

**INTERAGENCY COORDINATION AGREEMENT  
ON  
WETLAND MITIGATION BANKING  
WITHIN THE REGULATORY BOUNDARIES OF  
CHICAGO DISTRICT, CORPS OF ENGINEERS  
January 1997**

**SECTION 1, PURPOSE**

The Chicago District of the U.S. Army Corps of Engineers (Corps), the U.S. Environmental Protection Agency (USEPA), and the U.S. Fish and Wildlife Service (USFWS), hereinafter referred to as the parties, pursuant to their statutory authorities and in recognition of the need to better manage the waters of the United States, including wetlands, do hereby agree to support the establishment of wetland mitigation banks in Cook, DuPage, Kane, Lake, McHenry, and Will Counties, in northeastern Illinois. Further, the parties agree that said mitigation banks can serve to mitigate for unavoidable wetland impacts due to the filling, flooding, excavating, or draining of waters of the United States as regulated under Section 404 of the Clean Water Act.

This Interagency Coordination Agreement includes the criteria for establishing, owning and operating wetland mitigation banks. It further sets out the criteria for authorizing applicants (e.g., individuals, corporations, units of government) to withdraw credits from a mitigation bank to offset unavoidable wetland impacts that would result from the applicant's proposed activity.

The parties intend that this interagency coordination agreement serve as a basis for establishing and certifying mitigation banks and authorizing the withdrawal of credits from the bank. The Corps will take the leadership role in the review and approval of mitigation bank projects. It is the intent of the signatory agencies that this guidance be applied to mitigation bank proposals submitted for approval on or after the effective date of this agreement, and to those in the early stages of planning or development. It is not intended that this agreement be retroactive for mitigation banks that have already received agency approval.

**SECTION 2, GOALS**

Mitigation banks are a form of regional mitigation which

encourage the development of large-scale wetland complexes which can be professionally managed and maintained in perpetuity for the benefit of the general public. The consolidation of multiple small mitigation projects allows for economies of scale in planning, implementation, and maintenance, and can produce wetlands of greater value because of their size and a high level of commitment to long-term management. The expected benefits include water quality management, wildlife habitat restoration and creation, flood control, conservation of biological diversity, education, recreation, and aesthetics. Further, this action will reduce administrative costs and delays in issuing permits for proposed activities which qualify for use of a mitigation bank.

The establishment of wetland mitigation banks and the determination of a project's eligibility for use of a bank shall be in compliance with all applicable regulations and guidelines, including the Clean Water Act Section 404(b)(1) Guidelines and the 1990 Corps/USEPA Memorandum of Agreement on mitigation. Other applicable regulations and guidelines are listed under **SECTION 4, AUTHORITIES** part of this document.

The parties intend that mitigation banking be a means of creating or restoring wetlands and generating bank credits in advance of the filling of wetlands for specific projects. As an interim measure, and as a way to encourage the initial development and implementation of banks, the sale of bank credits and the issuance of permits prior to the generation of bank credits at the bank site shall be allowed under conditions described elsewhere in this document.

### **SECTION 3, DEFINITIONS**

1. Creation. Conversion of a non-wetland site into a wetland site by excavation, diking and flooding, or conversion of a deepwater site by filling.

2. Credit Certification. A formal determination by the Corps of Engineers that mitigation bank credits have been generated. Certified credits result from fully meeting all certification standards (see **Section 15, Mitigation Bank Credits and Certification Standards**). Conditionally certified credits are those credits that are based on reasonable progress towards becoming certified credits. Uncertified credits are those credits that are based on full approval of the bank charter, and initial construction of the bank, including demonstration of wetland hydrology and planting. Typically, a maximum of 30% of

the total potential credits may be sold upon approval of bank charter alone. An additional 20% of the total credits may be sold upon the demonstration of wetland hydrology. Upon completion of the approved planting plan, an additional 20% of the total credits may be sold. Using this formula, 70% of the total credits available from the bank may be sold as uncertified credits.

3. Department of the Army Permits. Authorizations for the discharge of dredged or fill material into waters of the United States, including wetlands, issued by the Army Corps of Engineers pursuant to Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899.

4. Designated Service Area. For purposes of this agreement, the designated service area of a mitigation bank is the watershed in which it is located, as shown on Appendix A of this document

5. Enhancement. Altering the physical characteristics of an existing wetland such that it permanently improves one or more specific wetland functions and values. Because impacts associated with individual projects that propose to use bank credits will, in virtually all cases, be permanent, only enhancement that results in permanent improvement of a wetland's functions and values will generate credits.

6. Growing Season. The period between May 1 and October 10. This growing season definition is for the purposes of this document alone, and is used to establish performance periods for determining compliance with revegetation standards. It does not establish the growing season for purposes of wetland delineation.

7. Ledger. Document to be used in the accounting of credits and debits. The ledger will be maintained by the bank sponsor and reviewed by the Corps.

8. Management. Actions taken within mitigation bank wetlands to establish and maintain desired habitat conditions. Representative management actions include water level manipulations, herbiciding, mechanical plant removal, and prescribed burning.

9. Mitigation Bank. A system of accounting for wetland loss and compensation, which can include one or more wetland mitigation sites.

10. Mitigation Bank Charter. A written document which contains specifications pertaining to establishment, operation and maintenance of a wetland mitigation bank, codification of the

goals, objectives, procedures of the bank, and incorporating the relevant terms and conditions of this interagency agreement. Principal types of banking charters are a legally binding interagency agreement or a Department of the Army permit.

