

U.S. Army Corps
Of Engineers
Baltimore District
PN 10-61

Public Notice

**In Reply to Application Number: NAB-2010-02501-P07 (PA DOT
Statewide Mitigation Banking Umbrella Instrument)**

Comment Period: October 11, 2010 to November 10, 2010

THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM THE PUBLIC REGARDING THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION (PennDOT) PROPOSAL TO ENROLL 10 EXISTING WETLAND BANKS/ADVANCED WETLAND COMPENSATION SITES, PREVIOUSLY APPROVED UNDER PRIOR LOCAL AGREEMENTS, UNDER AN UMBRELLA BANKING INSTRUMENT, FOR THE PURPOSES OF ESTABLISHING A STATEWIDE WETLAND BANKING UMBRELLA INSTRUMENT, AS DESCRIBED IN FEDERAL REGULATION AT 33 CFR 332.8(a)(2). NO DECISION HAS BEEN MADE AS TO WHETHER OR NOT A STATEWIDE WETLAND BANKING UMBRELLA INSTRUMENT WILL BE APPROVED.

This District has received a prospectus from the Pennsylvania Department of Transportation (PennDOT) to establish a statewide wetland banking umbrella instrument pursuant to 33 CFR 332.8(a)(2). PennDOT seeks to enroll 10 existing wetland banks and advanced wetland compensation sites currently operated under separate local agreements with the Corps and Pennsylvania Department of Environmental Protection (PADEP), under one umbrella banking instrument to develop consistent operation and monitoring protocols and streamline development of additional wetland mitigation bank sites.

APPLICANT:

**Pennsylvania Department of Transportation
Environmental Quality Assurance Division
400 North Street
Commonwealth Keystone Building, 7 West
Harrisburg, Pennsylvania 17105-3162
Attn: Gary Fawver, P.E. Chief**

Through construction and maintenance of the fifth largest highway transportation system in the Nation, PennDOT is required to obtain permits and authorizations pursuant to Section 404 of the Clean Water Act from the U.S. Army Corps of Engineers. Special conditions of these authorizations and permits often require compensatory mitigation for unavoidable impacts to regulated aquatic resources. Compensation generally requires in-kind replacement of the aquatic resources that have been impacted. Recent Federal policies encourage industries and organizations to situate compensatory mitigation projects, such as wetland creation and restoration, at regional locations, which provide amplified benefits to the affected watershed.

Individual PennDOT Engineering Districts, which address set regions, have developed 20 existing wetland banks or advanced wetland compensation sites through local agreements with the Corps and PADEP. The purpose of the PennDOT Statewide Wetland Banking Umbrella Instrument is to enroll these first 10 sites under a standard Umbrella Instrument, to provide consistency in monitoring and accounting, as well as, streamline processes for development of new sites.

SITES TO BE ENROLLED UNDER STATEWIDE UMBRELLA BANKING INSTRUMENT:

<i>Site Name</i>	<i>Corps District</i>	<i>PennDOT District</i>	<i>County</i>	<i>Lat/Lon</i>
Kettle Creek AWC	Baltimore	2-0	Potter	41.4958/-77.79484
Aughwick-Whitsel	Baltimore	9-0	Huntingdon	40.2734/-77.8261
Cambria AWC	Baltimore	9-0	Cambria	40.6480/-78.5568
Fulton AWC	Baltimore	9-0	Fulton	39.9723/-78.0680
Old Crow AWC	Baltimore	9-0	Huntingdon	40.4882/-78.0377
Mowry AWC	Baltimore	9-0	Blair	40.4598/-78.3440
Polk WMB	Pittsburgh	1-0	Venango	41.3605/-79.8999
Armstrong-Schall	Pittsburgh	10-0	Armstrong	40.6927/-79.4120
Dubois Airport	Pittsburgh	10-0	Jefferson	41.1472/-78.8527
Jefferson-Wingard	Pittsburgh	10-0	Jefferson	41.2406/-78.8692

The attached prospectus provides general guidelines for the establishment and operation of the PennDOT Statewide Wetland Mitigation Banking Umbrella Instrument and specific information for each of the ten initial sites to be enrolled. Further guidance is provided in the Statewide Wetland Mitigation Banking Memorandum of Agreement, signed by PennDOT, the Corps, the Federal Highways Administration, and PADEP.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the proposal. Any comments received will be considered by the Corps of Engineers to determine whether to issue, condition or deny approval of this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors. Comments provided will become part of the public record for this action. Written comments concerning the proposal described above related to the factors listed above or other pertinent factors must be received by the District Engineer, U.S. Army Corps of Engineers, Baltimore District, within the comment period specified above. Written comments should be addressed to:

Mr. John Gible, Regulatory Program Manager
 U.S. Army Corps of Engineers
 401 East Louther Street, Suite 205
 Carlisle, Pennsylvania 17013

Comments received will be provided to the applicant and the Interagency Review Team comprised of the Corps, PADEP, EPA, and other Federal and State resource agencies. All information developed will assist the IRT in making a decision whether to accept or reject, in whole or by site, any of the information included in the request to establish an Umbrella Banking Instrument.

It is requested that you communicate this information concerning the proposal to any persons known by you to be interested and not being known to this office, who did not receive a copy of this notice.

Wade B. Chandler
Chief, Pennsylvania Section

**FINAL
Memorandum of Agreement**

**For the purpose of
Establishing a Statewide Umbrella Mitigation Banking Instrument
To compensate for losses to Wetlands**

Between

Commonwealth of Pennsylvania, Department of Transportation (PennDOT)

And

Commonwealth of Pennsylvania, Department of Environmental Protection (PADEP)

And

U.S. Army Corps of Engineers, Philadelphia District (USACE)

And

U.S. Army Corps of Engineers, Baltimore District (USACE)

And

U.S. Army Corps of Engineers, Pittsburgh District (USACE)

And

Federal Highway Administration, Pennsylvania Division (FHWA)

This MEMORANDUM is entered into this September 16, 2010 among the above listed parties.

WHEREAS, Sections 501 and 502 of the Pennsylvania Administrative Code of 1929, as amended, 71 P.S. §§181-182 require the Commonwealth Departments and agencies to cooperate with one another and coordinate their work; and,

WHEREAS, Pennsylvania Department of Transportation (PennDOT) is charged with construction, operation and maintenance of state roads and highways. These activities can impact aquatic resources and are thus regulated under state and federal environmental laws including the federal Clean Water Act (33 U.S.C. §1251 *et seq.*), the Rivers and Harbors Appropriations Act of 1899 (33 U.S.C. § 401 *et seq.*), the Pennsylvania Clean Streams Law (35 P.S. §§ 691.1 *et seq.*) and the Dam Safety and Encroachments Act (32 P.S. §§ 693.1 *et seq.*). Section 2002(a)(7) of the Pennsylvania Administrative Code of 1929, as amended, 71 P.S. §512(a)(7), requires the Pennsylvania

Department of Transportation to cooperate with appropriate Federal agencies in the coordination of plans and policies in the development of transportation facilities; and,

WHEREAS, the Pennsylvania Department of Environmental Protection (PADEP or Department) is the executive agency of the Commonwealth with the power to administer and enforce, *inter alia*, Pennsylvania Clean Streams Law (35 P.S. §§ 691.1 *et seq.*) also, the Dam Safety and Encroachments Act (Dam Safety Act), Act of November 26, 1978, P.L. 1375 *as amended*, 32 P.S. §§ 693.4 - 693.7, Section 514 of The Administrative Code of 1929 (Administrative Code), Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 194, and the rules and regulations promulgated there under at Title 25, Pa. Code Chapter 105; and

WHEREAS, the PennDOT, is required to consider the impacts of its projects on aquatic resources pursuant to the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (hereinafter, "CWA"), Pennsylvania Clean Streams Law (35 P.S. §§ 691.1 *et seq.*), the Dam Safety and Encroachments Act (32 P.S. §§ 693.1 *et seq.*), and their supporting regulations; PennDOT is obligated under these laws to avoid and minimize impacts to aquatic resources to the maximum extent possible. When impacts cannot be avoided, federal and state regulations may require PennDOT to mitigate the aquatic resource that is impacted; and

WHEREAS, Federal and state regulations allow for replacement of aquatic resources through the development of "mitigation banks." to implement this replacement; and

WHEREAS, on April 10, 2008, the USACE and the Environmental Protection Agency (EPA) promulgated regulations for compensatory mitigation for losses of aquatic resources at 33 CFR Parts 325 and 332 and 40 CFR Part 230; and,

WHEREAS, the parties desire to establish a wetland banking system, to include a process for the development of mitigation banks, in accordance with 33 CFR Parts 325 and 332, 40 CFR Part 230, and 25 Pa. Code Chapter 105 to provide effective compensatory mitigation for unavoidable impacts to regulated wetlands;

WHEREAS, the parties intend to provide the framework for one Umbrella Banking Instrument that addresses the needs of PennDOT to provide reasonable wetland mitigation across the Commonwealth in all USACE Districts and all DEP Regions;

WHEREAS, the Federal Highway Administration (FHWA) may provide Federal-aid funding assistance to PennDOT for implementation of eligible elements of this Agreement.

