

OVERVIEW OF USACE MITIGATION APPROACHES AND STRATEGIES

Sarah Wingert and Linda Speerstra (USACE HQ)

Michelle Lee Mattson (USACE IWR)

Texas Department of Transportation Peer Exchange

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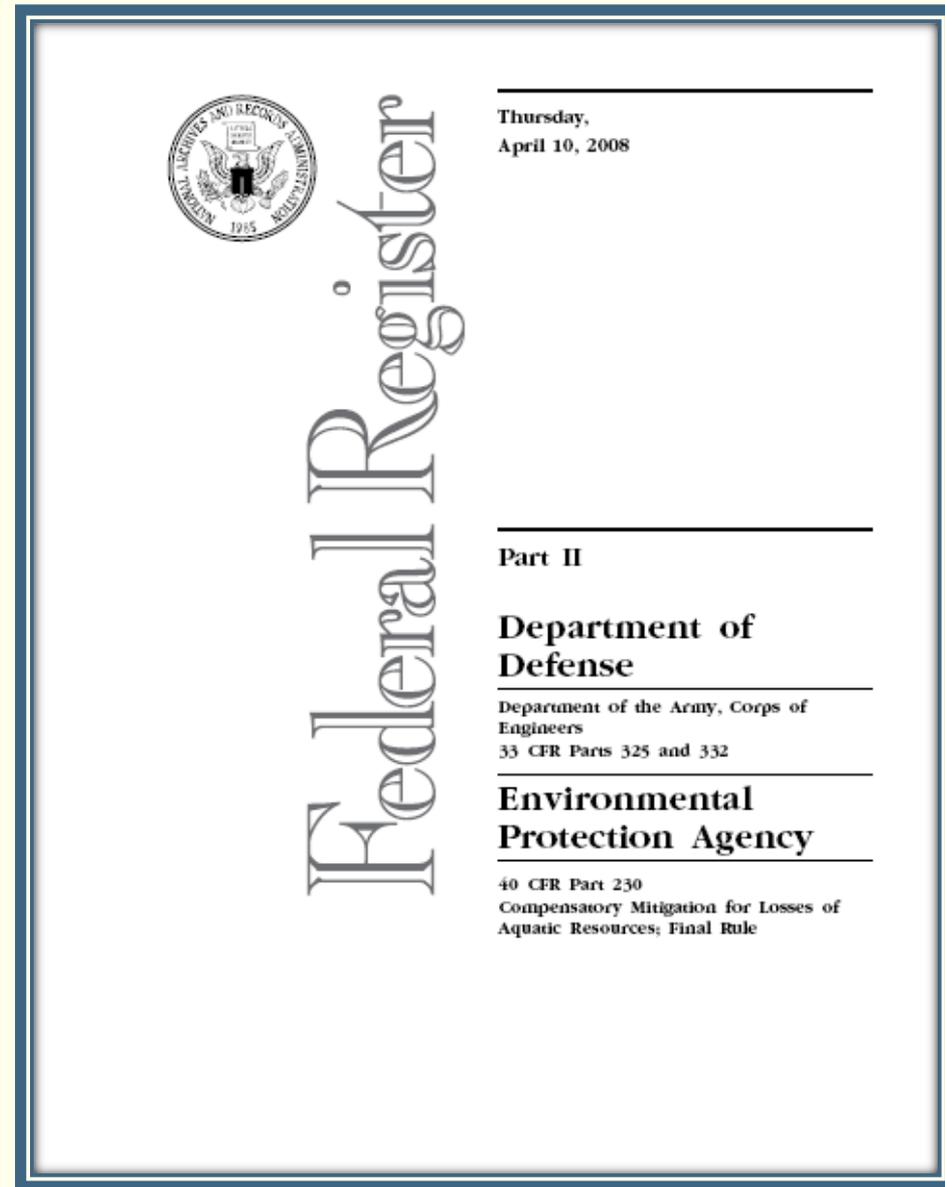
DISCUSSION OUTLINE

- Final Mitigation Rule 2008
- Mitigation Banks by Single-Users and DOTs
- Advance Permittee-Responsible Mitigation (APRM)
- Advantages and Disadvantages



2008 MITIGATION RULE - GOALS

- Sustainability
- Equivalent standards
 - not “when” but “how”
 - *Sequencing* – still avoid and minimize first
- Use of best available science
 - NRC recommendations
- Predictability and efficiency
- Public participation



MITIGATION DEFINED

What is compensatory mitigation?

- The restoration, establishment, enhancement, and/or preservation of aquatic resources to offset unavoidable impacts to waters of the United States

Restoration (Re-establishment and Rehabilitation)

- Returning natural or historic functions to a degraded or former resource

Establishment (creation)

- Manipulate an upland site to develop an aquatic resource

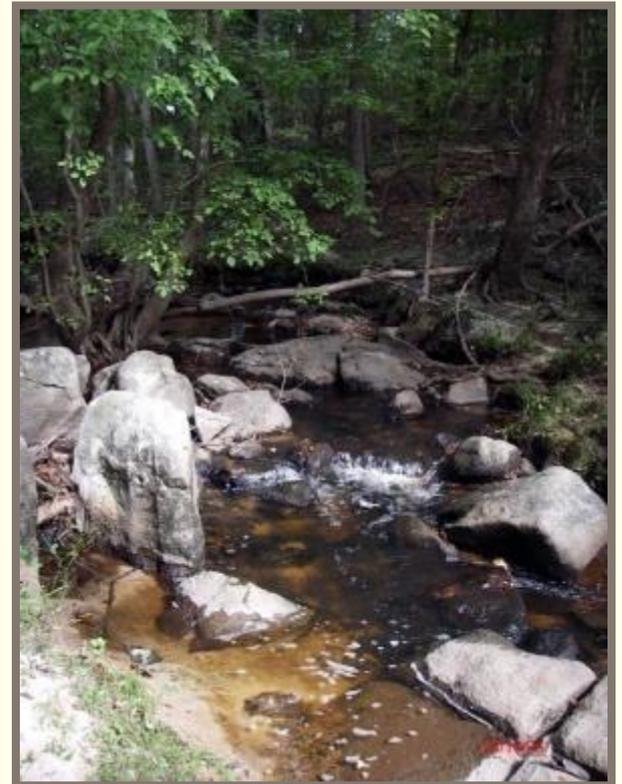
Enhancement

- Manipulate existing resource to increase one or more specific function

Preservation

- Remove a threat to an existing aquatic resource

*Preferably in conjunction with restoration and other methods





MITIGATION APPROACHES

How is compensatory mitigation provided?