11. Mitigation Bank Credits. The unit of measure of bank credit will be acres by wetland type.

12. Mitigation Bank Review Team. The representatives of the Corps of Engineers, U.S. Fish and Wildlife Service and the U.S. Environmental Protection Agency responsible for the evaluation of proposed mitigation banking projects.

13. Mitigation Bank Site. The geographic location of created, restored, enhanced, or in exceptional circumstances, preserved wetlands which serve as the physical resource used to generate bank credits.

14. Monitoring. A specific program of data collection which documents the physical, chemical, and biological characteristics of the mitigation bank wetlands, for the purpose of determining compliance with performance standards contained in the mitigation bank charter.

15. Phased mitigation bank. The construction of a mitigation bank in discrete steps, as authorized or agreed to in advance by the mitigation bank review team. The bank prospectus must clearly describe each phase of the bank, and list the order in which the phases would be constructed.

16. Preservation. The protection of ecologically important wetlands or other aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands as necessary to ensure protection and/or enhancement of the aquatic ecosystem.

17. Prospectus. A preliminary plan for a wetland mitigation bank prepared by a prospective sponsor and submitted for consideration to mitigation bank review team and other principals involved in the review and approval of banks.

18. Restoration. Re-establishing wetland conditions in areas that were wetland in historical times, but which have been modified such that they are now considered non-wetland. Restoration converts previous wetland sites back to functional and jurisdictional wetlands.

19. Site Development Plan. A plan for each bank site that

identifies all actions that will be undertaken to generate bank credits. Representative elements of the site development plan include plans for site grading, revegetation, erosion control, structures, management, and monitoring.

20. Sponsor. The legally responsible individual or entity proposing establishment of a wetland mitigation bank.

21. Waters of the United States. Those areas subject to Corps regulatory authority pursuant to Section 404 of the Clean Water Act, as defined at 33 CFR Part 328.3(a).

22. Wetlands. Areas that are inundated or saturated by surface water or groundwater 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. Examples of wetland types may be found in Classification of Wetlands and Deepwater Habitats of the United States, (December 1979), published by the United States Fish and Wildlife Service, or in Wetland Plants and Plant Communities of Minnesota and Wisconsin (1987), by Eggars and Reed.

23. Wetland mitigation. Replacement of wetlands, and wetlands functions and values, for the purposes of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved. The replacement of the wetland functions and values is generally accomplished through wetland restoration, creation, enhancement, or in exceptional circumstances, wetland preservation.

#### **SECTION 4. AUTHORITIES**

The establishment and use of mitigation banks, as described in this document, shall be in accordance with all applicable statutes, regulations, and policies, including the following:

- Final Rule for Regulatory Programs of the Corps of Engineers (33 CFR Parts 320-330);
- Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 CFR Part 230) (Section 404 (b) (1) Guidelines);
- Clean Water Act (33 U.S.C. 1251 et seq.);
- Rivers and Harbors Act of 1899 (33 U.S.C. 403);
- Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.);
- Endangered Species Act (16 U.S.C. 1531 et seq.);
- Memorandum of Agreement Between Environmental Protection

- Agency and Department of the Army Concerning  
Determination of Mitigation under the Clean Water Act,  
Section 404(b)(1) Guidelines, 1990.
- National Environmental Policy Act (42 U.S.C. 4321 et seq.).
  - National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.)
  - Federal Guidance for the Establishment, Use and Operation of Mitigation Banks, (Memorandum to Field, effective date 28 December, 1995.)

## **SECTION 5. CONSIDERATIONS IN ESTABLISHMENT AND USE OF MITIGATION BANKS**

Charters of mitigation banks, mitigation sites, and associated wetland credits shall be subject to approval by the Corps, based on coordination with the signatories to this agreement. Every mitigation bank shall have as its primary purpose the creation, restoration, enhancement, and long-term protection and maintenance of wetland resources. As wetlands are created or restored, bank credits are established and these areas become jurisdictional waters of the United States. All existing property rights remain in effect.

In all cases of a proposed bank, the Corps will issue a public notice describing the project. The public comment period for submittal of relevant comments on the bank prospectus will be a minimum of 21 days. If a Department of the Army permit is needed in order to construct, restore, or enhance wetlands on the bank site, the Corps will follow normal permit processing procedures.

Operation and maintenance procedures approved by the Corps in coordination with the other signatory agencies shall be employed to maintain the wetland resources in the bank in as high a qualitative state as is technically practicable. Management of the mitigation bank shall be based on a monitoring plan approved by the Corps in coordination with the signatory agencies. Monitoring shall include, but shall not necessarily be limited to, monitoring of the water, soil, plants, and wildlife comprising the wetland assets of the bank. The bank sponsor shall strive to manage the assets to provide multiple wetland benefits such as water quality management, wildlife habitat, flood control, biological conservation, and educational and recreational opportunities. In general, mitigation banks should be planned and designed such that little or no management or maintenance other than prescribed burning is necessary once the plant communities are established.

