



Chapter 62-331, F.A.C. State 404 Program Mitigation and Mitigation Hierarchy



Rules Overview

Rule 62-331.053, F.A.C.

Rule 62-331.130, F.A.C.

404 Handbook, section 8.5

Applicant's Handbook Vol. I Section 10.3



State 404 Program

Review

- **Overview of the State 404 Program**
- **Applications for a State 404 Program permit**
- **Evaluating an Alternatives Analysis**
- **Secondary and Cumulative Impacts**
- **Documenting wetlands using the Chapter 62-340, F.A.C., Data Form**
- **Mitigation and Mitigation Hierarchy**



Compensatory Mitigation

- **The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.**

[404 Handbook, section 2.0(b)11.]

- **Chapter 62-345, F.A.C. (Uniform Mitigation Assessment Method [UMAM])**



Definitions

***Select definitions related to
compensatory mitigation***



Definitions

404 Handbook, section 2.0

- **“Restoration,”** for the purposes of the State 404 Program, means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.
- **“Rehabilitation”** means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function but does not result in a gain in aquatic resource area.



Definitions – 2

404 Handbook, section 2.0

- **“Re-establishment” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions. (see “Restoration”)**
- **“Preservation” means the protection of wetlands, other surface waters or uplands from adverse impacts by placing a conservation easement as defined in and meeting the requirements of Section 704.06, F.S., over the property, or by donation of fee simple interest in the property to an entity having purposes as described in Section 704.06(3), F.S.**



Mitigation

When is mitigation required?

- **When there are unavoidable impacts to state-assumed waters**
- **General permit**
 - **Specific conditions**
- **Individual permits**
 - **Administratively complete**



Good Compensation

What is it?

- **Provides appropriate ecological replacement**
- **Addresses temporal loss of functions**
- **Appropriate location in landscape**
- **Considers cumulative impacts**
- **Includes margin of safety to reflect the expected degree of success**
- **Incorporates success measures and monitoring plan**



Special Provisions

***Special considerations regarding
compensatory mitigation***



Mining

Section 62-331.130(4), F.A.C.

Mining reclamation activities may be considered appropriate compensatory mitigation for impacts from mining projects undertaken pursuant to Chapter 378, F.S., and rules promulgated thereunder, if they maintain or improve the water quality and the function of biological systems present at the site prior to the commencement of mining activities, subject to the following additional requirements:

(a) Additional compensatory mitigation shall be required if the Agency determines that the onsite reclamation activities will not fully offset the regulated activity's adverse impacts.



Mining – 2

Section 62-331.130(4), F.A.C.

(b) Section 373.414(6)(b), F.S., and paragraph 62-345.600(1)(b), F.A.C., pertaining to time lag for phosphate and heavy minerals mines, shall not apply to compensatory mitigation for permits or compliance actions.

(c) Additional compensatory mitigation, if required, shall be subject to the mitigation hierarchy in subsection (1), above.



FDOT Projects

Section 62-331.130(5), F.A.C.

(5) Compensatory mitigation for Florida Department of Transportation (FDOT) projects, proposed in accordance with section 373.4137, F.S., shall be consistent with this Chapter to be used for State 404 Program permits.



Miami-Dade Lake Belt

Section 62-331.130(6), F.A.C.

(6) Compensatory mitigation for mining in the Miami-Dade County Lake Belt Area requiring a State 404 permit conducted in accordance with Section 373.41492, F.S. shall be consistent with this Chapter to be used for State 404 Program permits. Activities authorized by the permit cannot commence until the specific compensatory mitigation project for which the mitigation funds will be used are identified and approved by the Lake Belt Mitigation Committee.



Mit. Banks & ILFs

404 Permitting

Rule 62-331.140, F.A.C. – Mitigation Banks and In-Lieu Fee Programs (ILFs)

(1) Mitigation banks and in-lieu fee program instruments shall be reviewed and processed by the Corps in accordance with federal law. However, the Agency shall be responsible for issuing any permits required for dredge or fill activities needed to implement the mitigation bank or in-lieu fee program within state-assumed waters.

