

Compensatory Mitigation Rule



US Army Corps
of Engineers®

COMPENSATORY MITIGATION RULE

Each year thousands of property owners undertake projects that affect the nation's aquatic resources, such as wetlands and streams. Before property owners may proceed, a permit from the U.S. Army Corps of Engineers is often required to satisfy the requirements of the Clean Water Act or the Rivers and Harbors Act of 1899. Through its regulatory program, the Corps of Engineers ensures that any environmental impact on aquatic resources from these projects is avoided and minimized as much as possible. In some cases, the Corps may require compensatory mitigation to offset the losses of aquatic resources. The Corps of Engineers authorizes approximately 100,000 projects per year.



Wetland creation—first season.

Wetland creation—second season.

Elizabeth River, Virginia. *Photographer: Steve Martin, U.S. Army Corps of Engineers*

What is compensatory mitigation?

Compensatory mitigation is the restoration, establishment, enhancement, or preservation of aquatic resources for the purpose of offsetting losses of aquatic resources resulting from activities authorized by Corps of Engineers' permits. Annually, the Corps of Engineers authorizes an average of 22,000 acres of wetland impacts and requires 49,000 acres of compensatory mitigation to offset these impacts.

Types of compensatory mitigation:

Restoration – An activity that returns natural or historic functions to a former or degraded aquatic resource.

Establishment – An activity that alters an upland site to develop an aquatic resource at that site.

Enhancement – An activity that improves the functioning of an existing aquatic resource.

Preservation – An activity that protects and maintains an existing aquatic resource through real estate actions (deed restrictions, conservation easements) or physical actions, such as constructing a fence.

What are the sources of compensatory mitigation?

There are three ways compensatory mitigation can be provided: mitigation banks, in-lieu fee programs, and permittee-responsible mitigation. Mitigation banks and in-lieu fee programs are generally the preferred options for compensatory mitigation, because they consolidate resources and involve more financial planning and scientific expertise. These factors help reduce the risk of failure of mitigation projects.

Sources of compensatory mitigation:

Mitigation bank: One or more sites where aquatic resources such as wetlands or streams are restored, established, enhanced and/or preserved for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.

In-lieu fee program: A program that involves the restoration, establishment, enhancement, and/or preservation of aquatic and terrestrial resources through funds paid to a governmental or non-governmental natural resource management organization.

Permittee-responsible mitigation: Individual projects constructed by permittees to provide compensatory mitigation for activities authorized by Corps of Engineers' permits.



Wetland mitigation planting project, Florida.

Photographer: Cam Shaw, U.S. Army Corps of Engineers

What are the key elements in the rule?

There are a number of key elements for mitigation bankers, in-lieu fee program sponsors and permittees to consider for compensatory mitigation projects. Some of these include:

- Strategic site selection within the watershed
- Consolidation of financial and technical resources can provide for larger, more successful mitigation banks and in-lieu fee projects
- Use of preservation, riparian areas, and uplands to sustain wetlands and waters
- Being able to obtain approval to transfer mitigation responsibility from permit recipient to mitigation bank or in-lieu fee program

Where does compensatory mitigation occur?

Compensatory mitigation projects may occur on the same site as the permitted project or at an off-site location usually within the same watershed. For some permits, a combination of on-site and off-site compensatory mitigation projects is required. Off-site compensatory mitigation may be provided by mitigation banks and in-lieu fee programs or through permittee-responsible mitigation.

Why a compensatory mitigation rule?

The Corps of Engineers received Congressional authority to issue its compensatory mitigation rule as part of the National Defense Authorization Act of 2004. The goal of the rule is to provide more opportunities for compensatory mitigation as well as provide similar standards and criteria for mitigation projects. Prior to this rule, compensatory mitigation practices varied considerably among Corps of Engineers' district offices, because they relied on non-binding guidance documents. The new rule will promote consistency and predictability, as well as improved ecological success. The Corps of Engineers and U.S. Environmental Protection Agency issued the new rule in the spring of 2008 following months of collaboration with key agency partners and public review.

Who oversees compensatory mitigation?

