

# OVERVIEW OF COMPENSATORY MITIGATION WITHIN TENNESSEE

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# TOPICS

- Overview of Compensatory Mitigation Within Tennessee
- Regulatory Initiatives



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# PREFERENCE HIERARCHY FOR MITIGATION *(33 CFR 332.3(B))*

1. Mitigation bank credits
2. In-lieu fee program credits
3. Permittee-responsible mitigation under a watershed approach
4. On-site and/or in-kind permittee-responsible mitigation
5. Off-site and/or out-of-kind permittee-responsible mitigation



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# ENVIRONMENTALLY PREFERABLE CONSIDERATIONS

- 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



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## MITIGATION BANKS

- One or more sites where resources are restored, established, enhanced, and/or preserved to provide compensatory mitigation for impacts authorized by DA permits
- Sells compensatory mitigation credits to permittees
- Credits usually produced in advance of impacts
- Bank sponsor assumes responsibility for providing the mitigation



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# MITIGATION BANKING IN TENNESSEE

13 Public Banks Approved

1 Pending Stream

2 Pending Stream/Wetland

11 Wetland, 1 Stream,

1 Wetland/Stream

3 Active Single-Client Banks

3 Wetland



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# ACTIVE SERVICE AREAS FOR MITIGATION BANKS IN TENNESSEE



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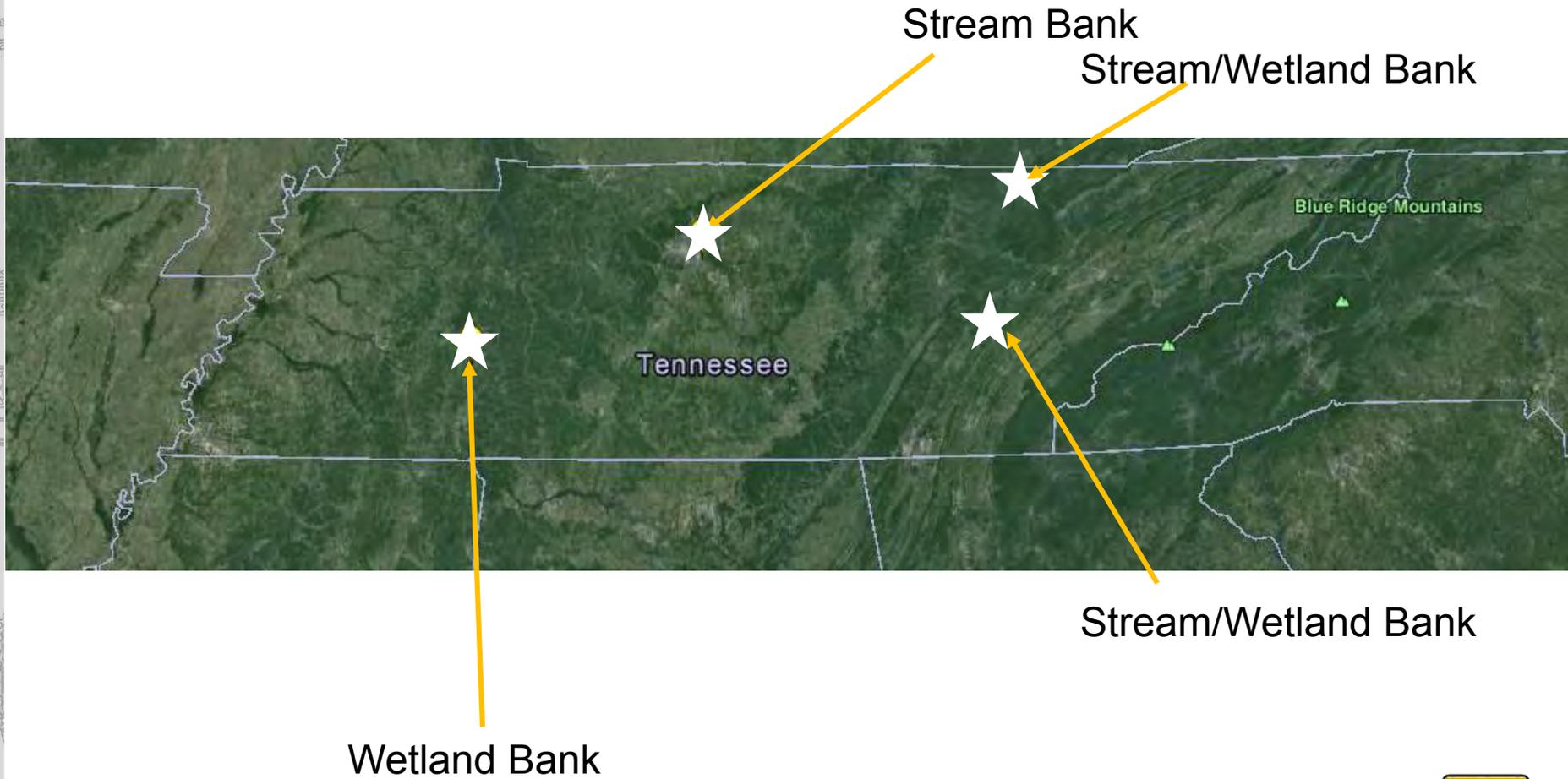
# SERVICE AREAS FOR APPROVED STREAM MITIGATION BANKS IN LRN