- 3rd Party Mitigation
 - Mitigation banks
 - In-lieu fee programs
- Permittee-responsible mitigation (including Advance PRM)

Mitigation bank

- Commercial entity (Private for-profit) or a single user (TxDot)
- One or more large compensatory mitigation sites
- Permittees obtain credits from sponsor
- Sponsor assumes responsibility for providing mitigation
- Corps has no oversight over bank expenditures

In-lieu fee program

- Government or non-profit natural resource management entity
- Collects fees to do larger compensatory mitigation projects
- Fees often received before securing/implementing mitigation
- Typically multiple project sites over the life of the program
- Sponsor assumes responsibility for providing mitigation
- Corps reviews accounting including revenues & expenditures



PREFERENCE HIERARCHY FOR COMPENSATION (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

*Consider what is “environmentally preferable” [332.3(a)(1)]

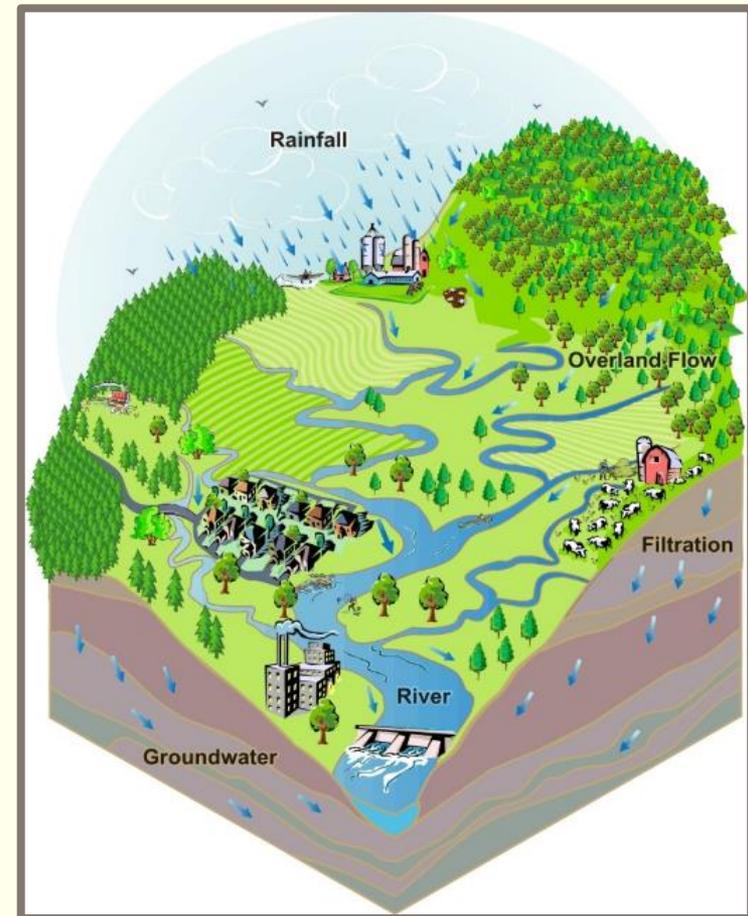
Also consider likelihood of success, risk, uncertainty, and temporal loss

TYPE AND LOCATION OF MITIGATION

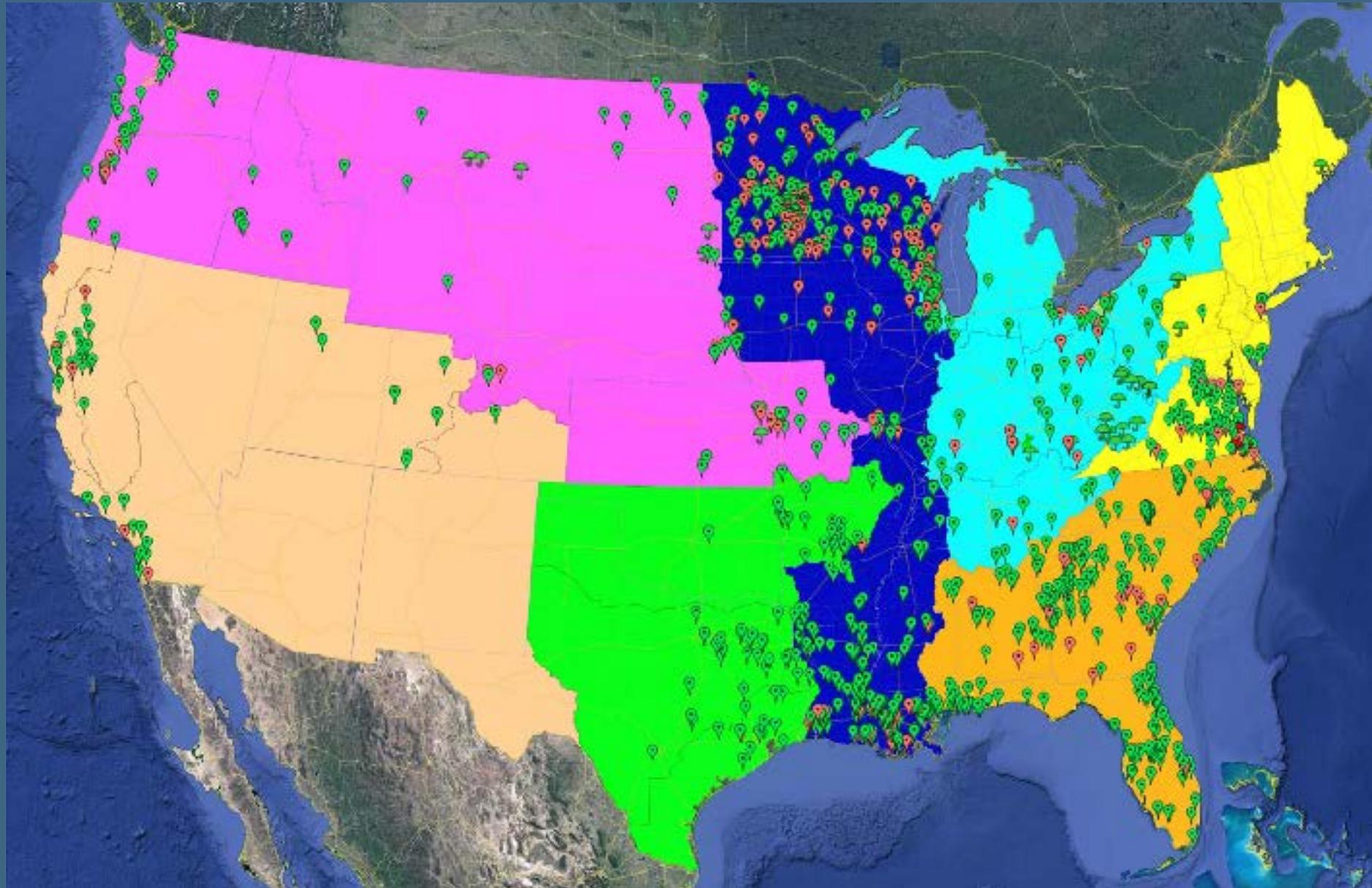
Should be within same watershed as impact AND where most likely to replace lost functions

