



**US Army Corps
of Engineers**
Fort Worth District

Public Notice

Number: CESWF-13-MIT-1
Activity: Proposed "50-50" Stream Mitigation Method
Date: April 15, 2013

	<p>The purpose of this public notice is to inform you of a proposed stream mitigation method and public meeting.</p>
<u>Regulatory Program</u>	<p>Since its early history, the U.S. Army Corps of Engineers has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the U.S. Army Corps of Engineers Regulatory Program.</p>
<u>Section 10</u>	<p>The U.S. Army Corps of Engineers is directed by Congress under Section 10 of the Rivers and Harbors of 1899 (33 USC 403) to regulate <i>all work or structures in or affecting the course, condition or capacity of navigable waters of the United States</i>. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.</p>
<u>Section 404</u>	<p>The U.S. Army Corps of Engineers is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the <i>discharge of dredged and fill material into all waters of the United States, including wetlands</i>. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.</p>
<u>Contact</u>	<p>Name: <u>Ms. Jennifer Walker</u> Phone Number: <u>(817) 886-1863</u></p>

**PUBLIC NOTICE FOR PROPOSED “50-50” STREAM MITIGATION METHOD
AND NOTIFICATION OF PUBLIC MEETING**

U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT

SUBJECT: Compensatory Mitigation is one of the key requirements of the Regulatory Program. As per the 2008 Mitigation Rule, compensation mitigation requirements must be commensurate with the amount and type of aquatic resource impacts associated with permit actions. Appropriate implementation of compensatory mitigation requirements further supports the national program goals of no net loss of aquatic resource function.

When compensatory mitigation has been required as a condition of a CWA Section 404 authorization, the U.S. Army Corps of Engineers (USACE) has always shown a preference for in-kind replacement of lost aquatic functions. Because of on-site ecological limitations for permittee-responsible mitigation (PRM) and the lack of true in-kind mitigation bank credits, in-kind mitigation has not always be achievable, especially in the case of lost stream functions. In the Fort Worth District (District) this especially holds true for in-kind replacement of lost stream functions. In the past, the District has allowed activities such as upland buffer planting or wetland enhancement, accomplished either through permittee-responsible mitigation or mitigation bank credits, to be used as compensatory mitigation for loss of stream. While such forms of mitigation afford some level of benefit to the adjacent stream function, they in no way serve to replace in-channel stream functions to the extent required by the Regulatory Program. As a result of more recent studies on stream mitigation, in addition to our own evaluations performed as part of the development of the Texas Rapid Assessment Model (TXRAM), the District now recognizes that allowing for the continued use of these upland buffer and wetland enhancement activities, performed either as permittee-responsible mitigation or as part of an approved mitigation bank, will result in further net loss of overall stream functions within the District. In an effort to address this issue, the District has developed a draft method known as the “50/50” Stream Mitigation Method (method) to ensure an appropriate level of compensatory mitigation for stream function is achieved.

This Public Notice is being issued to provide interested parties an opportunity to comment on the proposed stream mitigation method and announce a public meeting to further allow discussion on the proposed method.

DATE ISSUED: April 15, 2013

DEFINITIONS:

- **In-Channel Credits:** Credits generated from specific activities within stream channels. SWF banks with in-channel credits, as of April 2013, include Daisy MB, Mill Branch MB, Patroon Bayou MB, and Wilbarger Creek MB.
- **Stream Credits:** Certain credits generated from non-riparian buffer, non-in-channel activities; not generated in newer banks. SWF “legacy” banks with these credits include: Patroon Bayou MB, Trinity River MB, South Forks Trinity River MB, Steele Creek MB, and Anderson Tract MB.
- **Riparian Buffer Credits:** Credits generated from enhancement activities in stream buffer areas only. SWF banks with riparian buffer credits, as of April 2013, include Fall-Off Creek MB, Patroon Bayou MB and Scoober Creek MB.
- **In-Channel Work:** Minimum 50% of TXRAM lift for each stream assessment reach occurs from in-channel metrics (i.e. without Riparian Buffer Condition metric included).
- **In-Kind Mitigation:** Perennial and intermittent stream impacts must be mitigated with in-kind replacement relative to stream type. Ephemeral stream impacts may be mitigated with either ephemeral or intermittent stream mitigation.

