

# Interagency Regulatory Guide

## Advance Permittee-Responsible Mitigation

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*U.S. Army Corps of Engineers*  
*Washington State Department of Ecology*  
*Washington State Department of Fish and Wildlife*



**US Army Corps  
of Engineers**  
Seattle District



DEPARTMENT OF  
**ECOLOGY**  
State of Washington



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## Publication and Contact Information

This Interagency Regulatory Guide on Advance Permittee-Responsible Mitigation (Guide) was cooperatively developed by an interagency workgroup. The workgroup members include:

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This report is available on the Department of Ecology's website at <https://fortress.wa.gov/ecy/publications/SummaryPages/120615.html>.

This report and other mitigation resources can be found on the Department of Ecology's Mitigation That Works website at: <http://www.ecy.wa.gov/mitigation>.

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*If you need this document in a format for the visually impaired, call the Shorelands and Environmental Assistance Program at 360-407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.*

**US ARMY CORPS OF ENGINEERS AND WASHINGTON STATE DEPARTMENTS OF  
ECOLOGY AND FISH AND WILDLIFE INTERAGENCY REGULATORY GUIDE ON  
ADVANCE PERMITTEE-RESPONSIBLE MITIGATION  
DECEMBER 2012**

The U.S. Army Corps of Engineers and the Washington State Departments of Fish and Wildlife, Ecology and Transportation have developed the Interagency Regulatory Guide on Advance Permittee-Responsible Mitigation (Guide), dated December 2012, prepared to address questions raised by the Mitigation that Works Forum and their report, "Making Mitigation Work" (Ecology pub. #08-06-018). The report includes a recommendation to "expand appropriate use of advance mitigation". The Guide is intended to help applicants in developing advance mitigation proposals, and explain how advance mitigation sites may be used to mitigate for unavoidable impacts. This Guide works within existing regulatory authorities and is not intended to expand or restrict any existing regulatory authorities.

The regulatory agencies, in signing this document show their support for advance mitigation because it provides mitigation in advance of impacts so the temporal loss of functions common with concurrent mitigation is eliminated or reduced. The risk of mitigation sites not achieving the targeted improvement to wetlands, water quality, and/or fish and wildlife habitat are eliminated because advance mitigation sites will not generate credits until the targeted functions are achieved and the site is proposed for use by an applicant. This Guide provides information on how an advance site can be proposed for regulatory approval, and how a site can be used to provide aquatic resource mitigation. This Guide is intended to provide flexibility and emphasizes using a watershed approach in planning and designing sites, while operating within existing regulatory frameworks.

The U.S. Army Corps of Engineers and the Washington State Departments of Fish and Wildlife and Ecology will use this Guide to provide applicants with information on what is needed when proposing and using an advance mitigation site.



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US Army Corps  
of Engineers  
Seattle District

US ARMY CORPS OF ENGINEERS  
AND WASHINGTON STATE  
DEPARTMENTS OF ECOLOGY AND  
FISH AND WILDLIFE  
INTERAGENCY REGULATORY GUIDE ON  
ADVANCE PERMITTEE-RESPONSIBLE MITIGATION  
DECEMBER 2012



## Purpose

The purpose of this Interagency Regulatory Guide on Advance Permittee-Responsible Mitigation (Guide) is to identify the circumstances under which the Seattle District, U.S. Army Corps of Engineers (Corps) and the Washington State Departments of Ecology (Ecology) and Fish and Wildlife (WDFW) will consider advance permittee-responsible compensatory mitigation for unavoidable impacts to aquatic resources. Nothing in this Guide either diminishes or expands the regulatory authorities of these agencies. This Guide is meant to provide assistance to applicants proposing to establish an advance mitigation site and to explain how a site might be used as mitigation. This Guide supersedes the definitions for advance and excess mitigation found in “Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance,” (2006 Joint Guidance) March 2006, pages 33 and 34, Chapter 4, section 4.1<sup>1</sup>. This Guide complements WDFW’s mitigation policy (POL-M5002).

