

4/20/2018

APPENDIX 1

STATEWIDE UMBRELLA
MITIGATION BANK
INSTRUMENT FOR NORTH
DAKOTA

PROSPECTUS



North Central Mitigation, LLC

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ACRONYMS AND ABBREVIATIONS

BSP	Bank Site Plan
Corps	U.S. Army Corps of Engineers
CFR	Code of Federal Regulations
DA	Department of the Army
EPA	U.S. Environmental Protection Agency
FR	Federal Register
HUC	hydrologic unit code
NDDOT	North Dakota Department of Transportation
NDG&F	North Dakota Game and Fish Department
NDIRT	North Dakota Interagency Review Team
RGL	Regulatory Guidance Letter
RSA	Regional service area
UMBI	Umbrella Mitigation Bank Instrument
USC	United States Code
USFWS	U.S. Fish and Wildlife Service

I. INTRODUCTION

Pursuant to regulations at 33 CFR 332, this Umbrella Mitigation Bank Instrument (hereafter, “UMBI” or “Instrument”), which describes the standard provisions for the establishment, use, operation, and maintenance of one or more mitigation Bank Sites (hereinafter, individually the “Bank Site” and collectively “Bank Sites”), provides the operating framework for the Instrument made and entered into by and among North Central Mitigation, LLC (hereafter, “NCM” or “Sponsor”) and the North Dakota Interagency Review Team (“NDIRT”), Chaired by the U.S. Army Corps of Engineers (“Corps), and including the U.S. Environmental Protection Agency (“EPA”), the U.S. Fish and Wildlife Service (“FWS”), the Federal Highway Administration (“FHWA”), the USDA Natural Resources Conservation Service (“NRCS”), and the North Dakota Game and Fish Department (“NDG&F”) as applicable. A mitigation bank is defined as a “site, or suite of sites, where resources are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits.”

Bank Sites may be used for compensatory mitigation for unavoidable impacts to Waters of the United States, including special aquatic sites such as wetlands, that result from activities authorized under Section 404 of the Clean Water Act (the “CWA”) and Section 10 of the Rivers and Harbors Act, provided such activities have met all applicable requirements and are authorized by the appropriate authority. This UMBI and associated Bank Sites are authorized under Sections 401 and 404 of the Clean Water Act (33 USC §§ 1251 et seq.; 1344[b]; 1361[a]) and associated implementing regulations (“Compensatory Mitigation for Losses of Aquatic Resources – Final Rule” [73 FR No. 70, 19594 et seq., published April 10, 2008 – hereafter the “2008 Rule”]; District Guidance (Corps of Engineers, Omaha District, “Guidance for Compensatory Mitigation and Mitigation Banking in the Omaha District”) and North Dakota State Guidance (“Wetland Mitigation Banking Guidance in North Dakota: Interagency Guidance for Mitigation Bank Sponsors”, hereafter “ND State Guidance”).

A. Purpose

The purpose of this UMBI is to establish guidelines and responsibilities for the establishment, operation, and maintenance of multiple Bank Sites (33 CFR 332.8[h]). It is also the purpose of this UMBI to gain approval for one initial Bank Site, authorized as an Addendum to this UMBI. If additional Bank Sites, beyond those initially included under this UMBI, are selected at some future date, they will be added as modifications of this UMBI, using the procedures established for modification of an instrument set forth in the 2008 Rule (33 CFR 332.8[g]).

