



Public Notice

U.S. Army Corps
of Engineers
Baltimore District

Date: October 2, 2004

Special Public Notice # 04-12

Subject: Final Mitigation and Monitoring Guidelines

Summary

The Baltimore District Corps of Engineers is hereby issuing the attached final Mitigation and Monitoring Guidelines. These final Guidelines should be considered when developing compensatory mitigation for unavoidable aquatic resource impacts authorized by the Corps Regulatory Program pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. This includes Regional General Permits, Nationwide Permits, State Programmatic General Permits (Category III activities), and Individual Permit (Standard Permit) actions. The Baltimore District will apply these final Guidelines to their regulatory boundaries in Pennsylvania, Maryland, Northern Virginia military bases, and Washington, D.C. Effective November 1, 2004, please ensure that mitigation plans submitted in support of a Section 404 or Section 10 permit application address the items specified in the attached final Mitigation and Monitoring Guidelines, as appropriate.

In addition to the requirements identified in the final Guidelines, there may be other individual guidance provided by Federal or State agencies. For example, these Mitigation and Monitoring Guidelines were intended to supplement existing interagency mitigation guidance papers published for the State of Maryland (*Maryland Compensatory Mitigation Guidance, August 1994*) for consistency with the mitigation implementation clarification provided in Regulatory Guidance Letter #02-2 and the National Academy of Science recommendations. These Guidelines do not supercede existing Federal or State laws or regulations. As additional guidance and/or clarification are received from the National Mitigation Action Plan initiatives, we will modify these Guidelines as appropriate.

Background

As a result of the recommendations of the National Academy of Sciences findings and the resulting National Mitigation Action Plan, the U.S. Army Corps of Engineers has commenced several national initiatives to improve the success of compensatory mitigation overall and in the context of a regional watershed approach. In December 2003, in accordance with Corps Headquarters guidance on the National Mitigation Action Plan, a special public notice was issued announcing the draft Baltimore District Mitigation and Monitoring Guidelines for review and comment. The public notice was issued for 30 days and extended for an additional 15 days. The public notice was sent to all interested parties, including appropriate State and Federal agencies.

The main purpose for the draft Mitigation and Monitoring Guidelines was to assist applicants in the preparation of compensatory mitigation and monitoring plans. The draft Guidelines included a Compensatory Mitigation Plan Checklist and Guidance Supplement developed by the Corps in coordination with the Environmental Protection Agency. The one page Checklist and supporting Supplement were intended to be used as a technical guide by permit applicants preparing compensatory mitigation plans to identify the types and extent of information that the Corps may

need to assess the likelihood of a mitigation proposal's success. In addition, the draft Guidelines included the National Academy of Science's recommendations with implementing clarification for the development and implementation of compensatory mitigation projects.

Discussion of Public Comments

Comments were received in response to Baltimore District's public notice from the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Maryland Department of the Environment, the Pennsylvania Department of Environmental Protection, the Pennsylvania Department of Transportation, the Pennsylvania Game Commission, the Tri-County Regional Planning Commission, Harford County Government, the Pennsylvania Chapter of the Sierra Club, and Loiederman Soltesz Associates, Inc.

Several commenters specifically recommended that one consistent set of "Guidelines" be developed among the three Corps Districts (Baltimore, Philadelphia, and Pittsburgh) for use within the regulatory boundaries of the Commonwealth of Pennsylvania. To address this recommendation, the Baltimore, Philadelphia, and Pittsburgh Corps Districts have jointly developed the enclosed final Guidelines. Baltimore District will apply these jointly developed final Guidelines to their regulatory boundaries in Pennsylvania, Maryland, Northern Virginia military bases, and Washington D.C.

Overall, comments varied with regard to the "level of detail" needed in developing the Guidelines. Some commenters wanted more prescriptive discussions and implementing procedures, while other commenters wanted the focus to be more on flexibility rather than detail. To allow for regional and project-specific flexibility inherent in a watershed approach, we have removed many of the specific implementing procedures described in the draft Guidelines. The final Guidelines focus on assisting applicants with preparation of compensatory mitigation and monitoring plans by identifying the types and extent of information that agency personnel may need to assess the likelihood of success of a mitigation proposal. The final Guidelines set a minimum level of information needed by the agency to evaluate compensatory mitigation. In all circumstances, the level of information required for a mitigation plan should be commensurate with the scope of the proposed impacts to aquatic resources, consistent with the guidance from Regulatory Guidance Letter 93-2 on the appropriate level of analysis for compliance with the Section 404 (b)(1) Guidelines. The Corps project managers will continue to make mitigation decisions on a case-by-case basis and in accordance with national policy.

Several commenters requested clarification on the applicability of the Guidelines to projects being processed under State Programmatic General Permits (SPGPs). We have provided clarification that the Guidelines should be considered with all Federal permit actions reviewed under Category III of the SPGPs requiring compensatory mitigation for impacts to aquatic resources. In general, the Corps will require compensatory mitigation by special condition for most unavoidable permanent wetland and stream impacts processed under Category III of the SPGPs.


Several commenters stated that other professionals, such as accredited landscape architects and licensed surveyors, in addition to professional engineers, could prepare and certify acceptable as-built plans. We agree with this recommendation and have made these additions to the Guidelines.

One commenter recommended that an adaptive management plan should only be required if the post-construction monitoring report concluded that the mitigation site is not functioning as planned. The purpose of an adaptive management program is to provide a plan that identifies and prepares for unanticipated site conditions or changes (e.g., flooding, drought, invasive species, seriously degraded site, etc). Advance planning for potential challenges through an adaptive management plan will allow for projects to start with a better understanding of best management practices and innovations relevant to the goals and objectives of the mitigation project. The adaptive management plan not only informs for what might be done differently, but also provides for an action plan to implement appropriate remedial measures. Monitoring of wetland functions and processes (e.g., water-level fluctuations, sediment accretion and erosion, plant flowering, and bird nesting) is an important component of an adaptive management program that provides for early identification of potential problems and remedial actions. The adaptive management plan may also identify the financial assurance mechanisms that could be used to implement these remedial actions to correct the unexpected problems.

All comments received were reviewed and considered in the development of these final mitigation and monitoring guidelines. These Mitigation and Monitoring Guidelines are now available for use by the general public and by the Baltimore District regulatory project managers. Effective November 1, 2004, all mitigation plans submitted in support of a Section 404 or Section 10 permit application shall conform to these guidelines.

“A copy of the final Mitigation and Monitoring Guidelines can be reviewed on the Baltimore District’s web site: <http://www.nab.usace.army.mil/Regulatory/PublicNotice/spnotices.htm> Interested parties who do not have access to the Internet, but who would like to view the Mitigation and Monitoring Guidelines, may request a copy of this document by calling Ms. Aida Vasquez at (410) 962-3670.”

For additional information, please call Ms. Beth E. Bachur of my staff at (410) 962-4336.


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