

U.S. Army Corps of Engineers (USACE) Fort Worth District



Mitigation Bank Prospectus Form

This form includes the information required for a mitigation bank prospectus as outlined in the Final Rule on Compensatory Mitigation for Losses of Aquatic Resources (Federal Register Vol. 73, No. 70; April 10, 2008) and in the Code of Federal Regulations (CFR) Title 33, Part 332.8. Please consult instructions included at the end prior to completing this form.

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BACKGROUND FOR A MITIGATION BANK PROSPECTUS

The purpose of a mitigation bank prospectus is to provide an overview of the proposed mitigation bank with sufficient detail to support public and initial interagency review team (IRT) review and comment.

Definition of Mitigation Banking: A mitigation bank is a wetland or other aquatic resource area that has been restored, established, enhanced or preserved, which is then set aside to compensate for future conversions of wetlands and other aquatic resources from development activities. Permittees, upon approval of regulatory agencies, can purchase credits from a mitigation bank to meet their requirements for compensatory mitigation. The value of these "credits" is determined by quantifying the biological functions or acres restored or created. The bank sponsor is ultimately responsible for the success of the project. Mitigation banking is performed "off-site".

All mitigation banks must comply with 33 CFR Part 332.8 if they are to be used to provide compensatory mitigation for Department of the Army (DA) permits. Additionally, in an effort to streamline the evaluation process, proposed banks located within the Fort Worth District are also encouraged to adhere to the Fort Worth District Mitigation Banking Guidance, which can be found at <http://www.swf.usace.army.mil/Missions/Regulatory/Permitting/Mitigation.aspx>

Mitigation Bank Prospectus Preliminary Review Process. Prior to submitting a prospectus, the sponsor is encouraged to submit a pre-application request form (found at http://media.swf.usace.army.mil/pubdata/envIRON/regulatory/permitting/applicationforms/USACE_Pre-App_Meeting_Request.doc) to the USACE, to schedule a pre-application meeting with the IRT. This meeting will provide an opportunity for sponsors to present their mitigation banking proposals and receive preliminary feedback from IRT members. The sponsor may elect to submit a draft prospectus to the IRT for initial review and comment. Any comments from the IRT and/or the district engineer will be provided to the sponsor within 30 days of submitting the draft prospectus. This review process is optional, but is strongly recommended, as it will allow for the identification potential issues early so that the sponsor may attempt to address those issues prior to the formal review process.

Mitigation Bank Prospectus Formal Review Process. Within 30 days of receipt of a complete prospectus, the district engineer will prepare and distribute a public notice describing the proposed mitigation bank. The comment period for public notice will be 30 days unless the district engineer determines that a longer comment period is appropriate. The IRT, including the USACE may also provide comments during this time. If the construction of a mitigation bank requires a DA permit, the public notice requirement may be satisfied through the public notice provisions of the permit processing procedures, provided all of the relevant information is provided.

Mitigation Bank Prospectus Initial Evaluation. After the close of the public comment period, the district engineer will provide the sponsor a written initial evaluation whether the proposed mitigation bank has the potential or does not have the potential to provide compensatory mitigation for activities authorized by DA permits.

- a. If the district engineer determines that the proposed mitigation bank has the potential to provide compensatory mitigation for DA permits, then the initial evaluation letter will inform the sponsor that he/she may proceed with preparation of a draft mitigation instrument.
- b. If the district engineer determines that the proposed mitigation bank does not have the potential to provide for compensatory mitigation for DA permits, the initial evaluation letter must discuss the reasons for that determination. The sponsor may revise the prospectus to address the district engineer's concerns, and submit the revised prospectus to the district engineer. If the sponsor submits a revised prospectus, a revised public notice will be issued.

Mitigation Bank Prospectus Form

Box 1 Proposed Mitigation Bank or Umbrella Banking Prospectus Name:

Name of Sponsor:

Mailing Address:

Phone Number:

Fax Number:

Email Address:

Box 2 Objectives:

Indicate in ACRES (for wetlands and impoundments) and LINEAR FEET (for rivers and streams) the total quantity of waters of the U.S. proposed to be created, restored, enhanced, and/or preserved for purposes of providing compensatory mitigation. Indicate waterbody type (emergent wetland, scrub/shrub wetland, forested wetland, perennial stream, intermittent stream, ephemeral stream, impoundment, other) or non-jurisdictional (uplands¹).

Waterbody Type	Created	Restored	Enhanced	Protected
Totals:				

¹ For uplands, please indicate if designed as an upland buffer.

Project Location (UTM and Lat/Long in DD):

Baseline Conditions: (Including any man-induced disturbances occurring within the last five years)

Indicate in ACRES (for wetlands and impoundments) and LINEAR FEET (for rivers and streams) the total quantity of current delineated waters of the U.S. located on the project area.

