


SUBJECT: TO INFORM THE ASSEMBLY OF OTHER COUNTIES/BOROUGHES WITHIN THE UNITED STATES THAT MANAGE COMPENSATORY WETLAND MITIGATION WITHIN THEIR BOUNDARIES.




AGENDA OF: October 30, 2018

ASSEMBLY ACTION:

presented to the Assembly
10.30.18 

MANAGER RECOMMENDATION: For Information Only.

APPROVED  **BY JOHN MOOSEY, BOROUGH MANAGER:** 

Route To:	Department/Individual	Initials	Remarks
	Originator		
	Community Development Director	EP	
	Finance Director		
	Borough Attorney	Jay N.S.	
	Borough Clerk	JAM	10/22/18 

ATTACHMENT (S): Fiscal Note: YES _____ NO X _____
Examples Requested (29 pp)

SUMMARY STATEMENT: At the June 19, 2018, Matanuska-Susitna Borough Assembly meeting the Borough Mayor requested staff to provide examples of local government agencies that require compensatory mitigation for wetland impacts within their respective boroughs and counties.

Examples were taken from three different borough/county websites and are provided herein to include excerpts from the individual programs and their website links. Additionally, included are guidelines from the borough's wetland mitigation bank partner Su-Knik Wetland Mitigation Bank (Su-Knik) that speaks to how a mitigation program might work within the Matanuska-Susitna Borough.

The Assembly decided to enter into an agreement with Su-Knik to create a Wetland Preservation Bank in partnership with the Borough. Approximately 12,000 acres were classified as wetland bank lands

to be used by the Bank to generate credits to offset compensatory mitigation requirements relating to 404 permits. The process took six years weaving through the regulatory process; and in 2009 the U.S. Army Corp of Engineers (Corps) certified the Bank which allowed the sale of credits.

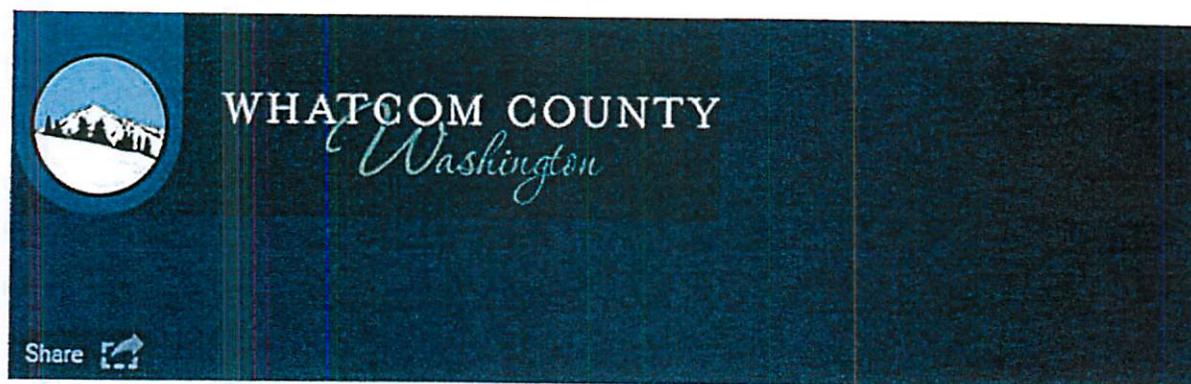
The issue at hand is the borough's bank has not sold any credits since 2014 largely due to U.S. Army Corps of Engineers change of policy regarding requirements for compensatory mitigation, wherein the Corps methodology for determining compensatory mitigation now results in little or no compensatory mitigation being required. Staff believes this lack of requirement has an adverse impact on fish, wildlife, and wetlands within the borough boundary. The question the borough assembly must contemplate is whether it is in the borough's best interest to create a new policy and program as a supplement to the Corps requirements in order to address protection of our resources.

With direction from the borough assembly, staff will continue to bring information and policies forward for review and consideration of a new program to preserve the integrity of our watershed resources.

Whatcom County, Washington

WCC16.16.600

<http://whatcomcounty.us/748/Wetlands>





Wetlands

Critical Areas Ordinance

HANDOUT D5

What is a wetland?

Wetlands are areas that, under normal circumstances, are inundated or saturated by surface or groundwater frequently enough and long enough to support vegetation that is adapted for life in saturated soil conditions. Wetlands generally include swamps (forested), marshes (non-forested), bogs (peat) and other similar areas, and may be either freshwater or estuarine systems.

Wetlands can be identified by the presence of all three of the following characteristics:

- **Hydric soils** – soils that formed under conditions of saturation, flooding, or ponding that were long enough to develop anaerobic (oxygen lacking) conditions.
- **Wetland hydrology** – standing water and/or soil saturation at the surface at least part of the year.
- **Hydrophytic vegetation** – predominant water-tolerant or water-dependent plants.

Why are wetlands important?

Wetlands perform a variety of beneficial functions that are important to the environmental and economic well being of Whatcom County, including:

- Reduction of flooding and erosion by storing storm and flood waters.
- Improvement of water quality by filtering and retaining sediments, nutrients and contaminants.

- Maintenance of stream flows during low flow periods by slowly releasing water stored after floods and wet seasons.
- Groundwater recharge and discharge.
- Stabilizing stream banks and shorelines areas.
- Habitat diversity for fish and wildlife.
- Opportunities for passive recreation, education, scientific study, and aesthetic appreciation.

Why are wetlands regulated?

Wetlands are regulated under the Whatcom County Critical Areas Ordinance (WCC, Chapter 16.16 – Article 6) for the general purposes of protecting and maintaining the beneficial functions and values provided by many freshwater and estuarine wetlands throughout Whatcom County.

Does my property contain a wetland?

To help you determine if your property may contain a wetland, you can contact Whatcom County Planning and Development Services (PDS) - Land Use Division. In many cases, a qualified wetland specialist should visit your property to do a site-specific investigation of soils, water, and vegetation conditions to determine the presence, type, extent, and boundaries of any wetland(s). This process is referred to as wetland delineation.

*Note: PDS can provide you with a list of qualified wetland consultants.

THE PLANNING AND DEVELOPMENT SERVICES HANDOUT SERIES

Whatcom County Planning & Development Services
5280 Northwest Drive, Bellingham, WA 98226
Phone (360) 676-6907 ▪ Fax (360) 738-2525 ▪ Inspections (360) 738-2520

Updated: 2/13/2007
IM 18-159

Non-Regulated Wetlands

Some wetland areas may not be regulated by the County. This will depend on certain factors including, but not limited to, dates of manipulation or creation, wetland category, and size of wetland. Special studies are usually required to determine if a wetland area is not regulated.

Protective Buffers

Designation and establishment of protective buffers are intended to protect and minimize impacts to wetlands by providing separation between wetlands and development activities.

- All regulated wetlands are to be protected by a standard vegetated buffer that is based on:
 - **Overall quality of the wetland** (i.e., Category I, Category II, Category III, and Category IV);
 - **Quality of habitat provided by the wetland** (high, moderate, and low); and
 - **Intensity of proposed land use** (high, moderate, and low).
- In general, protective buffers may range from 25 feet for a Category IV wetland with low habitat quality and low intensity land use up to 300 feet for a Category I wetland with high habitat quality and high intensity land use.
- Wetland category and habitat value are to be determined in accordance with the 2004 *Washington State Wetland Rating System for Western Washington*.