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# PENDING MITIGATION BANKS IN TENNESSEE



# IN-LIEU FEE PROGRAM

- Government or non-profit natural resource management entity
- Collects fees from permittees to do larger compensatory mitigation projects
- Credits usually produced after impacts
- Sponsor assumes responsibility for providing the mitigation
- Operation and use are governed by an in-lieu fee program instrument



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# TWO IN-LIEU FEE (ILF) MITIGATION PROGRAMS WITHIN TENNESSEE

**#1 - Tennessee Stream Mitigation Program (TSMP)**

**#2 - Tennessee Wildlife Federation (TWF) Statewide Wetland ILF Program**

**#3 Proposed - Cumberland River Compact ILF Program**

## In-Lieu Fee Programs Within Other States

**#3 - Kentucky Department of Fish and Wildlife Resources (KDFWR) Wetland & Stream Fee In-Lieu-Of Mitigation Program**



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# TSMP ILF PROGRAM

Established per 2002 MOA and currently operates under a 2013 In-Lieu Fee Instrument

Operates across TN (Nashville and Memphis Districts)

10 Service Areas

TSMP suspended credit sales in 2016. They currently have three operating service areas



Available Service Areas

- |                       |                           |
|-----------------------|---------------------------|
| North Hatchie Obion   | East Lower Cumberland     |
| South Hatchie Obion   | Upper Cumberland          |
| Lower Tennessee       | Middle Tennessee Hiwassee |
| Middle Tennessee Elk  | Upper Tennessee           |
| West Lower Cumberland | French Broad Holston      |



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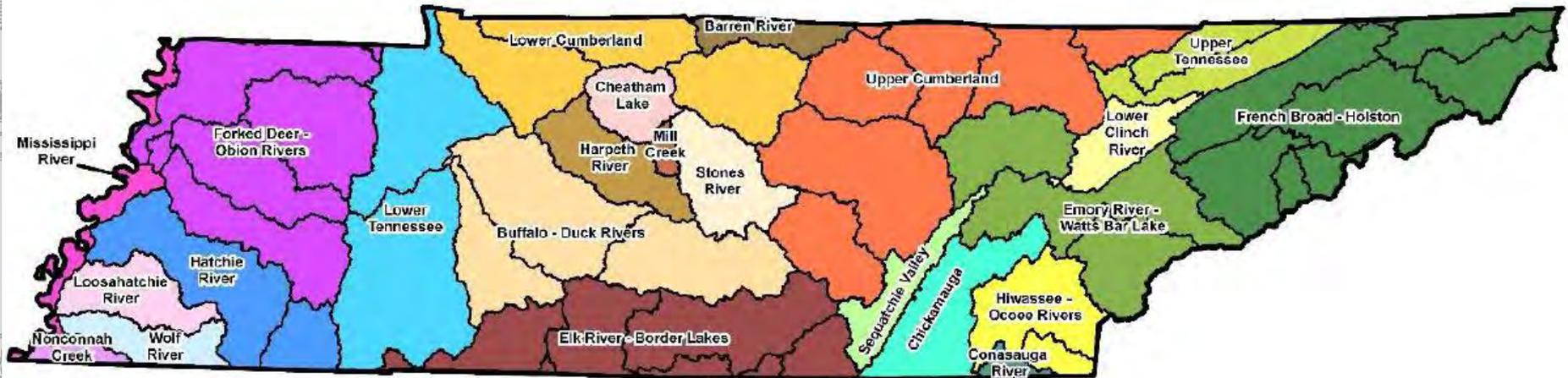


# TENNESSEE WILDLIFE FEDERATION (TWF) STATEWIDE WETLAND IN-LIEU FEE PROGRAM

Instrument Approved in 2012.

