



Public Notice

U.S. ARMY CORPS OF ENGINEERS

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**Subject: Umbrella Mitigation Banking Program in North Dakota
Being Proposed by North Central Mitigation, LLC**

Action ID: NWO-2018-0208-BIS

Comment Period: August 8, 2018 through September 10, 2018

INTRODUCTION: The U.S. Army Corps of Engineers (USACE), Omaha District, North Dakota Regulatory Office (NDRO) has received a prospectus from North Central Mitigation, LLC (NCM), for an umbrella mitigation banking instrument with the purpose of establishing mitigation bank sites throughout North Dakota. The mitigation program would provide a third-party mitigation option to satisfy compensatory mitigation requirements for Department of the Army (DA) permits, but may also be used to satisfy other Federal, state and local regulatory program requirements related to impacts to aquatic resources and/or species conservation. NCM has provided a site plan for the Mekinock Mitigation Bank, which would be the first site proposed to be developed in accordance with this instrument. It would provide mitigation credits in the Red River Basin Regional Service Area (RSA).

INFORMATION ON MITIGATION PROGRAMS IN NORTH DAKOTA: To date, there are two approved mitigation programs operating in the State. The *North Dakota Department of Transportation (NDDOT) Umbrella Mitigation Banking Instrument* was approved on June 24, 2013. The NDDOT Program is statewide and was developed specifically to offset wetland impacts associated with NDDOT infrastructure projects.

On March 5, 2014 the USACE approved the *Ducks Unlimited, Inc. North Dakota Aquatic Resource In-Lieu Fee Program Instrument* (DU-ILF). The DU-ILF is statewide and provides a third-party compensatory mitigation option for DA permits. In-lieu fee programs provide for limited credit sales up to three years in advance of mitigation site selection and development.

Ducks Unlimited, Inc. (DU) is in the final stages of approval of its *North Dakota Umbrella Wetland Mitigation Bank Program*, which is also statewide and developed to provide an additional option for third-party compensatory mitigation for DA permits.

AUTHORITY: Section 10 of the Rivers and Harbors Act of 1899 [33 USC 403] (Section 10)
Section 404 of the Clean Water Act [33 USC 1344] (Section 404)

PUBLIC NOTICE: This notice is to inform interested parties of the proposed establishment of an umbrella mitigation banking program and to solicit comments. **The prospectus may be viewed in its entirety on the NDRO website at:**

<http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/NorthDakota/PublicNotices.aspx>

If you do not have access to the internet or wish to obtain a printed copy of the prospectus, please contact the project manager listed below.

U.S. ARMY CORPS OF ENGINEERS – Omaha District
North Dakota Regulatory Office
3319 University Drive
Bismarck, ND 58504-7565

<http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/NorthDakota.aspx>.

In addition, NCM has provided a site plan for the Mekinock Mitigation Site, which will provide credits in the Red River Basin RSA. **Details of the proposed site plan can be viewed and downloaded from the NDRO web site at:**

<http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/NorthDakota/PublicNotices.aspx>

If you do not have access to the internet or wish to obtain a printed copy of the site plan, please contact the project manager listed below.

If this prospectus is determined to be sufficient, NCM may proceed with the development of a banking instrument in accordance with the Corps 'Mitigation Rule', 33 CFR 332, Compensatory Mitigation for Losses of Aquatic Resources. [Note: The Rule requires a mitigation bank site to be included in the initial banking instrument.] Participation is encouraged so that the NDRO is better able to complete a more thorough public interest review. Comments assist the District Engineer in making a reasonable decision based on public interest factors. Written comments must be postmarked by **September 10, 2018** to be considered in the evaluation of this proposal.

SPONSOR: North Central Mitigation LLC, PO Box 2009, Sioux Falls South Dakota 57101.
Point-of-Contact: David Patrick (605) 809-7251 or
info@northcentralmitigation.com

PROSPECTUS ACTIVITY & PURPOSE: To establish guidelines, responsibilities, and standards for carrying out third party compensatory mitigation requirements necessary for compliance with DA permits. Mitigation credits may also be used for other agency aquatic resource or species conservation requirements.

