OVERVIEW OF COMPENSATORY MITIGATION WITHIN TENNESSEE

Joshua Frost, PWS, Certified Ecologist Chief, Technical Services Branch Regulatory Division U.S. Army Corps of Engineers 19 April 2017

"The views, opinions and findings contained in this report are those of the authors(s) and should not be construed as an official Department of the Army position, policy or decision, unless so designated by other official documentation." US Army Corps of Engineers

U.S.ARM

TOPICS

- Overview of Compensatory
 Mitigation Within Tennessee
- Regulatory Initiatives









PREFERENCE HIERARCHY FOR MITIGATION (33 CFR 332.3(B))

- 1. Mitigation bank credits
- 2. In-lieu fee program credits
- 3. Permittee-responsible mitigation under a watershed approach
- 4. On-site and/or in-kind permittee-responsible mitigation
- 5. Off-site and/or out-of-kind permittee-responsible mitigation





ENVIRONMENTALLY PREFERABLE CONSIDERATIONS

- Uncertainty and Risk
- Size and Ecological Value of Parcel
- Temporal Loss
- Scientific/Technical Analysis

- Long-Term Viability of Mitigation
- Site Protection
- Financial
 Assurances
- Other Relevant Factors





MITIGATION BANKS

- One or more sites where resources are restored, established, enhanced, and/or preserved to provide compensatory mitigation for impacts authorized by DA permits
- Sells compensatory mitigation credits to permittees
- Credits usually produced in advance of impacts
- Bank sponsor assumes responsibility for providing the mitigation



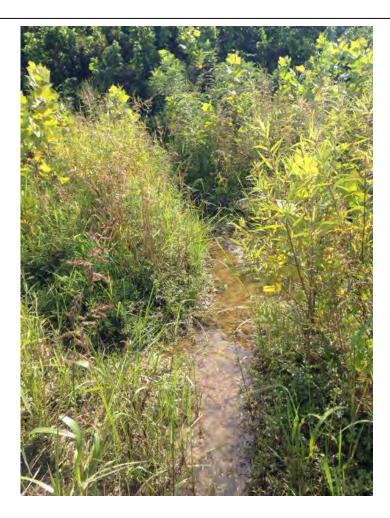




MITIGATION BANKING IN TENNESSEE

<u>13 Public Banks Approved</u> 1 Pending Stream 2 Pending Stream/Wetland 11 Wetland, 1 Stream, 1 Wetland/Stream

<u>3 Active Single-Client Banks</u> 3 Wetland







ACTIVE SERVICE AREAS FOR MITIGATION BANKS IN TENNESSEE







SERVICE AREAS FOR APPROVED STREAM MITIGATION BANKS IN LRN







PENDING MITIGATION BANKS IN TENNESSEE Stream Bank Stream/Wetland Bank **Blue Ridge Mountains** Tennessee Stream/Wetland Bank Wetland Bank US Army Corps of Engineers. U.S.ARM

IN-LIEU FEE PROGRAM

- Government or non-profit natural resource management entity
- Collects fees from permittees to do larger compensatory mitigation projects
- Credits usually produced after impacts
- Sponsor assumes responsibility for providing the mitigation
- Operation and use are governed by an in-lieu fee program instrument







TWO IN-LIEU FEE (ILF) MITIGATION PROGRAMS WITHIN TENNESSEE

 #1 - Tennessee Stream Mitigation Program (TSMP)
 #2 - Tennessee Wildlife Federation (TWF) Statewide Wetland ILF Program

#3 Proposed - Cumberland River Compact ILF Program

In-Lieu Fee Programs Within Other States

#3 - Kentucky Department of Fish and Wildlife Resources (KDFWR) Wetland & Stream Fee In-Lieu-Of Mitigation Program





TSMP ILF PROGRAM

Established per 2002 MOA and currently operates under a 2013 In-Lieu Fee Instrument Operates across TN (Nashville and Memphis Districts)

10 Service Areas

TSMP suspended credit sales in 2016. They currently have three operating service areas



Available Service Areas

- North Hatchie Obion
 - South Hatchie Obion
 - Lower Tennessee
 - Middle Tennessee Elk
 - West Lower Cumberland

- East Lower Cumberland
- Upper Cumberland
- Middle Tennessee Hiwassee
- Upper Tennessee
- French Broad Holston



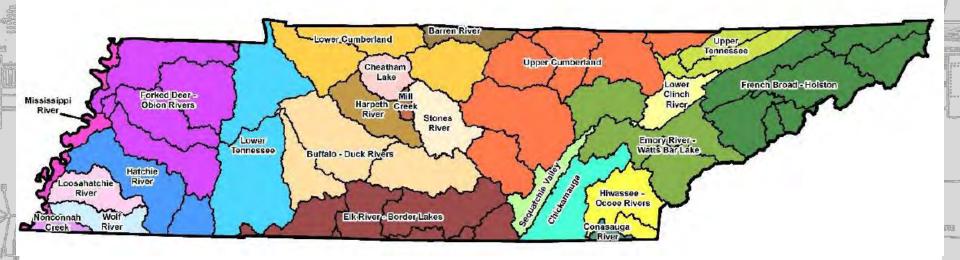


TENNESSEE WILDLIFE FEDERATION (TWF) STATEWIDE WETLAND IN-LIEU FEE PROGRAM

Instrument Approved in 2012.

