

Authorizing In-Lieu Fee Projects in Kentucky – Mitigation LOP

ELI ILF Webinar Series - Standard Operating Procedures and Mitigation Plan Development

Patricia A. Grace-Jarrett, Ph. D.

Senior Project Manager

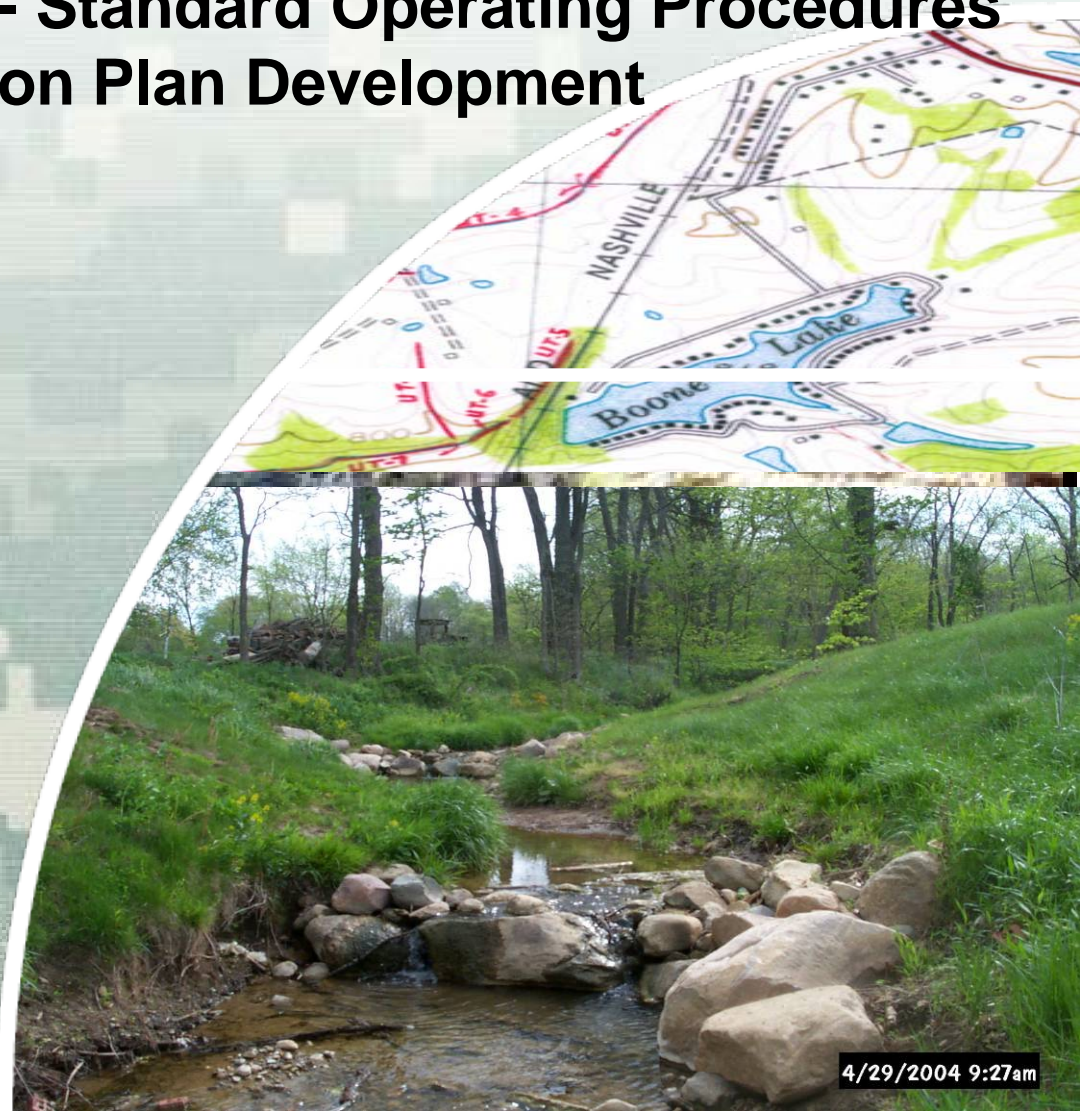
Louisville District

September 4, 2013



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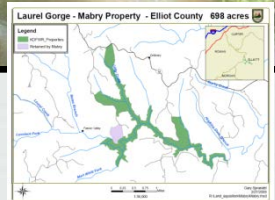
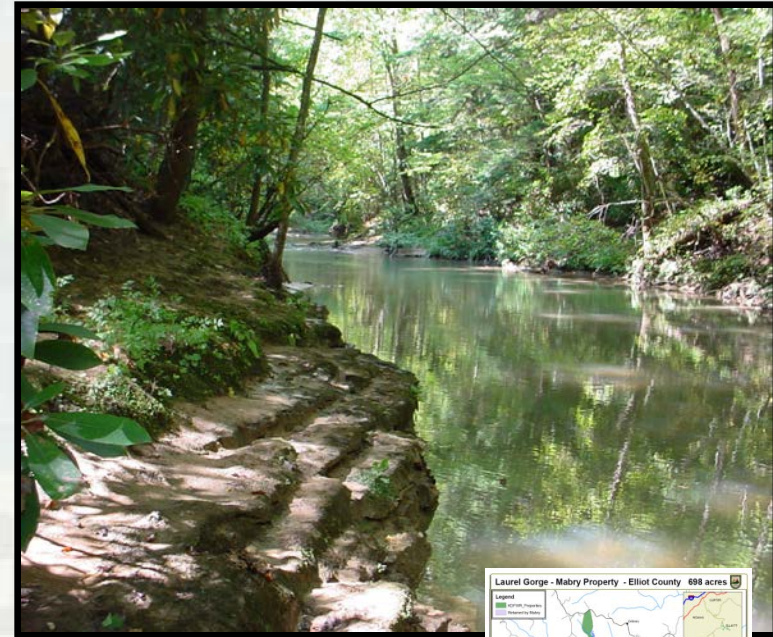
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Mitigation LOP Overview