Under certain conditions, the County may allow modification of standard buffer widths by granting agreements for wetland buffer averaging or buffer reductions. The County may also require larger buffer widths when necessary to protect wetland functions and values.

What is the review process for my project?

Review and approval for a proposed development within a regulated wetland or buffer may be initiated through any project permit or land use application in Whatcom County. The County will use the following review procedure:

- The County will determine if the proposed activity is located within a wetland or its buffer through map evaluation, site inspection and/or other appropriate means.
- A Critical Areas Assessment Report is required when any part of a proposed project is within, abutting or may adversely affect a regulated wetland or buffer. An assessment report would include the results of a wetland delineation, a regulatory compliance analysis, an impact assessment, identification of alternatives, and/or a compensatory mitigation plan.
- The recommendations and conclusions of an approved assessment report will be used to assist the County in making a final decision regarding wetland boundaries and appropriate protective and/or mitigation measures.

Reasonable Use Allowance and Variances

Permit applicants who are unable to comply with the specific standards of the CAO may seek approval pursuant to "reasonable use" or "variance" standards and procedures. To qualify, a proposal must meet several criteria including, but not limited to, demonstration that there is no feasible alternative, adverse impacts will be avoided to the maximum extent possible, unavoidable impacts will be mitigated, etc. Because proposals seeking approval under these provisions will require a thorough review, County Natural Resource

Planners are available to help you determine if your project qualifies for a reasonable use allowance or a variance.

Mitigation

Proposed activities that will adversely affect wetlands and/or wetland buffers are required to mitigate impacts in the following prioritized order:

- Avoid the adverse impact altogether.
- Minimize adverse impacts by limiting the degree or magnitude of the action.
- Rectify the adverse impact by repairing, rehabilitating or restoring the affected environment.
- Reduce or eliminate the adverse impact over time by preservation and maintenance during the life of the action.
- Compensation by replacing, enhancing, or providing similar substitute resources or environments.

Mitigation may include a sequenced combination of the above measures.

Mitigation Plan

A compensatory mitigation plan must be developed when mitigation is necessary to address unavoidable adverse wetland and/or wetland buffer impacts. The purpose of a compensatory mitigation plan is to identify and outline installation and monitoring provisions for appropriate mitigation measures that will be implemented to address wetland/buffer functions and values impacted by the proposed development.

Wetland Protection

Protecting wetlands requires public education, involvement, and cooperation. Depending on the specific circumstances of your project, the County may require that the wetlands and

buffers on your property be identified with Native Growth Protection Easement (NPGE) signs, markers or protective fencing, and/or a notice on the property title to ensure that these areas are fully protected.

If your property contains a wetland, there are ways you can protect it. Avoid dumping, draining, or filling near your wetland. Even yard waste can degrade a wetland's functions and values. Learn more about wetland preservation and enhancement by contacting Whatcom County PDS - Land Use Division or calling the Washington State Department of Ecology at (360) 407-6000.

Fees

Please refer to the current Whatcom County Unified Fee Schedule.

Information

Due to the administrative complexity of these regulations, it is best to visit with a Natural Resource Planner to answer any additional questions.

Planning and Development Services
5280 Northwest Drive
Bellingham, Washington 98226 USA
E-mail: pds@co.whatcom.wa.us

Staff Contact: Natural Resources Planner
Phone: (360) 676-6907

Stearns County, Minnesota

<https://co.stearns.mn.us/Environment/WaterResources/WetlandManagement/WetlandRegulations>



Permit Application Form

[Follow Link to download the Joint Application Form for Activities Affecting Water Resources in Minnesota](#)

Wetland Regulations

In 1991 the MN State Legislature passed the Minnesota [Wetland Conservation Act](#). The purpose of the act is to achieve no net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands. [View some brochures that describe the provisions of the Wetland Conservation Act.](#)

Stearns County administers the MN Wetland Conservation Act and is the wetland permitting agency for all of Stearns County, with the exception of the cities of Roscoe and Sartell.

[\(Download "Joint Application Form for Activities Affecting Water Resources in Minnesota"\)](#)

The Wetland Conservation Act requires that anyone proposing to impact a wetland by draining, filling, or excavating must attempt to:

- avoid the impact
- minimize the impact
- replace any impacted area with another wetland of at least equal function and value.

Usually when a wetland is drained, filled, or excavated, Stearns County must assure that the impact is properly replaced by other wetland. There are exceptions, however, and it is best to contact the [Stearns County Environmental Services Department](#) before you do the work.

Some of the more common wetland impacting activities are:

- digging a pond
- installing drain tile
- cleaning sediment from or modifying a ditch
- building or improving a road

For activities involving installing drain tile, cleaning or modifying a ditch, and building or improving a road, please contact the [Stearns County Environmental Services Department](#) with the following information:

- the location of where the activity will take place
- what drainage is there now
- if tiling, will it be perforated or non-perforated
- what depth with the activity be at (tiling and ditch cleaning)
- width and length of road and the area of the side slopes
- cropping history of the area

For digging a pond it depends on what the area is like:

- If the area is upland, then the Wetland Conservation Act doesn't have jurisdiction
- If the area is wetland and is type 1, 2, 6, or 7, then excavation is allowed as long as the depth of the pond doesn't go deeper than 6.6 feet and that the wetland spoils are deposited somewhere outside of wetland
- If the area is a type 3, 4, or 5 wetland, then an application to replace the impacted area with other wetland is usually required.

Once it has been determined that a wetland exists on a property, it may be necessary to define specific boundaries of the wetland. Wetland consultants do wetland delineations – they assess the soil, the hydrology and the plants of an area and map which areas are wetland. Defining the "line" between upland and wetland is called wetland delineation. This process requires technical knowledge of soils, vegetation and hydrology. You should contact a wetland consultant if you need an exact location of the wetland boundary. People also hire a wetland consultant if they want to impact wetland and must submit a Wetland Replacement Application or if they want to establish a Wetland Bank.

[View a Wetland Consultant List](#)

For specific and accurate information regarding a particular property or location, concerning wetland types, rules, regulations and other general questions concerning wetlands, please contact the Stearns County Environmental Service Department by [phone](#) or [email](#).

Joint Application Form for Activities Affecting Water Resources in Minnesota

This joint application form is the accepted means for initiating review of proposals that may affect a water resource (wetland, tributary, lake, etc.) in the State of Minnesota under state and federal regulatory programs. Applicants for Minnesota Department of Natural Resources (DNR) Public Waters permits **MUST** use the MPARS online permitting system for submitting applications to the DNR. Applicants can use the information entered into MPARS to substitute for completing parts of this joint application form (see the paragraph on MPARS at the end of the joint application form instructions for additional information). This form is only applicable to the water resource aspects of proposed projects under state and federal regulatory programs; other local applications and approvals may be required. Depending on the nature of the project and the location and type of water resources impacted, multiple authorizations may be required as different regulatory programs have different types of jurisdiction over different types of resources.