(2) Federal mitigation bank and in-lieu fee credits shall be acceptable to provide compensatory mitigation for State 404 Program permits, where appropriate (see 404 Handbook, section 8.5.1).

(3) A designated representative of the Agency shall serve as a member of the Interagency Review Team.



Watershed Approach

404 Handbook, section 8.5.2



Watershed Approach

Definition

“Watershed approach” means an analytical process for making mitigation decisions that support the sustainability or improvement of aquatic resources in a watershed. It involves consideration of watershed needs, and how locations and types of compensatory mitigation projects address those needs. A landscape perspective is used to identify the types and locations of mitigation projects that will benefit the watershed and offset losses of aquatic resource functions and services caused by activities authorized by Section 404 permits. The watershed approach may involve consideration of landscape scale, historic and potential aquatic resource conditions, past and projected aquatic resource impacts in the watershed, and terrestrial connections between aquatic resources when determining mitigation requirements for Section 404 permits.



Watershed Approach 2

404 Handbook, section 8.5.2

- **A general framework for better decision-making for compensatory mitigation**
- **Goal: “maintain and improve the quality and quantity of aquatic resources within watersheds through strategic selection of compensatory mitigation sites”**
- **Watershed approach must be used to the extent appropriate and practicable**



Watershed Approach – 2

404 Handbook, section 8.5.2

- **Cumulative impact analysis – different from ERP; may be smaller than watershed**
- **Watershed scale: The cumulative impact basins described in Volume I, section 10.2.8 shall be used when considering watershed scale in mitigation for State 404 Program permits**



Mitigation Hierarchy & Timing

Avoid
Minimize
Mitigate



Mitigation Sequence

Unavoidable Impacts

- 1. Avoid**
- 2. Minimize**
 - **1+2 = “Least Environmentally Damaging Practicable Alternative” (LEDPA)**
- 3. Compensate – restore, establish, enhance, or preserve aquatic resources to offset unavoidable losses**
 - **Mitigation bank credits**
 - **ILF credits**
 - **Permittee-Responsible Mitigation (PRM) projects**



Impact Minimization

Section 62-331.053(1), F.A.C.

No dredge or fill activity shall be permitted if there is a practicable alternative to the proposed activity which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. The Agency shall require the applicant to submit an alternatives analysis completed in accordance with the provisions below. Guidance for completing an alternatives analysis is in Appendix C of the 404 Handbook.



Comp. Mitigation

Rule 62-331.130, F.A.C.

Compensatory mitigation shall be considered only after the requirements of Rule 62-331.053(1), F.A.C., have been met. Compensatory mitigation required for authorizations or compliance actions under this Chapter shall be conducted in accordance with section 10.3 of Volume I, section 8.5 of the 404 Handbook, and this section:...



Avoid

Alternatives Analysis

Are there practicable alternatives to the project that are less environmentally damaging?

- **404 Handbook Appendix C**
- **Webinar: Alternatives Analysis**



Minimize

Alternatives Analysis

Are there design modifications that will minimize impacts to resources?

- **404 Handbook Appendix C**
- **Webinar: Alternatives Analysis**



Compensate

Mechanisms/Hierarchy

The preferential hierarchy in the 404 Handbook, section 8.5.1, shall be followed when compensatory mitigation is required for **authorizations and compliance actions. 62-331.130(1), F.A.C.**

- **Applicant must justify any deviation**
 - 1. Mitigation Bank**
 - 2. In-Lieu Fee Program**
 - 3. Permittee Responsible Mitigation**
 - a. Onsite and/or in-kind**
 - b. Offsite and/or out-of-kind**



1. Mitigation Bank

- **A site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation**
- **Bank sponsor is responsible party**
- **Section 62-331.130(3), F.A.C. – federal credits from mitigation banks or in-lieu fee programs approved by the U.S. Army Corps of Engineers (USACE) shall be accepted by the agencies to offset impacts for permits when the number and resource type of credits available are appropriate to offset impacts**