Waterbody Type	Linear Feet in Project Area	Acres in Project Area
Emergent wetland	-	
Scrub/Shrub wetland		
Forested wetland	-	
Perennial stream		-
Intermittent stream		-
Ephemeral stream		-
Impoundment	-	
Other:		
Total:		

Box 3 Establishment Operation and Assessment:

Box 4 Proposed Service Area(s):

Box 5 General Need and Technical Feasibility:

Box 6 Any and all easements, encumbrances liens, and/or mortgages: (Residential abstract, including 50-year title search documenting all easements, encumbrances, liens, mortgages, and lender information.)

Box 7 Site Ownership: (Existing ownership and contact information)

Box 8 Existing and Known Proposed and Private Airports Located within a 5-mile Radius of the Proposed Bank Site:

Box 9 Proposed Ownership Arrangement, Conservation Easement Holder and Qualifications and Long-term Management Strategy:

Box 10 Qualifications of Consultant and Sponsor:

Box 11 Ecological Suitability/Sustainability of the Site: (Prepare and submit a Phase I environmental site assessment. Assessment should also include examination of past, present, and to the extent possible, future alterations/modifications/impacts within the watershed. Pending the findings of the assessment, additional studies may be required.)

Box 12 Assurance of Water Rights:

Attachments

	Included
A. Preliminary Site Reconnaissance or Delineation of Waters of the U.S., Including Wetlands	<input type="checkbox"/>
B. Historic Properties and Cultural Resources Reports and/or Letters	<input type="checkbox"/>
C. Threatened or Endangered Species Reports and/or Letters	<input type="checkbox"/>
D. Figures	<input type="checkbox"/>
E. Abstract/Title Search	<input type="checkbox"/>
F. Other:	<input type="checkbox"/>

End of Form

Instructions: [please do not include these pages when submitting form]

- 1) **Box 1:** Provide the proposed mitigation bank name and the name and contact information for the sponsor.
- 2) **Box 2:** Describe the overall goals and objectives of the proposed mitigation bank. Describe how the project will offset impacts. Describe the natural resource mitigation opportunities proposed (e.g., wetland, open water and/or stream mitigation, supporting upland/riparian, etc.) and the type of mitigation proposed (i.e., restoration, creation, enhancement, and/or preservation). Provide appropriate acreages and/or linear footage for of each aquatic resource for which mitigation work would be performed (e.g., acres of wetland or linear feet of stream restoration, creation, enhancement, and/or preservation). If available, discuss the habitat or vegetated community type proposed with each resource type (e.g., forested wetland restoration, stream channel enhancements, etc.).
 - a. **Project Location:** Include the legal description of the site (along with coordinates in UTM and Latitude/Longitude as Decimal Degrees) and provide an accurate current map of the proposed bank property boundary on a USGS 7.5 minute quadrangle, along with the proposed bank boundary on a recent aerial photograph in the attachments to the prospectus.
 - b. **Baseline Conditions:** Provide a brief description of the current site conditions, habitats, threatened and/or endangered species known to occur or potentially present, and site photos. Details on the site's history, past land use, including and man-induced (unnatural) disturbances which have occurred within the last five years, surrounding land uses and zoning, which should indicate the anticipated future development in the area, and development within the upstream watershed or changes in surface or groundwater uses/rights. The sponsor should also include tabular summary of current delineated waters of the U.S. found on the proposed site.

Waters of the U.S. are defined under 33 CFR part 328.3 (a) as:

 - (1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
 - (2) All interstate waters including interstate wetlands;
 - (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:
 - (i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - (ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (iii) Which are used or could be used for industrial purposes by industries in interstate commerce;
 - (4) All impoundments of waters otherwise defined as waters of the U.S. under the definition;
 - (5) Tributaries of waters identified in paragraphs (a) (1) through (4) of this section;
 - (6) The territorial seas;
 - (7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) (1) through (6) of this section.

In addition, 33 CFR part 328.3 (b) states: The term wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, the ordinary high water mark, as well as any adjacent wetlands, demarcate the limits of non-tidal waters of the U.S. Wetlands are identified and delineated using the methods and criteria established in the USACE *Wetlands Delineation Manual* (1987 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils, and wetland hydrology) as well as any applicable interim regional supplements.