- Background, Purpose & Need
- Why a LOP?
- LOP Process
 - ▶ Early Coordination (Pre-Application)
 - ▶ Complete Application
 - ▶ IRT Consultation & PN
 - ▶ Intent to approve Mod & Project
 - ▶ Dispute Resolution
 - ▶ Notification of Mod approval
 - ▶ SOF
 - ▶ LOP & Mod Approval (sig pg + table)
- Preservation Project Approval



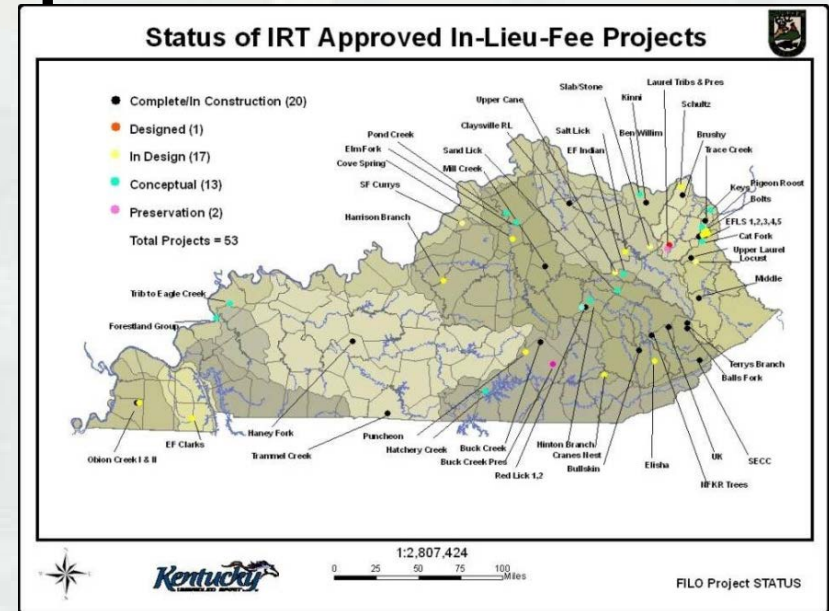
Background, Purpose & Need



Background, Purpose & Need

Background :