## Definition of Permittee-Responsible Advance Mitigation

In the context of this Guide, advance mitigation is a form of permittee-responsible compensatory mitigation constructed in advance of a permitted impact. Permittee-responsible mitigation is defined by 33 CFR 332.2 as aquatic resource restoration, establishment, enhancement, and/or preservation, undertaken to provide compensatory mitigation, for which the permittee retains full responsibility.

Applicants conduct advance mitigation at their own risk. Even if compensatory mitigation activities are themselves authorized by a permit, establishing compensatory mitigation in advance of the impacts does not create any presumption or guarantee that a proposed future impact will be authorized, or that the advance compensatory mitigation will be considered adequate and/or suitable mitigation for any specific future project.

Mitigation credits may be generated on an “advance mitigation” basis by establishing an advance mitigation site designed to compensate for future expected impacts. Alternatively, advance mitigation can also be combined with concurrent mitigation required by a Federal, State, or local permit, where the concurrent mitigation site provides additional area beyond the immediate mitigation requirements, and/or the site provides additional functions in excess of what is required for the permitted impact. The excess mitigation generated at a site would be established in advance of, and would generate credits for use against, expected future impacts. In these cases, the area being set aside for advance mitigation must be clearly identified and documented to distinguish from the area being used as concurrent mitigation.

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<sup>1</sup> The 2006 Joint Guidance can be found online at:  
<http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/guidance/index.html>.

Advance mitigation can be proposed by any applicant, but the advance compensatory mitigation credits generated by a mitigation effort in advance of impacts can only be used by that same applicant. If it is determined a mitigation effort and the generated advance credits are not needed by the permittee, they should coordinate possible options with the regulatory agencies. Once any credits have been utilized on an approved advance mitigation site, further credits generated by the advance mitigation effort on that site cannot be sold to another applicant. The restriction on sale of credits derives from the lack of regulatory authority, except in a mitigation banking or in-lieu fee program context, to transfer the obligation for mitigation success to any party other than the permittee of the impacting project.

The credit value of mitigation efforts at a site will generally increase over time because the temporal loss is eliminated or decreased if a mitigation effort is established and meeting performance standards prior to the use of the generated credits. The longer a site is functioning, the more credits it may generate for use until the site has reached its maximum potential of credits by meeting all of the listed performance standards (typically around year ten). The general policy of the regulatory agencies is that a site would not generate advance mitigation credit beyond the concurrent ratios recommended in the most current Joint Guidance for wetland mitigation, or in the WDFW mitigation policy POL-M5002 for fish habitat, until the site has been functioning and meeting the required performance standards for a minimum of two calendar years after earth work and planting have been completed. In cases where a permit applicant seeks to apply mitigation credits prior to this interval, it will usually be reviewed as concurrent mitigation. There may be circumstances where the site, or a portion of the site, may generate advance credit within the first two years (e.g., breaching dikes, removing fish passage barriers, preserving existing wetland or fish habitat, and in some cases wetland re-establishment or creation actions). These circumstances will be reviewed by the regulatory agencies on a case-by-case basis.

When applying for approval to establish an advance mitigation site, applicants will need to provide information similar to that required for a mitigation plan approval. Additional information pertinent to the review of the advance proposal will also be required as defined in the “Proposing Advance Mitigation” section on pages 5-6 of this document. The agencies also recommend submitting a proposed credit generation schedule demonstrating a reduced ratio as the site matures, and proposed credit value(s) the applicant is anticipating the advance site may generate. The geographic area proposed as the potential project use area for future impacts should also be proposed by the applicant based on a watershed approach. The regulatory agencies can review and finalize the credit generation schedule and the geographic use area during the permitting process as part of the approval for the mitigation plan. This will provide the applicant a conditional decision on the potential credits a site may generate if a site is meeting performance standards outlined in the mitigation plan as well as what geographic areas will be acceptable for use. If this information is not available at the time of application for the advance mitigation establishment, it will be required to be approved by the agencies prior to using any credits generated at the site.

