NATURAL RESOURCES COMMISSION

Information Bulletin #79 (First Amendment)

SUBJECT: In-Lieu Fee Mitigation

1. Purpose

The purpose of this bulletin is to identify the service areas and credit prices for mitigation through the In-Lieu Fee Program (ILFP) as authorized by 312 IAC 9.5-3-1. A person that seeks to obtain a permit under the Flood Control Act, IC 14-28, the Lake Preservation Act, IC 14-26, or the Navigable Waterways Act, IC 14-29, may be required to conduct mitigation for impacts to fish, wildlife, and botanical resources. While effort is made to avoid and minimize a project's impact on fish, wildlife, and botanical resources, in some instances compensatory mitigation is necessary to offset unavoidable impacts.

The Natural Resources Commission (Commission) adopted "Habitat Mitigation Guidelines" (hereafter referred to as HMG), Information Bulletin #17, Sixth Amendment, published in the Indiana Register at 20211020-IR-312210435NRA, which provides guidance on the assessment and determination of necessary compensatory mitigation.

Compensatory mitigation plans developed in accordance with the HMG are carried out on a site at or near a project site to reduce the impact of disturbed areas and diminished or degraded habitat for fish, wildlife, and botanical resources. Permittees often have difficulty locating a suitable mitigation site and fulfilling the time consuming and often financially burdensome long-term monitoring and corrective actions. In addition, the individualized approach to compensatory mitigation typically results in smaller habitat areas of poorer quality than can be achieved through a more coordinated effort.

Under the ILFP approach to mitigation, permittees and violators may be authorized to purchase ILFP credits from the Department of Natural Resources (DNR). Funds generated from the ILFP will be accumulated to finance larger, more sustainable mitigation sites, thereby maximizing mitigation efforts. The purchase of ILFP credits will satisfy the mitigation requirements that would otherwise be required under a permit.

Mitigation associated with the Lake Preservation Act is rare and highly variable. For this reason, although the HMG and this bulletin are applicable to mitigation for impacts to public freshwater lakes, neither the HMG nor this bulletin provides an in-depth discussion associated with that topic. Mitigation of impacts to public freshwater lakes will be considered on a case-by-case basis using both the HMG and this bulletin as guidance.

While 312 IAC 9.5-3 does not expressly address the use of ILFP mitigation to address the impact of violations of the Flood Control Act, the Lakes Preservation Act, or the Navigable Waterways Act, it is determined that ILFP mitigation is permissible and shall be considered in developing mitigation plans for such violations.

2. Administration of the ILFP Funds

Through the ILFP, the Indiana Natural Resources Foundation (INRF) serves as the fiscal agent and receives funds as ILFP credits are purchased. The INRF will transfer ILFP funds to the DNR, to be used solely for conducting future mitigation. All ILFP funds held by the INRF, including interest, shall be utilized solely for the benefit of the ILFP in accordance with 312 IAC 9.5. ILFP funds held by the INRF shall not be diverted by DNR or the INRF for other uses and shall not revert to any other fund at the end of the state's fiscal year.

3. In-Lieu Fee Credit Pricing

The ILFP mirrors several aspects of a complementary program, the Indiana Stream and Wetland Mitigation Program (IN SWMP), which was approved by the US Army Corps of Engineers (USACE) to address mitigation associated with permits issued by the USACE and the Indiana Department of Environmental Management (IDEM) under the Federal Clean Water Act and the state's isolated wetland law. DNR's Division of Land Acquisition is the IN SWMP program sponsor and will also administer the mitigation efforts funded by the ILFP. Several aspects of IN SWMP are mirrored in the ILFP to improve clarity for the regulated public and enhance coordination between the programs to increase mitigation output. Additional information regarding IN SWMP can be found at:
https://www.in.gov/dnr/land-acquisition/stream-and-wetland-mitigation-program/

The ILFP credit prices will align with the IN SWMP credit prices to the greatest extent possible. The credit prices

that are determined by the Division of Land Acquisition incorporate the full cost of fulfilling mitigation obligations, including costs associated with administering the program, land acquisition, mitigation project planning and design, permitting, construction (including labor and materials), legal fees, permanent site protection, and short and long term monitoring, maintenance, and management, as well as any other costs necessary to complete mitigation projects for regulatory approval. Purchase prices for ILFP credits are specified in Appendix A.

Although DNR, IDEM, and USACE have different regulatory responsibilities, their jurisdictional areas often overlap. As a result, activities undertaken by a member of the regulated public near bodies of water may fall under the jurisdiction of one or more than one of these agencies. If an activity is under the jurisdiction of more than one of the three agencies, a single credit transaction through the ILFP or through the IN SWMP may address all areas of overlapping jurisdiction. If, however, there are additional areas of impact involved that are within DNR's sole jurisdiction, additional ILFP credits will be required to fully address the DNR mitigation requirement.

4. In-Lieu Fee Credit Purchasing

The types and amounts of mitigation required will be determined by DNR as specified in the HMG. An individual may seek authorization from DNR to fulfill the mitigation requirements using the ILFP by submitting the necessary form in accordance with 312 IAC 9.5, including the submission of required documentation. If DNR approves the use of the ILFP for mitigation, DNR may issue a permit or reconcile a violation through the purchase of ILFP credits.

A permit applicant shall complete the purchase of ILFP credits before conducting approved activities. A person reconciling a violation through the purchase of ILFP credits shall complete the purchase within the time specified by DNR. Once sold to a permittee, ILFP credits may not be refunded.