- 3) **Box 3:** Describe the manner in which the bank would be established and operated. Additionally, describe the functional/conditional assessment methodology proposed to be used to assess wetland and/or other aquatic resource restoration, creation, enhancement and/or preservation activities within the proposed mitigation bank. The assessment methodology will be used to quantify the amount of available credits. To promote consistency and efficiency for those banks operating in the state of Texas, the Fort Worth District USACE strongly encourages the use of the Texas Rapid Assessment Method (TXRAM) Version 1. Using separate ledgers for each geographic area and aquatic resource type, describe an appropriate mitigation credit accounting system and credit release schedule that will be employed during the operation of the proposed mitigation bank.
- 4) **Box 4:** Describe the proposed primary, secondary, and tertiary service areas and the basis for selecting the service area of the proposed mitigation bank. Include a figure showing the service areas in relation to the location of the proposed Mitigation Bank in the attachments to the prospectus. Please ensure the text description of the proposed service areas match all graphical figures depicting these areas.
 - a. The primary service area is defined as the entire 8-digit HUC within which the mitigation bank is located (regardless of Ecoregion). The secondary service area is defined as any 8-digit HUC (or portion thereof) adjacent to the primary service area, and located within the same Level III Ecoregion as the mitigation bank. The tertiary service area is defined as any 8-digit HUC (or portion thereof) adjacent to the primary service area, but located outside of the same Level III Ecoregion as the mitigation bank. All secondary and tertiary service area must be located within the same major river basin as the primary service area (Sulphur/Cypress, Sabine, Neches, Trinity, Brazos, Colorado, etc.) Tertiary service areas may not extend beyond the limits of the adjacent Ecoregion as that of the mitigation bank. Ratios for service areas will generally be as follows: Primary Service Area 1 : 1, Secondary Service Area 1.5 : 1, and Tertiary Service Area 3 : 1.
- 5) **Box 5:** Describe the purpose and need for the proposed mitigation bank within the service area. Describe in appropriate detail the proposed mitigation techniques that will be used for establishing, restoring, or enhancing wetlands and other aquatic resources. Mitigation Banks should be designed to be self-sustaining over time to the extent possible, requiring minimal maintenance.
- 6) **Box 6:** Provide a copy of a residential abstract, including 50-year title search for the subject property(s) performed by a title company. The abstract should include a description of any liens, mortgages, easements and/or encumbrances (to include but not limited to, flowage and drainage

easements and utility and road right-of-ways) located on the site along with an assessment of how these features may affect bank operations or habitat values.

- 7) **Box 7:** Provide a list and contact information for any and all current owners of the project site.
- 8) **Box 8:** Provide details on any and all existing and known proposed private or commercial airports located or proposed to be located within 5 miles of the proposed project. This information is required in order to comply with the FAA Advisory Circular (AC) 150/5200-33B, Attractants on or Near Airports, which can be found on the FAA's website at: http://www.faa.gov/documentLibrary/media/advisory_circular/150-5200-33B/150_5200_33b.pdf
- 9) **Box 9:** Describe the legal arrangements and documents that will be used to implement a conservation easement, in addition to any agreements designed to ensure/oversee the long-term management of the site. In addition, identify the financial assurance mechanism and the party responsible for long-term management of the proposed mitigation bank. Information on the financial mechanism can be found in the Fort Worth District Guidance on Financial Assurances.
- 10) **Box 10:** Describe the qualifications of the consultant to prepare the design and monitoring elements of the project, in addition to those of the sponsor that would allow for the successful completion of the proposed mitigation bank, including information describing any such past activities performed by the sponsor. This may include qualifications of sponsor consultants and/or contractors or other relevant groups/individuals.
- 11) **Box 11:** Describe in appropriate detail the ecological suitability (chemical, physical, and biological) of the site to support the proposed types of mitigation to be implemented on the site. Other significant factors for consideration include, but are not limited to, the site's location to other protected lands, development trends (i.e., anticipated land use changes), habitat status and trends, local or regional goals for the restoration or protection of particular habitat types or functions (e.g., re-establishment of habitat corridors or habitat for species of concern), water quality and floodplain management goals, and the relative potential for chemical contamination of the wetlands and/ or other aquatic resources within the service area that may benefit from the proposed Mitigation Bank.
- 12) **Box 12:** If applicable, describe the methods that will be implemented to ensure sufficient water rights to support the long-term sustainability of the proposed mitigation bank. In some cases a water budget or other hydrologic data may be required. For information about water rights permitting within the State of Texas please visit the Texas Commission on Environmental Quality's website at:

http://www.tceq.state.tx.us/permitting/water_supply/water_rights/permits.html
- 13) **Attachments:** Check the boxes for those attachments that are included, and place a cover sheet or tab with each attachment behind the last page of the form. Include any figures required for the prospectus (e.g., Project Location, Proposed Service Area(s) with an overlay of each 8-digit HUC watershed and Level III Ecoregion (2004 Map), Existing Conditions, Proposed Conditions) in the figures attachment.

Note: In the event of submission of a revised document, in an effort to expedite IRT review, the bank sponsor is strongly encouraged to provide a version clearly annotated to reflect all IRT comments, including details on the way in which all comments have been addressed.