At the time generated advance credits are proposed for use, the regulatory agencies with jurisdiction over the impacting proposal will decide if the advance compensatory mitigation project provides the appropriate type and extent of mitigation necessary to compensate for a project’s impacts. The agencies will also consider how the mitigation site is functioning prior to determining how much of the advance credit is necessary to offset impacts (see “Use of the Advance Mitigation Site” section, pages 7-8 of this document). Credits can only be used once and upon their use as mitigation the mitigation effort reflected in these credits will not accumulate additional value over time. The

agencies with jurisdiction will require in the permit for the aquatic impact, the appropriate number of advance credits necessary for mitigation. If necessary, the agencies will also define specific areas of the advance mitigation site designed to address compensation for specific impacts to critical on-site functions or habitat type that might be required (e.g. a created stream channel may be required to mitigate for filling a stream). In some cases the agencies may require critical functions to be mitigated on-site at the impact location while other functions may be appropriately mitigated at the advance site (“decoupling”). Critical functions are those site specific functions the agencies have determined must be maintained on-site.

The agency-approved use as compensatory mitigation of all advance credits must be documented in a ledger managed by the advance mitigation permittee, and submitted to the appropriate regulatory agencies for each ledger transaction. The transaction must document the use of credits and in some cases specific areas on a map that will be deducted or shown as used if necessary to offset critical habitat or function impacts (i.e. a stream creation area to offset stream loss). Any generated credits will not be officially accepted or released by the agencies for compensatory use until the time an applicant proposes the use of credits as mitigation for a specific impacting project, and the regulatory agencies approve use of those credits as mitigation. However if a site has achieved performance standards as outlined in the advance mitigation plan but the advance site has not been approved by the regulatory agencies for use, , the opportunity for the permittee to use the advance mitigation site will not expire. The functional lift achieved by the site will be considered by the agencies when proposed for use by the permittee.

## **Pertinent Regulations**

### **Federal**

The Corps and the Environmental Protection Agency (EPA) published a rule on Compensatory Mitigation for Losses of Aquatic Resources (Mitigation Rule) (33 CFR Parts 325 and 332, 40 CFR Part 230), dated April 10, 2008<sup>2</sup>. The Mitigation Rule defines requirements of compensatory mitigation for unavoidable impacts to the nation’s aquatic resources resulting from authorized activities. The Mitigation Rule is intended to enable the agencies to promote greater consistency, predictability and ecological success of mitigation projects under the Clean Water Act and Rivers and Harbors Act.

The Mitigation Rule defines three forms of compensatory mitigation: mitigation banks; in-lieu fee programs; and permittee-responsible mitigation. The Federal hierarchy of preferred forms of mitigation is

1. Mitigation banks
2. In-lieu fee programs
3. Permittee-responsible mitigation that is undertaken using a watershed approach, if appropriate and practicable
4. On-site and in-kind
5. Off-site and/or out-of-kind.

When proposing advance mitigation in a service area where a mitigation bank or in-lieu fee program has been approved, the applicant must demonstrate why the advance site is ecologically preferable to

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<sup>2</sup> The Mitigation Rule can be found online at:  
[http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation\\_index.cfm](http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm).

other forms of mitigation. Also, in some cases it may be necessary to replace critical functions on-site. Appendix 1 sets forth a comparison of these various mitigation options and the responsibilities associated with each.

Although the Mitigation Rule does not specifically define or discuss advance mitigation as a compensatory mitigation strategy, advance mitigation fulfills several of the objectives that are cited in 33 CFR 332.3(a) as bases for concluding that mitigation banks and in-lieu fee programs are preferable forms of compensatory mitigation: reducing temporal losses of functions, and reducing uncertainty over mitigation project success. In addition, under the definition of “temporal loss” at 33 CFR 332.2, the Federal mitigation regulations provide: “Higher compensation ratios may be required to compensate for temporal loss,” and 33 CFR 332.3(m) articulates a strong preference for advance compensatory mitigation, by requiring advance or concurrent mitigation “to the maximum extent practicable.” By requiring additional mitigation to offset temporal losses, the Federal regulations implicitly authorize comparatively reduced mitigation requirements when mitigation is accomplished in advance. It is thus an acceptable form of permittee-responsible mitigation for the federal regulatory agencies provided it follows the procedures and constraints outlined in this Guide.

