



Public Notice

**US ARMY CORPS
OF ENGINEERS
St. Louis District
Gateway to Excellence**

**Reply To:
U.S. Army Corps of Engineers
Attn: Regulatory Branch
1222 Spruce Street
St. Louis, Missouri 63103-2833**

Public Notice Date
July 1, 2004

Expiration Date
July 31, 2004

The District Engineer has received a proposal for a statewide Missouri Department of Transportation Cooperative Mitigation Banking Instrument from:

Missouri Department of Transportation
C/O Ms. Gayle Unruh
1511 Missouri Boulevard
P.O. Box 718
Jefferson City, Missouri 65102

AUTHORITY: This Public Notice is issued pursuant to recommendations contained in the Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks (60 Fed. Reg. Pages 58605-58614, 1995).

SOLICITATION OF COMMENTS: The U.S. Army Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; natural resource and wildlife conservation organizations; the scientific community; and other interested parties in order to consider and evaluate this proposal. Any interested party is invited to submit to this office written facts or objections relative to the activity on or before the public notice expiration date. Comments both favorable and unfavorable will be accepted and made a part of the record and will receive full consideration in development of the final Banking Instrument. Copies of all comments, including names and addresses of commenters, may be provided to the applicant. All comments to this public notice should be addressed to the St. Louis District, U.S. Army Corps of Engineers (Attn: CEMVS-CO-F. Mr. Shawn Sullivan), 1222 Spruce Street, St. Louis, Missouri 63103-2833.

PUBLIC HEARING: Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this proposal. Any request for a public hearing shall state, with particularity, the reason for the hearing, and must be based on issues that would warrant additional public review.

ADDITIONAL INFORMATION: Additional information about this application may be obtained by contacting Mr. Shawn Sullivan at 314-331-8580 (FAX 314-331-8741) or by e-mail at shawn.f. sullivan@mvs02.usace.army.mil.

DANNY D. MCCLENDON
Chief, Regulatory Branch

MoDOT COOPERATIVE MITIGATION BANKING INSTRUMENT

This Banking Instrument; regarding the establishment, use, operation, and maintenance of the Missouri Department of Transportation Mitigation Banks (hereinafter, Banks); is made and entered into by and among the Missouri Department of Transportation (MoDOT, hereinafter, Sponsor), the U.S. Army Corps of Engineers (Corps), the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), the Federal Highway Administration (FHWA), the Missouri Department of Natural Resources (MDNR), and the Missouri Department of Conservation (MDC), with reference to the following:

I. PREAMBLE

A. Purpose: The purpose of this Banking Instrument is to provide guidelines and assign responsibilities for the ~~development~~ establishment, use, operation, and maintenance of Banks established in Missouri within the U.S. Army Corps of Engineers, Kansas City, St. Louis, Memphis, Little Rock, and Rock Island Districts. Although the Banking Instrument establishes the method to develop a banking prospectus, this instrument does not authorize any specific Bank.

The Kansas City District will act as the lead Corps district for this Banking Instrument. Subsequent individual Bank prospectuses will be reviewed by a Mitigation Bank Review Team (MBRT) with the Corps district having jurisdiction over the bank service area in which the bank is proposed. Banks will be used for compensatory mitigation for unavoidable impacts to waters of the United States, including wetlands and streams, which result from activities authorized under Section 404 of the Clean Water Act, and FHWA rulemaking on Mitigation of Impacts to Wetlands; provided such use meets all applicable requirements and is authorized by the appropriate authorities.

In addition to compliance with the regulatory authorities listed above, this Banking Instrument is intended to be the primary method by which the Sponsor meets the net-gain goals expressed in the FHWA's commitment to increased wetland mitigation based on the President's Wetland Plan of 1998 and the Missouri Executive Order 96-03.

Prior to the use of a Bank, the Sponsor will comply with Section 404(b)(1) Guidelines by applying the following mitigation sequence:

- 1) Avoid wetland and aquatic (streams and natural lakes) impacts through the use of practicable alternatives;
- 2) Minimize wetland and aquatic impacts using all reasonable actions to reduce impacts; and
- 2) Compensate for unavoidable wetland and aquatic impacts and loss of aquatic function. On-site and in-kind mitigation opportunities must be evaluated on a project-by-project basis prior to use of a Bank.

This Bank Instrument does not guarantee that the Corps will accept the use of a Bank for a specific project. However, as stated in the Federal mitigation banking guidance, use of a Bank to compensate for small impacts associated with linear projects and impacts authorized by nationwide permit is preferred to on-site mitigation.

B. Project Description: Whereas, the Sponsor will establish and maintain projects in wetland and aquatic

habitat in accordance with the provisions of this Banking Instrument and a Bank Development Plan (BDP) and Provisions for Bank Closure.

C. Mitigation Bank Goals and Objectives: Whereas, a Bank will replace essential functions for both wetland and aquatic functions anticipated to be lost by transportation development projects and maintenance activities authorized by the Corps within a specified service area.

