



**U.S. Army Corps of Engineers (USACE)  
Galveston District**

**SWG MITIGATION BANK PROSPECTUS TEMPLATE**

This Template includes the information required for a mitigation bank prospectus as outlined in the Final Rule on Compensatory Mitigation for Losses of Aquatic Resources (Federal Register Vol. 73, No. 70; April 10, 2008) and in the Code of Federal Regulations (CFR) Title 33, Part 332.8. The purpose of a mitigation bank prospectus is to provide an overview of the proposed mitigation bank with sufficient detail to support public and initial interagency review team (IRT) review and comment.

**Definition of Mitigation Banking:** A mitigation bank is a wetland or other aquatic resource area that has been restored, established, enhanced or preserved, which is then set aside to compensate for future unavoidable impacts to wetlands and other aquatic resources from permitted activities. Permittees, upon approval of regulatory agencies, can purchase credits from a mitigation bank to meet their requirements for compensatory mitigation. The value of these “credits” is determined by quantifying the biological, chemical, and physical functions restored, enhanced, or created. The bank sponsor is ultimately responsible for the success and maintenance of the project. All mitigation banks must comply with 33 CFR Part 332.8 if they are to be used to provide compensatory mitigation for Department of the Army (DA) permits.

**Mitigation Bank Prospectus Review Process:**

- Draft Prospectus (Preliminary) Review: Prior to submitting a prospectus, the sponsor is encouraged to meet with USACE regulatory program staff and discuss the sponsor’s proposed mitigation project. The sponsor may submit a draft prospectus to the district engineer and subsequently the IRT for initial review and comment. Comments from the IRT and/or the district engineer will be provided to the sponsor within 45 days of submitting the draft prospectus. This review process is optional, but is strongly recommended, as it will allow for the identification of potential issues early so that the sponsor may attempt to address those issues prior to the formal review process.
- Complete Prospectus (Formal) Review: Within 30 days of receipt of a complete prospectus, the district engineer will provide public notice of the proposed mitigation bank. The comment period for public notice will be 30 days unless the district engineer determines that a longer comment period is appropriate. The district engineer and IRT members may also supply comment during this time. If the construction of a mitigation bank requires a DA permit, the public notice requirement may be satisfied through the public notice provisions of the permit processing procedures, provided all of the relevant information is provided.
- Prospectus Evaluation: After the close of the public comment period, the district engineer will provide the sponsor the consolidated comments along with a written evaluation letter stating whether the proposed mitigation bank has the potential or does not have the potential to provide compensatory mitigation for activities authorized by DA permits. If the district engineer determines that the proposed mitigation bank has the potential to provide compensatory mitigation for DA permits, then the letter will inform the sponsor that he/she may proceed with preparation of a draft mitigation instrument. If the district engineer determines that the proposed mitigation bank does not have the potential to provide for compensatory mitigation for DA permits, the letter must discuss the reasons for that determination. The sponsor may revise the prospectus to address the concerns, and submit it to the district engineer. If the sponsor submits a revised prospectus, a revised public notice will be issued.

**SWG MITIGATION BANK PROSPECTUS TEMPLATE**

*\*Notes: [please do not include red-italic text when submitting Template]*

**Proposed Mitigation Bank Name:**

*Provide the proposed mitigation bank name and the name and contact information for the sponsor, agent, and property owner.*

|                  |                  |                  |
|------------------|------------------|------------------|
| Name of Sponsor: | Agent:           | Property Owner:  |
| Mailing Address: | Mailing Address: | Mailing Address: |
| Phone Number:    | Phone Number:    | Phone Number:    |
| Fax Number:      | Fax Number:      | Email Address:   |
| Email Address:   | Email Address:   |                  |

**Objectives:**

*Describe the overall goals and objectives of the proposed mitigation bank. Describe the factors considered during site selection, the compatibility with adjacent land uses and the practicability of an ecologically self-sustaining aquatic resource restoration, establishment, enhancement and/or preservation project on this site. A detailed description of the resource type and amount that will be provided and how it addresses the needs of the watershed and/or ecoregion. Describe how the project will offset impacts. Describe the natural resource mitigation opportunities proposed (e.g., wetland, open water and/or stream mitigation, supporting upland/riparian, etc.) and the type of mitigation proposed (i.e., restoration, creation, enhancement, and/or preservation). In Table format: Indicate the amount of each type of resource mitigation that is to be performed (e.g., acres of wetland or linear feet of stream restoration, creation, enhancement, and/or preservation). If available, discuss the habitat or vegetated community type proposed with each resource type (e.g., forested wetland restoration, stream channel enhancements, etc.).*

| Resource Type            | Restored        | Enhanced       | Created       | Preserved     |
|--------------------------|-----------------|----------------|---------------|---------------|
| <i>Riverine Forested</i> | <i>89.5 ac</i>  | <i>22.5 ac</i> | <i>5.3 ac</i> | <i>100 ac</i> |
| <i>Stream</i>            | <i>1,989 lf</i> |                | <i>-</i>      |               |
|                          |                 |                |               |               |
|                          |                 |                |               |               |
| <b>Totals:</b>           |                 |                |               |               |

