WI WETLAND CONSERVATION TRUST: demystifying this new in-lieu fee mitigation program

Prepared for:
Critical Methods Training 2015

March 11th, 2015
Prepared by:
Matt Matrise – Wetland In-Lieu Fee Coordinator

Agenda Topics

- Mitigation Progression
- Who administers / sponsors the program?
- What is an in-lieu fee program?
- When was it approved?
- Where is the program operating?
- Why is the program needed?
- How is it operated?
- Where can I lean more?

Mitigation Sequence

- 1972 - Clean Water Act Section 404
- 1980 – §404(b)(1) guidelines, established by EPA
  - Practicable Alternative Analysis, before issuing 404 permit
  - “No Net Loss” of wetlands
- 1990 Corps & EPA clarified goal as:
  - “No overall net loss of values and functions”
  - MOA between EPA and Army Corps
    - establishes a three-part sequencing process:
      - First Avoid, then Minimize, lastly Compensate (i.e. Mitigate)
WI Timeline Highlights

- 1990 - WI DOT mitigation
- 1993 - WI DOT Technical Guidelines
- 2002 DNR Mitigation Banking (NR 350)
- 2002 DNR Mitigation Guidelines
- 2008 Federal Mitigation Rule 33 CFR 332
- 2012 WI Compensatory Mitigation Required
- 2014 WI Wetland Conservation Trust Signed

WI Basis for In-Lieu Fee

- March 2012 Act 118 signed –
  - Under the Act, the DNR may establish an “in-lieu fee subprogram”; in consultation with the Corps…
- July 1st, 2012 took effect –
  - 281.36(3n)(d) Wis. Stats. – Mitigation required for wetland individual permits. Does not entitle applicant to a permit.
  - 281.36(3r)(e) Wis. Stats. – Mitigation; in lieu fee subprogram: 
    - ...the department may establish an in-lieu fee subprogram...The subprogram must be approved by the U.S. Army Corps of Engineers and be consistent with federal regulations.

What is In-Lieu Fee?

In-lieu fee: a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for permits. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor.
Program Establishment

- Applicable to:
  - WI Individual Wetland Permits approved under 281.36 Wis. Stats.
  - Federal wetland Permits under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899.

- Program Funding:
  - Credit Fees & accept additional other money:
    - such as donations, enforcement actions & Surcharge Fee under 281.36(11)

- Program Creation:
  - Governed by a written document subject to public notice & approved by the US Army Corps in consultation with Interagency Review Team (EPA, USFWS, NRCS).

Corps Approval Process

- Phase I
  - Draft Prospectus: not required, but provides a general overview and introduction.

- Phase II
  - Prospectus
  - Public comment period

- Phase III
  - Draft Instrument

- Phase IV
  - Final Instrument

Program Establishment Recap

- Draft Prospectus submitted – 3/15/2013
- Final Approvals obtained – 11/19/2014
  - Process took: 614 days
  - 20 months
  - 1.68 years
Key Program Elements

- Objectives
- Mitigation Process
- Service Areas
- Advanced vs. Released Credits
- Credit Fee
- Compensation Planning Frameworks
- Request for Proposal Process
- Ownership & Long Term Maintenance

Watershed Approach

- An analytical process for making mitigation decisions that support sustainability or improvement of wetland resources
  - Considers watershed scale needs
    - How location & type address needs
  - Landscape perspective
    - Identify location & type of mitigation
  - Historic & potential resource condition
  - Past & projected resource impacts
  - Terrestrial connections between resources

Objectives

- Provide an additional method of mitigation
- Focus on the greatest watershed needs
- Complete projects on the ground selected through a watershed approach
Mitigation Process

- WWCT does not change the requirement to First Avoid, then Minimize and lastly mitigate.
- Follow general hierarchy in the 2008 Federal Rule

1. Mitigation Banking
   Preferred over ILF for — no temporal loss.
2. In-Lieu Fee Program
   Preferred over PRM for — watershed selection, extensive planning, larger impact.
3. Permittee-Responsible Mitigation

- New Process Forms:
  - Mitigation Summary Sheet & IP Wetland Mitigation Process

Service Areas

- Statewide program
- Divided into 12 service areas
- Based on modified HUC-6
- Consistent with Banking & Permittee Responsible
- If credit sales are too small
  - Possibility to combine adjacent
  - Purchase Bank credits
  - Cannot cross HUC-4 basins

Advanced vs. Released Credits

- **Advanced**: available for sale prior to being fulfilled with an approved mitigation project.
- **Released**: generated from a Corps approved project as performance standards are met, released per a credit release schedule.