D. Establishment and Use of Credits: Whereas, in accordance with the provisions of this Banking Instrument and upon satisfaction of the success criteria contained herein, credits will be available to use as compensatory mitigation. The final number of credits shall be based on the total area of wetland or aquatic habitat that is established (created), restored, enhanced, buffered, or in some exceptional circumstances preserved to the standards of the success criteria defined in Section IV. E. and in accordance with the guidelines outlined in Tables 2 and 3 in Section IV. F. The credits generated by all Banks shall be used as compensatory mitigation of unavoidable and adverse environmental impacts to wetlands, aquatic resources of the United States, and where legal requirements apply to other natural resources, as these impacts result from public transportation projects constructed by the Sponsor.

E. Mitigation Banking Review Team (MBRT): Whereas, the MBRT members consist of representatives from:

- U.S. Army Corps of Engineers, Kansas City District (Lead District for Banking Instrument)
- U.S. Army Corps of Engineers, St. Louis District
- U.S. Army Corps of Engineers, Memphis District
- U.S. Army Corps of Engineers, Little Rock District
- U.S. Army Corps of Engineers, Rock Island District
- U.S. Environmental Protection Agency, Region VII
- U.S. Fish and Wildlife Service, Columbia Field Office
 - Federal Highway Administration, Jefferson City Office
- Missouri Department of Conservation
- Missouri Department of Natural Resources

H. Disclaimer: Whereas, this Banking Instrument does not, in any manner, affect statutory authorities and responsibilities of the signatory parties. Furthermore, endorsement by the signatory parties of these policies and procedures does not authorize future banking prospectuses.

II. AUTHORITIES

The establishment, use, operation, and maintenance of a Bank will be carried out in accordance with the following authorities:

A. Federal Authorities:

- Clean Water Act (33 USC 1251 et seq.)
- Rivers and Harbors Act of 1899 Section 10 (33 USC 403 et seq.)
- Fish and Wildlife Coordination Act (16 USC 661 et seq.)
- Department of the Army, Section 404 Permit Regulations (33 CFR Parts 320-330) - Policies for Evaluating Permit Applications to Discharge Dredged or Fill Material
- Environmental Protection Agency, Section 404(b)(1) Guidelines (40 CFR Part 230) - Guidelines

for Specification of Disposal Sites for Dredged or Fill Material

- Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act, Section 404 (b)(1) Guidelines (February 6, 1990)
- Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (FR, Vol. 60, No. 228, Pages 58605-58614, 1995) (60 FR 58605)
- National Historic Preservation Act, Section 106 (16 USC 470)
- National Environmental Policy Act (42 USC 4321 et seq.), including the Council on Environmental Quality's implementing regulations (40 CFR Parts 1500-1508)
- Federal Highway Administration Guidance on Mitigation of Impacts to Wetlands (23 CFR Part 777) Revised March 30, 2001
- Clean Water Act, Section 404 (33 USC 1344)
- Federal Guidance on the Use of the TEA-21 Preference for Mitigation Banking to fulfill Mitigation Requirements under Section 404 of the Clean Water Act.
- Army Corps of Engineers Regulatory Guidance Letter (RGL) 02-2, Guidance on Compensatory Mitigation Projects for Aquatic Resource Impacts Under the Corps Regulatory Program Pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899
- Federal Agricultural Improvement and Reform Act of 1996, Public Law 104-494. 16 USC 3801 et seq.
- Fish and Wildlife Service Mitigation Policy (46 FR pages 7644-7663, 1981)

B. State Authorities:

- 10 CSR 20-6.060 Missouri State Water Quality Certification
- 10 CSR 20-7.031 Missouri State Water Quality Standards
- Chapter 644 Missouri Revised Statute, Missouri Clean Water Law

NOW, THEREFORE, the parties agree to the following:

III. ESTABLISHMENT OF A BANK

Projects initiated independent of or prior to an approved BDP will not be considered. Notification to the Corps of the intent to use a site for mitigation banking purposes is required prior to the initiation of physical work to create the bank. The MBRT will provide general assistance to the Sponsor in developing their Bank prospectus provided the Sponsor follows the guidelines developed in this Banking Instrument.

A. Sponsor Agreements: The Sponsor agrees to coordinate their planning, establishment, monitoring, bookkeeping, and reporting activities through MoDOT's Environmental Unit. The Sponsor agrees to perform all necessary work, in accordance with the provisions of this Banking Instrument, to establish wetland and aquatic habitat. The Sponsor agrees to perform this work until it is demonstrated to the satisfaction of the agencies represented on the MBRT that the project complies with all conditions contained herein or until all credits are debited, whichever is later. Work shall include implementing individual BDPs and Provisions for Bank Closures. As originally agreed upon by the signatory agencies of the federal guidance on Banking, the Sponsor's financial assurance for public

transportation bank proposals shall be their assurance that the purchase, construction, monitoring, and maintenance of a Bank shall be carried out as described in the Banking Instrument, BDP, and attached documents.