**Project Location (UTM and Lat/Long in DD):**

*Include the legal description of the site (along with coordinates in UTM and Latitude/Longitude as Decimal Degrees) and provide an accurate current map of the proposed bank property boundary on a USGS 7.5 minute quadrangle, along with the proposed bank boundary on a recent aerial photograph in the attachments to the prospectus.*

**Baseline Conditions:**

*An Approved Jurisdictional Delineation and verified functional assessment of the site is generally warranted to facilitate informed public and IRT comments and should be submitted as part of a complete prospectus. Prospectus must also include a description of the site conditions, habitats, and species known or potentially present, and may include photos of the site. It should also include the site history, past land use, surrounding land uses and zoning, along with the anticipated future development in the area, including development within the watershed or changes in surface or groundwater uses/rights. The sponsor should also include tabular summary of current delineated Waters of the U.S. (defined under 33 CFR part 328.3 (a)) found on the proposed site. In Table format: Indicate in ACRES (for wetlands and impoundments) and LINEAR FEET (for rivers and streams) the total quantity of current delineated waters*

of the U.S. located on the project site. Indicate waterbody type (herbaceous wetland, scrub/shrub wetland, forested wetland, perennial stream, intermittent stream, ephemeral stream, impoundment, other) or non-jurisdictional (uplands, buffer, prior converted croplands, other). Generally, the baseline information should include a functional assessment (e.g., iHGM) and/or conditional assessment (e.g. SWG Stream) that has been verified by the Corps, for the determination and establishment of credits to provide the required compensatory mitigation and the baseline assessment of the functions of all aquatic resources existing on the site. A detailed plan specifying the geographic boundaries of the project; construction methods, timing, and sequence; source(s) of water, including connections to existing waters and uplands; methods for establishing the desired plant community; plans to control invasive plant species; the proposed grading plan, including elevations and slopes of the substrate; soil management; and erosion control measures. For stream compensatory mitigation projects, the mitigation work plan may also include other relevant information, such as planform geometry, channel form (e.g., typical channel cross-sections), watershed size, design discharge, and riparian area plantings. This should include the construction methods, timing, sequence and materials source to meet this desired objective.

| Resource Type | Linear feet in Project Area | Acres in Project Area |
|---------------|-----------------------------|-----------------------|
|               |                             |                       |
|               |                             |                       |
|               |                             |                       |
|               |                             |                       |
|               |                             |                       |
| Totals:       |                             |                       |

**Establishment and Operation:**

Describe an appropriate functional assessment methodology to be used to assess wetland and/or other aquatic resource restoration, creation, enhancement and/or preservation activities within the proposed Mitigation Bank and to quantify the amount of available credits. Include an appropriate mitigation credit accounting system and credit release schedule that will be employed during the operation of the proposed Mitigation Bank. Establish ecologically based standards that will be used to determine when objectives are met and credits are released.

**Proposed Service Area(s):**

The service area is the watershed, ecoregion, physiographic province, and/or other geographic areas within which the mitigation bank is authorized to provide compensatory mitigation required by DA permits. Service areas must be appropriately sized for each credit type to ensure that the aquatic resources provided will effectively compensate for adverse environmental impacts across the service area respectively. Describe how the service area was determined using a “watershed approach” and the basis for a mapped boundary representing the service area(s) of the mitigation bank. The Prospectus must include a figure (map) showing the proposed service area in relation to the location of the proposed bank. A primary service area may be the 8-digit HUC in which the bank property is located. Smaller primary areas may be required in certain circumstances (e.g., coastal areas); as determined appropriate by the IRT consistent with the watershed approach, a secondary Service Area may also be considered. Generally a secondary service area shall be no larger than the adjacent 8-digit HUC watersheds that have the same first six digits and are within the same EPA Level III Ecoregion as the bank. The secondary service area will generally be attributed with a multiplier (e.g., 1.5x). Approval of a service area occurs after detailed evaluation by the IRT and therefore is site-specific (determined on a case-by-case basis). An ILF or umbrella proposal may have multiple service areas (e.g., each watershed within a region may

*be a separate service area); however, all impacts and compensatory mitigation must be accounted for by service area.*

**General Need and Technical Feasibility:**

*Describe the purpose and need for the proposed Mitigation Bank within the service area. Describe in appropriate detail the proposed mitigation techniques that will be used for establishing wetlands and other aquatic resources. Mitigation Banks should be designed to be self-sustaining over time to the extent possible, requiring minimal maintenance.*