NOW, THEREFORE, these parties set forth the following as terms and conditions of this Agreement

I. PURPOSE

The purposes of this agreement include:

- A. Establishing a process for development of an umbrella mitigation banking instrument for PennDOT and other federal, state, and local transportation agencies by which these agencies may address impacts to state and federally regulated aquatic resources incurred through development, construction, operations, maintenance, and repair of transportation related projects.
- B. Outline of predictable strategies for establishing and approving individual bank sites for the PennDOT.
- C. Establishing guidelines to be used in development of an umbrella wetland banking instrument that will supersede existing wetland banking agreements held by individual PennDOT Engineering Districts, standardize the establishment, operation, management of wetland banks proposed or operated by PennDOT; and focus reporting, monitoring, and management of existing and developing bank sites through PennDOT Bureau of Design and district offices to ensure compliance with state and federal regulations and facilitate development and management of PennDOT-sponsored banks.
- D. Utilization of wetland banking where appropriate as a preferred strategy for mitigating unavoidable impacts from development, construction, operation, maintenance, and repair of transportation related projects. (Note that the use of mitigation banks for offsetting unavoidable impacts to jurisdictional wetlands is subject to project specific review, in accordance with 33 CFR 332.3(b)(2).
- E. Promotion of consistent mitigation requirements related to U.S. Army Corps of Engineers (USACE) and PADEP permits and authorizations.

II. DUTIES AND RESPONSIBILITIES OF SIGNATORIES AND PARTICIPANTS

- A. PennDOT Engineering Districts and other parties as defined in Appendix A may develop specific plans to develop Mitigation Bank sites under a PennDOT Statewide Mitigation Banking Umbrella Instrument to be developed consistent with this Memorandum of Agreement (MOA) and in accordance with applicable state and federal regulations. PennDOT Environmental Quality Assurance Division (EQAD) will assist these organizations in developing such plans and in seeking approval for individual bank sites under the umbrella banking instrument. To the extent of any conflict between this MOA and the PennDOT Statewide Mitigation Banking Umbrella Instrument, the latter shall control.
- B. All existing banks and advanced wetland compensation sites operated by PennDOT under individual or programmatic agreements shall be enrolled under the PennDOT Statewide Mitigation Banking Umbrella Instrument. Incomplete or new sites should be submitted as amendments once the instrument has been

established. The procedures in this MOA are intended to serve as the outline for the establishment of the Umbrella Instrument. The Umbrella Instrument is initiated when PennDOT submits, to the District Engineer, USACE, Baltimore, Philadelphia and Pittsburgh Districts, a prospectus that lists all of the existing PennDOT wetland banks, statewide, with sufficient information and description to satisfy 33 CFR § 332.8. This prospectus shall include a list of existing and developing banks, with specific information as required in accordance with 33 CFR § 332.8(d)(2):

1. Bank objectives
2. Establishment and operation of the bank site.
3. The Proposed Service Area based upon the Service Areas identified in Appendix B.
4. Need and technical feasibility
5. Ownership arrangements and long term management.
6. Qualifications of PennDOT to successfully construct and operate a mitigation bank;
7. Ecological suitability to achieve objectives; and
8. Assurance of water rights if necessary.

- C. At such time as the prospectus for existing and developing banks is received, the appropriate USACE District Engineer or his designated representative (hereinafter "District Engineer"), shall convene an Interagency Review Team (IRT) and within 30 days of receipt of complete prospectus, USACE District Engineer shall issue a Public Notice requesting public comment on the prospectus. The USACE District Engineer or their designee shall serve as IRT Co-Chair with the Pennsylvania PADEP Director of the Bureau of Watershed Management (or designee). The USACE District Engineer has the authority to ensure that all bank sites enrolled under the Umbrella Instrument, and future sites amended to the instrument, comply with federal regulations, specifically 33 CFR § 332. The PADEP Co-Chair has the authority to evaluate compliance of sites enrolled under the Umbrella Instrument, and future sites amended to the instrument, with applicable Commonwealth regulations.
- D. The following federal agencies shall be invited to participate in the IRT: U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; National Marine Fisheries Service; Natural Resources and Conservation Service. The District Engineer for the District in which a proposed mitigation bank site will be located, or his designee, shall preside as the USACE Co-chair for that project. To ensure consistency across the Commonwealth, a representative from each of the other two Districts shall also serve on the IRT in order to advise the District Engineer. The umbrella instrument shall be approved by all three District Engineers.
- E. The following state agencies shall be invited to participate in the IRT: Pennsylvania Fish and Boat Commission; Pennsylvania Game Commission; Pennsylvania Historical and Museums Commission; and at least one representative of each Regional Office of the PADEP.
- F. The USACE will be responsible for meeting the timelines outlined for processing

Bank Instrument requests at 33 CFR § 332.8 and PADEP shall evaluate compliance with 25 Pa. Code Chapter 105. The roles of the IRT are to:

1. Facilitate bank establishment.
2. Review prospectus, instruments, and other proposals.
3. Advise the Co-chairs on monitoring reports, recommending remedial or adaptive management, credit releases; and modifications to an instrument.
4. When dispute resolution process, described at 33 CFR § 332.8. (e) is invoked, work to resolve disputes.
5. Perform site inspections or review reports or otherwise facilitate inspections of new sites and existing sites, as delegated by the IRT Co-Chairs.

A flowchart of the bank instrument establishment time line is included in Appendix E of this agreement.

- G. All three District Engineers will have the authority to approve or disapprove the Umbrella Instrument. Each District Engineer retains final authority to approve amendments to the Umbrella Instrument for projects within that District's Regulatory boundaries. Similarly, it is the responsibility of the PADEP Director of the Bureau of Watershed Management (or designee) to approve or disapprove the Umbrella Instrument; and to approve or disapprove amendments to the Umbrella instrument , in accordance with state regulations.
- H. With respect to IRT comments and public comments forwarded by the District Engineer, PennDOT will prepare a Draft Instrument. The Draft Instrument will include and describe for each existing and developing site to be enrolled:
 1. Mitigation Plans (13 items listed at 33CFR332.4(c), outlined in Appendix C and in accordance with 25 PA Code Chapter 105 requirements)
 2. Accounting procedures
 3. Provision stating legal liability
 4. Default and closure provisions
 5. Reporting protocols
 6. Service area
 7. Comment responses
- I. The District Engineers will determine if the draft Umbrella Instrument is complete and will notify the IRT and PennDOT. IRT members will have 30 days to provide comments to the District Engineers and the PADEP Co-Chair. After the 30-day IRT comment period has expired the appropriate District Engineer will indicate to PennDOT if the instrument is generally acceptable and what changes, if any, are needed. The PADEP Co-chair will provide similar review and work with the District Engineers and PennDOT to resolve significant issues. Within 90 days of receipt of a complete Draft Instrument, the District Engineers and PADEP must advise PennDOT of the status of the Draft Instrument and provide comments in accordance with 33 CFR 332.8(d)(7).
- J. Upon approval of the Draft Instrument, PennDOT will prepare the final Umbrella Instrument based on public comment, IRT comments, and direction from the

USACE and PADEP. The final instrument should include a discussion on how public and agency comments were addressed. The final instrument or amendment may be approved or not approved within 45 days. PADEP and the USACE may come to independent conclusions. If a District Engineer invokes dispute resolution procedures (33CFR.332.8 (e)) final resolution may not exceed 150 days. A flowchart of the dispute resolution process timeline is included in Appendix E of this agreement.

- K. These procedures outline the process for enrolling all existing and developing PennDOT wetland banks under the Umbrella Instrument. Furthermore, for any new wetland bank sites, PennDOT may propose an amendment to the Umbrella Instrument. Enrollment of new sites shall follow the same procedures outlined in 33 CFR 332.8 and submitted with an Amendment /Modification Acceptance Form (Appendix D).
- L. **Monitoring and Management:** PennDOT shall assemble an annual monitoring report for all sites enrolled under the Umbrella Instrument. Said report shall, site by site, list all pertinent information related to the success of the sites and a ledger of available credits and applied debits covering the history of each site. The monitoring reports will be prepared in accordance with USACE Regulatory Guidance Letter 08-03 or any superseding guidance. The report shall be submitted to the District Engineer and to the PADEP co-chair. The District Engineers will distribute the report to the IRT and schedule a meeting of the IRT to receive comments on the report. Based on the monitoring reports, the District Engineers and PADEP may require adaptive management for a bank site or restrict the use of available credits for a particular site until remediation is complete.
- M. The permitting agencies (PADEP and USACE District Engineers) have authority over the transfer of credits to mitigate for unavoidable wetland impacts. The USACE and PADEP will strive to agree on the project specific use of banks to offset unavoidable impacts to aquatic resources related to permits and authorizations.

The USACE and PADEP will:

1. Provide approval for the establishment and debiting of mitigation banks in all service areas. In the event that a mitigation bank has not been established in a given service area, an approved participant may propose use of an in-lieu fee program or other similar compensation.
2. Establish, on a case-by-case basis, the number of mitigation bank credits necessary for appropriate compensatory mitigation, within a framework that includes aerial extent, landscape position, and ecological function, as outlined, in this Agreement, 25 Pa. Code §105.20a, and 33 CFR §332.3.
3. Ensure proper use and accounting of credits by participants and bank sponsor.

4. Ensure compliance with the performance standards identified in the final mitigation plan for the mitigation bank site.
- N. PADEP will evaluate whether the proposed compensation of wetland resource impacts achieves functional replacement required under 25 Pa. Code §105.20a(a)(2).

III. GENERAL CONSIDERATIONS IN ESTABLISHING A PennDOT WETLAND MITIGATION BANK

A. Site Selection

PennDOT will identify sites within a service area with the potential for the development of a mitigation bank in accordance with 33 CFR §332.3(d) and 105.20a(a)(3) and 105.20a(b). The service areas incorporated in this agreement are identified in Appendix B. Suitability of the site for compensatory mitigation of wetlands as well as location of anticipated transportation program projects should be considered in locating such sites. PennDOT should consider watershed-scale features such as aquatic resource diversity, habitat connectivity and other landscape scale functions; watershed, species recovery and comprehensive plans, municipal coordination, soils data, hydrologic data, natural communities, local or regional goals for the restoration or protection of particular habitat types or functions; land use and land cover. During the site selection process, special attention may be paid to sites that have the potential for the enhancement and preservation of aquatic habitat that are difficult to replace, such as bogs, fens, and springs as indicated in 33 CFR §332.3(e)(3).

