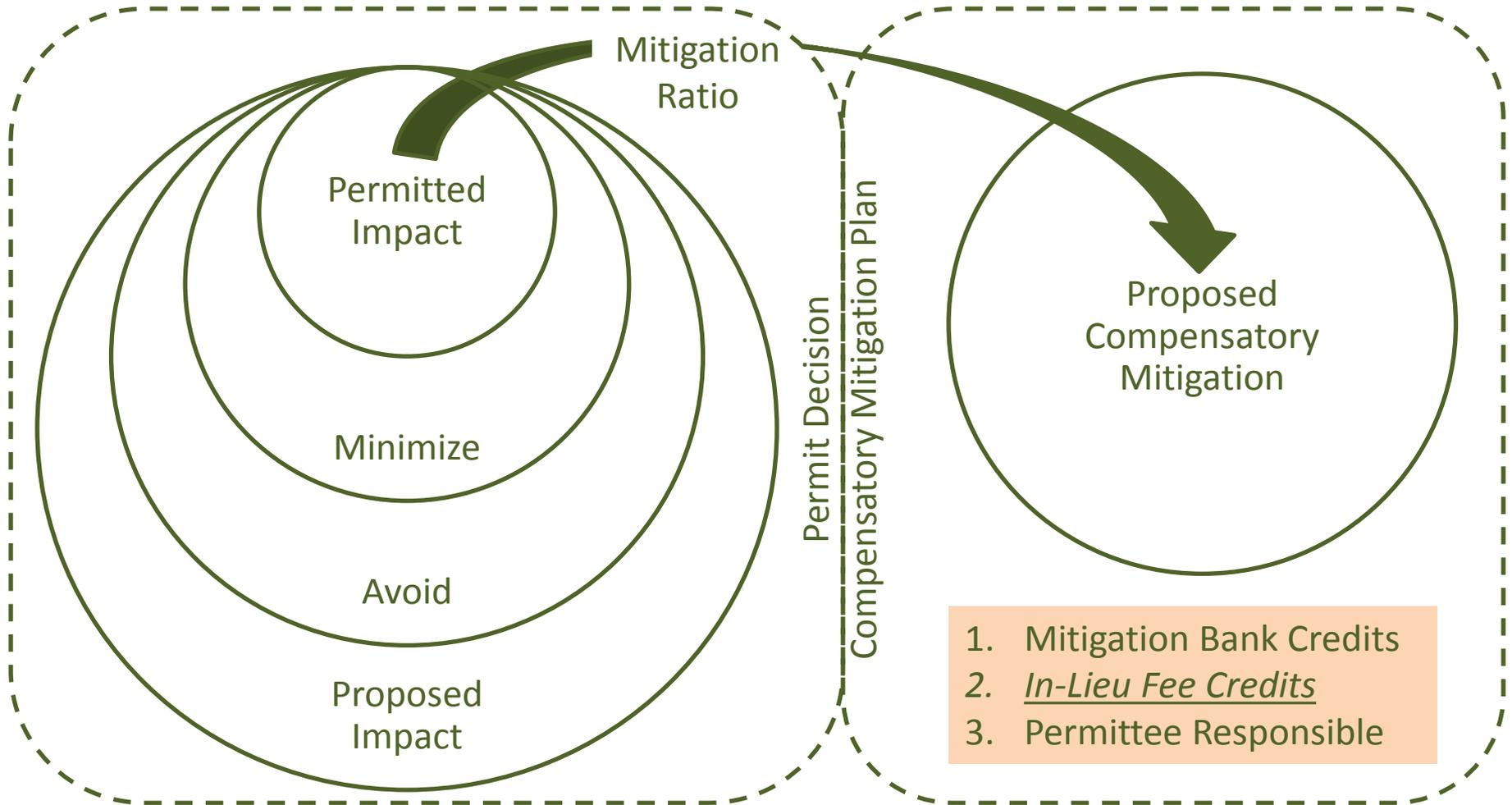
1. Use of an approved mitigation bank
2. Permittee-responsible mitigation (PRM)



# Sources of Compensatory Mitigation

- *Mitigation bank*: provide compensatory mitigation *in advance of authorized impacts* to similar resources; requires up-front investment and usually a for-profit entity or conservation NGO
- *Permittee-responsible mitigation*: Individual projects constructed by permittees to provide compensatory mitigation for activities authorized by permits.

