

Corps / EPA Compensatory Mitigation Rule 3rd Party Mitigation: Requirements



Regulatory Branch
U.S. Army Corps of Engineers

Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency

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Differences Between Banks & ILF Programs

- Mitigation Banks:
 - Public or private sponsor
 - Compensation site secured & mitigation initiated in advance of debits
 - Single or multiple project sites
 - Corps has no authority over bank expenditures
- In-Lieu Fee programs:
 - Government or non profit conservation organization
 - Fees often received before securing/implementing mitigation project
 - Multiple project sites
 - Corps approves project funding



ILF Reforms for Equivalency

- The Rule retains ILF mitigation but with significant reforms:
 - Advance planning requirement
 - Financial accounting requirements
 - Cap on “advance” credits
 - Same administrative/ecological standards as banks
 - Same public/IRT review process as banks



ILF Compensation Planning Framework

- Components:
 - Service area (watershed-based)
 - Analysis of historic aquatic resource loss and current condition
 - Threats to aquatic resources
 - How threats are addressed
 - Aquatic resource goals and objectives
 - Prioritize mitigation projects
 - Use of preservation
 - Description of stakeholder involvement
 - Long-term protection and management
 - Evaluation and reporting



ILF Program Account

- Funds for mitigation projects ONLY
- Interest income
- Administrative costs
- Corps responsible for funding approval
- Annual reports
 - Fees collected, funds expended
 - List of permits using in-lieu fee program
 - Credit balances, by service area
- Program audit



ILF Program Advance Credits

- Cap on advance credits when instrument approved
- # advance credits based on:
 - Compensation planning framework
 - Sponsor's past project performance
 - Financing needed for mitigation projects
- As projects produce *released* credits *advance* credits are fulfilled and available again



ILF Program Advance Credits

- Land acquisition and improvements must be initiated by **3rd growing season** after first advance credit is acquired



Determining Credits

- Appropriate assessment methodology
- Credit production = Δ
(post – pre project conditions)
- Credit value
- Credits from preservation
- Credits from buffers & uplands



Credit Release Schedule

- Single site Banks: Instrument
- Umbrella Banks & ILF: Mitigation Plan
- Tied to performance-based milestones
- Reserve *significant* share of credits for release only after attainment of performance standards
- Credit release approval by DE in consultation with IRT



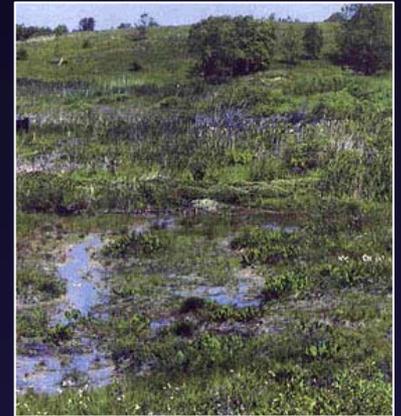
Initial Credit Release from Mitigation Banks

% of total Bank credits once:

1. Instrument and plan are approved
2. Bank site has been secured
3. Financial Assurances established
4. Any other requirements set by Corps are met



Example 1 of Credit Release Schedule



- Chicago District Wetlands:
 - 30% Initial Release
 - 20% Release for meeting hydrology
 - 20% Release planting completion
 - 30% release when all performance standards are met



Example 2 of Credit Release Schedule

- Norfolk Stream Restoration:
 - 15% Initial Release
 - 10% Completion of construction
 - 10–25% Year 1 – Bankfull or not
 - 10–25% Year 2 – Bankfull or not
 - 10–25% Year 3 Bankfull or not
 - No additional releases until Bankfull event



Example 3 of Credit Release Schedule

- Mobile Wet Pine Flats
 - 20% Initial Release
 - 15% Hydrologic restoration
 - 15% 2nd incremental release
 - 15% 3rd Incremental release
 - 15% 4th Incremental Release
 - 20% Final Release (approx Year 10)



Use of Credits

- Corps determines # & types of credits to offset permitted impacts
- Applicant must provide Corps with statement of credit availability from Bank or ILF
- IRT may notify Corps of concern with use of credits to satisfy permit requirements



