

EXHIBIT E

ILF Project Development Process

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The Program Sponsor will collaborate with partners that have experience and technical expertise in restoring, creating, enhancing, and/or in certain cases preserving aquatic resources (e.g., non-profit conservation organizations, private entities, governmental entities, and others), to develop and implement ILF Projects. An ILF Project may be a stand-alone project developed and implemented solely with funds from the Sale and/or Pre-Transfer Sale of Credits, or an ILF Project may be a component of a larger restoration effort. In all cases, the Program Sponsor will be responsible for ensuring the ILF Projects are developed and implemented in compliance with the Instrument. The Program Sponsor may engage partners in various ways, e.g., direct selection of existing restoration efforts; requests for assistance with project development and/or implementation; formal requests for proposals (RFPs); etc.

The Compensation Planning Framework (**Exhibit D of the Instrument**) sets forth a basic analysis of threats to wetland resources, historical wetland resource losses, and current wetland resource conditions, with corresponding goals and objectives for each Service Area. The Compensation Planning Framework builds from this analysis with a prioritization strategy for selecting and implementing restoration, enhancement, creation, and in certain cases preservation ILF Projects based on landscape position, historical and current threats, hydrology, wetlands functions and services, and species or habitat benefits. The Compensation Planning Framework is also a living document that will be periodically evaluated, updated, and refined as necessary to incorporate new information.

After the first Sale or Pre-Transfer Sale of Advance Credits within a Service Area, the Program Sponsor is required to commence the development and implementation of an ILF Project within three full growing seasons (as determined by the geography of the applicable ILF Project site) unless the IRT determines that more time is needed to plan and implement an ILF Project. As minimum threshold funding to develop and implement an ILF Project becomes available within a Service Area, areas of greatest mitigation need will be identified based on the criteria outlined in the Compensation Planning Framework, coupled with applicable technical research specific to the Service Area. Once priority areas and/or functions have been identified, the Program Sponsor will evaluate whether, and to what extent, opportunities exist in the Service Area for the implementation of suitable ILF Project(s). Any opportunities identified by the Program Sponsor will be filtered and evaluated based upon their ability to provide functional lift to the targeted needs in the Service Area. If minimum threshold funding is not available in a Service Area to warrant ILF Project development and implementation, or if no suitable opportunities for ILF Project development exist, in each case within the designated timeframe, then the Program Sponsor will evaluate potential alternative mitigation implementation approaches in consultation with the IRT. The process described below (and depicted in **Figure 1**) is intended to address likely scenarios and is iterative:

General Process for ILF Project Site Selection

- 1) On an on-going basis, Program Sponsor will calculate the amount of collected funds for

each Service Area.