- All Released Credits must 1st be used to replenish or “payback” previous Advanced Credit sales.
  - Similar to a credit card or revolving account concept.
Advanced Credits

- Assigned individually to each Service Area
- Once sold, must initiate project within 3 growing seasons
- Based on Corps permit data, anticipated ratio, 3 year project initiation requirement, urbanization, mitigation bank presence, current permit impacts, future threats (i.e. mining).

<table>
<thead>
<tr>
<th>Service Area</th>
<th>Advanced Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lake Superior</td>
<td>75</td>
</tr>
<tr>
<td>St. Croix</td>
<td>30</td>
</tr>
<tr>
<td>Mississippian</td>
<td>50</td>
</tr>
<tr>
<td>Upper Mississippi - Black River</td>
<td>50</td>
</tr>
<tr>
<td>Upper Mississippi</td>
<td>100</td>
</tr>
<tr>
<td>Lower Mississippi</td>
<td>40</td>
</tr>
<tr>
<td>Upper Mississippi - Rampart Range</td>
<td>30</td>
</tr>
<tr>
<td>Southwestern Lake Michigan</td>
<td>100</td>
</tr>
<tr>
<td>Fox</td>
<td>55</td>
</tr>
<tr>
<td>Rock</td>
<td>90</td>
</tr>
<tr>
<td>Northwestern Lake Michigan</td>
<td>60</td>
</tr>
<tr>
<td>Northern Lake Michigan</td>
<td>30</td>
</tr>
</tbody>
</table>

General Fulfillment Schedule

- How will actual project credits be released?
  - Founded on 2013 guidelines, performance based
  - Each project will have a specific release schedule

- How will released credit be generated?
  - Preservation Release
    - 100% upon Corps approval of:
      - Mitigation Plan, Long Term Maintenance Plan & signed conservation easement

<table>
<thead>
<tr>
<th>Range of Credit Ratio (Released Credits / Site area)</th>
<th>Typical Credit Ratio (Released Credits / Site area)</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 1 : 1</td>
<td>1 : 1</td>
<td>Restoration</td>
</tr>
<tr>
<td>Up to 1 : 1</td>
<td>0.75 : 1</td>
<td>Enhancement</td>
</tr>
<tr>
<td>Up to 1 : 1</td>
<td>0.5 : 1</td>
<td>Establishment</td>
</tr>
<tr>
<td>Up to 0.25 : 1</td>
<td>0.25 : 1</td>
<td>Buffer</td>
</tr>
<tr>
<td>Up to 0.125 : 1</td>
<td>0.125 : 1</td>
<td>Preservation</td>
</tr>
</tbody>
</table>

Credit Fee

- Established by the Sponsor, evaluated annually
- Based on true cost accounting
- Since adjacent Service Areas may be combined within HUC-4 basins, credit fee consistent

<table>
<thead>
<tr>
<th>Service Area</th>
<th>Credit Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lake Superior</td>
<td>$58,000</td>
</tr>
<tr>
<td>St. Croix</td>
<td>$60,000</td>
</tr>
<tr>
<td>Mississippian</td>
<td>$45,000</td>
</tr>
<tr>
<td>Upper Mississippi - Black River</td>
<td>$50,000</td>
</tr>
<tr>
<td>Upper Mississippi</td>
<td>$50,000</td>
</tr>
<tr>
<td>Lower Mississippi</td>
<td>$50,000</td>
</tr>
<tr>
<td>Fox</td>
<td>$55,000</td>
</tr>
<tr>
<td>Rock</td>
<td>$90,000</td>
</tr>
<tr>
<td>Northwestern Lake Michigan</td>
<td>$60,000</td>
</tr>
<tr>
<td>Northern Lake Michigan</td>
<td>$30,000</td>
</tr>
<tr>
<td>Fox</td>
<td>$40,000</td>
</tr>
<tr>
<td>Northwestern Lake Michigan</td>
<td>$30,000</td>
</tr>
<tr>
<td>Northern Lake Michigan</td>
<td>$30,000</td>
</tr>
<tr>
<td>Fox</td>
<td>$60,000</td>
</tr>
<tr>
<td>Northwestern Lake Michigan</td>
<td>$60,000</td>
</tr>
<tr>
<td>Northern Lake Michigan</td>
<td>$30,000</td>
</tr>
<tr>
<td>Fox</td>
<td>$40,000</td>
</tr>
</tbody>
</table>
Credit Ratios (credits : impact acre)

- In general, WWCT will be a 1.45:1 ratio
  - Meaning a 1 acre impact equals 1.45 credits.
  - Based on state minimum 1.2:1 + 0.25:1 increase for temporal loss.
- WWCT sells Advanced Credits, prior to having project on the ground.
- Subject to change and addressed on a project case by case basis as some impacts may require additional credits.