The Corps of Engineers establishes an Interagency Review Team to review and manage proposed mitigation banks or in-lieu fee programs. The team may consist of the Corps and representatives from the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration Fisheries, the Natural Resources Conservation Service, and other federal agencies, as well as representatives from tribal, state and local regulatory and resource agencies. The Corps of Engineers makes the final decision on whether or not to approve a proposed mitigation bank or in-lieu fee program.

What are the benefits of the new compensatory mitigation rule?

The new rule will improve the ecological success of compensatory mitigation efforts through better site selection, the use of a watershed approach for planning and project design, and use of ecological success criteria to evaluate and measure performance of mitigation projects. Using a watershed approach, mitigation project sites will be selected to offset permitted losses of aquatic resources and to provide ecological benefits to an entire watershed.



Wetland restoration project, Puerto Rico.

Photographer: Jose Rosario-Fabregas, U.S. Army Corps of Engineers

Benefits of the mitigation rule:

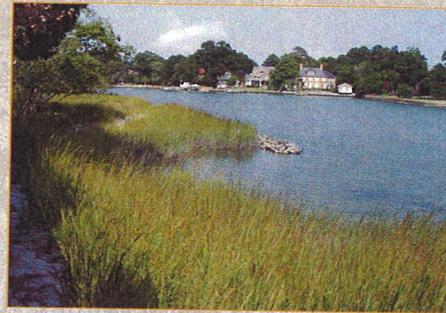
- Improve predictability, transparency and performance of compensatory mitigation projects
- Flexibility of mitigation options
- All compensatory mitigation procedures in one document
- Possible reduction of permitting time

This rule ensures consistent compensatory mitigation standards and requirements for all jurisdictional waters and wetlands.

The rule also preserves existing mitigation requirements by ensuring that environmental impacts are avoided and minimized wherever possible. The rule does not affect the Corps of Engineers' current regulatory jurisdiction under Section 10 of the Rivers and Harbor Act of 1899 or Section 404 of the Clean Water Act.



Wetland creation—first season.



Wetland creation—second season.

Lafayette River, Virginia. Photographer: Steve Martin, U.S. Army Corps of Engineers



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For more information on compensatory mitigation,
please visit the Army Corps of Engineers' Regulatory web site at
<http://www.usace.army.mil/cw/cecwo/reg/>

April 2008

What is prior converted cropland?

Prior converted croplands (PC) are wetlands that were drained, dredged, filled, leveled, or otherwise manipulated, including the removal of woody vegetation, before December 23, 1985, to make production of an agricultural commodity possible, and that (1) do not meet specific hydrologic criteria, (2) have had an agricultural commodity planted or produced at least once prior to December 23, 1985, and (3) have not since been abandoned. Activities in prior converted cropland are not regulated under Swampbuster or CWA Section 404.

What happens if I don't farm my prior converted cropland and wetland conditions return?

If prior converted cropland is not planted to an agricultural commodity for more than 5 consecutive years and wetland characteristics return, the cropland is considered abandoned and then becomes a wetland subject to regulation under Swampbuster and CWA Section 404.

What are farmed wetlands?

Farmed wetlands (FW) are similar to prior converted cropland in that they were drained, dredged, filled, leveled, or otherwise manipulated before December 23, 1985, to make production of an agricultural commodity possible, but are often wet enough to still be valuable wetland habitat subject to Swampbuster and CWA Section 404. Farmed wetlands include potholes, playas, pocosins, and other manipulated and cropped areas that meet specific hydrologic criteria.

How do I know if I have wetlands, prior converted croplands, or farmed wetlands on my property?

To be sure about the status of wetlands on your farm, contact your local NRCS office. NRCS is the lead Federal agency responsible for wetland delineations on agricultural land for both Swampbuster and CWA Section 404. NRCS conservationists can also advise you on how to comply with Swampbuster. The Corps is the lead Federal agency responsible for wetland delineations on non-agricultural land for anyone who does not participate in USDA programs. For questions regarding CWA Section 404 provisions, contact your local Corps office.

ANSWERS

This brochure was prepared jointly by

USDA Natural Resources Conservation Service



U.S. Army Corps of Engineers



U.S. Environmental Protection Agency



U.S. Fish and Wildlife Service



For additional information on wetlands, call EPA's Wetlands Information Hotline 1-800-832-7828 Monday-Friday, 9:00 am to 5:30 pm (EST)

The Hotline is contractor operated and provides confidential referrals and information regarding wetlands.

