

## MITIGATION PLAN REQUIREMENTS (9 June 2008)

All proposed compensatory mitigation plans, proposed mitigation banks and proposed in-lieu fee programs, submitted after June 9, 2008, to the Corps of Engineers for approval, must include a discussion of the following items. A compensatory mitigation plan cannot be approved by the district engineer until the following items are included. These requirements are the result of the new federal regulations entitled Compensatory Mitigation for Losses of Aquatic Resources released on April 10, 2008. These regulations are found at 33 CFR Part 332.

1. **Mitigation objectives:** A description of the resource type(s) and quantities that will be restored, created, enhanced or preserved. A discussion of the resource functions and how these functions address the needs of the watershed or other geographic area of interest. The watershed approach is defined in the new Compensatory Mitigation for Losses of Aquatic Resources regulation at Part 332.3(c).
2. **Site selection:** A description of the factors considered during the site selection process. This should include consideration of the watershed needs, on-site alternatives where applicable and the practicability of accomplishing ecologically self-sustaining aquatic resource restoration, establishment, enhancement, and/or preservation at the compensatory mitigation site.
3. **Site protection instrument:** A description of the legal arrangements and documents including verification of site ownership that will be used to ensure the long-term protection of the compensatory mitigation site.
4. **Baseline information:** A description of the ecological characteristics of the proposed compensatory mitigation site and, in the case of an application for a DA Permit, the impact site. This may include descriptions of historic and existing plant communities, historic and existing hydrology, soil conditions, a map showing the locations of the impact and the mitigation sites(s) or the geographic coordinates for those site(s), and other site characteristics appropriate to the type of resource proposed as compensation. The baseline information should also include a delineation of the waters of the United States on the proposed compensatory mitigation project site. A perspective permittee planning to secure credits from a mitigation bank or an in-lieu fee program only needs to provide baseline information about the impact site, not the mitigation bank or the in-lieu fee project site.
5. **Determination of credits:** A description of the number of credits to be provided, including a brief explanation of the rationale for this determination (stream or wetland assessment method). For permittee-responsible mitigation, this should include an explanation of how the compensatory mitigation project will provide the required compensation for the unavoidable impacts to aquatic resources resulting from the permitted activity. For permittees intending to secure credits

from an approved mitigation bank or in-lieu fee program, it should include the number and the resource type of credits to be secured and how these credit needs were determined.

- 6. Mitigation work plan:** Detailed written specifications and work descriptions for the compensatory mitigation project, including, but not limited to, the geographic boundaries of the project; construction methods, timing, and sequence; source(s) of water, including connections to existing waters and uplands; methods for establishing the desired plant community; plans to control invasive plant species; the proposed grading plan, including elevations and slopes of the substrate; soil management; and erosion control measures. For stream mitigation projects, the mitigation work plan may also include other relevant information, such as plan form geometry, channel form (e.g., typical channel cross-section), watershed size, design discharge, and riparian area plantings.
- 7. Maintenance plan:** A description and schedule of maintenance requirements to ensure the continued viability of the resource once initial construction is completed.
- 8. Performance standards:** Ecologically-based standards (hydrology, plant survival, habitat features, etc.) that will be used to determine whether the compensatory mitigation project is achieving its objectives.
- 9. Monitoring requirements:** A description of the parameters to be monitored in order to determine if the compensatory mitigation project is on track to meet the performance standards and if adaptive management is needed. A schedule for monitoring and reporting on monitoring results to the district engineer must be included.
- 10. Long-term management plan:** A description of how the compensatory mitigation project will be managed after performance standards are achieved to ensure the long-term sustainability of the resource. In addition, the long-term financing mechanism(s) and the party responsible for the long-term management must be identified.
- 11. Adaptive management plan:** This plan should address strategies to address unforeseen issues associated with site conditions or other components of the compensatory mitigation plan. This plan will guide decisions for revising the original construction plan and implement measures to address both foreseeable and unforeseen circumstances that adversely affect the success of the compensatory mitigation project. The plan must identify the party or parties responsible for implementing the adaptive management plan.

**12. Financial assurances:** A description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the compensatory mitigation project will be successfully completed and managed for the long-term, in accordance with the required ecological performance standards.

The financial assurance can be in the form of performance bonds, escrow accounts, casualty insurance, letters of credit or other appropriate instruments approved by the district engineer.

**In addition to the above information proposed mitigation banks and proposed in-lieu fee programs must submit a bank or program prospectus that summarizes the following:**

1. The objectives of the proposed mitigation bank or in-lieu fee program.
2. How the mitigation bank or in-lieu fee program will be established and operated.
3. The boundary of the proposed service area.
4. The general need for and technical feasibility of the mitigation bank or in-lieu fee program.
5. The ownership arrangements and the long-term management strategy for the mitigation bank site(s) or in-lieu fee project site(s).
6. The qualifications of the sponsor to successfully complete the type(s) of mitigation project(s) proposed, including any past such activities completed by the sponsor.

For mitigation banks the prospectus must include:

1. An assessment of the ecological suitability of the site to achieve the objectives of the bank, including the physical, chemical, and the biological characteristics of the bank site and how that site will support the planned types of aquatic resources and functions.
2. Assurance of sufficient hydrology, including water rights, to support the long-term sustainability of the mitigation bank.

For in-lieu fee programs the prospectus must include:

1. The compensation planning framework (Part 332.8(c)) that will be used to select, secure and implement aquatic resource restoration, establishment, enhancement, and/or preservation activities. The framework must support the watershed approach (Part 332.3(c)) to compensatory mitigation.
2. The compensation planning framework must include:
  - a. The boundary of the geographical service area(s) including a watershed-based rationale for the delineation of each service area.

- b. A description of the threats to aquatic resources in the service area(s), including how the in-lieu fee program will help offset impacts resulting from those threats.
- c. An analysis of the historic aquatic resource loss in the service area(s).
- d. An analysis of current aquatic resource conditions in the service area(s), supported by an appropriate level of field documentation.
- e. A statement of aquatic resource goals and objectives for each service area, including a description of the general amounts, types, and locations of aquatic resources the program will seek to provide.
- f. A prioritization strategy for selecting and implementing compensatory mitigation activities.
- g. If preservation is part of the compensation strategy, an explanation of how preservation of the existing resource(s) provide important physical, chemical, and biological functions within the watershed, how these functions contribute to the sustainability of the watershed, and to what degree are these resources threatened by destruction or adverse modification.
- h. Preservation, as a mitigation component, must be permanently protected by an appropriate real estate instrument and must be completed in conjunction with restoration, establishment, and/or enhancement of aquatic resources.
- i. A description of any public or private stakeholder involvement in plan development and implementation, including, where appropriate coordination with federal, state, tribal, and local aquatic resource management and regulatory authorities.
- j. A strategy for periodic evaluation and reporting on the progress of the program in achieving the goals and objectives of the site as described in item “e” above.

The level of detail necessary to be included in the compensation planning framework is at the discretion of the district engineer and will take into account the characteristics of the service area(s) and the scope of the program. As part of the in-lieu fee program instrument, the compensation planning framework will be reviewed by the Interagency Review Team (IRT) and will be a major factor in the district engineer’s decision on whether to approve the instrument.