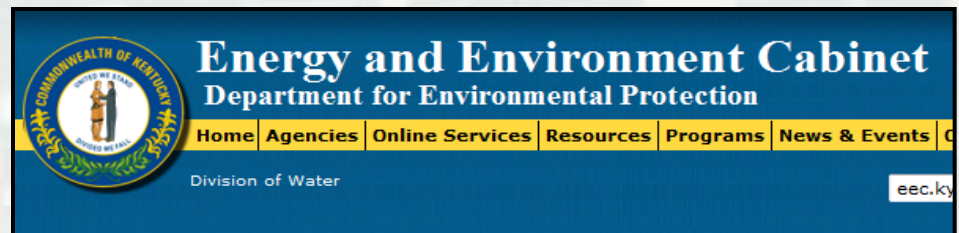
- 2003 - ILF programs approved
- Project approval:
 - ▶ Pre-app site visit (informal)
 - ▶ 2 or 3-step IRT “vote”: concept + design + construction
 - ▶ ‘kill’ projects at any stage of voting process
 - ▶ Corps issues NWP 27, KDOW issues WQC
- 2008 – Mitigation Rule:
 - ▶ 3-year turn around
 - ▶ most mitigation through ILF = large # potential projects®



Background, Purpose & Need

Purpose & Need:

- Streamline process/decrease processing times
- Kill projects early
- Define IRT roles/responsibility
- Enhance agency coordination
- Consistent with Rule (PN, etc.)



Why a LOP?



Why a LOP?

LOPs (Letters of Permission)

- Abbreviated processing procedure
- Non-controversial
- Agency coordination
- 120 days
- Does not require renewal
- Retain elevation rights



**US Army Corps
of Engineers**

Louisville, Nashville,
Memphis and Huntington
Districts

Public Notice

Public Notice No. LRL-2010-323-pgj Date: 27 September 11 Closing Date: NA

Please address all comments and inquiries to:
U.S. Army Corps of Engineers, Louisville District
ATTN: Dr. Patricia A. Grace-Jarrett, Ph. D., CELRL-OP-FS, Rm 752
P.O. Box 59
Louisville, Kentucky 40201-0059 Phone: 502-315-8887

NOTICE ANNOUNCING ISSUANCE OF A LETTER OF PERMISSION FOR NEW MITIGATION PROJECTS ASSOCIATED WITH APPROVED COMPENSATORY MITIGATION BANKING AND IN-LIEU FEE INSTRUMENTS

This notice announces that on September 27, 2011, the Louisville, Nashville, Huntington, and Memphis Districts of the U.S. Army Corps of Engineers (the "Corps"), issued a Letter of Permission (LOP), in accordance with Title 33 CFR 325.5 (b) (2), published in the Federal Register, Volume 51, No. 219, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (Section 10) and Section 404 (Section 404) of the Clean Water Act (CWA). The LOP supports the implementation of compensatory mitigation projects consistent with the April 10, 2008, "Compensatory Mitigation for Losses of Aquatic Resources" (Mitigation Rule) (CFR Vol. 73 No. 70, p 19670-19705 (33 U.S.C. 401 et seq.; 33 U.S.C. 1344; and Pub. L. 108-136).

COVERAGE AREA:

All "waters of the United States" (U.S.) in the Commonwealth of Kentucky.

CATEGORIES OF ACTIVITY COVERED BY THE LOP:

The LOP authorizes work in navigable waters and discharges of dredged or fill material into "waters of the U.S.," and adjacent wetlands associated with these waters. The LOP authorizes all activities performed in association with the enhancement, rehabilitation, establishment, re-establishment, maintenance, and repair of compensatory mitigation projects associated with a Corps approved Mitigation Bank (Bank) or In-Lieu Fee (ILF) Instrument, including dredging, temporary and permanent work, structures, discharges of dredged or fill material into "waters of the U.S.," the removal of structures, and the removal of fill.