May 1995

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To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC, 20250, or call (202) 720-7327 (voice) or (202) 720-1127 (TDD). USDA is an equal employment opportunity employer.

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Wetlands and Agriculture:

Section 404 of the Clean Water Act

Swampbuster in the Food Security Act



Contact the Natural Resources Conservation Service to Identify Wetlands on Your Farm

Program Aid 1546

What are wetlands?

Wetlands are areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. For further guidance on whether your land contains wetlands, contact your local Natural Resources Conservation Service (NRCS) office, formerly the Soil Conservation Service.

What is the Swampbuster provision?

The Wetland Conservation provision (Swampbuster) of the 1985 and 1990 farm bills requires all agricultural producers to protect the wetlands on the farms they own or operate if they want to be eligible for USDA farm program benefits. Producers will not be eligible if they plant an agricultural commodity on a converted wetland that was converted by drainage, leveling, or any other means after December 23, 1985, or convert a wetland for the purpose of or to make agricultural commodity production possible after November 28, 1990.

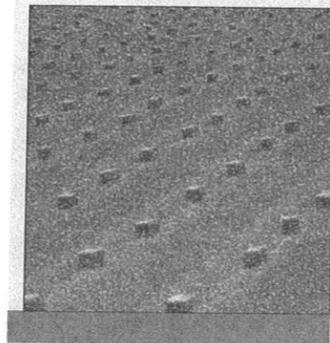
What does Section 404 require?

Section 404 of the Clean Water Act (CWA) requires a landowner to obtain a permit from the U.S. Army Corps of Engineers (Corps) prior to beginning any non-exempt activity involving the placement of dredged or fill material in waters of the United States, including wetlands. Certain ongoing, normal farming practices in wetlands are exempt and do not require a permit (see list of exempted activities). In order to be exempt, the activities cannot be associated with bringing a wetland into agricultural production or converting an agricultural wetland to a non-wetland area.

How does the Swampbuster program relate to CWA Section 404?

Generally, areas subject to regulation under Swampbuster and CWA Section 404 are the same, but there are differences. Some activities that are exempted under Swampbuster may require a CWA Section 404 permit while some Section 404 permitted activities may be subject to Swampbuster. Before beginning any activity affecting a wetland, contact your local Corps district or NRCS office.