## **State**

Ecology’s authority rests with the state Water Pollution Control Act (Chapter 90.48 RCW) and associated water quality regulations (Chapter 173-201A WAC). Based on the anti-degradation policy (WAC 173-201A-300-330), adequate mitigation is required to effectively offset aquatic impacts. Per Section 401 of the Clean Water Act, Ecology must certify that projects comply with state water quality protection laws before the Department of the Army permit can be authorized.

WDFW is charged with implementing the state’s Hydraulic Project Approval (HPA) authority (Chapter 77.55 RCW). Any entity conducting work affecting the bed or flow of state waters is required to obtain an HPA from WDFW. An HPA must contain all avoidance, minimization, and compensation measures necessary to ensure the proper protection of fish and their habitats. The rules implementing the Hydraulic Project Approval authority not only allow the use of advance mitigation, they state that a project proponent may be required to establish functional compensatory mitigation prior to the impact (WAC 220-110-020(66)).

For projects located on state owned aquatic lands, applicants must coordinate with the Department of Natural Resources. Local jurisdictions regulate critical areas including wetlands and streams. Projects affecting critical areas may need to obtain local permits for construction.

## **Agency Support**

Federal and state regulations and guidance encourage implementation of mitigation in advance of the project impacts to reduce or eliminate temporal loss, and reduce the risk of unsuccessful mitigation. With advance mitigation, temporal loss is eliminated or reduced, therefore allowing for a reduced amount or ratio for compensation. In addition, the WDFW mitigation policy (POL-M5002) acknowledges the benefit of providing compensatory mitigation in advance of the impacting project. The risk of failed mitigation is reduced because mitigation credit will not be generated for use to offset aquatic impacts until the advance mitigation site demonstrates performance and functional lift. Applicants also may benefit from completing mitigation in advance. If a mitigation site is constructed and functioning prior to the impacts, the eventual compensatory mitigation decisions are likely to occur more quickly. This may result in a decrease in permit processing time because

regulatory agencies will have the certainty that a mitigation site is successfully functioning and will not have to review and approve a new site that has the risks associated with concurrent mitigation. The site's mitigation credit generally will increase over time as the site matures until it reaches the maximum credit potential when the mitigation goals, objectives and performance standards are met. Ratios required to offset impacts generally will be reduced over time due to the decrease in temporal loss and risk, making advance mitigation more cost effective.

## Proposing Advance Mitigation

In order to qualify for the enhanced compensation ratios associated with advance mitigation, agency verification of baseline conditions is necessary, so pre-approval of a Mitigation Plan prior to commencing the mitigation effort is required. When proposing an advance mitigation site, applicants should consider the anticipated location of future projects that will require mitigation so an appropriate location near potential impacts can be selected. The mitigation should be designed to achieve a self-sustaining site where appropriate. The type of mitigation proposed should consider future needs so the mitigation type can offset expected functional losses of future aquatic impacts. In cases where WDFW mitigation is required, the site should benefit the same fish stocks impacted by the project. Fish stocks are defined as "a group of fish that return to spawn in a given area at the same time and are, for the most part, reproductively isolated from other such groups. A stock may include several local spawning populations."

The risk of advance mitigation is borne by the permittee planning to use the mitigation site. Establishing a mitigation effort generating advance credits provides no entitlement to, or guarantee of, use of those credits as compensation for any particular project causing impact to aquatic resources.