## **SECTION 6, GENERAL GUIDELINES**

Using normal review procedures prescribed by regulation, the Corps will conduct project evaluations and will determine the level of mitigation required, and whether a project is eligible to use a mitigation bank. The following general guidelines will be used in determining whether use of a bank is appropriate:

1. It is intended that mitigation banks in Corps' regulatory jurisdiction be used primarily to mitigate wetland impacts associated with projects which, individually, affect relatively small acreage of low value wetlands or other waters of the United States. Mitigation banks may not be used for the resolution of enforcement cases pursuant to Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act of 1899.
2. All appropriate and practicable steps to avoid and minimize adverse impacts to aquatic resources, as determined by the Corps, must be reflected in an applicant's project plan before authorization to use a mitigation bank will be granted.
3. On-site mitigation will be preferred over use of bank credits for projects where it is determined that replacing wetlands on-site is appropriate considering landscape function and the probability of mitigation success; conversely, banking is preferred where on-site mitigation would necessarily produce wetlands of low functional value, or where the mitigation would be prone to failure.
4. It is the goal of the parties that project impacts be mitigated at bank sites that are located within the same watershed as the project site (for the purposes of this document, watershed boundaries are those shown on Attachment A). In the event that project impacts are allowed to be mitigated at bank sites outside of the project watershed, higher credit ratios will be required. In accordance with the December 28, 1995 Federal guidelines on mitigation banking, the use of mitigation banks to compensate for impacts beyond the designated service area may be authorized, on a case-by-case basis, where the mitigation bank review team has determined it to be practicable and environmentally desirable.
5. Preservation of wetlands will be considered for mitigation credit in exceptional circumstances (e.g., existing wetlands of extremely high functional value, and where incorporation of these wetlands into a bank would further enhance or protect their

value). Credits attributed to the preservation of existing aquatic resources may become available for debiting immediately upon implementation of appropriate legal protection, and accompanied by appropriate changes in land use, at the discretion of the Corps. These credits are to be calculated as part of the first portion of the total allowable pre-construction sales of uncertified credits at the bank site.

6. Ideally, mitigation banks should be a way of restoring and creating wetlands *in advance* of development projects that result in wetland losses. However, to promote the establishment of mitigation banks, this agreement provides for limited, incremental sales of uncertified credits, and for the issuance of DA permits based on uncertified credits according to the guidelines found in **SECTION 16, MITIGATION BANK CREDIT SALES**. This provision is considered necessary to increase the economic viability of privately-sponsored mitigation banks. Because the development plan for any given bank site may require the sale of a minimum number of credits before wetlands may be restored or constructed, it is recognized that a temporary deficit of wetlands may result. To address this possibility, the Corps will require a higher mitigation ratio for the use of uncertified and conditionally certified credit, and for funds to be maintained in an appropriate financial security to ensure construction of the bank's wetlands. This agreement also limits the number of credits that can be sold prior to construction, and prior to conditional certification. It also establishes a maximum amount of time that may elapse before pre-construction credit sales are converted to conditionally certified or fully certified credits.

7. Recognizing that current methods of assessing wetland functions and values are in a state of revision, emphasis will be on the replacement of wetland acreage and type. Therefore, the preferred method of generating wetland bank credits will be the restoration of former wetlands or the creation of new wetlands, which will result in a net gain in wetland acreage on the bank site. Permanent wetland enhancement and preservation as a means of generating bank credits will be considered on a case by case basis. Appropriate functional value assessment methodologies and credit ratios will be determined for each site by the Corps, in consultation with the mitigation bank review team.

8. Mitigation banks generally shall be held to a higher standard of performance than conventional wetland mitigation sites. These standards are detailed in **APPENDIX B, PERFORMANCE STANDARDS**.

9. Permit applications for work in wetlands that have any of the following characteristics generally will not be considered for mitigation banking if they:



- a. Have important hydrologic functions which, if altered, would have a significant adverse effect on the source, quality, or seasonal distribution of surface and/or groundwater supply of important habitats;
- b. Have been identified as important wetlands under the Corps/USEPA Advanced Identification process;
- c. Provide important habitat for State or Federally listed endangered or threatened species;
- d. Are identified in the Illinois Natural Areas Inventory;
- e. Provide important breeding, foraging, or resting areas for migratory birds or other wetland-dependent wildlife;
- f. Have high native plant species diversity, reflecting relatively undisturbed conditions.

10. The mitigation bank, once established, must be dedicated to maintaining the wetland functions and values to the exclusion of other conflicting uses, as determined by the mitigation bank review team.

## **MITIGATION BANK ESTABLISHMENT**

### **SECTION 7, SITE SELECTION CRITERIA**

The bank site will be reviewed with respect to the following site selection criteria. Failure to meet any of these criteria may be, depending on circumstances, grounds for rejection of a bank site. The site shall:

1. Be owned and/or under the full control of the bank;
2. Contain a majority of drained or hydrologically modified hydric soils, recognizing that restoration of former wetlands is a preferred form of mitigation;
3. Have no high quality wetlands that would be adversely affected by the construction or restoration work.
4. Contain adequate perimeter upland areas to buffer the wetlands from potentially incompatible land uses on adjacent parcels;

5. Be so situated that adequate hydrology can be ensured (e.g., be located on a floodplain or possess a high groundwater table);
6. Be proximate or adjacent to public land holdings so as to create contiguous, large-scale habitat areas;
7. Be part of an adopted or accepted open space plan, watershed plan, conservancy district, protected riparian corridor, or other local or regional conservation land use plan. This criterion has been established in order to help implement local and regional conservation plans, and to ensure maximum consistency and compatibility with future surrounding land uses;
8. Contain no known hazardous waste, which must be confirmed by an environmental assessment conducted by a qualified person or firm.
9. Have a minimum size of 25 acres, and;
10. Development of the site shall not adversely affect federal or state listed endangered or threatened species, or their habitat, or other high quality habitats or natural areas such as oak groves, prairies, or savannas.