QUESTIONS

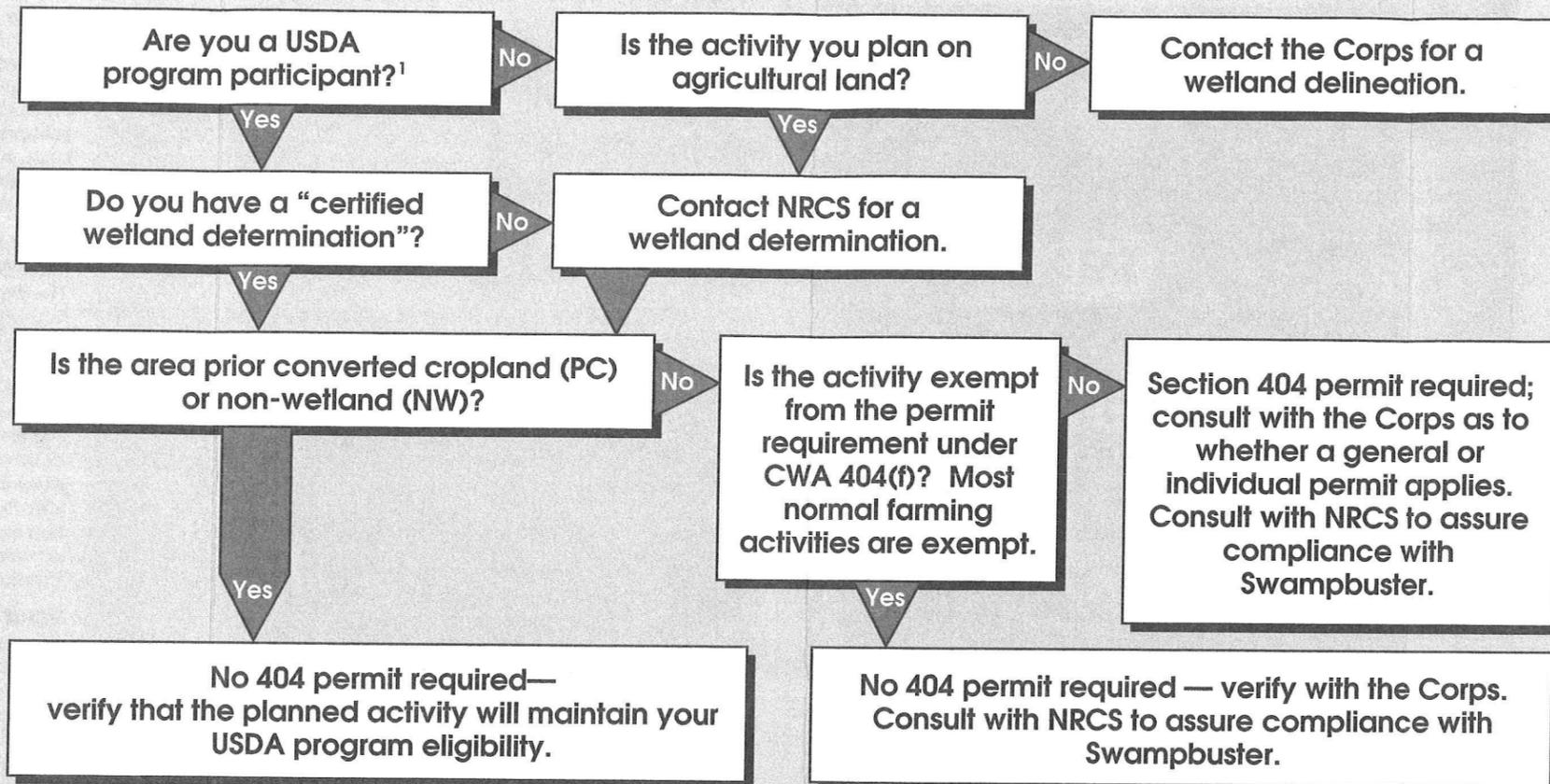


Farming Activities That Are Exempt From Section 404

Contact the Corps before undertaking these activities in wetlands and other waters of the United States to verify applicability of the exemptions.

- Established (i.e., ongoing), normal farming activities
 - plowing
 - harvesting
 - seeding
 - minor drainage
 - cultivating
- Maintenance, but not construction, of drainage ditches
- Construction and maintenance of irrigation ditches
- Construction and maintenance of farm or stock ponds
- Construction and maintenance of farm roads, in accordance with best management practices

Questions to Answer Before Starting a New Activity



¹ USDA program participants are required to document their intent to manipulate wet areas on Form AD-1026 at the local USDA Consolidated Farm Service Agency office.

Types Of Section 404 Permits Issued By The Corps

Individual permits are issued to a single entity (individuals or companies) to authorize specific activities. Once a complete permit application is received by the Corps, a public notice is issued which describes the proposed project. The Corps evaluates all comments received and makes a final permit decision.

General permits are issued to the public-at-large to authorize specific activities that have minimal environmental impacts such as bank stabilization activities or construction of farm buildings. A general permit can be issued on a State, regional, or nationwide basis. Activities authorized by a general permit require less review than an individual permit would require.

For phone numbers of your NRCS state office and Corps district, call 1-800-832-7828.

NRCS state offices have phone numbers for local NRCS field offices.

Agricultural lands are lands intensively used and managed for the production of food or fiber to the extent that the natural vegetation has been removed and cannot be used to determine whether the area meets applicable hydrophytic vegetation criteria in making a wetland delineation. Areas that meet this definition may include intensively used and managed cropland, hayland, pasture land, orchards, vineyards, and areas which support wetland crops (e.g., cranberries, taro, watercress, rice). Agricultural lands do not include range lands, forest lands, wood lots, or tree farms.