1. Mitigation Bank

Resource Type of Credit

- **Do not confuse:**
 - Permit (ERP)
 - Instrument (404)
- **Projects may require BOTH credits**
- **Credit types may use different terminology**

ERP (State Credits)	404 (Federal Credits)
Freshwater Forested	Palustrine Forested
Freshwater Marsh*	Palustrine Emergent



2. ILF Program

In Lieu Fee Program

- **A program involving the restoration, creation, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for 404 permits**
- **The government agency or entity is responsible**
- **Section 62-331.130(3), F.A.C. – federal credits from mitigation banks or in-lieu fee programs approved by the USACE shall be accepted by the agencies to offset impacts for permits when the number and resource type of credits available are appropriate to offset impacts**



3. PRM

Permittee Responsible Mitigation

- **An aquatic resource restoration, creation, enhancement, and/or preservation activity undertaken by the permittee to provide compensatory mitigation**
- **Permittee is responsible party**
- **Section 62-331.130(2), F.A.C. – mitigation proposals other than the purchase of mitigation bank or in-lieu fee program credits shall include an adaptive management plan; the plan shall include information about the party or parties responsible for implementing adaptive management measures, including the information required in Volume I, section 10.3.1.2.1.**



3a. PRM – 2

Onsite and/or In-kind

- **“On-site” means an area located on the same parcel of land as the impact site, or on a parcel of land contiguous to the impact site**
- **“In-kind” means a resource of a similar structural and functional type to the impacted resource**
- **e.g., Impacts to a palustrine forested wetland on-site are compensated by mitigation to an on-site palustrine forested wetland**



3b. PRM – 3

Offsite and/or Out-of-kind

- **“Off-site” means an area that is neither located on the same parcel of land as the impact site, or on a parcel of land contiguous to the parcel containing the impact site**
- **“Out-of-kind” means a resource of a different structural and functional type from the impacted resource**
- **e.g., Impacts to an on-site palustrine forested community are compensated by mitigation to an off-site palustrine emergent community**



Timing

404 Handbook, section 8.5.4

Implementation of the compensatory mitigation project shall be, to the maximum extent practicable, in advance of or concurrent with the authorized impacts. Temporal loss shall be compensated for in accordance with appropriate calculations for time lag in accordance with Rule 62-345.600, F.A.C., except paragraph 62-345.600(1)(b), F.A.C., which is not applicable to the State 404 Program.



Monitoring

404 Handbook, section 8.5.6.1



PRM

Additional Considerations

- **404 Handbook 8.5.6.1**
- **The compensatory mitigation plan shall provide for a monitoring period that is sufficient to demonstrate that the compensatory mitigation project has met performance standards, but not less than five years.**
- **A longer monitoring period shall be required for aquatic resources with slow development rates (e.g., forested wetlands, bogs).**
- **Following project implementation, the Agency shall reduce or waive the remaining monitoring requirements upon a determination that the compensatory mitigation project has achieved its performance standards.**
- **The Agency may also extend the original monitoring period upon a determination that performance standards have not been met or the compensatory mitigation project is not on track to meet them.**
- **The Agency shall revise monitoring requirements when remediation or adaptive management is required.**



RIBITS

Regulatory In-lieu fee and Bank Information Tracking System



Bank/ILF

- **RIBITS**
 - **Service area**
 - **Verify availability of credits**
 - **Type**
- **Verify purchase of mitigation credits to compensate for impacts**



RIBITS

<http://ribits.usace.army.mil>

« Collapse

TRACKING

☒ MITIGATION ☐ WQT

MENU

- Mitigation Concepts
- Banks & ILF Sites
- ILF Programs
- Umbrella Banks
- NRDA Projects
- Reporting
- Bank & ILF Establishment
- Assessment Tools
- Credit Classifications
- Related Resources
- Find Credits
- Help

FILTER

- ☐ USACE District
- ☒ State
- ☐ FWS Field Office
- ☐ NOAA Fisheries Region

ALL STATES

[Terms Of Use]



RIBITS – 2

<http://ribits.usace.army.mil>

Browser window showing the RIBITS application interface. The address bar displays <https://ribits.usace.army.mil/ords/?p=107:158:6294706786249:NO>.