B. Goals and Objectives

The principal goal of the UMBI is to provide the basis for the restoration, enhancement, creation and/or preservation of the functions and values of wetlands, streams and riparian corridors at multiple Bank Sites across the State of North Dakota, as compensation for unavoidable wetland impacts throughout the state. Development, implementation and operation of the UMBI and its Bank Sites will accomplish the following objectives:

- To support the national goal of “no net loss” of wetlands by providing wetland mitigation Bank Sites and credit options in North Dakota;
- To consolidate resources in order to increase the potential for the establishment, permanent protection and long-term management of successful mitigation that maximizes opportunities for contributing to biodiversity and/or watershed function;
- To contribute to watershed function through appropriate determination of the Bank Site regional service area (generally hydrologically based on major watershed basin);
- To reduce permit processing times and provide more cost-effective compensatory mitigation opportunities for those projects which qualify;
- To increase review and compliance monitoring efficiency and, thus, improve the reliability of efforts to restore, create, or enhance wetland areas for mitigation purposes;
- To identify sites with an aquatic resource base, some significant portion of which is degraded and restorable to a properly functioning condition;
- To select and prioritize sites based on review of hydrologic function, water rights, position within the landscape and watershed, and ownership structure;
- To establish permanent protection for the created, restored and enhanced aquatic resources of the Bank Sites;
- To establish an appropriate coverage area for the UMBI (State of North Dakota), as well as appropriate hydrologically-based, regional boundaries within which each Bank Site may operate in terms of crediting and debiting.

C. Projects Eligible to Use the Bank Sites

The following types of projects may be eligible to use the Bank Sites established under this UMBI:

- For projects in the regional service area of a Bank Site established under this UMBI that require authorization with an Individual Permit (IP) under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act, the Corps, in consultation with members of the NDIRT as necessary, may allow use of a Bank Site as compensatory mitigation for unavoidable impacts;
- For projects in the regional service area of a Bank Site established under this UMBI that require authorization with a Nationwide Permit (NWP) under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act, Omaha District/State Program General Permits (SPGP), and/or a State permit for impacts to aquatic resources, and if said authorizations requires compensatory mitigation, credits from a Bank Site may be used to satisfy these compensatory mitigation requirements;
- For projects under other programs (National Environmental Policy Act, Executive Order 11990, Corps Civil Works, CERCLA remediation, natural resource damage compensation, supplemental environmental projects, State and Federal enforcement actions, etc.) in the regional service area of a Bank Site established under this UMBI, credits from a Bank Site may be used to satisfy these compensatory mitigation requirements;

- For projects under any and all of these project types which occur outside of the regional service area of a Bank Site, the Corps, in consultation with the NDIRT, may allow use of credits from a Bank Site to satisfy these compensatory mitigation requirements.

D. Sponsor's Qualifications

The Sponsor of this UMBI is uniquely qualified to establish and operate this UMBI and its component Bank Sites by virtue of its ownership and financial resources. North Central Mitigation, LLC (the Sponsor) is owned by the partners of Tetonka, LLP and Eco-Asset Management, LLC, each of which are in turn owners and operators of several mitigation banks in Montana and South Dakota. The Sponsor's management team has broad interdisciplinary capabilities and extensive experience in the areas of real estate, land use entitlements, land management, conservation and mitigation banking, environmental regulations, and regulatory coordination. Tetonka, LLP has a ten-year history of experience in wetland mitigation in South Dakota. Eco-Asset Management, LLC has experience in permitting six wetland and stream mitigation banks in Montana, in addition to consultation on stream and wetland mitigation banks and various on-site mitigation solutions throughout the United States. Sponsor's contact information is as follows:

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II. LEGAL AUTHORITY AND INTER-AGENCY REVIEW TEAM

A. Authorities

The establishment, use, operation and maintenance of Bank Sites under this UMBI are carried out in accordance with a number of authorities, including but not limited to:

1. Federal

- 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.

B. NDIRT Members

Pursuant to the ND State Guidance this UMBI will be subject to execution by a duly authorized representative of the participating agencies described below, which make up the NDIRT:

- US Department of the Army, Corps of Engineers (Corps), CHAIR of the NDIRT; and
- US Environmental Protection Agency (EPA); and
- US Department of the Interior, Fish and Wildlife Service (FWS); and
- Federal Highway Administration (FHWA); and
- USDA Natural Resources Conservation Service (USDA NRCS); and
- North Dakota Game and Fish Department (NDG&F).