Prior to the Sponsor's signature of individual BDPs, the Sponsor's financial resources shall be committed to the purchase of real estate as Sponsor land or as interest in the form of an easement. The commitment shall be in the form of formal Missouri Highways & Transportation Commission (MHTC) approval of fee simple purchase for a project. When the site is not acquired through MHTC purchase, the Sponsor shall record a conservation easement or deed restriction on Bank land prior to certification of any credits. The deed restriction or conservation easement shall be held by the Sponsor. The deed restriction or conservation easement shall preserve a Bank as wetlands and wildlife habitat in perpetuity and shall preserve the perpetual right of access for the Sponsor and the MBRT. In cases where a Federal or State resource agency or non-profit conservation organization owns the property, a conservation easement will not be required, if they agree to the terms of the BDP and this Banking Instrument.

B. Environmental Documentation: The Sponsor is encouraged to notify and discuss potential bank sites with the MBRT prior to submitting formal applications. The Sponsor will submit six copies of a Bank prospectus to the Corps district with jurisdiction in that Service Area. This will initiate the official planning and review process. The Bank prospectus will follow the guidelines outlined in RGL No. 02-2 and the Model Compensatory Mitigation Plan Checklist and Supplement for Aquatic Resource Impacts under the Corps Regulatory Program Pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Once it is formalized, the prospectus will become a BDP and should address:

1. Mitigation goals and objectives
 - Describe functions to be gained at the mitigation site
 - Describe overall watershed improvements to be gained
2. Baseline Information for Proposed Mitigation Site
 - Provide data on physical attributes of site as part of a completed wetland delineation (soils, vegetation, hydrology)
 - Describe historic and existing land uses and resources impacted
 - Provide evidence of a Section 106 of the National Historic Preservation Act clearance
 - Provide information concerning species protected under the Endangered Species Act and evidence of coordination with MDC and/or the FWS, if protected species occur on or near the site
 - Describe reference site attributes if available (provide an example of a site with similar attributes in the area)
 - Provide evidence of coordination with MoDOT's Multimodal Operations to obtain information on potential impacts on local airport operations
3. Mitigation Site Selection and Justification
 - Provide description of current ownership of Bank lands
 - Describe process of selecting proposed site
 - Describe likelihood of compatibility with local land use planning
 - Describe class of wetlands proposed (emergent, scrub/shrub, forested, open water, etc.)
4. Mitigation Work Plan
 - Describe location and size of site
 - Provide construction plan
 - Describe planned hydrology, vegetation, soils, and buffers

5. Performance Standards
 - Identify Bank specific success criteria
 - Describe soils, vegetation, and hydrology parameter changes
6. Site Protection and Maintenance
 - List parties and responsibilities
 - Describe legal protective measures
 - Provide maintenance plan and schedule
 - Monitoring Plan
 - Provide monitoring schedule
 - Identify parties and their responsibilities
 - Specify data to be collected, including assessment tools and methodologies
6. Adaptive Management Plan
 - Identify parties and responsibilities
 - Describe remedial measures

The Corps will issue a public notice, including the Bank prospectus, describing the project. The public comment period for submittal of relevant comments on the Bank prospectus will be a minimum of 21 and maximum of 45 days. If a Department of the Army permit is needed in order to construct, restore, or enhance wetlands or other aquatic sites on the Bank site, the Corps will follow normal permit processing procedures and include the Bank prospectus with the permit public notice. The Sponsor will obtain any other appropriate environmental

documentation, permits, or other authorizations needed to establish and maintain a Bank. Neither this Banking Instrument nor the BDPs fulfill or substitute for such authorization.

C. Sponsor Performance and Modifications: Credits shall become available in accordance with the schedule specified in Section IV. G. of this Banking Instrument. In the event the Sponsor determines that modifications must be made in a BDP and Provisions for Bank Closure, to ensure successful establishment of habitat within a Bank, the Sponsor shall submit a written request for approval of such modification to the MBRT, through the District for the service area. Documentation of implemented modifications shall be made consistent with Section III. E. *infra*.

D. Real Estate Provisions: If the Sponsor sells the Bank property to a private individual or company, the Sponsor will record a conservation easement on Bank property prior to certification of any credits in favor of the Sponsor or its successor. The conservation easements shall preserve a Bank as wetlands and wildlife habitat in perpetuity. If the Sponsor transfers ownership of the Bank property to a Federal or State resource agency or non-profit conservation organization, a conservation easement will not be required if the new owner has documented plans that are compatible with the terms of the BDP and this Banking Instrument.

F. As-Built Report: The Sponsor agrees to submit an as-built report within 90 days following completion of construction of a Bank. The as-built report will describe in detail any deviation from that described in a BDP and include a plan showing finish grades and planting scheme, as appropriate.

IV. OPERATION OF A BANK

A. Service Area: The service area for individual Banks will be established to provide mitigation to compensate for impacts to the waters of the United States within the regulatory jurisdiction of the Corps. Authorization for the use of credits from a Bank will be made by the Corps district with jurisdiction over the service area on a

case-by-case basis in accordance with applicable requirements. The establishment of a primary service area for individual Banks does not preclude any subsequent public interest review processes of 404 permit applications for specific transportation projects. Federal Guidance for the Establishment, Use and Operation Mitigation Banks (60 F.R. 58605 et seq., November 28, 1995) recommends that the geographic extent of the service areas should be determined by hydrologic map units or larger watershed regions and eco-regions as much as possible. Since the primary purpose of a Bank is to compensate for linear transportation projects, a more inclusive service area than the standard 8-digit hydrologic unit is designated for Banks covered by this Banking Instrument, as also prescribed in the 1995 Federal Guidance.

