Permittee-Responsible Compensatory Mitigation Plan Guidance

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Temporary Stream Crossing near 19th century bridge

Mill Creek HDD Hydraulic Fracture Clean-up
Topics

- Overview of Permittee-Responsible Mitigation
- Review “Permittee-Responsible Mitigation Guidance” Document
- Review “Environmentally Preferable” Determination Considerations
Permittee-Responsible Mitigation – Overview

- Permittee retains responsibility for ensuring that required compensation activities are completed and successful.
- Can be located at or adjacent to the impact site or at another location generally within the same watershed as the impact site.
- A compensatory mitigation plan is required.
“Permittee-Responsible Mitigation Guidance” Document

- **Purpose**: To provide guidance on the required elements of a compensatory mitigation plan that is compliant with 33 CFR 332.

- **Benefits**: To provide clear expectations to the public and a consistent and more efficient review that is rooted in sound science and is compliant with all applicable laws.
“Permittee-Responsible Mitigation Guidance” - Organization

- Basic Information
- Components of a Compensatory Mitigation Plan
- Environmentally Preferable Consideration
Basic Information

- DA Number
- Applicant
- Agent
- Impact Site: location, characterize impacts and functions lost
Components of a Compensatory Mitigation Plan - 12 Elements [33 CFR 332.4(c)]

- Objectives
- Site Selection
- Site Protection Instrument
- Baseline Information
- Credit Determination
- Mitigation Work Plan
- Maintenance Plan
- Performance Standards
- Monitoring Requirements
- Long-Term Management
- Adaptive Management
- Financial Assurances
Components of a Compensatory Mitigation Plan

- **Executive Summary**
  - Brief narrative overview: overview of plan, impact summary, how lost function will be replaced

- **Project Goals**
  - Addresses improving specific physical, chemical, and/or biological functions at the proposed compensatory mitigation site.
Components of a Compensatory Mitigation Plan (cont.)

- **Objectives**
  - Resource type/amount to be provided
  - Method of compensation (restoration, enhancement, etc.)
  - Specific and quantitative

- **Site Selection**
  - Watershed overview
  - Site constraints
  - Additional site selection criteria
Site Selection [33 CFR 332.3(d)]
Components of a Compensatory Mitigation Plan (cont.)

- **Site Protection Instrument**
  [33 CFR 332.7(a)]
  - Conservation easement, restrictive covenant, deed restriction, etc.
  - Should include prohibited uses (ATV use, cutting vegetation, grazing etc.)
Components of a Compensatory Mitigation Plan (cont.)

- **Baseline Information**
  - Description of Ecological Characteristics
    - Both impact site and mitigation site
    - Delineation of waters of the U.S.
  - Maps: Historic and Existing Conditions
    - Plant communities, hydrology, soils
  - Baseline Stream/Wetland Assessment
    - Data Forms, Habitat Assessments
  - Additional Factors
    - ESA, Historic Properties, Toxic Waste, etc.
Components of a Compensatory Mitigation Plan (cont.)

- **Determination of Credits [33 CFR 332.3(f)]**
  - Mitigation approach and crediting summary
  - Functional lift to be provided and ratios utilized
  - Explain how compensatory mitigation project will fully offset unavoidable impacts to aquatic resources.
Components of a Compensatory Mitigation Plan (cont.)

- **Mitigation Work Plan**: Detailed written specifications and work descriptions
  - Project boundaries
  - Construction methods/ timing/ sequence
  - Planted vegetation and invasive plant species control
  - Grading plan, soil management, erosion control
  - Hydrologic assessments, reference site
Components of a Compensatory Mitigation Plan (cont.)

- **Maintenance Plan**
  - A description and schedule of maintenance requirements to ensure the continued viability of the resource once initial construction is completed.
  - Identify responsible party.

- **Performance Standards (33 CFR 332.5)**
  - Ecologically-based standards that will be used to determine whether the project is achieving its objectives.
Components of a Compensatory Mitigation Plan (cont.)

- **Monitoring Requirements (33 CFR 332.6):** Description of parameters to be monitored in order to determine if the project is meeting performance standards and the need for adaptive management.
  - Monitoring plan with responsible party identified
  - Reporting format/timeframes
Components of a Compensatory Mitigation Plan (cont.)