Although each site should be selected and managed to utilize the natural water storage functions of wetlands, flood control shall not be the primary purpose. Specifically, banks **shall not** be used to satisfy local or regional stormwater detention requirements. An appropriate stormwater management function of a mitigation bank, for example, is the filtration and purification of stormwater runoff after required stormwater detention has been provided.

## **SECTION 8, BANK OWNERSHIP**

A mitigation bank may be either publicly or privately owned. The bank may be incorporated as for-profit or not-for-profit. If the bank is incorporated, it must be incorporated in the State of Illinois. Publicly owned refers to ownership of the bank site by any municipal, county, regional, state or federal agency.

All land, including associated uplands, which are part of the mitigation bank shall be protected from future development by a permanent conservation easement or deed restriction. This easement must be recorded with the appropriate county register of deeds, attached to the abstract of title, with a certified copy

of the registration provided to the Corps prior to the Corps authorizing the bank. The banking instrument should also identify the entity responsible for the ownership and long-term management of the site. In addition, the bank sponsor is responsible for securing adequate funds for the operation and maintenance of the bank during its operational life, as well as for long-term management of the site. Bank sponsors are strongly encouraged to establish agreements for long-term management with public or private conservation organizations.

Transfer or sale of the mitigation bank may occur to a party willing and financially able to abide by the terms and conditions of the approval agreement entered into by the Corps and the bank owner. Any such transfer must be approved by the Corps.

### **SECTION 9, INITIAL PLANNING**

The individual or entity proposing to sponsor establishment of a mitigation bank will initially hold informal discussions with the ICA signatory agencies. The purpose of these discussions will be to acquaint the sponsor with the legal, regulatory, and ecological background relevant to banking and to provide procedural guidance to the prospective applicant.

During this discussion the prospective bank sponsor will be informed that a formal request for the establishment of a bank must be made to the Corps. The formal request will include a prospectus and a Department of the Army permit application, if required. Where no Department of the Army permit is needed for the bank, the bank sponsor and the Federal agencies shall develop an authorizing document for the bank that shall be signed by all parties. The authorizing document should outline the responsibilities of the bank sponsor, and contain the necessary information outlined in this agreement governing the operation of the bank.

### **SECTION 10, PROSPECTUS DEVELOPMENT**

The purpose of the prospectus is to provide sufficient information to allow the mitigation bank review team to determine if the general considerations and site evaluation criteria outlined in this agreement are likely to be met if the proposed bank is established. It is understood that the prospectus will become the basis of the mitigation bank charter. The prospectus should contain:

1. The bank location and size;
2. A delineation of any wetlands or other jurisdictional areas that may exist at the proposed bank location;
3. The type of real estate interest in bank property;
4. A legal description of the property;
5. The type of bank (i.e., single client, general use, market oriented, etc.);
6. The method of credit production (i.e., restoration, creation, enhancement, preservation) the number of proposed credits by each method, and the rationale for crediting;
7. A statement as to compliance with this document;
8. A general site plan showing the location of all existing and proposed wetland and upland habitats, roads, trails, structures, utilities, and any other existing or proposed site improvements;
9. An outline of management and maintenance responsibilities;
10. A preliminary construction plan and schedule of completion, preliminary planting plan, and preliminary administrative, management, monitoring, and financial plans, and;
11. A charter of incorporation for the mitigation bank, if appropriate.

## **SECTION 11, FINANCIAL ASSURANCES**

The bank sponsor is responsible for securing sufficient funds or other financial assurances to cover contingency actions in the event of bank default or failure. Accordingly, banks posing a greater risk of failure, and where credits have been debited, should have comparatively higher financial sureties in place than those where the likelihood of success is more certain. In addition, the bank sponsor is responsible for securing adequate funding to monitor and maintain the bank throughout its operational life, and to make provision for long-term management through financial assurances or through agreements with land management organizations or agencies. Total funding requirements should reflect realistic cost estimates for monitoring, long-term maintenance, contingency and remedial actions. Financial assurances may be in the form of performance bonds, irrevocable

letters of credit, irrevocable trusts, escrow accounts, casualty insurance or other approved instruments. Such assurances may be phased out or reduced once it has been demonstrated that the bank is functionally mature and/or self-sustaining in accordance with the approved performance standards. The financial plan must demonstrate that the bank and its wetlands can be maintained in perpetuity whether through continual ownership or by conveyance to a public or private agency that will assume the responsibilities of the bank.

## **SECTION 12, MITIGATION BANK APPLICATION PROCESS**

The sponsor must submit a Department of the Army permit application and a prospectus if a permit is required for the initial development of the bank. Upon receipt of these items the Corps shall begin a public interest review on the prospectus with input from government agencies and the general public. The public will be notified of all proposed banks by a public notice issued by the Corps for a 21 day comment period.

Where a Department of the Army permit is not required, the Corps will issue a public notice describing the project for a 21 day comment period. Copies of all comments received during the public notice comment period will be distributed to all members of the mitigation bank review team, and to the bank sponsor. Full consideration will be given to all comments received in evaluating the bank proposal. Where no Department of the Army permit is needed for the bank, the bank sponsor and the mitigation bank review team shall develop an authorizing document for the bank that shall be signed by all parties. The authorizing document should outline the responsibilities of the bank sponsor, and contain the necessary information outlined in this document governing the operation of the bank. Additionally, the details of the bank sponsor's responsibilities should be noted in any Department of the Army permit in which the permittee's mitigation responsibilities are met through the use of the mitigation bank.