Regulatory Review Structure

Federal

The St. Paul District of the U.S. Army Corps of Engineers (Corps) is the federal agency that regulates discharges of dredged or fill material into waters of the United States (wetlands, tributaries, lakes, etc.) under Section 404 of the Clean Water Act (CWA) and regulates work in navigable waters under Section 10 of the Rivers and Harbors Act. Applications are assigned to Corps project managers who are responsible for implementing the Corps regulatory program within a particular geographic area.

State

There are three state regulatory programs that regulate activities affecting water resources. The Wetland Conservation Act (WCA) regulates most activities affecting wetlands. It is administered by local government units (LGUs) which can be counties, townships, cities, watershed districts, watershed management organizations or state agencies (on state-owned land). The Minnesota DNR Division of Ecological and Water Resources issues permits for work in specially-designated public waters via the Public Waters Work Permit Program (DNR Public Waters Permits). The Minnesota Pollution Control Agency (MPCA) under Section 401 of the Clean Water Act certifies that discharges of dredged or fill material authorized by a federal permit or license comply with state water quality standards. One or more of these regulatory programs may be applicable to any one project.

Required Information

Prior to submitting an application, applicants are **strongly encouraged** to seek input from the Corps Project Manager and LGU staff to identify regulatory issues and required application materials for their proposed project. Project proponents can request a pre-application consultation with the Corps and LGU to discuss their proposed project by providing the information required in Sections 1 through 5 of this joint application form to facilitate a meaningful discussion about their project. Many LGUs provide a venue (such as regularly scheduled technical evaluation panel meetings) for potential applicants to discuss their projects with multiple agencies prior to submitting an application. Contact information is provided below.

The following bullets outline the information generally required for several common types of determinations/authorizations.

- For delineation approvals and/or jurisdictional determinations, submit Parts 1, 2 and 5, and Attachment A.
- For activities involving CWA/WCA exemptions, WCA no-loss determinations, and activities not requiring mitigation, submit Parts 1 through 5, and Attachment B.
- For activities requiring compensatory mitigation/replacement plan, submit Parts 1 thru 5, and Attachments C and D.
- For local road authority activities that qualify for the state's local road wetland replacement program, submit Parts 1 through 5, and Attachments C, D (if applicable), and E to both the Corps and the LGU.

Submission Instructions

Send the completed joint application form and all required attachments to:

U.S Army Corps of Engineers. Applications may be sent directly to the appropriate Corps Office. For a current listing of areas of responsibilities and contact information, visit the St. Paul District's website at:

<http://www.mvp.usace.army.mil/Missions/Regulatory.aspx> and select "Minnesota" from the contact Information box.

Alternatively, applications may be sent directly to the St. Paul District Headquarters and the Corps will forward them to the appropriate field office.

Section 401 Water Quality Certification: Applicants do not need to submit the joint application form to the MPCA unless specifically requested. The MPCA will request a copy of the completed joint application form directly from an applicant when they determine an individual 401 water quality certification is required for a proposed project.

Wetland Conservation Act Local Government Unit: Send to the appropriate Local Government Unit. If necessary, contact your county Soil and Water Conservation District (SWCD) office or visit the Board of Water and Soil Resources (BWSR) web site (www.bwsr.state.mn.us) to determine the appropriate LGU.

DNR Public Waters Permitting: In 2014 the DNR will begin using the Minnesota DNR Permitting and Reporting System (MPARS) for submission of Public Waters permit applications (<https://webapps11.dnr.state.mn.us/mpars/public/authentication/login>).

Applicants for Public Waters permits **MUST** use the MPARS online permitting system for submitting applications to the DNR. To avoid duplication and to streamline the application process among the various resource agencies, applicants can use the information entered into MPARS to substitute for completing parts of this joint application form. The MPARS print/save function will provide the applicant with a copy of the Public Waters permit application which, at a minimum, will satisfy Parts one and two of this joint application. For certain types of activities, the MPARS application may also provide all of the necessary information required under Parts three and four of the joint application. However, it is the responsibility of the Applicant to make sure that the joint application contains all of the required information, including identification of all aquatic resources impacted by the project (see Part four of the joint application). After confirming that the MPARS application contains all of the required information in Parts one and two the Applicant may attach a copy to the joint application and fill in any missing information in the remainder of the joint application.

PART ONE: Applicant Information

If applicant is an entity (company, government entity, partnership, etc.), an authorized contact person must be identified. If the applicant is using an agent (consultant, lawyer, or other third party) and has authorized them to act on their behalf, the agent's contact information must also be provided.

Applicant/Landowner Name:

Mailing Address:

Phone:

E-mail Address:

Authorized Contact (do not complete if same as above):

Mailing Address:

Phone:

E-mail Address:

Agent Name:

Mailing Address:

Phone:

E-mail Address:

PART TWO: Site Location Information

County:

City/Township:

Parcel ID and/or Address:

Legal Description (Section, Township, Range):

Lat/Long (decimal degrees):

Attach a map showing the location of the site in relation to local streets, roads, highways.

Approximate size of site (acres) or if a linear project, length (feet):

If you know that your proposal will require an individual Permit from the U.S. Army Corps of Engineers, you must provide the names and addresses of all property owners adjacent to the project site. This information may be provided by attaching a list to your application or by using block 25 of the Application for Department of the Army permit which can be obtained at:

http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RegulatoryDocs/engform_4345_2012oct.pdf

PART THREE: General Project/Site Information

If this application is related to a delineation approval, exemption determination, jurisdictional determination, or other correspondence submitted *prior to* this application then describe that here and provide the Corps of Engineers project number.

Describe the project that is being proposed, the project purpose and need, and schedule for implementation and completion. The project description must fully describe the nature and scope of the proposed activity including a description of all project elements that effect aquatic resources (wetland, lake, tributary, etc.) and must also include plans and cross section or profile drawings showing the location, character, and dimensions of all proposed activities and aquatic resource impacts.

Project Name and/or Number:

PART FOUR: Aquatic Resource Impact¹ Summary

If your proposed project involves a direct or indirect impact to an aquatic resource (wetland, lake, tributary, etc.) identify each impact in the table below. Include all anticipated impacts, including those expected to be temporary. Attach an overhead view map, aerial photo, and/or drawing showing all of the aquatic resources in the project area and the location(s) of the proposed impacts. Label each aquatic resource on the map with a reference number or letter and identify the impacts in the following table.

Aquatic Resource ID (as noted on overhead view)	Aquatic Resource Type (wetland, lake, tributary etc.)	Type of Impact (fill, excavate, drain, or remove vegetation)	Duration of Impact Permanent (P) or Temporary (T) ¹	Size of Impact ²	Overall Size of Aquatic Resource ³	Existing Plant Community Type(s) in Impact Area ⁴	County, Major Watershed #, and Bank Service Area # of Impact Area ⁵

¹If impacts are temporary; enter the duration of the impacts in days next to the "T". For example, a project with a temporary access fill that would be removed after 220 days would be entered "T (220)".

²Impacts less than 0.01 acre should be reported in square feet. Impacts 0.01 acre or greater should be reported as acres and rounded to the nearest 0.01 acre. Tributary impacts must be reported in linear feet of impact and an area of impact by indicating first the linear feet of impact along the flowline of the stream followed by the area impact in parentheses). For example, a project that impacts 50 feet of a stream that is 6 feet wide would be reported as 50 ft (300 square feet).