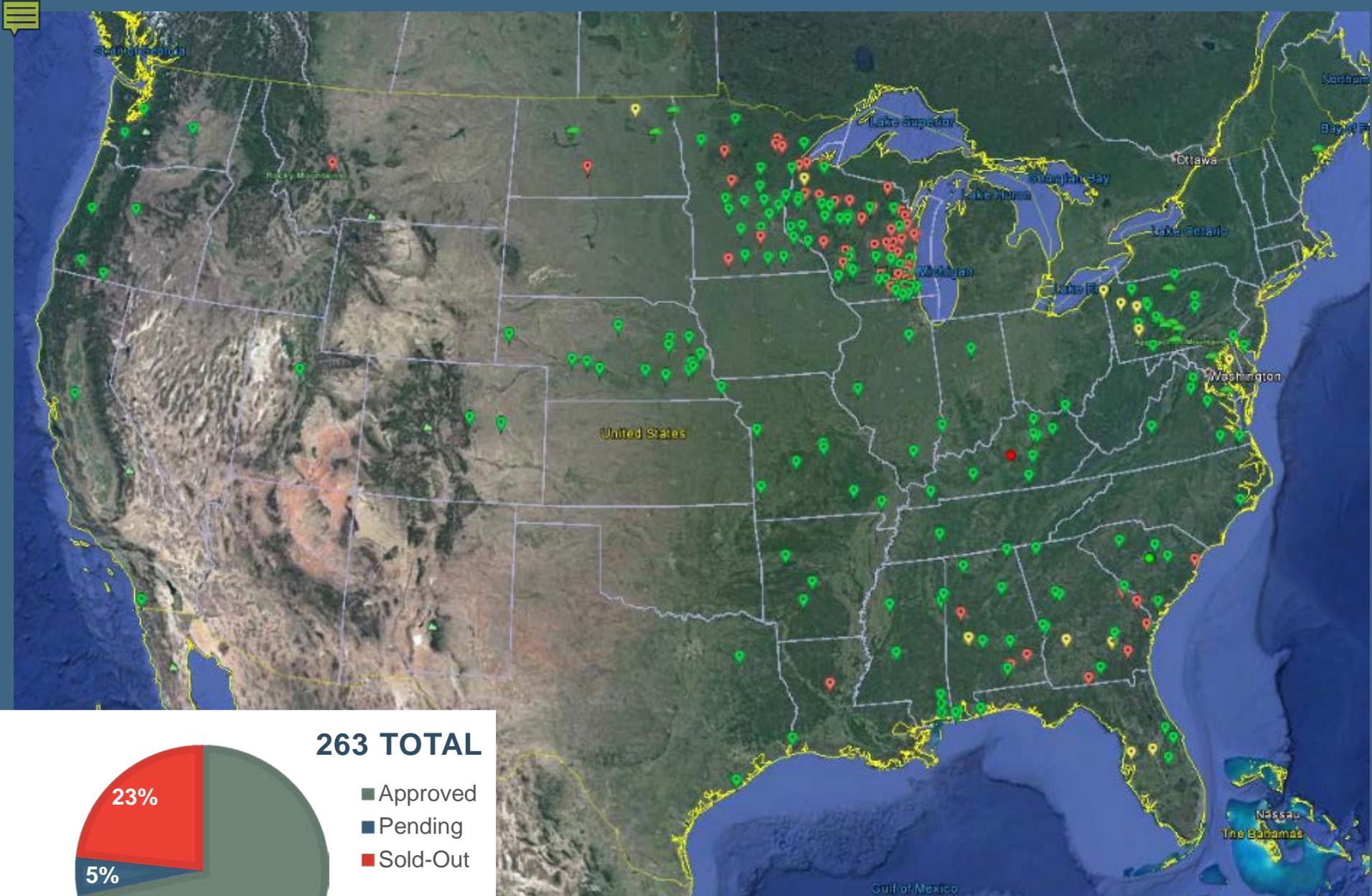
➔ **Watershed Approach**

- Consider:
 - Historic losses
 - Habitat diversity
 - Connectivity
 - Land use trends
 - Compatibility with adjacent uses
- Marine resources
- Coastal watersheds
- Risks to aviation