In both cases above, the mitigation bank review team shall make a site inspection of the bank area. A written response to the banking prospectus indicating the prospective bank's feasibility would then be prepared by the Corps in coordination with the mitigation bank review team based upon observations made during the site visit and agency consultations. An indication of feasibility in the letter should be interpreted as general acceptability of conceptual bank plans and either probable issuance of a Department of the Army permit, or probable signatory approval of an interagency agreement upon completion of

detailed plans.

The formal request to the Corps for establishment of a bank shall include:

1. A Department of the Army permit application to conduct any work within existing waters of the United States that is necessary to establish the bank. If a Department of the Army permit is not needed, a permit application is not required.
2. A copy of the previously described prospectus; and
3. A plan that details the goals, objectives, and success criteria for creating wetlands, including wetland types and their respective acreages.

### **SECTION 13, DETAILED PLANNING STAGE**

This is the final planning stage leading to issuance of a Department of the Army permit or interagency agreement authorizing implementation and operation of a bank. The preparation of detailed plans should be closely coordinated with the mitigation bank review team and other local authorities as appropriate.

Each mitigation bank shall have a site development plan which must be approved by the Corps in coordination with the signatory agencies. This plan shall identify and incorporate, to the extent practicable and appropriate:

1. Diverse aquatic and supporting landscapes (e.g., shallow open water, riparian wetlands, deep and shallow marshes, floodplain forests, wet meadows and prairies, upland buffers, etc.) which are interrelated, one to the other, so as to maximize wetland functions and values;
2. Diverse wildlife habitats and associated edge conditions;
3. Associated upland buffer areas contiguous to the wetlands to protect the wetlands from potential adverse effects of adjacent land uses, specifying the width and area of all such zones;
4. Wetland functions which will be created or enhanced by maximizing vegetative diversity and abundance, structuring specific wildlife habitats, optimizing wetland hydrology, and providing public access;

5. Species native to the area;
6. The use of native soils on the site;
7. The means for establishing the appropriate hydrology, and;
8. Design, maintenance, and monitoring procedures which minimize energy needs, human intervention, and costs. Ideally the procedures should require only periodic weed and pest control and prescribed burns, where appropriate.

## **BANK OPERATION**

### **SECTION 14, ESTABLISHING MITIGATION BANK CREDITS**

The units of wetland credit shall be acres of wetland. Mitigation bank credits shall be generated as wetlands are created, restored, enhanced, or preserved on the bank site, resulting in an increase in wetland acreage and/or quality on the bank site. Banking credits may be generated as follows: Full credit will be given for wetland creation from upland and for restoration of former wetlands. Partial credit (specified in each bank charter) can be given for permanent enhancement (e.g., re-establishment of hydrology) of degraded wetlands or in exceptional circumstances, preservation of existing wetlands. The appropriateness of enhancement and preservation, and the corresponding credit ratio will be determined by the Corps in coordination with the signatory agencies. A maximum of 30% of the total potential credits generated by the bank may consist of enhanced or preserved wetlands. Preserved wetlands may constitute no more than 15% of any mitigation bank. Associated upland buffers should be included as part of each mitigation bank. Credit ratios for buffers are discussed under **SECTION 15, CREDIT CERTIFICATION**.

### **SECTION 15, CREDIT CERTIFICATION**

Mitigation bank credits shall be certifiable by the Corps when the bank credits conform to the criteria outlined in **APPENDIX B, PERFORMANCE STANDARDS (Jan 27, 1997)**. Credits may be certifiable at any time, but the standards for certification shall be met no later than five years from the date of planting unless otherwise specified in the bank charter and approved by the agencies. After the second full growing season following creation or restoration of wetlands, the Corps may conditionally certify the credits of the bank based on reasonable progress toward achieving the performance standards. Conditional certification shall be

based on degree of conformance with the standards for conditional certification in Appendix B, and on any interim corrective measures recommended by the Corps, in consultation with the other signatory agencies.

At the end of five years, any of the above conditions are not met, the authorized agent of the bank shall submit a plan to the Corps outlining corrective measures to be taken based on the ecological conditions of the site. Management activities shall continue until the standards are met, as verified by the Corps.

Certain types of enhancement of existing wetland can be an acceptable way of generating credits if the enhancement actions are scientifically sound and result in a substantial, measurable, and permanent increase in the level of wetland function. In general, the types of enhancement that will be viewed most favorably and receive the greatest amount of credit include the following:

1. Restoration of wetland hydrology at sites that have been significantly modified through tile drainage or ditch drainage;

2. Restoration of diverse native plant communities where the original plant community has been totally destroyed, and the site is currently farmed or has revegetated with aggressive and/or exotic species such as reed canarygrass, cattails, purple loosestrife or other species. Restoration goals would include the removal of the exotic or aggressive species, and the introduction and establishment of a diverse assemblage of native species appropriate for the site considering geographic location, soils, hydrology, and other factors. Selective removal of exotic species in otherwise healthy native plant communities will normally not be considered eligible for credit.