STEVEN L. BESHEAR
GOVERNOR

**TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY HERITAGE COUNCIL**

MARCHETA SPARROW
SECRETARY

THE STATE HISTORIC PRESERVATION OFFICE
300 WASHINGTON STREET
FRANKFORT, KENTUCKY 40601
PHONE (502) 564-7005
FAX (502) 564-5820
www.heritage.ky.gov

LINDY CASEBIER
ACTING EXECUTIVE DIRECTOR AND
STATE HISTORIC PRESERVATION OFFICER

February 13, 2013

Mr. Michael L. Davis, P.E.
Senior Associate
Strand Associates, Inc.
1525 Bull Lea Road, Suite 100
Lexington, KY 40511

Re: Amendment to Regional Wastewater Facilities Plan, Mercer County Sanitation District

Dear Mr. Davis:

Thank you for your letter concerning the above-referenced proposed project. A review of our files indicates that the entire proposed project area has not been surveyed for archaeological resources. Investigations of projects in similar environmental contexts have resulted in the identification of a large number of sites, some of which have been determined eligible for listing in the National Register. Additionally, there is at least one previously documented archaeological site that could be impacted by the proposed project.

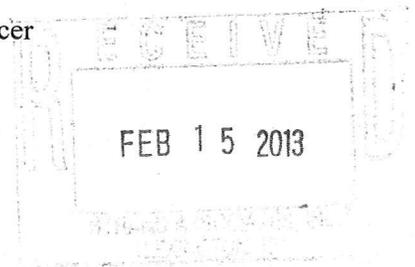
Therefore, I recommend that the undisturbed areas of the proposed project area be surveyed by a professional archaeologist, any potential impacts to previously documented archaeological sites be assessed, and that the resulting report of these investigations be submitted to our office for review and comment. Where a given project area or portions thereof have been disturbed by prior construction, the applicant may file documentation of that disturbance with the State Historic Preservation Officer and may request an opinion concerning the need of an archaeological survey. The State Historic Preservation Officer must review and approve the survey report.

Should you have any questions, feel free to contact Nick Laracuente of my staff at 502.564.7005, ext. 151.

Sincerely,

Lindy Casebier,
Acting Executive Director and
State Historic Preservation Officer

LC:nrl





**KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES
TOURISM, ARTS, AND HERITAGE CABINET**

Steven L. Beshear
Governor

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Marcheta Sparrow
Secretary

Dr. Jonathan W. Gassett
Commissioner

January 25, 2013

Michael L. Davis, P.E.
Senior Associate
Strand Associates, Inc.
1525 Bull Lea Road, Suite 100
Lexington, KY 40511

JAN 30 2013

RE: Environmental Review for the Regional Wastewater Facilities Plan Amendment, KY 33 Sewer Line Installation, Mercer County, Kentucky

Dear Mr. Davis:

The Kentucky Department of Fish and Wildlife Resources (KDFWR) has received your request for the above-referenced information. The Kentucky Fish and Wildlife Information System (KFWIS) indicates the federally endangered Gray Myotis (*Myotis grisescens*) occurs within close proximity to the proposed project site. Under the existing plans, new water lines will be installed in highway rights-of-way or within private property easements. Therefore, KDFWR does not expect impacts to listed species or their critical habitat due to the location and nature of the project. Please be aware that our database system is a dynamic one that only represents our current knowledge of the various species distributions.

To minimize indirect impacts to aquatic resources strict erosion control measures should be developed and implemented prior to construction to minimize siltation into streams and storm water drainage systems located within the project area. Such erosion control measures may include, but are not limited to silt fences, staked straw bales, brush barriers, sediment basins, pump around, and diversion ditches. Erosion control measures will need to be installed prior to construction and should be inspected and repaired regularly as needed.

For the portions of the project that cross intermittent and perennial streams, the pipe should be laid perpendicular to the stream bank to minimize the direct impacts to the streambed. All instream habitat should be returned to its original condition upon completion of construction in the area. Preservation of the tree canopy overhanging the streams should be considered.

If you have any questions or require additional information, please call me at (502) 564-7109 ext. 4473.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joe Z.', written in a cursive style.

