



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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JUN 15 2010

Ref: 8EPR-EP

Jeffrey K. Towner
Field Supervisor
U.S. Fish and Wildlife Service
3425 Miriam Avenue
Bismarck, North Dakota 58501

Re: Wetland Mitigation Banking in North
Dakota, Interagency Guidance for
Mitigation Bank Sponsors

Dear Mr. Towner:

This letter is in response to the Interagency Agreement between North Dakota Department of Transportation, North Dakota Game and Fish Department, Federal Highways Administration, National Resource Conservation Agency, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and U.S. Environmental Protection Agency (EPA). EPA has reviewed the North Dakota Wetland Mitigation Banking Guidance Document (Guidance Document) and endorses the procedures contained in the Guidance Document. Attached you will find the signed inter agency document.

If you have any question on this matter, please feel free to contact Dick Clark of my staff at 303-312-6748 or e-mail to clark.richard@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Reed", written over a horizontal line.

Karen Reed
Wetlands and Tribal Unit Manager

cc: Richard Clark EPA/EP
Toney Ott EPA/EP
Erin Perkins EPA/ORC

INTERAGENCY AGREEMENT

Among

**North Dakota Department of Transportation
North Dakota Game and Fish Department
Federal Highway Administration
Natural Resource Conservation Agency
U.S. Army Corps of Engineers
U.S. Environmental Protection Agency
and
U.S. Fish and Wildlife Service**

I. PURPOSE

The purpose of this agreement is to endorse the procedures described in the North Dakota Wetland Mitigation Banking Guidance Document (Guidance Document). The Guidance Document was written to provide a consistent, clear set of procedures to assist Federal, tribal, State, and County agencies, agricultural producers, developers, and individuals to mitigate unavoidable wetland losses in North Dakota through the establishment of mitigation banks. Wetland mitigation banking is an efficient and effective method to meet wetland mitigation requirements by investing time to establish a bank of mitigation credits in advance of project impacts. For agencies and organizations with construction programs that frequently impact wetland resources, mitigation banking has proven to be a more reliable, cost-effective means of compensating for unavoidable wetland losses than locating and developing individual mitigation sites for each construction activity or project.

II. AUTHORITIES

This Interagency Agreement and the Guidance Document were developed to be consistent with the following authorities:

- Clean Water Act {33 U.S.C.1251 et seq.}, Section 404 and Section 401.
- Food Security Act of 1985, as amended (7 CFR Part 12).
- Compensatory Mitigation for Losses of Aquatic Resources – Final Rule (Federal Register Vol. 73, No. 70, April 10, 2008).
- National Environmental Policy Act {42 U.S.C. 4321 et seq.} and implementing regulations.
- Fish and Wildlife Coordination Act {16 U.S.C. 661-666 (c)}.
- U.S. Fish and Wildlife Service Mitigation Policy.
- Rivers and Harbors Act of 1899 {33 U.S.C. 403}.
- Section 404(b)(1) Guidelines {40 CFR, Part 230}; including interpretations of the Guidelines in the Memorandum of Agreement between EPA and the

Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines.

- Federal Permit Regulations {33 CFR, Part 320-330} including interpretive guidance provided by the Corps.
- Endangered Species Act, as amended {16 U.S.C. 1531-1543}.
- Federal Guidance on the Use of the TEA-21 Preference for Mitigation Banking to fulfill mitigation requirements under Section 404 of the Clean Water Act.
- Executive Order 11990, concerning the Protection of Wetlands.
- Executive Order 11988, concerning Floodplain Management.
- 1990 Memorandum of Agreement between the Department of the Army and the Environmental Protection Agency on the Determination of Mitigation under the Clean Water Act 404(b)(1) Guidelines.
- FAA Advisory Circular 150/5200-33, Hazardous Wildlife Attractants On or Near Airports.