³This is generally only applicable if you are applying for a de minimis exemption under MN Rules 8420.0420 Subp. 8, otherwise enter "N/A".

⁴Use *Wetland Plants and Plant Community Types of Minnesota and Wisconsin* 3rd Ed. as modified in MN Rules 8420.0405 Subp. 2.

⁵Refer to Major Watershed and Bank Service Area maps in MN Rules 8420.0522 Subp. 7.

If any of the above identified impacts have already occurred, identify which impacts they are and the circumstances associated with each:

PART FIVE: Applicant Signature

☐ Check here if you are requesting a pre-application consultation with the Corps and LGU based on the information you have provided. Regulatory entities will not initiate a formal application review if this box is checked.

By signature below, I attest that the information in this application is complete and accurate. I further attest that I possess the authority to undertake the work described herein.

Signature: _____ Date: _____

I hereby authorize _____ to act on my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this application.

¹ The term "impact" as used in this joint application form is a generic term used for disclosure purposes to identify activities that may require approval from one or more regulatory agencies. For purposes of this form it is not meant to indicate whether or not those activities may require mitigation/replacement.

Attachment A

Request for Delineation Review, Wetland Type Determination, or Jurisdictional Determination

By submission of the enclosed wetland delineation report, I am requesting that the U.S. Army Corps of Engineers, St. Paul District (Corps) and/or the Wetland Conservation Act Local Government Unit (LGU) provide me with the following (check all that apply):

☐ **Wetland Type Confirmation**

☐ **Delineation Concurrence.** Concurrence with a delineation is a written notification from the Corps and a decision from the LGU concurring, not concurring, or commenting on the boundaries of the aquatic resources delineated on the property. Delineation concurrences are generally valid for five years unless site conditions change. Under this request alone, the Corps will not address the jurisdictional status of the aquatic resources on the property, only the boundaries of the resources within the review area (including wetlands, tributaries, lakes, etc.).

☐ **Preliminary Jurisdictional Determination.** A preliminary jurisdictional determination (PJD) is a non-binding written indication from the Corps that waters, including wetlands, identified on a parcel may be waters of the United States. For purposes of computation of impacts and compensatory mitigation requirements, a permit decision made on the basis of a PJD will treat all waters and wetlands in the review area as if they are jurisdictional waters of the U.S. PJDs are advisory in nature and may not be appealed.

☐ **Approved Jurisdictional Determination.** An approved jurisdictional determination (AJD) is an official Corps determination that jurisdictional waters of the United States are either present or absent on the property. AJDs can generally be relied upon by the affected party for five years. An AJD may be appealed through the Corps administrative appeal process.

In order for the Corps and LGU to process your request, the wetland delineation must be prepared in accordance with the 1987 Corps of Engineers Wetland Delineation Manual, any approved Regional Supplements to the 1987 Manual, and the *Guidelines for Submitting Wetland Delineations in Minnesota* (2013).

<http://www.mvp.usace.army.mil/Missions/Regulatory/DelineationJDGuidance.aspx>

Attachment B

Supporting Information for Applications Involving Exemptions, No Loss Determinations, and Activities Not Requiring Mitigation

Complete this part *if* you maintain that the identified aquatic resource impacts in Part Four do not require wetland replacement/compensatory mitigation OR *if* you are seeking verification that the proposed water resource impacts are either exempt from replacement or are not under CWA/WCA jurisdiction.

Identify the specific exemption or no-loss provision for which you believe your project or site qualifies:

Provide a detailed explanation of how your project or site qualifies for the above. Be specific and provide and refer to attachments and exhibits that support your contention. Applicants should refer to rules (e.g. WCA rules), guidance documents (e.g. BWSR guidance, Corps guidance letters/public notices), and permit conditions (e.g. Corps General Permit conditions) to determine the necessary information to support the application. Applicants are strongly encouraged to contact the WCA LGU and Corps Project Manager prior to submitting an application if they are unsure of what type of information to provide:

Attachment C

Avoidance and Minimization

Project Purpose, Need, and Requirements. Clearly state the purpose of your project and need for your project. Also include a description of any specific requirements of the project as they relate to project location, project footprint, water management, and any other applicable requirements. Attach an overhead plan sheet showing all relevant features of the project (buildings, roads, etc.), aquatic resource features (impact areas noted) and construction details (grading plans, storm water management plans, etc.), referencing these as necessary:

Avoidance. Both the CWA and the WCA require that impacts to aquatic resources be avoided if practicable alternatives exist. Clearly describe all on-site measures considered to avoid impacts to aquatic resources and discuss at least two project alternatives that avoid all impacts to aquatic resources on the site. These alternatives may include alternative site plans, alternate sites, and/or not doing the project. Alternatives should be feasible and prudent (see MN Rules 8420.0520 Subp. 2 C). Applicants are encouraged to attach drawings and plans to support their analysis:

Minimization. Both the CWA and the WCA require that all unavoidable impacts to aquatic resources be minimized to the greatest extent practicable. Discuss all features of the proposed project that have been modified to minimize the impacts to water resources (see MN Rules 8420.0520 Subp. 4):

Off-Site Alternatives. An off-site alternatives analysis is not required for all permit applications. If you know that your proposal will require an individual permit (standard permit or letter of permission) from the U.S. Army Corps of Engineers, you may be required to provide an off-site alternatives analysis. The alternatives analysis is not required for a complete application but must be provided during the review process in order for the Corps to complete the evaluation of your application and reach a final decision. Applicants with questions about when an off-site alternatives analysis is required should contact their Corps Project Manager.

Attachment D

Replacement/Compensatory Mitigation

Complete this part *if* your application involves wetland replacement/compensatory mitigation not associated with the local road wetland replacement program. Applicants should consult Corps mitigation guidelines and WCA rules for requirements.

Replacement/Compensatory Mitigation via Wetland Banking. Complete this section if you are proposing to use credits from an existing wetland bank (with an account number in the State wetland banking system) for all or part of your replacement/compensatory mitigation requirements.

Wetland Bank Account #	County	Major Watershed #	Bank Service Area #	Credit Type (if applicable)	Number of Credits

Applicants should attach documentation indicating that they have contacted the wetland bank account owner and reached at least a tentative agreement to utilize the identified credits for the project. This documentation could be a signed purchase agreement, signed application for withdrawal of credits or some other correspondence indicating an agreement between the applicant and the bank owner. *However, applicants are advised not to enter into a binding agreement to purchase credits until the mitigation plan is approved by the Corps and LGU.*

Project-Specific Replacement/Permittee Responsible Mitigation. Complete this section if you are proposing to pursue actions (restoration, creation, preservation, etc.) to generate wetland replacement/compensatory mitigation credits for this proposed project.

WCA Action Eligible for Credit ¹	Corps Mitigation Compensation Technique ²	Acres	Credit % Requested	Credits Anticipated ³	County	Major Watershed #	Bank Service Area #

¹Refer to the name and subpart number in MN Rule 8420.0526.

²Refer to the technique listed in *St. Paul District Policy for Wetland Compensatory Mitigation in Minnesota*.

