Introduction to ILF Project Development and Approval

Steven Martin
Environmental Planner
Institute for Water Resources
The 2008 Mitigation Rule does **NOT** indicate **HOW** ILF mitigation projects should be developed

Only **WHAT** must be included in an ILF project and **WHEN** it must be implemented
Successful implementation of projects = securing the mitigation obligation on the ground  

33 CFR 332.8(n)(3)
All ILF projects must be consistent with the ILF Compensation Planning Framework

33 CFR 332.8(c)(1)
Mitigation Plans must have/address these elements 33 CFR 332.4(c)

1. Objectives
2. Site protection instrument
3. Baseline information
4. Work plan
5. Maintenance plan
6. Performance standards
7. Monitoring requirements
8. Financial assurances
9. Site selection factors
10. Credit determination
11. Long-term management plan
12. Adaptive management plan
ILF project implementation

- Land acquisition & initial physical/biological improvements by 3rd growing season (3rd year) after first advance credit is secured by permittee*

  33 CFR 332.8(n)(4)
Different approaches to ILF project development:

- Design and build
- Design-Bid-Build
- Request for Proposals
  - Full Delivery Project
  - Letter of Intent process
- Purchase Bank Credits
Leveraging - ILF funds have been used as matching funds for larger projects

**Caution:**

- ILF program account for mitigation fees only! Do *NOT* commingle with other funds
  
  33 CFR 332.8(i)(1)

- Make sure grant allows mitigation funds as a match

- Mitigation credits are *ONLY* generated by mitigation funds

- Non mitigation federal funded restoration *CANNOT* generate 404 credits 33 CFR 332.3(j)(2)
Modification of Third Party Instruments

- **Full Modification including:**
  - Umbrella bank sites
  - In-lieu fee project sites
  - Site expansion
  - New credit types

- **Streamlined process**
  - Changes based on adaptive management
  - Changes in credit release schedules
  - Changes district engineer determines are not significant
### Compensatory Mitigation Rule
#### Timeline for Bank or ILF Instrument Approval

<table>
<thead>
<tr>
<th>Phase I</th>
<th>Event</th>
<th># of Days**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Optional Preliminary Review of Draft Prospectus</td>
<td>30</td>
<td>DE provides copies of draft prospectus to IRT and will provide comments back to the sponsor within 30 days.</td>
</tr>
</tbody>
</table>

**Sponsor Prepares and Submits Prospectus**

- DE must notify sponsor of completeness within 30 days of submission.

<table>
<thead>
<tr>
<th>Event</th>
<th># of Days**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complete Prospectus Received by DE</td>
<td></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>30-Day Public Comment Period</td>
<td>30</td>
</tr>
<tr>
<td>DE must provide the sponsor with an initial evaluation letter within 30 days of the end of the public comment period.</td>
<td>30</td>
</tr>
</tbody>
</table>

**Sponsor Considers Comments, Prepares and Submits Draft Instrument**

- DE must notify sponsor of completeness within 30 days of submission.

<table>
<thead>
<tr>
<th>Event</th>
<th># of Days**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complete Draft Instrument Received by IRT Members</td>
<td></td>
</tr>
<tr>
<td>30-day IRT comment period begins 5 days after DE distributes draft instrument to IRT members</td>
<td>30</td>
</tr>
<tr>
<td>DE discusses comments with IRT and seeks to resolve issues <del># of days variable</del></td>
<td>60</td>
</tr>
</tbody>
</table>

**Sponsor Prepares Final Instrument**

- Sponsor provides copies to DE and all IRT members.

<table>
<thead>
<tr>
<th>Event</th>
<th># of Days**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final Instrument Received by DE &amp; IRT</td>
<td></td>
</tr>
<tr>
<td>DE must notify IRT members of intent to approve/not approve instrument within 30 days of receipt.</td>
<td>30</td>
</tr>
<tr>
<td>Remainder of time for initiation of dispute resolution process by IRT members</td>
<td>15</td>
</tr>
</tbody>
</table>

**Total Required Federal Review (Phases II-IV): ≤225 Days**

*Timeline also applies to amendments.

**The timeline in this column uses the maximum number of days allowed for each phase.
Steps in project approval

- Draft Prospectus (optional **BUT** recommended)
- Prospectus
  *(Initial Evaluation not required!)*
- Draft Modification/Plan
- Final Modification/Plan
Approaches to Project Approval

- Opportunistic
- Permitting process
- Regular Public Schedule
# ME NRCP Annual Project Approval Timeline

<table>
<thead>
<tr>
<th></th>
<th>June</th>
<th>July</th>
<th>Aug</th>
<th>Sept</th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
</tr>
</thead>
<tbody>
<tr>
<td>LOI</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proposal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PN</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Review Committee</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Approval Committee</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Awards</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Recommendations

1. Pre-application/draft prospectus
2. Projects consistent with the CPF
3. Due diligence – early is best
4. Work with the landscape
5. Don’t oversell
6. Stay calm & professional