Operates across TN (Nashville and Memphis Districts)

24 Service Areas – The IRT is reviewing an Instrument modification request to reduce service areas from 24 to 10







REGULATORY INITIATIVES

Development of Mitigation Guidance Documents

Existing Guidance

- Draft Prospectus Guidance for Stream Mitigation Banks or ILF Projects
- Draft Prospectus Guidance for Wetland Mitigation Banks or ILF Projects
- Permittee-Responsible Mitigation Guidance

New Guidance

• Mitigation Banking Instrument Template

Future Guidance

- Prospectus Checklist for Stream and Wetland Mitigation Banks or ILF Projects
- Performance Standards and Monitoring for Stream and Wetland Compensatory Mitigation

Purpose: To provide clear expectations to the public and a consistent and more efficient review that is rooted in sound science and is compliant with all applicable laws





DRAFT PROSPECTUS GUIDANCE FOR STREAM AND WETLAND MITIGATION BANKS OR ILF PROJECTS



US Army Corps Of Engineers «

authorized by Th

Draft Prospectus Submittal Guidance for Stream Mitigation Banks or Stream In-Lieu Fee Projects May 26, 2016



A draft prospectus for a stream mitigation bank or stream in-lieu fee (ILF) project should contaut the information outlined in this guidance document. To help facilitate project review, please provide the information outlined in this document along with an Interagency Pmeeting request. Prior to an IRT site visit, the sponsor will have present the proposed project. Based on the init will determine if the project have





1.

Draft Prospectus Submittal Guidance for Wetland Mitigation Banks or Wethand In-Lieu Fee Projects within Tennessee May 26, 2016 (Draft)

prospectus for a wetland mitigation bank or wetland in lien fee (ILF) project should A draft prospectus for a weiland multigation bank or weiland in-hen fee (LLF) project should fouliain the information outlined in this guidance document. To help facilitate project review, does committee the information entities in this document along with on Langement Document the information outlined in this guidance document. To usep facilitate project review works the information outlined in this document along with an Interagency Review please provide the information outlined in this document along with an intergency Keview Team (RT) meeting request. Prior to an IRT site visit, the sponsor will have up to an hour with the IRT to request the control of the state of the initial information of the state of the st

- 1 call (UK.1) meeting request. Flor to an UK.1 site visit, the sponsor will have up to an another the IKT to present the proposed project. Based on the initial information provided by the sponsor the TOT will determine if the remaind has the estimated to remaind a comparation of the sponsor. the IRT to present the proposed project. Based on the initial information provided by the Ponsor, the IRT will determine if the project has the potential to provide compensatory unitgation for activities authorized by Department of the Anny permits. If the IRT determin the site has potential, a site visit will be scheduled to further evaluate the proposed project.
- Owner. Identify the bank/ILF sponsor, landowners, and any agent for the sponsor Agent: Identify consultants or experts to be involved in design of the compensation site, and list Agent. Identify consultants or experts to be unvolved in design of the compensation and their qualifications and experience in designing and implementing mitigation projects.
- Project Location. Identify the project area in acres and location from the nearest intersection of
- Project Location. Identify the project area in acres and location from the nearest intersection roads. List the nearest town, county, state, HUC-8 watershed, HUC-12 watershed, ecoregion (Level III) and provide project coordinates in decimal degrees (NAD 83). Access to Property. Provide written permission from the property owner to access the proposed
- Project Goals. Describe the purpose and goals of the project. Provide a description of any VIOLET Loads. Describe the purpose and goals of the project. Provide a description of any physical, chemical, and/or biological degradation occurring within the proposed project area. The current and easis should address inversion ensuing aluminal chemical and/or hindure
- physical, chemical, and/or biological degradation occurring within the proposed project area. The purpose and goals should address improving specific physical, chemical, and/or biological Project Objectives. Describe how the goals or correction of the "problem(s)" will be achieved.
- Describe constraints that would limit the restoration potential of the project Site Constriants, Describe constraints that would unit the restoration potential of the project. This should include a description of any waterabed, physical, chemical, or biological constraints
- This should include a description of any watershed, physical, chemical, or biological con-tant would limit upland buffer width: construction methodology, site protection, welland that would limit upland builter wight, construction methodology, site protection, we have function, etc. Examples of constraints include, but are not limited to: adjacent landaue. function, etc. Examples of constraints include, but are not immed to: adjacent ianguse, roadways, utility lines, stormwater outfalls, liens, easements, or encombrances on the property 1080W45%, UMBY 1086%, StormWater Outfalls, liens, easements, or encombrances on the property inability to acquire property and/or long-term protection, presence of fureaten or endangered. Provide (state and foldard) and biologic removation. Martific new continue of the maximum during the state of the inability to acquire property and/or long-term protection, presence of threaten or endangered ispecies (state and federal), and historic properties. Identify any portion of the project that would course on onblic leads and the onblic sectors that more the lead apenes years and revenue, and missione properties. Identify and occur on public lands and the public entity that owns the land.