PROJECT LOCATION: Throughout North Dakota in any of the six previously established RSAs. See attached map.

MEKINOCK MITIGATION SITE: The proposed mitigation site is located 3 miles north of Mekinock, North Dakota. The legal description for the property is the S½ of Section 19, Township 153 North, Range 52 West, Grand Forks County, North Dakota. [Lat: 48.053160° N, Long: -97.379413° W] Credits established will be used to offset wetland impacts in the Red River Basin RSA. Ratios contained in the *Wetland Mitigation Banking in North Dakota – Interagency Guidance for Mitigation Bank Sponsors* were used to estimate the number of credits the site will yield upon plan implementation. NCM estimates the 240-acre site will yield 207 credits.

SECTION 401 OF THE CLEAN WATER ACT (Water Quality Certification): Establishment of a mitigation banking program does not authorize any work requiring water quality certification. Individual site plans will be reviewed and submitted to the North Dakota Department of Health, Division of Water Quality, and/or the US Environmental Protection Agency for review as appropriate.

The Mekinock Site Plan, as currently proposed, appears to meet the terms and conditions of Nationwide Permit No. 27 (NWP27). No classified rivers, streams or lakes are proposed to be impacted; therefore, blanket certification from the North Dakota Department of Health would apply. Final determination of applicability of NWP27 will be made upon Site Plan approval.

ENDANGERED SPECIES ACT OF 1973 (ESA): Establishment of a mitigation banking program does not authorize any work; therefore, there would be 'no effect' on threatened and/or endangered species or designated critical habitat. Individual site plans will be reviewed and coordinated with the U.S. Fish and Wildlife Service (FWS). Consultation under Section 7, if necessary, would be completed prior to completing a permit determination.

The Mekinock Site is located in Grand Forks County, which is within the known historic ranges of the endangered Whooping crane (*Grus americanis*) and Gray wolf (*Canis lupus*); and the threatened Northern long-eared bat (*Myotis septentrionalis*). No critical habitat has been identified in the County. The Site is located east of the main migration corridor of the Whooping Crane and does not contain desirable habitat for either the Gray wolf or the Northern long-eared bat, a preliminary 'No Effect' determination has been made pursuant the ESA. Final effects determination will be made upon Site Plan approval. Consultation with the FWS will occur, if necessary.

NATIONAL HISTORIC PRESERVATION ACT OF 1966 (NHPA): The NDRO will comply with the NHPA and amendments and procedures set forth in 33 CFR Part 325, Appendix C. Establishment of a mitigation banking program does not authorize any work; therefore, no effect determination must be made at this time. Individual mitigation sites undertaken pursuant to this banking program will be reviewed individually in accordance with Section 106 of the NHPA. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places, will be approved until the NDRO has complied with the provisions of Appendix C.

No sites at or near the Mekinock Site are listed on the National Register. The majority of the Site is cropped annually. Our preliminary determination is the project has '*little likelihood to cause effect*'. The NDRO will comply with the NHPA and amendments and the procedures set forth in 33 CFR, Appendix C if the site is approved. We will evaluate input by Indian Tribes, the North Dakota State Historical Society and any interested parties in response to this public notice and coordinate/consult as appropriate.

PUBLIC INTEREST REVIEW: The public interest review procedures call for weighing the benefits that reasonably may be expected to accrue. These are balanced against its reasonably foreseeable detriments and results in reaching a determination that expresses the public interest. Public interest factors include all factors which may be, or may become, relevant to this project, such as conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. The decision whether to issue a permit is based on an evaluation of those factors and the

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probable impact, including cumulative impacts, and reflects the national concern for both the protection and utilization of important natural resources.

SUBMITTING COMMENTS: Written comments, referencing Public Notice NWO-2018-0208-BIS must be submitted to the office listed below on or before **September 10, 2018**.

