

# Savannah District, US Army Corps of Engineers, Draft Guidelines to Establish And Operate Mitigation Bank in Georgia dated January 11, 2010

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US Army Corps of Engineers  
**BUILDING STRONG**



# PURPOSE AND SCOPE

- The “Guidelines” are the Savannah District’s interpretation of the New Mitigation Rule (33 CFR 332)
- Assist bank sponsors, their agents, and other interested parties with the successful development and operation of wetland and stream mitigation banks
- Assist the Interagency Review Team (IRT) members in reviewing, commenting and approving mitigation bank documents
- Guidelines developed to reduce delays during BI approval process



# PURPOSE AND SCOPE

- All BIs approved on or before July 9, 2008, are grandfathered
- Any BI approved prior to July 9, 2008, that requires a major amendment must comply with the Rule.
- All BIs not approved before July 10, 2008, must comply with the Rule
- Do not address in-lieu-fee or site specific mitigation requirements



# SITE SELECTION

- Critical step when determining site feasibility
- Bank sponsor's responsibility to provide supporting rationale
- Site must be large enough to warrant the investment of USACE resources
- Typically, wetland banks should be a minimum of 100 acres of wetland
- Stream banks should be a minimum of 4,000 linear feet of stream
- Smaller banks may be considered

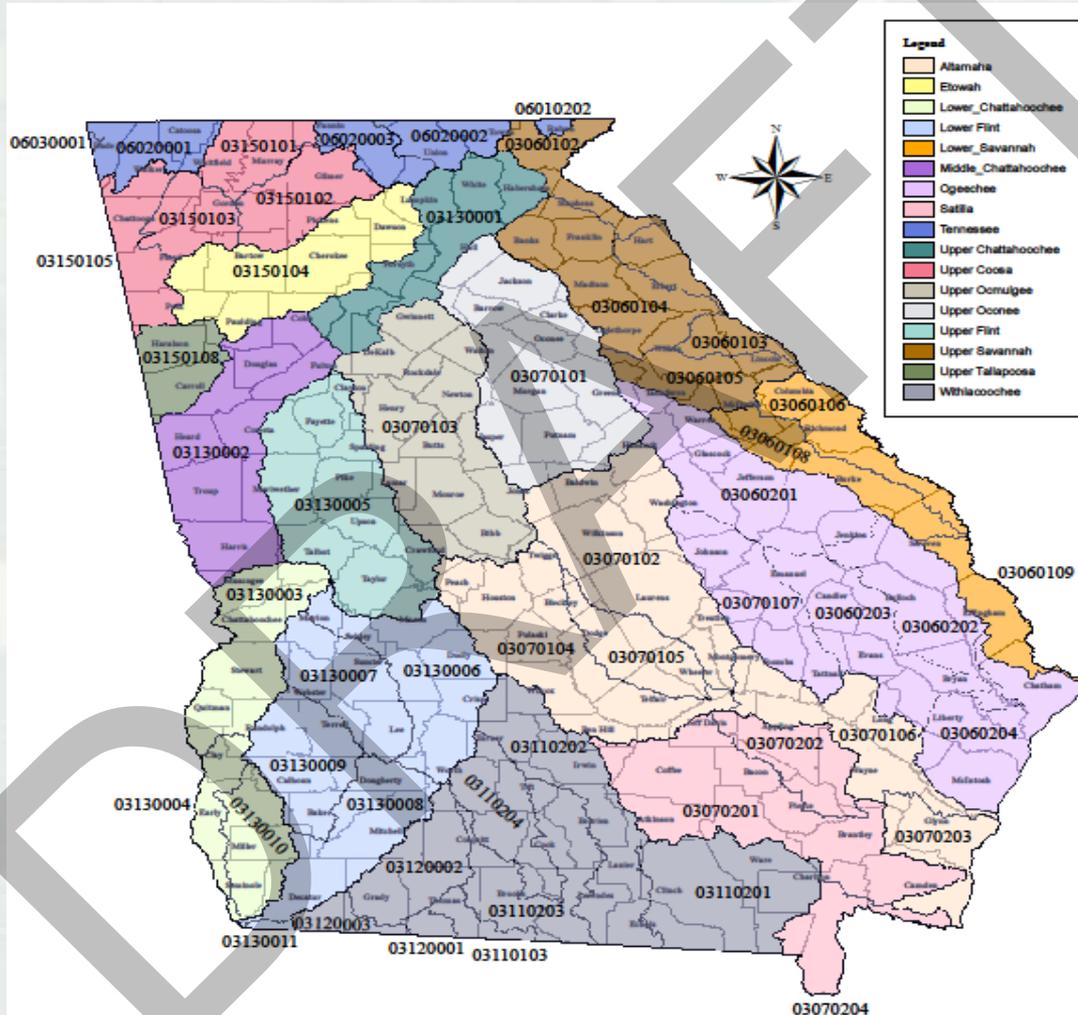


# SERVICE AREA

- Designated geographic area
- Service areas were defined by IRT and published on Public Notice (March 2004)
- 17 primary service areas, each of which has at least 1 secondary service area assigned
- Primary service area has priority over secondary service area