Draft Prospectus Submittal Guidance for Weiland Mitigation Boula: or Weiland In-Lieu Fee Projects May 26, 2016 (Draft)

- The draft prospectus guidance document is applicable for banks and **ILF** programs
- It facilitates early feedback to mitigation providers
- Draft Prospectus Submittal Procedures:
 - Submit draft prospectus information and request a meeting with the IRT
 - Based on the information provided, the IRT will determine if the project has potential
 - If the site has potential, a site visit will be scheduled
 - IRT will provide written comments following the site visit



of Engineers.



PERMITTEE-RESPONSIBLE MITIGATION GUIDANCE



Permittee-Responsible Mitigation Guidance May 26, 2016 (Draft)



This Permittee-Responsible Mitigation (PRM) document has been developed to provide guidance on the required elements of a compensatory mitigation (CM) plan that is compliant with 33 CFR 332. This guidance document is applicable to all type of permittee-responsible compensatory mitigation, including on-site and off-site mitigation. As stated in 33 CFR 332.3(c)(3)(iii) and 230.93(c)(3)(iii), the level of information and analysis contained in a mitigation plan must be commensurate with the scope and scale of the authorized impacts and functions lost. Please provide the following information with the submittal of a permitter-responsible mitigation plan:

A. Basic Information

 <u>DA Permit Number</u>: Provide the DA permit number for which PRM is proposed as well as other past or current permits from state or federal agencies.

2. Applicant. Provide contact information for the applicant, landowner(s), and agent(s).

 <u>Agent</u>. Identify consultants or experts to be involved in design of the compensation site, and list their qualifications and experience in designing and implementing mitigation projects.

4. <u>Impact Site</u>. Identify the resource type(s) and amount(s) of waters of the U.S. to be impacted by the project for which PRM is proposed. Please specify whether impacts will be temporary or permanent. For temporary impacts, please include an estimated schedule outlining when restoration of the temporary impacts would occur.

a. List the impact site(s) location from the nearest intersection of roads. List the nearest town, county, state, HUC-8 watershed, HUC-12 watershed, EPA ecoregion (Level III) and provide the impact site(s) coordinates in decimal degrees (NAD 83) and any associated available shapefiles relating to the proposed impact site.

b. Describe and quantify the aquatic resource type and functions that will be lost at the proposed impact site (e.g. RBP score, TRAM, etc.). Please fill out applicable items 6(a), (b), (c), (d)(ii), (iv)-(vi) in the "Baseline Information" section for proposed stream relocations.

c. Describe existing aquatic resource concerns in the watershed (e.g. flood storage, water quality, habitat, etc.) and how the impact site currently contributes to overall watershed/regional functions.

B. Components of a Compensation Mitigation (CM) Plan

1. Executive Summary. Provide a brief, narrative overview of the mitigation plan (approximately one page). The narrative should summarize the amount, aquatic resource type (e.g. Cowardin, HGM, ecological, and/or Rosgen stream classification), and functional capacity of both the aquatic resources proposed for impact and those proposed to be established, restored, enhanced, or preserved in the CM plan. The narrative should also explain how the CM work would replace aquatic resource functions that would be lost as a result of the proposed project.

Permittee-Responsible Mitigation Guidance May 26, 2016 (Draft) **Purpose**: To provide guidance on the required elements of a compensatory mitigation plan that is compliant with 33 CFR 332.

Benefits: To provide clear expectations to the public and a consistent and more efficient review that is rooted in sound science and is compliant with all applicable laws

Components of the PRM Guidance:

- Basic Information
- Components of a Compensatory Mitigation Plan
- Environmentally Preferable
 Consideration



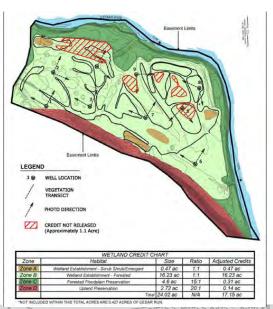
of Engineers.