Toni Erhardt, Project Manager
US Army Corps of Engineers, Omaha District
North Dakota Regulatory Office
3319 University Drive
Bismarck, North Dakota 58504-7565
Email: CENWO-OD-RND@usace.army.mil

The Corps is particularly interested in receiving comments related to the proposal's probable impacts on the affected aquatic environment and the secondary and cumulative effects. Anyone may request, in writing, that a public hearing be held to consider this application. Requests shall specifically state, with particularity, the reason(s) for holding a public hearing. If the Corps determines that the information received in response to this notice is inadequate for thorough evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties will be notified of the time, date, and location. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act. If you have questions or need additional information, please contact the applicant or the NDRO project manager Toni Erhardt at (701) 255-0015, extension 2003 or the above email.

Request to Postmasters: Please post this notice in a conspicuous place until the expiration date specified at the top of page one.

Notice to Editors: This notice is provided for your use in developing news stories only. No payment for publication will be provided.

Attachments: RSA Map and Excerpts from the Prospectus and Site Plan

4/20/2018

APPENDIX 1

STATEWIDE UMBRELLA
MITIGATION BANK
INSTRUMENT FOR NORTH
DAKOTA

PROSPECTUS



North Central Mitigation, LLC

PO Box 2009
Sioux Falls, SD 57101

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:

North Central Mitigation, LLC
Attn: David Patrick
PO Box 2009
Sioux Falls, SD 57101
(605) 809-7251
info@northcentralmitigation.com
www.northcentralmitigation.com

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.



PROSPECTUS

MEKINOCK BANK SITE
GRAND FORKS COUNTY, NORTH DAKOTA
S19 – 153N – 52W



April 20, 2018

PREPARED WITH ASSISTANCE FROM:



401 E 8th Street, Suite 211
Sioux Falls, SD

PROJECT DESCRIPTION

Type and Purpose

Pursuant to its Statewide (North Dakota) Umbrella Mitigation Banking Instrument (UMBI), North Central Mitigation, LLC (NCM) proposes to establish mitigation bank sites in multiple watersheds throughout the state of North Dakota. The Mekinock Bank Site (Bank Site) is one of several bank sites under consideration as an Addendum to that UMBI. The purpose of the Bank Site is the establishment of wetland mitigation bank credits in the Red River Basin Regional Service Area (RSA) as defined in the UMBI and “Wetland Mitigation Banking in North Dakota: Interagency Guidance for Mitigation Bank Sponsors” (hereafter “ND Mitigation Guidance”). This effort will produce ecologically beneficial compensatory mitigation in advance of such impacts, and in a location which will provide water quality benefits to the region.

Size, Location, and Regional Service Area

The Bank Site is located in the S½ of Section 19, T153N/R52W in Grand Forks County, North Dakota, approximately 3.0 miles north of the community of Mekinock (Exhibits 1 & 2). The site consists of 240 acres of agricultural lands with an extensive ditch/drainage network and numerous plow furrows affecting site hydrology. The site is the northern portion of a larger tract of some 627 acres that has been in CRP since 1988. The southern 387 +/- acres will also be restored under a separate program.

The geological context for the Bank Site is in the Saline Area of the Lake Agassiz Plain ecoregion (Level IV Ecoregion, EPA), 15 miles northwest of the City of Grand Forks. Credits made available through this bank site will offset impacts in the Red River Basin Regional Service Area as defined in the UMBI (RSA, Exhibit 3). The Bank Site is in the Forest River subbasin (HUC 8: 09020308), draining northeast into the Red River, part of the Lower Red River basin (HUC 6: 090203).