There will be eleven service areas as shown in Table 1 and Figure 1. Each service area is composed of several watersheds within a basin or several smaller basins. This keeps most service areas within one Corps district with the exception of the Bootheel Region Mitigation Bank Service Area previously approved by the Memphis, St. Louis, and Little Rock Corps districts. In addition to the watersheds within the service area, approved bank sites at the edge of watersheds will have a service area that includes a 30-mile radius around the bank. This will include a portion of other service area(s) for the life of that bank.

Table 1. The geographic extent (by 8 digit hydrologic unit) of Eleven Proposed Mitigation Bank Service Areas within the state of Missouri.

<i>Service Area</i>	<i>Corps District</i>	<i>8 Digit Hydrologic Units in the Service Area</i>				
1	Memphis	08020201	08020203	08020204	08020302	
	St. Louis	07140105	07140107	08020202		
	Little Rock	11010007	11010008			
2	St. Louis	07140101	07140102	07140103	07140104	
		That part of 10300200 in the St. Louis District Regulatory Jurisdiction				
3	St. Louis	07110004	07110005	07110006	07110007	07110008
		07110009				
4	Rock Island	07110001	07110002	07110003	07110004	07110005
5	Kansas City	10280101	10280102	10280103	10280201	10280202
		10280203				
6	Kansas City	10240001	10240004	10240005	10240010	10240011
		10240012	10240013			
7	Kansas City	10300101	10300102	10300103	10300104	10300200
8	Kansas City	1029101	10290103	10290104	10290105	10290106
		10290107	10290108	10290109	10290110	10290111
9	Kansas City	10290201	10290202	10290203		
10	Little Rock	11070206	11070207	11070208		
11	Little Rock	11010001	11010002	11010003	11010006	11010009
		11010010	11010011			

B. Landowner Responsibilities: If a Landowner other than MoDOT owns a Bank, they will allow, or otherwise provide for, access to the site by the Sponsor and other signatory parties, as necessary, for the purpose of inspection and compliance monitoring consistent with the terms and conditions of this Banking Instrument and the conservation easement. Inspecting parties shall provide reasonable notice to the Sponsor and the Landowner, if applicable, of not less than 24 hours prior to inspection of a Bank.

C. Project Eligibility: The intended use of a Bank is for compensatory mitigation of wetland and aquatic impacts for federally or state-funded transportation projects. For individual projects requiring authorization under Section 404 of the Clean Water Act, the Corps, in consultation with the other regulatory and resource agencies, will determine projects that are eligible to use a Bank. In general, it is agreed that a Bank may be used to provide full or partial compensatory mitigation for unavoidable impacts to wetlands or other aquatic

resources on transportation projects within its service area that receive a Department of the Army (DA) regional or nationwide general permit. Signatories recognize that the Corps District can review any proposed project and determine that the specific project does not meet general permit criteria or that another form of compensatory mitigation is ecologically preferable because of case-specific circumstances.

Use of a Bank for impacts beyond the specified service area or for projects requiring an Individual DA Permit, may be authorized when such use of a Bank is determined to be environmentally desirable and practicable; as determined on a case-by-case basis by the Corps Districts. Credits may also be used to compensate for environmental impacts authorized under