- 2) A minimum of fifty thousand dollars (\$50,000) (threshold) within a Service Area will trigger the Program Sponsor to consider in consultation with the IRT whether minimum threshold funding is available in the Service Area to warrant ILF Project development consideration.
If sufficient funding for ILF Project development does not exist, proceed to step 9.
- 3) If sufficient funding is present, Program Sponsor will conduct an evaluation of critical needs within the Service Area and an evaluation of the existence of potential ILF Project opportunities and/or ILF Project partners through a request for proposals process and/or other outreach.
- 4) In addition to 3) above, Program Sponsor will determine if there is a mitigation bank in the Service Area with applicable available credits.
- 5) Program Sponsor will evaluate and compare potential ILF Project proposals, including the purchase of any applicable available mitigation bank credits, using the Project Evaluation Criteria worksheet (**Exhibit E**). The worksheet references the requirements of the 2008 Mitigation Rule, and specifically uses the first three requirements that are applicable at the ILF Project prospectus stage as a screen to determine whether an ILF Project proposal should be considered and evaluated. The worksheet is intended as a tool to aid the Program Sponsor and IRT in evaluating and comparing proposed ILF Projects for funding consideration but is not the only consideration.
- 6) Program Sponsor will present to the IRT for the IRT's consideration the highest priority ILF Project(s) that Program Sponsor determines to be feasible and practicable, and that can be implemented with available funds. The presentation will be in the form of an Initial Project Prospectus (as described in further detail below), including an estimated budget for each such proposed ILF Project(s), which Program Sponsor will submit to the IRT along with the Project Evaluation Criteria worksheet described above.
 - a. As soon as possible, and no later than fifteen (15) days from receipt of the Initial Project Prospectus(es), each IRT Member will notify the USACE and Program Sponsor in writing whether it will participate or abstain from participating on the IRT with respect to consideration of each proposed ILF Project.
 - b. As soon as possible, and no later than fifteen (15) days from receipt of the complete Initial Project Prospectus(es), the USACE will issue a public notice of the Initial Project Prospectus(es) providing a thirty (30) day public comment period. A public notice shall not be required for any Initial Project Prospectus that proposes only the purchase of credits from a mitigation bank. If required or otherwise desired, other IRT Members participating on the IRT with respect to consideration of the Initial Project Prospectus(es) may also issue a public notice of the Initial Project Prospectus(es) providing a public comment period. To the extent possible, the USACE and such other IRT Members shall coordinate such public notices and public comment periods to run concurrently.
 - c. If the proposed ILF Project would provide benefits to special status, threatened, or endangered species, the appropriate state or federal fish and wildlife agencies that are not otherwise on the IRT (i.e., USFWS and CDFW)

may be requested by the IRT and Program Sponsor to participate in the IRT discussions regarding the proposed ILF Project.

- 7) Approval of Initial Project Prospectus(es). Within thirty (30) days of the close of the applicable public comment period(s), the IRT shall consider the Initial Project Prospectus(es), supporting information, and any public comments received regarding the proposed project(s), and provide to Program Sponsor its written approval or denial of the Initial Project Prospectus(es). Alternatively, the IRT may provide Program Sponsor with comments regarding the Initial Project Prospectus(es) that Program Sponsor may address in revisions to the Initial Project Prospectus(es) and resubmit to the IRT for its written approval or denial.
 - a. If an Initial Project Prospectus is approved, then as of the date of such approval the Program Sponsor may access and expend funds in the applicable Service Area-specific Sub-Account to pay for the ILF Project Development Plan, in accordance with the estimated budget for the Project Development Plan as set forth in the approved Initial Project Prospectus. If in the course of the Project Development Plan process, the Program Sponsor discovers that the expenditures will exceed the budget, the Program Sponsor will notify the IRT in writing and propose a budget augmentation for the IRT's consideration and written approval. The expenditure of such funds is intended to allow the Program Sponsor to develop and finalize, based on the foundation of the Initial Project Prospectus, a formal Project Development Plan for the applicable ILF Project.
 - b. Once finalized, the Project Development Plan will be submitted to the IRT as a formal request for a modification to the Instrument in accordance with the ILF Project approval process set forth below.
- 8) If sufficient funding is not available for ILF Project development, the Program Sponsor will wait to determine if sufficient funding has been reached for ILF Project development. If funding is sufficient after waiting an additional period of time (not to exceed twenty-four (24) months total after first funds collected in the Service Area), proceed with steps 3 through 8. If funding is not sufficient by the end of the 24-month period, proceed to step 9.
- 9) Consult with the IRT as to how to proceed, which may include, but not be limited to the following: continue to wait a specified period of time as determined by the IRT; merge funds with another Service Area; or, purchase mitigation bank credits.