# Service Area



# Draft Prospectus

- Bank Sponsor and Agent Information
- Discuss Existing Site Conditions
- Discuss Watershed- Scale Features
- Stream and/or wetland bank objectives
- Existing Stream and/or wetland site conditions
- Describe method of compensation (restoration, enhancement, and/or preservation)



# Draft Prospectus

- Describe work to be performed on the site
- Summarize Probability of Bank Success
- Discuss Qualifications of the Sponsor
- Site Delineated on Maps, Figures, and Photographs
- Real Property Requirements



# Approval Process of Draft Prospectus

- Sponsor submits a draft prospectus to USACE for review, comment, and consultation
- 30 Calendar Days of Receipt of the Draft Prospectus, USACE will review for completeness
- Complete Draft Prospectus will be placed on the IRT agenda and copies will be sent to IRT members and USACE Office of Counsel (The bank sponsor will maintain a record of all documents sent to the IRT)
- Within 15 calendar days of the IRT meeting or site visit, whichever occurs last, the IRT members will provide written opinion
- Within 30 calendar days of the IRT meeting or site visit, USACE will provide the bank sponsor and IRT members with a written recommendation



# Incomplete Draft Prospectus

- USACE will identify additional elements to be addressed and will request from the sponsor
- Bank sponsor has 45 calendar days to submit requested information, if not the bank will be administratively withdrawn
- Upon receipt of additional information from the bank sponsor, the 30 calendar day review will start over



# Prospectus

- USACE verified delineation of on-site waters
- Statement of potential effects on federal and state threatened/endangered species
- Statement of potential effects on cultural resources
- Detailed Baseline Data Collection Plan Streams/Wetlands
- Conceptual Mitigation Work Plan
- Property Ownership



# Prospectus

- Provide statements/concurrence to address Adaptive Management, Contingency, Long-Term Management/Maintenance Plans
- Financial Assurances
- Bank Sponsor will use Bank Credit Methodology, as outlined in the SOP, Performance/Success Criteria, Monitoring Criteria, Reporting Protocols, Tracking and Monitoring Procedures, Credit Release Schedule



# Approval Process for Prospectus

- Sponsor submits prospectus to USACE for review, comment, and consultation
- USACE will review the submittal for completeness within 30 calendar days from receipt
- When the prospectus is deemed complete, USACE will publish a Public Notice and request bank sponsor to provide copies to IRT members
- PN comment period for 30 days



# Approval Process for Prospectus

- Within 15 calendar days of end of comment period, USACE will provide all comments received to sponsor and IRT members
- Within 30 Calendar Days of end of comment period, USACE will provide the bank sponsor and IRT members with a written recommendation on practicability of the proposal and any additional information needed to proceed with preparation of the Draft BI
- Prior to collection of baseline data, the bank sponsor shall submit a final baseline monitoring plan for USACE review and approval



# Incomplete Prospectus

- If the Prospectus is not complete, USACE will identify the additional required elements and request these from the bank sponsor
- The bank sponsor will have 45 calendar days to provide the requested information. USACE will administratively withdraw the prospectus until the information is received



# Draft Banking Instrument

- Baseline Study Findings
- Mitigation Work Plan
- Site Ownership and Protection
- Financial Assurances
- Adaptive Management and Contingency Plans
- Long-Term Management/Maintenance Plans
- Long-Term Management and Maintenance Funding



# Draft Banking Instrument

- Bank Credit Methodology
- Credit Release Schedule
- Performance/Success Criteria
- Monitoring Criteria
- Reporting Protocols
- Accounting Procedures
- Adopt Standard Default and Closure Provisions
- Statement that legal responsibility for providing compensatory mitigation lies with the sponsor once a permittee secures credits from the sponsor



# Draft Banking Instrument

- The Bank Sponsor will submit a draft BI to USACE for review and comment
- USACE will review the draft BI within 30 calendar days for completeness
- If the draft BI is complete, USACE will request that the bank sponsor send copies to the IRT and the Savannah District Office of Counsel



# Draft Banking Instrument

- The IRT will have 30 calendar days to provide a written opinion (i.e., accept or provide substantive comments) on the draft BI
- If a member of the IRT fails to provide an opinion, USACE will assume there are no objections to the draft BI
- If an IRT member has substantive unresolved issues the USACE will initiate discussions with the IRT and seek to resolve issues within an additional 30 calendar days
- Within 90 Calendar Days of Receipt of a Complete Draft BI, the USACE will notify the bank sponsor of what changes, if any, are needed



# Incomplete Draft Banking Instrument

- If the draft banking instrument is incomplete, USACE will identify what additional required elements that need to be addressed and submit them to the bank sponsor
- If the bank sponsor fails to provide the requested information within 45 days, the project will be administratively withdrawn until the information is received