Mitigation banks may include any or all of the following related to wetland habitats: creation, restoration, enhancement, and preservation. PADEP does not accept credits for preservation activities. Additionally, PennDOT may request credits be given for riparian areas, buffers, and upland habitats that are important to supporting the aquatic habitats within either the mitigation bank or watershed. The decision to approve these credit requests lies with the respective USACE District Engineer and the PADEP Director of the Bureau of Watershed Management (or designee).

B. Site Selection Field View

In accordance with 33 CFR §332.4 and PADEP policy pre-application and/or field view meetings are highly recommended. The IRT may conduct a field view to review each of the potential mitigation bank sites. At the conclusion of the field view, the IRT will provide comments and recommendations to the District Engineer.

C. Public Review and Comment

After a potential site has been selected, PennDOT will notify the PADEP Director of the Bureau of Watershed Management (or designee) and the USACE District Engineer in writing of their intent to establish a bank site. This notification must include a summary of the proposed bank site suitable for use in a USACE Public Notice. Once the prospectus is determined complete by the District Engineer, a Public Notice will be issued to announce the proposed project and to request public comment. The comment period will typically be 30 days from the date of issue. The District Engineer will distribute copies of the comments received to the IRT and the sponsor for review and appropriate action.

D. Draft Mitigation Plan Submittal

Once PennDOT has received any public comments, a Draft Mitigation Plan (DMP) will be submitted to the USACE District Engineer. The DMP will be coordinated by the USACE District Engineer through the IRT and completed as outlined within 33 CFR § 332.4 (c) paragraphs 2 through 14. The IRT will provide comments on the DMP to the USACE District Engineer. The USACE District Engineer will coordinate comments to PennDOT to formulate the final mitigation plan. Details of the required information have been included in Appendix C.

E. IRT Review

Once the USACE District Engineer has notified PennDOT that the DMP is complete, the plan will be submitted to the IRT for a 30 day comment period. Within 90 days of the DMP submission to the IRT, the USACE District Engineers will provide any comments to be addressed to PennDOT.

F. Final Mitigation Plan Submittal

Once the IRT Chairs have submitted any comments received related to the draft DMP to the District Engineer, a Final Mitigation Plan (FMP) that addresses the comments will be prepared. Submission of a Joint 404/105 Authorization Application, may occur concurrent with the submission of the FMP but in accordance with 33 CFR 332.8(k), no permit shall be issued until all relevant provisions of the mitigation plan have been substantively determined. A permit application is required and will be submitted for review and approval to PADEP.

G. Final Mitigation Plan Approval: The USACE and PADEP will each provide PennDOT with an approval document for the banking instrument once all requirements have been met and, for existing banks, credits may be withdrawn under the instrument. For amendments, approval will be granted in writing from both the USACE and PADEP and credits may be utilized according to the credit release schedule. Both the USACE and PADEP will maintain records indicating the review process and approval of each initial and amended site.

H. Post Construction Submittal

Upon complete construction of a specific mitigation bank site, the Bank Sponsor will prepare and submit as-built plans (record drawings) and revised available credit calculations to the USACE District Engineer who will coordinate that submission with the IRT Chairs and permitting agencies.

IV. PROCEDURES FOR THE ADMINISTRATIVE OPERATION OF MITIGATION BANK

A. Establishment of Credit Release Schedule (CRS)

1. Credits will be enumerated by acres or tenths of acres by method of creation (creation of wetlands from uplands; restoration of wetlands; enhancement; preservation) and enumerated by acres or tenths of acres by type of wetlands created (open water, emergent, scrub-shrub, forested).

Additionally, the IRT Chairs may recommend to the USACE District Engineer to provide wetland mitigation credits for non-wetland areas that are important supporting components to the aquatic mitigation habitats and/or the watershed as a whole (e.g. Buffers, preservation, or enhancement). These credits may be used to augment PADEP mitigation requirements after state mitigation requirements are met in accordance with Pa.Code § 105.20a.

At the request of either PennDOT or the recommendation of the IRT, a re-evaluation of the credits available at a mitigation bank may be conducted at any time during the life of the mitigation bank. Credit revisions by PennDOT must be appended to this Agreement through the submission of updated materials accompanied by an Amendment Form (Appendix D) and approved by the USACE District Engineer and PADEP Director of the Bureau of Watershed Management (or designee) in consultation with the IRT.

2. For established sites, deemed successful by the USACE and PADEP, 100% of credits will be immediately available. For amended projects (new or developing banks, or bank sites with identified success issues) credits will be released on a project specific basis. A standardized credit release schedule is complicated by the variety of goals and construction challenges presented by each individual site, however, unless otherwise approved as part of an FMP, the guideline credit release schedule for all mitigation banks established under this Agreement will be as follows;

Mitigation Bank Site Milestone	Credits Released
FMP approval by USACE and PADEP	0 % of planned credit
Successful Post Construction Submittal	10 % of as-built credits
First annual monitoring report deemed successful by USACE and PADEP	20 % of as-built credits
Second annual monitoring report deemed successful by USACE and PADEP	30 % of as-built credits
Third annual monitoring report deemed successful by USACE and PADEP	45 % of as-built credits
Fourth annual monitoring report deemed successful by USACE and PADEP	60 % of as-built credits
The fifth annual monitoring report, or two consecutive years of comparable monitoring results.*	100 % of the accepted as-built credits

* The length of monitoring will be dictated by the monitoring requirements submitted in the FMP bank construction and permit special conditions.

3. Once established and released in accordance with the FMP, unused credits remain available for debiting. There is no date of expiration for approved credits.
4. It should be noted that some wetland creation projects may take several years to reach goals outlined in the mitigation plan (e.g. forested wetlands). The mitigation bank may be approved for 100% crediting prior to attainment of such goals; and in such instance, USACE and PADEP authorizations may require

credits at a higher rate than 1:1 replacement.

5. The ledger of credits for each approved bank site will list credits by type (e.g. emergent, scrub shrub, forested, forested riparian buffer) and category (e.g. created, enhanced, preserved) the debits will be listed similarly along with associated impacts and the USACE and PADEP permit file number.

B. Guidelines for Mitigation Bank Usage to Offset Project Specific Impacts

1. This section does not alter the regulations at CFR 33 § 320.4(r), which addresses the general mitigation requirements for Department of the Army (DA) permits. It does not change the circumstances under which mitigation is required or the need to avoid and minimize adverse impacts as outlined in the provisions of: 33 CFR §332.1; 40 CFR part 230; and 25 Pa.Code §105.18a.
2. Generally, PennDOT will have the option to propose:
 - a. Debit from an approved mitigation bank located within the project service area.
 - b. Contribute to an in-lieu fee program as an option if item (a) above is determined not to be practicable and where no mitigation bank currently exists with available credits within the service area.
 - c. Replace on-site if and only if: replacement on-site meets suitable criteria for the establishment or restoration of a wetland resource, and is practicable, and a wetland replacement plan and monitoring plan can be approved.

Based upon past experience with the performance/success or lack thereof of on-site mitigation replacement projects, the history of success with in-lieu fee programs and the recommendations contained within the “Federal Rule” relating to compensatory mitigation for losses of aquatic resources published April 10, 2008; the use of wetland mitigation banking as mitigation to offset unavoidable impacts to Waters of the Commonwealth and Waters of the United States is the preferred strategy for mitigating wetland impacts. It is solely the decision of the USACE and PADEP in reviewing a permit application to determine if use of a bank is appropriate; and such determinations are case-specific.

The ability to use in-lieu fee programs is in no way meant to diminish the need for or the expectation of the establishment of mitigation banks by the PennDOT in each of the designated service areas. In-lieu fee programs should only be used in the event that, despite considerable bank sponsor effort or due to insufficient service area size to justify and support a mitigation bank, a mitigation bank is not available.

3. Credits may be used to satisfy compensatory mitigation requirements associated with authorized impacts if credits are available in the service area.
4. If approved by USACE and PADEP, and in accordance with other requirements of this agreement and the Mitigation Rule, approved credits may be used to offset impacts for USACE Nationwide permit authorization, PASPGP-3 and subsequent programmatic permit authorizations; and individual permits.
5. Credits banked by PennDOT under this agreement may be debited, with PennDOT approval, and as authorized by the USACE and PADEP on a case by case basis, by any of the parties listed as participants in Appendix A with the approval of the USACE District Engineer and PADEP project managers.
6. PennDOT will determine the conditions of credit transfer to other participants. PennDOT retains the right to deny the transfer of credits to any potential participant outside of the Pennsylvania Department of Transportation. Within PennDOT, one District may utilize the credits created by another District only if such transfer is acceptable to the District that constructed the banked credits.
7. PennDOT will document the transfer of credits to other participants and will enter the details of credit transfer (participant, number and type of credits transferred, date, remaining mitigation bank credit balance, and impact to be mitigated) into the accounting record/ledger report.
8. Within a service area having an approved wetland mitigation bank, mitigation requirements will be based upon current regulations, policies, and guidance at the time of project specific permit submission, as well as the requirements determined by the USACE and PADEP permits or permit authorizations and in coordination with commenting state and Federal agencies.

V. INFORMATION REQUIRED IN THE INITIAL PROSPECTUS FOR EXISTING WETLAND MITIGATION BANKING AND, ADVANCED WETLAND MITIGATION AGREEMENTS AND SITES

All existing wetland banks will be updated to meet the requirements of the mitigation rule as they are enrolled or amended to the Umbrella Wetland Banking Instrument enabled by this agreement. In order to enroll a bank site, the following site specific information will be submitted to the District Engineer as a draft prospectus.