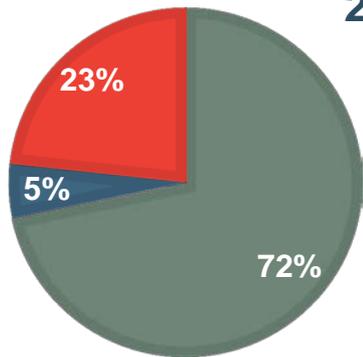


All Bank Sites Approved 2008-2017





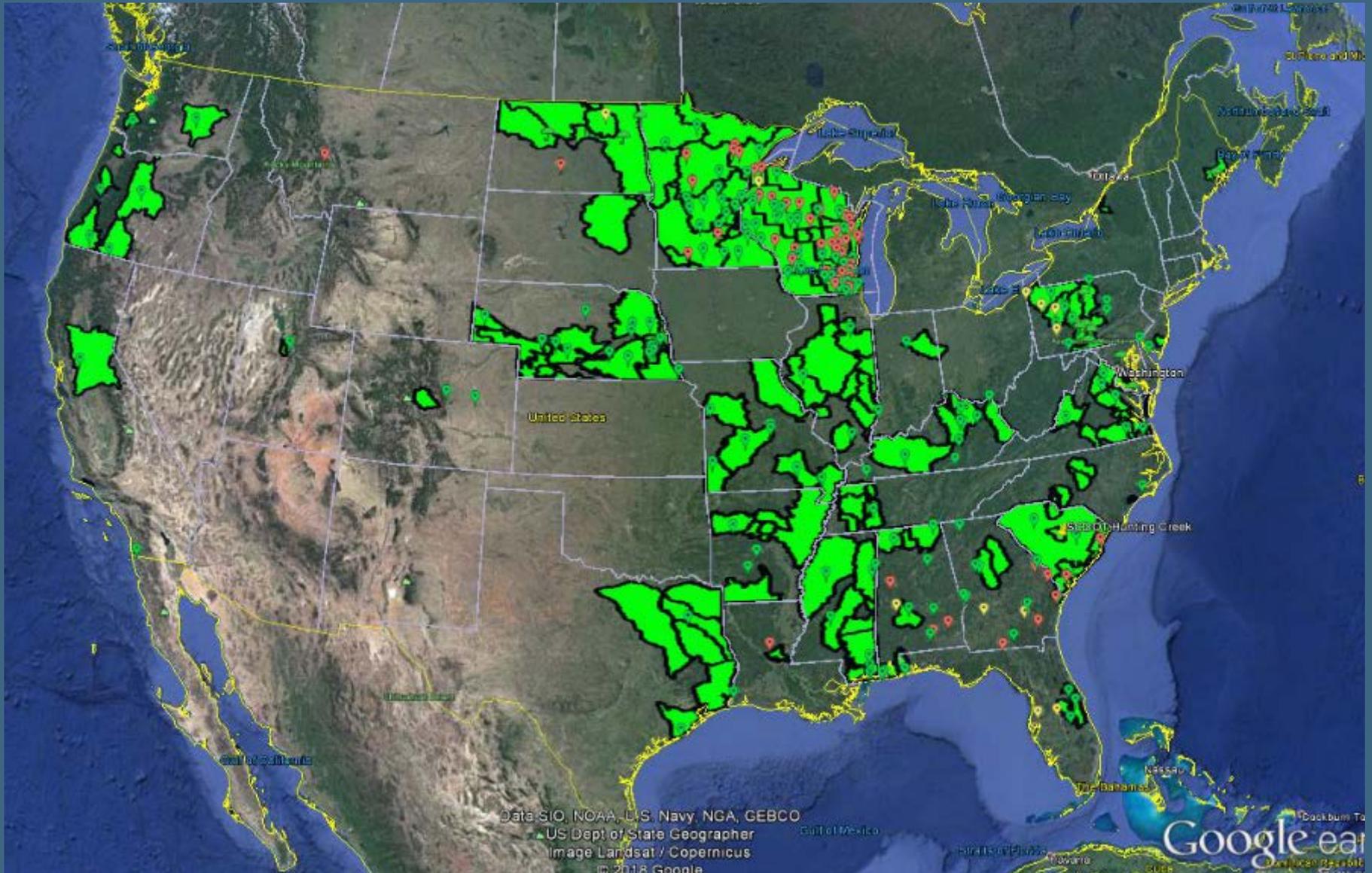
263 TOTAL



- Approved
- Pending
- Sold-Out

DOT Mitigation Banks (06/01/2018)