Operates across TN (Nashville and Memphis Districts)

24 Service Areas – The IRT is reviewing an Instrument modification request to reduce service areas from 24 to 10



# REGULATORY INITIATIVES

## Development of Mitigation Guidance Documents

### *Existing Guidance*

- Draft Prospectus Guidance for Stream Mitigation Banks or ILF Projects
- Draft Prospectus Guidance for Wetland Mitigation Banks or ILF Projects
- Permittee-Responsible Mitigation Guidance

### *New Guidance*

- Mitigation Banking Instrument Template

### *Future Guidance*

- Prospectus Checklist for Stream and Wetland Mitigation Banks or ILF Projects
- Performance Standards and Monitoring for Stream and Wetland Compensatory Mitigation

Purpose: 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

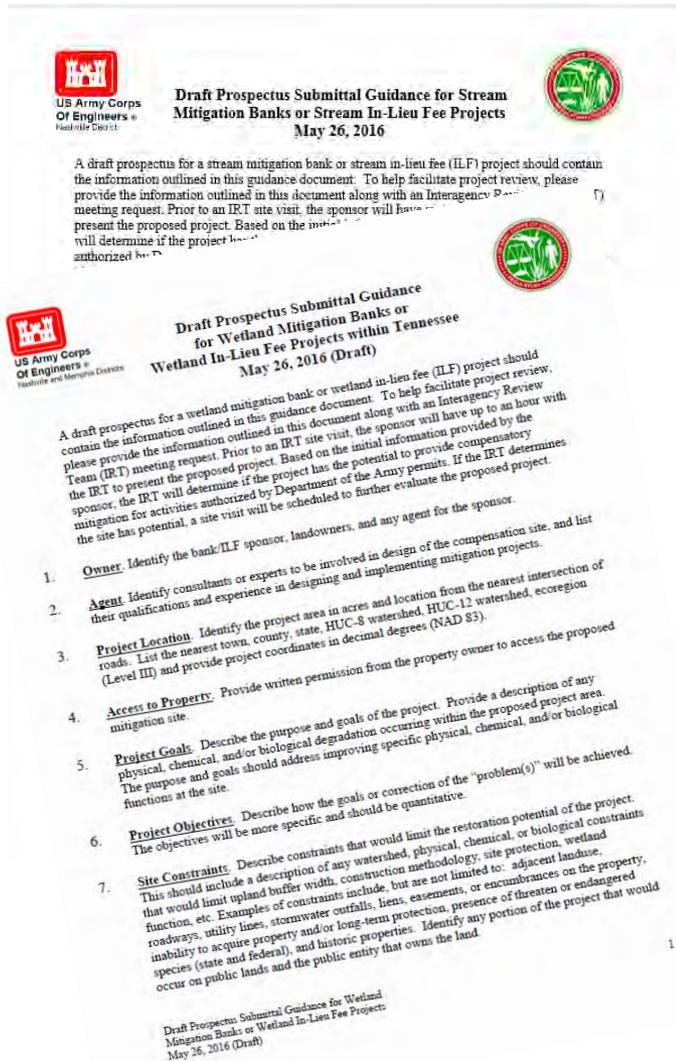


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# DRAFT PROSPECTUS GUIDANCE FOR STREAM AND WETLAND MITIGATION BANKS OR ILF PROJECTS

- The draft prospectus guidance document is applicable for banks and ILF programs
- It facilitates early feedback to mitigation providers
- Draft Prospectus Submittal Procedures:
  - Submit draft prospectus information and request a meeting with the IRT
  - Based on the information provided, the IRT will determine if the project has potential
  - If the site has potential, a site visit will be scheduled
  - IRT will provide written comments following the site visit



# PERMITTEE-RESPONSIBLE MITIGATION GUIDANCE



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## Permittee-Responsible Mitigation Guidance May 26, 2016 (Draft)



This Permittee-Responsible Mitigation (PRM) document has been developed to provide guidance on the required elements of a compensatory mitigation (CM) plan that is compliant with 33 CFR 332. This guidance document is applicable to all type of permittee-responsible compensatory mitigation, including on-site and off-site mitigation. As stated in 33 CFR 332.3(c)(3)(iii) and 230.93(c)(3)(iii), the level of information and analysis contained in a mitigation plan must be commensurate with the scope and scale of the authorized impacts and functions lost. Please provide the following information with the submittal of a permittee-responsible mitigation plan:

### A. Basic Information

1. **DA Permit Number:** Provide the DA permit number for which PRM is proposed as well as other past or current permits from state or federal agencies.
2. **Applicant:** Provide contact information for the applicant, landowner(s), and agent(s).
3. **Agent:** Identify consultants or experts to be involved in design of the compensation site, and list their qualifications and experience in designing and implementing mitigation projects.
4. **Impact Site:** Identify the resource type(s) and amount(s) of waters of the U.S. to be impacted by the project for which PRM is proposed. Please specify whether impacts will be temporary or permanent. For temporary impacts, please include an estimated schedule outlining when restoration of the temporary impacts would occur.
  - a. List the impact site(s) location from the nearest intersection of roads. List the nearest town, county, state, HUC-8 watershed, HUC-12 watershed, EPA ecoregion (Level III) and provide the impact site(s) coordinates in decimal degrees (NAD 83) and any associated available shapefiles relating to the proposed impact site.
  - b. Describe and quantify the aquatic resource type and functions that will be lost at the proposed impact site (e.g. RBP score, TRAM, etc.). Please fill out applicable items 6(a), (b), (c), (d)(ii), (iv)-(vi) in the "Baseline Information" section for proposed stream relocations.
  - c. Describe existing aquatic resource concerns in the watershed (e.g. flood storage, water quality, habitat, etc.) and how the impact site currently contributes to overall watershed/regional functions.

### B. Components of a Compensation Mitigation (CM) Plan

1. **Executive Summary:** Provide a brief, narrative overview of the mitigation plan (approximately one page). The narrative should summarize the amount, aquatic resource type (e.g. Cowardin, HGM, ecological, and/or Rosgen stream classification), and functional capacity of both the aquatic resources proposed for impact and those proposed to be established, restored, enhanced, or preserved in the CM plan. The narrative should also explain how the CM work would replace aquatic resource functions that would be lost as a result of the proposed project.

Permittee-Responsible Mitigation Guidance  
May 26, 2016 (Draft)

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**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

### Components of the PRM Guidance:

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

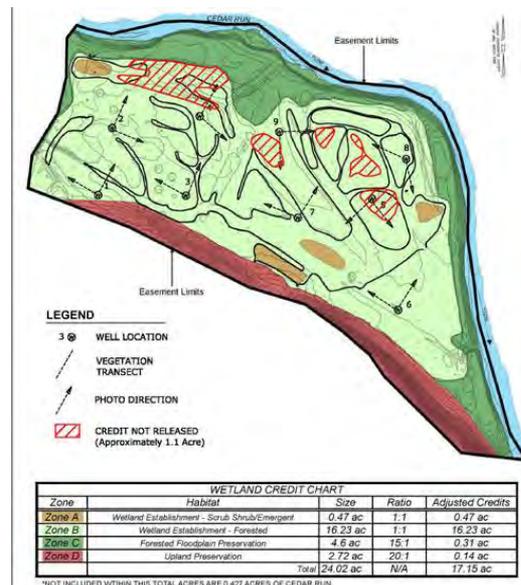


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# COMPONENTS OF A COMPENSATORY MITIGATION PLAN - 12 ELEMENTS [33 CFR 332.4(C)]

- 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



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# NASHVILLE REGULATORY MITIGATION WEBPAGE

<http://www.lrn.usace.army.mil/Missions/Regulatory/Mitigation>

**Mitigation**

Compensatory mitigation involves actions taken to offset unavoidable adverse impacts to wetlands, streams, and other aquatic resources authorized by Clean Water Act section 404 permits and other Department of the Army (DA) permits. As such, compensatory mitigation is a critical tool in helping the federal government to meet the longstanding national goal of "no net loss" of wetland acreage and function. For impacts authorized under section 404, compensatory mitigation is not considered until after all appropriate and practicable steps have been taken to first avoid and then minimize adverse impacts to the aquatic ecosystem pursuant to 40 CFR part 230 (i.e., the CWA Section 404(b)(1) Guidelines).

Compensatory mitigation can be carried out through four methods: the restoration of a previously-existing wetland or other aquatic site, the enhancement of an existing aquatic site's functions, the establishment (i.e., creation) of a new aquatic site, or the preservation of an existing aquatic site. There are three mechanisms for providing compensatory mitigation: permittee-responsible compensatory mitigation, mitigation banks and in-lieu-fee mitigation.

Permittee-responsible mitigation is the most traditional form of compensation and continues to represent the majority of compensation acreage provided each year. As its name implies, the permittee retains responsibility for ensuring that required compensation activities are completed and successful. Permittee-responsible mitigation can be located at or adjacent to the impact site (i.e., on-site compensatory mitigation) or at another location generally within the same watershed as the impact site (i.e., off-site compensatory mitigation).

