



Public Notice

**US Army Corps
of Engineers**

Huntington District
Buffalo District
Pittsburgh District

**SPECIAL NOTICE: Guidelines for Wetland Mitigation Banking and
In-Lieu Fee Programs in Ohio, Version 2.0**

Issuance Date:

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June 12, 2019

July 12, 2019

Please address any inquiries to:

U.S. Army Corps of Engineers, Huntington District

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**The Ohio Interagency Review Team Requests Comments on the Draft Guidelines for
Wetland Mitigation Banking and In-lieu Fee Programs in Ohio, Version 2.0 for
Application within the
State of Ohio in the United States Army Corps of Engineers'
Huntington, Buffalo, and Pittsburgh Districts**

JOINT PUBLIC NOTICE: This joint public notice is distributed on behalf of the Ohio Interagency Review Team (IRT), which consists of the following federal and state resource agencies: U.S. Army Corps of Engineers (Corps) Huntington, Buffalo, and Pittsburgh Districts, U.S. Environmental Protection Agency (USEPA), U.S. Fish and Wildlife Service, U.S. Department of Agriculture's Natural Resource Conservation Service, Ohio Environmental Protection Agency, and the Ohio Department of Natural Resources.

AUTHORITY: The guidelines described below were drafted by the Ohio IRT in accordance with the mitigation procedures derived from the Corps and USEPA final rule on Compensatory Mitigation for Losses of Aquatic Resources (Mitigation Rule), published April 10, 2008 in the Federal Register (Vol. 73, No. 70). The federal regulations associated with this final rule include 33 CFR 325 and 33 CFR 332 (federal regulation for the Corps) and 40 CFR 230 (federal regulation for the USEPA). The mitigation rule became effective June 9, 2008 and may be referenced in its entirety at:

<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/FederalRegulation.aspx>

PURPOSE: The purpose of this public notice is to solicit comments on the attached draft document titled "Guidelines for Wetland Mitigation Banking and In-lieu Fee Programs in Ohio, Version 2.0," (Guidelines). The Guidelines provide those interested in wetland mitigation banking and in-lieu fee wetland mitigation with statewide recommendations developed by the Ohio IRT. The Guidelines have been developed to increase the likelihood for ecological success and sustainability of aquatic resources developed by mitigation banks and in-lieu fee programs. In addition, applicable standards and criteria of the Guidelines should be applied equivalently to all forms of compensatory mitigation, including permittee responsible mitigation sites.

For all forms of compensatory mitigation, the Ohio IRT encourages applying the Guidelines for ecological success, consistency, and predictability. These Guidelines do not alter or replace any current regulations or regulatory requirements. They do not alter in any way the mitigation sequence specified in the 2008 Mitigation Rule (33 CFR 332) or in the Clean Water Act Section 404(b)(1) Guidelines (40 CFR 230). The Corps does not consider compensatory mitigation until adverse effects to waters of the United States have been first avoided and minimized to the extent practicable.

The Guidelines may be updated in light of public comments, supporting scientific information, and/or technical expertise. A final version of the Guidelines will be released after the public notice comments have been considered, addressed, and any necessary revisions have been incorporated. In addition, Regulatory Guidance Letter (RGL) 19-01 was released on February 22, 2019. The purpose of the RGL is twofold: first, to provide guidance on credit release schedules for mitigation banks and second, to use consistent criteria to establish service areas for both mitigation banks and in-lieu fee programs. The Guidelines will be updated to reflect RGL 19-01 once further guidance is provided from a National standpoint.

During development of the Guidelines, the Ohio IRT considered numerous alternatives and approaches. We welcome comments on the following options:

- On a case-by-case basis, the IRT may determine that it is appropriate to reduce the amount of credit generated by a wetland that is located within 100 feet of the mitigation site perimeter based upon an assessment of potential adverse effects reasonably expected to result from adjacent land uses and conditions. In such cases of reduced wetland crediting, the IRT has considered relaxing the associated performance standards due to the expectation that such external forces would hinder attainment of final performance standards. Specifically, the Ohio IRT requests feedback on eliminating the VIBI-FQ performance standard in these scenarios while maintaining woody stem count and invasive species standards.
- Additionally, the Ohio IRT has considered the potential cumulative effects of non-restoration mitigation activities (e.g. wetland preservation and upland mitigation activities). We are committed to adhering to the national policy of "no net loss" and to ensuring that compensatory mitigation adequately offsets the loss of aquatic resource functions and services. Accordingly, we are requesting comments regarding the establishment of a cap on the amount of non-restoration mitigation activities that may be generated by either a given mitigation site or within an established service area.
- Lastly, the Ohio IRT is considering options for crediting unvegetated open water resources. Unvegetated open water resources often do not meet the wetland definition set forth in the 1987 Corps of Engineers Wetlands Delineation Manual. The ecological value of this non-wetland habitat is acknowledged however, questions have arisen whether these aquatic resources should be credited the same as wetland resources or if they should more appropriately be credited similarly to buffers. Unvegetated open water resources often do not provide the same functions and services as wetland resources however, they do provide supporting and complimentary functions and services to wetland resources. Similar to bullet above, the Ohio IRT is considering the establishment of a cap on the amount of unvegetated open water than may be credited on a given mitigation site (e.g. unvegetated open water may comprise no more than 10% of the acreage of wetland within a mitigation site).

REQUEST FOR COMMENTS AND ADDITIONAL INFORMATION: We are seeking public input on the Guidelines. Persons wishing to comment on issues pertaining to the Guidelines should submit written comments setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. All comments must reach this office on or before the close of the comment period listed above. Comments or questions pertaining to the Guidelines should be directed to the attention of Mr. Cory Wilson, who can be contacted at the above address or by calling (330) 365-4271. If responding by email please direct comments to cory.l.wilson@usace.army.mil. All written comments will be made part of the administrative record which is available to the public under the Freedom of Information Act.

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Attachment A:

Guidelines for Wetland Mitigation Banking and In-Lieu Fee Programs in Ohio, Version 2.0

Huntington District Website:

<https://www.lrh.usace.army.mil/Missions/Regulatory/Public-Notices/>

Buffalo District Website:

<https://www.lrb.usace.army.mil/Missions/Regulatory/Public-Notices/>

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