III. BACKGROUND

The Guidance Document was developed by the North Dakota Interagency Review Team (NDIRT), an interagency team of State and Federal agencies, consisting of the U.S. Army Corps of Engineers, North Dakota Regulatory Office (NDRO); U.S. Environmental Protection Agency, Region 8 (EPA); U.S. Fish and Wildlife Service, Ecological Services, North Dakota Field Office (FWS); Federal Highway Administration, North Dakota Division (FHWA); Natural Resources Conservation Service, North Dakota State Office (NRCS); and the North Dakota Game and Fish Department (NDGF). While the North Dakota Department of Transportation (NDDOT), as a mitigation bank sponsor, is not an official member of the NDIRT, they provided an important perspective throughout the process. The Guidance Document has been structured to comply with the goals and objectives of Section 404 of the Clean Water Act; the National Food Security Act of 1985, as amended; and Executive Order 11990 concerning the protection of wetland resources. The Guidance Document is based on a consensus of the participating agencies and the best available scientific information concerning the ecology of prairie wetlands and wetland mitigation methods that have proven effective in North Dakota. The Guidance Document was specifically written to only address wetland resources in the State of North Dakota. The procedures described in this document may not be applicable to fens and riverine systems.

The NDIRT relied extensively on the U.S. Army Corps of Engineers and the Environmental Protection Agency's Compensatory Mitigation Final Rule, entitled *Compensatory Mitigation for Losses of Aquatic Resources* (Federal Register Vol. 73, No. 70, April 10, 2008). The NDIRT also used information provided in the U.S. Army Corps of Engineers – Omaha District's guidance document on mitigation and mitigation banking to prepare this document, specifically addressing North Dakota's unique wetland resources and opportunities for mitigating unavoidable wetland impacts in an ecologically sound manner.

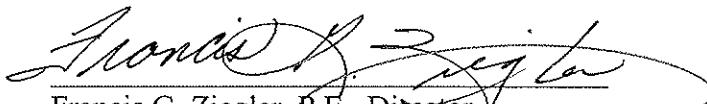
The Guidance Document provides information addressing North Dakota's wetland resources and describes methods for offsetting unavoidable losses that have proven effective throughout the State. Procedures describing all aspects of establishing and operating a successful wetland mitigation bank, including bank sponsor and agency responsibilities, determining and using mitigation credits, and monitoring established mitigation banks, are presented in the Guidance Document.

IV. EFFECTIVE DATE AND TERMINATION


This Interagency Agreement shall be effective upon the date of the last signature below and shall remain in effect until such time as one or more of the signatory agencies terminates the agreement. Termination of the Interagency Agreement shall occur 30 days after written notification is provided to the participating agencies. A written notice of termination can be sent at the sole discretion of an individual agency without cause. Termination by any party of this Interagency Agreement does not preclude use of the Guidance Document by other agencies or the public. The Interagency Agreement can be modified or amended upon the consent of the participating agencies.

V. SIGNATURES

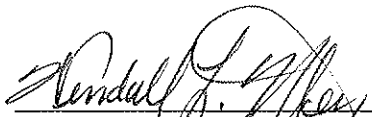
The undersigned agencies endorse the procedures described in the North Dakota Wetland Mitigation Banking Guidance Document as a preferred method for mitigating the unavoidable loss of wetland resources:


Francis G. Ziegler, P.E., Director
North Dakota Department of Transportation
Bismarck, North Dakota

12/22/09
(Date)

Fov 
Terry Steinwand, Director
North Dakota Game and Fish Department
Bismarck, North Dakota

12-29-09
(Date)

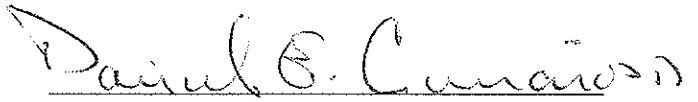

Wendall Meyer, Division Administrator
Federal Highway Administration
Bismarck, North Dakota

12/22/09
(Date)



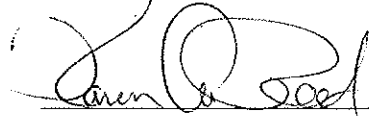
State Conservationist
Natural Resources Conservation Service
Bismarck, North Dakota

2/1/2010
(Date)



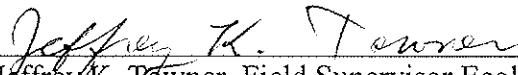
Daniel Cimarosti, State Program Director
U.S. Army Corps of Engineers
Bismarck, North Dakota

22 Dec 09
(Date)



Karen Reed, Unit Chief, Wetland and Watershed Unit
U.S. Environmental Protection Agency -Region 8
Denver, Colorado

6/14/2010
(Date)



Jeffrey K. Towner, Field Supervisor Ecological Services
U.S. Fish and Wildlife Service
Bismarck, North Dakota

12/22/09
(Date)