Mitigation banks and in-lieu fee mitigation both involve off-site compensation activities generally conducted by a third party, a mitigation bank sponsor or in-lieu fee program sponsor. When a permittee's compensatory mitigation requirements are satisfied by a mitigation bank or in-lieu-fee program, responsibility for ensuring that required compensation is completed and successful shifts from the permittee to the bank or in-lieu fee sponsor. Mitigation banks and in-lieu fee programs both conduct consolidated aquatic resource restoration, enhancement, establishment and preservation projects; however, under current practice, there are several important differences between in-lieu fee programs and mitigation banks.

Compensatory Mitigation for Losses of Aquatic Resources (2008 Mitigation Rule 33 CFR 332) (pdf copy of the Federal Register Notice providing Federal guidance for mitigation banking)

Regional Internet Bank Information Tracking System (RIBITS) – RIBITS is an interactive web-based compensatory mitigation tracking system. RIBITS allows the public to track the status of USACE approved Mitigation Banks and In-lieu Fee programs in the Nashville District. It will provide up-to-date information about the availability of compensatory mitigation to offset adverse impacts authorized by Department of the Army permits.

Please note that RIBITS is not a database and includes information on other types of Federal and State mitigation programs. In order to view information about stream and wetland mitigation in the Nashville District area of responsibility you will need to select Nashville District from the list of USACE Districts on the RIBITS Home Page.

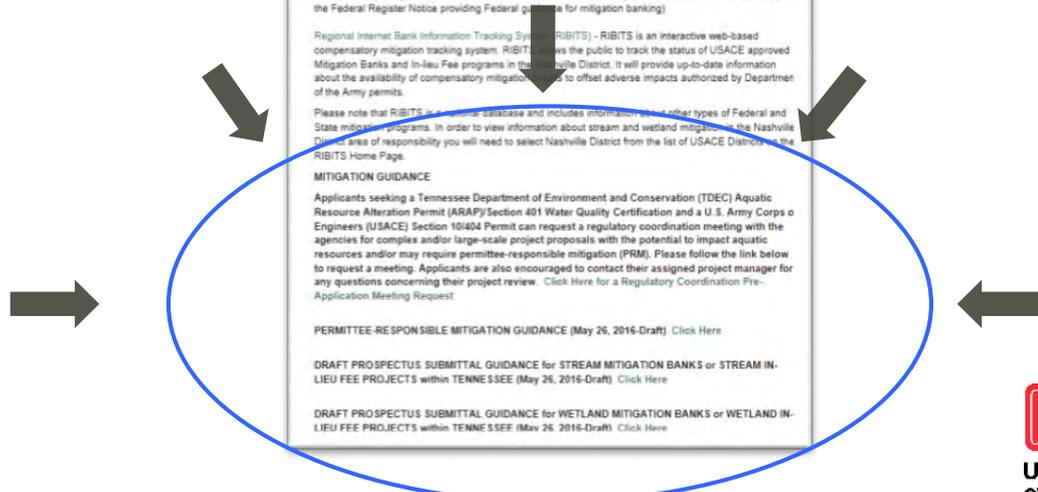
**MITIGATION GUIDANCE**

Applicants seeking a Tennessee Department of Environment and Conservation (TDEC) Aquatic Resource Alteration Permit (ARAP) Section 401 Water Quality Certification and a U.S. Army Corps of Engineers (USACE) Section 10/404 Permit can request a regulatory coordination meeting with the agencies for complex and/or large-scale project proposals with the potential to impact aquatic resources and/or may require permittee-responsible mitigation (PRM). Please follow the link below to request a meeting. Applicants are also encouraged to contact their assigned project manager for any questions concerning their project review. [Click Here for a Regulatory Coordination Pre-Application Meeting Request](#)

**PERMITTEE-RESPONSIBLE MITIGATION GUIDANCE (May 26, 2016-Draft)** [Click Here](#)

**DRAFT PROSPECTUS SUBMITTAL GUIDANCE for STREAM MITIGATION BANKS or STREAM IN-LIEU FEE PROJECTS within TENNESSEE (May 26, 2016-Draft)** [Click Here](#)

**DRAFT PROSPECTUS SUBMITTAL GUIDANCE for WETLAND MITIGATION BANKS or WETLAND IN-LIEU FEE PROJECTS within TENNESSEE (May 26, 2016-Draft)** [Click Here](#)



# THE TENNESSEE INTERAGENCY REVIEW TEAM REPRESENTATIVES



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U.S. Department of Agriculture  
Natural Resources Conservation Service



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