Cost of 3rd Party Mitigation

- Credit costs determined by the sponsor
- In-lieu fee programs, cost per credit must be based on:
 - Expected costs
 - Full cost accounting, including appropriate contingencies



Accounting Procedures

- Bank
 - Establish/maintain a ledger for credit transactions
- ILF
 - Annual report ledger
 - Individual ledgers for each ILF project site

[Credit Release Schedule] [Bank Info]

Credit Ledger at a Glance for Mud Slough

Type	Total Withdrawn	Balance of Released	Balance of Maximum Potential	Total Potential	Total Reserved
State Only	3.93	-3.93	-3.93	0	0
Federal & State	53.861	15.389	-25.736	28.125	0
	57.791	11.459	-29.666	28.125	0

Last Transaction: Jul 15, 2008

Bank Ledger for Mud Slough

Transaction Type:

Habitat Type:

Category:

TW = Total Withdrawal Credits, BoR = Balance of Released Credits, MP = Balance of Maximum Potential Credits

Type	Foot State	Date	Credits	Acres	Linear Feet	Permit No.	Credit Habitat Type	Impact Huc	Impact Quantity	TW	BoR	MP
Wdr	B	12/14/2005	1.1200	-	-	200600382, 30605-fp	Not Specified	-	-	38.90	30.36	-10.77
Wdr	B	02/06/2007	0.0200	-	-	200600590,	Not Specified	-	-	38.92	30.34	-10.79
Wdr	S	03/28/2007	0.3200	-	-	en16405	Not Specified	-	-	39.24	30.02	-11.11
Wdr	B	03/29/2007	0.6200	-	-	200600348,	Not Specified	-	-	39.86	29.40	-11.73
Wdr	B	06/06/2007	0.1250	-	-	2007-250, 38070-fp	Not Specified	-	-	39.98	29.27	-11.86
Wdr	B	06/07/2007	0.3000	-	-	2006-831, 37358-rf	Not Specified	-	-	40.28	28.97	-12.16
Wdr	S	06/06/2007	0.1460	-	-	en16539	Not Specified	-	-	40.43	28.82	-12.30



Reporting Requirements:

- Ledger accounts
- Monitoring reports
- Financial assurance report
- Long-term management funding report



RIBITS

Regional Internet Bank Information Tracking System
(Approved) Edge Farm Bank Site (Great Dismal Swamp Credit Ledger)

[\[Back\]](#) | [\[Home\]](#) | [\[Printable Excel*\]](#) | [\[Public Credit Query Page\]](#)

*The Printable Excel Spreadsheet is only the current view of the ledger!

Select Habitat:

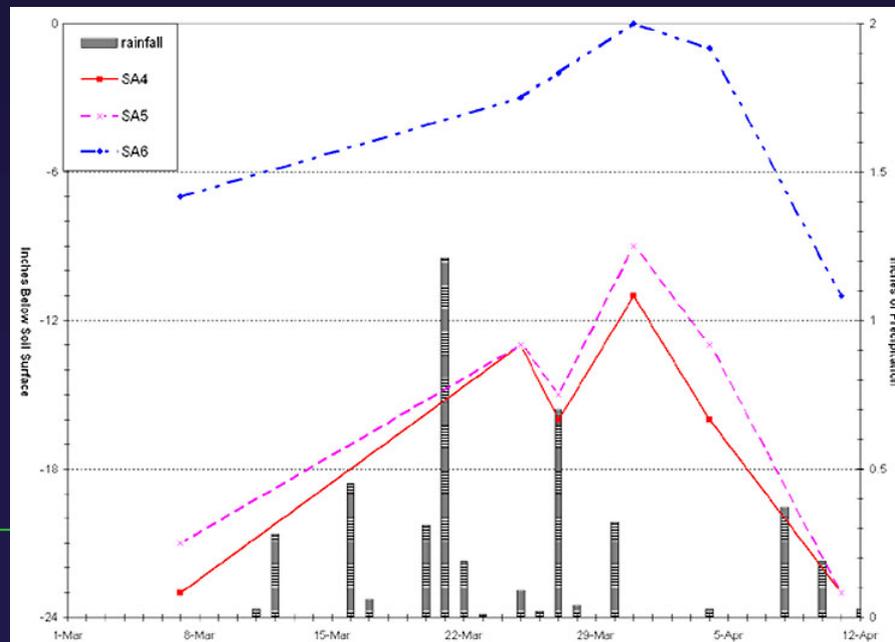
Select type of View:

