

Joint Army–EPA: *Compensatory Mitigation Rule*

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Compensatory Mitigation

- Clean Water Act §404 requires a permit to discharge dredged or fill material into waters of the U.S.
- Impacts must be:
 - Avoided
 - Minimized
 - For unavoidable impacts, an evaluation of *compensatory mitigation* is required



Compensatory Mitigation

Generally, compensatory mitigation is achieved through 3 methods:

- Mitigation Banking
- In-lieu Fee Programs
- Permittee Responsible Mitigation



Major Themes

- Implementing equivalent, effective standards
- Emphasizing best available science
 - Watershed approach
- Ensuring predictability and efficiency
- Expanding public participation



Equivalency – Mitigation Plans

1. Project objectives
2. Site selection factors
3. Site protection instrument
4. Baseline information (at impact site and compensation site)
5. Credit determination methodology
6. Work plan
7. Maintenance plan
8. Performance standards
9. Monitoring requirements
10. Long-term management plan
11. Adaptive management plan
12. Financial assurances



Banking Preference

- Initiated in advance of permitted impacts:
 - Increase likelihood of success
 - Reduce temporal losses
- Involve larger, ecologically valuable parcels
- Greater up-front planning and investment



Ecological Performance Standards

- Must be included, must be objective and verifiable
- Must be based on the *best available science* that can be measured or assessed in a practicable manner
- Reflect the range of variability exhibited by regional classes of aquatic resources



Clarified Watershed Approach

- Added new definitions:
 - Watershed
 - Watershed plan
 - Watershed approach
- Addresses appropriateness of existing plans
- Outlines information required to utilize a watershed approach



Equivalency – ILF Reforms

- The rule retains ILF mitigation but with significant reforms:
 - Advance planning requirement
 - Cap on “advance” credits
 - Financial accounting requirements
 - Same review process as banks



Compensation Hierarchy

1. Credits from a mitigation bank
2. Credits from an in-lieu fee program
3. PRM using a watershed approach
4. PRM on-site
5. PRM off-site

***In-kind preference** maintained



Monitoring Plans

- Monitoring the compensatory mitigation project site is necessary to ensure it is meeting its performance standards
- Submission of monitoring reports is required, but level of detail will vary
- Mitigation plan should detail the parameters, period, frequency, and party responsible for monitoring plans



Transition

- Rule goes into effect on June 9, 2008
- Mitigation banks
 - Existing banks and those approved by July 9, 2008, are grandfathered
 - Instrument modification will trigger compliance with new requirements
- In-lieu Fee mitigation
 - Existing ILFs and those approved by July 9, 2008: 2-yr transition period
 - Additional 3 years possible if “*good cause*”



Next Steps

- Outreach/Training
 - Corps/EPA Joint National Meeting – May/08
 - ASWM Workshop May/08
 - Federal/State IRT Training– June/08
 - Web-based Training Courses – Spring–Summer '08
- Implementing Guidance



Questions?

Compensatory Mitigation Website:

- <http://www.epa.gov/wetlandsmitigation/>

