

Mitigation Banking Instrument Submittal Procedures for Federal and State Wetland Mitigation Banks in Washington State

Introduction

The mitigation banking instrument (MBI or instrument) must be based on the prospectus. The MBI details all of the physical characteristics, legal obligations, operational procedures, monitoring, and maintenance requirements for a wetland mitigation bank (bank). As the Interagency Review Team (IRT)¹ Co-Chairs,² the U.S. Army Corps of Engineers (Corps) and Department of Ecology (Ecology) use the MBI to document agency and sponsor concurrence on the objectives and administration of the bank. The MBI requirements may vary based on the specific conditions of the bank site. For specific banking rule language, see the Federal Rule³ and the State Rule.⁴

Overview

Preliminary Review of the Technical Elements of the Draft Mitigation Banking Instrument

After receiving approval⁵ from the Co-Chairs to move forward in the certification process, the sponsor may elect to have meetings with the IRT to discuss technical elements of their proposal prior to submitting their draft MBI. This preliminary review is optional, but is strongly recommended. It is intended to identify potential issues early, so the sponsor may attempt to address those issues prior to the start of the formal draft MBI review process.

Submittal of the Draft Mitigation Banking Instrument

After considering comments from the Co-Chairs and the public on the prospectus, the sponsor must prepare a draft MBI and submit it to the Co-Chairs in electronic and hard copy format. Electronic copies over 3MB in size should be submitted via CD. The draft MBI must contain all of the information identified in the attached checklist to be considered complete.

After receiving the draft MBI, the Co-Chairs shall determine whether the MBI is complete and notify the sponsor within 30 days. The Co-Chairs will notify the sponsor in writing of this determination. If the draft MBI is not complete, the Co-Chairs will identify any additional information that is necessary to complete the MBI. Once a modified draft MBI is submitted, the Co-Chairs will make another completeness determination. If the draft MBI is complete, the Co-Chairs will inform the sponsor to provide a complete draft MBI to each member of the IRT in electronic and hard copy format. Electronic copies over 3MB in size should be submitted via CD.

The IRT has 30 days⁶ to review and comment on the draft MBI. Following the comment period, the Co-Chairs will discuss any comments with the IRT and sponsor. Within 90 days of receipt of the complete draft MBI, the Co-Chairs will notify the sponsor of the IRT review status. Specifically, the

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 bank.

² For projects seeking federal approval and state certification.

³ [Compensatory Mitigation for Losses of Aquatic Resources; 33 CFR Parts 325 and 332.](#)

⁴ [Wetland Mitigation Banks; Chapter 173-300 WAC.](#)

⁵ Once the public comment period for the prospectus has ended, the Co-Chairs determine if a proposal is ecologically appropriate and will notify the sponsor whether their project can move forward in the certification process.

⁶ This begins 5 days after the Co-Chairs receive their copies of the complete draft MBI.

Co-Chairs will indicate to the sponsor if the draft MBI is generally acceptable and what changes, if any, are needed. If there are significant unresolved concerns that may lead to a formal objection from one or more IRT members to the final MBI, the Co-Chairs will indicate the nature of those concerns. The IRT will seek to resolve issues using a consensus based approach, to the extent practicable, while still meeting the decision-making time frames specified.

Submittal of the Final Mitigation Banking Instrument

The sponsor should submit the final MBI to all members of the IRT in electronic and hard copy format for approval. Electronic copies larger than 3MB should be submitted via CD. The final MBI should contain all of the information listed in the attached checklist. In addition, other supporting information must be submitted as required by the IRT. This supporting information may include, but is not limited to:

- An explanation of how the final MBI addresses the comments provided by the IRT;
- Financial assurance documents;
- Legal mechanisms for the permanent protection of the bank site; and
- Hydrologic and other ecological studies contained within the MBI resource folder.

Within 30 days of receipt of the final MBI, the Co-Chairs will provide public notice on the proposed certification. The public notice will be issued in accordance with the public notice procedures at 33 CFR 325.3 and as specified in WAC 173-700-240 and 173-700-241. At the end of the public comment period, the Co-Chairs will direct the sponsor to incorporate any necessary changes, depending on comments received. After incorporating the required changes, the sponsor will submit the revised final MBI to all members of the IRT.

Within 30 days of receipt of the final MBI, the following will occur:

- 1) The Corps will notify the IRT whether or not they intend to approve the MBI;
- 2) Ecology will notify the local jurisdiction of its intent to approve or deny the certification,⁷ and based on the local jurisdiction's concurrence, Ecology will notify the IRT of its decision.

If no IRT member objects, by initiating the dispute resolution process,⁸ the Corps will notify the sponsor of their final decision within 45 days of receipt of the final MBI; Ecology will notify the sponsor of their final decision within 15 days of receipt of the local's certification decision⁹. If the MBI is approved, the sponsor will arrange for it to be signed by the appropriate parties.