Site Baseline Conditions

Soil

There is less than four feet of elevation variation within the Bank Site, which spans a heavily modified west-to-east drainage network (Exhibits 4 & 5). Roughly half of the area is in the Ojata soil association, consisting of silty clay loam soils which are sodium affected (NRCS Soil Survey, Exhibit 6). Lake Agassiz, the massive post-glacial lake formed by meltwater which once covered Grand Forks County, is responsible for both the deposition of these sediments and the level topography of the Lake Plain area. In addition to Ojata soils, the site is equally underlain by Bearden silty clay loam. Of these two soils, Ojata holds the most hydric potential, while Bearden is listed as a non-hydric soil with some minor hydric components.

Hydrology

Analysis using the USGS Stream Stats Tool shows several large drainage units which lead into the Bank Site (Exhibit 7). Additional hydrology modeling and analyses have been provided by KJL in Fargo, ND. The overall catchment area is quite large – draining 5.4 square miles – and while this figure is probably accurate, the areas of the individual drainage units should only be viewed as estimates as they do not necessarily reflect the effect of drainage features which have changed how surface water flows through the area. Prior to modification historic waterflow across the Bank Site likely occurred via groundwater and sheet-flow over the gradually sloping topography, collecting in scattered depression areas across the site. Plow furrows, fencelines, berms, and ditching have altered the topography, redirecting water out of the site to the north and east. The US Fish and Wildlife Service’s National Wetlands Inventory found no wetland features within the boundaries of the Bank Site, but rather found several adjacent to the north and east (Exhibit 8). These wetlands feature persistent palustrine vegetation, with temporary and seasonal hydrologic regimes (PEM1A and PEM1C, respectively). An initial wetland survey has identified existing wetlands within the site, along with estimated lateral effects on those wetlands of the on-site ditching system (Exhibit 9). Note that this wetland survey considers the larger conservation effort underway on the property, which includes an adjacent/south parcel of 387.3 acres which will be restored under a separate program.

Despite its close proximity to the Turtle River, the Mekinock Bank Site is not within the Turtle River subbasin, but rather drains north-northeast towards the Forest River (HUC-8 subbasin: 09020308). The Bank Site is located in the subwatershed of “County Ditch Number 12” (HUC-12: 090203080402); part of the larger “Town of Ardoch” watershed (HUC-10: 0902030804). All or part of the Bank Site may have drained into the Turtle River in the past, but the installation of drainage features like County Ditch Number 12, along with the remarkably level topography of the area, have likely altered its hydrology. Water passing through the Bank Site now flows northeast, then north through County Ditch Number 12 into Lake Ardoch in Walsh County, ND. Lake Ardoch drains into the Forest River, which flows northeast before joining the Red River of the North (HUC-2 region: 09).

General Vegetation Communities

Historical aerial photography shows evidence of agricultural production within the Bank Site prior to its conversion to CRP in 1988. The agricultural history of the site is evidenced by the extensive ditch network and the many linear drainage features (furrows) which have mostly eroded but are still visible in LiDAR/Hillshade (Exhibit 5). The landscape surrounding the Bank Site is largely used for row-crop and rangeland livestock production, though some has been put into wildlife habitat through various state and federal programs. A Wildlife Management Area operated by North

Dakota Game and Fish borders the site partially along the eastern perimeter, and water draining from the site eventually enters the Ardoch National Wildlife Refuge at Lake Ardoch.

