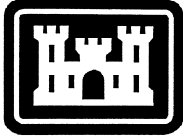


SPECIAL PUBLIC NOTICE



**US Army Corps
of Engineers
Kansas City District**

Public Notice No. 2008-424 (KSMG)

Issue Date: December 31, 2009

Expiration Date: January 30, 2010

30-Day Notice

UPDATE OF KANSAS STREAM MITIGATION GUIDANCE (KSMG)

Background: The Kansas Natural Resources Sub-cabinet and the Kansas Stream Mitigation Task Force requested that the Kansas City District (District) adopt the KSMG in early 2008. Following a notice for public comment, and review for conformance with the Compensatory Mitigation Rule (see 33 CFR part 332), the District adopted the KSMG on October 30, 2008. The KSMG became the primary tool the District used for the evaluation of stream impacts and mitigation proposals for permit actions within the State of the Kansas, including Indian Country. Note: In February 2007, the District, in coordination with the other Missouri Corps Districts, adopted the *Missouri Stream Mitigation Method* (MSMM). When evaluating compensatory mitigation proposals, the District will continue to consider regional differences when deciding which “stream tool” to use and apply in transition areas. The District will also continue to use flexibility in adapting the KSMG to account for specific environmental functions.

For projects approved pursuant to the Corps Regulatory Program jurisdiction under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344), the Corps of Engineers must require compensatory mitigation to offset losses of aquatic functions. The KSMG creates a level tool to identify impacts to aquatic ecosystems (debits) and effects of mitigation actions (credits) so that the debit and credits can be compared in like terms. Use of a standard assessment tool improves efficiency, communication and consistency and provides increased predictability in the mitigation design and evaluation process.

Purpose: The District has completed the comprehensive review of the KSMG to address inconsistencies and issues identified during its first year of use. The intent of these proposed changes is to make the KSMG more understandable/easier to use, and to make the required mitigation appropriate and compensatory for the various types of impacts and the diverse ecological areas within Kansas. An outline of the proposed changes begins on page 3 of this notice. The purpose of this notice is to inform the public of the changes that the District is proposing to make, and to request comments on these proposed changes, and on all other aspects of the KSMG.

Both the current (October 2008) KSMG and the Draft version are located on the District's webpage at <http://www.nwk.usace.army.mil/regulatory/regulatory.htm>, and posted at the link labeled "Compensatory Mitigation" located under the Topics of Interest heading. Note: Only the current (October 2008) KSMG Assessment Spreadsheets are on the website. Spreadsheets for the Draft version have not been created.

Periodic Review: After this public interest review period, the KSMG will be reviewed and updated by the Corps as necessary based on comments received and lessons learned during its use. Comments may be provided at any time, not just within an official review period.

Address for Providing Comments and Contact for Additional Information: When providing comments, please identify Public Notice No. 2008-424 (KSMG), and mail to Mr. Thomas A. McCabe, Kansas State Regulatory Office, 2710 NE Shady Creek Access Road, El Dorado, Kansas, 67042, or fax to 316-322-8259, or transmit via e-mail to Thomas.a.mccabe@usace.army.mil. For additional information, please contact Mr. McCabe at the above email address or at telephone (316) 322-8247.

Public Interest Review & Comment: The District is soliciting comments from the public; Federal, state and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the proposed changes as well as any other area of the KSMG. All comments received will be considered by the District to determine whether to finalize, and/or modify the proposed update. NOTE: The District can only consider actions that will comply with the national Compensatory Mitigation Rule, and other applicable laws and regulations.

Kansas Stream Mitigation Guidance (KSMG) Proposed Changes December 2009

The KSMG has been reviewed by the Corps to address inconsistencies and issues identified during its first year of use. The purpose of these changes is to make the KSMG more understandable/easier to use and to make the required mitigation appropriate and compensatory for the various types of impacts and the diverse ecological areas within Kansas. The following changes, listed in order of appearance, have been proposed and incorporated into the Draft document:

5.2.5. Livestock Exclusion.

- Deleted: “Where a documented problem exists.”
- Changed the Note to state: Total livestock exclusion will require fencing that meets Natural Resources Conservation Service (NRCS) design standards.

5.7. Lakes, Ponds and Impoundments.

- Added: Compensatory mitigation is intended to replace the habitat that is lost. Creating different (out-of-kind) functional types of aquatic habitat does not offset the loss of stream habitat.

5.9. Mitigation Construction Timing.

- Added: Note: Credit is not applicable for the portion of a proposed mitigation plan that is considered “Preservation only.” “Preservation only” mitigation would receive a value of 0 for Mitigation Construction Timing.