Each entity represented on the NDIRT may replace its representative upon written notice to the NDIRT Chair(s), the other NDIRT members, and the Sponsor.

III. ESTABLISHMENT OF BANK SITES

A. Scope of Instrument

The Sponsor agrees to perform all necessary work, in accordance with the provisions of this UMBI, to establish and maintain aquatic habitats and associated upland buffers, as more fully described in any BSP, until it is demonstrated to the satisfaction of the agencies represented on the NDIRT (acting through the Chair[s]) that the project complies with all provisions contained herein, or until all credits are sold, whichever is later. Work as described herein will include implementing each BSP in full, as approved by the NDIRT.

B. Bank Site Ownership

Land ownership will vary across the Bank Sites, but in all cases the Sponsor will “own” and operate (i.e. be the sole responsible party for) the Bank Site, including performance, upkeep and credits. In general, the Sponsor will develop most Bank Sites under “license” with a private landowner (see Attachment 3 for a template of the license). The license allows NCM to develop the mitigation credits on the landowner’s property in exchange for some financial or other benefit which accrues to the landowner.

C. Bank Site Selection Criteria

Each Bank Site will be selected based on a number of criteria including, but not limited to, aquatic resource base of the site, hydrologic connectivity provided by the site, water rights and availability of such water rights to support the site’s resource base, position of the site within the landscape and watershed, and ownership structure. Of particular importance will be the aquatic resource base in a context of historic aquatic resource loss within the regional service area, and Bank Sites which present opportunity to replace or supplement rare and/or trending rare aquatic resources will be prioritized.

D. Bank Site Plans

A “Bank Site” as herein defined encompasses the individual wetland and/or stream mitigation effort employed under this UMBI which occupies a discrete geographic location from where credits are to be offered to permittees. Bank Sites will generally not be located on real estate owned by the Sponsor, but rather on real estate owned by a landowner under contractual agreement (“license”) with the Sponsor. Bank Site landowners will establish a long-term real estate protective instruments as further described below, and Sponsor will remain liable for performance of landowner in this regard, as well as all other aspects of the Bank Site’s performance. Bank Sites included under the UMBI will include all pertinent information for improvements at the selected site, from conceptual engineering to final site development plans. A draft BSP will be submitted to the NDIRT for review and approval under timelines defined at 33 CFR 332.8.

The information provided in the BSP will be submitted to the Corps and NDIRT for consideration as an addition to the UMBI by way of modification of the Instrument. Such modification will follow the procedures outlined at 332.8 (g). In addition, the BSP will include sufficient information to obtain appropriate permits or other authorizations needed to construct and maintain each Bank Site. An initial Bank Site is included as part of this Prospectus, as further described in Addendum 1 to this UMBI.

E. Financial Assurances

Sponsor agrees to be responsible for securing sufficient funds to cover establishment, monitoring, maintenance and remediation of each Bank Site in the event the Sponsor is unable or unwilling to fulfill the obligations specified under this UMBI. Sponsor will establish a financial mechanism for each Bank Site separately and independently to ensure sufficient funds are available to perform the restorative and management activities as stipulated in the BSP, and/or to perform subsequent corrective actions which may be needed to meet applicable performance standards and to monitor and maintain any Bank Site. There is no named beneficiary of the financial assurance; rather, the financial assurance shall include language consistent with 33 CFR 332.3(n)(6), “Financial assurances shall be payable at the direction of the district engineer to his designee or to a standby trust agreement.”. Specific to this UMBI, financial assurances are described below.

