



**US Army Corps
of Engineers**
Philadelphia District

Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3390
ATTN: CENAP-OP-R

Public Notice

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Compensatory Mitigation Guidelines

COMPENSATORY MITIGATION GUIDELINES

In June 2001, the National Research Council (NRC) published a comprehensive report entitled "Compensating for Wetland Losses Under the Clean Water Act". This report was critical of compensatory mitigation success through the Corps' Regulatory program. The report also provided guidelines that could be utilized to plan and implement successful mitigation projects. In response to the findings and recommendations from the National Research Council, the U.S. Army Corps of Engineers is undertaking a number of initiatives to improve the success of wetland compensatory mitigation in the Corps' regulatory program. One of these efforts was the development and publication of the National Mitigation Action Plan published jointly by the Corps of Engineers and the U.S. Environmental Protection Agency on December 24, 2002. In addition, the Corps of Engineers published Regulatory Guidance Letter 02-2 (RGL 02-2) on December 24, 2002. This guidance letter was also intended to clarify and re-focus the Corps' efforts toward the goal of no overall net loss of wetland functions and values nationwide.

In response to this initiative, each Corps of Engineers District Office has been tasked to refine any existing mitigation guidelines and/or to develop new wetland compensatory mitigation guidelines, which would be developed and applied within their respective districts. This effort is being undertaken at the district level to enable each Corps of Engineers District Office to develop a set of guidelines, which would reflect the needs and circumstances specific to that District.

It should be noted that these compensatory mitigation guidelines are being developed as a technical guide, and are not intended to modify or alter the Corps' responsibilities to comply with the Section 404(b)(1) Guidelines, the Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning Mitigation, and Regulatory Guidance Letter 02-2. Rather, these guidelines are being developed to assist applicants in the development of a compensatory mitigation proposal associated with the requirements of a Department of the Army permit authorization. This would include individual permits, nationwide permits, and any other regional general permits that may involve or require some form of compensatory mitigation requirements.

The Philadelphia District has not previously published any formal compensatory mitigation guidelines. However, we routinely coordinate with various Federal and State agencies, other non-governmental organizations, and environmental experts from the private sector. These on-going efforts have resulted in the development of informal policies and permit conditions that are continually evaluated and modified as our knowledge and skill in the field of compensatory mitigation increases.

For example, to date a formal functional assessment program has not been completed and implemented for routine use. While this effort is on going, we have utilized an alternative approach relying on acreage ratios as an interim effort. Where a project would involve a loss of forested wetland habitat, we generally seek a replacement ratio of 2 to 1. This effort has afforded the opportunity to consider such issues as less than complete success and as well as the temporal losses of forested habitat. Where a project would involve a loss of scrub/shrub wetland habitat, we generally seek a replacement ratio of 1.5 to 1. And finally, where a project would involve the loss of emergent wetland habitat, we generally seek a replacement ratio of 1 to 1.

In addition, we have a number of permit conditions that have evolved over the past twenty years based upon our collective experience and knowledge. Most, if not all, of our permits with a compensatory mitigation requirement include a range of monitoring requirements once a compensatory mitigation project has been completed. This length of monitoring is normally based upon the habitat type(s) being developed, and generally specifies a list of observations and/or parameters that must be included with required monitoring reports. Many of our permits have specific success criteria described in the permit document or in an approved mitigation proposal, which was prepared by the applicant. These may include survival criteria for planted stock (i.e., 85% survival rate) or an aerial coverage requirement (i.e., 85% ground cover). As our experience has grown, we have also recognized the need for long-term protection of compensatory mitigation sites. In this regard, we have been requiring deed restrictions, conservation easements, and/or other legally binding mechanisms to assure long term protection once a site has been constructed.

We believe that compensatory mitigation is an integral part of the Corps regulatory program. This is true for wetland habitat as well as other aquatic resources such as streams, rivers, lakes and coastal bays and estuaries. We further believe that the success of any comprehensive compensatory mitigation of wetlands and aquatic resources must involve early public and private planning efforts outside of the Federal regulatory program. Success is generally defined as a healthy sustainable wetland or aquatic area that, to the extent practicable, compensates for the lost functions of the impacted area(s) in an appropriate landscape or watershed position. This document is intended to provide a basic framework that will improve predictability and consistency in the development of compensatory mitigation plans. Although every mitigation plan may not need to include each specific item, applicants should address as many as possible and indicate, when appropriate, why a particular item was not included.

Attached to this public notice is a draft document entitled “Compensatory Mitigation Guidelines”. We are proposing to refine and/or modify this document for use within the Philadelphia District. After public review and comment, the Philadelphia District will finalize and publish a final version of these guidelines for use in the Philadelphia District. A similar effort is underway in other Corps District Offices. However, it is important to recognize that this document is a reflection of the current policy, science and knowledge of wetland compensation and development. As such, it is anticipated that this guidance document will be periodically reviewed and/or modified to reflect the growth of science and experience in this field.

We have also attached a one-page checklist, which will be utilized by our regulatory program project managers on an individual project review basis to assure that the appropriate issues/guidelines have been addressed. The purpose of this checklist is to identify the types and extent of information that agency personnel need to assess the likelihood of success of a compensatory mitigation proposal. This checklist will also be a valuable tool for applicants and their agents to assess the information in their mitigation proposals prior to submittal to the Corps.

The Philadelphia District is soliciting comments from the public; Federal, State and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate these proposed compensatory mitigation guidelines. Any comments received will be considered by the Corps of Engineers. Comments on these proposed guidelines should be submitted, in writing, within 30 days to the District Engineer, U.S. Army Corps of Engineers, Philadelphia District, Wanamaker Building, 100 Penn Square East, Philadelphia, Pennsylvania 19107-3390.

Additional information concerning these mitigation guidelines may be obtained by calling Mr. Edward Bonner at (215) 656-5932 between the hours of 1:00 and 3:30 p.m., or by writing this office at the above address.

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Chief, Regulatory Branch