1. Site name and location;
2. The proposed service area, as defined in this agreement;
3. The total number credits created at the site;
4. A summary of credits debited to date,
5. A summary of available credits;
6. Long Term Management Plan: The Bank Sponsor, in cases where the bank site is to be transferred to a non-government entity, shall place upon all mitigation banks such restrictions or easements, acceptable to the USACE District Engineer and the PADEP to guarantee the protection of the mitigation banks in perpetuity;
7. An as-built plan (record drawing) of the mitigation bank site showing the resources created;
8. A copy of the previous agreement;
9. Other information, identified in Appendix C as requested by the District Engineer and the PADEP Co- chairs; and
10. A completed Amendment Form (Appendix D).

VI. RATIFICATION, MODIFICATION, AND TERMINATION OF THIS AGREEMENT

This Agreement will take effect one (1) day after the date of the last signature. This Agreement may be modified with the approval of all signatories. Modifications of this Agreement may be proposed by one or more signatories. The originator(s) of the modification shall circulate such draft modification(s) to all signatories for a sixty (60) day period of review. Approval of the modification(s) will be indicated by written acceptance. A signatory may terminate participation in this Agreement upon a ninety (90) day written notice to all other signatories.

VII. LEGAL EFFECT

This MOA is not intended to, and does not, create any contractual rights or obligations with respect to the signatory agencies or any other persons or entities, and creates no cause of action against the signatories. In addition, the execution and implementation of this MOA does not constitute an explicit or implicit agreement by the signatories to subject themselves to the jurisdiction of any federal or state court. Nor shall this MOA be construed as creating any rights or benefits, substantive or procedural, enforceable in

law or in equity, by any person or entity against the signatories. This MOA shall not be construed or create any right to judicial review involving the compliance or noncompliance with this MOA.


Nothing in this MOA shall be construed to require actions by the signatories that are inconsistent with local, state or federal laws, or regulations, or any court order.

VIII. EXECUTION IN COUNTERPART

This document may be executed by the parties' signatory hereto in counterpart, and such execution shall be deemed to have the same force and effect as simultaneous execution, and all counterparts shall together constitute a single Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Agreement to be executed as of the date herein written.

U.S. Army Corps of Engineers, North Atlantic Division, Philadelphia District

Signature  Date 8/3/10

Typed or Printed Name Frank J. Cianfrani

Title Chief, Regulatory Branch

U.S. Army Corps of Engineers, North Atlantic Division, Baltimore District

Signature _____ Date _____

Typed or Printed Name _____

Title _____

U.S. Army Corps of Engineers, Great Lakes and Ohio River Division, Pittsburgh District

Signature _____ Date _____

Typed or Printed Name _____

Title _____

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Agreement to be executed as of the date herein written.

U.S. Army Corps of Engineers, North Atlantic Division, Philadelphia District

Signature _____ Date _____

Typed or Printed Name _____

Title _____

U.S. Army Corps of Engineers, North Atlantic Division, Baltimore District

Signature William P. Seib Date 8/5/10

Typed or Printed Name William P. Seib

Title Chief, Regulatory Branch - Baltimore District

U.S. Army Corps of Engineers, Great Lakes and Ohio River Division, Pittsburgh District

Signature _____ Date _____

Typed or Printed Name _____

Title _____

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Agreement to be executed as of the date herein written.

U.S. Army Corps of Engineers, North Atlantic Division, Philadelphia District

Signature _____ Date _____

Typed or Printed Name _____

Title _____

U.S. Army Corps of Engineers, North Atlantic Division, Baltimore District

Signature _____ Date _____

Typed or Printed Name _____

Title _____

U.S. Army Corps of Engineers, Great Lakes and Ohio River Division, Pittsburgh District

Signature Scott A. Hans Date 8-4-10

Typed or Printed Name Scott A. Hans

Title Chief, Regulatory Branch Pittsburgh District

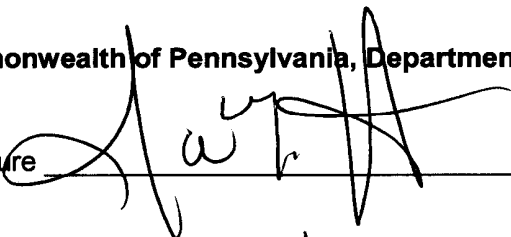
Commonwealth of Pennsylvania, Department of Transportation

Signature  Date 6/30/10

Typed or Printed Russell Scott Christie, P.E.

Title Deputy Secretary of Transportation

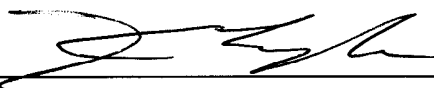
Commonwealth of Pennsylvania, Department of Environmental Protection

Signature  Date 7/12/10

Typed or Printed Name John T. Hines

Title Deputy Secretary, Office of Water Management

U.S. Department of Transportation Federal, Highway Administration - PA Division

Signature  Date 9/16/10

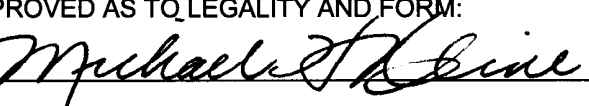
Typed or Printed Name Keith Lynch

Title Director of Program Development

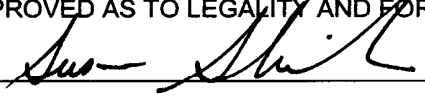
PRELIMINARILY APPROVED:

By  Date 6/29/2010
Assistant Counsel, Pennsylvania Department of Transportation

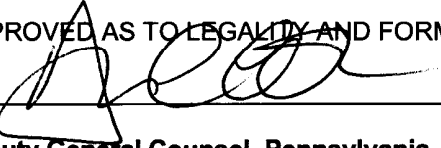
APPROVED AS TO LEGALITY AND FORM:

By  Date June 30, 2010
for Chief Counsel, Pennsylvania Department of Transportation

APPROVED AS TO LEGALITY AND FORM:

By  Date 7/8/10
Chief Counsel, Pennsylvania Department of Environmental Protection

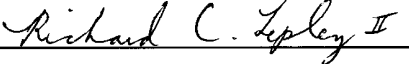
APPROVED AS TO LEGALITY AND FORM:

By  Date 8-18-10
Deputy General Counsel, Pennsylvania

APPROVED AS TO LEGALITY AND FORM:

By  Date 8/30/10
Deputy Attorney General, Pennsylvania

Fiscal and Budgetary Approval:

By  Date 9/3/10
for Comptroller Operations, Pennsylvania

Appendix A – Definitions

Adaptive Management means the development of a management strategy that anticipates likely challenges associated with compensatory mitigation projects and provides for the implementation of actions to address those challenges, as well as unforeseen changes to those projects. It requires consideration of the risk, uncertainty, and dynamic nature of compensatory mitigation projects and guides modification of those projects to optimize performance. It includes the selection of appropriate measures that will ensure that the wetland functions are provide and involves analysis of monitoring results to identify potential problems of a compensatory project and the identification and implementation of measures to rectify those problems.

Bank Service Area means the geographic area within which impacts can be mitigated at a specific bank or in-lieu program, as designated in its instrument.

Bank Sponsor - An organization within the Pennsylvania Department of Transportation (such as an Engineering District) assigned the responsibility for the establishment and operation of a mitigation bank in a given service area.

Buffer means an upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, streams, lakes, marine, and estuarine systems from disturbances associated with adjacent land uses.

Compensatory mitigation means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of wetland resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Compensatory mitigation project means a restoration, establishment, enhancement, and/or preservation activity implemented by the permittee as a requirement of a DA permit and PADEP authorization (i.e., permittee-responsible mitigation), or the same work implemented by a mitigation bank sponsor or an in-lieu fee program.

Credit means a unit of measure (e.g., a functional or aerial measure or other suitable measure) representing the accrual or attainment of wetland functions at a compensatory mitigation site. The measure of wetland functions is based on the wetland restored, established, enhanced, or preserved.

Credit Release Schedule (CRS) – The schedule defining when credits will be released and available for use in a mitigation bank.

DA means Department of the Army.

Days mean calendar days.

Debit means a unit of measure (e.g., a functional or aerial measure or other suitable measure) representing the loss of wetland functions at an impact or project site. The measure of wetland function is based on the wetland impacted by the authorized activity.

PADEP means Department of Environmental Protection

District Engineer means the commander of an U.S. Army Corps of Engineers Engineering District.

Enhancement means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation) means the manipulation of the physical, chemical, or biological characteristics present to develop a wetland resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and function.

Environmental Clearance Documentation - Documentation prepared with the purpose of compliance with the National Environmental Policy Act and/or Pennsylvania Act 120 of 1970. Such documentation is reviewed and approved by the Federal Highway Administration and/or the Pennsylvania Department of Transportation.

FMP – is the Final Mitigation Plan is also referred to as the “Final Instrument”.

Functional capacity means the degree to which an area of aquatic resource performs a specific function.

Functions mean the physical, chemical, and biological processes that occur in ecosystems.

Impact means adverse effect.

In-kind means a resource of a similar structural and functional type to the impacted resource.

In-lieu fee program means a program involving the restoration, establishment, enhancement, and/or preservation of wetland resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for DA permits and PADEP authorizations.

Inter-Agency Review Team (IRT) – An interagency group of regulatory and resource agencies that reviews documentation for, and advises the U.S. Army Corps of Engineers District Engineer and Pennsylvania Department of Environmental Protection (PADEP), on the establishment and management of a mitigation bank.