1. Financial Assurance Requirements

Financial assurances may be in the form of a surety bond, irrevocable letter of credit, casualty insurance or cash-in-escrow account as provided for in 33 CFR 332.3(n)(2). If a performance/surety bond is used, the bond will follow that provided in Regulatory Guidance Letter 05-1 in form and format. Such bond will normally be written by a surety company which is on the most recent US Department of the Treasury Financial Management list of approved bonding companies as published in the Federal Register. If an irrevocable letter of credit or a cash-in-escrow account is used, the letter or account must be provided by a federally insured depositor that is “well-capitalized” or “adequately capitalized” as defined in Section 38 of the Federal Deposit Insurance Act.

i. Contingency Fund

The amount of the Contingency Fund will be determined for each Bank Site based on the risk of failure or default, and the cost associated with such failure or default. The Contingency Fund will be established before release of any credits and carried until all credits are meeting performance standards within the subject Bank Site. The Contingency Fund will constitute the maximum aggregate monetary liability of the Sponsor for failure to take remedial actions to repair conditions at the subject Bank Site until establishment of the Long-term Management Fund (see below). A casualty insurance policy in the form approved by the Corps’ Chief Counsel’s office will be the preferred financial assurance for most NCM Bank Sites.

ii. *Long-term Management Fund*

Following completion of active restoration and other implementation activities, a non-wasting Long-term Management Fund will be established before transfer to the long-term manager. A cash-in-escrow account is an example financial assurance for this purpose. The annually distributable return from the endowment is available to the long-term steward or other third party once the subject Bank Site has been determined by the Corps to be successful in accordance with its performance standards. These funds are to provide financial assurance that the subject Bank Site will be properly maintained and managed in in the long-term as a conservation area pursuant to the real estate Protection Instrument and long-term management goals. The “principal” amount should be sufficient to return, at 4.0%/year, enough distributable funds to cover those average annual maintenance costs. At the discretion of the Corps, in consultation with the NDIRT, the Long-term Management Fund principal and/or return may also be used in the case of catastrophic events as further defined below. The Long-term Management Fund will constitute the maximum aggregate monetary liability of the Sponsor and long-term steward associated with management and remedial actions to repair conditions at the subject Bank Site.

2. *Catastrophic Events*

The Sponsor intends that each Bank Site and its functions and values be self-sustaining and should not experience any more detrimental events than similar acreages, functions and values which exist naturally. However, in the event of a catastrophic event as defined herein, the Long-term Management Fund principal and/or return may be used to provide funds to remediate damage to a subject Bank Site’s features (e.g., created, enhanced or restored wetlands or streams) that are not likely to be otherwise self-repairing and that are likely to result in the Bank Site being more vulnerable to further disturbance because of their location or other factors.

F. *Real Estate Provisions*

The Sponsor is responsible for providing sufficient legal protection by means of a dedicated real estate protection instrument for each Bank Site to ensure that all requirements of the UMBI and BSP are fulfilled. The Sponsor must also ensure the subject Bank Site is protected for the long-term consistent with the terms and conditions set out in this UMBI and the BSP (a “Protection Instrument”) and with State (North Dakota) law. The Protection Instrument must be approved in writing and a copy of the Protection Instrument provided to the Corps and NDIRT prior to sale or transfer of any credits. The Protection Instrument must, among other things, ensure the right of ingress and egress for the Sponsor, NDIRT, and long-term steward of that Bank Site. The Protection instrument will meet all requirements of the Corps of Engineers, Omaha District Guidance, and will run with/burden title to the Bank Site and will bind current and future owners and tenants. Areas within the deed restriction will be mapped with survey grade GPS, and all necessary actions will be taken by the Sponsor and long-term steward to protect the mitigation efforts that have been completed.

G. Water Rights

Pursuant to 33 CFR 332.8(d)(2)(vii)(B) and 33 CFR 332.8(7)(4), “Where needed, the acquisition and protection of water rights should be secured and documented in the instrument “. Sponsor and/or the landowners of each Bank Site will be required to own, possess and/or have right to good and sufficient rights to the water resources required to support the function of each Bank Site. Such water rights will be committed to the ecological functions supporting the subject Bank Site’s credits. Additionally, water rights permits will be obtained as needed from the state of North Dakota as statutorily required.