The Bank Site presently features both upland and wetland plant communities, as well as transitional zones which intergrade between them. A draft wetland delineation, referred to herein as an initial “wetland survey” illustrates the extent of existing wetlands meeting the three standard criteria of vegetation, soils and hydrology (Exhibit 9). These low-lying areas in the center of the site and around its perimeter are occupied by dense stands of narrowleaf cattail (*Typha angustifolia*), occasionally broken up by equally dense stands of common reed (*Phragmites australis*). The ditches that were excavated to drain the site have aggregated subsurface salts and feature salt-tolerant halophytes like red saltwort (*Salicornia rubra*) and seepweed (*Suaeda calceoliformis*). Surrounding these relatively homogenous communities are more open stands of mixed cattails (*T. angustifolia* and *T. latifolia*), cosmopolitan bulrush (saltmarsh bulrush; *Bolboschoenus maritimus*), northern reedgrass (*Calamagrostis stricta*), bushy knotweed (*Polygonum ramossissimum*), and narrowleaf dock (*Rumex stenophyllus*). Some of these plants, such as dock, knotweed, and the cattails, then intergrade with plants from upland communities like quackgrass (*Elymus repens*) and smooth brome (*Bromus inermis*) to create transitional zones along the gradually sloping topography. These latter two species, along with sweet clover (*Melilotus officianale*), have become fully dominant in some areas, creating zones lacking in other, native flora. However, much of the upland in the southwestern portion of the site – and the artificially drained area in the eastern portion of the site – are now occupied with a native prairie mixture of wheatgrasses (slender wheatgrass, *Elymus trachycaulus*; tall wheatgrass, *Elymus elongatus*) and forbs such as Canada goldenrod (*Solidago canadensis*). Russian olive (*Eleagnus angustifolia*) is the predominant woody species found in the Bank Site, growing in patches across the upland (Exhibit 10).

Creditable Resources at the Bank Site

Wetlands

The Bank Site covers a large depressional area with adequate soils to support persistent palustrine vegetation. However, the National Wetland Inventory (Exhibit 8) shows no existing wetlands with its borders while elsewhere in the area, the NWI shows several semi-contiguous wetlands, a mixture of depressional palustrine wetlands and intermittent stream systems in drainageways. The paucity of wetlands within the site is likely due to the extensive drainage modifications, which were installed prior to its entry into the CRP program in 1988. The initial wetland survey (Exhibit 9) indicates that there are approximately 42 acres of wetlands currently within Bank Site, mostly within the ditches and the depressional areas that have been partially drained. Therefore, the primary goal of Bank Site development will be restoration of the drained wetlands and reestablishment and expansion of historic wetlands, focused on repairing hydrology of the Bank Site. These efforts are expected to result in approximately 225 acres of

palustrine-emergent, scrub-shrub and forested wetlands (183 acres of which are restored/established, and 42 acres of which are enhanced). Scrub-shrub and forested areas will be planted in transitional zones where soil and hydrologic conditions are conducive to their establishment.

Non-Wetlands

At present, the entirety of the site is recognized as non-wetland according to mapping services provided by the NRCS (Certified Wetland Determination) and USFWS (NWI map). The initial wetland survey found approximately 42 acres of existing wetlands and 183 acres of non-wetlands within the Bank Site. Non-wetland areas consist of artificially drained lowlands, impaired marshes, and salty ditches, as well as uplands in the eastern and western portions of the site. Restoration activities are expected to enhance/restore/reestablish wetlands across 225 acres of the site, so the remaining 15 acres of upland areas will be managed for upland vegetation as buffer and inclusions in the Bank Site.

ESTABLISHMENT OF THE BANK

Bank Goals and Objectives

The primary goal of the Bank Site is to restore and reestablish palustrine emergent, scrub-shrub and forested wetland habitat in the Red River watershed, with the secondary goal of enhancing existing upland habitat as buffers and inclusions. These activities will result in compensatory mitigation credits for use by applicants in Red River RSA as authorized by the Corps in consultation with the North Dakota Interagency Review Team (NDIRT). Objectives to accomplish this goal include:

- Restoration of area hydrology by plugging/filling ditches as appropriate and leveling plow furrows where they negatively affect hydrology, resulting in rehabilitation of hydrologically altered wetlands and reestablishment of historic wetland acreage;
- Enhancement of existing wetland vegetation communities to higher quality assemblages of hydrophytic species;
- Establishment of upland buffers on non-hydric soils in upland areas and on terraces and dikes around the bank site to filter runoff from nearby roads and agricultural fields.