³If WCA and Corps crediting differs, then enter both numbers and distinguish which is Corps and which is WCA.

Explain how each proposed action or technique will be completed (e.g. wetland hydrology will be restored by breaking the tile.....) and how the proposal meets the crediting criteria associated with it. Applicants should refer to the Corps mitigation policy language, WCA rule language, and all associated Corps and WCA guidance related to the action or technique:

Attach a site location map, soils map, recent aerial photograph, and any other maps to show the location and other relevant features of each wetland replacement/mitigation site. Discuss in detail existing vegetation, existing landscape features, land use (on and surrounding the site), existing soils, drainage systems (if present), and water sources and movement. Include a topographic map showing key features related to hydrology and water flow (inlets, outlets, ditches, pumps, etc.):

Project Name and/or Number:

Attach a map of the existing aquatic resources, associated delineation report, and any documentation of regulatory review or approval. Discuss as necessary:

For actions involving construction activities, attach construction plans and specifications with all relevant details. Discuss and provide documentation of a hydrologic and hydraulic analysis of the site to define existing conditions, predict project outcomes, identify specific project performance standards and avoid adverse offsite impacts. Plans and specifications should be prepared by a licensed engineer following standard engineering practices. Discuss anticipated construction sequence and timing:

For projects involving vegetation restoration, provide a vegetation establishment plan that includes information on site preparation, seed mixes and plant materials, seeding/planting plan (attach seeding/planting zone map), planting/seeding methods, vegetation maintenance, and an anticipated schedule of activities:

For projects involving construction or vegetation restoration, identify and discuss goals and specific outcomes that can be determined for credit allocation. Provide a proposed credit allocation table tied to outcomes:

Provide a five-year monitoring plan to address project outcomes and credit allocation:

Discuss and provide evidence of ownership or rights to conduct wetland replacement/mitigation on each site:

Quantify all proposed wetland credits and compare to wetland impacts to identify a proposed wetland replacement ratio. Discuss how this replacement ratio is consistent with Corps and WCA requirements:

By signature below, the applicant attests to the following (only required if application involves project-specific/permittee responsible replacement):

- All proposed replacement wetlands were not:
 - Previously restored or created under a prior approved replacement plan or permit
 - Drained or filled under an exemption during the previous 10 years
 - Restored with financial assistance from public conservation programs
 - Restored using private funds, other than landowner funds, unless the funds are paid back with interest to the individual or organization that funded the restoration and the individual or organization notifies the local government unit in writing that the restored wetland may be considered for replacement.
- The wetland will be replaced before or concurrent with the actual draining or filling of a wetland.
- An irrevocable bank letter of credit, performance bond, or other acceptable security will be provided to guarantee successful completion of the wetland replacement.
- Within 30 days of either receiving approval of this application or beginning work on the project, I will record the Declaration of Restrictions and Covenants on the deed for the property on which the replacement wetland(s) will be located and submit proof of such recording to the LGU and the Corps.

Applicant or Representative:

Title:

Signature: _____

Date:

Attachment E

Local Road Replacement Program Qualification

Complete this part *if* you are a local road authority (county highway department, city transportation department, etc.) seeking verification that your project (or a portion of your project) qualifies for the MN Local Government Road Wetland Replacement Program (LGRWRP). If portions of your project are not eligible for the LGRWRP, then Attachment D should be completed and attached to your application.

Discuss how your project is a repair, rehabilitation, reconstruction, or replacement of a currently serviceable road to meet state/federal design or safety standards/requirements. Applicants should identify the specific road deficiencies and how the project will rectify them. Attach supporting documents and information as applicable:

Provide a map, plan, and/or aerial photograph accurately depicting wetland boundaries within the project area. Attach associated delineation/determination report or otherwise explain the method(s) used to identify and delineate wetlands. Also attach and discuss any type of review or approval of wetland boundaries or other aspects of the project by a member or members of the local Technical Evaluation Panel (TEP) or Corps of Engineers:

In the table below, identify only the wetland impacts from Part 4 that the road authority has determined should qualify for the LGRWRP.

Wetland Impact ID (as noted on overhead view)	Type of Impact (fill, excavate, drain)	Size of Impact (square feet or acres to 0.01)	Existing Plant Community Type(s) in Impact Area ¹	County, Major Watershed #, and Bank Service Area # of Impact ²

¹Use *Wetland Plants and Plant Community Types of Minnesota and Wisconsin* 3rd Ed. as modified in MN Rules 8420.0405 Subp. 2.

²Refer to Major Watershed and Bank Service Area maps in MN Rules 8420.0522 Subp. 7.

Discuss the feasibility of providing onsite compensatory mitigation/replacement for important site-specific wetland functions:

Please note that under the MN Wetland Conservation Act, projects with less than 10,000 square feet of wetland impact are allowed to commence prior to submission of this notification so long as the notification is submitted within 30 days of the impact. The Clean Water Act has no such provision and requires that permits be obtained prior to any regulated discharges into water of the United States. To avoid potential unauthorized activities, road authorities must, at a minimum, provide a complete application to the Corps and receive a permit prior to commencing work.

By signature below, the road authority attests that they have followed the process in MN Rules 8420.0544 and have determined that the wetland impacts identified in Part 4 are eligible for the MN Local Government Road Wetland Replacement Program.

Road Authority Representative:

Title:

Signature: _____

Date:

Technical Evaluation Panel Concurrence:

Project Name and/or Number:

TEP member:

Representing:

Concur with road authority's determination of qualification for the local road wetland replacement program? ☐ Yes ☐ No

Signature: _____

Date:

TEP member:

Representing:

Concur with road authority's determination of qualification for the local road wetland replacement program? ☐ Yes ☐ No

Signature: _____

Date:

TEP member:

Representing:

Concur with road authority's determination of qualification for the local road wetland replacement program? ☐ Yes ☐ No

Signature: _____

Date:

TEP member:

Representing:

Concur with road authority's determination of qualification for the local road wetland replacement program? ☐ Yes ☐ No

Signature: _____

Date:

Upon approval and signature by the TEP, application must be sent to: **Wetland Bank Administration**
Minnesota Board of Water & Soil Resources
520 Lafayette Road North
Saint Paul, MN 55155