H. Long-term Management

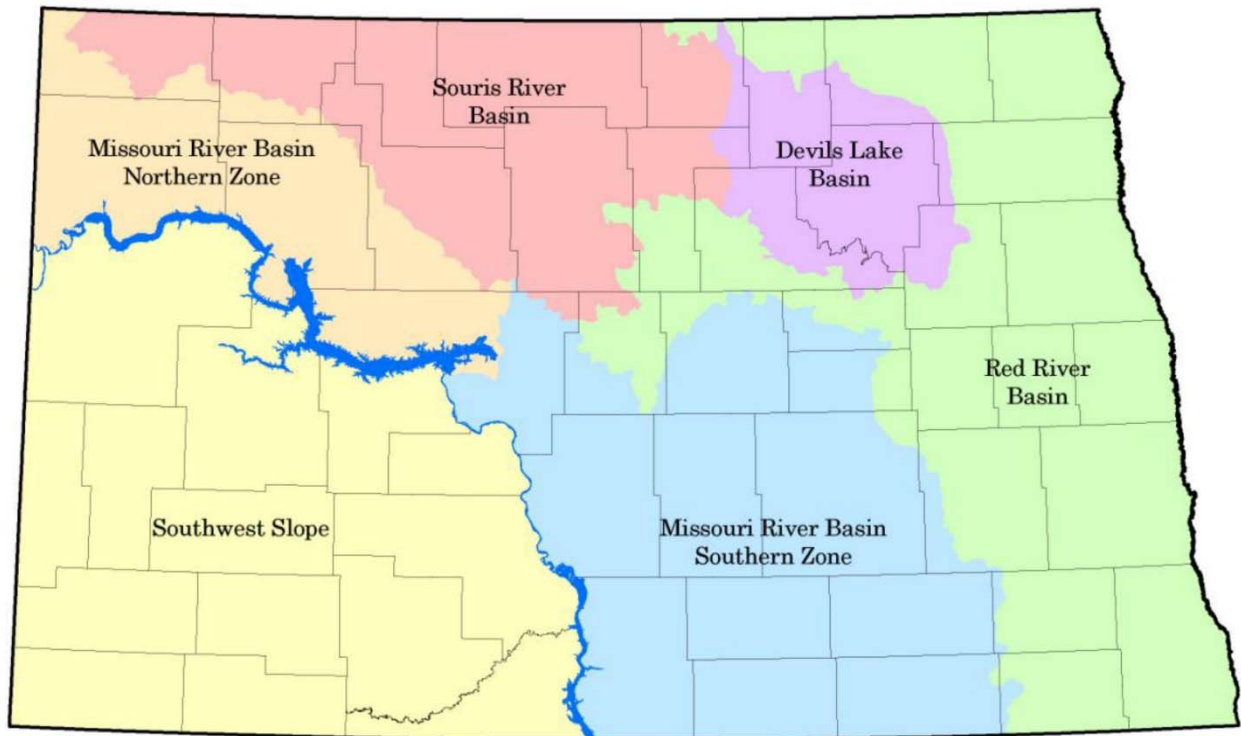
NCM will manage Bank Site operations during the implementation phase of each project, defined as that period of time during which there is active site work such as grading, planting, monitoring and remedial activities. Following the implementation phase, each Bank Site will enter the long-term management phase. This is the time period during which site management and maintenance responsibilities are, upon approval of the Corps, transferred to an approved long-term manager. A specific long-term manager, as well as long-term management plans, and provisions for funding amounts via a long-term management fund, will be specified for each Bank Site added to the Umbrella Bank.