The following information is required for agency review and conditional approval when proposing an advance mitigation site:

1. Applicants shall submit a mitigation plan for agency review and approval. The plan shall be in accordance with 33 CFR 332.4(c) (see Appendix 2), and the current Joint Guidance, "Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans", March 2006 Interagency Guidance, Ecology Publication #06-06-011b, and WDFW POL-M5002 for fish habitat as applicable. The advance mitigation plan shall contain the requirements of a concurrent mitigation plan and the following additional information:
  - a. Disclosure that the proposal is to construct a permittee-responsible advance mitigation site.
  - b. The site location must be selected using a watershed approach. The watershed needs should be identified in the plan, and include an explanation of how the mitigation will improve the watershed.
  - c. Detailed and adequate documentation of baseline conditions (e.g., wetland delineation and functional assessments, wetland category based on the Ecology rating form, condition of riparian or wetland buffers, and condition of stream and fish species if present), from which future ecological lift can be determined and adequate credit identified. The baseline must be thoroughly documented as it is the foundation for determining a site's potential for functional lift, and therefore the advance mitigation credits that may be generated.
  - d. The size/acreage and type of mitigation proposed to be established, restored, rehabilitated, enhanced, and/or preserved.

- e. As stated above, if fish habitat mitigation is being included, the mitigation site should benefit the same fish stocks impacted by the project proposing to use the site for future mitigation needs. This may be required by WDFW prior to using a site for mitigation. For all mitigation sites proposed to be used for any fish or fisheries habitat impacts, provide size/acreage details for mitigation proposals that include fish habitat creation, restoration, or enhancement, fish barrier removals, or other mitigation that is required to offset expected fish habitat or stream impacts. Also include information on the limiting factors of the watershed if available, and an explanation of how the mitigation will improve these limiting factors for the species and habitats that may benefit. It may be necessary to track fish habitat mitigation elements separately from wetland credits in order to document appropriate establishment and use of mitigation for fish habitat impacts.

The following information is recommended for agency review and approval when proposing an advance mitigation site. Submitting this additional information will facilitate agency approval earlier in the process on key mitigation decisions such as the anticipated credits that may be generated at a site if performance standards are met, and on the acceptable location (service area) that may apply to the proposed mitigation site. Getting agency approval on these elements prior to establishing the site should provide applicants with more assurance of how a site may be used on future actions. If an applicant decides not to provide this additional information prior to site establishment, they may have an increased risk that their anticipated use area and credit generating schedule may not be approved by the agencies at time of proposed use.

- f. Propose a credit generating schedule or framework demonstrating how the credits will increase over time as the site matures and successfully reaches performance standards. This schedule should show how the advance credit may be generated as the site matures from construction (when concurrent mitigation ratios will apply) through year 10 and should include the performance standards guiding the credits that may be generated. The agencies can agree on the site's proposed or expected future (e.g., post-construction) environmental value, credit, and ecological lift if all performance standards are accomplished, but they cannot determine the appropriateness for the use of any credits until such time as it is proposed to be used as compensatory mitigation for a specific project.
- g. Propose the boundary of the geographic area that is appropriate to be used for future impact locations.
- h. Propose appropriate ratios for credit use based on impact type, and quality of and functions provided by the aquatic resources at the impact site. This will likely be general information based on standard ratios for impacts to wetland category and type outlined in the Joint Guidance. Exact impact areas and functions may not be known and adequacy of ratios proposed must be considered on a case by case basis.

In order to use the credits generated by an advance mitigation effort for compensatory mitigation, the permittee of the impacting project shall be responsible for the performance, sustainability, maintenance and monitoring (for both the establishment period of the advance mitigation site and the Long-term Monitoring and Maintenance period) of the advance mitigation site. This permittee can act through a third party agent to construct, maintain, and monitor the mitigation but the permittee is ultimately responsible for site performance.

The agencies strongly recommend applicants contact tribes and local governments involved in decisions for use of the site as mitigation (e.g., critical area or shoreline permits, sites affecting fish habitat, or Tribal 401 Certification) early in the permit review process. In some cases, local jurisdictions may not have regulations in place to allow mitigation in advance of impacts. If a project is located on state owned aquatic lands, applicants will also need to contact the Department of Natural Resources for approval.