# Mitigation Process



# What is an In-Lieu Fee Program?



# 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

# Why does Indiana need an ILF program?

- The 2008 federal mitigation rule recognizes that ILF programs are an environmentally preferable option over PRM based on several factors.
  - Target larger, more ecologically valuable parcels prioritized on a landscape and/or watershed scale.
  - Provide rigorous scientific and technical analysis and financial assurances which translates to reduction of project success uncertainty.

# 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.**



# 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., W256  
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The screenshot shows the Indiana Department of Natural Resources (DNR) website. The page title is "INDIANA STREAM AND WETLAND MITIGATION PROGRAM". The main content area contains the following text:

**INDIANA STREAM AND WETLAND MITIGATION PROGRAM**

The Department is excited to announce its proposed sponsorship of a statewide in-lieu fee (ILF) mitigation program, Indiana's Stream & Wetland Mitigation Program (IN SWMP). In the fall of 2013, the DNR, with assistance from the Indiana Department of Transportation and the Indiana Department of Environmental Management, initiated the approval process with the U.S. Army Corps of Engineers (Corps) and the Indiana Department of Environmental Management (IDEM) for establishing the state's first stream and wetland in-lieu fee compensatory mitigation program.

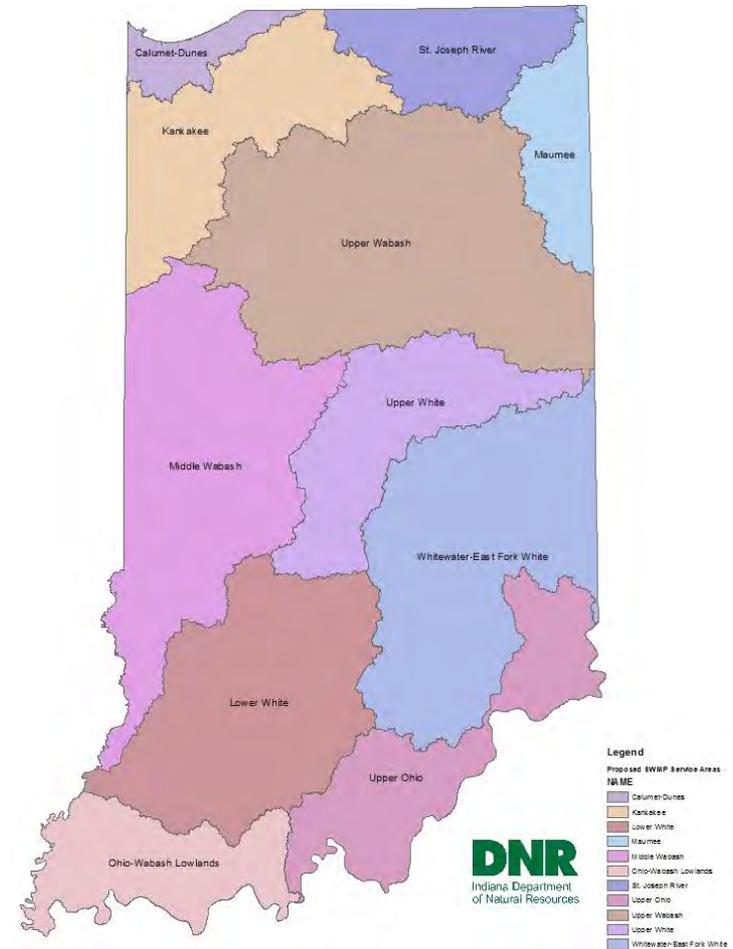
The Department's ILF program, when established, will provide stream and wetland mitigation credits that can be used for compensatory mitigation for unavoidable impacts to waters of the United States and isolated wetlands in the State of Indiana. Permits are required by the Corps in accordance with Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) for work in or affecting traditionally navigable "waters of the United States" and in accordance with Section 404 of the Clean Water Act (CWA) for the discharge of dredged and/or fill material into "waters of the U.S.", and by IDEM under Section 401 Water Quality Certification of the CWA and Indiana's Isolated Wetlands law (Indiana Code 13-18-22).

Additionally, the Indiana Natural Resources Commission adopted new rules allowing for an in-lieu fee for permits for construction in a floodway, public freshwater lake or navigable waterway issued by the DNR Division of Water under the Flood Control Act, Lakes Preservation Act or Navigable Waterways Act. While this rule was formally adopted by the Commission, it is not yet in effect and must still be reviewed by the Attorney General's Office and Governor's Office.