Compensation Planning Frameworks (CPF)

- Main decision tool specific to each service area guiding selection and implementation of mitigation activities.
  - Threats
  - Historic Loss
  - Current Conditions
  - Goals and Objectives
  - Priorities
  - Preservation
  - Stakeholder Involvement
  - Protection
  - Evaluation and Reporting

CPF – Overall Wetland Threats

- Habitat Segmentation and Loss
- Agricultural Impacts
- Groundwater Depletion & Surface Water Alteration
- Invasive Species
- Nutrient and Sediment Loading
CPF – Service Area Specific Threats

- Overall Wetland Threats
- Ecological Landscape based resource concerns
- Current Land Use: Ag, Developed, Natural
- Corps Permit Trends – past 5 years
  - Quantity & Wetland Cover Type
- Anticipated Future Threats:
  - Non-Metallic & Metallic Mining

CPF – Historic Loss

- Historic Wetland Conditions (type, location, losses)
- Overall Estimated % Lost per HUC-8
- Historic Type = Combination of:
  - WI Wetland Inventory
  - Potentially Restorable Wetlands
  - Original Vegetation of WI
  - SSURGO Soil Orders
  - Tension Zone position

<table>
<thead>
<tr>
<th>HUC</th>
<th>Wetland Type</th>
<th>Total Acres</th>
<th>Returning Acres</th>
<th>Restorable Acres</th>
<th>Potentially Restorable Acres</th>
<th>Original Vegetation Acres</th>
<th>SSURGO Soil Orders Acres</th>
<th>Tension Zone Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>07090005</td>
<td>Bogs</td>
<td>83.40%</td>
<td>57.89%</td>
<td>0.02%</td>
<td>90.18%</td>
<td>71.48%</td>
<td>45.10%</td>
<td></td>
</tr>
<tr>
<td>07090006</td>
<td>Kishwaukee</td>
<td>31.11%</td>
<td>68.99%</td>
<td>48.03%</td>
<td>2.81%</td>
<td>50.27%</td>
<td>4.02%</td>
<td>90.18%</td>
</tr>
<tr>
<td>07090004</td>
<td>Sugar River</td>
<td>19.77%</td>
<td>56.69%</td>
<td>87.72%</td>
<td>90.99%</td>
<td>14.69%</td>
<td>61.27%</td>
<td>90.18%</td>
</tr>
<tr>
<td>07090003</td>
<td>Pecatonica</td>
<td>40.40%</td>
<td>55.70%</td>
<td>23.32%</td>
<td>0.72%</td>
<td>31.11%</td>
<td>61.27%</td>
<td>90.18%</td>
</tr>
<tr>
<td>07090002</td>
<td>Lower Rock</td>
<td>14.17%</td>
<td>56.75%</td>
<td>19.78%</td>
<td>40.70%</td>
<td>14.62%</td>
<td>46.29%</td>
<td>90.18%</td>
</tr>
</tbody>
</table>

CPF – Current Conditions

- Current Wetland Resource Conditions
  - Gateway to Basins Website (https://dirr.wi.gov/water/basins/)
  - State of Basin Reports
  - Ecological Landscapes
  - WI Wetland Inventory
    - Acres of each type
    - Relative Frequency
CPF – Goals and Objectives

- Overall Service Area goals & objectives
  - Provide comp mitigation based on credit sales
  - Perform comp mitigation in high priority watersheds (high historic loss, high PRW)
  - Replace historic wetland types sustaining high losses, supported by permitted losses.
  - Implement priority actions for SGCN & their associated wetland habitat.
  - Address 303d listed waters capable of remediation through wetland projects.
  - Provide functional buffers around projects to sustain wetland function.
  - Preserve rare & high quality wetlands, critical habitat for T/E species, etc.

- Specific HUC-8 Watershed goals & objectives
  - Discuss specific watershed characteristics
  - Identify the restoration & enhancement of specific wetland cover types
  - Identify the preservation of specific rare wetland types according to the WWAP

CPF – Prioritization Strategy for Site Selection & Planning

- First, select projects that meet the core requirements
  - Successful & sustainable net gain &/or preservation of function &/or area.
  - Fulfill tenets of existing Advanced Watershed Plans (AWP) or prioritization strategy, preference for AWP.
  - Cost, feasibility, size, proximity to protected areas, corridor connectivity, human use value, efficient maintenance, NRB Boundaries.