IRT Chairs - One representative from the U.S. Army Corps of Engineers and from the Pennsylvania Department of Environmental Protection (PADEP) shall serve as Co-Chairs of the IRT. The U.S. Army Corps of Engineers and PADEP will determine the membership of the IRT consistent with 33 CFR § 332.8(b)

Mitigation bank means a site, or suite of sites, where wetland resources (e.g. wetlands) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits. In general, a mitigation bank, as defined in the agreement, provides compensatory mitigation credits for PennDOT districts and approved transportation partners, whose obligation to provide compensatory mitigation credits is then transferred to the mitigation bank sponsor (PennDOT District that constructed the bank and/or PennDOT Central Office). The operation and use of a mitigation bank are governed by a

mitigation banking instrument.

Mitigation banking instrument means the legal document for the establishment, operation, and use of a mitigation bank.

Mitigation Plan means the plan, as defined in 33 CFR § 332.4 (c) paragraphs 2 through 14 and appendix C submitted by the bank sponsor to the PADEP Transportation Program Manager and the respective USACE District Engineer..

Off-site means an area that is neither located on the same parcel of land as the impact site, nor on a parcel of land contiguous to or near the parcel containing the impact site.

On-site means an area located on the same parcel of land as the impact site, or on a parcel of land contiguous to the impact site.

Out-of-kind means a resource of a different structural and functional type from the impacted resource.

Participant - An entity obtaining credits from a wetland bank to compensate for authorized impacts resulting from that entity's activities. Specifically in this agreement, approved Participants are limited to the Pennsylvania Department of Transportation and the Pennsylvania Turnpike Commission. Other public entities carrying out transportation construction and maintenance activities, such as state and federal agencies, county and municipal governments, transit authorities, ports, and airports, may be deemed appropriate participants by decision of both the Bank Sponsor and the permitting agencies on a case by case basis when such entities impact wetland resources directly as a result of delivering transportation infrastructure or services.

Performance standards are observable or measurable physical (including hydrological), chemical, and/or biological attributes that are used to determine if a compensatory mitigation project meets its objectives.

Permittee-responsible mitigation means a wetland resource restoration, establishment, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

Practicable means available and capable of being carried out after taking into consideration cost, existing technology and logistics.

Preservation means the removal of a threat to, or preventing the decline of, wetland resources by an action in or near those wetlands. This term includes activities commonly associated with the protection and maintenance of wetlands through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/ historic functions to a former wetland resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in wetland resource area and function.

Reference wetlands are a set of wetlands that represent the full range of variability exhibited by a regional class of wetland resources as a result of natural processes and anthropogenic disturbances.

Rehabilitation means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/ historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded wetland resource. For the purpose of tracking net gains in wetland resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riparian areas are lands adjacent to streams, rivers, lakes, and estuarine-marine shorelines. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality.

Service area means the geographic area within which impacts can be mitigated at a specific mitigation bank or in-lieu fee program, as designated in Appendix B of this instrument.

Services mean the benefits that human populations receive from functions that occur in ecosystems.

Standard permit means a standard, Individual Permit issued under the authority of Section 404 of the Clean Water Act and/or Sections 9 or 10 of the Rivers and Harbors Act of 1899.

Temporal loss is the time lag between the loss of aquatic resource functions caused by the permitted impacts and the replacement of aquatic resource functions at the compensatory mitigation site. Higher compensation ratios may be required to compensate for temporal loss. When then compensatory mitigation project is initiated prior to, or concurrent with, the permitted impacts, the district engineer may determine that compensation for temporal loss is not necessary, unless the resource has a long development time.

Watershed means a land area that drains to a common waterway, such as a stream, lake, estuary, wetland or ultimately the ocean.

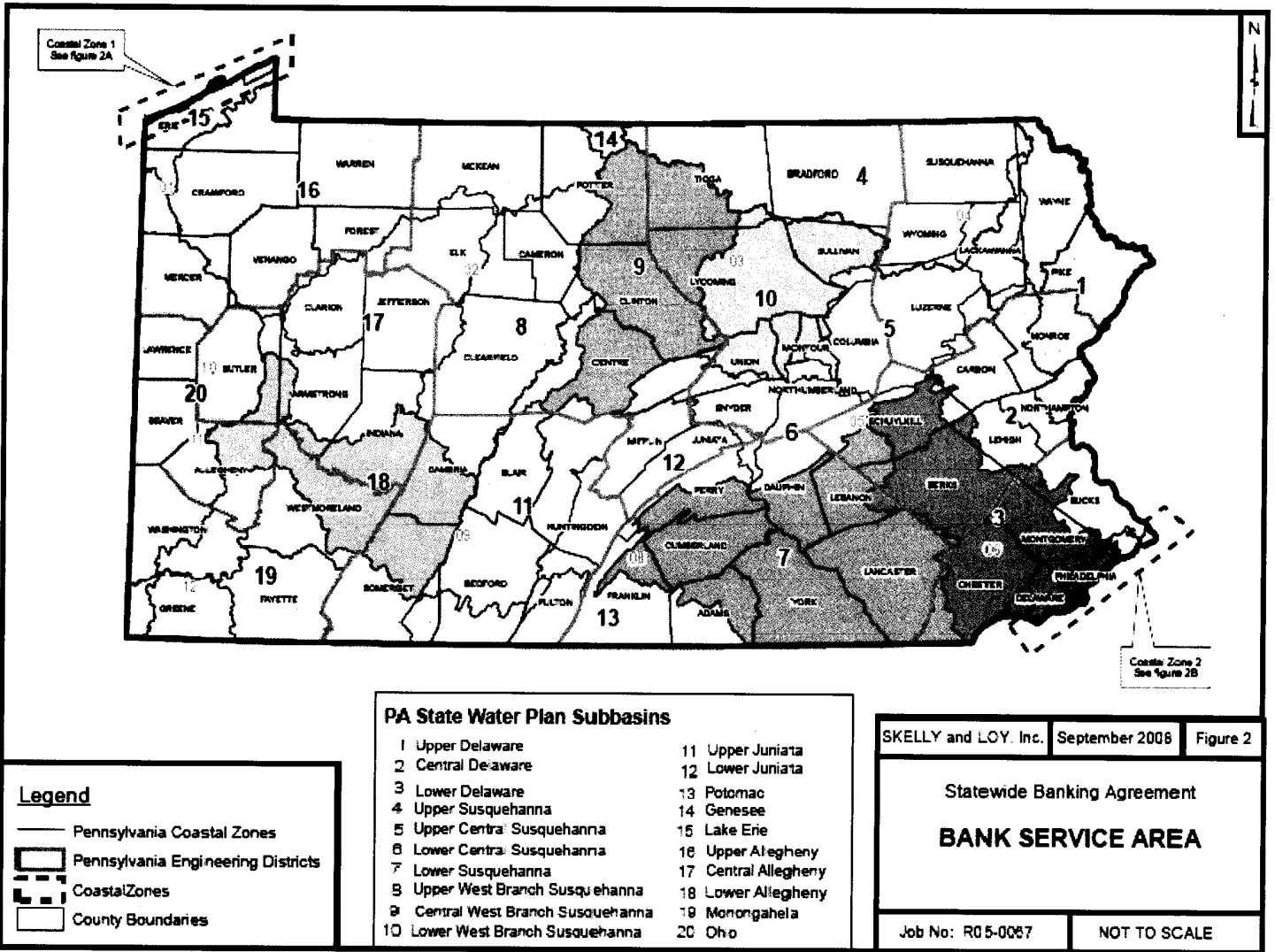
Watershed approach means an analytical process for making compensatory mitigation decisions that support the sustainability or improvement of aquatic resources in a watershed. It involves consideration of watershed needs, and how locations and types of compensatory mitigation projects address those needs. A landscape perspective is used to identify the types and locations of compensatory mitigation projects that will benefit the watershed and offset losses of aquatic resource functions and services caused by activities authorized by DA permits and PADEP authorizations. The watershed approach may involve consideration of landscape scale, historic and potential aquatic resource conditions, past and projected aquatic resource impacts in the watershed, and terrestrial connections between aquatic resources when determining the compensatory mitigation requirements for DA permits and PADEP authorizations.