PROPOSED “50/50” STREAM METHOD: (Please reference the attached flow charts titled “Proposed Procedure For Intermittent and Perennial Streams” and “Proposed Procedure For Ephemeral Streams”)

For intermittent and/or perennial stream impacts within the service area of a bank with *in-channel credits*, at least 50% of the calculated mitigation requirement must be met utilizing the mitigation bank. The remaining required mitigation may be met through purchase of either *stream credits* or *riparian buffer credits*. If the stream impacts are not within the service area of a mitigation bank with *in-channel credits*, *riparian buffer credits*, or *stream credits* permittee-responsible mitigation would be required. If the stream impacts are located within the service area of a mitigation bank with only *riparian buffer credits* or *stream credits*, a combination of permittee-responsible mitigation and purchase of mitigation credits would be allowed. Note that when utilizing permittee-responsible mitigation, the availability of a conservation easement affects the mitigation requirements.

For ephemeral stream impacts within the service area of a bank *with in-channel* OR *riparian buffer credits*, at least 50% of the calculated mitigation requirements must be met utilizing the mitigation bank. The remaining required mitigation may be met through purchase *stream credits*. If the stream impacts are not within the service area of a mitigation bank with *in-channel credits*, *riparian buffer credits*, or *stream credits* permittee-responsible mitigation would be required. If the stream impacts are located within the service area of a mitigation bank with *stream credits* only, a combination of permittee-responsible mitigation and purchase of

mitigation credits would be allowed. Note that when utilizing permittee-responsible mitigation, the availability of a conservation easement effects the mitigation requirements.

PUBLIC MEETING LOCATION: The public meeting will be held Thursday, April 25, 2013, from 1:00 to 4:00 PM at the US Army Reserve Center located at 1860 Summit Ave., in Lewisville, Texas. Parking is available at the Reserve Center. Please note that comments presented at the public meeting are not part of the official record. To be included in the official record, written comments must be received on or before May 15, 2013.

REGISTRATION: The public meeting is being made available to the first 100 respondents and is limited to two representatives per external stakeholder organization. To register for this meeting, please email Ms. Cynthia Partee at: Cynthia.a.partee@usace.army.mil.

DIRECTIONS TO ARMY RESERVE CENTER:

Heading South on I-35E

Exit 454A toward Justin Rd/FM 407

Turn Right on Justin Road/FM 407 (directly after going under bridge)

Turn Left to stay on Justin/FM 407 (at stop light)

Turn left on Summit Ave. (at stop light)

Location will be on your left, it will be the building on left.

Heading North on I-35E

Exit 454A

Slight Right on Lake Park Road

Turn Left on Justin Road/FM 407 (at stop light, crossing back over I-35E)