## **Use of the Advance Mitigation Site**

At the time that credits generated by the advance mitigation effort are proposed to be used as compensatory mitigation for a specific project, the permit applicant shall provide an Advance Mitigation Site Use Plan (Use Plan) to the regulatory agencies with jurisdiction over the action causing aquatic impacts.

The Use Plan should include the following information:

1. Reference the mitigation plan defined in the “Proposing Advance Mitigation” section listed above. This should include all of the elements listed in the required section. If the information listed in the recommended section was not included in the application stage, this information should be provided in the Use Plan.
2. All monitoring reports for the site, or a reference to the reports if they have been provided.
3. Demonstrate the advance mitigation’s ecological lift beyond the approved baseline conditions, documented by meeting stated performance standards or demonstrated by a functional assessment and monitoring reports.
4. Describe the development project’s impacts to aquatic resources requiring mitigation. Include type of aquatic impact, fish and wildlife species affected, acreage impacted, functions lost, and how impacts have been avoided and minimized.
5. Describe how the advance mitigation adequately compensates for the unavoidable impacts to waters of the U.S. and any impacts to fish life.
6. If the impact area is within the service area of an approved mitigation bank or in-lieu-fee program, demonstrate why the use of the advance mitigation site is ecologically preferable from a watershed perspective. Some critical functions may need to be mitigated on site.
7. Propose the amount of mitigation credit the applicant believes is necessary to offset lost functions from the proposed impacts. This should be based on the credit generating schedule if one was established during the application stage (see 1.f. above). If not established it should be based on the quality of the impacted area and functions lost, and the age and demonstrated success of the advance mitigation site. The final decision on the type, and amount of compensatory mitigation required for an impacting project is reserved to the exclusive discretion of the regulatory agencies with authority over that project.
8. The site must be protected in perpetuity prior to the use of the site as mitigation. Include information on what site protection mechanism has been established or is being proposed for

agency approval (restrictive covenant, deed restriction, conservation easement, etc.). Include financial assurances and/or long-term management and maintenance plan as required by the regulatory agencies.

9. Propose an adequate record-keeping method, ledgers to be used, and methods for tracking of the site's credits and area used. Once credits are approved for use by the regulatory agencies, a ledger will be required and will include the documentation of all projects using credits from the site to date and which agency(s) required the credit for mitigation, how much credit is used for each project (based on a specific geographic area and/or function), and date of use. Prior to authorizing the use of any advance compensatory mitigation, the Corps, Ecology, and WDFW if applicable, will be required to approve the mechanisms for tracking the credit use of the site. For tracking purposes, any time a site's credit is used, the permittee will be required to send a copy of an updated ledger within 30 days of the credit use to the assigned project manager for the Corps, Ecology and WDFW even if these agencies did not require the credit for a federal or state authorization.

At the time a credit is used and debited from the ledger, the regulatory agencies will identify if the mitigation requires a specific geographic area or function to be deducted from use on the site plan, or if just a general credit deduction is necessary. This will allow the expenditure of advance credits to be accurately tracked. It will also provide direct linkage between activities causing loss of aquatic resources and the corresponding specific compensatory mitigation, for compliance and enforcement purposes. If only a portion of the advance mitigation site is used as mitigation, adequate buffers will be required to protect the mitigation area from adjacent land uses.

As previously stated, once the first credits generated by the mitigation site are approved for use in accordance with a Use Plan, and once those credits are applied to an impacting project as compensatory credits, the released credits and the opportunity to generate any further credits from that site cannot be sold or otherwise transferred to another party. If it is determined the mitigation and the generated advance credits are not needed by the permittee, they should coordinate possible options with the regulatory agencies. There is no guarantee of any opportunity to transfer any released credits, either prior to or after use as compensatory mitigation for an impacting project, nor any guarantee that the right to use any potential credits, that may be generated by the mitigation site following the first use of credits, may be sold or transferred to another party. The permittee bears the risk of possible inability to utilize all the credits that could potentially be generated on a mitigation site. Regardless of any options for disposition of unused and unneeded potential credits, once credits generated by the advance mitigation have been authorized for use, the mitigation site constitutes permittee-responsible mitigation and the permittee of the impacting project retains legal responsibility for the success, sustainability, and monitoring of the advance mitigation site. The permittee is also responsible for funding and implementation of the site protection mechanism and any long-term management and maintenance plan as described in #8 above.