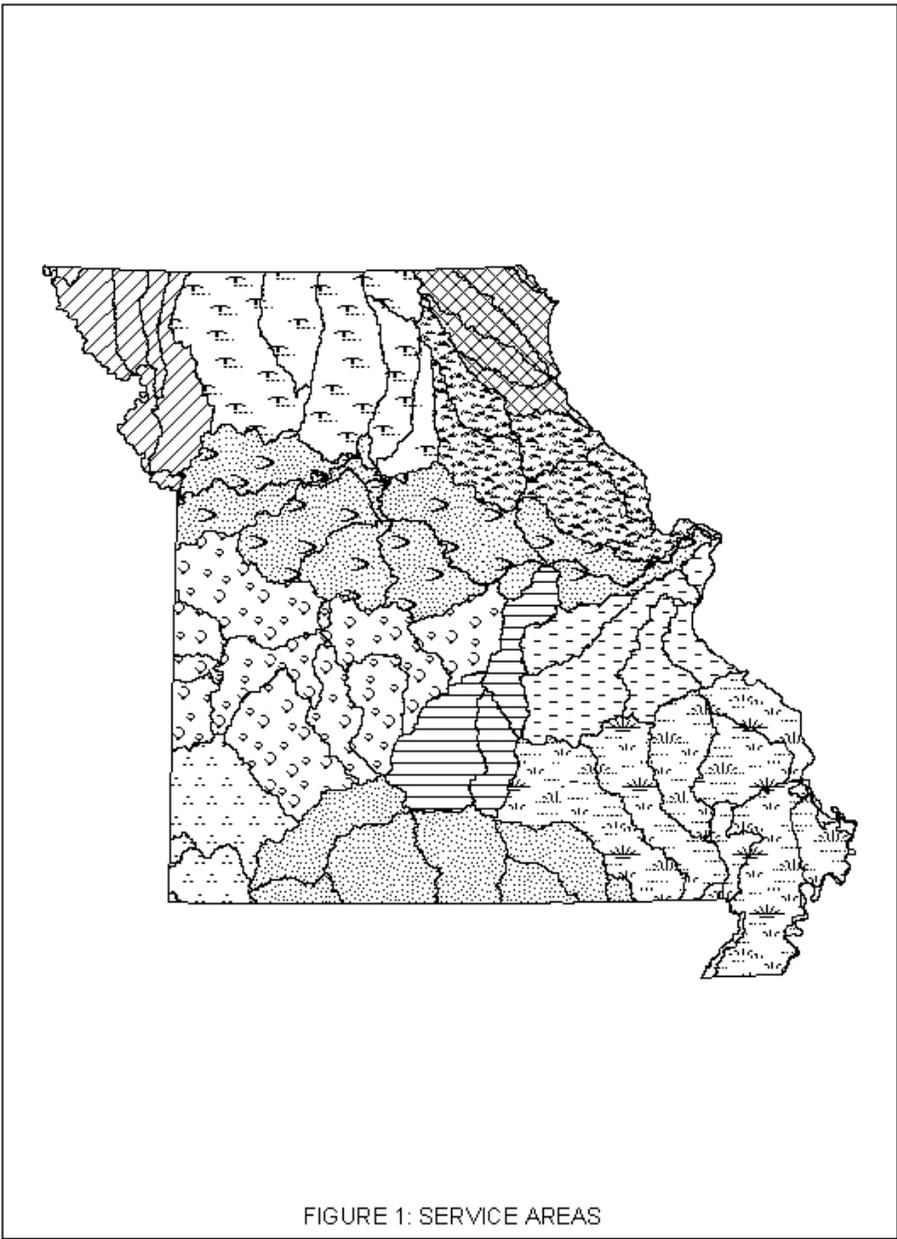


FIGURE 1: SERVICE AREAS

Legend

 08 Digit Hydrologic Unit	 Service Area 6
 Service Area 1	 Service Area 7
 Service Area 2	 Service Area 8
 Service Area 3	 Service Area 9
 Service Area 4	 Service Area 10
 Service Area 5	 Service Area 11

er environmental laws for federal, state, or local wetland, watershed, stream, or endangered species programs. oth

D. Project Ineligibility: The Corps District may determine during the public interest review that compensatory mitigation, through use of credits from a Bank, may be inappropriate for some projects. Decisions about the appropriate compensatory mitigation for impacts of a specific project will be made by the Corps District on a case-by-case basis, after a request for general permit verification or a Department of the Army permit application is submitted to the Corps.

E. Success Criteria: The following general criteria will be used to assess basic project success:

1. **Financial Success Criteria:** The Sponsor must demonstrate that it has purchased a conservation easement or property and restoration services; or, MHTC has approved funds for bank construction.
2. **Hydrologic Success Criteria:** That portion of the site planned as wetland must meet the hydrologic criteria for wetlands as outlined in the 1987 Wetland Delineation Manual and consistent with the BDP. However, in the early phases of Bank site establishment, special water level drawn-down may be necessary and are allowed to establish desirable woody species.
 3. **Vegetative Success Criteria:** The long-term vegetative success criteria will be determined for individual Banks. In general, at least 80% of the vegetative cover should be from native plants suitable for the project's water regime and site potential. No more than 10% of the vegetation cover may be non-desirable species in the third growing season after construction is finished. Desirable species are those native to the eco-region of the Bank and not listed as a noxious or invasive weed for Missouri.
 4. **Soil Success Criteria:** That portion of the site planned as wetland must meet the hydric soil requirements according to the 1987 Wetland Delineation Manual.

Each BDP will outline more specific success criteria depending on its goals and objectives.

F. Debit/Credit Assessment: The current guidance, upon which the Corps compensatory mitigation requirement would be based, includes: the Regulatory Guidance Letter No. 02-2, Guidance on Compensatory Mitigation Projects for Aquatic Resource Impacts Under the Corps Regulatory Program Pursuant to Section 404 and the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899; the Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army concerning the Determination of Mitigation Under the Clean Water Act, Section 404 (b)(1) Guidelines (February 6, 1990); and the Federal Guidance for the Establishment, Use, Operation of Mitigation Banks (60 F.R. 58605 *et seq.*).