# Final Banking Instrument

- Once the draft BI is approved, all of the documents collectively will be considered the Final BI
- The bank sponsor shall provide a copy of the approved draft BI to all IRT members. The bank sponsor shall provide a cover letter explaining changes that were made to the document
- IRT members will notify USACE within 15 calendar days, if the bank sponsor failed to adequately address their comments



# Final Banking Instrument

- USACE will complete review of the final BI, within 30 calendar days to determine whether it is consistent with the guidelines and the Rule, if consistent, the USACE will notify the IRT of its intent to approve the BI
- If no IRT member objects within the 45 days of receipt of the BI by initiating the dispute resolution process, the USACE will notify the sponsor of the final decision
- If a IRT member initiates the dispute resolution process, after receiving the BI, USACE will notify sponsor
- Once the dispute resolution process has been concluded, USACE will notify the sponsor of the final decision



# Incomplete Final Banking Instrument

- If the BI is not consistent with the guidelines and the rule, USACE will identify what additional required elements need to be addressed
- If the bank sponsor fails to provide requested information within 45 calendar days, the project will be administratively withdrawn



# Final Banking Instrument

- The final BI approval document is signed by the Regulatory Division Chief and the Bank Sponsor
- In accordance with the Rule, the USACE retains final authorities for approval, operation, and use of a BI in cases where the mitigation bank is used to satisfy compensatory mitigation requirements of a Department of the Army permit



# CREDIT RELEASES

- Three different Credit Release schedules
- Schedules based on degree of success and Financial Assurances
- Schedule 1 – No financial assurances
- Schedule 2 - Construction and Monitoring Financial Assurances
- Schedule 3 - Monitoring Financial Assurances
- Suspension of Credit Sales
  - Failure to Meet Performance Criteria
  - Credit Over-Sales
  - Inappropriate Service Area Sale
  - Wetland and Stream Credits – All suspended
  - Post Suspension - Resume Credit Sales



# CREDIT RELEASES

- Systematic release of credits during the construction phase and the minimum seven-year monitoring period
- Specific milestones
- USACE determines during draft prospectus level
- Determination based on success with past mitigation banks in Georgia or other states; bank sponsors financial status; probability of bank success; past experience of the environmental consulting firm to design and implement the mitigation bank; and experience of the team designing the stream or wetland restoration project and the contractors who will install the project



# CREDIT RELEASE SCHEDULE TABLE

Year	Documented Activity, in List Sequence	Schedule 1	Schedule 2	Schedule 3
1	BI , RC, FA and/or Escrow	0%	10%	0%
1	Construction Begins	10%	10%	0%
2	Construction Completed	10%	10%	40%
3	1 <sup>st</sup> Year of Monitoring Report with Success	10%	10%	10%
4	2 <sup>nd</sup> Year of Monitoring Report with Success	10%	10%	10%
5	3 <sup>rd</sup> Year of Monitoring Report with Success	10%	10%	5%
6	4 <sup>th</sup> Year of Monitoring Report with Success	10%	10%	5%
7	5 <sup>th</sup> Year of Monitoring Report with Success	10%	5%	5%
8	6 <sup>th</sup> Year of Monitoring Report with Success	10%	5%	5%
9	7 <sup>th</sup> Year of Monitoring Report with Success	20%	20%	20%



# TRACKING AND MONITORING

- Banker Responsibilities
- Ledgers must include required info
- Wetland and stream credits on different ledger
- USACE Responsibilities
- Fact Sheets
- Regional Internet Bank Information Tracking System  
(RIBITS)



# MODIFICATIONS

- Major Modification
- Minor Modification
- USACE determines significance of request
- USACE notifies IRT members and the sponsor of this determination
- Within 30 calendar days of receipt from USACE, IRT members and the sponsor shall notify the USACE if there are any concerns with the proposed modification
- If any concerns, USACE will attempt to resolve



# MODIFICATIONS

- Within 60 calendar days, USACE must inform IRT and sponsor of intent to approve or disapprove
- Within 15 calendar days of receipt of this notification, if no IRT member initiates the dispute resolution process, USACE must notify sponsor of decision
- If IRT member initiates the dispute resolution process, USACE will so notify the sponsor
- Following conclusion of the dispute resolution process, USACE will notify sponsor of decision



# POLICY DISPUTE RESOLUTION PROCESS

- Rule explains dispute resolution process between USACE and an IRT member regarding approval process
- No formal process for interpretation of the Rule or Guidelines between USACE and USEPA
- If the USACE or USEPA wishes to formally dispute a policy



# POLICY DISPUTE RESOLUTION PROCESS

- USACE District Commander or the USEPA Regional Administrator will notify the other agency representative by letter
- Within 30 days of the date of the letter, the receiving agency will respond by letter to acknowledge receipt of the letter and confirm the date for a formal dispute resolution meeting
- Within 45 days of the date of the initial notification letter, a dispute resolution meeting will be held
  - Resolved
  - Not Resolved



# QUESTIONS??????

- This document is available on the web at <http://www.sas.usace.army.mil/permit.htm>

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