LIMITATIONS:

Compensatory mitigation projects must result in a net increase in aquatic resource functions and services.

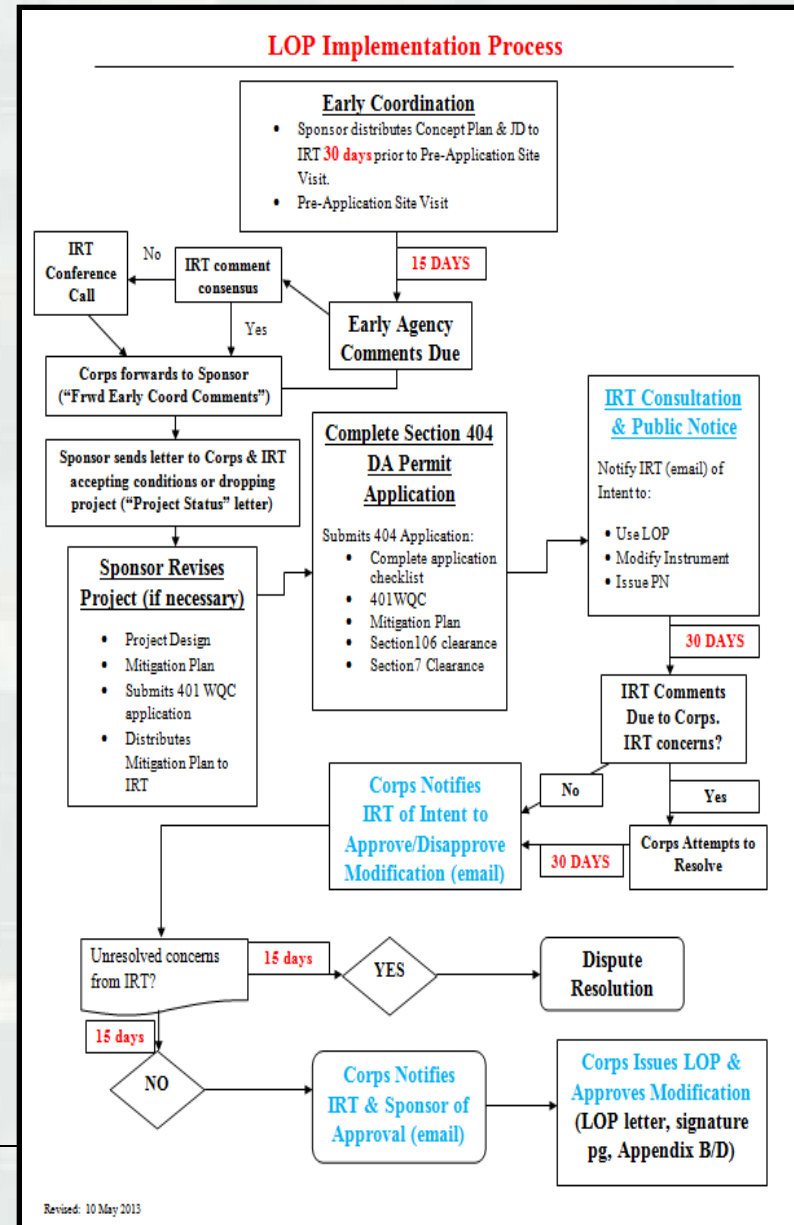
LOP Process



LOP Process

Early Coordination (Pre-App):