- **Long-term Management (LTM) Plan [33 CFR 332.7(d)]:** How the mitigation project will be managed after performance standards have been achieved to ensure long-term sustainability.
  
  - Describe LTM needs, annual cost estimate
  - Funding mechanism, responsible party
  - Appendix E of Guidance
Components of a Compensation Mitigation Plan (cont.)

- Adaptive Management Plan [33 CFR 332.7(c)]: A management strategy to address unforeseen changes in site conditions or other components of the mitigation project, including the party or parties responsible for implementing adaptive management measures.
  - Identify potential risks and potential corrective measures
Components of a Compensation Mitigation Plan (cont.)

- **Financial Assurances [33 CFR 332.3(n)]:** A description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the mitigation project will be successfully completed, in accordance with its performance standards.
  - Appendix F of Guidance
  - Responsible party, type of financial instrument
Components of a Compensatory Mitigation Plan (cont.)

- **Other Information:** The district engineer may require additional information as necessary to determine the appropriateness, feasibility, and practicability of the mitigation project.
  - Access to Property
  - TDEC in-system mitigation requirement (conditions unavailable / exceptional TN water)
Environmentally Preferable Considerations

- DE must consider what will be environmentally preferable
- Specific criteria must be evaluated to determine if the proposed mitigation is the environmentally preferable option, which includes consideration of the preference hierarchy at 33 CFR 332.
- Preference hierarchy [33 CFR 332.3(b)(2)–(6)]
Environmentally Preferable Considerations (Cont.)

- Uncertainty and Risk
- Size and Ecological Value of Parcel
- Temporal Loss
- Scientific/Technical Analysis
- Long-Term Viability of Mitigation
- Site Protection
- Financial Assurances
- Other Relevant Factors
Uncertainty and Risk

- Uncertainty: the element associated with whether the mitigation will successfully offset project impacts.
- Risk: the element associated with the potential for the proposed plan to fail.
Environmentally Preferable Considerations (Cont.)

- Size and Ecological Value of Parcel; Watershed Approach
  
  The physical characteristics of the parcel, watershed scale features, size, and location; compatibility with adjacent land uses; and, likely effects on important resources will be considered to determine how the site is ecologically suitable for mitigation compared to mitigation bank and in-lieu fee.
Environmentally Preferable Considerations (Cont.)

- **Temporal Loss**
  
  - *The time between the initiation of the mitigation plan and the maturation of anticipated ecological functions at a CM site.*
  
  - *Considers duration between impact start date and completion of mitigation activities.*
Scientific/Technical Analysis, Planning, and Implementation

- The level of scientific/technical evaluation required to appropriately and adequately assess the likelihood for ecological success and sustainability.
Environmentally Preferable Considerations (Cont.)

- **Long-Term Viability of Mitigation Site**
  
  *How the CM project will be managed after performance standards have been achieved to ensure long-term sustainability of the resource*
Environmentally Preferable Considerations (Cont.)

- Site Protection

  - Aquatic habitats, riparian areas, buffers, and uplands that comprise the overall CM must be provided long-term protection through real estate instruments or other available mechanisms.
Environmentally Preferable Considerations (Cont.)

- **Financial Assurances**
  
  *Description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the CM project will be successfully completed, as well as annual cost estimates for the long-term management needs of the site and the funding mechanism that will meet those needs.*
Environmentally Preferable Considerations (Cont.)

- Other Relevant Factors
  - Additional information contributing to the appropriateness, feasibility, or practicability of the mitigation project (ESA, wildlife corridor, unique habitat, etc.)
Permittee-Responsible Mitigation Plan Guidance - Summary

- Compensatory mitigation plans must address the 12 elements at 33 CFR 332.4(c).
- Specific criteria must be evaluated to determine if the proposed mitigation is the environmentally preferable option, with consideration of the preference hierarchy.
- The Guidance Document is intended to provide clear expectations to the public and a consistent and more efficient review that is rooted in sound science and is compliant with all applicable laws.
Questions?