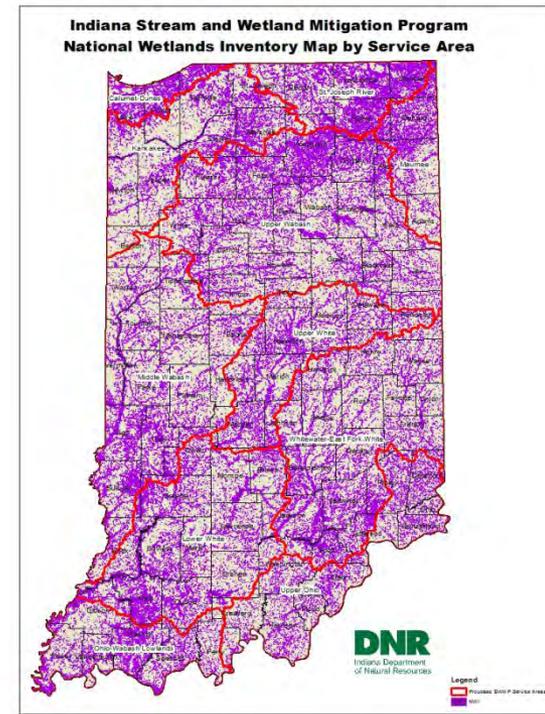
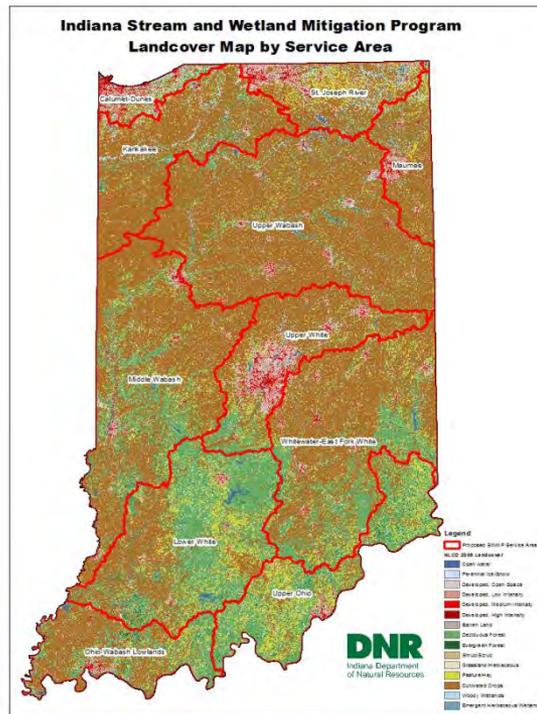
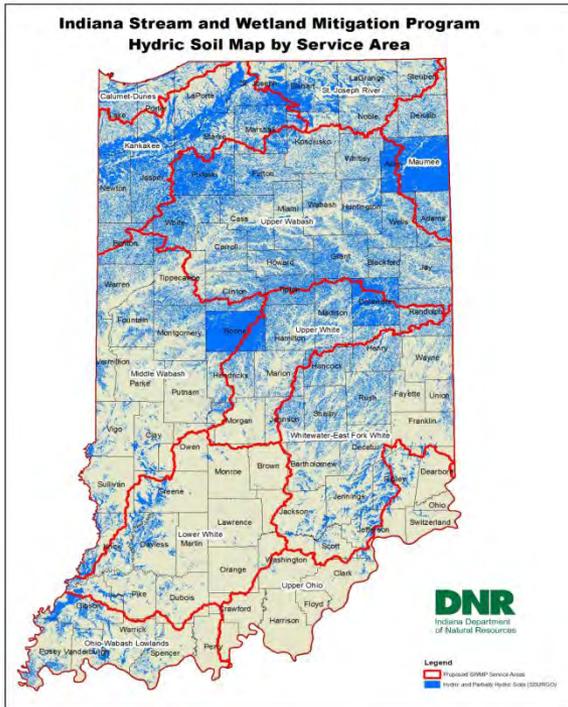
Currently, these permits require an applicant to restore aquatic resources and habitat either (1) at or near the project site, or (2) using an approved mitigation

# 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



# 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 “Potentially Restorable 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**

