

SUBJECT: Mitigation Bank Consistency Review within the Savannah District, Regulatory Division

1. Purpose: To ensure proposed mitigation bank projects within the Savannah District are consistent with the established standards and criteria developed in the New Mitigation Rule (33 CFR Part 332) (Rule) and the Savannah District's Guidelines to Establish and Operate Mitigation Banks in Georgia (Guidelines). [Note: Applicable sections of the Guidelines are referenced below]

2. Preliminary Consistency Review:

- a. Upon receipt of a Draft Banking Instrument (Draft BI) (8.2.1) and prior to providing a copy of the document to the Interagency Review Team (IRT) (8.2.3), the Project Manager (PM)/Regulatory Specialist (RS) will complete the Banking Instrument Evaluation and Findings Form (BIEFF) (copy attached).
- b. Within 5 working days of receipt of a Draft BI, the PM/RS will notify the Division Mitigation Liaison (DML) via email that a Draft BI has been submitted. This email will include a copy of the Draft BI, the completed BIEFF, and IRT comments received in response to the Public Notice advertising the Prospectus. The PM/RS will also provide the DML with an assessment as to whether or not the Draft BI is complete (8.2.3 or 8.2.4).
- c. The DML will complete a preliminary review within 5 working days of the date of the PM/RS email. The DML will notify the PM/RS if a consistency review meeting will be necessary, and if so, the date and time of this scheduled meeting.
- d. If the DML determines that a consistency review meeting is not necessary, the PM/RS will be notified to proceed with IRT coordination of the Draft BI.
- e. Upon completion of the consistency review meeting, the DML will make one of the following determinations:
 - (1) The Draft BI is complete, consistent with the Rule/Guidelines and ready to be coordinated with the IRT, or
 - (2) The Draft BI is incomplete and/or inconsistent with the Rule/Guidelines, and should be returned to the Bank Sponsor for revision.

3. Interim Consistency Review:

- a. Within 5 working days of the close of the 30-day Draft BI comment period (8.2.5), the PM/RS will provide a copy of IRT comments to the DML.

- b. If an IRT member(s) has substantive unresolved issues with the Draft BI (8.2.6), the PM/RS will schedule a meeting with the DML and the IRT member(s), to discuss resolution of issues.
- c. Within 90 calendar days of receipt of a Draft BI, the PM/RS will complete coordination with the DML and provide written notification to the bank sponsor (8.2.7) that:
 - (1) The Draft BI is consistent with the Rule/Guidelines and recommend proceeding to preparation of the Final BI, or
 - (2) The Draft BI is inconsistent with the Rule/Guidelines, and identify changes required prior to submittal of the Final BI.

4. Final Consistency Review:

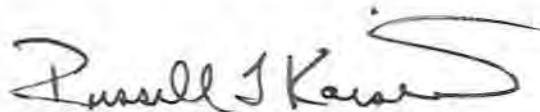
- a. Upon receipt of a complete Final BI (9.1), the PM/RS will update the BIEFF to reflect any changes to the document resulting from early consistency review.
- b. Within 5 working days of receipt of a complete Final BI, the PM/RS will notify the DML via email that a Final BI has been submitted. This email will include a copy of the Final BI, the revised BIEFF; the Bank Sponsor cover letter addressing any remaining IRT comments; the draft Bank Approval Transmittal Letter; and the draft Bank Authorization Document.
- c. If an IRT member(s) notifies the PM/RS that the bank sponsor failed to adequately address their comments or resolve remaining issues, this information will immediately be provided to the DML (9.2).
- d. Within 30 days of receipt of the Final BI, the PM/RS and DML will meet and determine final consistency status. If the Final BI is determined consistent with the Rule and Guidelines, the DML will formally notify the IRT that the USACE plans to approve the Final BI (9.3).
- e. If no IRT member objects to the USACE approving the Final BI by initiating the dispute resolution process within 45 days of receipt of the Final BI, the USACE will proceed to final approval (9.5).
- f. The DML will immediately schedule a meeting with the Regulatory Division Chief and the Bank Sponsor for signature of the Bank Approval Transmittal Letter and the Bank Authorization Letter.
- g. If Final BI is determined to be inconsistent with the Rule and/or Guidelines, the DML and PM/RS will schedule a meeting with the Bank Sponsor and their Consultant to discuss the inconsistencies and measures needed to bring the mitigation bank into compliance. Following the receipt of the Bank Sponsor's documentation addressing the

requested revisions, the PM/RS will reinitiate a review meeting as previously described in Part 3.a of this guidance.