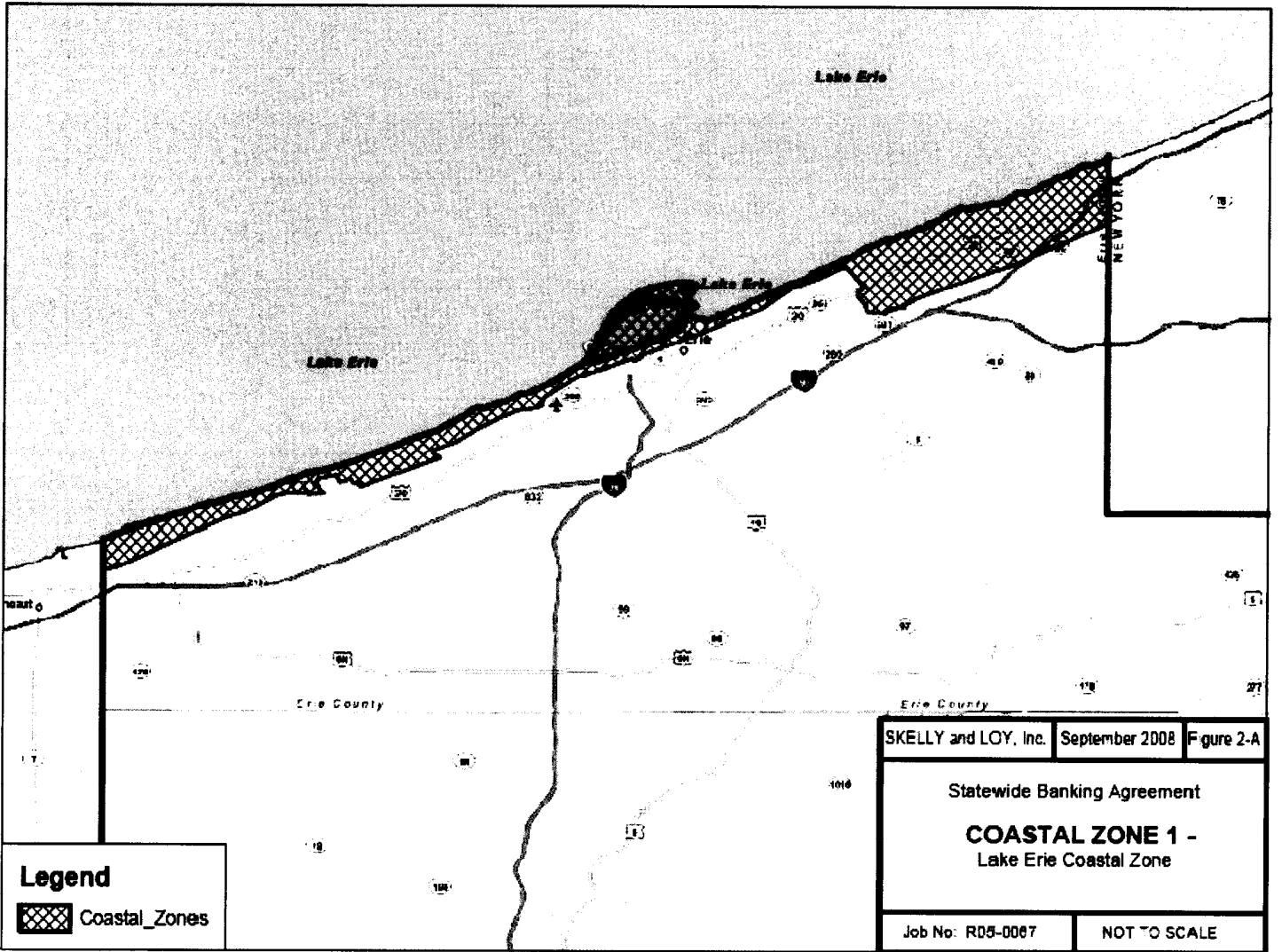
Watershed plan means a plan developed by federal, tribal, state, and/or local government agencies or appropriate non-governmental organizations, in consultation with relevant

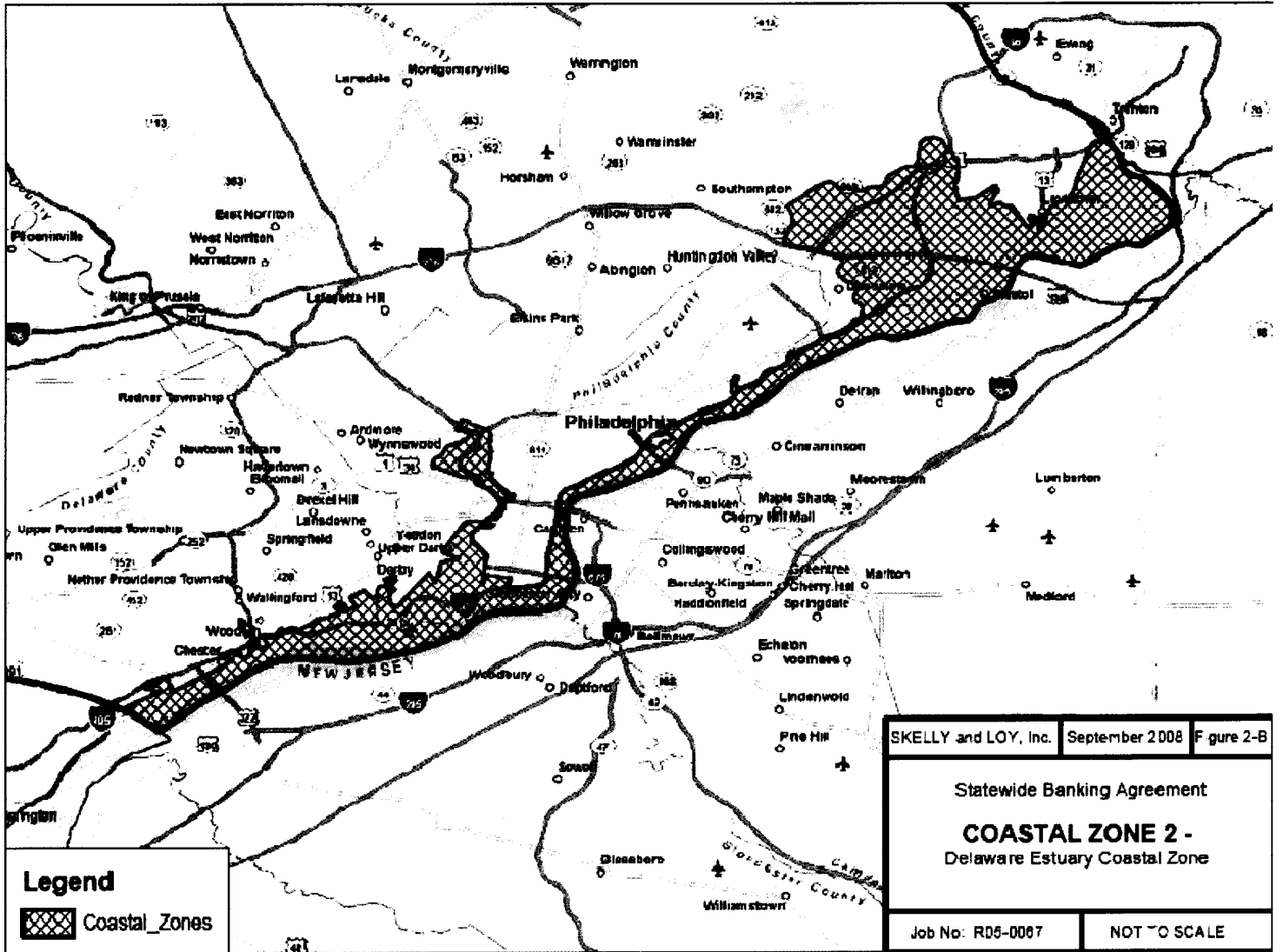
stakeholders, for the specific goal of wetland resource restoration, establishment, enhancement and preservation. A watershed plan addresses aquatic resource conditions in the watershed, multiple stakeholder interests, and land uses. Watershed plans may also identify priority sites for aquatic resource restoration and protection. Examples of watershed plans include special area management plans, advance identification programs, and wetland management plans.

Wetland Mitigation Plan - as established in 33 CFR § 332.4(c) is a formal submission to the PADEP transportation program manager and the USACE District Engineer providing the site specific details related to the establishment of a wetland bank site.

Bank Service Area Maps







Appendix C - Mitigation Plan Details

1. Objectives: A description of the resources, types, functions, services, and sizes to be provided by the site.
2. Site Selection Criteria: this section will include an overview of the criteria used in Article III Section A to identify suitable bank sites.
3. Site Protection Instrument: this shall include a description of the legal arrangements to be employed by the Bank Sponsor to ensure long-term protection of the proposed bank site.
4. Base Line Information: This section will describe the existing environmental conditions on the site. They may include:
 - a. A Wetland Delineation shall be required.
 - b. Baseline Functional Assessment. The methodology for baseline functional assessments should be recommended by the IRT and must be based on acceptable ecological principles.
 - c. Evidences that any Cultural Resource issues have been resolved to the satisfaction of the State Historical Preservation Officer.
 - d. Threatened and Endangered Species issues identification.
 - e. Soils mapping for the entire site. Soils mapping provided by a local soil survey should be verified in the field.
 - f. Hydrologic data should indicate the observed and/or predicted duration of ponding or saturation to the surface; the source of hydrology for wetland creation and sustenance, all in terms of primary and secondary indicators listed in the 1987 Corps of Engineers Wetland Delineation Manual.
 - g. Natural communities.
 - h. Land Use and Land Cover.
5. Preliminary Credit Calculations: This section will outline number of credits that the bank will provide and rationale for the number of credits. Credits for each site will be broken down by habitat type and area and presented in spreadsheet format.
6. Mitigation Work Plan: This will include detailed written and graphical specifications and descriptions of the work planned to accomplish the establishment of the proposed credits. This could include, but is not limited to: the geographic boundaries of the project; construction methods; timing and sequence of the work; source of hydrology (including connection to existing waters and uplands) methods for establishing the desired plant community, plans to control invasive plant species; the proposed grading plan (including elevations and slopes of the substrate); soil management and erosion control measures.
7. Maintenance Plan: This plan will include a description of any routine maintenance that will be required to ensure the success of the proposed mitigation bank site. It should be stressed that the intent of the final rule is to improve the quality and success of compensatory replacement projects resulting from unavoidable impacts to waters of the U.S, which have been authorized by DA permits.