Lake County, Illinois

<https://lakecountyil.gov/2329/Wetlands>



Wetlands

Form	Description
Agricultural Wetlands	
Addendum to SMC Guidance on Agricultural Land Wetland Determinations (PDF)	Clarification of guidelines for agricultural land wetland determinations on development sites in Lake County. See also the March 20, 2012, SMC guidance.
Agricultural Wetland Determinations (FSA527.4) (PDF)	National Food Security Act Manual (NFSAM) methodology for determining the presence of wetlands on agricultural land.
Corps Revised Guidance for Agricultural Land Wetland Determinations (June 19, 2006) (PDF)	Clarification of guidelines for agricultural land wetland determinations on development sites in the Chicago Corps District.
McHenry-Lake SWCD FSA Slide Request Form for Agricultural Land Wetland Determinations (PDF)	A blank PDF of the form for requesting Farm Service Agency (FSA) farmed wetland compliance slides.
NRCS Wetland Mapping Conventions (PDF)	Narrative of accepted practices and procedures to assist wetland delineators with conducting off-site and on-site determinations on agricultural land. See also the guidance on Agricultural Wetland Determinations.
Updated SMC Guidance for Agricultural Wetland Determinations (March 20, 2012) (PDF)	A memo providing updated guidance from SMC for conducting agricultural land wetland determinations. This memo supersedes all previous guidance memoranda issued by SMC for agricultural land wetland determinations in Lake County, Illinois.
Certified Wetland Specialists	
CWS Application Form (2013) (PDF)	An application form for persons wishing to submit qualifications to SMC to become a Lake County, Illinois, Certified Wetland Specialist.
CWS Delineation Training Course Requirements and Providers (2009) (PDF)	A summary of the minimum requirements for SMC-approved wetland delineation training courses to qualify for the CWS program.
General	
Covenant Wetland and Wetland Buffer Restrictive Covenant by Plat (PDF)	Template language for establishing a restrictive covenant by plat of survey over wetland or wetland buffer areas outlining limitations, restrictions and uses.
General Permit 2 (PDF)	An application form to request authorization from Lake County SMC for minor wetland impacts (i.e., ≤ 0.1 acre of non-HQAR wetland impact or $\leq 1,000$ s.f. of impact to HQAR wetland) to Isolated Waters of Lake County (IWLC). To be completed and delivered to SMC at least 30 days prior to development activity. See also the General Permit 2 Memo (August 2010).
General Permit 2 Memo (August 11, 2010) (PDF)	A memo with highlights of General Permit 2, which covers development activities in areas under SMC's authority that will result in minor wetland impacts to Isolated Waters of Lake County.

[IWLC Exclusion Worksheet \(2015\) \(PDF\)](#)

A worksheet to help determine and document whether an Isolated Waters of Lake County (IWLC) is eligible for exclusion from WDO regulations.

[IWLC Exclusion Fillable Worksheet \(2015\) \(PDF\)](#)

A fillable worksheet to help determine and document whether an Isolated Waters of Lake County (IWLC) is eligible for exclusion from WDO regulations.

[IWLC Submittal Checklist \(2015\) \(PDF\)](#)

A form to assist both the permit applicant and the Lake County SMC reviewer with determining the items needed for a Wetland Submittal.

[National Plant List for Midwest Region \(2016\) \(PDF\)](#)

National Wetland Plant List ratings for Midwest species.

[Petition for IWLC Certification \(2015\) \(PDF\)](#)

A signatory form for communities wishing to petition Lake County SMC for the authority to review and issue permits involving isolated wetlands. The form also outlines the provisions and responsibilities associated with Isolated Wetland Certification.

[Preliminary Wetland Jurisdictional Determination and Boundary Verification Form \(2013\) \(PDF\)](#)
[Wetland Restoration Fund Fee Schedule \(2016\) \(PDF\)](#)

A fillable PDF form for requesting a preliminary wetland jurisdictional determination (PJD) and/or a wetland boundary verification (BV) from Lake County SMC. Alternately, you may use the fillable Word form. Fee schedule for in-lieu wetland mitigation within each of the four major watersheds in Lake County, Illinois, for use when wetland mitigation bank credits are not available for purchase.

U.S Army Corps of Engineers

[Corps of Engineers - Chicago District Map of Available Mitigation Banks \(March 2014\) \(PDF\)](#)

A map of wetland mitigation banks with credits available for purchase located in the Chicago District Corps of Engineers boundaries within Illinois.

SW KUK WETLAND MITIGATION BANK

Main Tenets:

1. Utilize existing 2008 Federal Rule on Compensatory Mitigation, the 2009 PAO Regulatory Guidance Letter, and the revised 2018 EPA/Corps MOA for Alaska.
2. No mitigation is required for impacts smaller than half an acre in size unless the impacts occur to difficult-to-replace resources or riparian wetlands adjacent to salmon bearing waters (case-by-case determination).
3. All information based on existing required Corps Section 404 Permit Process.
4. Limited MSB oversight required. Review permit submittal (again information taken from 404 permit) and follow flow chart (below).
5. It is the MSB decision (based on case-by-case determination) as to what impacts are required to be mitigated. Some examples may include:
 - a. no compensatory mitigation for impacts related to residential development for low functioning wetlands;
 - b. no compensatory mitigation for impacts smaller than one acre in size for non-residential impacts (see caveat above under item 2);
 - c. compensation ratios based on wetland functions and landscape position (e.g. lower ratios for lower functioning and common wetlands)

Permitting Flow Chart

1. Complete and submit and Borough Wetland Permit Application, in similar format to ENG form 4345 http://www.poa.usace.army.mil/Portals/34/docs/regulatory/engform_4345_2014dec.pdf
Package should include supporting documents as would accompany a 404 application:
 - a. Wetland Delineation and functional assessment
 - b. Mitigation Document (i.e. Mitigation Plan or Bank Use Plan)
2. Application is reviewed for completeness by Borough.
3. Borough will conduct a site review, if necessary (can request to accompany PAO if a site visit is deemed necessary by Corps).
4. Borough will send a Request for Additional Information, if needed.
5. Once the permit application is administratively and technically complete, Borough issues their permit (conditional use; construction; grading; etc. outlining the Borough's compensatory mitigation requirements).
6. Permit is valid for five (5) years (unless otherwise specified).

into consideration the nation's "no net loss" goal. See Table 1 for examples of projects that will require compensatory mitigation and may or may not require compensatory mitigation.

1. The proposed project does not require compensatory mitigation beyond avoidance and minimization:

- a. The applicant must document avoidance and minimization measures;
- b. The applicant must provide rationale as to why they are not proposing compensatory mitigation for their proposed project; and
- c. In the administrative record (i.e., memorandum for record (MFR), decision document, etc.), Borough permit reviewer must document acceptance of avoidance and minimization measures and rationale for not requiring compensatory mitigation (use existing Corps documentation if Borough agrees with Corps that no compensatory mitigation is required for impacts within Borough).

OR

2. The proposed project requires compensatory mitigation, but the applicant does not think so, nor proposes any:

- a. The applicant must document avoidance and minimization measures; and
- b. Items the Borough permit reviewer should discuss with the applicant during the review period:

Are there any opportunities for on-site compensatory mitigation? If so, is it ecologically preferable and practicable (e.g. will it be self-sustaining, low risk, address temporal losses, etc.).

Is the proposed project within a service area for an established bank or ILF Program? Are there compensatory mitigation opportunities within the impacting project's watershed/ecoregion, which might be applicable and/or of which the applicant is unaware?

c. Proceed to Section C.

OR

3. The proposed project is submitted with a compensatory mitigation plan**:

- a. The applicant must document avoidance and minimization measures;
- b. Review the plan for adequacy, as outlined in Section C;
- c. If inadequate, work with the applicant to get the plan refined until it is adequate; and
- d. Proceed to Section C.

***If using a mitigation bank, the applicant shall prepare a Bank Use Plan*

https://www.lummi-nsn.gov/userfiles/210_IRT%20Mitigation%20Bank%20Use%20Plan%20Guidance.pdf

Most language below is taken directly from the PAO 2009 Mitigation RGL. Additional information has been added to clarify or edited for specific compliance with the 2008 Federal Rule.

