

**A TRAINING COURSE FOR  
MITIGATION BANKING AND IN-LIEU FEE PROGRAM  
INTERAGENCY REVIEW TEAMS**



Reference Document:  
**Mitigation Bank and In-Lieu Fee Documentation –  
From Conceptual Plan to Final Instrument**

**A. Necessary Elements of the Prospectus, Draft and Final  
Instrument, and Mitigation Plan**

**Prospectus (§332.8(d)(2))**

- For both mitigation banks and ILF: must include 6 elements
  1. Objectives
  2. How the bank or ILF will be established and operated
  3. Proposed service area
  4. Need and technical feasibility
  5. Ownership arrangements
  6. Qualifications
- For mitigation banks: must include 2 additional elements
  1. Ecological suitability
  2. Assurance of sufficient water rights
- For ILF: must include 2 additional elements
  1. Compensation planning framework
  2. Description of program account

**Draft Instrument (§332.8(d)(6))**

- For both mitigation banks and ILF: must include 5 elements
  1. Service area
  2. Accounting procedures
  3. Provision stating legal liability
  4. Default and closure provisions
  5. Reporting protocols
- For mitigation banks: must include 2 additional elements
  1. Mitigation plan (with 12 key elements)
  2. Credit release schedule
- For ILF: must include 4 additional elements
  1. Compensation planning framework
  2. Specification of initial allocation of advanced credits
  3. Methodology for determining project-specific credits and fees
  4. Description of ILF program account

### **Final Instrument (§332.8(d)(8))**

- The final instrument for mitigation banks and ILF must include all of the elements listed above for the draft instrument, and supporting documentation addressing IRT comments

### **ILF Project Plan (§332.8(j))**

- The ILF Project plan must include:
  1. **Mitigation plan** (with 12 key elements) for each project
  2. Credit release schedule

### **Mitigation Plan (§332.4(c))**

- Mitigation plans must be submitted for all three forms of compensatory mitigation. Mitigation banks and in-lieu fee programs must prepare a mitigation plan for each separate compensatory mitigation project site. Mitigation plans must include the following 12 elements:
  1. Objectives
  2. Site selection
  3. Site protection instrument
  4. Baseline information
  5. Determination of credits
  6. Mitigation work plan
  7. Maintenance plan
  8. Performance standards
  9. Monitoring requirements
  10. Long-term management plan
  11. Adaptive management plan
  12. Financial assurances
  13. Other information

## **B. Bibliography of Resource Materials**

### **STATE & DISTRICT EXAMPLES OF PRE-APPLICATION AND PROSPECTUS**

**GUIDANCE:** *\*consistent with mitigation regulations*

**Mobile District**, U.S. Army Corps of Engineers: Initial Review Checklist

**Ft. Worth District**, U.S. Army Corps of Engineers: Prospectus Form

**Mobile District**, U.S. Army Corps of Engineers: Prospectus Checklist

**New Orleans District**, U.S. Army Corps of Engineers: Prospectus Checklist

**Norfolk District**, U.S. Army Corps of Engineers: Prospectus Checklist

**Seattle District**, U.S. Army Corps of Engineers. "Mitigation Bank Instrument Submittal Procedures for Federal and State Wetland Mitigation Banks in Washington" 2013

**Sacramento, San Francisco, and Los Angeles Districts**, U.S. Army Corps of Engineers: Banking Checklists September 2010

**Rock Island District**, U.S. Army Corps of Engineers, Iowa Mitigation Banking Package February 2011

**Wilmington District**, U.S. Army Corps of Engineers, Mitigation Bank Prospectus Checklist, May 24, 2012

### **STATE & DISTRICT MITIGATION BANKING INSTRUMENT TEMPLATES:**

*\*generally consistent with mitigation regulations*

**Charleston District**, U.S. Army Corps of Engineers "Mitigation Banking Instrument" November 6, 2014.

**Chicago District**, U.S. Army Corps of Engineers. "Interagency Coordination Agreement on Mitigation Banking Within the Regulatory Boundaries of Chicago District, Corps of Engineers". June 2008

**Fort Worth District**, U.S. Army Corps of Engineers. "Mitigation Bank Instrument Template " 2010

**Institute for Water Resources**, U.S. Army Corps of Engineers. "National Wetland Mitigation Study: Model Banking Instrument." May 1996.