# Appendices

## Appendix 1. Comparison of Permittee-Responsible Advance Mitigation to Other Mitigation Options

Type	Who is Responsible for Site Development, Management, Performance & Protection	When Can the Site be Used	Is the Sale of Credits Allowed	Who Can use the Site as Mitigation
Mitigation Banking	Bank Sponsor – any private, tribal, or public entity	Credits must be generated and released prior to impacts; one major advantage of banking is that a limited number of credits become available when the banking instrument is approved, the site is protected, and financial assurances are posted.	Yes	As approved by the permitting agencies, an applicant with impacts in bank-service area
In-Lieu Fee	Program Sponsor – must be a governmental (including tribal) or non-profit natural resource entity	The fee must be applied to mitigation effort within 3 growing seasons from the first in-lieu fee payment within a designated service area.	Yes, in-lieu fee payment is applied toward the costs of establishing mitigation	As approved by the permitting agencies, any applicant with impacts in an approved service area that pays the in- lieu fee to an approved program
Permittee-Responsible Advance	Permittee of the Advance Site	The site can be used as concurrent mitigation within one year of impacts through the first two years after construction. If used two or more years after mitigation construction, the ratio for use will decrease as additional credits generated will be valued as advance credits which generally increase in value as the effort matures and the performance standards are met.	No, advance credits cannot be sold	The advance credits can only be used by the permittee that developed the advance site.
Permittee-Responsible Concurrent	Permittee	Mitigation effort must be implemented concurrently or within one year of impacts.	No	The permittee for the impact project

## **Appendix 2. Minimum requirements for a compensatory mitigation plan (33 CFR 332.4(c))**

1. Objectives: A description of the resource type(s) and amount(s) that will be provided, the method of compensation, and the manner in which the resource functions of the project will address the needs of the watershed.
2. Site Selection: A description of the factors considered during the site selection process.
3. Site Protection Instrument: A description of the legal arrangements and instrument that will ensure the long-term protection of the project site.
4. Baseline Site Information: A description of the ecological characteristics of the proposed site.
5. Determination of Credits: A description of the number of credits to be provided, including a brief explanation of the rationale for this determination.
6. Mitigation Work Plan: Detailed written specifications and work descriptions for the project, including geographic boundaries; construction methods, timing, and sequence; source(s) of water, including connections to existing waters and uplands; methods for establishing the desired plant community; plans to control invasive plant species; the proposed grading plan; soil management; and erosion control measures.
7. Maintenance Plan: A description and schedule of maintenance requirements to ensure the continued viability of the resource once initial construction is completed.
8. Performance Standards: Ecologically based standards that will be used to determine whether the compensatory mitigation project is achieving its objectives.
9. Monitoring Requirements\*: A description of parameters to be monitored in order to determine if the compensatory mitigation project is on track to meet performance standards and if adaptive management is needed. A schedule for monitoring and reporting on monitoring results must also be included.
10. Long-term Management Plan\*: A description of how the project will be managed after achievement of performance standards to ensure the long-term sustainability of the resource, including long-term financing mechanisms and the party responsible for long-term management.
11. Adaptive Management Plan\*: A management strategy to address unforeseen changes in site conditions or other components of the project, including the party or parties responsible for implementing adaptive management measures. The adaptive management plan will guide decisions for revising mitigation plans and implementing measures to address both foreseeable and unforeseen circumstances that adversely affect the project's success.
12. Financial Assurances\*: A description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the compensatory mitigation project will be successfully completed, in accordance with its performance standards.
13. Other information as deemed necessary.

\*These requirements may be deferred until submittal of the first Use Plan for the advance mitigation site. If technical advice is needed to address these requirements, please contact the Regulatory Agency(s).