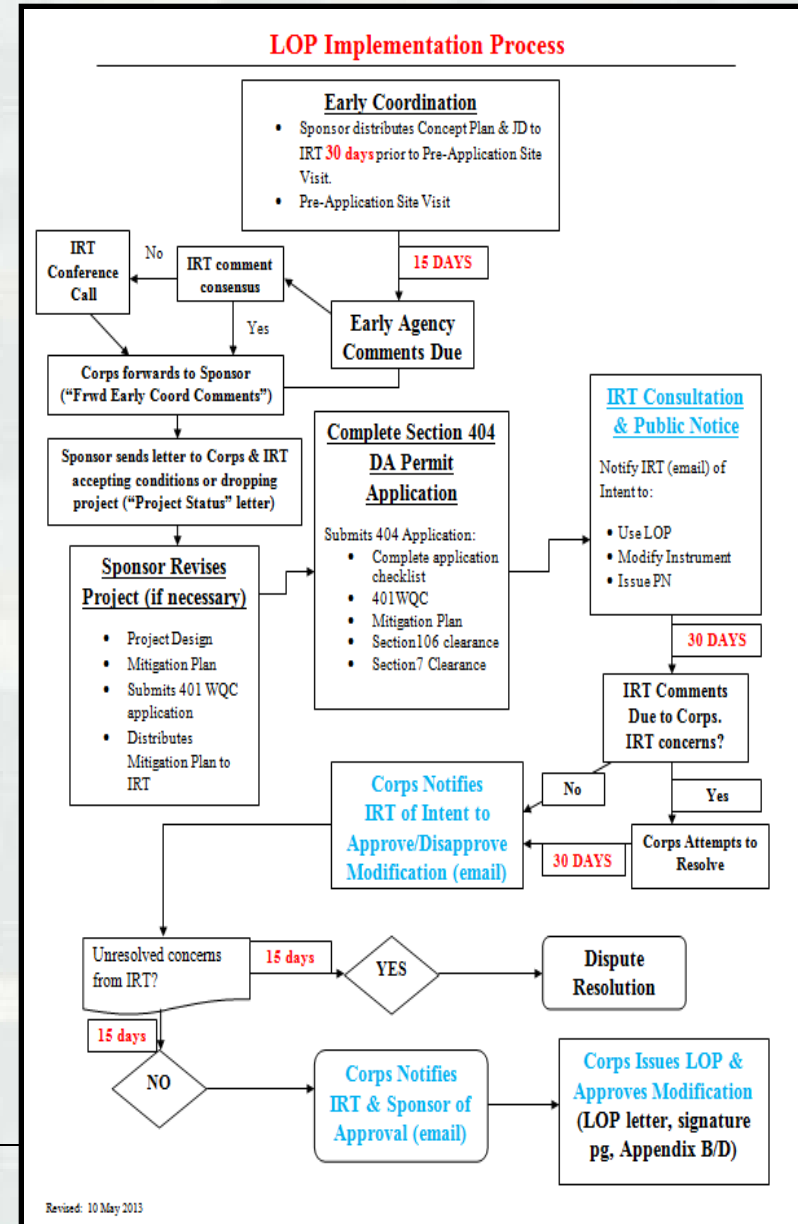
- CP (check list) - 30 days prior to site visit
- CP site visit – within 60 days of CP
- 15-day IRT comment period
- Unresolved Issues call (optional)
- Early Coordination Comment Letter
- Project Status Letter



LOP Process

Complete Application:

- Section 106
- Section 7
- WQC
- Mitigation Plan



LOP Process

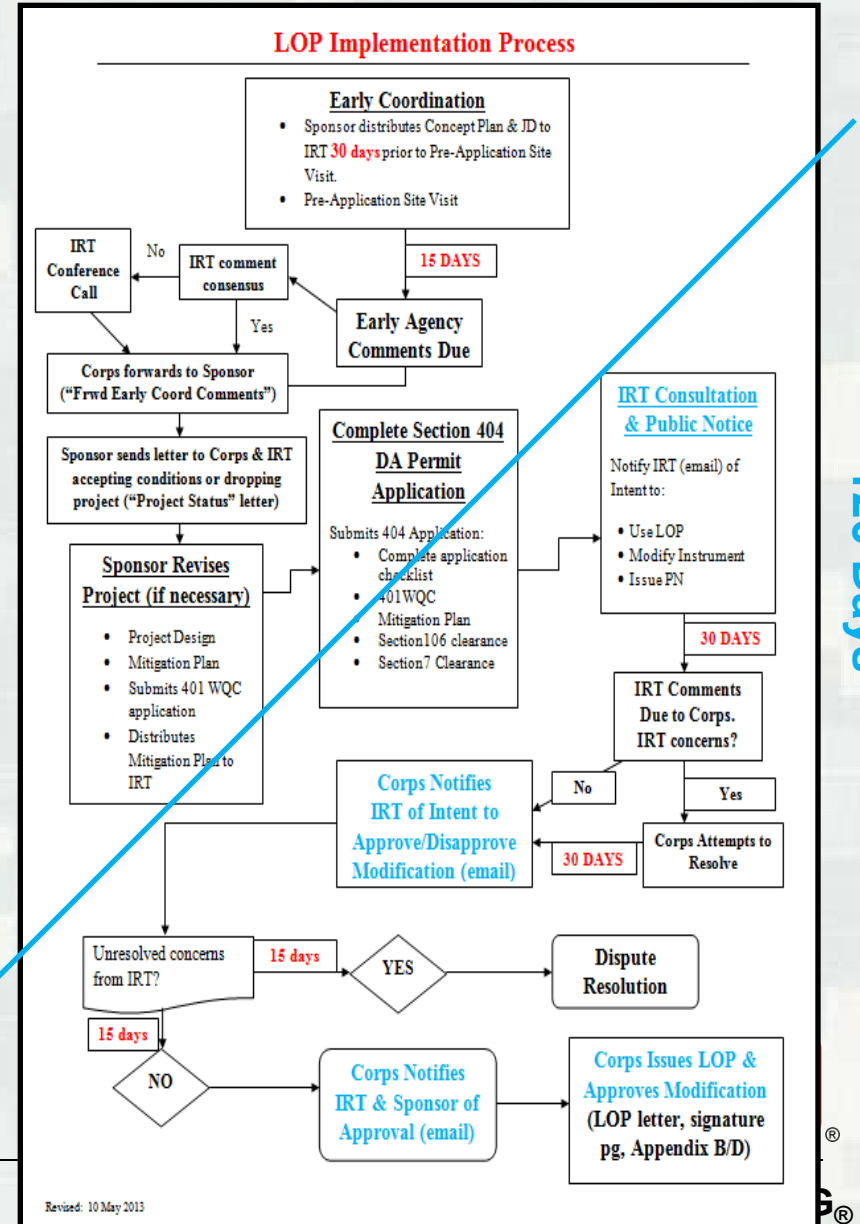
IRT Consultation & PN

Notification of Intent to Approve Mod & Project

Dispute Resolution

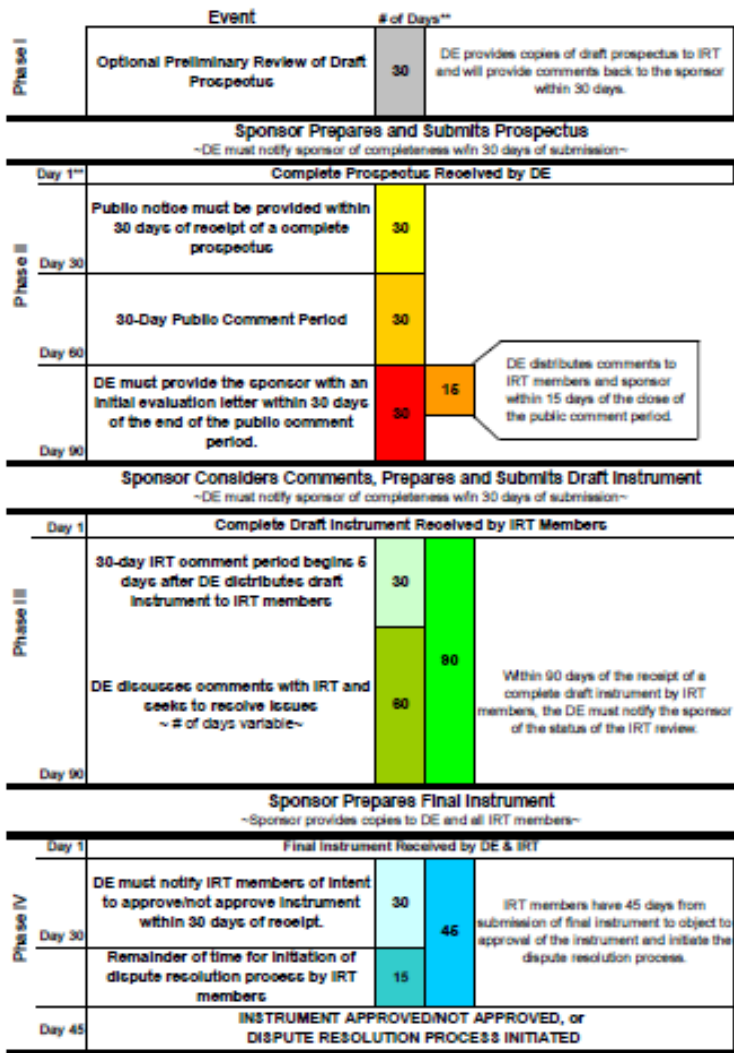
Mod Approval Notification

LOP (404 Authorization) & Instrument Mod



LOP Process

