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# *Implications of the New Mitigation Rule in Florida*

*Regulatory Division*



# Goals of the New Rule



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- Provide more mitigation opportunities
- Promote consistency and predictability
- Provide similar standards and criteria for mitigation projects
- Improve ecological success of mitigation projects





# What is not affected



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- **Jurisdiction**
- **Sequencing**
- **When to do compensatory mitigation**





# Implications of the New Mitigation Rule



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## Adds “Soft” Preference Hierarchy

1. Mitigation Banks: larger parcels, rigorous planning, site/work done in advance
2. In Lieu Fee: usually identifying high priority needs in watershed
3. Permittee Responsible





# Implications of the New Mitigation Rule



## Many of the concepts already practiced in FL

- There are currently 40 mitigation banks available for use throughout FL, providing many mitigation opportunities to the development community
- Past FI practices and the current Rule emphasize the watershed approach to location siting
- New Rule patterned after SAJ “Green book” (IRT = MBRT)
- Currently, there are 5 In Lieu Fee programs available in south FL where the program sponsor is a govt agency or non-profit natural resource management agency

# Implications of the New Mitigation Rule



  
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## Many of the concepts already practiced in FL

- Project Managers generally show preference for Mit Banks & In Lieu Fees (where available)
- Use of functional assessments that include risk and temporal lag
- Use of Watershed approach and alignment w/ state on compensatory mitigation to some degree
- Standardized specific conditions for compensatory mitigation

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# Implications of the New Mitigation Rule



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Part of the new Rule included a change in the 1986 regulations (33CFR325.1(d)(7)).

A complete application must now include –



- a statement on avoidance and minimization
- a statement regarding the compensatory mitigation plan or why the applicant believes compensation is not required.



# Implications of the New Mitigation Rule



**Final mitigation plan must be approved by Corps prior to issuance of an individual permit or commencement of work under a general permit.**

**Mitigation Plans must include the 12 fundamental components noted at 33 CFR 332.4(c). Handout available**





# Implications of the New Mitigation Rule

**These new regulations may  
require additional  
documentation in the Corps'  
administrative record**





# Implication for Mitigation Banks



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- **Required timelines for Corps and IRT are intended to facilitate faster reviews than in the past**
- **Existing banks and those approved prior to July 9, 2008 are grandfathered**
- **Instrument modifications of existing banks will trigger new requirements**





# Implication for In Lieu Fee Programs



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Second in the “soft” preference hierarchy

ILF process will mirror mitigation bank process

- Compensation Planning Evaluation & Prospectus
- IRT process
- Approved Instrument
- Initiation of mitigation within three growing seasons



# Implication for In Lieu Fee Programs



- Existing In lieu fees will need to comply by June 9, 2010, unless additional time is granted by the DE
- Can only be established by governmental or non-profit entities
- Advanced Credits – establish cap on number of credits that can be sold before commencing mitigation activities





# Implications for Permittee Responsible Mitigation



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- Last in the hierarchy of preference – may result in instances where requirements differ between federal & state or local regulatory agency
- Corps Project Managers will need to focus on strategic site selection to provide successful mitigation projects (33CFR332.3(d))





# Implications for Permittee Responsible Mitigation



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- Implications for developers on large parcels who want to provide onsite mitigation; Preference for mit banks may result in combination of offsite and onsite mitigation
- Documentation in the administrative record must include justification for permittee responsible mitigation & for offsite or out of kind mitigation





# Jacksonville District Initiatives



- To ensure consistency, all future mitigation banks and ILF will be processed by a specialized mitigation banking team located in Jacksonville
- Credit tracking for all mitigation banks and ILF will be centralized over time and tied to RIBITS