1. Credits from mitigation banks may also be used to compensate for environmental impacts authorized under other programs, such as state or local wetland programs. In no case may the same credits be used to compensate for more than one activity. Once credits have been used to mitigate the impacts occurring on one property or project, those credits cannot be used again. However, if mitigation for a specific project is required under both the Clean Water Act and the Endangered Species Act, for impacts to the same wetland/habitat, the credits can count towards mitigation under both programs.
2. The Sponsor may request credit certification at any time after a minimum of three (3) years data collection for emergent wetlands/stream systems and seven years for forested wetland/stream systems. After reviewing the monitoring reports, credits will be certified by the MBRT if the Bank has met the success criteria in Section IV. E and the BDP.
3. The same method will be used to assess both credits and debits for each future Bank. In the absence of a more suitable functional assessment method, credits will be assessed based on the type and acreage of wetlands created, restored, enhanced, buffered, and preserved.

5. Credit ratios for each Bank and wetland type may vary, but no ratio should be below the ratios shown in Tables 2 and 3.

Table 2 Credit Ratios for Wetland Mitigation Banks

Acres/Credit After Certification	Mitigation Type	Acres/Credit Before Certification
1:1	Restoration (Re-establishment)	1.5:1
2:1	Restoration (Rehabilitation)	2.5:1
3:1	Enhancement	4:1
3:1	Buffer**	4:1
1:1	Establishment (Creation)	2:1
10:1	Preservation (Protection/Maintenance)	10:1

Table 3 Credit Ratios for Stream/Linear Mitigation Banks

Ratio A After Certification Acres/Credit	Mitigation Type	Ratio B Before Certification Acres/Credit
1:1	Restoration (Re-establishment)	1.5:1
1:1	Restoration (Rehabilitation)	1.5:1
4:1	Buffer* *	4:1

6. **Buffer zones are important for wetland and stream functions such as water quality protection, stream stabilization, and riparian habitat. Therefore, buffer zones will be a necessary component of wetland or stream re-establishment and will not receive extra credit. Only restored or expanded buffers on existing wetlands or aquatic resources will receive credit.

6. The actual exchange ratio of credits for unavoidable wetland impacts (acres) will be determined on a project-by-project basis by the permitting Corps District in coordination with the other members of the MBRT during the 404-permit process.

G. Schedule of Credit Availability: Upon submittal of all appropriate documentation by the Sponsor and subsequent approval by the Corps, in consultation with the other members of the MBRT, it is agreed that credits will become available for use by the Sponsor or for transfer to a third party in accordance with the following schedule:

1. Twenty-five percent of total anticipated credits shall be available for debiting immediately after the MBRT's approval of a project construction design, the Sponsor's purchase of restoration services, and the Sponsor's purchase of easement or right of way for a Bank site. Preservation credits are considered certified at this point and would receive full credit.
2. An additional 25 percent of total anticipated credits shall be available for debiting immediately after the construction and any initial planting has been completed.
3. An additional 25 percent of total anticipated credits shall be available for debiting following successful demonstration of hydrologic success criteria as described in Section IV.E.

4. The remaining credits for wetland restoration shall be made available for withdrawal when vegetative and soil success criteria, as described in Section IV. E., are satisfied, based on monitoring reports approved by the Corps. Once this requirement is satisfied, credits are certified and receive full value.

5. Credits for establishment or expansion of upland or riparian buffer shall be made available following the same schedule except they do not have hydrologic success criteria.

H. Debiting Conditions: No debits against Bank credits shall be made for impacts to waters of the U.S. in areas specifically identified by the MDC as significant or exceptional natural communities, as defined in the Missouri Natural Features Inventory published by the Missouri Department of Conservation, without MBRT approval.

I. Site Use Provisions: The Sponsor or Landowner shall **NOT**:

1. Grant additional easements, right of way, or any other property interest in or to the project areas for pipelines, utility lines, transportation projects, etc., without the written consent of the Corps, in consultation with the MBRT;
2. Construct trails except for educational purposes, which is contingent upon MBRT review and approval;
3. Use or allow the use of all terrain vehicles, motorcycles, tractors, off-road vehicles, swamp buggies, motor boats or other motorized vehicles unless for maintenance activities approved by the MBRT; or
4. Cut, harvest, or otherwise alter the successional growth of timber unless outlined in the BDP or approved by the MBRT.
5. Burn, hay, graze, cultivate, or plant crops unless outlined in the BDP as a management tool or approved by the MBRT and a Corps permit, if necessary.
6. Use or authorize the use of areas within a Bank for any purpose that interferes with the individual Bank's goals and objectives. This includes modifying the hydrology or vegetation to create a different type of wetland. Hunting, fishing and trapping may be compatible uses when conducted in accordance with state and federal regulations and approved by the MBRT. This includes the leasing of such rights to others, provided no commercial harvest is involved. However, development of roads, ATV trails, and permanent blinds or stands for hunting purposes are not necessarily compatible but may be approved by the MBRT under certain circumstances.

V. MAINTENANCE AND MONITORING OF A BANK

A. Maintenance Provisions: The Sponsor agrees to ensure that all necessary work to maintain a Bank consistent with the maintenance criteria established in a BDP and Provisions for Bank Closure of individual Banks is performed. The Sponsor shall continue with such maintenance activities until closure of a Bank. Upon closure of a Bank, the Sponsor shall implement the management requirements established in Section V. E. and F. Deviation from the approved BDP and Provision for Bank Closure is subject to review and written approval by the MBRT.