8. **Performance Standards:** This shall identify easily measurable and reasonably attainable ecologically based criteria to be used as a measure of the degree of success or failure of the mitigation bank site to create the anticipated credits (such as Cowardin and the 1987 Wetland Delineation Manual Method).
9. **Monitoring requirements –** The intent of the monitoring requirements will be to demonstrate that the bank site is meeting the performance standards. Monitoring and the submission of monitoring reports will be conducted in compliance with 08-03 as well as the 25 Pa. Code Chapter 105. The monitoring requirements for wetland bank site will generally be five years; however, the bank sponsor has the ability to request early release from the IRT in the event the bank site has met the performance standards.
10. **In Perpetuity Management Plan:** The Bank Sponsor shall place upon all mitigation banks such restrictions or easements, acceptable to the IRT Chairs to guarantee the protection of the mitigation banks in perpetuity.
11. **Adaptive Management Plan:** If the bank, based on the monitoring data, is not developing as planned then the Bank Sponsor will either;
 - a. Present a Bank Modification Plan to the IRT Chairs and upon approval pursue appropriate remedial measures to rectify conditions limiting the provision of aquatic resource functions, or
 - b. Elect to modify the number of available credits available to the site within the banking agreement.
12. **Financial Assurance:** Given the fact that the Bank Sponsor is a government agency this document will serve as a formal legal commitment and as such the district engineer may determine that financial assurances are not necessary.
13. **Other information requested by the IRT Co-chairs**

Appendix D

Amendment/Modification Acceptance

Memorandum of Agreement No. _____

Amendment No. _____

(Add letters a, b, c to amendment no. if this represents a modification of a previous amendment)

Date:

Subject: Memorandum of Agreement No. _____
re: Wetland Mitigation Bank Name and corresponding permit nos.

To: **NAME**, Chief
Division of Wetlands, Waterways and Erosion Control
Pennsylvania Department of Environmental Protection
Insert Current Division Chief Name

NAME, Chief
U.S. Army Corps of Engineers
_____ District
Insert Current Division Chief Name

NAME, Division Administrator
Federal Highway Administration
Pennsylvania Division
Insert Current Division Administrator Name

From: The Pennsylvania Department of Transportation

Insert Applicable District Office and Contact

Attached for your review and acceptance is a Final Mitigation Plan (FMP) or modification to a previously approved FMP for the SITE NAME PennDOT Wetland Mitigation Bank Site located at _____ . In accordance with Memorandum of Agreement No. _____, upon receiving all signatures of acceptance, this amendment and all attachments hereto will be appended to the MOA as Amendment _____ and will be incorporated as part of that Agreement.

Any questions regarding the FMP or modifications may be directed to
NAME, TITLE at PHONE #
and E-MAIL .

cc: (should include the following)

PennDOT OCC

PADEP OCC

FHWA

USACE _____ District

District Engineer

PennDOT Bureau of Environmental Quality

PennDOT Bureau of Design

Appendix E – Timelines

**Compensatory Mitigation Rule
Timeline for Bank or ILF Instrument Approval***

	Event	# of Days**	
Phase I	Optional Preliminary Review of Draft Prospectus	30	DE provides copies of draft prospectus to IRT and will provide comments back to the sponsor within 30 days.
	Sponsor Prepares and Submits Prospectus ~DE must notify sponsor of completeness w/in 30 days of submission~		
	Day 1**	Complete Prospectus Received by DE	
Phase II	Day 30	30	Public notice must be provided within 30 days of receipt of a complete prospectus
	Day 60	30	30-Day Public Comment Period
	Day 90		DE must provide the sponsor with an initial evaluation letter within 30 days of the end of the public comment period.
			DE distributes comments to IRT members and sponsor within 15 days of the close of the public comment period.
Sponsor Considers Comments, Prepares and Submits Draft Instrument ~DE must notify sponsor of completeness w/in 30 days of submission~			
	Day 1	Complete Draft Instrument Received by IRT Members	
Phase III	Day 30	30	30-day IRT comment period begins 5 days after DE distributes draft instrument to IRT members
	Day 90		DE discusses comments with IRT and seeks to resolve issues ~ # of days variable~
			Within 90 days of the receipt of a complete draft instrument by IRT members, the DE must notify the sponsor of the status of the IRT review.
Sponsor Prepares Final Instrument ~Sponsor provides copies to DE and all IRT members~			
	Day 1	Final Instrument Received by DE & IRT	
Phase IV	Day 30	30	DE must notify IRT members of intent to approve/not approve instrument within 30 days of receipt.
	Day 45		Remainder of time for initiation of dispute resolution process by IRT members
			IRT members have 45 days from submission of final instrument to object to approval of the instrument and initiate the dispute resolution process.
	Day 45	INSTRUMENT APPROVED/NOT APPROVED, or DISPUTE RESOLUTION PROCESS INITIATED	

EPA/Corps draft 4/02/08

Total Required Federal Review (Phases II-IV): ≤225 Days

*Timeline also applies to amendments

**The timeline in this column uses the maximum number of days allowed for each phase.

**Compensatory Mitigation Rule
Timeline for Bank or ILF Instrument Dispute Resolution***

		# of days**	
Day 1**	Final Instrument Received by DE and IRT		
Day 30	DE must notify IRT members of intent to approve instrument within 30 days of receipt.		45
Day 45	IRT members then have 15 days to notify DE and other IRT members of their objection by letter	15	
Day 75	If an objection is received, the DE must respond within 30 days	30	150
Day 90	If not satisfied, IRT member may forward the issue to IRT Agency HQ*** for review****	15	
Day 110	Within 20 days, IRT Agency HQ may request further review by the Assistant Secretary of the Army, Civil Works		The DE's response must be sent to all IRT members, and may either indicate an intent to disapprove the instrument as a result of the objection, or provide a modified instrument that attempts to address the objection.
Day 140	ASA(CW) has 30 days to review the draft instrument and advise the DE on how to proceed with the final action		IRT member must object within 15 days of the notification of intent from the DE. The DE must hold in abeyance the final action.
Day 150	Remainder of time for notification of the sponsor of the final decision		The requesting IRT Agency HQ must also notify the ASA(CW) if further review will not be requested.
			The ASA(CW) must immediately notify requesting Agency HQ of the final decision.
			The DE must notify the sponsor of the final decision within 150 days of receipt of the final instrument.

*Timeline also applies to amendments.

**The timeline in this column uses the maximum number of days allowed for each phase.

***IRT Agency HQ refers to the Assistant Administrator for Water, U.S. EPA, the Assistant Secretary for Fish and Wildlife and Parks, U.S. FWS, or the Undersecretary for Oceans and Atmosphere, NOAA.

****While this step is available only to EPA, NOAA and FWS, other IRT members who do not agree with the DE's final decision do not have to sign the instrument or recognize the mitigation bank or in-lieu fee program for purposes of their own programs and authorities.

Total maximum time for dispute resolution process ≤ 150 days

~ EPA/Corps draft 4/02/08

INTRODUCTION

The Pennsylvania Department of Transportation (PennDOT) is the caretaker of the Nation's fifth largest highway network. With new construction, safety improvements to existing infrastructure, and maintenance, PennDOT often requires permits and authorizations from the U.S. Army Corps of Engineers (Corps) and Pennsylvania Department of Environmental Protection (PADEP) for work in waters of the U.S. including jurisdictional wetlands pursuant to Section 404 of the Clean Water Act. Special conditions of such permits and authorizations often require compensatory mitigation for unavoidable impacts to regulated aquatic resources.

Since the 1990s, PennDOT has worked with the regulatory agencies to establish 20 Advanced Wetland Compensation Sites or Mitigation Banks. These sites, established under separate agreements with local PennDOT Districts, function as mitigation banks as described in Federal regulations at 33 CFR 332.8 (d). The purpose of this prospectus is to establish a Statewide Umbrella Banking Instrument that ultimately enroll all 20 existing sites and additional sites as they are developed, under one instrument that standardizes the management and development of regional wetland banks.

This prospectus details 10 established sites. If approved, these sites will form the core of the PennDOT Statewide Wetland Umbrella Banking Instrument. Additional existing and new sites will be enrolled under this one instrument following procedures outlined in Federal regulation and the Statewide Wetland Banking Memorandum of Agreement (MOA) signed by PennDOT, PADEP, and the Corps (reference FTP site for agreement). Each established site was developed in accordance with applicable Corps and PADEP regulations and guidance, including notification of adjacent property owners, clearance of endangered species issues, and clearance for historical and archaeological resources. Documentation of compliance is contained in the permit files maintained by PennDOT, the Corps, and PADEP.

OBJECTIVES

The overall objective is to develop a comprehensive Statewide Umbrella Banking Instrument that complies with 33 CFR 332 and 40 CFR 230, providing a consistent approach for the management and establishment of all PennDOT wetland banks. Individual sites have been developed to address a variety of resources. Based on initial design and the most recent monitoring reports, these ten sites include a total of 56.4 acres of wetlands restored or created; 6.3 acres forested; 10.6 acres scrub-shrub; 34.9 acres emergent; and 3.9 acres open water wetland habitats; and 22.2 acres of riparian buffers and 4.5 acres of preserved wetlands. Table 1 describes the credits for each of the ten sites included in this initial prospectus.

Table 1 Summary of Wetland Banks

Site Name	USACE District	Penn DOT District	Service Area	Wetland and Acres ¹	Preserved Wetland and Acres	Buffer Acres ²	Built Year	County	Ownership	Site Protection	Location (decimal degrees)
Kettle Creek	Baltimore	2-0	Central West Branch Susquehanna	0.9	0.0	0.0	2002	Potter	DCNR State Forest	Memorandum of Understanding	41.49582651, - 77.7948475547
Aughwick Whitsel	Baltimore	9-0	Lower Juniata	1.3	0.0	0.4	2001	Huntingdon	Theodore J. Whitseil	Conservation Easement	40.2734114, - 77.8261175597
Cambria AWC	Baltimore	9-0	Upper West Branch Susquehanna	5.4	0.0	0.0	1997	Cambria	PA Game Land	Signed Agreement	40.6480161, - 78.5568218386
Fulton AWC	Baltimore	9-0	Potomac	12.9	0.0	13.2	1998	Fulton	PennDOT	PennDOT Policy	39.97234881, - 78.068039666

¹ Approximate rounded acres based upon monitoring delineation, not including preserved wetland acres or riparian and upland buffers which may be considered for wetland mitigation at the federal level only in accordance with 33 CFR Part 332, 40 CFR Part 230 and PA Code Title 25, Chapter 105.