The interface includes a navigation menu on the left, a main content area with a table of bank data, and a Google Map on the right.

MENU

- Mitigation Concepts
- Banks & ILF Sites
- ILF Programs
- Umbrella Banks
- NRDA Projects
- Reporting
- Bank & ILF Establishment
- Assessment Tools
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- Help

FILTER

- ☐ USACE District
- ☒ State
- ☐ FWS Field Office
- ☐ NOAA Fisheries Region

Florida

1. Primary Report

Rows: All | Actions: [icon]

State Abbrev List contains ' FL '

1 - 174 of 174

Name	Bank Type	Bank Status	State Abbrev List	Zoom
Alafia River MB	Private Commercial	Approved	FL	[icon]
Alafia River Wetland MB	Private Commercial	Pending	FL	[icon]
Aripeka MB	Private Commercial	Pending	FL	[icon]
Backbone Conservation Bank	Private Commercial	Approved	FL	[icon]
Barberville MB	Private Commercial	Approved	FL	[icon]
Basin 22 MB	Private Commercial	Approved	FL	[icon]
Bayfield MB	Private Commercial	Suspended	FL	[icon]
Bear Creek MB	Private Commercial	Approved	FL	[icon]
Bear Point MB (St. Lucie Co-Mosquito Control District)	Private Commercial	Approved	FL	[icon]
Big Bullfrog Creek MB	Private Commercial	Pending	FL	[icon]
Big Cypress MB_Phase I-V	Private Commercial	Approved	FL	[icon]
Big Cypress MB_Phase VI	Private Commercial	Approved	FL	[icon]
Blackwater Creek MB	Private Commercial	Approved	FL	[icon]
Bluefield Ranch MB	Private Commercial	Approved	FL	[icon]

Google Map

☐ Roads ☐ Borders ☐ USACE Districts ☐ FWS Field Offices ☐ NOAA Regions ☐ HUC8 ☐ Footprint ☐ Service Area

Map data ©2020 Google, INEGI Imagery ©2020 TerraMetrics | Terms of Use

Disclaimer: In most cases, RIBITS bank or ILF project limits are only approximate (not surveyed property limits).



RIBITS – 3

<http://ribits.usace.army.mil>

Browser address bar: https://ribits.usace.army.mil/ords/f?p=107:10::NO::P10_BANK_ID:259

Browser tabs: Mitigation and Mitigation Hiera... Louisville District > Missions > ... View Bank Information

Browser extensions: McAfee

Browser toolbar: interactive map, Google, Office 365 DEP, Oracle Prod, OTIS Self-Service, People First, Welcome Florida Departm...

RIBITS
Regulatory In-lieu Fee and Bank Information Tracking System

Navigation: Banks & Sites >> Bank

Left Sidebar:

- TRACKING
 - ☒ MITIGATION ☐ WQT
- MENU
 - Mitigation Concepts
 - Banks & ILF Sites
 - ILF Programs
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 - Help
- FILTER
 - ☐ USACE District
 - ☒ State
 - ☐ FWS Field Office
 - ☐ NOAA Fisheries Region
 - Florida
 - [Terms Of Use]

Main Content:

Florida MB

Chair(s):	USACE
USACE District:	Jacksonville
FWS Field Office:	South Florida
NOAA Fisheries Region:	Southeast
State:	Florida
County:	Osceola [FL]
Permit No:	SAJ-1996-03573
Year Established:	1997
Total Acres:	1,582.00
Status:	Approved
Approved Date:	11/05/1997
Type:	Private Commercial
Website:	
Comments:	The project proposes the establishment of a mitigation bank within a 1,582-acre parcel located in northern Osceola County. The bank proposes to improve the hydrology of the site through the construction of a berm and water control structures at the outflow point of an existing ditch. Functional assessment used is M-WRAP.