COMPONENTS OF A COMPENSATORY MITIGATION PLAN -12 ELEMENTS [33 CFR 332.4(C)]

- Objectives
- Site Selection
- Site Protection Instrument
- Baseline Information
- Credit Determination
- Mitigation Work Plan

- Maintenance Plan
- Performance Standards
- Monitoring Requirements
- Long-Term Management
- Adaptive Management
- Financial Assurances







NASHVILLE REGULATORY MITIGATION WEBPAGE

http://www.lrn.usace.army.mil/Missions/Regulatory/Mitigation

Mitigation

Compensatory mitigation involves actions taken to offset unavoidable adverse impacts to vestands, stream and other sources subvisioned by Clean Vetter Act acctor of 40 permits and other Department of the Army (DA) permits. As such, compensatory mitigation is a critical tool in helping the flideral government to meet the longstanding rational goal of 'no net loss' of vestand acreage and function. For impacts authorized under section 494, compensatory mitigation is not considered until after all appropriate and practicable steps have been taken to first avoid and their minimize adverse impacts to the aquatio ecosystem pursuant to 40 CFR part 200 (e.s. the CVMA Section 444(VL) (G subdimes).

Compensatory mitigation can be earned out through four methods: the restoration of a previously-existing veeland or other aquartic site, the enhancement of an existing aquatic site's functions, the establishment: (i.e., creation) of a new aquatic site, or the preservation of an existing aquatic site. There are three mechanisms for previding compensatory mitigation, permittee-responsible compensatory mitigation, mitigation baries and h-leav-be mitigation.

Pemittee-responsible intigation is the most traditional form of compensation and continues to represent the majority of compensation acreage provided each year. As its name implies, the permittee retains responsibility for ensuing that required compensation activities are completed and subcessful. Permitteeresponsible mitigation can be located at or adjacent to the impact site (i.e., on-site compensatory mitigation or at another location generally within the same watershed as the impact site (i.e., offsite compensatory mitigation).

Mitgation banks and in-laws the mitigation both involve off-site compensation activities generally conducted by a third party, a mitigation bank sponsor or in-lieu fee program sponsor. When a permittee's compensatory mitigation requirements are satisfied by a mitigation bank or in-lear-lee program, responsibility for ensuing that required compensation is completed and successful shifts from the permitter to the bank or in-lieu fee sponsor. Mitigation banks and in-lear lee programs both conduct consolidated aquatio resource restoration, enhancement, establishment and preservation projects; however, under current practice. There are several important differences batween in-lear lee programs and mitigation banks and mitigation banks and the programs both conducts.

Compensatory Mitigation for Losses of Aquatic Resources (2008 Mitigation Rule 33 CFR 332) (pdf copy of the Federal Register Notice providing Federal guiltage for mitigation banking)

Regional Internet Bank Information Tracking Sys compensatory mitigation tracking system. RIBIT: Mitigation Banks and In-lex Fee programs in the about the availability of compensatory mitigation of the Army permits.

g Syn RIB(TS) - RIB(TS) is an interactive web-based XBTS uses the public to track the status of USACE approved in the temple District. It will provide up-to-date information above to offset adverse impacts authorized by Department

Please note that RBITS is a convex statution and includes information consistent types of Federal and State information programs. In order to view information about stream and wetland mitigation is the Nashville Disord area of responsibility you will need to select Nashville District from the list of USACE Districtions the RBITS home Page.

MITIGATION GUIDANCE

Applicants seeking a Tennessee Department of Environment and Conservation (TDEC) Aquatic Resource Alteration Permit (ARAP)/Section 401 Water Quality Certification and a U.S. Army Corps o Engineers (USACE) Section 101404 Permit can request a regulatory coordination meeting with the agencies for complex and/or large-scale project proposals with the potential to impact aquatic resources and/or may require permittee-responsible mitigation (PRM). Please follow the link below to request a meeting. Applicants are also encouraged to contact their assigned project manager for any questions concerning their project review. Click Here for a Regulatory Coordination Pre-Application Meeting Request

PERMITTEE-RESPONSIBLE MITIGATION GUIDANCE (May 26, 2016-Draft) Click Here

DRAFT PROSPECTUS SUBMITTAL GUIDANCE for STREAM MITIGATION BANKS or STREAM IN-LIEU FEE PROJECTS within TENNESSEE (May 26, 2016-Draft) Click Here

DRAFT PROSPECTUS SUBMITTAL GUIDANCE for WETLAND MITIGATION BANKS or WETLAND IN-LIEU FEE PROJECTS within TENNESSEE (May 26, 2016-Draft) Click Here







THE TENNESSEE INTERAGENCY REVIEW TEAM REPRESENTATIVES

1



US Army Corps of Engineers.