B. Monitoring Provisions: The Sponsor agrees to perform all necessary work to monitor each Bank and demonstrate compliance with the success criteria established in this Banking Instrument. Work will include:

1. Vegetative species monitoring will be done in accordance with the 1987 Wetland Delineation Manual methods (or other methodology subsequently approved by the Corps) to characterize woody stem density and herbaceous plant cover by species. This will be scheduled annually early to late growing season from year one through year five following initial establishment and again in the eighth and eleventh years, subject to the MBRT's approval of progress after year five report review.
2. An annual wildlife species listing for the site will be compiled from casual observations.
3. Hydrologic monitoring will document water distribution in accordance with the 1987 Wetland Delineation Manual for the first three years. This will serve to document water retention capability and

success of water manipulation in facilitating vegetation establishment. The frequency of hydrologic monitoring will be reduced to annual or biannual monitoring after three years. This data will be collected by the Sponsor using monitoring wells, piezometers, gauges, local rainfall reports, or other approved method.

4. Soils will be sampled in accordance with the 1987 Wetland Delineation Manual to determine if the soils have indicators of hydric conditions. Soils will be sampled concurrently with the vegetation sampling annually for five years following initial establishment and once every third year thereafter. The later schedule is subject to the MBRT's approval of progress after year five report review.
5. If any of the performance criteria have not been met, further monitoring may be required, at the MBRT's direction, after the period specified above in Section V.B.1.

C. Reporting: The Sponsor shall submit to the Corps, for distribution to the other members of the MBRT, a report in digital format describing the conditions of a Bank comparing those conditions to the success criteria until credits are fully expended. Reports will be submitted each calendar year at a time agreed upon for each Bank and contain the following:

1. A US Geological Survey map showing the location of a Bank. A digital point location will also be included.
2. A narrative summarizing the condition of a Bank and all regular maintenance activities.
3. Appropriate topographic maps (e.g., 1-2-foot contour intervals) showing location of sampling plots, permanent photo points, and location of transects.
4. Results of hydrology survey including the extent of inundation and depth of pools after site construction.
5. Results of vegetation survey, including:
 - a) Visual estimates of percent cover by species for each vegetation layer; relative percent cover of non-native invasive species in each vegetation layer; total percent cover of obligate, facultative wetland, facultative, and facultative upland species in each vegetation layer; and a list of dominant species in plant communities within a Bank site;
 - b) Survival rate of planted trees and shrubs based on sampling transects and description of planted vegetation vigor; and
 - c) Description of natural woody species colonization.
6. Results of qualitative wildlife observations.
7. Soil sample descriptions with soil profile and hydric condition indicators.
8. List of deficiencies identified for the site.
9. Recommendations for remedial vegetation plantings, as needed.

10. Recommendations for hydrologic modifications, as needed.
11. Recommendations for modification of vegetative sampling scheme, as needed.
12. Recommendations for modifications of hydrologic monitoring scheme, as needed.

D. Accounting Procedures: **Once use of the Bank is approved by the permitting Corps District within which the impact occurs, the Sponsor shall submit a statement to the Corps District requesting credits be debited or additional credits be approved. If requested by any member of the MBRT, the Corps will distribute the statement to all members of the MBRT. The Sponsor will maintain a ledger for each bank listing credits by habitat and mitigation type. Debits will be subtracted from the appropriate habitat category at the appropriate rate. At a minimum, the Sponsor shall submit an annual ledger showing all transactions at a Bank for the previous year to the Corps for distribution to all members of the MBRT.**

E. Contingency Plans/Remedial Actions: Should the MBRT determine by consensus that remedial action is necessary because a Bank, or a specific phase of a Bank, has failed to achieve the success criteria specified in Section IV. E., the Sponsor shall develop and implement such remedial action plans in coordination with the MBRT. In the event the Sponsor fails to implement necessary remedial actions at a Bank site within 90 calendar days or other agreed to time-period by the MBRT, the MBRT acting through the District, will notify the Sponsor. Disputes regarding the necessity of remedial actions shall be resolved by the Corps District.

If the Sponsor determines that a Bank is operating at a deficit, the Corps will be notified and debiting of credits will immediately cease. The Corps, in consultation with the MBRT and the Sponsor, will determine what remedial actions are necessary to correct the situation.

At the request of the Sponsor, the MBRT will perform compliance visits to determine whether all success criteria have been satisfied. Written certification that success criteria have been successfully met shall be provided by the permitting Corps District to the Sponsor.

F. Long-Term Management: The Sponsor or cooperating Landowner is the responsible entity for long-term management; assuming this responsibility for the site after reimbursement for this service as part of an easement purchase and site construction agreement. When all credits of a Bank have been debited, the Sponsor or a Landowner shall be responsible to manage a Bank in perpetuity in accordance with the terms of the long-term management plans and real estate provisions outlined in the BDP.