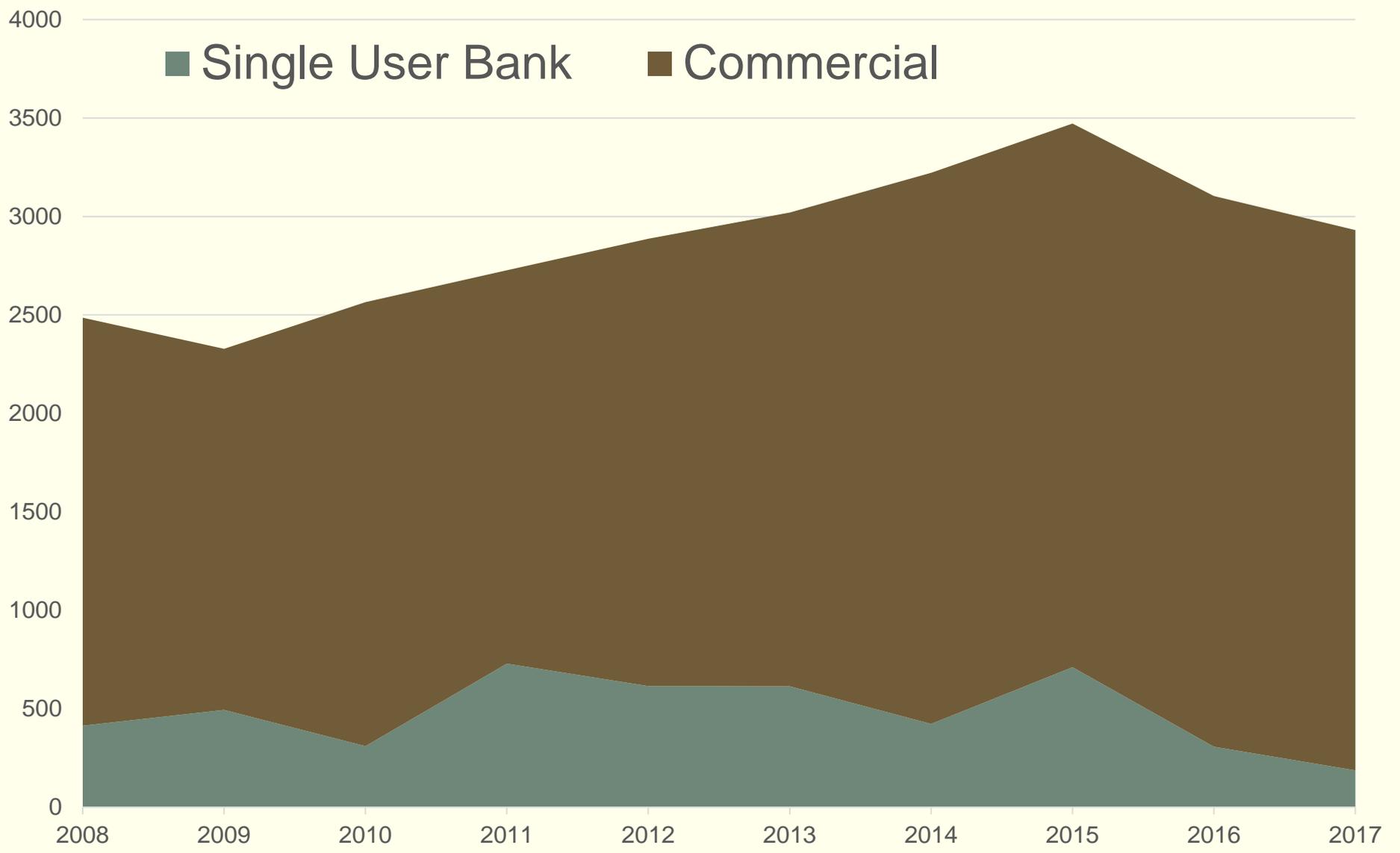
Single-User Bank Service Areas (12/31/2017)



RIBITS Data



All Credit Withdrawals





THIRD-PARTY INSTRUMENT DEVELOPMENT PROCESS

332.8(d)

1. Draft Prospectus
2. Prospectus
3. Draft instrument
4. Final instrument

Compensatory Mitigation Rule Timeline for Bank or ILF Instrument Approval*				
		Event	# of Days**	
Phase I	Day 1	Optional Preliminary Review of Draft Prospectus	30	DE provides copies of draft prospectus to IRT and will provide comments back to the sponsor within 30 days.
	Sponsor Prepares and Submits Prospectus ~DE must notify sponsor of completeness w/in 30 days of submission~			
Day 1** Complete Prospectus Received by DE				
Phase II	Day 30	Public notice must be provided within 30 days of receipt of a complete prospectus	30	
	Day 60	30-Day Public Comment Period	30	
	Day 90	DE must provide the sponsor with an initial evaluation letter within 30 days of the end of the public comment period.	30	15 DE distributes comments to IRT members and sponsor within 15 days of the close of the public comment period.
Sponsor Considers Comments, Prepares and Submits Draft Instrument ~DE must notify sponsor of completeness w/in 30 days of submission~				
Day 1 Complete Draft Instrument Received by IRT Members				
Phase III	Day 1	30-day IRT comment period begins 5 days after DE distributes draft instrument to IRT members	30	
	Day 90	DE discusses comments with IRT and seeks to resolve issues ~ # of days variable~	60	90 Within 90 days of the receipt of a complete draft instrument by IRT members, the DE must notify the sponsor of the status of the IRT review.
Sponsor Prepares Final Instrument ~Sponsor provides copies to DE and all IRT members~				
Day 1 Final Instrument Received by DE & IRT				
Phase IV	Day 30	DE must notify IRT members of intent to approve/not approve instrument within 30 days of receipt.	30	45 IRT members have 45 days from submission of final instrument to object to approval of the instrument and initiate the dispute resolution process.
	Day 45	Remainder of time for initiation of dispute resolution process by IRT members	15	
Day 45 INSTRUMENT APPROVED/NOT APPROVED, or DISPUTE RESOLUTION PROCESS INITIATED				

EPA/Corps draft 4/02/08

Total Required Federal Review (Phases II-IV): ≤225 Days
 *Timeline also applies to amendments
 **The timeline in this column uses the maximum number of days allowed for each phase.

PROSPECTUS CONTENTS

332.8(D)(2)

Banks and ILFs):

1. Objectives
2. How the Bank or ILF program will be established and operated
3. Proposed service area
4. Need and technical feasibility
5. Ownership arrangements
6. Qualifications

Banks must also include:

7. Ecological suitability
8. Assurance of sufficient water rights

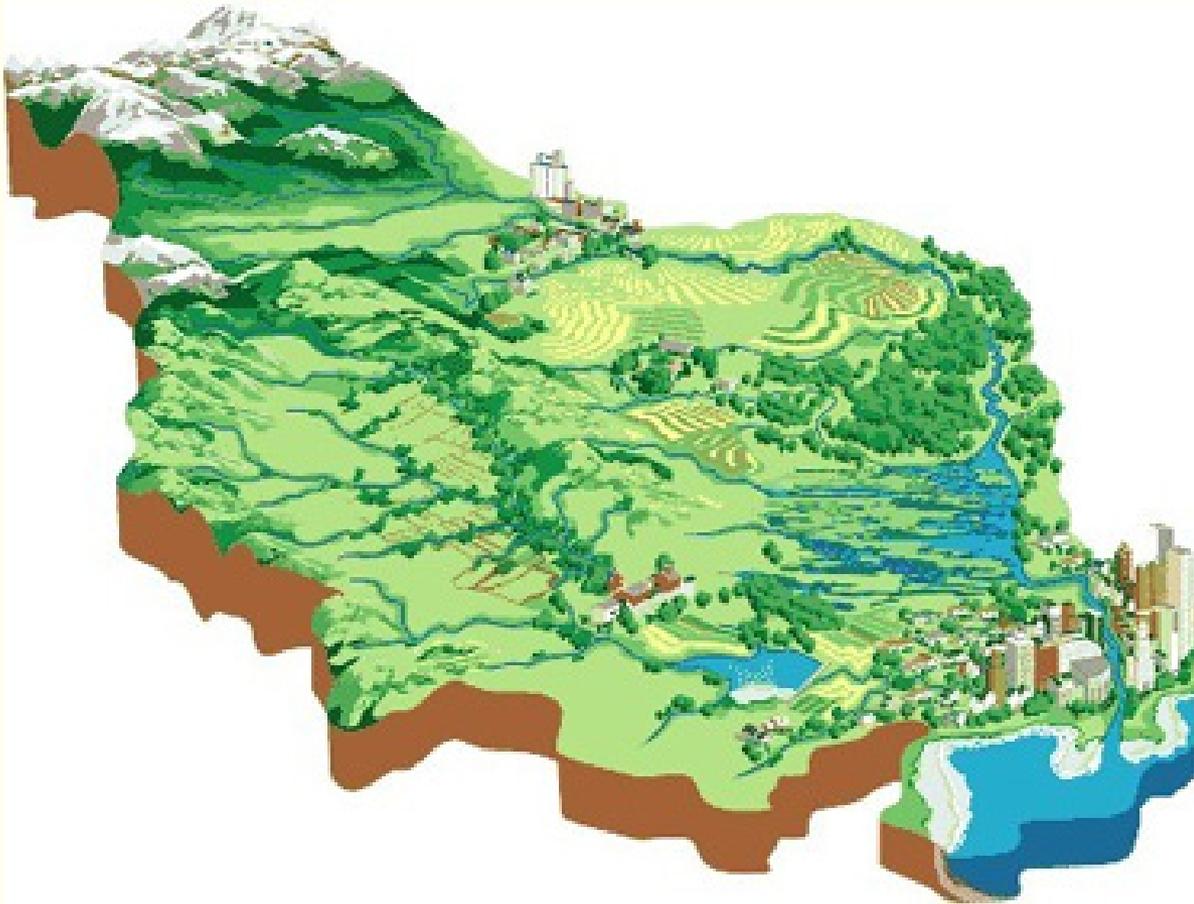
ILFs must also include:

7. Compensation planning framework
8. Description of ILF program account

	Public Notice
U S Army Corps of Engineers Huntington District	In reply refer to Public Notice No. _____ Wetland Mitigation Banking in Ohio Issuance Date: July 20, 2011 Stream: _____ Closing Date: _____ Ohio Wetlands Not Applicable
Please address all inquiries to: U.S. Army Corps of Engineers, Huntington District ATTN: DELBLOREN Public Notice No. (reference above) 502 8 th Street Huntington, WV 25701-2070 Phone: (304) 399-6210	
GUIDELINES FOR WETLAND MITIGATION BANKING IN OHIO BASED UPON THE 2008 FINAL RULE ON COMPENSATORY MITIGATION FOR LOSSES OF AQUATIC RESOURCES WITHIN THE U.S. ARMY CORPS OF ENGINEERS, BUFFALO, HUNTINGTON AND PITTSBURGH DISTRICTS	
JOINT PUBLIC NOTICE: This joint public notice is distributed on behalf of the Buffalo, Huntington and Pittsburgh Districts of the U.S. Army Corps of Engineers.	
AUTHORITY: On April 10, 2008, the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency published a joint federal rule which established regulations governing compensatory mitigation for activities authorized by Department of the Army permits issued pursuant to Section 404 of the Clean Water Act and/or Sections 9 and 10 of the Rivers and Harbors Act of 1899. The federal regulations associated with this final rule include 33 CFR 325 and 33 CFR 332 (U.S. Army Corps of Engineers) and 40 CFR 230 (U.S. Environmental Protection Agency). The Ohio rules that govern wetland compensatory mitigation for Section 401 Water Quality Certifications are found in Ohio Administrative Code 3745-1-50 to 54. In 2001 the Ohio state legislature developed Ohio's Isolated Wetland Statute which regulates compensatory mitigation for impacts to isolated wetlands (Ohio Revised Code 6111.02 to 6111.029).	
PURPOSE: The purpose of this public notice is to announce the availability of the Guidelines for Wetland Mitigation Banking in Ohio. These guidelines were developed by the Ohio Interagency Review Team (Ohio IRT). The Ohio IRT is composed of the Buffalo, Huntington and Pittsburgh Districts of the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency Region V, U.S. Fish and Wildlife Service, Natural Resource Conservation Service, Ohio Environmental Protection Agency, and the Ohio Department of Natural Resources. A draft document was distributed for comment by the Huntington and Buffalo Districts in a public notice dated March 11, 2010, and by the Pittsburgh District in a public notice dated March 12, 2010. In response to public input, changes have been made throughout the document to improve its clarity and consistency with the federal rule and state rules. These guidelines provide those interested in wetland mitigation banking in Ohio with a statewide guide developed to ensure that wetland mitigation banks established in Ohio will have the greatest likelihood of success. Applicable portions of this	

ILF - COMPENSATION PLANNING FRAMEWORK (CPF)

Objective: a mechanism to identify sites that meet aquatic resource needs in the watershed



- Application of the Watershed Approach
- Guides selecting, securing, and implementing compensatory mitigation projects



INSTRUMENT CONTENT COMPARISON

Bank & ILF

1. Service Area
2. Accounting procedures
3. Provision stating legal liability
4. Default and closure provisions
5. Reporting protocols
6. "Other information deemed necessary by DE"