Compensatory Mitigation Rule Timeline for Bank or ILF Instrument Approval*

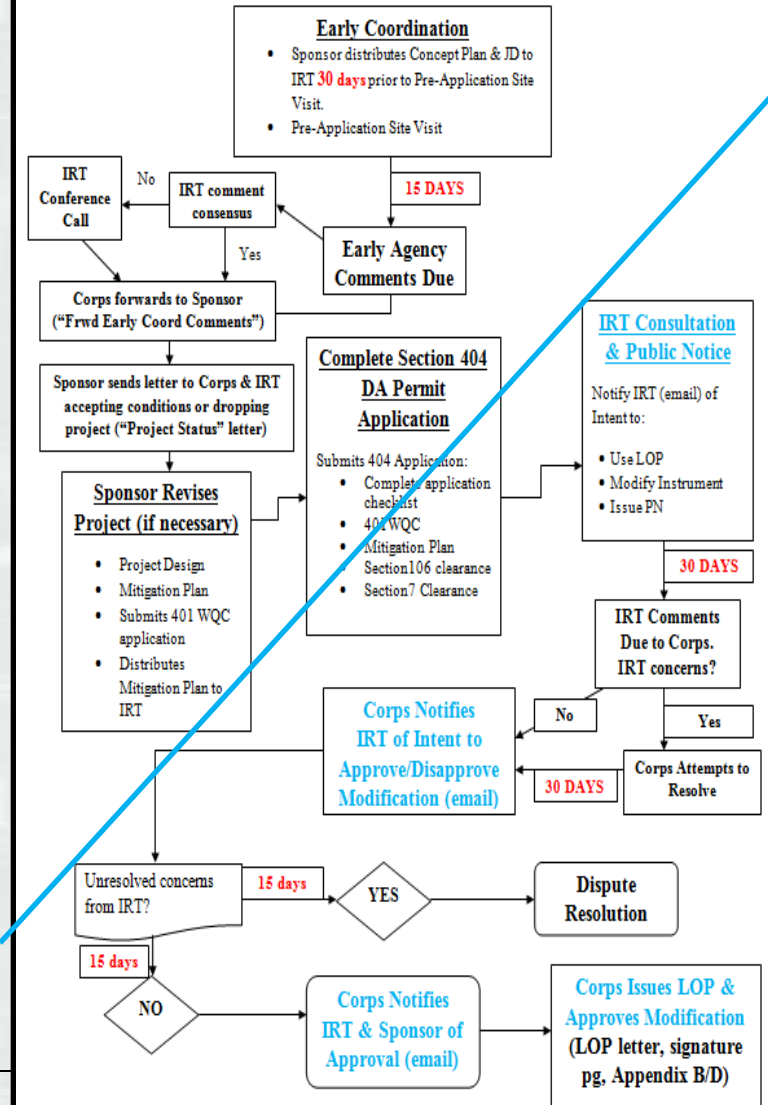


Total Required Federal Review (Phases II-IV): 5225 Days

*Timeline also applies to amendments

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

LOP Implementation Process



Revised: 10 May 2013

Approval of Preservation Projects



Preservation Project Approval