IV. BANK SITE OPERATIONS

A. Regional Service Area

Each Bank Site will be established to provide mitigation to compensate for impacts to Waters of the United States and/or State Waters, including wetlands and streams, within a regional service area (RSA or “service area”) (33CFR332.8[d][6][ii][A]). In rural areas such as the State of North Dakota, several contiguous 8-digit Hydrologic Unit Code (HUC) sub-basins, or a 6-digit accounting unit watershed (USGS 2009) may be an appropriate service area. Delineation of the service area must also consider any locally-developed standards and criteria that may be applicable. The economic viability of each Bank Site may also be considered in determining the size of the service area. The basis for the initially established service areas will be documented in the UMBI; however, service areas will be approved separately and individually for each Bank Site, based on the ecological character of that Bank Site. All impacts and compensatory mitigation must be accounted for by Bank Site, thereby providing a direct connection between wetland losses and wetland gains on a watershed basis. RSA’s are also based on ecological and geological characteristics as well as common wetland types, impacts, and related need for Bank Sites under the UMBI (see Figure 1 below).

Figure 1. Regional Service Areas, as defined in “Wetland Mitigation Banking in North Dakota”.



B. Access

With reasonable notice, the Sponsor will allow, or otherwise provide for, access to all Bank Sites by members of the NDIRT or their agents or designees, as reasonably necessary, for the purpose of inspection, compliance monitoring, and remediation consistent with the terms and conditions of this UMBI throughout the period of Bank Site establishment, monitoring, and operation. Inspecting parties will not unreasonably disrupt or disturb activities on any Bank Site.

C. Determination of Credits

Crediting and debiting methodology has been specifically prescribed in the ND Mitigation Guidance. For mitigation crediting/debiting for which acres are the base metric for replacement, credits will be produced based on the ratios outlined in Table 1. In cases where preservation is used as mitigation, the preservation areas must be: (1) regionally important and under demonstrable threat; and (2) a minor component of the overall Bank Site crediting (<25%). Creditable upland inclusions (i.e. small upland areas within a Bank Site’s wetlands context) are also acceptable, when they clearly show a valuable relationship to aquatic resource function, and total upland area (internal and surrounding buffer) and related credits do not make up more than 25% of the total Bank Site wetland credits.

Table 1. Wetland Credit Production Using Acre-to-Acre Credit Production

Type of Mitigation	In-Kind
Restoration of completely drained/filled wetland	1:1
Restoration of completely drained area of a partially drained wetland	1:1
Restoration of deeper portion of partially drained wetland	2:1
Restoration of wetland with sediment accumulation	2:1
Creation of new wetland	2:1
Enhancement by establishing 50-foot buffer and upland inclusions	5:1
Preservation of existing wetlands	10:1
Upland grasslands beyond 50-foot buffer	20:1

To assess ecological lift and success of mitigation efforts relative to performance standards, a functional assessment may be conducted at both crediting and debiting sites using a Corps-approved functional assessment methodology and based on best available science.

Impact mitigation will typically be on an in-kind basis. Each BSP will clearly define the subject Bank Site’s ability to compensate for impacts to Cowardin et al. (1979) wetland classes. Wetland credits produced by a Bank Site will be “blended credits” (i.e. wetland credits are the sum total of all credits for all wetland types and applied to debits regardless of type. More specifically, debiting will not be done by Cowardin types (forested, scrub-shrub or emergent), but rather wetland debit for wetland credit.

D. Credit Release

In general, when a Bank Site is approved by the Corps, and the Bank Site's credits are secured by a Protection Instrument and financial assurances, 30% of such credits may be eligible for initial release to the bank Sponsor. These credits will be based on the projected number of total credits to be produced during the operational life of any particular Bank Site. Most Bank Sites under this UMBI will qualify for this 30% immediate release of credits, based on factors such as Sponsor's experience and qualifications, type of credit development proposed (restoration vs. creation), types of wetland vegetation communities proposed (herbaceous and scrub-shrub vs. forested), and demonstrable low risk associated with NCM's projects, as well as financial assurances established to off-set those levels of site development risk.