13. Adverse Impact Factors/Definitions.

Existing Condition:

- Deleted: Note: If its condition has a characteristic that would allow it to be placed in more than one category, the higher category should be utilized.
- Deleted: *If the existing condition cannot be properly determined, the “Fully Functional” value should be utilized.
- Changed the term “Fully Functional” to “Pristine.”
- Changed the requirements for Pristine to state: For purposes of this SMG, a pristine stream reach must meet 4 out of the 5 following characteristics:
- Changed Pristine characteristic to state: Has no stream impact within 0.5 stream miles upstream or downstream of the proposed stream impact, including perched culverts, pipes, impoundments, or other manmade modifications (less than 30 feet of impacted section). Low water crossings that permit aquatic organism passage is not considered an adverse impact and may protect upstream reaches from gradient instability.
- Changed Pristine characteristic to state: Is considered stable (see definition of stable stream on page 22), does not exhibit channel incision and headcutting.
- Changed Pristine characteristic to state: Scores between 7-10 if using the KDWP Stream Habitat Evaluation.
- Changed the term “Moderately Functional” to “Functional.”
- Changed the requirements for Functional to state: For purposes of this SMG, a functional stream must meet at least 2 of the following criteria:
- Changed Functional characteristic to state: Scores between 5 - 6.9 if using the KDWP Stream Habitat Evaluation.

- Changed the term “Functionally Impaired” to “Impaired.”
- Change the requirements for Impaired to state: For purposes of this SMG, an impaired stream fails to meet either the pristine or functional criteria and generally has one or more of the following criteria:
- Changed Impaired characteristic to state: Scores between 1.0 – 4.9 if using the KDWP Stream Habitat Evaluation.
- Added: **Temporary Inundation Zone** refers to the length of stream channel, located upstream from a structure that would only receive temporary impacts by temporary inundation due to the use of an uncontrolled 2” diameter flow-thru augmentation pipe. The length of stream channel in this Zone would be calculated based upon the elevation placement of the flow-thru pipe in relation to the primary overflow pipe or structure. Note. Due to the reduction in debits for the use of a flow-thru pipe, credits will not also be given for the same, even though it is recognized that downstream flows may be enhanced.
- Deleted: **Total Project Impact**.
- Added: **Linear Impact**: means the length of stream, in feet, that will be impacted by each individual activity, as authorized under Section 404 of the Clean Water Act, and for which mitigation will be required. The scale of values per stream length is located on the Adverse Impact Worksheet.
- Changed the Example to reflect how Linear Impact is calculated.

14. Stream Restoration Credit Factors.

Net Improvement for Stream Channel Restoration

- Moderate:
 - Deleted the action stating “Excluding livestock with native riparian vegetation restoration (see Section 5.2.5 page 6).”
- Minimal:
 - Changed the action to state: “Excluding livestock with a fence that meets NRCS design standards.”

15. Riparian Area Credit Factors:

Control/Site Protection

- Added: Note: The Corps will decide which level of protection is necessary and appropriate.

Site Factor

- Changed Site Factor of 1 to state: “Use a site factor of 1.0 for: 1) all in-kind aquatic resource or buffer replacements AND permittee constructed mitigation proposed within the 8-digit HUC watershed in which the impacts occurred or 2) impacts within a mitigation bank service area and proposing to go to a bank.”

16. Additional Credits

- Added this Section to the KSMG to reflect calculations for possible additional mitigation credits.

Appendix A Glossary and References

- Added definition for Ordinary High Water Mark (OHWM).

Appendix C Sample Project

- Replaced the Sample Project with Worksheets.

Appendix D Worksheets

- Added “KSMG 12/09” to all Worksheets for identification purposes.

Adverse Impact Factors Table/Worksheet

- Stream Types. Changed to: Ephemeral/Intermittent w/o Pools, Intermittent w/Pools or Perennial.

Existing Condition:

- Changed value of Impaired Stream to: Stream Type x 0.1=
- Changed Value of Functional Stream to: Stream Type x 0.8=
- Changed Value of Pristine Stream to: Stream Type x 5.0=

Impact Activity:

- Added the activity Temporary Inundation Zone with an impact value of 0.4.

Linear Impact:

- Deleted Total Project Impact and replaced with Linear Impact.

In Stream Work /Channel Restoration or Enhancement and Relocation Table/Worksheet

Stream Types. Changed to: Ephemeral/Intermittent w/o Pools, Intermittent w/Pools or Perennial based on the Average Width at OHWM (<15', 15-30', 30-50', >50').

- Added block on the Worksheet for Additional Credits.
- Changed Formula for Total Credits Generated to reflect Additional Credits (if appropriate).