**Any and all easements and/or encumbrances:**

*As a component of the Prospectus, the bank sponsor shall provide the description of property ownership, including any easements and/or encumbrances on the site along with an assessment of how it may affect bank operations or habitat values. This should include a copy of a title abstract, including a 60-year title search performed by a title company operating within the state. The submittal shall also include a legal survey of the proposed mitigation bank site. The Bank Sponsor shall submit an attorney's Opinion of Title prepared in accordance with federal title standards, addressing each scheduled exception to the title and either clear said exception or explain its permissible use in the project. The Title Opinion may be structured in a manner similar to that used in standard American Land Title Association Title Commitment Form. This information is required to ensure that all properties being considered as potential mitigation banks have been fully researched and full disclosure has been provided relative to all liens and encumbrances.*

**Proposed Ownership Arrangement and Long-term Management Strategy:**

*Describe the legal arrangements and documents that will be used to ensure the long-term protection of the site. In addition, identify the financial mechanism and the party responsible for long-term management of the proposed Mitigation Bank. Describe the proposed site protection- real estate instrument, including timing and sequence of filing of instrument, and appropriate independent third-party conservation easement holder. A description and schedule of the general maintenance required to ensure continued viability of the aquatic resource once construction is completed and credits are released. This should include the following:*

- a description and schedule of abatement of non-target flora and fauna,*
- a description of what long-term funding assurances are to be provided and how it is sufficient to ensure a high level of confidence the project will remain successful, and*
- a description on long-term ownership arrangement, including any real estate instrument holders and a description of any additionally proposed long-term land uses after the credits are sold. Include any proposed transfer of liability to another sponsor or long-term steward.*

**Qualifications of Sponsor:**

*Describe the qualifications of the sponsor to successfully complete the proposed Mitigation Bank, including information describing any such past activities performed by the sponsor. This may include qualifications of sponsor consultants and/or contractors or other relevant groups/individuals.*

**Ecological Suitability of the Site:**

*Describe in appropriate detail the ecological suitability (chemical, physical, and biological) of the site to support the proposed types of mitigation to be implemented on the site. Other significant factors for consideration include, but are not limited to, development trends (i.e., anticipated land use changes), habitat status and trends, local or regional goals for the restoration or protection of particular habitat types or functions (e.g., re-establishment of habitat corridors or habitat for species of concern), water quality and floodplain management goals, and the relative potential for chemical contamination of the*

wetlands and/ or other aquatic resources within the service area that may benefit from the proposed Mitigation Bank.

**Assurance of Water Rights:**

*The Sponsor shall disclose and address existing water rights, including a discussion of the assurance (adequacy and source) of sufficient water rights to support the long-term sustainability of the mitigation bank. This could include the acquisition of water rights of current hydrology and/or demonstrating the site currently possess adequate hydrology to sustain the site as a wetland. The sponsor must also address where and how they will obtain adequate hydrology for the site. As part of determining hydrology, the sponsor shall also identify any activities upstream (or downstream) that may have potential future impacts on this hydrology (e.g. reservoirs, water rights permits, FEMA-letters of map revision, flowage easements, etc.) including the review the Texas Water Development Board’s current State Water Plan to identify any proposed reservoirs that could influence hydrology, and existing water rights upstream and downstream and the proximity of the bank site to potential urban expansion shall also be reviewed (see TCEQ website; POC: Iliana Delgado 512-239-3678). Sponsor must provide all holders on respective project waterway: including the priority number, priority date, water right number, annual amount (acre-feet), continuous flow in cubic feet per second (cfs), summed flow (cfs), preference diversion (cfs), and maximum diversion (cfs). If proposing hydrologic manipulation, the Sponsor should consult the Texas Commission on Environmental Quality (TCEQ) and provide a written statement from TCEQ as to whether a water rights permit is or is not required for the proposed project. If a permit is required, Sponsor must provide the permit with submittal of the final MBI.*

*Water Supply Division at [http://www.tceq.texas.gov/permitting/water\\_rights/wr\\_amiregulated.html](http://www.tceq.texas.gov/permitting/water_rights/wr_amiregulated.html)*

*Phone: 512/239-4691*

*E-mail: [wras@tceq.texas.gov](mailto:wras@tceq.texas.gov)*

*Water Supply Division MC-160*

*Texas Commission on Environmental Quality*

*PO Box 13087*

*Austin, Texas 78711-3087*

**Attachments:**

Approved Jurisdictional Delineation of Waters of the U.S., Including Wetlands

*The Prospectus should generally include a copy of the SWG “Approved Jurisdictional Determination/Delineation” and respective wetland delineation report of wetlands identified and delineated using the methods and criteria established in the USACE Wetlands Delineation Manual (1987 Manual) as well as any applicable interim regional supplements, and functional assessments.*

Historic Properties and Cultural Resources Reports and/or Letters

Threatened or Endangered Species Reports and/or Letters

Figures/Maps

Other