Bank Credit Classifications

Wetland

- Palustrine
- Palustrine Emergent
- Palustrine Forested

Contact Information

Bank POC
Ms. Alexis Preisser
Mitigation Marketing LLC

Credit Ledger Summary

Last Transaction: May 22, 2020
ATTENTION

OpenLayers Map

Map controls: USACE Districts, States, FWS Offices, NOAA, Counties, HUC 8

Map layers: ☒ Service Area ☒ Footprint

Rank: ☒ Primary



RIBITS – 4

<http://ribits.usace.army.mil>

Browser address bar: https://ribits.usace.army.mil/ords/f?p=107:10::NO::P10_BANK_ID:259

Navigation: Mitigation and Mitigation Hiera... Louisville District > Missions > ... View Bank Information

Interactive map | Google | Office 365 DEP | Oracle Prod | OTIS Self-Service | People First | Welcome Florida Departm...

Website: Private Commercial

Comments: The project proposes the establishment of a mitigation bank within a 1,582-acre parcel located in northern Osceola County. The bank proposes to improve the hydrology of the site through the construction of a berm and water control structures at the outflow point of an existing ditch. Functional assessment used is M-WRAP.

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Contact Information

Bank POC
Ms. Alexis Preisser
 Mitigation Marketing, LLC
 PO Box 540285
 Orlando, FL 32854
 Email: Alex@mitigationmarketing.com
 Phone: (407) 481-0677
 Fax: (407) 648-3886

Credit Ledger Summary

Last Transaction: May 22, 2020

*****ATTENTION*****
 Credit reservations and pending transactions are **NOT** reflected in the Available Credits total. Potential purchasers **MUST** contact the Sponsor to verify credit availability.

Name	Available Credits	Withdrawn Credits	Released Credits	Potential Credits
Wetland				
Palustrine Emergent	109.11	78.49	187.6	187.6
Palustrine Forested	247.23	412.67	659.9	659.9

Credit Ledger Summary

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Wetland				
Palustrine Emergent	109.11	78.49	187.6	187.6
Palustrine Forested	247.23	412.67	659.9	659.9

System tray: 1:23 PM 9/9/2020



Use of Preservation

404 Handbook, section 8.5.5



Preservation Defined

AH Volume I, section 2.0(a)75.

“Preservation” means the protection of wetlands, other surface waters or uplands from adverse impacts by placing a conservation easement as defined in and meeting the requirements of section 704.06, F.S., over the property, or by donation of fee simple interest in the property to an entity having purposes as described in section 704.06(3), F.S. [via 404 Handbook sec. 2.0(a)]



Preservation as Mitigation

- **In ERP, preservation may be used as mitigation to ensure long-term protection of ecological values or prevent secondary or cumulative impacts [Volume I section 10.3.1]**
- **For the State 404 Program, the use of preservation to provide compensatory mitigation is limited pursuant to section 8.5.5 of the 404 Handbook**



Preservation

404 Handbook, section 8.5.5

(a) Preservation may be used to provide compensatory mitigation when all the following criteria are met:

- 1. The resources to be preserved provide important physical, chemical, or biological functions for the watershed;**



Preservation – 2

404 Handbook, section 8.5.5

- 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 Agency shall use appropriate quantitative assessment tools, where available;**



Preservation – 3

404 Handbook, section 8.5.5

- 3. Preservation is determined by the Agency 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 as described in Volume I, section 10.3.8.**



Preservation – 4

404 Handbook, section 8.5.5

(b) Where preservation is used to provide compensatory mitigation, to the extent appropriate and practicable the preservation shall be done in conjunction with aquatic resource restoration, establishment, and/or enhancement activities. This requirement may be waived by the Agency where preservation has been identified as a high priority using a watershed approach described in section 8.5.2 of this Handbook, but compensation ratios shall be higher.



Adaptive Management

Section 62-331.130(2), F.A.C.
404 Handbook, section 2.0(b)3.
404 Handbook, section 8.5.6.2



Rule Requirement

Section 62-331.130(2), F.A.C.