Initial Project Prospectus

The Initial Project Prospectus will include the following information to enable the IRT to consider whether or not to approve the advancement of a proposed ILF Project for preparation of a Project Development Plan:

- Property location and ownership
- Compensatory mitigation proposal describing benefits to aquatic resources and/or vernal pools and consistency with the Compensation Planning Framework
- Completed Project Evaluation Criteria worksheets
- An evaluation of how the ILF Project achieves a watershed priority(ies) for the Service Area, as well as any relevant updates to be incorporated into the Compensation Planning

- Framework for that Service Area
- Project partners (if applicable)
- Number of proposed Released Credits to be generated by the ILF Project
- Proposed Budget for Project Development Plan development and approval
- Preliminary estimates of budgets for: 1) Project implementation, including interim management and monitoring; and 2) long-term management and monitoring
- Title report (if applicable)

ILF Project Approval Process

The review and approval of Project Development Plans for individual ILF Projects will be conducted by the IRT in accordance with procedures in 33 C.F.R. 332.8(g)(1) and processed as formal modifications of the Instrument, with the exception of Project Development Plans for individual ILF Projects that propose the purchase of credits from a mitigation bank. A formal modification of the Instrument shall not be required for ILF Projects that are solely the purchase of credits from an approved mitigation bank. The ILF Projects must be approved in writing by the USACE, following coordination with the IRT.

Accordingly, the Program Sponsor shall submit to the USACE a Project Development Plan as a request for modification of the Instrument in accordance with procedures in 33 C.F.R. 332.8(g)(1), unless the USACE determines the streamlined review process described in 33 C.F.R. 332.8(g)(2) is warranted. In accordance with 33 C.F.R. 332.8(d)(6)(i), this request for modification will consist of a draft amendment to the Instrument.

The Project Development Plan will be developed utilizing prevailing IRT mitigation templates, as applicable, and will include the following information, with a level of detail commensurate with its scale and scope:

- Development Plan prepared in accordance with the South Pacific Division's Final Regional Mitigation and Monitoring Guidelines (or subsequent updated guidance or standards) with associated maps and project drawings prepared in accordance with the South Pacific Division's Regional Mapping Standards;
- Estimate of proposed acreage/linear feet and type of compensatory mitigation credits generated by the proposal;
- Proposed credit release schedule;
- Description of existing functions and services and how they will be improved or enhanced through proposed project activities;
- Functional/condition assessment data (if applicable);
- Project budget, including interim and long-term management funding estimates and justification;
- Interim and Long-Term Management Plans;
- Proposed Performance Standards;
- Title report;
- Proposed site protection instrument, including draft site protection instrument (if applicable); and
- Other information as requested by the IRT.

The Program Sponsor may elect to ask for a preliminary review and consultation of an Instrument modification request. In this case, the Program Sponsor will provide copies of the draft request to the IRT, and upload to RIBITS, and the IRT will provide comments back to Program Sponsor within forty-five (45) days.

The Program Sponsor will submit a formal request for an Instrument modification to the IRT. Within thirty (30) days of receipt of Program Sponsor's formal request for an Instrument modification, the USACE will notify Program Sponsor whether the draft amendment to the Instrument is complete. If it is incomplete, the USACE will request from the Program Sponsor the information necessary to make the draft amendment complete. Once any additional information is submitted, the USACE must notify the Program Sponsor as soon as the USACE determines the draft amendment is complete. (33 C.F.R. 332.8(d)(6)(i))

The USACE and other IRT Members may also provide comments to the Program Sponsor at this time, and copies of any such comments will also be uploaded to RIBITS by the USACE.

The Program Sponsor will then submit a revised proposed amendment to the IRT Members for a 30-day comment period, which shall begin five (5) days after the date of distribution.

Within ninety (90) days of receipt of the final complete draft amendment by the IRT Members, the USACE must notify the Program Sponsor of the status of the IRT review, i.e., whether it is generally acceptable and what changes, if any, are needed. (33 C.F.R. 332.8(d)(7))

If no additional changes are needed, the USACE may notify the Program Sponsor that the USACE and other applicable IRT Members intend to approve the amendment request. If the USACE notifies the Program Sponsor that any changes are needed, the Program Sponsor must incorporate such changes and then submit a final amendment to the USACE for IRT approval, along with supporting documentation that explains how the final amendment addresses the changes identified by the USACE and other applicable IRT Members. (33 C.F.R. 332.8(d)(8))

