



**US Army Corps
of Engineers**
Portland District

PUBLIC NOTICE

MITIGATION BANKING

Issue Date: September 7, 2005

THE USE OF EXISTING FEDERAL PROGRAMS TO RESTORE, ENHANCE OR CREATE WETLANDS AND HOW SUCH AREAS WILL BE CONSIDERED IN THE REVIEW OF DEPARTMENT OF THE ARMY PERMIT APPLICATIONS AND MITIGATION BANKS

Landowners can enter into federally funded wetland conservation agreements with the Natural Resources Conservation Service (NRCS), U.S. Fish and Wildlife Service (USFWS), U.S. Department of Agriculture or other federal agencies designed to encourage private landowners to participate in conservation activities on their property. These programs offer technical support and cost-share opportunities to private landowners. Such programs were established by Congress to be a source of net gain in aquatic resources. During the duration of the program/landowner agreement (generally 5-33 years), the site cannot be used for mitigation credit. However, the terms of the program allow the landowner to terminate the agreement if he/she reimburses the respective federal agency for their cost of the project.

In accordance with Section II of the Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks (Guidance), published in the Federal Register on November 28, 1995, by the U.S. Army Corps of Engineers (Corps), U.S. Environmental Protection Agency, NRCS, USFWS, and National Marine Fisheries Service, wetlands restored through a federally-funded wetland conservation program cannot be used to generate credits within a mitigation bank. However, the Guidance also states that mitigation credit may be given for activities undertaken in conjunction with, but supplemental to, such programs in order to maximize the overall ecological benefit of the conservation project.

Therefore, in accordance with the Guidance, federally funded wetland mitigation projects such as those described above cannot be used to generate credits within a mitigation bank. In addition, the U.S. Army Corps of Engineers, Portland District (District), will not allow such restored, enhanced or created habitats to be used as mitigation credit as part of any site-specific mitigation plan. However, the District may consider such wetlands for preservation credit if the agreement with the applicable federal agency has been terminated. In all cases, the use of such restored, enhanced or created wetlands as preservation credit will be at a minimum of a 10:1 ratio and cannot be used to reduce the restoration, enhancement or creation component of any required compensatory mitigation plan deemed necessary to offset an authorized wetland impact to less than a 1:1 ratio. Any project that utilizes federal funds must specifically identify the exact location and acreage, as well as fully and clearly describe the activity, that pertains to the use of these funds.