Mitigation Work Plan

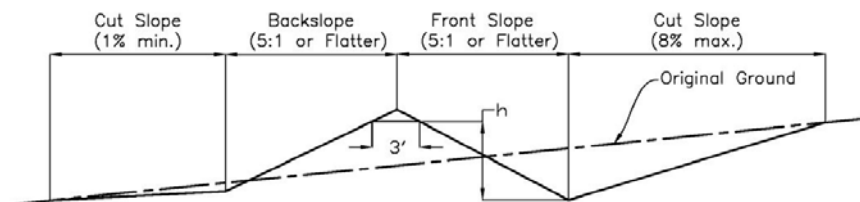
The mitigation strategy for the Bank Site will focus on reestablishment of suitable hydrology to support a suite of hydric vegetation species across the majority of the Bank Site (Mitigation Strategy, Exhibits 11 & 12). Preliminary analysis of the Bank Site indicates strong potential for wetland restoration and reestablishment. The deep, silty clay loam soils have moderate water retention and low permeability with demonstrated potential to support wetland plant

communities. Filling and plugging the extensive drainage features, along with selective landscape alterations, will serve to restore emergent wetlands at the Bank Site and will improve area hydrology, resulting in lengthened inundation periods in low-elevation areas and flats. Additionally, an enhanced hydrologic regime will result in an expansion of hydrophytic vegetation coverage as well as a more diverse wetland plant community, thereby providing ancillary benefits to wildlife, as well as increased sediment and nutrient retention. Upland areas currently in mixed native and non-native grasses will be enhanced to favor a native grassland vegetation matrix, further buffering surface-water runoff. This will buffer runoff from the roadway and adjacent fields, as well as provide additional faunal habitat. By eliminating drainage features which have impaired the site, and constructing a dike along the northern and eastern borders, restoration activities will effectively result in a large palustrine wetland with varied microtopography of saturated and inundated areas.

Hydrology Modifications

A variety of techniques will be employed to restore wetlands at the Bank Site, including construction of interior terraces and boundary dikes as well as selective filling/plugging of ditches and leveling of plow furrows where hydrology is negatively affected (Mitigation Strategy 1, Exhibit 11). Dikes will be set back from the northern and eastern property boundaries to account for any lateral effects an increase in the water table might have on adjacent property owners and to allow for an access trail. (Mitigation Strategy 2, Exhibit 12).

Figure 1. Typical terrace construction (per NRCS Practice STD 600)



Terraces will be open-ended and constructed along contours which will, along with filled/plugged ditches, extend travel time of sheet flow across the site, thereby recharging the water table and promoting expansion of Bank Site wetlands. Construction of low level terraces (~ 18"-24"), selective filling of ditches, and selective leveling of plow furrows will establish hydrologic regimes utilizing water sources available to the site per the KLJ water budget.

To restore the drained wetlands, filling/plugging of excavated ditches, and furrows where hydrology is negatively affected, will be implemented to isolate surface water in depressions and lowland areas and extend hydrology in flats (Exhibit 11). This will be followed by installation of interior terraces, as well as low-level dikes around the "downhill" perimeter of the Bank Site to detain surface flow on site. Native fill will be used for earthwork, taken largely from upland areas

within the Bank Site. The primary dike will extend along the eastern and northern border of the site, effectively closing-off the area and resulting in an extended hydrology (Exhibit 12). Ditch plugs will be used to close-off the smaller drained depressions which will reestablish individual micro-depressions and swales. Old plow furrows and minor drainage features that negatively affect hydrology will be leveled to help accentuate the natural undulation of the terrain (Exhibit 11).

Ecological Prescriptions

Wetlands

These hydrologic modifications will effectively restore a large area of palustrine wetlands for a total of approximately 225 acres of aquatic habitat. The effects of hydrology restoration will encourage establishment of varied areas of vegetation, ranging from obligate wetland vegetation in the lowest areas to facultative wetland vegetation on the wetland's flats and perimeter. The variable hydrological regime will likely result in Cowardin classifications including palustrine emergent, seasonally inundated (PEM1C) and palustrine emergent, temporarily inundated (PEM1A) wetlands (Exhibit 13). In addition, scrub-shrub (PSS) and forested (PFO) areas will be established on suitable soils as hydrology is better understood following grade restoration.