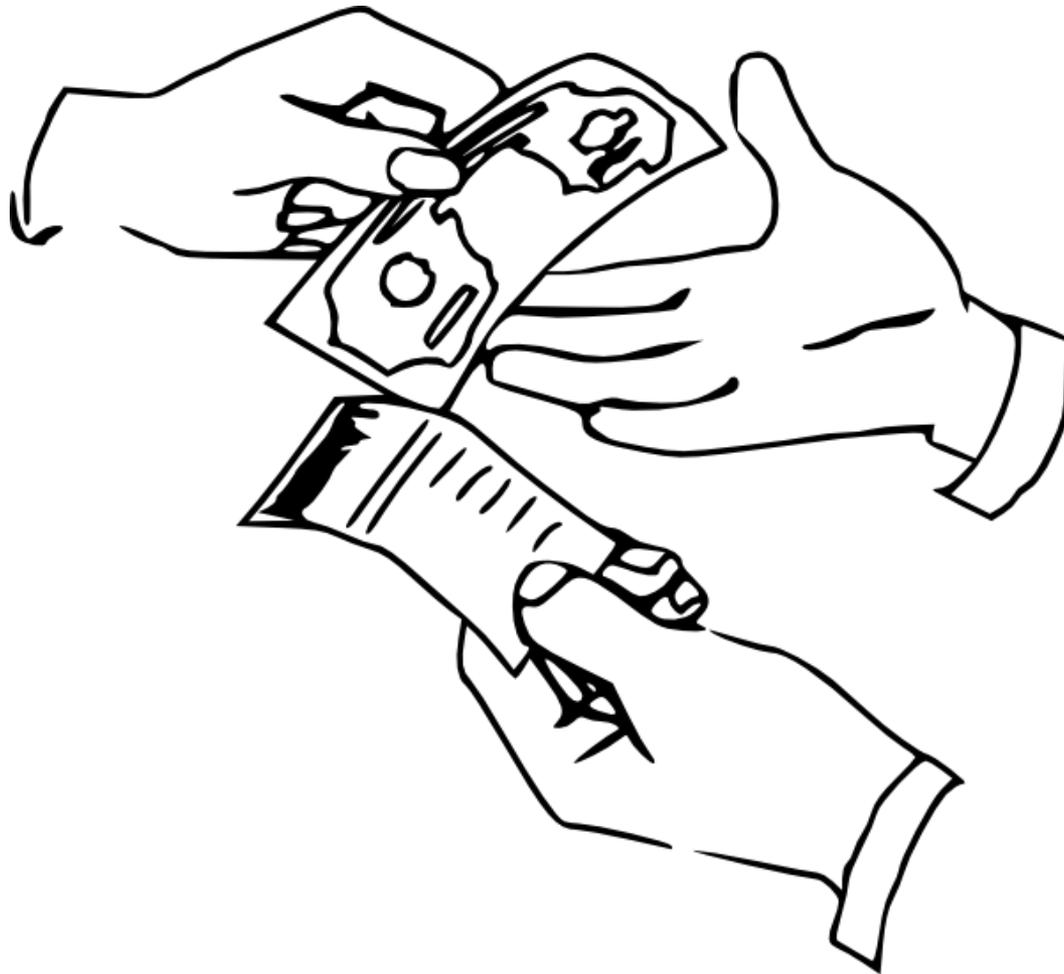
*Each Mitigation Plan is an amendment to the Instrument*

# Accountability



- Projects must have same accountability as a mitigation bank
- All proposed projects are public noticed by the Corps (Lead District for given project)
- Submit annual program reports and **project specific performance monitoring reports**
- Projects should replace impacted/lost aquatic resources