² Riparian and Upland Buffers created

Huntingdon Old Crow AWC	Baltimore	9-0	Upper Juniata	7.6	0.0	0.8	1997	Huntingdon	PennDOT	PennDOT Policy	40.48827036, - 78.0377053997
Mowry AWC	Baltimore	9-0	Upper Juniata	9.9	0.0	7.8	2002	Blair	Robert A. and Ronald L. Mowry Partnership	Conservation Easement	40.45983523, - 78.3340524375
Polk	Pittsburgh	1-0	Upper Allegheny	4.4	0.0	0.0	2003	Venango	PA Game Land	Memorandum of Understanding	41.36057159, - 79.8999398666
Armstrong Schall	Pittsburgh	10-0	Central Allegheny	3.0	0.5	0.0	2001	Armstrong	William R. and Susan H. Schall	Conservation Easement	40.69272663, - 79.4120516959
Dubois Airport	Pittsburgh	10-0	Central Allegheny	5.5	2.0	0.0	2005	Jefferson	PennDOT	PennDOT Policy	41.147222, - 78.852778
Jefferson Wingard	Pittsburgh	10-0	Central Allegheny	5.5	2.0	0.0	2005	Jefferson	Ron and Carol Wingard	Conservation Easement	41.24065919, - 78.8692284968
Total				56.4	4.5	22.2					

ESTABLISHMENT AND OPERATIONS

PennDOT is structured with a Central Office and eleven distinct regional Engineering Districts. The ten sites detailed in this prospectus were established by individual agreement between Regional Offices and the regulatory agencies. These sites are currently monitored and maintained in accordance with these local agreements. Establishment of the Statewide Wetland Banking Umbrella Instrument will provide for a consistent management of existing PennDOT wetland banks and streamline development of new wetland banks. This consistency in wetland banking over numerous sites in three Corps Districts and six PADEP regions is outlined in the Statewide Mitigation Banking Memorandum of Agreement (ftp site) and will be further detailed in the final Umbrella Banking Instrument.

The PennDOT Statewide Umbrella Banking Instrument will cover the entire Commonwealth of Pennsylvania. Figure 1 describes the area of operation and the location of each of the ten sites to be enrolled initially. Each bank is a single client, government-entity bank operated by the respective PennDOT Districts. Debits from enrolled banks will only be made for transportation-related projects sponsored by PennDOT or under agreement with regional or county transportation agencies.

All sites enrolled and developed under the PennDOT Statewide Umbrella Banking Instrument will be monitored at least annually. Credits for all sites will be determined based on habitat-type created and enumerated by acres or tenths of acres. All monitoring reports will be submitted to PennDOT Central Office, Environmental Quality Assurance Division, and there compiled into one annual report to the Corps, PADEP, and resource agencies. Monitoring reports will follow the ten-page format currently used by PennDOT under direction of the Corps. New sites will be monitored in accordance with individual development plans. Credits for existing banks will be immediately available for debiting; for new sites or sites that require modification, credit release will follow the schedule in Table 2.

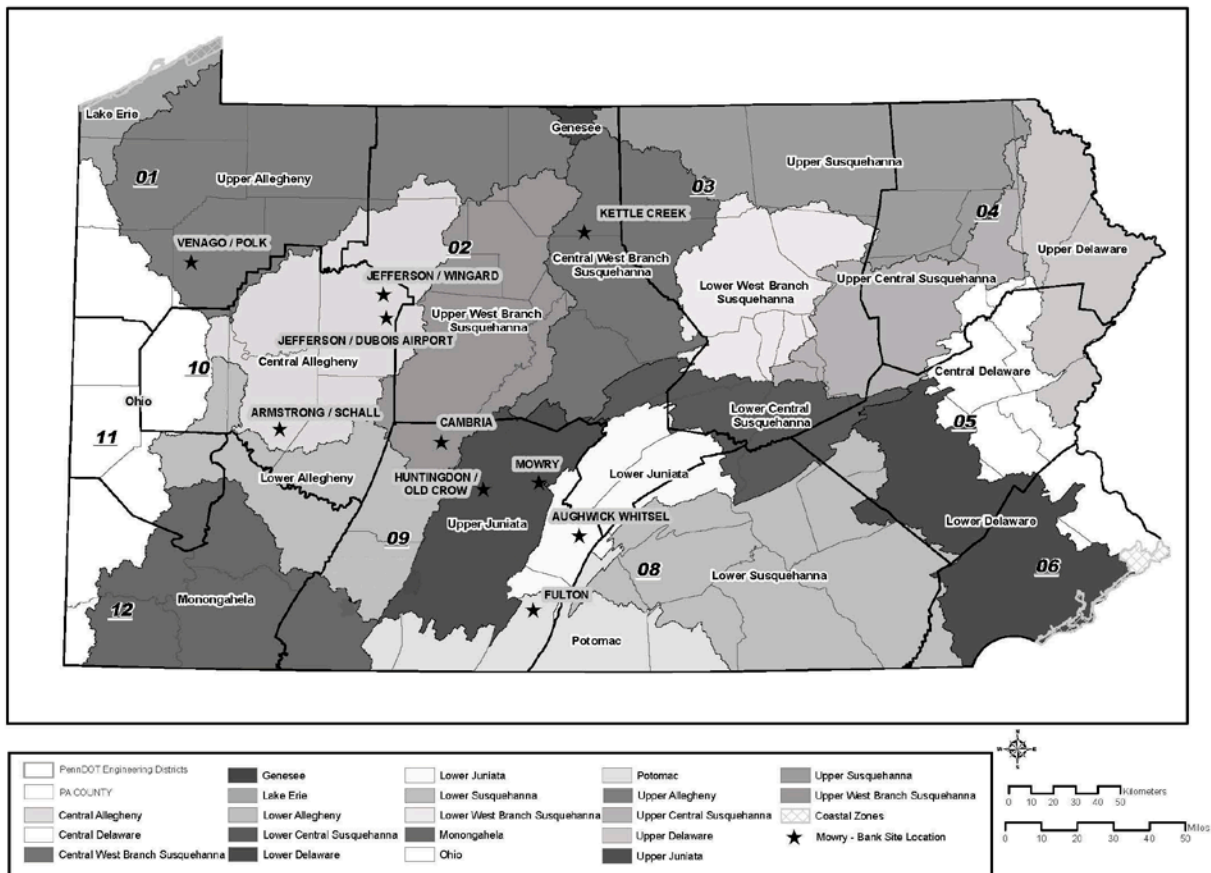
Table 2 Credit Release Schedule for New Wetland Banks

Mitigation Bank Site Milestone	Credits Released
Final Mitigation Plan approval by USACE and PADEP	0 % of planned credit
Successful Post Construction Submittal	10 % of as-built credits
First annual monitoring report deemed successful by USACE and PADEP	20 % of as-built credits
Second annual monitoring report deemed successful by USACE and PADEP	30 % of as-built credits
Third annual monitoring report deemed successful by USACE and PADEP	45 % of as-built credits
Fourth annual monitoring report deemed successful by USACE and PADEP	60 % of as-built credits
The fifth annual monitoring report, or two consecutive years of comparable monitoring results.	100 % of the accepted as-built credits

An agency of the Commonwealth of Pennsylvania, supported with state and Federal funding, financial assurances from PennDOT for development, establishment, monitoring, and maintenance may be assumed to be in place.

Figure 1 describes the area of operation for the PennDOT Statewide Umbrella Banking Instrument, provides locations of the ten established sites, and delineates the service area plan. Twenty-two service areas, including two coastal zones, are proposed to address compensatory mitigation needs on a statewide basis. These 22 service areas are roughly based on the State Water Resource Plan, an accepted delineation of 36 primary watersheds. The initial plan was revised to combine several adjacent watersheds, providing concise ecological and economical limits. Application to watershed principles was tested and accepted in development of PADEP’s “Pennsylvania Wetland Replacement Project”. PennDOT proposes to utilize the same service area plan.

Figure 1 Service Areas and Locations of 10 Bank Sites



Each existing site described in this prospectus was selected based on service area, suitability for conversion, projected need for compensatory mitigation within the service area and PennDOT District, as well as special ecological considerations such as contribution to watershed quality or the protection

and enhancement of the physical, chemical, and biological integrity of the watershed. Selection criteria for each site were approved by the Corps and PennDOT through individual agreements. Each of the ten sites is essentially self-sustained although minimal monitoring and maintenance may occur for adaptive management purposes or early in establishment of wetland conditions.

Existing and proposed wetland banks may be PennDOT-owned, on property owned by other state agencies (such as those properties on State Game Lands or lands owned by the Department of Conservation and Natural Resources where agreements between those agencies and PennDOT provide protections), or privately-owned and preserved through an approved deed restriction or conservation easement.

PennDOT assumes responsibility for long-term maintenance of these ten sites and any sites added through the Umbrella Banking Instrument. PennDOT has designed, constructed, and maintained literally hundreds of project-specific wetland mitigation projects in addition to the 10 established banks described in this prospectus. PennDOT maintains regional and central office environmental staff, as well as relies on numerous environmental consultants.

In conclusion, PennDOT proposes to establish the PennDOT Statewide Wetland Mitigation Banking Umbrella Instrument to authorize updated operations of the ten sites described hereafter, develop a streamlined process for enrollment and operation of 10 additional established sites and new sites as needed (in accordance with the Statewide Wetland Mitigation Banking Memorandum of Agreement); to provide a consistent approach to wetland banking for unavoidable impacts to aquatic resources; and to comply with applicable Federal Regulation and statewide programs. This prospectus does not include development of any new wetland bank sites, but only updates the existing PennDOT banking program to conform to the latest Federal regulations.