**Kansas City, Little Rock, Memphis, Rock Island, and St. Louis Districts**, U.S. Army Corps of Engineers, Mitigation Banking Instrument Outline For Proposed Mitigation Banks Within the State of Missouri, 2010

**Mobile District**, U.S. Army Corps of Engineers. "Mobile District Template Banking Instrument." May 2013.

**New Orleans District**, U.S. Army Corps of Engineers. "Template Mitigation Bank Instrument." 2010

**Norfolk District**, U.S. Army Corps of Engineers, Virginia Department of Environmental Quality. February 2010. "Mitigation Banking Template."

**Portland District**, U.S. Army Corps of Engineers. "Template Mitigation Bank Instrument." December 2012

**Rock Island District**, U.S. Army Corps of Engineers, Iowa Mitigation Banking Package February 2011 (includes an outline of Banking instrument, and Banking Instrument template)

**Sacramento, San Francisco, and Los Angeles Districts**, U.S. Army Corps of Engineers. "Template Mitigation Bank Enabling Instrument." May 2008.

**Seattle District**, U.S. Army Corps of Engineers. "Mitigation Bank Instrument Template " 2013

**Wilmington District**, U.S. Army Corps of Engineers. "Final Mitigation Bank Instrument Template." January 14, 2013.

**CORPS DISTRICT AND STATE MITIGATION PLAN CHECKLISTS & GUIDANCE:**

**Buffalo, Huntington, Louisville, and Pittsburgh Districts**, U.S. Army Corps of Engineers. "Guidelines for Wetland Mitigation Banking in Ohio." March 2011

**Charleston District**, U.S. Army Corps of Engineers. "Checklist for Compensatory Mitigation Proposals." June 2008

**Charleston District**, U.S. Army Corps of Engineers. "Guidelines for Preparing a Compensatory Mitigation Plan." October 2010

**Chicago District**, U.S. Army Corps of Engineers. "Permittee Responsible Mitigation Requirements." October 2009.

**Fort Worth District**, U.S. Army Corps of Engineers. "Mitigation Plan Template." Addresses each of the elements required of a mitigation plan under regulations at 33 CFR 332.4(c)(2)-(14)

**New England District**, U.S. Army Corps of Engineers. "Compensatory Mitigation Guidance" July 20, 2010

**New Orleans District**, U.S. Army Corps of Engineers. "Compensatory Mitigation Standard Operating Procedures." June 29, 2004.

**Norfolk District**, U.S. Army Corps of Engineers and Virginia Department of Environmental Quality. "Wetland Mitigation Checklist." July 2004.

**South Pacific Division** Regional Compensatory Mitigation and Monitoring Guidelines 2015. (Covers California, Utah, Nevada, New Mexico, Arizona, and western Colorado)

**Savannah District**, U.S. Army Corps of Engineers. "Standard Operating Procedure: Compensatory Mitigation." March 2004. (Includes Mitigation Plan Checklist and guidance on monitoring.)

**Seattle District**, U.S. Army Corps of Engineers, Washington Department of Ecology, U.S. Environmental Protection Agency, Region 10. "Wetland Mitigation in Washington State: Part II – Developing Mitigation Plans." March 2006. (Includes Mitigation Plan Checklist and guidance on monitoring.)

**Wilmington District**, U.S. Army Corps of Engineers. "Stream Mitigation Considerations Checklist." April 2011.

"Wetland Mitigation Considerations Checklist." January 2011.

"Use of Stream Preservation as Compensatory Mitigation In North Carolina". December 2012

"North Carolina Stream Mitigation Guidelines" April 2003.

"Monitoring Requirements and Performance Standards for Compensatory Mitigation in North Carolina" February 22, 2013.