Bank only

7. Mitigation plans addressing the 12 required elements
8. Credit release schedule

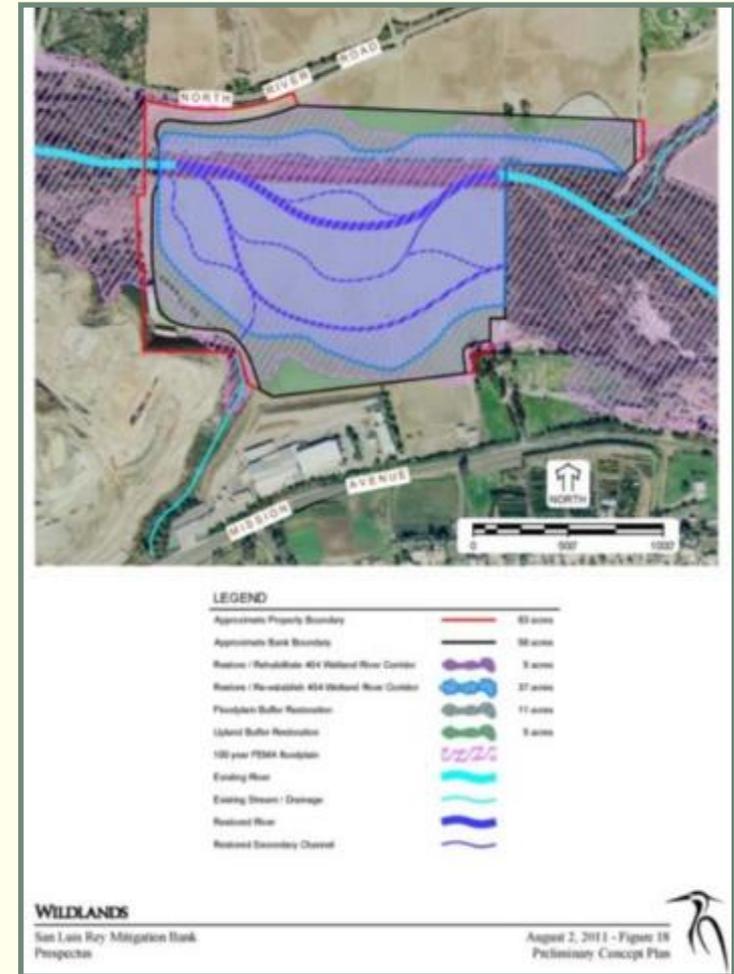
ILF only

7. Compensation Planning Framework
8. Advance credits
9. Fee schedule
10. Method for determining fees and credits
11. Description of in-lieu fee program account

MITIGATION PLAN REQUIREMENTS

332.4(C)

1. Objectives
2. Site Selection
3. Site Protection Instrument
4. Baseline Information
5. Determination of Credits
6. Mitigation Work Plan
7. Maintenance Plan
8. Performance Standards
9. Monitoring Requirements
10. Long-Term Management Plan
11. Adaptive Management Plan
12. Financial Assurances



No permit issued for bank/ILF project until relevant aspects of plan determined.

332.8(j) & (k)



Modifications include:

- Umbrella bank sites
- In-lieu fee project sites
- Site expansion
- New credit types



Streamlined process

- Changes based on adaptive management
- Changes in credit release schedules
- Changes district engineer determines are not significant
- DE determines the proposed modification in “not significant”
- 30 day IRT Review Period

INSTRUMENT MODIFICATIONS



ADVANCE PERMITTEE-RESPONSIBLE MITIGATION (APRM)

- A form of PRM (33CFR332.2)
- Mitigation occurs in advance of authorized impacts
- Permittee retains responsibility and risk
- Mitigation credits used by same entity (not sold)
- Mitigation Rule notes consolidating mitigation may be environmentally preferable for **linear projects**, versus implementing numerous small mitigation projects near impact sites



SEATTLE DISTRICT'S GUIDE, 2012

- Corps Seattle District and WA State Departments of Ecology, Fish and Wildlife, and Transportation
- Allows for advance mitigation and concurrent mitigation
- Applicant provides similar information required for mitigation plan and mitigation bank review
 - Consider the watershed/region
 - Mitigation credit release schedule
 - Credit/debit tracking ledger
 - Geographic use area (“service area”)
- Applicant must show APRM is **environmentally preferable**
- Applicant must track credit use (ledger, maps)