# How will credit sales work?



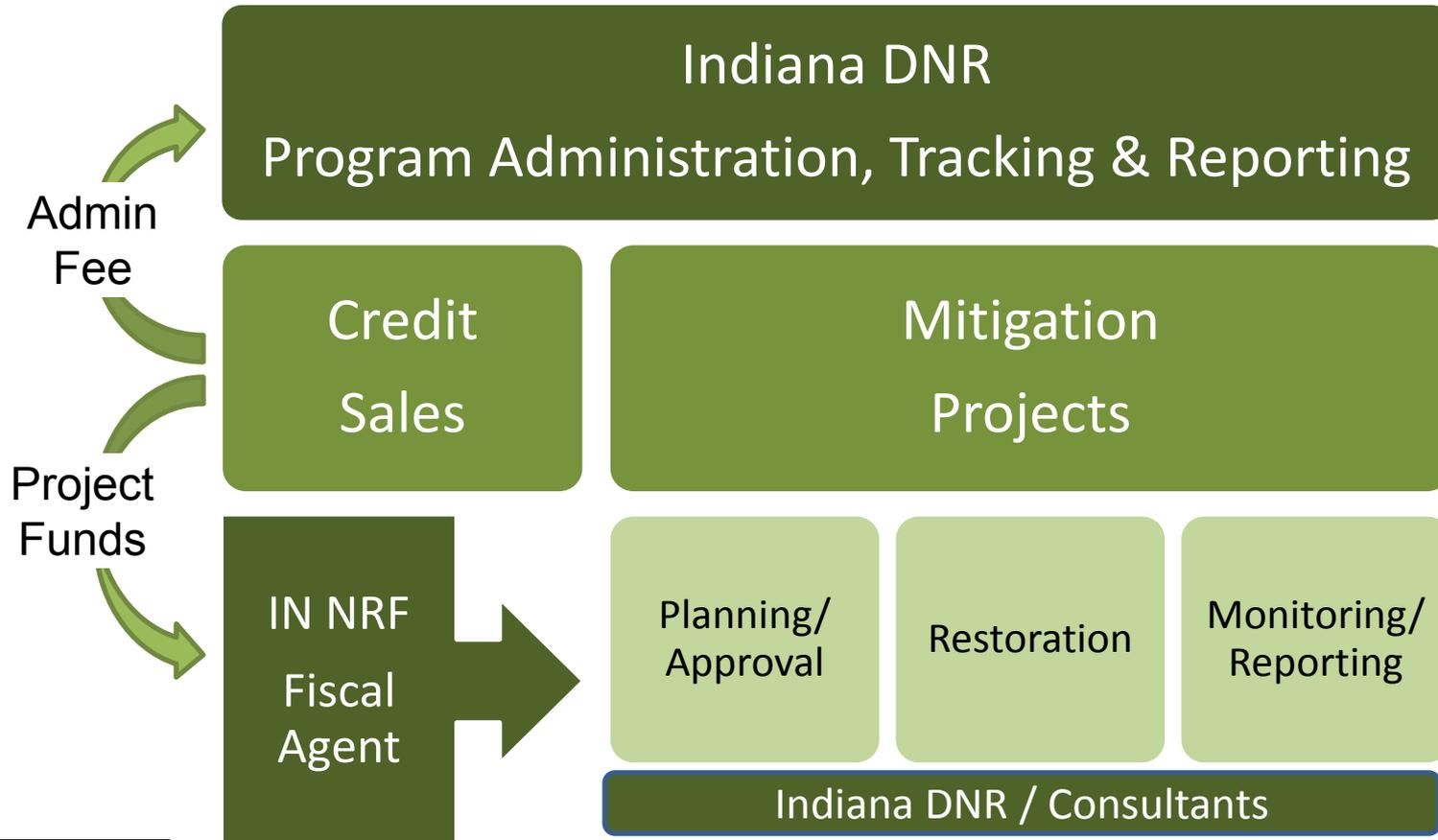
# Credit Sales



# 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

# Program Management



# Requested Advance Credit Allocation

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

*\*Stream credits = linear feet; Wetland credits = acres*

*\*\*Advance Credit Allocation may change*

# Credit Price Components

<b><u>Project Component</u></b>	<b><u>Percent of TPC</u></b>
Land Acquisition	10 – 35%
Plan Development / Proj. Mgm't	2 – 16%
Permanent Protection	up to 10%
Restoration	12 – 30%
Monitoring / Adaptive Mgm't	up to 10%
Long Term Management	15%
Contingencies	7 – 10%
Administration Fee	15%

# DRAFT Credit Pricing\*

<u>Service Area</u>	<u>Stream Credits</u>	<u>Wetland Credit</u>
Calumet-Dunes	\$636.00	\$50,000.00
St. Joseph River (Lake MI)	\$545.00	\$71,000.00
Maumee	\$409.00	\$59,000.00
Kankakee	\$636.00	\$71,000.00
Upper Wabash	\$340.00	\$59,000.00
Middle Wabash	\$327.00	\$59,000.00
Upper White	\$306.00	\$53,000.00
Whitewater-East Fork White	\$363.00	\$59,000.00
Lower White	<del>\$294.00</del>	\$53,000.00
Upper Ohio	\$363.00	\$59,000.00
Ohio-Wabash Lowlands	\$413.00	\$59,000.00

\*These prices are likely to change

# Next Steps & Schedule

- 2 new Mitigation Specialists
  - Brad Baldwin & David Carr
    - CPF revisions
    - Project site selection
    - Coordination with Corps & IRT on projects
    - Contractor oversight
- 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



# DNR DIVISION OF WATER PERMITS

- **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

# Getting Work Done: 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
  - Wetland delineations?
  - Land appraisals & surveys?
  - Monitoring?

# Any Questions?

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## **IN SWMP Mitigation Specialists:**

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<http://www.in.gov/dnr/heritage/8340.htm>