(2) Mitigation proposals other than the purchase of mitigation bank or in-lieu fee program credits shall include an adaptive management plan. The plan shall include information about the party or parties responsible for implementing adaptive management measures, including the information required in Volume I, section 10.3.1.2.1.



Definition

404 Handbook, section 2.0(b)3.

“Adaptive Management” means the development of a management strategy that anticipates likely challenges associated with compensatory mitigation projects and provides for the implementation of actions to address those challenges, as well as unforeseen changes to those projects. It requires consideration of the risk, uncertainty, and dynamic nature of compensatory mitigation projects and guides modification of those projects to optimize performance. ...



Definition – 2

404 Handbook, section 2.0(b)3.

... It includes the selection of appropriate measures that will ensure that the aquatic resource functions are provided and involves analysis of monitoring results to identify potential problems of a compensatory mitigation project and the identification and implementation of measures to rectify those problems.



Rule Provisions

404 Handbook, section 8.5.6.2

(a) If the compensatory mitigation project cannot be constructed in accordance with the approved mitigation plans, the permittee shall notify the Agency. Any significant modification of the compensatory mitigation project requires approval from the Agency.



Rule Provisions – 2

404 Handbook, section 8.5.6.2

(b) If monitoring or other information indicates that the compensatory mitigation project is not progressing towards meeting its performance standards as anticipated, the responsible party shall notify the Agency as soon as possible. The Agency shall evaluate and pursue measures to address deficiencies in the compensatory mitigation project. The Agency shall consider whether the compensatory mitigation project is providing ecological benefits comparable to the original objectives of the compensatory mitigation project.



Rule Provisions – 3

404 Handbook, section 8.5.6.2

(c) The Agency, in consultation with the responsible party (and other state, federal, tribal, and local agencies, as appropriate), will determine the appropriate measures. The measures may include, but are not limited to, site modifications, design changes, revisions to maintenance requirements, and revised monitoring requirements. The measures shall be designed to ensure that the modified compensatory mitigation project provides aquatic resource functions comparable to those described in the mitigation plan objectives.



Rule Provisions – 4

404 Handbook, section 8.5.6.2

(d) Performance standards shall be revised in accordance with adaptive management to account for measures taken to address deficiencies in the compensatory mitigation project. Performance standards shall also be revised to reflect changes in management strategies and objectives if the new standards provide for ecological benefits that are comparable or superior to the approved compensatory mitigation project. No other revisions to performance standards shall be allowed except in the case of natural disasters.



Adaptive Mgmt. Plan Considerations

- **The definition identifies two categories of adaptive management considerations:**
 - 1. Anticipated challenges**
 - 2. Unexpected changes**
- **Anticipated issues may be addressed specifically in the Adaptive Mgmt. Plan, while unexpected issues are covered by specific permit conditions (akin to Handbook provisions)**



Anticipating Challenges

- **What potential failures can reasonably be anticipated for the mitigation project?**
 - **Ex. Plantings unsuccessful**
 - **Ex. Incompatible substrate**
 - **Ex. Hydrology insufficient**



Adaptive Mgmt. Plan

- **Any remedial actions outlined in an approved plan should be specific**
 - **Methods**
 - **Objectives**
 - **Location(s) and timeline**
- **However, the plan must allow for flexibility — to "adapt" to changing circumstances when necessary**



Long-term Protection and Management

404 Handbook, section 8.5.6.3



Long-term P&M

404 Handbook, section 8.5.6.3

(a) The real estate instrument, management plan, or other long-term protection mechanism must contain a provision requiring 60-day advance notification to the Agency before any action is taken to void or modify the instrument, management plan, or long-term protection mechanism, including transfer of title to, or establishment of any other legal claims over, the compensatory mitigation site.



Long-term P&M – 2

404 Handbook, section 8.5.6.3

(b) The permit conditions shall identify the party responsible for ownership and all long-term management of the compensatory mitigation project. The permit conditions shall, where applicable, contain provisions allowing the permittee to transfer the long-term management responsibilities of the compensatory mitigation project site to a land stewardship entity, such as a public agency, non-governmental organization, or private land manager, after review and approval by the Agency. The land stewardship entity need not be identified in the original permit, as long as the future transfer of long-term management responsibility is approved by the Agency.