Future releases of credits will be requested by Sponsor and authorized by the Corps based on project performance, and with such releases tied to defensible data as illustrated in as-built reports, interim assessments and/or monitoring reports that show Bank Site trends are meeting established performance standards. Such releases will include data and narrative illustrating upland buffers are meeting their respective standards as well. Upon submittal of applicable documentation by the Sponsor, and subsequent approval by the Corps, in consultation with the NDIRT, the Corps will provide in writing the release of credits to the Sponsor in accordance with Corps regulations (33 CFR 332.8(g)(2) and (o)(8)).

E. Bank Site Success

The Corps, in consultation with the NDIRT, will use monitoring reports and visual observations, along with best professional judgment to evaluate attainment of "success" and in determining whether some or all of a Bank Site requires corrective actions. "Success" is defined as meeting the performance standards outlined in this UMBI and more specifically prescribed in the BSP for each Bank Site (Section V. below) to the degree, and in accordance with, any set schedules established for attaining such standards.

F. Conditions of Debiting

Any credits debited before achieving the performance standards defined herein (e.g. the immediate release of credits following a Bank Site's approval), will require conformance with the financial assurance requirements and execution of the Protection Instrument described in Section III. The financial assurance will be sufficient to assure performance, and to cover contingency actions in the event of partial or total failure and other relevant provisions in this UMBI.

If use of a Bank Site's credit is approved by the Corps to provide part or all of the required compensatory mitigation for an impacting project within the service area, the permittee retains responsibility for providing the compensatory mitigation until the appropriate number and resource type of credits have been secured from the Sponsor and the Corps has received documentation that confirms that the Sponsor has accepted the responsibility for providing the required mitigation.

G. Bank Site Closure

Bank sponsors may choose to “close” a mitigation bank at any time following its approval. Bank closure occurs when a bank sponsor chooses to discontinue operation of the mitigation bank (credit transactions, reporting, etc.) and “close out” those activities through an administrative process described herein. A bank sponsor may choose to close a mitigation bank prior to receipt from the Corps of written certification of satisfaction of all performance standards. Likewise, a bank sponsor may choose to close a mitigation bank following receipt of a written certification of satisfaction from the Corps, with such certification constituting mitigation bank success. In either case, notice of intent to close the mitigation bank must be given by the Sponsor to the Corps at least 90 days in advance of such closure.

H. Long-term Management Plans

Once the Bank Site has entered the long-term management phase, the third-party manager shall manage the Bank Site in the long-term in accordance with the terms of a long-term management plan, the goals for which are provided below. The third-party manager will also ensure compliance with real estate provisions, including the terms of the Protection Instrument. A detailed long-term management plan will be developed by the Sponsor and the third party long-term manager and submitted to the Corps and NDIRT for review and approval at the end of the implementation phase and before transfer of management responsibilities to the third party long-term manager. The agreement between the Sponsor and long-term manager will specify that the long-term manager and its land stewards will provide oversight of management needs consistent with these goals and ensure implementation of all Protection Instrument provisions. Costs associated with management of the subject Bank Site will be entirely funded by the Long-term Management Fund as provided herein (Section III. F.).

V. ECOLOGICAL PERFORMANCE STANDARDS

A. Wetlands

Wetland areas in the Bank Site which are designated as “assessment areas” must individually meet a number of performance standards, including:

- Wetland Criteria - meet the three standard criteria (soils, vegetation, hydrology) prescribed in the Corps’ 1987 Delineation Manual and applicable supplements;
- Functional standards - meet any ecological functional goals set forth in the BSP, as measured by an appropriate functional assessment method for that wetland, in order to achieve full release of projected credits;
- Floristic Quality – in some cases, a “floristic quality index” may be used to measure the quality of the vegetation communities in Bank Site wetland areas;
- Scrub-shrub and Forested Wetlands – Cowardin et al. (1979) classification for scrub-shrub and forested areas is 30% areal cover of the canopy at maturity, and so coverage will be 174 stems per acre for two consecutive years of native willow, alder, aspen and cottonwood species when such areas are prescribed in the BSP;
- Exotic Species – support a minimum cover of vegetation species considered to be exotic, weed and/or nuisance species by the North Dakota Department of Agriculture County Noxious Weed List by the end of the fifth year of monitoring.