VI. RESPONSIBILITIES OF THE MBRT

A. Agency Oversight: The agencies represented on the MBRT agree to provide appropriate oversight in carrying out provisions of this Banking Instrument.

B. Agency Review: The agencies represented on the MBRT agree to review and provide written comments on all project plans, regular monitoring reports, credit review reports, contingency plans, and necessary permits for a Bank within 30 calendar days. If an MBRT agency chooses not to participate in the review of a particular portion of the review process, they will notify the Corps District. If written comments are not received by the Corps District within 30 calendar days, the District shall assume report approval and proceed to the next stage of the review process. This does not guarantee that mitigation proposals or permit applications will be approved within 30 days.

C. Credit Certification: The agencies represented on the MBRT agree to review, upon the request of the Sponsor, reports evaluating the success of the Bank and certify as appropriate credits. The request can be made

any time after a minimum of three years data collection for emergent wetland/creek systems and seven years for forested wetland/creek systems.

D. Compliance Inspections: The agencies represented on the MBRT shall conduct compliance inspections, as necessary and as determined by the Corps in consultation with the Sponsor, to verify credits available in a Bank. The MBRT will recommend corrective measures, if any, until the terms and conditions of a BDP and Provisions for Bank Closure have been determined to be fully satisfied or until all credits have been debited, whichever is later.

IV. OTHER PROVISIONS

A. Force Majeure: The Sponsor will not be responsible for Bank failure that is attributed to unexpected and disruptive forces that the MBRT determines is beyond the control of the Sponsor to prevent or mitigate. Typically, damages caused by floods, droughts, animals, and storms that would be expected to occur within the establishment period for the specific site are not considered disruptive forces and should have been anticipated in the BDP. Under circumstances where reestablishment of the site for wetland or aquatic purposes is not possible, the remaining credit shall be abandoned.

B. Dispute Resolution: Resolution of disputes about application of this Banking Instrument shall be in accordance with those stated in the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 F.R. 58605 et seq., November 28, 1995).

C. Validity, Modification, and Termination of the Banking Instrument: This Banking Instrument will become valid on the date of the last signatory's signature. This Banking Instrument may be amended or modified with the written approval of all signatory parties. Any of the MBRT members may terminate their participation 30 calendar days after written notification has been sent to all signatory parties. The lead Corps District can reconvene the MBRT for amendments to this agreement. For minor modifications to a BDP, the Corps District for that service area may choose to convene through email or teleconferencing.

Changes to this document that are determined to be "minor" by the MBRT members may be adopted without further public interest review and re-signature. Such changes will be documented in an amendment signed by the Corps District, MBRT members, and designated Sponsor representative.

D. Individual Banking Sites: When the Sponsor submits a Bank prospectus to the Corps District for the service area of the proposed Bank, that Corps District will be the District and will convene the MBRT at the Bank site for prospectus review. The other Corps Districts may, but are not required to, participate on the MBRT for that Bank. The Bank prospectus will be put on public notice and approved Banks will be considered part of this Banking Instrument. The Corps District's signatory authority for Individual Bank Plan will be the Regulatory Branch Chief.

E. Controlling Language: To the extent that specific language in this document changes, modifies, or deletes terms and conditions contained in those documents that are incorporated into the BDP by reference, and that are not legally binding, the specific language within the Banking Instrument shall be controlling.

V. Definitions (taken from RGL No. 02-2)

A. Establishment (Creation): The manipulation of physical, chemical, or biological characteristics present to develop a wetland on an upland or deepwater site, where a wetland did not previously exist.

B. Enhancement: The manipulation of the physical, chemical, biological characteristics of a wetland (undisturbed or degraded) site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present.

C. Preservation: The removal of a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This term includes the purchase of land or easements and/or repairing water control structures or fences.

D. Restoration: The manipulation of the physical, chemical, or biological characteristics present with the goal of returning natural or historic functions to a former or degraded wetland.

1. **Re-establishment:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland.

2. **Rehabilitation:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded wetland.

BANKING INSTRUMENT LEAD DISTRICT

Colonel, U.S. Army Corps of Engineers
District Engineer, Kansas City District

Date

MBRT CONCURRENCE

Colonel, U.S. Army Corps of Engineers
St. Louis District

Date

MBRT CONCURRENCE

Colonel, U.S. Army Corps of Engineers
Little Rock District

Date

MBRT CONCURRENCE

Colonel, U.S. Army Corps of Engineers
Rock Island District

Date

MBRT CONCURRENCE

Date

Colonel, U.S. Army Corps of Engineers
Memphis District

MBRT CONCURRENCE

Director of Water, Wetlands, & Pesticides Division
US Environmental Protection Agency, Region VII

Date

MBRT CONCURRENCE

Field Supervisor
US Fish & Wildlife Service

Date

MBRT CONCURRENCE

Division Administrator, Missouri Division
Federal Highway Administration

Date

MBRT CONCURRENCE

Director
Missouri Department of Natural Resources

Date

MBRT CONCURRENCE

Director
Missouri Department of Conservation

Date

SPONSOR

Director
Missouri Department of Transportation

Date