The final amendment must also be provided by the Program Sponsor directly to all IRT Members. (33 C.F.R. 332.8(d)(8))

Within 30 days of receipt of the final amendment, the USACE will notify the IRT Members whether or not the USACE intends to approve the amendment. If no IRT Member objects within forty-five (45) days of receipt of this notice, the USACE will notify the Program Sponsor of the USACE's final decision and arrange for the final amendment to be signed by the applicable IRT Members. (33 C.F.R. 332.8(d)(8))

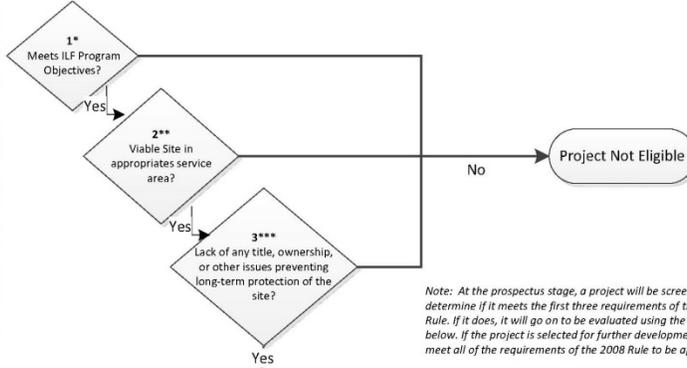
In accordance with Section VII.B., Modification and Amendment of Instrument, "any amendment to add an approved ILF Project Development Plan to the Instrument need only be executed by signature of those Parties that approved the ILF Project Development Plan in accordance with the process set forth in Exhibit E."

Project Evaluation Criteria

Eligibility Criteria

Eligible Projects at the Prospectus Stage Must Meet the Three Initial Criteria

- Commitment by ILF Project Proponent that all components of the 2008 Mitigation Rule will be met, including:
1. Objectives*
 2. Site Selection**
 3. Site protection instrument***
 4. Baseline information
 5. Determination of credits
 6. Mitigation work plan
 7. Maintenance plan
 8. Performance standards
 9. Monitoring requirements
 10. Long-term management plan
 11. Adaptive management plan.
 12. Financial assurances



Note: At the prospectus stage, a project will be screened to determine if it meets the first three requirements of the 2008 Rule. If it does, it will go on to be evaluated using the criteria below. If the project is selected for further development, it must meet all of the requirements of the 2008 Rule to be approved.

Evaluation Criteria

Eligible Projects will be Evaluated and Compared using the Following Criteria
(Circle the appropriate criteria in each category and place the corresponding score in the column to the right)

	LOW 1	MEDIUM 2	HIGH 3	Score 1-3
Degree to which project addresses Service Area priorities	No priorities met, but meets other goals	One SA priority met	More than one SA priority met	_____
Potential for re-establishment or rehabilitation of wetlands	Enhancement	Rehabilitation	Re-establishment	_____
Use of natural processes in restoring ecological function – biological, physical, hydrologic	No natural process used to achieve ecological lift	1 – 2 ecological components improved using natural processes	All 3 ecological components improved using natural processes	_____
Extent of connectivity with other protected lands	Isolated	Within planned connectivity corridor or biological core area	Immediately adjacent to protected lands	_____
Extent of buffer	Buffer less than 50 feet in width	Buffer between 50 and 100 feet	Buffer more than 100 feet	_____
Experience of proponent	Has never done a mitigation project	Has done one successful mitigation project	Has done multiple successful mitigation projects	_____
Cost effectiveness	Per acre cost more than fee collection rate	Per acre cost equal to fee collection rate	Per acre cost less than fee collection rate	_____
Credits generated	Equal to minimum needed	More than minimum needed	Equal to or more than minimum needed & could create additional types of credits (e.g., USFWS or CDFW species credits)	_____
TOTAL				_____

Figure 1 – Process for ILF Project Development and IRT Approval

