

# **Applicant Proposed Mitigation Statements**

## **Background:**

The U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency issued regulations that govern national compensatory mitigation policy for activities in waters of the U.S., including wetlands, authorized by Corps permits. The final mitigation rule was published in the federal register on April 10, 2008, and became effective on June 9, 2008. The final rule establishes standards and criteria for the use of appropriate and practicable compensatory mitigation for unavoidable functional losses of aquatic resources authorized by Corps permits (33 CFR Part 332). Additionally, the rule requires new information to be included in Corps permit applications and public notices to enable meaningful comments on applicant proposed mitigation. In accordance with 33 CFR Part 325.1(d)(7), "For activities involving discharges of dredged or fill material into waters of the U.S., the application must include a statement describing how impacts to waters of the United States are to be avoided and minimized. The application must also include either a statement describing how impacts to waters of the United States are to be compensated for or a statement explaining why compensatory mitigation should not be required for the proposed impacts." For additional information, the final mitigation rule can be viewed at: [http://www.usace.army.mil/cw/cecwo/reg/news/final\\_mitig\\_rule.pdf](http://www.usace.army.mil/cw/cecwo/reg/news/final_mitig_rule.pdf)

Mitigation is a sequential process of avoidance, minimization, and compensation. 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. Please provide your proposed avoidance, minimization, and compensatory mitigation below:

## **Applicant's Proposed Mitigation (attach additional sheets as necessary):**

### **1. Avoidance of impacts to waters of the U.S., including wetlands:**

*Please describe how, in your project planning process, you avoided impacts to waters of the U.S., including wetlands, to the maximum extent practicable. Examples of avoidance measures include site selection, routes, design configurations, etc...*

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2. **Minimization of unavoidable impacts to waters of the U.S., including wetlands:**

*Please describe how your project design incorporates measures that minimize the unavoidable impacts to waters of the U.S., including wetlands, by limiting fill discharges to the minimum amount/size necessary to achieve the project purpose.*

3. **Compensation for unavoidable impacts to waters of the U.S., including wetlands:**

*Please describe your proposed compensatory mitigation to offset unavoidable impacts to waters of the U.S., or, alternatively, why compensatory mitigation is not appropriate or practicable for your project. Compensatory mitigation involves actions taken to offset unavoidable adverse impacts to waters of the U.S., including wetlands, streams and other aquatic resources (aquatic sites) authorized by Corps permits. Compensatory mitigation may involve the restoration, enhancement, establishment (creation), and/or the preservation of aquatic sites. The three mechanisms for providing compensatory mitigation are mitigation banks, in-lieu fee of mitigation, and permittee-responsible mitigation. Please see the attached definitions for additional information.*

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## **Definitions:**

**Enhancement:** the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

**Establishment (creation):** the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and functions.

**In-lieu fee program:** a program involving the restoration, establishment, 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 DA permits. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor. However, the rules governing the operation and use of in-lieu fee programs are somewhat different from the rules governing operation and use of mitigation banks. The operation and use of an in-lieu fee program are governed by an in-lieu fee program instrument.

**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 for impacts authorized by DA permits. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument.

**Permittee-responsible mitigation:** an aquatic resource restoration, establishment, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

**Practicable:** available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

**Preservation:** the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

**Restoration:** 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.