For most banks, a MBI must be signed by the Corps, Ecology, the sponsor, and the local jurisdiction(s), for certification to be complete. The final MBI will be made available to the public at:

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

⁷ Ecology will certify the bank only if the local jurisdiction concurs, per WAC 173-700-230.

⁸ Federal: §332.8(e); State: WAC 173-700-232.

⁹ The Federal and State rules on wetland mitigation banking allow for the extension of deadlines.

Mitigation Banking Instrument Checklist for Federal and State Wetland Mitigation Banks

The mitigation banking instrument (MBI or instrument) details all of the physical characteristics, legal obligations, operational procedures, monitoring, and maintenance requirements for a bank. The MBI requirements may vary based on the specific conditions of the bank site.

The MBI 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. The Co-Chairs require use of an approved MBI template, available at:

- Ecology's website:
<http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/banking/guidance.html>.

Information should be provided in complete sentences and paragraphs. This checklist is meant as a guide for what should be included in the MBI and associated appendices and figures, not as a question and answer form. To view past MBI submittals you can visit:

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

Please provide a completed checklist with the MBI submittal

The minimum technical elements required in the MBI are:

- ☐ 1. The goals and objectives of the project;
- ☐ 2. Site location including city or county, proximity to existing roads and other landmarks, and a vicinity map showing location of the proposed site(s);
- ☐ 3. A description of existing conditions of the bank site(s) including, but not limited to:
 - a. Local land use or zoning designation;
 - b. Current uses;
 - c. Presence of liens, rights-of-way, easements, or other encumbrances;
 - d. The landscape position of the site including water resource inventory area (WRIA), basin, and subbasin location;
 - e. Wetland types present on the site including Cowardin classification and hydrogeomorphic (HGM) class of each wetland;
 - f. Other habitat types present;
 - g. Technical information on wetland delineations, soil types, vegetation, and water sources, including surface water features and ground water information;
 - h. An analysis of functions provided by on-site wetlands;
 - i. Adjacent land uses that might affect the bank's function;

- j. Site constraints, conflicts, or known risks that could affect bank development or function;
 - k. Identification of all buildings, structures, and other built features that would remain on the site after construction;
 - l. Identification of existing mitigation sites and whether they will remain on-site after construction; and
 - m. Detailed site map(s) that includes, but is not limited to:
 - i. Total area of site;
 - ii. Location, delineated boundaries, size, and number of existing wetlands;
 - iii. Location of all streams, ponds, and other water features on and adjacent to the site;
 - iv. Location and type of all known water control features on and adjacent to the site; and
 - v. Presence of rights-of-way, easements, or other encumbrances.
- ☐ 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 addressing the considerations listed in the Federal Rule §332.3(d), Washington Administrative Code (WAC) 173-700-303, and Ecology's 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).
- ☐ 6. A detailed description of the proposed bank site including, but not limited to:
- a. The bank size;
 - b. The Cowardin and HGM classes, wetland rating, and sizes of wetlands and other aquatic resources proposed;
 - c. A description of the buffers for the site and any other habitats provided on the site;
 - d. The functions to be provided by the bank and level of increase over existing conditions;
 - e. Detailed site design plans and specifications to include grading plans, planting plans, and specifications for any structures; and
 - f. Construction timing and schedules.
- ☐ 7. Documentation of the ownership of bank lands and a legal description of the bank site;
- ☐ 8. A detailed description of sponsor responsibilities for construction implementation, monitoring and reporting, and maintenance;
- ☐ 9. A description and map of the service area and accompanying rationale that demonstrates the service area is ecologically appropriate;
- ☐ 10. The potential number of credits to be generated by the bank and a credit description consistent with WAC 173-700-310;
- ☐ 11. A description of any restrictions on use of credits;
- ☐ 12. Documentation of water rights for the proposed bank, if required;

- ☐ 13. An evaluation of historic, cultural, and archaeological resources on the bank site;
- ☐ 14. Credit tracking and accounting procedures including reporting requirements;
- ☐ 15. Performance standards for determining bank success and credit release including a schedule for the phased release of credits, if necessary;
- ☐ 16. Monitoring plan and reporting protocols including a clear statement of responsibility for conducting the monitoring and reporting;
- ☐ 17. An adaptive management plan and statement of responsibility for adaptive management activities;
- ☐ 18. Provisions for financial assurances;
- ☐ 19. The ownership arrangements and long-term management plan for the bank;
- ☐ 20. Provisions for permanent protection of the bank site;
- ☐ 21. Force majeure clause (identification of sponsor responsibilities in the event of catastrophic events that are beyond the sponsor's control);
- ☐ 22. Any supporting documentation requested by the interagency review team (IRT);
- ☐ 23. A provision stating that legal responsibility for providing the compensatory mitigation lies with the sponsor once a permittee secures credits from the sponsor; and
- ☐ 24. Default and closure provisions.

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>