3. Restoration of deep marsh habitat through shallow impoundment, where the purpose is to create hemimarsch conditions suitable for nesting by target wetland bird species of concern. This approach is appropriate at sites that have been significantly altered through partial drainage, and consist largely of dense monotypic stands of cattails or other aggressive species. It is not appropriate for sites that have existing biodiversity or habitat values that would be adversely affected by the proposed actions or where the level of benefit would be minimal.

The prospectus must specifically state which aspects of wetland function would be increased as a result of the enhancement actions, the level to which they would be increased, and the scientific basis for expecting the increase. It must also



include a narrative description of how the enhancement would be accomplished, a schedule of completion, explicit performance standards, and performance milestones for enhancement actions to be carried out over an extended period of time.

Performance standards for enhancement work will be considered on a case-by-case basis. Actions such as the restoration of hydrology can be implemented in a very short time, and can be measured through immediate water level responses. Plant community restoration is a lengthier process, requiring sustained effort over a period of time. In such cases, interim performance milestones may be established, and credits resulting from such work would be included in the final 30% increment of credit released from the bank.

Credit ratios will be determined based on specific circumstances for each bank. Restoration of a historic wetland area or creation of a wetland from an upland area would receive a credit ratio of 100%. Actions that restore a very degraded wetland to a high degree of function, such as restoring normal hydrology to a drained wetland, or restoring a high level of species diversity to a monotypic plant community, may receive credit at a maximum ratio of 50% of the credit values awarded to restored or created wetlands. Ratios for actions of lesser value may be only 10% to 25% credit, or may be determined to be unsuitable for mitigation credit.

The appropriate ratio for crediting preserved wetlands will be determined through the bank review process, and will, in most cases, be less than the ratio for restored or created wetlands. Ratios for preserved wetlands may be as low as 10% of the credit ratios for restored and created wetlands.

Limited credit may be granted for upland areas where it can be demonstrated that such areas would provide tangible benefits to the bank, such as nutrient or sediment filtering of water entering the site, or other functions that would serve to enhance or maintain the ecological integrity of the bank. The determination of the credit to be granted upland areas must be based on clearly demonstrated functions, and not on general ecological values. In general, the credit ratio for the inclusion of upland areas will be 25%, but may be adjusted as deemed appropriate by the mitigation bank review team during the evaluation of the bank prospectus. Upland areas must be afforded the same protection as the rest of the bank. No credit will be considered for upland areas that are not part of the bank site (for example, adjacent forest preserve land or other public lands). Since the goal of mitigation banking is to offset wetland losses, credits generated from inclusion of upland areas

will comprise only a small percentage of the total credits generated by the bank.

The inclusion of upland and deepwater environments within a wetland mitigation bank may be inadvertent (i.e., due to topographic reasons and real estate considerations) or planned (i.e., to realize or enhance certain wetland functions). In the latter case, upland areas may be either naturally occurring or be artificially created and, depending on their basic purpose, may occur along the periphery of the bank or be dispersed throughout.

If the inclusion of upland and deepwater areas is clearly inadvertent and has no demonstrable wetland enhancement function, no mitigation credit would be accorded such areas. However, if beneficial effects can be clearly demonstrated, such environments would be accorded credit for mitigation purposes which is proportional to their functional contribution.

Conditional certification will allow for a reduction of the posted financial security to a level sufficient to assure full certification. Corrective measures will be approved by the Corps prior to implementation. These measures should ensure that the mitigation standard is met at the end of the five-year management period from the day the planting is completed.

During construction of the mitigation wetlands, qualified personnel must make periodic inspections of the site to ensure that soil erosion control measures are employed and functioning properly. Inspection reports shall be submitted to the Corps on a monthly basis.

## **SECTION 16, MITIGATION BANK CREDIT SALES**

Upon authorization of the mitigation bank, through a Department of the Army permit or interagency agreement, the sale of wetland credits and the creation or restoration of wetlands and buffers may commence. The mitigation bank credits may be sold for mitigation purposes in accordance with the following conditions:

1. Certified credits and conditionally certified credits may be sold provided that adequate funds, as approved by the Corps, are established through an escrow account, performance bond, irrevocable letter of credit, or other financial surety for the generation of certified credits and long-term maintenance of the bank site;

2. If an approved bank has only uncertified credits, then those uncertified credits may be sold for mitigation purposes, provided that adequate funds, as approved by the Corps, are established through an escrow account, performance bond, irrevocable letter of credit or other financial surety for the generation of credits and long-term maintenance of the required bank site.

3. The Corps has sole authority to determine the number of credits available for withdrawal from the mitigation bank. In every event, the mitigation bank sponsor shall establish in a performance bond, escrow account, irrevocable letter of credit or other financial surety, adequate funds to ensure the construction, planting, and long-term monitoring, management, and maintenance of the mitigation bank wetlands and associated uplands. The amount of the financial surety shall be based upon the calculated per acre cost of completing the approved plan, including grading and planting of the site. Cost estimates for the construction and/or planting and maintenance for all restored, created, enhanced or preserved wetlands in the bank must be presented. A proposed schedule of release of the financial surety following completion of specific tasks associated with the establishment of the bank must also be submitted for approval. Construction estimates shall include an estimate of the cubic yards of earth to be moved during the grading of the site, as well as an estimated cost per cubic yard for the earthwork.

The interest on all such escrow accounts may be used by the bank sponsor for monitoring, management, and maintenance purposes only. The financial sureties must be maintained until all credits have been certified and sold or the Corps has determined the mitigation bank is self-sustaining. The amount of the financial surety will be reviewed annually based on the results of the monitoring report.