Long-term P&M – 3

404 Handbook, section 8.5.6.3

(c) A long-term management plan shall include a description of long-term management needs, annual cost estimates for these needs, and identify the funding mechanism that will be used to meet those needs.



Long-term P&M – 4

404 Handbook, section 8.5.6.3

(d) Any provisions necessary for long-term financing shall be addressed in the original permit. The Agency shall require provisions to address inflationary adjustments and other contingencies, as appropriate. Appropriate long-term financing mechanisms include non-wasting endowments, trusts, contractual arrangements with future responsible parties, and other appropriate financial instruments. In cases where the long-term management entity is a public authority or government agency, that entity shall provide a plan for the long-term financing of the site.



Long-term P&M 5

404 Handbook, section 8.5.6.3

(e) Any long-term financing mechanisms shall be approved by the Agency in advance of the authorized impacts.



Long-term Summary

404 Handbook, section 8.5.6.3

Provisions address:

- a) Noticing requirements for modification or transfer of a mitigation area**
- b) Permit conditions re: responsible parties**
- c) Long-term management plan**
- d) Financial considerations**
- e) Agency approval of long-term financing mechanisms**



Permit Conditions

404 Handbook, section 8.5.3



Conditions

404 Handbook, section 8.5.3

(a) The compensatory mitigation requirements for a permit, including the amount and type of compensatory mitigation, shall be clearly stated in the specific conditions of the individual or general permit verification. The specific conditions must be enforceable.



Conditions – 2

404 Handbook, section 8.5.3

(b) For an individual permit that requires permittee-responsible mitigation, the specific conditions shall:

- 1. Identify the party responsible for providing the compensatory mitigation;**
- 2. Incorporate the final mitigation plan approved by the Agency;**
- 3. State the objectives, performance standards, and monitoring required for the compensatory mitigation project, unless they are provided in the approved final mitigation plan; and**
- 4. Describe any required financial assurances or long-term management provisions for the compensatory mitigation project, unless they are specified in the approved final mitigation plan.**



Conditions – 3

404 Handbook, section 8.5.3

(c) For a general permit activity that requires permittee-responsible mitigation, the specific conditions shall describe the compensatory mitigation proposal, which may be either conceptual or detailed. The general permit verification shall also include a specific condition that states that the permittee cannot commence work until the Agency approves the final mitigation plan, unless the Agency determines that such a specific condition is not practicable and not necessary to ensure timely completion of the required compensatory mitigation. To the extent appropriate and practicable, specific conditions of the general permit verification shall also address the requirements of paragraph (b), above.



Conditions – 4

404 Handbook, section 8.5.3

(d) If a mitigation bank or in-lieu fee program is used to provide the required compensatory mitigation, the specific conditions shall indicate whether a mitigation bank or in-lieu fee program will be used and specify the number and resource type of credits the permittee is required to purchase. In the case of an individual permit, the specific condition shall also identify the specific mitigation bank or in-lieu fee program that will be used. For general permit verifications, the specific conditions shall either identify the specific mitigation bank or in-lieu fee program, or state that the specific mitigation bank or in-lieu fee program used to provide the required credits shall be approved by the Agency prior to purchasing credits.



State 404 v. ERP

Summary of Differences and Similarities



Differences

- **ALWAYS** avoid, then minimize, then mitigate
- **Mitigation hierarchy**
- **Requirements for permit conditions (404 Handbook)**
- **Require federal credits for 404**
 - May have different names
- **Cumulative impact consideration not limited to watershed scale**
 - Can effect whether mitigation is “appropriate”



Differences – 2

- **Adaptive management required by rule, in advance**
- **Every permittee-responsible compensatory mitigation plan must include monitoring for at least five years**



Similarities

- **Federal laws often provide details where State laws do not, but the processes end up being the same/very similar**
- **Both use cumulative impact basins in 10.2.8**



Contact Information

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