Non-Wetland Buffers

An upland buffer will be established around the perimeter of the wetland complex on dikes and in unaffected uplands, establishing and enhancing approximately 15 acres of upland habitat. On interior upland inclusions, perennial grasses and forbs will be the focus of vegetation management. Such uplands will be included in crediting calculations as provided for in the NCM UMBI, and as further described below.

OPERATION OF THE BANK SITE

Site Performance

The Post-Mitigation Wetlands figure (Exhibit 13) is an indication of the anticipated aquatic resources that are to be reestablished at the Bank Site. While the NWI map identifies virtually no wetlands (Exhibit 8), the obligate plant community currently found within the wettest areas of the site is likely to increase in areal extent across the site in response to improved hydrology (Exhibit 8 vs. Exhibit 13). Additionally, existing areas of mixed facultative wet and facultative plant communities will likely respond positively to increased levels and duration of saturation and develop a higher quality facultative wetland plant community.

Monitoring and Reporting Requirements

Performance standards are established for this Bank Site as specified in the provisions of the NCM UMBI and rationale provided therein. There are no variations from those standards except for the following as specifically applied to this Bank Site:

- Soils will be evaluated for development of hydric indicators in established wetland areas;
- A subsequent wetland delineation will be performed before any release of credits following the initial (early) release of credits;
- Sponsor will inspect ditch plugs, terraces and dikes for integrity of structure and function;
- Upland buffers outside of the wetland area will be evaluated for continuity and condition as these factors affect wetland values of the site.

Maintenance

Maintenance activities will be conducted in accordance with protocols established in the UMBI as applied specifically to this Bank Site and its needs. The reestablished palustrine wetlands will be self-sustaining; however, it will be monitored closely for parameters itemized in “Reporting Requirements” above to ensure long term sustainability.

Adaptive Management

Adaptive management may be required to achieve the goals of this Bank Site given its size and enhancement of natural water-flow across the site. This adaptive management may include modification of the vegetation management strategy based on hydrologic regimes and soil conditions (e.g. more seasonal/permanent inundation may require introduction of more obligate species over more of the site via planting/seeding; saline tolerant species mix may be adjusted.

Long-term Management

Long-term management of the Bank Site will be conducted in accordance with provisions of the NCM UMBI to ensure the Bank Site area functions in an ecologically sound way for the long-term. Following establishment of the Bank Site and at the completion of the monitoring program, a long-term management plan will be developed by the Sponsor in concert with a third-party long-term manager, with input from the Corps and NDIRT. The long-term management plan must be approved by the Corps, long-term manager and landowner, before transfer of responsibility for the Bank Site to the long-term manager. For the Mekinock Bank Site, a qualified, Corps-approved long-term manager will be identified by the end of Year 5 following Bank Site approval, with management costs funded by the long-term management fund (described below).

ADMINISTRATIVE PROVISIONS

Crediting and Debiting Methodology

Sponsor will pursue restoration of wetlands and establishment and management of upland buffers on approximately 240 acres of former agricultural ground that has been enrolled in the Conservation Reserve Program since 1988. Credits have been determined in accordance with protocols established in the NCM UMBI and ND Mitigation Guidance (Table 1). Reestablishing adequate hydrology and promoting and managing appropriate vegetation on approximately 225

acres of reestablished and enhanced wetlands onsite will equate to 204.0 acre-credits, while the establishment of upland buffer on 15 acres will yield additional creditable habitat to the Bank Site. Based on a Scope and Effect analysis, 183 acres of the site are completely drained wetlands, while 42 acres are partially drained wetlands. In addition, upland buffer is creditable at 5:1 acres-to-credits (NCM UMBI, ND Mitigation Guidance), yielding 3.0 additional wetland acre-credits. Note that this latter amount of credit is far less than the 25% UMBI limit of the total credits proposed, which is 207.0 acre-credits (with the upland buffer credits included – Table 1). These upland buffer credits will be counted as palustrine emergent credits for debiting purposes.