PREAMBLE: All development in wetlands and their buffers, whether on public or private property, shall comply with the requirements of Title 6: Environmental Protection.

<http://www.codepublishing.com/AK/MatanuskaSusitnaBorough/>

[There currently is no code in this Title, it was repealed in 1994. Suggest to model code after Pierce County, WA

<http://www.codepublishing.com/WA/PierceCounty/#!/PierceCounty18E/PierceCounty18E30.html#18E.30> and follow RGL 2009 assessment methods and mitigation ratios.] Procedures described below are consistent with the Memorandum of Agreement between the EPA and Corps (June 2018).

PROCEDURES: The following are flow chart procedures for evaluating project related aquatic resource impacts and compensatory mitigation proposals that accompany grading permit requests. *[All application materials (i.e. reports and mitigation plans) as part of a standard 404 permit application can be submitted for review to the Borough. This will save the applicant time and money by not having to duplicate documents. Would recommend recreating ENG FORM 4345 as a template for Borough's Wetland Permit Application.*

http://www.poa.usace.army.mil/Portals/34/docs/regulatory/engform_4345_2014dec.pdf

A. Receipt of Application

1. Review permit request (applies to all permit requests)

- a. The application does not contain any information pertaining to existing conditions, impacts, mitigation sequencing and compensation for impacts (incomplete application). Request this information from the applicant.

OR

- b. The application contains the required information including, wetland/aquatic resource delineation and functional assessment, impact analysis and compensatory mitigation plan documentation* of mitigation sequencing (avoidance, minimization, then -compensation). Proceed to Section B.

** The Borough per the Federal Rule requirements considers compensatory mitigation options in the following order: (1) purchase of credits from an approved mitigation bank; (2) purchase of credits from an approved in-lieu fee program; and (3) completion of a permittee-responsible mitigation project. The applicant must provide a case why options (1) and (2) are not feasible before considering option (3).*

B. Determination of Mitigation Requirements for all Permit Requests

Mitigation requirements are determined by following the Alaska District Regulatory Guidance Letter (RGL ID No. 09-01) (2009 RGL). It is critical to document the evaluation process, whether compensatory mitigation is required or not; by following the sequencing outlined in the regulations above and taking

C. Reviewing Compensatory Mitigation Plans and General Considerations

If compensatory mitigation is required beyond what the Corps is requiring, for Borough permits, the Borough may approve a conceptual or detailed compensatory mitigation plan, but a final mitigation plan (as described in Section D) must be approved before work commences.

1. Is mitigation proposed in-kind or out-of-kind? On-site or off-site? The administrative record needs to include ecological rationale for out-of-kind compensatory mitigation proposals (e.g. very rarely would a resource trade-off for a marine impact proposed to be compensated at a fresh-water site be acceptable but the opposite may be easily justified). If off-site, can all impacted functions be mitigated adequately at an off-site-location? If not, how is the applicant addressing water quality and quantity functions on-site?
2. What option has the applicant determined would be environmentally preferable and why (e.g. in-kind, out-of kind, temporal concerns, etc.)?
 - a. If mitigation bank credits - go to item (i) below (applicant completes Mitigation Bank Use Plan)
 - b. If ILF program credits - go to item (ii) below (applicant completes ILF Use Plan)
 - c. If permittee-responsible mitigation - go to item (iii) below
 - i. Mitigation bank credits
 - 1) The applicant must provide a rationale for using a mitigation bank (why the bank is an environmentally preferable compensation choice);
 - 2) Confirm that the impact occurs in the service area of the mitigation bank and that credits are available;
 - 3) Baseline information and determination of credits as described in D. 4. and D. 5. below; and
 - 4) In the administrative record (i.e., MFR, decision document, etc.), Borough Permit Reviewer must document acceptance of avoidance and minimization measures and rationale for compensatory mitigation requirements.
 - ii. In-lieu fee program credits
 - 1) The applicant must provide a rationale for using an in-lieu fee (why the in-lieu fee is an environmentally preferable compensation choice);
 - 2) Confirm that the impact occurs in the Service Area of the in-lieu fee sponsor's program;
 - 3) Baseline Information and Determination of Credits as described in D. 4. and D. 5. below; and

- 4) In administrative record (i.e., MFR, Decision Document, etc.), the **Borough Permit Reviewer** must document acceptance of avoidance and minimization measures and rationale for compensatory mitigation requirements.

iii. Permittee-responsible mitigation

- 1) Type of compensatory mitigation
 - a) Preservation only (go to Section E)
 - b) Restoration, establishment, enhancement (go to Section D)
 - c) Stream compensatory mitigation projects (go to Section D)
- 2) Was a functional assessment provided for the impacted area, and was it related to the proposed compensatory mitigation? See Appendix A (Wetland Functions Information and Tools)
- 3) Was the functional assessment an approved methodology or is it based upon best professional judgment? See item 4.
- 4) Does the functional assessment adequately describe the impacts to all aquatic resource/**wetland** functions - water quantity; water quality; habitat? Does the Borough agree with the conclusions of the assessment?
- 5) Overall, is the wetland being impacted of high, medium, or low functions and services (Category I - IV - see Appendix A)?
- 6) Has the applicant or consultant included **wetland** and upland buffer impacts?
- 7) Are there indirect and/or secondary adverse effects from the project?
- 8) The **Borough Permit Reviewer** must document findings and rationale of items 2-7 above to support their conclusions.

D. Final Mitigation Plan Requirements for Permittee-Responsible Mitigation (meeting Federal Rule requirements; 33 CFR 332.4(c)(2) through (c)(14))

1. Objectives:

- a. method of compensation (restoration, establishment, enhancement and/or preservation);
- b. description of resource types (i.e., U.S. Fish and Wildlife Service Cowardin Class - PFO, PSS, PEM, riverine, lacustrine, etc. and/or Hydrogeomorphic (HGM) Class: Depressional, Riverine, Slope, or Flats) provided by plan (see Appendix A);
- c. the amount of each resource type provided by plan; and
- d. does the compensation project address the needs of the watershed, ecoregion, or other geographic area of interest?

2. Site Selection:

- a. will the compensation project be self-sustaining;
- b. did the applicant consider on-site alternatives where practicable; and
- c. were watershed needs considered by applicant?

3. Site Protection Instrument:

- a. what legal arrangements and instrument is the applicant proposing to ensure long-term protection of the mitigation site:
 - i. Conservation Easement
 - ii. Restrictive Covenant/Deed Restriction - See examples in O:\RD\Private\Library\Mitigation

4. Baseline Information:

For applicants planning on securing credits from a mitigation bank, baseline information only needs to be submitted for the impact site, not the mitigation bank project site. Information should be documented in a Bank Use Plan, See B.3.

Baseline information includes the following for both the impact site and the mitigation project site (if applicable). The list may not be inclusive of other information that may be needed on a case-by-case basis.

- a. descriptions of historic and existing plant communities and hydrology (including any monitoring well data);
- b. soil conditions (including any soil boring data);
- c. a map showing the locations of the impact and mitigation site(s) or the geographic coordinates; and
- d. delineation of wetlands (in accordance with the 1987 wetland delineation manual and the 2007 Alaska Regional Supplement) for both the impact and mitigation project site

5. Determination of Credits (See Appendix B):

A description of the number of credits to be provided, including a brief explanation of the rationale for this determination. (See Section 332.3(f).)