5. IRT Dispute Resolution: If an IRT member formally objects to the USACE's plan to approval of a final BI within the 45 day review period (9.6), the DML and PM/RS will draft a white paper outlining Savannah District's rationale for moving forward toward BI approval. This white paper will be provided to the Mitigation PDT for policy review. Within 30 days from the date of the IRT letter of formal objection, Savannah District will provide a response to the objecting IRT member outlining the USACE's intent to disapprove, approve, or modify the instrument in light of the formal objection. If US Fish and Wildlife Service, US Environmental Protection Agency, and/or National Marine Fisheries Service do not forward the issue to their Headquarters within 15 days from the date of Savannah District's response, RD will move forward with our intended action.

6. Internal Dispute Resolution: Should there be an internal dispute between the PM/RS and the DML, the PM/RS can prepare a white paper outlining the issue for submittal to the Mitigation PDT for review. Following the review of the issue, the Mitigation PDT will provide a formal policy decision resolving the issue.

7. DML Designee: The DML for both Coastal and Piedmont Branch is currently Mr. Justin Hammonds. If consistency issues or question arises at any point during the mitigation banking process, the PM/RS should contact Mr. Hammonds at (770) 904-2365 or via email at justin.a.hammonds@usace.army.mil.



Russell L. Kaiser
Chief, Regulatory Division

Banking Instrument Evaluation and Findings

I. Background and General Bank Description

1. Identify location, service areas (primary/secondary), landscape position, and general site conditions/constraints [*identify document section references here*]:
2. Explain the environmental need and factors considered for selecting proposed mitigation bank site(s) [*identify document section references here*]:
3. Summarize objectives of proposed bank [*identify document section references here*]:
4. Present mitigation plan in table format [*identify document section references here*]:
5. Present credit generation plan in table format [*identify document section references here*]:
6. Are there any proposed deviations from SAS Regulatory SOP re: accounting procedures format? If yes, explain [*identify document section references here*]:

II. Site Ownership and Protective Measures

1. Identify who will own proposed bank [*identify document section references here*]:
2. Identify who will be the bank sponsor [*identify document section references here*]:
3. Describe proposed site protection instrument (i.e. Restrictive Covenants and Conservation Easements) [*identify document section references here*]:

III. Plans: Management, Mitigation and Monitoring

1. Explain proposed adaptive management plan and how sponsor will account for unforeseen changes in site conditions [*identify document section references here*]:
2. Explain long term management and maintenance plan for proposed bank and identify financing amount/mechanism and responsible party, if applicable [*identify document section references here*]:
3. Present monitoring and reporting requirements in table format [*identify document section references here*]:

IV. Financial Assurances

1. Present qualifications of mitigation team [*identify document section references here*]:

2. Identify if proposed financial assurance plan is sufficient to complete project [*identify document section references here*]:

3. Present in table format elements of financial assurance plan [*identify document section references here*]:

V. Other Legal Requirements

1. Does banker have sufficient water rights to support mitigation bank and any proposed restoration activities? If not, explain [*identify document section references here*]:

2. Does BI include a statement accepting legal responsibility for providing compensatory mitigation once a permittee has secured credits from sponsor? If not, explain [*identify document section references here*]:

3. Does the BI identify default and closure provisions? If not, explain [*identify document section references here*]:

4. Are there any other outstanding issues with the proposed bank? If yes, explain [*identify document section references here*]:

VI. Findings

Based on a review of all information available to the District Office, I have determined the proposed bank submittal and resulting actions would not have significant effects on the quality of the human environment and comply with the Final Mitigation Rule dated April 10, 2008 (33 CFR Parts 325 and 332) and (40 CFR Part 230). The proposed action does not constitute a major Federal action significantly affecting the quality of the human environment; and, therefore, does not require the preparation of a detailed statement under Section 102(2)(c) of the National Environmental Policy Act of 1969 (42 USC 4321, et seq.).

I find the proposed action is based on a thorough analysis and evaluation of various practicable alternative courses of action for achieving the stated objectives. Wherever adverse effects are found to be involved, they cannot be avoided by following reasonable alternative course of action, which would achieve the specified purposes, and where the proposed action has adverse effect, this effect is either ameliorated or substantially outweighed by other considerations of national policy. The recommended action is consistent with national policy, statutes, and administrative procedures and issuance of this bank would not be contrary to the public interest.

PREPARED BY:

APPROVED BY:

Name
Project Manager/Specialist

Justin Hammonds
Division Mitigation Liaison