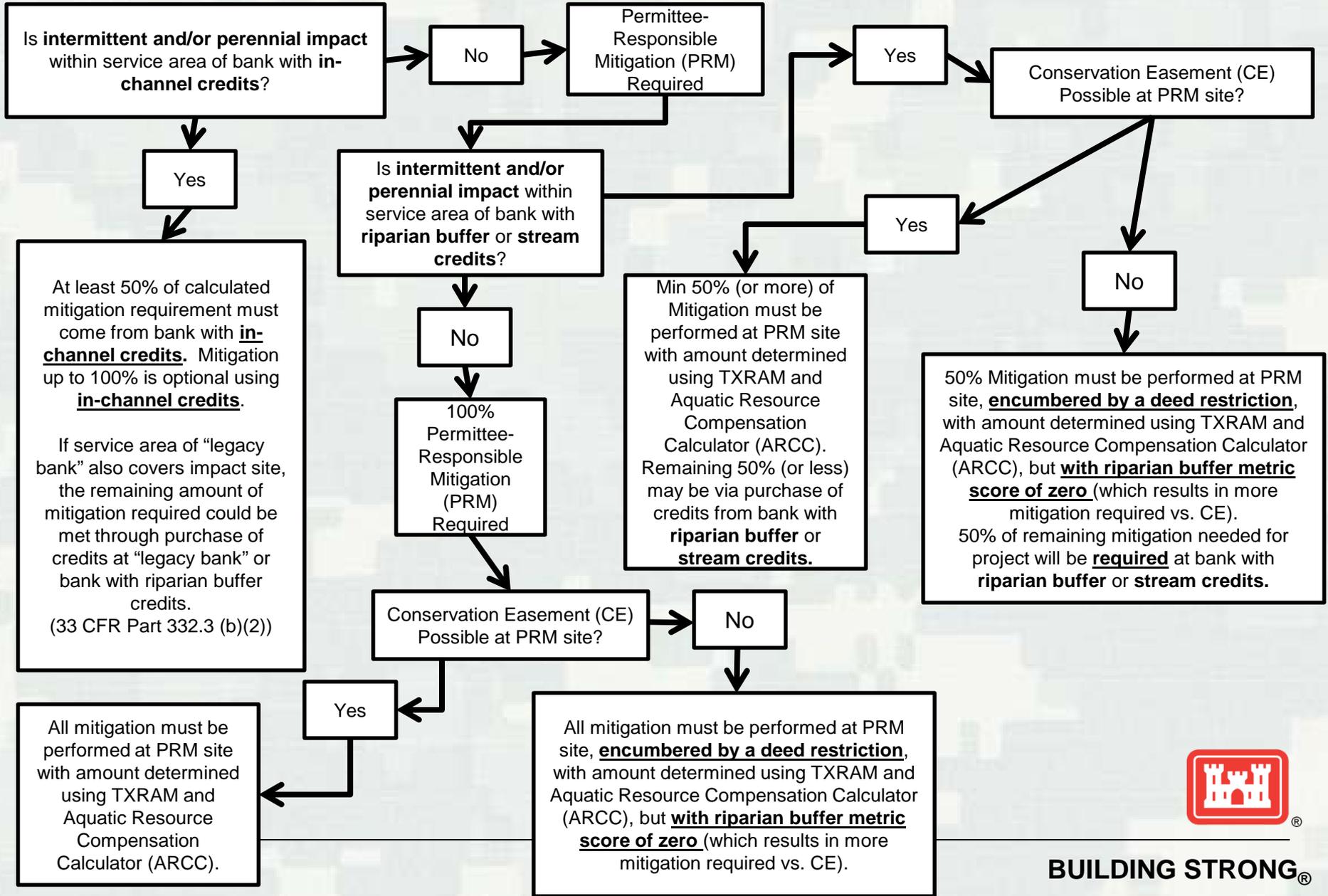
Turn Left on Summit Ave. (at stop light)

Location will be on your left, it will be the building on left.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before May 15, 2013, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Ms. Jennifer Walker; Regulatory Branch, CESWF-PER-R; U.S. Army Corps of Engineers; Post Office Box 17300; Fort Worth, Texas 76102-0300. You may visit the Regulatory Branch in Room 3A37 of the Federal Building at 819 Taylor Street in Fort Worth between 8:00 A.M. and 3:30 P.M., Monday through Friday. Telephone inquiries should be directed to (817) 886-1863. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available.

DISTRICT ENGINEER
FORT WORTH DISTRICT
CORPS OF ENGINEERS

Proposed Procedure For Intermittent and Perennial Streams



Proposed Procedure For Ephemeral Streams