Transaction	Date	Habitat Type	Permit #	Impact Acres	Credits	Total Credits Withdrawn	Balance of Released Credits	Balance of Maximum Potential Credits	Types of Credits	Impact HUC
Establishment	01/01/2003	PFO - Palustrine Forested - PFO1, PFO2, PFO4, PFO3/A	Simply	480	450	0	0	450	Ratio	
Release	01/01/2003	PFO - Palustrine Forested - PFO1, PFO2, PFO4, PFO3/A	Simply		59.4	0	59.4	450	Ratio	
Withdrawal	08/12/2003	PFO - Palustrine Forested - PFO1, PFO2, PFO4, PFO3/A	CWA-3-2001-0011	4.2	1.5	1.5	57.9	448.5	Ratio	02080208
Withdrawal	08/12/2003	PFO - Palustrine Forested - PFO1, PFO2, PFO4, PFO3/A	CWA-3-2001-0012	3	1.5	3	56.4	447	Ratio	02080208
Withdrawal	08/19/2003	PFO - Palustrine Forested - PFO1, PFO2, PFO4, PFO3/A	98-05773	0.275	0.55	3.55	55.85	446.45	Ratio	03010205
Withdrawal	01/28/2004	PFO - Palustrine Forested - PFO1, PFO2, PFO4, PFO3/A	02-0133	1.94	3.88	7.43	51.97	442.57	Ratio	03010205
Withdrawal	06/14/2004	PFO - Palustrine Forested - PFO1, PFO2, PFO4, PFO3/A	EPA Docket CWA-03-2004-0224DW	8.14	16.28	23.71	35.69	426.29	Ratio	02080208
Withdrawal	06/17/2004	PFO - Palustrine Forested - PFO1, PFO2, PFO4, PFO3/A	D4-V0395 (formerly 03-R2184)	0.12	0.24	23.95	35.45	426.05	Ratio	03010205
Withdrawal	11/22/2004	PFO - Palustrine Forested - PFO1, PFO2, PFO4, PFO3/A	EPA Docket CWA-3-2001-0022	0	2.5	26.45	32.95	423.55	Ratio	02080208
Withdrawal	04/08/2005	PFO - Palustrine Forested - PFO1, PFO2, PFO4, PFO3/A	04-R3293	4.1	12.3	38.75	20.65	411.25	Ratio	03010205
Withdrawal	05/17/2005	PFO - Palustrine Forested - PFO1, PFO2, PFO4, PFO3/A	WP4-04-0395	0.04	0.08	38.83	20.57	411.17	Ratio	03010205



Monitoring & 3rd Party Mitigation

- Determine level of success/compliance
- Determine need for remedial actions
- Early indication of potential problems
- Provide data to evaluate credit releases



Options for 3rd Party Mitigation Non-Compliance

- Suspend/delay credit releases
- Notice of non compliance
- Supplemental measures
- Suspend bank/ILF operations
- Permit suspension/revocation
- Mobilize financial assurances
- Terminate instrument



Site Protection

- Bank sites – mechanism finalized *before credits released*
- ILF sites – mechanism finalized *before advance credits become released credits*



Bank Closure

- Performance standards met
- Available credits debited
- Monitoring completed
- Long-term steward identified
- Long-term management funds
- Future management requirements understood by steward, sponsor & IRT



Long-Term Management

- Mechanism & responsible party
- Change in sponsors
- Transfer of bank
- New long-term steward
- Financial arrangements
- Water rights



Modification of 3rd Party Instruments:

- Modification including:
 - Umbrella bank sites
 - In-lieu fee project sites
 - Bank site expansion
 - New credit types
- Streamlined process
 - Changes based on adaptive management
 - Credit releases
 - Changes in credit release schedules
 - Changes DE determines are not significant



Third-Party Transition

- Mitigation Banks
 - Banks approved by **July 9, 2008** are grandfathered
 - Modification of instrument triggers compliance with regs
- In-lieu Fee mitigation
 - ILFs approved by **July 9, 2008**: 2-yr transition period
 - Additional 3 years possible if “*good cause*”



Questions?