Table 1. Acres and acre-credits by crediting type.

<i>Source</i>	<i>Acres</i>	<i>Ratio</i>	<i>Credits</i>
Completely drained wetlands	183.00	1:1	183.00
Partially drained wetlands	42.00	2:1	21.00
Upland buffer and inclusions	15.00	5:1	3.00
Total Ac	240		207.00

Provisions for the Release of Credits

Thirty percent (30%) of credits from restored wetlands (61.2 of 204.0 acre-credits) will initially be released following approval of the Bank Site Plan by the Corps, recording of the real estate protection instrument, and establishment of the financial assurance (Table 2). In addition, 100% of the wetland credits associated with upland buffer establishment (3.0 acre-credits) will be released at that time, for a total of 64.2 acre-credits.

Table 2. Initial release of acre-credits by crediting type.

<i>Source</i>	Early Release		
	<i>Credits</i>	<i>%</i>	<i>Release</i>
Completely drained wetlands	183.00	30%	54.90
Partially drained wetlands	21.00	30%	6.30
Upland buffer and inclusions	3.00	100%	3.00
TOTALS:	207.00	160%	64.20
* Note: Wetland credits sourced from uplands are <25% of Total Credits			

Financial Assurances

Sponsor agrees to provide adequate financial assurances to ensure that aquatic functions will be reestablished and maintained at the Bank Site. The amount provided will be adequate to develop replacement compensatory mitigation sufficient to match the type and number of released credits from the Bank Site in the event of default by the Sponsor.

Contingency Fund

An initial financial assurance will be provided as a Contingency Fund, maintained during the establishment period of the Bank Site, typically a period of five years. For the Mekinock Bank Site, the Contingency Fund will be \$100,000.00 and will take the form of a casualty insurance policy specific to mitigation bank site operations, a template for which is under review by the Corps / Omaha District and attached in specimen form to the NCM UMBI. The size of the Fund may be reduced under conditions provided in the NCM UMBI.

Long-Term Management Fund

In addition to the Contingency Fund, a Long-Term Management Fund in the form of a cash endowment will be funded and managed by the South Dakota Community Foundation (SDCF). The Long-Term Management Fund will be established at the end of the implementation period (Year 5) in accordance with the NCM UMBI in the amount of \$50,000. A portion of the return on the investment by SDCF of the Fund (the “distributable amount”) will be made available to the long-term manager as needed for Bank Site maintenance and management.

Bank Site Ownership

The Bank Site is owned by Steve Neff, et. Al. (“landowner”). Upon approval of the Bank Site Plan (BSP), NCM will be granted license by landowner to establish and operate the Mekinock Bank Site NCM Umbrella Bank. Under the license granted to NCM, landowner will provide unlimited access and use of the Bank Site property for purposes of developing the mitigation credits herein described. Landowner will further abide by all stipulations of the BSP, which will be incorporated into the license as an Attachment. Landowner will establish a real estate protection instrument over the Bank Site before release of any credits (see below). A copy of the fully executed license will be submitted to the Corps within 60 days of approval of the BSP.

Site Protection

Consistent with provisions of the NCM UMBI, NCM will ensure the legal protection of the Bank Site by means of a protective real estate instrument established by landowner over the Bank Site. Such instrument will ensure the right of ingress and egress, and the right to conduct remedial actions for the Sponsor, Corps, NDIRT, and long-term managers, among other rights. This protection will be in the form of a Deed Restriction executed by landowner and NCM. A template deed restriction based on the Corps / Omaha District is attached to the NCM UMBI. No credits will be released from the Bank Site until the final deed restriction has been executed by landowner and recorded with the register of deeds in Grand Forks County.