B. Upland Buffers and Inclusions

Performance standards will be used to measure success of upland habitats in adding value to each Bank Site:

- Species composition – native species will constitute a minimum of 50% of the vegetation suitable for the region, and ratios of dominant species present will be based on regional conditions and will be shown to benefit/protect the wetlands and/or streams;
- Exotic Species – less than 10% cover of exotic/noxious species as listed by the North Dakota Department of Agriculture, state noxious weeds list by the end of the third growing season and no more than 5% at the end of the monitoring period;
- Management – buffers must remain undisturbed to the maximum extent practicable allowing for sound management practices, to include periodic grazing as necessary and prescribed in the long-term management plan. Any prescribed grazing shall conform to an established vegetation management plan which specifically identifies the goal plant community and grazing regime including grazing intensity, timing, and duration.

VI. MONITORING, MAINTENANCE AND ADAPTIVE MANAGEMENT

A. Monitoring Protocols

To ensure success, the Sponsor will conduct no less than five years of annual monitoring at each Bank Site to validate compliance with the terms of this UMBI. Monitoring will be performed in accordance with the protocols listed below, which may be modified as needed and approved by the Corps, in consultation with the NDIRT, for each Bank Site. Following completion of the monitoring efforts each year, an annual report of findings will be submitted to the Corps by December 31, along with one copy to be made available to the NDIRT. The annual report will include a description of remedial actions needed, including replanting of vegetation or further hydrological modifications. Regulatory Guidance Letter 08-03 (33 CFR 332.6) describes how information is to be reported. A combination of the following protocols will be employed, depending on the subject Bank Site, to generate the detailed data supporting the findings of each report.

B. Maintenance Plans

For each Bank Site the Sponsor will develop a maintenance plan. Maintenance of each Bank Site will include the elements listed below, with such elements utilized in various areas of each Bank Site based on monitoring results. For example, herbicide and/or biological treatments may be used if the monitoring report was to conclude that a particular nuisance species was exceeding performance standards articulated in Section V above. Maintenance efforts may include one or more of the following actions:

- Maintenance of hydrologic features such as gates and check structures which facilitate maintenance of water movement in accordance with water rights;
- Use of appropriately labeled herbicides and/or biological controls to manage for nuisance species, including weeds and non-native grasses and herbs which negatively affect the species diversity for that area;
- Mending of livestock exclusion fences and related gates and crossings as needed.

C. Adaptive Management Plans

For each Bank Site the Sponsor will develop an adaptive management plan, to be implemented in the event any Bank Site fails to achieve performance standards. The Sponsor will follow the adaptive management plans and implement appropriate remedial actions for the Bank Site in coordination with the Corps and NDIRT. In the event any Bank Site is not adequately meeting performance standards as specified above, the Corps, in consultation with the NDIRT, may require the implementation of one or more of the following actions:

- Vegetation criteria – supplemental planting with high quality native wetland vegetation;
- Hydrology criteria – address nature and source of failure (e.g. side ditches with unanticipated hydraulic effects);

- Floristic Quality and Species Richness – supplemental planting with high quality native wetland vegetation, or adjustment of the Species Diversity Index to match reference site;
- Exotic Species – active weed management plan including manual removal, spraying and/or biological control;
- Scrub-Shrub classification – supplemental planting with scrub-shrub classified plants, or revised classification of the area.
- Vegetation criteria – supplemental planting with high quality native upland vegetation;
- Exotic Species – active weed management plan including manual removal, spraying and/or biological control.