- a. For permittee-responsible mitigation, this should include an explanation of how the compensatory mitigation project will provide the required compensation for unavoidable impacts to aquatic resources resulting from the permitted activity; and
- b. For permittees intending to secure credits from an approved mitigation bank or in-lieu fee program, it should include the number and resource type of credits to be secured and how these were determined.

Example - DO NOT USE MONETARY CONVERSIONS - that is between the bank sponsor and the applicant!!! Using Appendix B: If the impact is 5 acres of moderate functioning wetland (Category II or III)

and the applicant proposes preservation (Mitigation Bank) as their compensatory mitigation type, then according to the ratio table, the applicant would need to compensate at a 2: 1 ratio, which would translate to 10 credits (or acres) of preservation. The price for purchasing 10 credits from a bank sponsor will be determined by the sponsor, NOT by the Borough.

6. Mitigation Work Plan:

The applicant needs to include the following details (using all available information, but not limited to):

For Wetland Projects

- a. geographic boundaries of the project;
- b. construction methods, timing, and sequence;
- c. source(s) of water, including connections to existing waters and uplands;
- d. methods for establishing the desired plant community (including plant species, number of individuals and spacing - e.g. trees will be planted 10-foot on center);
- e. plans to control invasive plant species; proposed grading plan, including elevations and slopes of substrate;
- f. soil management; and
- g. erosion control measures

For Stream Projects - includes the above list, plus:

- h. planform geometry;
- i. channel form (e.g. typical channel cross-sections);
- j. watershed size;
- k. design discharge; and
- l. riparian area planting plan (including species, number of individuals, and spacing)

7. Maintenance Plan:

- a. description and schedule of maintenance requirements once initial construction is completed

8. Performance Standards (See Appendix C for examples):

- a. used to determine whether the project is achieving objectives - must be meaningful, measurable and achievable, as well as enforceable;
- b. must be objective and verifiable;
- c. may be based on variables or measures of functional capacity described in functional assessment methodologies, measurements of hydrology or other aquatic resource characteristics, and/or comparisons to reference aquatic resources of similar type and landscape position.

9. Monitoring Requirements:

- a. applicant should submit a description of parameters to be monitored in order to determine if the mitigation project is on track to meet performance standards and if adaptive management is needed - includes parameters to be monitored, the length of the monitoring period, party responsible for monitoring and submittal of reports, the frequency for submittal of reports; and
- b. content and detail is commensurate with scale and scope of mitigation project

10. Long-term Management Plan:

- a. how will mitigation project be managed to ensure long-term sustainability of the resource;
- b. party responsible for ownership and all long-term management of the mitigation project;
- c. long-term management responsibilities can be transferred to another entity, such as a public agency, non-governmental organization, or private land manager;
- d. should include description of long-term management needs, annual cost estimates for these needs, and funding mechanism that will be used to meet those needs;
- e. financing mechanisms include: non-wasting endowments, trusts, contractual arrangements with future responsible parties and other appropriate financial instruments; and
- f. public authority or government agency responsible for long-term management, must include plan for long-term financing of the mitigation site

11. Adaptive Management Plan:

- a. includes a strategy to address unforeseen changes in site conditions or other components of the mitigation project;
- b. must include party responsible for implementing adaptive management measures;
- c. adaptive management measures may include: site modification, design changes, revisions to maintenance requirements, and revised monitoring requirements

12. Financial Assurances:

- a. need to assess whether financial assurance is required;
- b. government agencies or public authorities with a formal documented commitment do not need to post financial assurances;
- c. is another regulatory entity requiring financial assurances;
- d. amount is based on the size and complexity of the mitigation project, likelihood of success, past performance of project sponsor, the degree of completion of the project at the time of project approval
- e. financial assurances may be in the form of performance bonds, escrow accounts, casualty insurance, letters of credit, legislative appropriations for government sponsored projects, or other appropriate instruments

- f. rationale for determining the amount of the required financial assurances, or not requiring any, must be documented in the administrative record

E. Required Criteria for using ONLY Preservation as Compensatory Mitigation (33 CFR 332.3(h))

1. The resources to be preserved provide important physical, chemical, or biological functions for the watershed;
2. The resources to be preserved contribute significantly to the ecological sustainability of the watershed. In determining the contribution of those resources to the ecological sustainability of the watershed, the district engineer must use appropriate tools, where available;
3. Preservation is determined by the Borough Permit Reviewer to be appropriate and practicable;
4. The resources are under threat of destruction or adverse modifications; and
5. The preserved site will be permanently protected through an appropriate real estate or other legal instrument (e.g., easement, title transfer to state resource agency or land trust).

F. Tables and Appendices

The tables and appendices were taken from the POA 2009 RGL and compiled using multiple resources and are to be utilized as tools and resources to assist in the permit reviewer's evaluation. Every project needs to be evaluated based on its own merit, and the tools are generalizations that may need adjusting or further analysis, which should be determined by the permit reviewer on a case-by-case basis. Edits were made for clarity.

Table 1: Examples of projects that will require compensatory mitigation and examples of projects that may or may not require compensatory mitigation.

Notes:

1. These are examples. Every project must be reviewed on a case-by-case basis to determine if compensatory mitigation is required.
2. This table assumes that avoidance and minimization has occurred for the project to the regulator's satisfaction and been documented. The decision whether to require compensatory mitigation must also be well documented in the project's administrative record.
3. The table does not mean that applicants proposing to utilize a Mitigation Bank or ILF Program for compensatory mitigation obligations would not have additional mitigation requirements (e.g. specific requirements outlined in the ESA consultation or another agencies' mitigation requirements or providing on-site or nearby mitigation for aquatic resource impacts that cannot be adequately mitigated off-site at a Mitigation Bank or ILF site).

WILL REQUIRE
The project occurs in degraded, rare, difficult to replace, or threatened wetlands, areas of critical habitat, 303(d) waters, etc.
The project, even if minimally impacting, occurs in a watershed where cumulative impacts are a concern (i.e., urban areas, transportation corridors, etc.)
Fill placed in intertidal waters associated with special aquatic sites, streams, rivers, lakes and/or riparian areas.
Fill placed in anadromous fish streams and wetlands adjacent to anadromous fish streams.
The project is federally funded, so compensatory mitigation is required under Executive Order 11990 (no net loss of wetlands).
MAY OR MAY NOT REQUIRE
The impacting project requires an IP or permanently impacts more than 1/2 acre of wetlands and/or other waters of the U.S.
The impacts from the project are so small (e.g. loss of 1/2 acre of forested wetlands in a remote, relatively undisturbed watershed) that they cannot be effectively compensated
There is no opportunity within the watershed for compensatory mitigation AND the impacts are so small that an ILF or Bank Sponsor could not sell a credit that would be worth the money to process (cost/benefit analysis does not add up)
The project impacts are minimal or in a watershed with large expanses of wetlands that are not at risk of being cumulatively degraded.

[The following sections below are kept as is]

Appendix A: Functional Assessment Information and Tools

Appendix B: Sample Ratios for Compensatory Mitigation

Appendix C: Performance Standards

Appendix D: Glossary