For privately-sponsored mitigation banks, credit sales may commence upon approval of the bank's charter. A maximum of 30% of the total potential credits may be sold prior to construction, based on approval of the bank's charter and the posting of adequate financial surety. Upon acceptance by the Corps that appropriate wetland hydrology has been demonstrated throughout all proposed wetlands at the site, an additional 20% of the total credits may be sold. Upon acceptance by the Corps that the site has been planted according to the approved plan, and after wetland hydrology has been demonstrated, another 20% of the total credits may be sold. The final 30% of the total credits may be sold upon full certification.

For publicly-sponsored mitigation banks, and for all single-user

mitigation banks, no pre-construction sales shall be allowed. Sales may commence only after the achievement of performance milestones established for each bank. After initial construction at the site, and upon acceptance by the Corps that appropriate wetland hydrology has been demonstrated throughout the proposed wetlands at the site, 30% percent of the total credits at the site will be made available for sale. An additional 20% of the total credits will be available for sale after wetland hydrology has been demonstrated, and the site has been planted according to the approved plan. The final 50% of total credits will be made available for sale upon full certification.

Incremental demonstration of wetland hydrology, and incremental planting of the site may also be awarded credit. For example; piezometer data from a 50 acre wetland restoration area shows that 37 acres of the planned wetland meets the wetland hydrology criterion of the 1987 Corps manual. These 37 acres represent 74% of the proposed wetland area. By applying this 74% factor to the allowable 20% increment of credits awarded for demonstrating wetland hydrology, the allowable increment of new credits for the bank would equal 14.8% of the proposed wetland on the site ( $0.74 \times .20 = 0.148$ , or 14.8%). The same method would be used for calculating credits due to incremental planting.

In the event that the bank sponsor sells more than the number of credits approved by the Chicago District, the District reserves the right to deduct the amount of the oversale from the total potential credits available from the bank. These credits will not be restored, even if future development of the bank results in the certification of additional credit sales.

No Department of the Army permits will be granted to applicants proposing to use a mitigation bank unless credits are available in the bank, as determined by the Corps. The initial physical and biological improvements at the bank site (including, but not limited to, grading, planting, and restoration of wetland hydrology) must be completed no later than the end of the first full growing season following the initial debiting of the bank. Initial debiting of the bank is defined as the date of the first approved sale from the bank under the allowable pre-construction sales established in this agreement for privately sponsored commercial banks. This provision is not applicable to bank that are not granted pre-construction sales.

In accordance with the rules governing the sale of credits as set out above, credits may be acquired by qualified buyers as compensatory mitigation to offset unavoidable wetland losses on the following basis:

A. In cases where wetland banking credits are based on created or restored wetlands and are being acquired within the same watershed as the bank site (as defined on the watershed map labeled Attachment A), the following criteria apply:

1. If the wetland credits are certified by the Corps, one wetland credit shall be acquired for every acre of wetland to be filled or adversely impacted;
2. If the wetland credits are either uncertified or conditionally certified by the Corps, qualified buyers must acquire 1.5 wetland credit for every acre of wetland filled or adversely impacted.

B. If credits are sought from outside the watershed of the bank site, the above ratios shall be multiplied by a factor of two. If wetland banking credits are based on enhancement, higher mitigation ratios shall apply as determined by the Corps in coordination with the other signatories. The use of a bank to compensate for impacts outside the watershed boundaries established in this agreement may be authorized on a case-by-case basis at the discretion of the mitigation bank review team, where the team has determined it to be practicable and environmentally desirable.

The bank sponsor shall keep a ledger of all available credits, whether purchased or unpurchased, and of all credits sold or otherwise debited including individual sale prices. This ledger shall be made available to the mitigation bank review team upon request. In addition, the bank sponsor must provide the Corps an updated ledger containing a list of all transactions, including sale prices at a given bank to date at the conclusion of every credit sale.

## **SECTION 17, MONITORING, MANAGEMENT, AND REPORTING**

Monitoring shall occur for a period of five years from the date of the completion of the approved planting plan. Management shall proceed on a continuing basis from the completion of planting through the end of the monitoring period. Management shall proceed as needed to reconcile current conditions with functional goals. Any required remedial measures will be based on information contained in monitoring reports and/or from agency site inspections.

The monitoring results of the mitigation bank shall be provided to the Corps on a annual basis during the monitoring period.

Following this, no report shall be required, but the Corps shall retain the right to inspect the mitigation bank as deemed appropriate. The Corps shall provide the other parties, upon their request, copies of any reports. Joint field inspections by all parties shall be conducted on a regular basis. The mitigation bank review team will establish an annual compliance monitoring schedule that assures that all mitigation bank sites are inspected for compliance with the approved bank plan.

The mitigation bank sponsor shall be responsible for all monitoring, management, and reporting. However, the work may be done by bank employees, subcontractors, or public or private organizations.

The operational life of a bank shall consist of the period during which the terms and conditions of the banking instrument are in effect. With the exception of arrangements for the long-term management and protection in perpetuity of the wetlands and/or other aquatic resources and associated uplands, the operational life of a mitigation bank terminates at the point when;

1. Wetland mitigation credits have been exhausted or banking activity is voluntarily terminated with written notice from the bank sponsor to the Corps, or;

2. The Corps has determined that the debited bank is functionally mature and/or self-sustaining to the degree specified in the banking instrument and associated documents, including the performance standards outlined in this agreement.