EX: I-5 NORTH COAST CORRIDOR

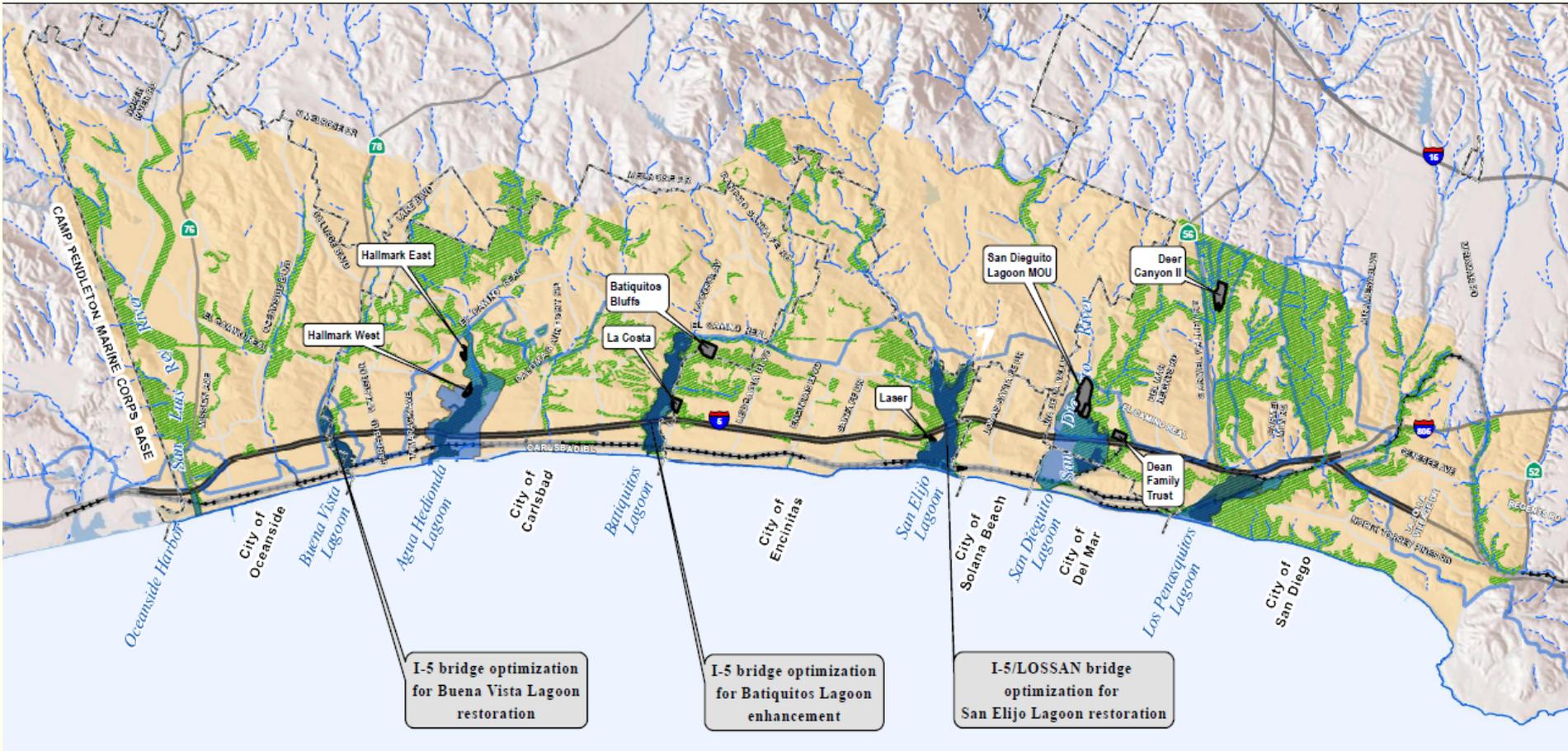
- **TransNet funds** (tax dollars collected by SANDAG)
- **Collaboration** among SANDAG, Caltrans, RWQCB, CDFW, CCC and cities
- **“Umbrella Mitigation Plan”**
 - Resources Enhancement and Mitigation Plan (REMP)
 - 27 miles, 6 lagoon systems, and many coastal watersheds
 - Integrates multiple modes of transportation, enhances coastal access
 - Seeks to protect and enhance natural resources in the NCC/coastal zone
- **Strategic identification** of compensatory mitigation opportunities
 - Addresses unavoidable resource impacts
 - Intended to exceed traditional ratio-based mitigation (proactive rather than reactive mitigation approach that considers coastal region & affected watersheds)
- **REMP Working Group** operates similar to IRT, regular meetings



EX: I-5 NORTH COAST CORRIDOR

- REMP – is the **overarching “Umbrella Mitigation Plan”**
 - Includes all 12 required elements (33 CFR § 332.4(c))
 - Service area covers the coastal areas of all watersheds along the 27 mile corridor.
- Templates or processes for **site-specific** Mitigation Plans; protection instruments; LTMPs; financial assurances; and the credit/debit tracking ledger
- Actual mitigation site approval takes time (some risk to Caltrans)
- Permittee (Caltrans) retains mitigation responsibility, unless officially transfers mitigation to another entity through Assignment & Assumption Agreement. In this case, SANDAG has agreed to take on the mitigation requirements because they hold the funds.

SERVICE AREA



- I-5 NCC Project Area
- LOSSAN Proposed Track
- LOSSAN Existing Track
- North Coast Corridor Travel Shed

- City Boundary
- Interstate
- State Route
- Major Arterial

- Coastal Zone Boundary
- Coastal Zone Appeal and Permit Areas**
- Coastal Commission Permit Jurisdiction
- Lagoon

- Mitigation Sites
- Land Preservation Area

0 1 2 4 Miles



APPROACH COMPARISON

	Advantages	Disadvantages
Mitigation Bank	<ul style="list-style-type: none"> Established process Banked credits Highest on hierarchy Transfer of Responsibility (for commercial, not single-user) 	<ul style="list-style-type: none"> Upfront workload to evaluate long-term mitigation needs Single site and service area May be limited credit types Upfront funding
Umbrella Bank + Individual Sites	<ul style="list-style-type: none"> Formalize approval process for future sites Larger Service Area(s) Multiple sites and credit types Upfront planning and costs 	<ul style="list-style-type: none"> Individual sites go through full process unless otherwise specified Upfront workload to evaluate long-term mitigation needs Upfront funding
ILF + Individual Sites	<ul style="list-style-type: none"> Advance credits Multiple sites and service areas Limited upfront costs 	<ul style="list-style-type: none"> Not collecting fees No DOT-sponsored ILFs IRT oversight of financials
Advance Permittee-Responsible Mitigation	<ul style="list-style-type: none"> Reduce Temporal Loss & Mitigation Ratios Early ID & Evaluation of Impacts, Avoidance & Minimization Early ID of Opportunities, and Compensatory Mitigation Options Increase Planning and Permitting Efficiencies (Proactive vs. Reactive) 	<ul style="list-style-type: none"> Upfront workload to evaluate long-term mitigation needs Must demonstrate Environmentally Preferable, Lower on Hierarchy At Own Risk – No Guarantee Accepted for each permitting project Mitigation credits CANNOT be sold

IF YOU HAVE FUTURE QUESTIONS

Corps HQ: Sarah Wingert or David Olson

- sarah.e.wingert@usace.army.mil
- david.b.olson@usace.army.mil

Corps IWR: Michelle Lee Mattson

- michelle.l.mattson@usace.army.mil

EPA HQ: Palmer Hough

- hough.palmer@epa.gov

EPA HQ: RIBITS Website for Bank/ILF Tracking:

- <https://ribits.usace.army.mil>

EPA Compensatory Mitigation Website:

- <https://www.epa.gov/cwa-404/compensatory-mitigation>

