

Prospectus Submittal Procedures for Federal and State Wetland Mitigation Banks in Washington State

Introduction

The prospectus provides a conceptual overview of the proposed wetland mitigation bank (bank) and serves as the basis for initial public and Interagency Review Team (IRT)¹ review and comment. The prospectus must summarize information associated with the proposed bank at a sufficient level of detail to support informed public and IRT comment. As IRT Co-Chairs², the U.S. Army Corps of Engineers and Department of Ecology use the prospectus and comments received during the public notice period to make an initial determination on whether there are critical issues that may affect the ability of the bank to be certified. For specific rule language, see the Federal Rule³ and the State Rule⁴.

Overview

Preliminary Review of the Draft Prospectus

Prior to prospectus submittal, the sponsor may elect to submit a draft prospectus to the Co-Chairs for comment and consultation. This preliminary review is optional but strongly recommended. It is intended to identify potential issues early so that the sponsor may attempt to address those issues prior to the start of the formal review process.

Prospectus

The sponsor is responsible for preparing all documentation associated with bank establishment including the prospectus. The sponsor must submit a complete electronic and hard copy of the prospectus to the Co-Chairs. Electronic copies over 3MB in size should be submitted via CD. A prospectus must contain all of the information identified in the attached checklist at a sufficient level of detail to support informed public and IRT comment to be considered complete.

On receipt of the sponsor's prospectus, the Co-Chairs will review the document. The Co-Chairs will notify the sponsor in writing within 30 days of receipt of the prospectus whether or not the document is complete. If the prospectus is determined to not be complete, the Co-Chairs will notify the sponsor of any additional information necessary to complete the prospectus. If the prospectus is determined complete, the Co-Chairs will prepare a joint public notice.

Joint Public Notice, Review, and Comment

Within 30 days of a prospectus completeness determination, the Co-Chairs will provide public notice of the proposed bank, in accordance with the public notice procedures at 33 CFR 325.3

¹ An interagency group of federal, tribal, state, and/or local regulatory and resource agency representatives that reviews documentation and makes decisions for the establishment and management of a mitigation bank.

² The IRT is Co-Chaired by the Corps and Ecology. The Co-Chairs are the final decision-making authority of the IRT.

³ Compensatory Mitigation for Losses of Aquatic Resources, 33 CFR Parts 325 and 332.

⁴ Wetland Mitigation Banks, Chapter 173-700 WAC.

and as specified in WAC 173-700-240 and 173-700-241. The public notice will include a summary of the prospectus and indicate that the full prospectus is available to the public for review at the applicable agency office or their website.

The public notice comment period will be a minimum of 30 days. The Co-Chairs will notify the sponsor if the comment period is extended beyond 30 days, including an explanation of why the longer comment period is necessary.

The Co-Chairs will distribute copies of all comments received in response to the public notice to the sponsor within 15 days of the close of the public comment period. The IRT members may also provide comments to the sponsor during the public notice period, and copies of any such comments will be distributed to the entire IRT.

Initial Evaluation

After the end of the comment period, the Co-Chairs will review the comments received in response to the public notice and make a written initial evaluation to the potential of the proposed bank to provide compensatory mitigation for activities authorized by regulatory permits, and on the ecological appropriateness of the bank. The Co-Chairs will provide the sponsor with an initial evaluation letter within 30 days of the end of the public notice comment period.

If the Co-Chairs determine that the proposed bank has potential for providing appropriate compensatory mitigation for activities authorized by permits and is ecologically appropriate, the initial evaluation letter will inform the sponsor that they may proceed with preparation of the draft mitigation banking instrument (instrument). If the Co-Chairs determine that the proposed bank does not have potential for providing appropriate compensatory mitigation for permits or is not ecologically appropriate, the initial evaluation letter will provide the reasons for that determination.

The sponsor may revise the prospectus to address IRT concerns and submit a revised prospectus. If the sponsor submits a revised prospectus, a revised public notice may be issued in accordance with procedures at 33 CFR 325.3 and WAC 173-700-240 and 173-700-241.

Prospectus Checklist for Federal and State Wetland Mitigation Banks

The prospectus must summarize information associated with the proposed wetland mitigation bank (bank) at a sufficient level of detail to support informed public and Interagency Review Team (IRT) comment.