Early Coordination (Pre-App)

Mitigation Plan

Request for Approval & Instrument Mod

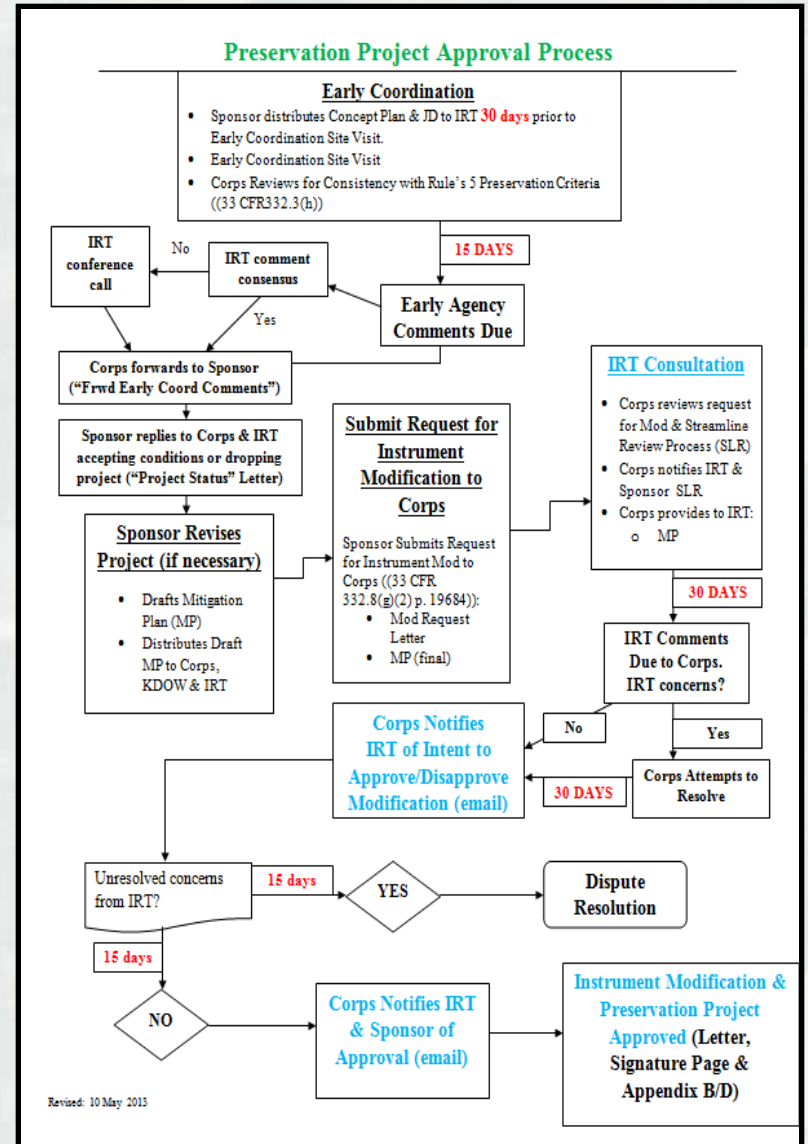
IRT Consultation (no PN)

Notification of Intent to Approve

Dispute Resolution

Mod Approval Notification

Instrument Mod



Questions?

(502)315-6687

patti.g.jarrett@usace.army.mil

<http://www.lrl.usace.army.mil/>