### **SECTION 18, LOSS OF BANK CHARTER**

Should a bank not meet the terms of its charter, for whatever reason, the Corps shall inform the bank sponsor and shall specify a reasonable period of time in which to comply. Should any modifications to the charter be required, recommended changes shall be coordinated by the Corps with the other agencies. Continued non-performance of the bank shall result in revocation of the charter and forfeiture of financial securities.

### **SECTION 19, AGREEMENT MODIFICATION/TERMINATION**

This agreement may be modified at any time by the joint agreement of the signatories. This agreement shall automatically expire within five years of the date of the last signatory. A party may terminate its participation in this agreement upon 30 days

written notice to all other parties.

**SECTION 20, SIGNATURES OF FEDERAL OFFICIALS**

\_\_\_\_\_  
Roger A. Gerber  
Lieutenant Colonel, U.S. Army  
District Engineer

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DATE

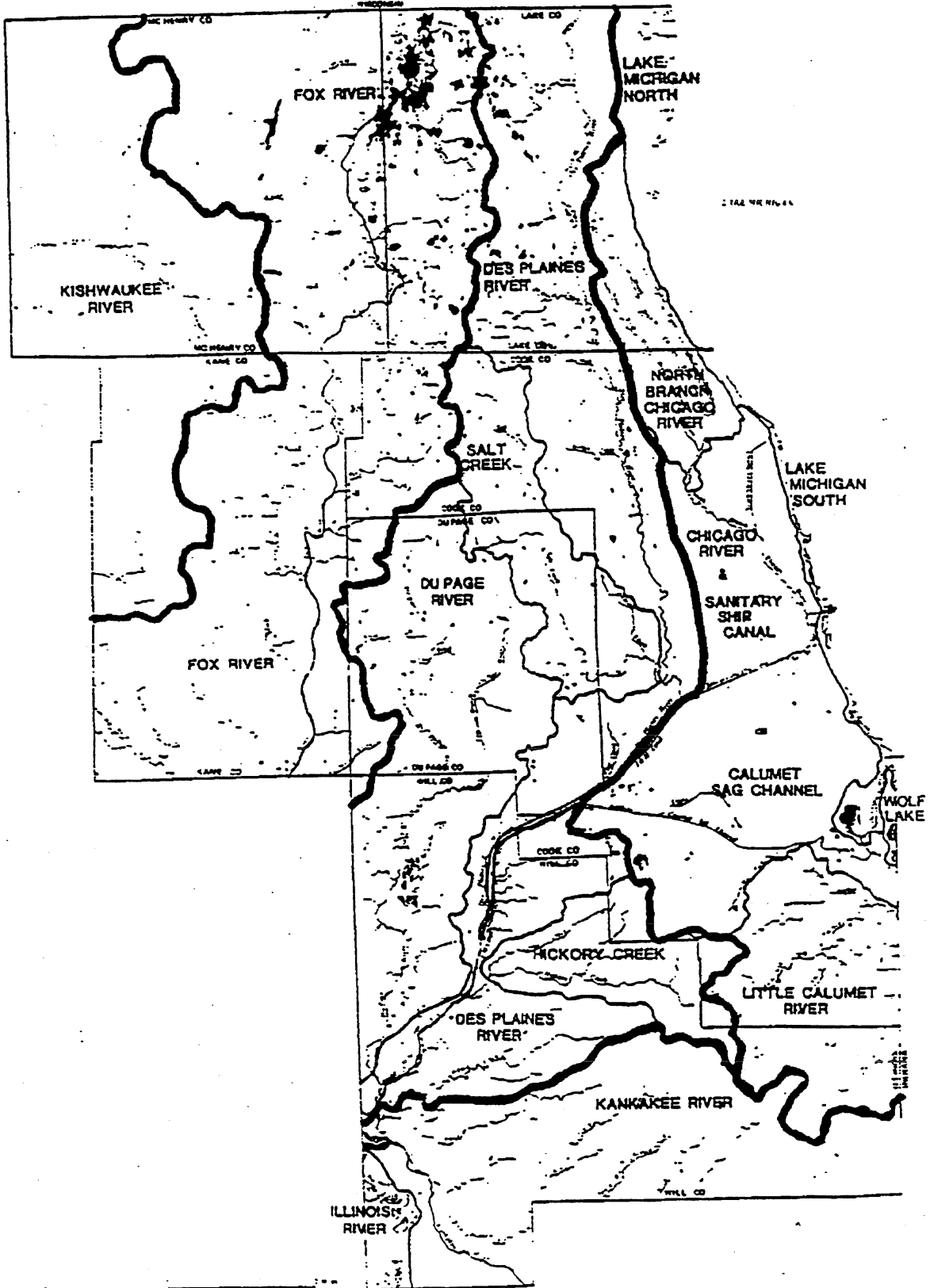
\_\_\_\_\_  
Kevin Pierard  
Chief, Watershed and Non-Point  
Source Program Branch  
U.S. Environmental Protection Agency,  
Region V

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Benjamin A. Tuggle, Ph.D.  
Field Supervisor  
Chicago Illinois Field Office  
U.S. Fish and Wildlife Service

\_\_\_\_\_  
DATE

MAP OF DRAINAGE BASINS IN NORTHEASTERN ILLINOIS



Attachment A