

Requirements for Mitigation Bank and In-Lieu Fee Program Instruments

Mitigation bank and in-lieu fee program instruments must include the following information:

- A. Description of the proposed geographic service area(s). The service area is the watershed, ecoregion, physiographic province, and/or other geographic area within which the mitigation bank or in-lieu fee program is authorized to provide compensatory mitigation required by Department of the Army permits. The basis of the proposed service area must be documented in the instrument;
- B. Accounting procedures;
- C. Provision stating that legal responsibility for providing mitigation lies with the sponsor
- D. once a permittee secures credits from the sponsor;
- E. Default and closure provisions;
- F. Reporting protocols; and
- G. Any other information deemed necessary by the district engineer.

For a mitigation bank, a complete instrument must also include the following information (33 CFR 332.4(c)(2)-(14) for each separate compensatory mitigation project site:

- A. 12 Components of a Compensatory Mitigation Plan (see 332.4(2) through (14)):
 - 1. Objectives. A description of the resource type(s) and amount(s) that will be provided, the method of compensation (i.e., restoration, establishment, enhancement, and/or preservation), and the manner in which the resource functions of the compensatory mitigation project will address the needs of the watershed, ecoregion, physiographic province, or other geographic area of interest.
 - 2. Site selection factors considered. A description of the factors considered during the site selection process, including consideration of watershed needs, on-site alternatives where applicable, and the practicality of accomplishing ecologically self-sustaining aquatic resource restoration, establishment, enhancement, and/or preservation at the compensatory mitigation project site (see 332.3(d)).
 - 3. Site protection instrument (conservation easement, declaration of restrictions, title transfer, etc.). A description of the legal arrangements and instrument, including site ownership, that will be used to ensure the long-term protection of the compensatory mitigation project site (see 332.7(a)).
 - 4. Baseline information – description of ecological characteristics of the proposed mitigation bank site, including descriptions of historic and existing plant communities, historic and existing hydrology, soil conditions, a map showing locations of the impact and mitigation site(s) or the geographic coordinates for those site(s), and other site characteristics appropriate to the type of resource proposed as compensation. The baseline information should also include a delineation of waters of the United States on the proposed compensatory mitigation project site.
 - 5. Determination of credits - Description of number of credits to be provided, including a brief explanation of the rationale for this determination (see 332.3(f)).
 - 6. Mitigation work plan – detailed written specification and work descriptions for the mitigation bank site, including, but not limited to, the geographic boundaries of the project; construction methods, timing, and sequence; source(s) of water, including connections to existing waters and uplands; methods for establishing the desired plant community; plans to control invasive plant species; the proposed grading plan, including elevations and slopes of the substrate; soil management; and erosion control

measures. For stream compensatory mitigation projects, the mitigation work plan may also include other relevant information, such as planform geometry, channel form (e.g., typical channel cross-sections), watershed size, design discharge, and riparian area plantings.

7. Maintenance plan – description and schedule of maintenance requirements to ensure the continued viability of the resource once initial construction is completed.
 8. Performance Standards – ecologically-based standards used to determine whether the project is achieving its objectives (see 332.5).
 9. Monitoring requirements- a description of parameters to be monitored in order to determine if the compensatory mitigation project is on track to meet performance standards and if adaptive management is needed. A schedule for monitoring and reporting on monitoring results must be included (see 332.6).
 10. Long-term management plan – description of mitigation site management after meeting all performance standards to ensure long-term sustainability of the site, including long-term financing mechanisms and the party responsible for long-term management (see 332.7(d)).
 11. Adaptive management plan – a management strategy to address unforeseen changes in site conditions or other components of the mitigation project, including the party or parties responsible for implementing adaptive management measures. It guides decisions for revising compensatory mitigation plans and implementing measures to address both foreseeable and unforeseeable circumstances that adversely affect compensatory mitigation success (see 332.7(c)).
 12. Financial assurances – a description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the mitigation project will be completed in accordance with its performance standards (see 332.2(n)).
- B. A credit release schedule tied to achievement of specific milestones. The credit release schedule should reserve a significant share of total credits for release only after full achievement of ecological performance standards. All credit releases must be approved by the Corps, in consultation with the IRT, based on a determination that required milestones have been achieved (see 332.8(d) & 332.8(o)).

For an in-lieu fee program, a complete instrument must also include the following information:

- A. Compensation planning framework (33 CFR 332.8(c));
- B. Specification of the initial amount of advance credits (33 CFR 332.8(n)) and the draft fee schedule for these credits, by service area, including an explanation of the basis for the allocation and draft fee schedule;
- C. Methodology for determining future project-specific credits and fees;
- D. Description of the in-lieu fee program account (33 CFR 332.8(i)).