The prospectus should be organized in a report format with a cover page, table of contents, page numbers, and headings/titles for each section you are discussing. Information should be provided in complete sentences and paragraphs. This checklist is meant as a guide for what should be covered in the prospectus discussion and associated figures, not as a question and answer form. To view past prospectus submittals you can visit:

- The Corps' website, Regulatory In Lieu Fee and Bank Information Tracking System (RIBITS) : <http://geo.usace.army.mil/ribits/index.html>
- Ecology's banking public notice website at: <http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/banking/public-notice.html>

Please provide a completed checklist with the prospectus submittal

- ☐ 1. Contact information for the sponsor.
- ☐ 2. The goals and objectives of the project.
- ☐ 3. Proposed bank site location including city or county, proximity to existing roads and other landmarks, and a vicinity map.
- ☐ 4. A statement of how the bank meets any watershed restoration needs and how its design and location are ecologically appropriate.
- ☐ 5. The rationale for site selection that includes, but not limited to, the following:
 - a. Banks must be sited based on a watershed approach;
 - b. Banks must be sited, planned, and designed to be self-sustaining over time;
 - c. Ecological suitability, ecological sustainability, and land use compatibility;
 - d. Compatibility of banks and agricultural lands of long-term commercial significance (ALLCS); and
 - e. Requirements specified in the State Rule, WAC 173-700-303.
- ☐ 6. The general need for the proposed bank.
- ☐ 7. General site map(s) that includes, but is not limited to:
 - a. Total area of site;
 - b. Location, size, and number of existing wetlands;
 - c. Location of all streams, ponds, and other water features on or adjacent to the site;
 - d. Location and type of all known water control features on or adjacent to the site; and
 - e. Presence of rights-of-way, easements, or other encumbrances.

- ☐ 8. A description of existing conditions of the proposed site including, but not limited to:
- a. Land ownership;
 - b. Local land use or zoning designation;
 - c. Current use;
 - d. Presence of liens, rights-of-way, easements, or other encumbrances;
 - e. The landscape position of the site including water resource inventory area (WRIA), basin, and sub-basin location;
 - f. Wetland types present on the site including Cowardin classification and hydrogeomorphic (HGM) class of each wetland;
 - g. Other habitat types present;
 - h. Available information on water sources including surface water features, preliminary ground water information, soil types, and vegetation;
 - i. A preliminary analysis of functions provided by on-site wetlands;
 - j. Adjacent land uses that might affect the bank's function;
 - k. Site constraints, conflicts, or known risks that could affect bank development or function;
 - l. Identification of all buildings, structures, and other built features that would remain on the site after construction; and
 - m. Identification of existing mitigation sites and whether they will remain on-site after construction.
- ☐ 9. Description of conceptual site design, including but not limited to:
- a. Proposed types and approximate sizes of wetlands;
 - b. Other proposed habitat types to be provided;
 - c. Proposed functions that the bank is anticipated to provide;
 - d. Description of alterations to hydrology;
 - e. Location of grading, if applicable; and
 - f. Proposed structures (e.g., perch poles, weirs, trails, etc.).
- ☐ 10. Figures illustrating the conceptual bank design.
- ☐ 11. The proposed service area and accompanying watershed-based rationale that demonstrates the service area is ecologically appropriate.
- ☐ 12. Discussion of whether water rights have been applied for or secured for the site, if needed.
- ☐ 13. Identification of a proposed permanent protection mechanism.
- ☐ 14. The proposed ownership arrangements and long-term management strategy for the bank.
- ☐ 15. Description of how the proposed bank project meets federal, state, and local laws and rules.
- ☐ 16. Identification of whether the bank site is fully or partially located on ALLCS.

- ☐ 17. The qualifications of the sponsor to successfully complete the bank project(s) proposed, including information describing any past such activities by the sponsor.
- ☐ 18. The qualifications of the main design team and their areas of expertise.

Reference Material

Federal Websites

Federal Rule on Compensatory Mitigation for Losses of Aquatic Resources; Available at:
http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/final_mitig_rule.pdf

Environmental Protection Agency-Compensatory Mitigation; Available at:
<http://www.epa.gov/wetlandsmitigation/>

US Army Corps of Engineers, Seattle District, Regulatory Program-Mitigation; Available at:
<http://www.nws.usace.army.mil/Missions/CivilWorks/Regulatory.aspx>

State Websites

Washington State Final Wetland Mitigation Bank Rule; Available at:
http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/banking/pdf/Guidance/RuleText_EasyRead.pdf

Washington State Department of Ecology-Wetland Mitigation Banking; Available at:
<http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/banking/index.html>

State Site Selection Documents

Selecting Wetland Mitigation Sites Using a Watershed Approach:
<http://www.ecy.wa.gov/biblio/0906032.html> (Western Washington)
<http://www.ecy.wa.gov/biblio/1006007.html> (Eastern Washington)