5. Project Locations

ILFP funds will be used to conduct mitigation within the Service Area impacted by the project for which a permit was issued or where a violation occurred. The Service Areas are identified in Appendix B.
The Service Areas are defined as follows (HUC-8 in parentheses):

1. Calumet Dunes (04040001, 07120003).
2. Kankakee (07120001, 07120002).
3. St. Joseph River (04050001).
4. Maumee (04010003, 04010004, 04010005, 04010007).
5. Upper Wabash (05120101, 05120102, 05120103, 05120104, 05120105, 05120106, 05120107).
6. Middle Wabash (05120108, 05120109, 05120110, 05120111, 05120113, 05120203).
7. Upper White (05120201).
8. Whitewater-East Fork White (05080001, 05080002, 05080003, 05120204, 05120205, 05120206, 05120207).
9. Lower White (05120202, 05120208, 05120209).
10. Upper Ohio (05090203, 05140104, 05140101).
11. Ohio-Wabash Lowlands (05120113, 05140201, 05140202).

6. History

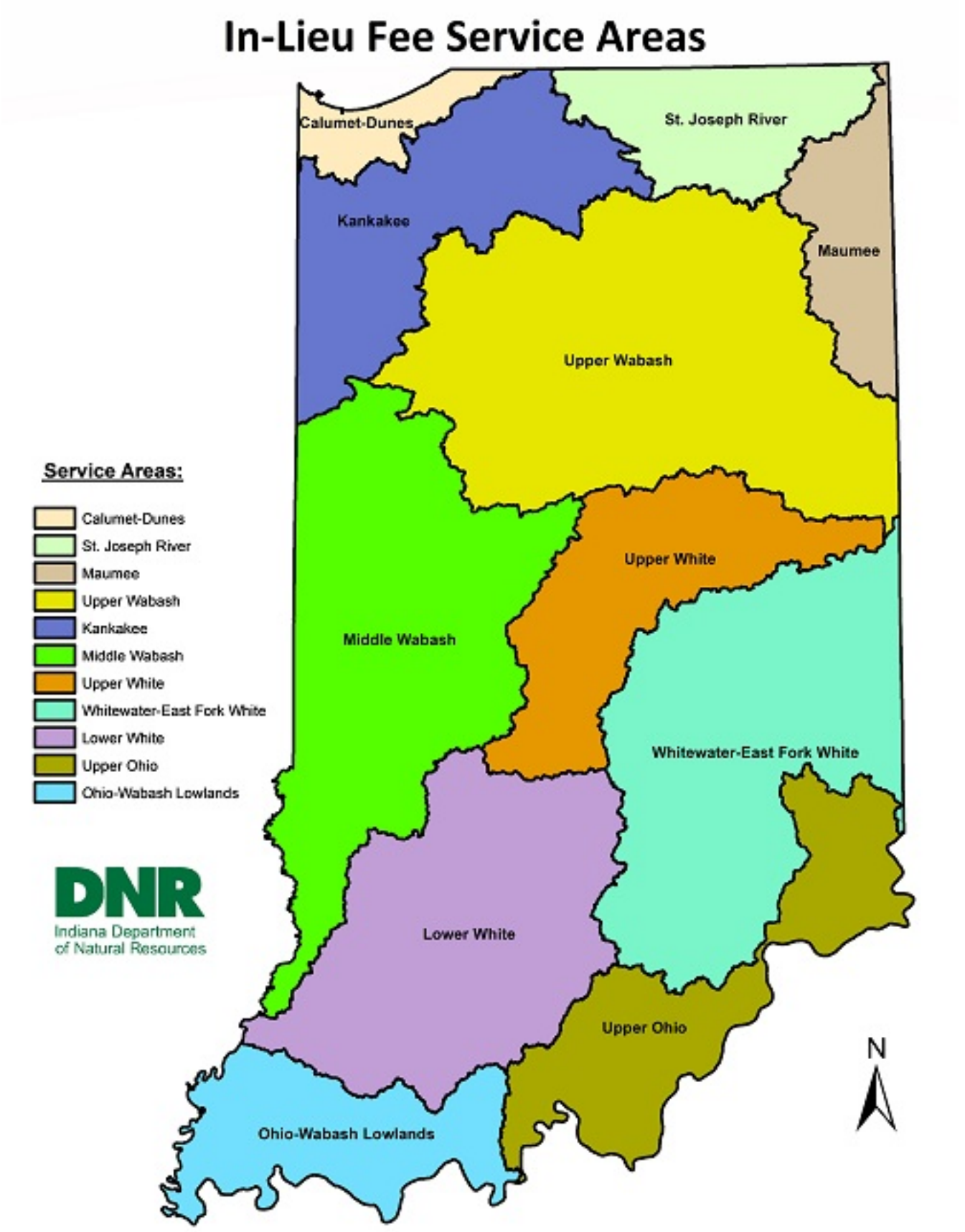
This Information Bulletin was first published in the Indiana Register on June 3, 2020 (20200603-IR-312200289NRA). On September 21, 2021, the Commission approved this First Amendment making technical changes.

Appendix A: ILFP Credit Purchase Prices

Service Area	Stream Credit Price	Floodway/Lake Credit Price
Calumet-Dunes	$600	$95,000
St. Joseph River (Lake MI)	$600	$120,000
Maumee	$450	$80,000
Kankakee	$500	$95,000
Upper Wabash	$400	$80,000
Middle Wabash	$400	$80,000
Upper White	$450	$80,000

Whitewater-East Fork White	$400	$80,000
Lower White	$400	$80,000
Upper Ohio	$400	$80,000
Ohio-Wabash Lowlands	$400	$80,000

Appendix B: In-Lieu Fee Service Areas



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