- Second, select projects based on capacity to provide wetland functions & achieve goals and objectives

- Third, select projects located in or adjacent to PRW or other priority conservation areas

- Fourth, prioritize projects located in high opportunity HUC-8’s (high % historic loss, high quantity PRW)

Request for Proposal Process (RFP)

- Two avenues for developing projects:
  - Solicitation of projects through open RFP process; or
  - Internal project developed by DNR
    - Preference given to open RFP process
- RFP developed by sponsor (DNR), submit to Corps for approval.
- RFP reviewed and approved by Corps in consultation with IRT.
- Final RFP published seeking projects from the public, non-profits, NGO’s, DNR programs, etc.
- Projects received are evaluated by sponsor (DNR) & a selection is made.
- Corps & IRT comment on selected project prior to developing mitigation plan.
- Selected project is prepared into a mitigation plan & submitted to Corps for funding approval in consultation with the IRT.
Ownership & Long-Term Mgmt.

- DNR legally responsible
- Perpetual protection
  - Fee simple title or;
  - conservation easements;
  - Other land restrictions
- Possible to transfer ownership
  - non-profit, NGO or another state/local government
- Possible to transfer long term management
  - solicitation of contracts proposals or other mechanism

Current Program Status

- Program approved on 11/19/2014
- First transaction completed on 12/22/2014
  - 5.47 advanced credits sold – Upper Illinois Service Area - $322,328

Current Credit Availability

<table>
<thead>
<tr>
<th>Service Area</th>
<th>Authorized Advanced Credits</th>
<th>Advanced Credits Sold</th>
<th>Released Credits</th>
<th>Available Advanced Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lake Superior</td>
<td>75</td>
<td>0.00</td>
<td>0.00</td>
<td>75.00</td>
</tr>
<tr>
<td>St. Croix</td>
<td>50</td>
<td>0.00</td>
<td>0.00</td>
<td>50.00</td>
</tr>
<tr>
<td>Ojibwe</td>
<td>60</td>
<td>0.00</td>
<td>0.00</td>
<td>60.00</td>
</tr>
<tr>
<td>Upper Mississippi - Black River</td>
<td>50</td>
<td>10.56</td>
<td>0.00</td>
<td>39.44</td>
</tr>
<tr>
<td>Upper Wisconsin</td>
<td>130</td>
<td>0.00</td>
<td>0.00</td>
<td>130.00</td>
</tr>
<tr>
<td>Lower Wisconsin</td>
<td>45</td>
<td>0.00</td>
<td>0.00</td>
<td>45.00</td>
</tr>
<tr>
<td>Upper Mississippi - Hayosota Point</td>
<td>50</td>
<td>0.00</td>
<td>0.00</td>
<td>50.00</td>
</tr>
<tr>
<td>Fox</td>
<td>75</td>
<td>5.47</td>
<td>0.00</td>
<td>24.53</td>
</tr>
<tr>
<td>Northwestern Lake Michigan</td>
<td>130</td>
<td>0.00</td>
<td>0.00</td>
<td>120.00</td>
</tr>
<tr>
<td>Southeastern Lake Michigan</td>
<td>60</td>
<td>0.00</td>
<td>0.00</td>
<td>60.00</td>
</tr>
<tr>
<td>Fox</td>
<td>64</td>
<td>0.00</td>
<td>0.00</td>
<td>64.00</td>
</tr>
</tbody>
</table>

Program Account

- Separate appropriation 435
  - Segregated from other funds
  - Interest bearing
  - 10% Administrative Fee
  - Max 10% Contingency Fund
- Annual Ledgers to Corps
- Project Initiation
  - 3 growing seasons after selling first Advanced Credit:
  - Failsafe options - Buy bank credits, combine adjacent service areas with HUC4's, Corps grants extension.
Miscellaneous Provisions

- Credit Resale, Brokerage, Stockpiling
  - Not allowed without express written approval of Sponsor & Corps
- Credits only available for permittees to offset active legal permit requirement
  - Validated by permit # on credit affidavit
- Sponsor retains sole right to refuse sale at any time
- Refunds with Sponsor, Corps & IRT approval
  - Provided permitted wetland impacts have not occurred

Nationwide Trends

- 25 States have an approved in-lieu fee program -
- 5 States have a pending in-lieu fee program -
- More existed prior to 2008 Federal Rule
  - Secured through MOA's, MOU's, adhere to 2008 Rule by 6/2013.

Additional Resources

- We have revised our mitigation website:
- Geared towards 3 mitigation types
- WWCT Helpful Resources:
  - Full Signed Instrument
  - Service Area Map
  - Credit Availability
  - Credit Fee Schedule
  - How to Buy Credits Guidance
- GovDelivery
  - [https://public.govdelivery.com/accounts/WIDNR/subscriber/new](https://public.govdelivery.com/accounts/WIDNR/subscriber/new)
  - Expand Water, then check Wetland Mitigation
Questions – THANK YOU!

Matt Matrise
Wetland In-Lieu Fee Coordinator
(262) 574-2124
Matthew.Matrise@WI.gov
http://dnr.wi.gov/topic/wetlands/mitigation/