Joseph Zimmerman
Environmental Biologist Consultant

cc: Environmental Section File



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Kentucky Ecological Services Field Office
330 West Broadway, Suite 265
Frankfort, Kentucky 40601
(502) 695-0468

February 7, 2013

Mr. Michael L. Davis, P.E.
Senior Associate
Strand Associates, Inc.
1525 Bull Lea Road, Suite 100
Lexington, KY 40511

Re: FWS 2013-B-0207; Strand Associates, Inc.; Mercer County Sanitation District;
Amendment to Regional Wastewater Facilities Plan; located in Mercer County, Kentucky

Dear Mr. Davis:

Thank you for the opportunity to provide comments on the above-referenced project. The U.S. Fish and Wildlife Service (Service) has reviewed this proposed project and offers the following comments in accordance with the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*), the Migratory Bird Treaty Act (40 Stat. 775, as amended; 16 U.S.C. 703 *et seq.*), and the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*). This is not a concurrence letter. Please read carefully, as further consultation with the Service may be required.

In accordance with the provisions of the Fish and Wildlife Coordination Act, the Service has reviewed the project with regards to the effects the proposed actions may have on wetlands and/or other jurisdictional waters. We recommend that project plans be developed to avoid impacting wetland areas and/or streams, and reserve the right to review any required federal or state permits at the time of public notice issuance. The U.S. Army Corps of Engineers should be contacted to assist you in determining if wetlands or other jurisdictional waters are present or if a permit is required.

In accordance to section 7 of the ESA, the Service must also consider the effects of actions interrelated and interdependent to the proposed project. "Interrelated actions" are those that are caused by the proposed action and are later in time, but still are reasonable certain to occur and "interdependent actions" are those that have no independent utility apart from the action under consideration. Please inform us of any future actions and/or projects (*i.e.*; water tanks, water/sewer lines, electrical transmission lines, subdivisions, commercial development) that would reasonably occur as a result of the proposed project so that we may adequately analyze those effects.

In order to assist you in determining if the proposed project has the potential to impact protected species we have searched our records for occurrences of listed species within the vicinity of the

proposed project. Based upon the information provided to us and according to our databases, we believe that the following federally listed species have the potential to occur within the project vicinity. The listed species are:

Group	Species	Common name	Legal* Status
Mammals	<i>Myotis sodalis</i>	Indiana bat	E
	<i>Myotis grisescens</i>	gray bat	E
Plants	<i>Lesquerella globosa</i>	globe bladderpod	C
	<i>Trifolium stoloniferum</i>	running buffalo clover	E

* Key to notations: E = Endangered, T = Threatened, C = Candidate, CH = Critical Habitat

We must advise you that collection records available to the Service may not be all-inclusive. Our database is a compilation of collection records made available by various individuals and resource agencies. This information is seldom based on comprehensive surveys of all potential habitats and thus does not necessarily provide conclusive evidence that protected species are present or absent at a specific locality.

Indiana bat

The proposed project site is located within habitat designated as “potential habitat” for the Indiana bat and we believe that: (1) forested areas in the vicinity of and on the project area may potentially provide suitable summer roosting and foraging habitat for the Indiana bat; and (2) caves, rockshelters, and abandoned underground mines in the vicinity of and on the project area may potentially provide suitable wintering habitat for the Indiana bat. Our belief that potentially suitable habitat may be present is based on the information provided in your correspondence, the fact that much of the project site and/or surrounding areas contain forested habitats that are within the natural range of this species, and our knowledge of the life history characteristics of the species.

The Indiana bat utilizes a wide array of forested habitats, including riparian forests, bottomlands, and uplands for both summer foraging and roosting habitat. Indiana bats typically roost under exfoliating bark, in cavities of dead and live trees, and in snags (*i.e.*, dead trees or dead portions of live trees). Trees in excess of 16 inches diameter at breast height (DBH) are considered optimal for maternity colony roosts, but trees in excess of 9 inches DBH appear to provide suitable maternity roosting habitat. Male Indiana bats have been observed roosting in trees as small as 5 inches DBH.

Prior to hibernation, Indiana bats utilize the forest habitat around the hibernacula (*i.e.* cave), where they feed and roost until temperatures drop to a point that forces them into hibernation. This “swarming” period is dependent upon weather conditions and may last from about September 15 to about November 15. This is a critical time for Indiana bats, since they are acquiring additional fat reserves and mating prior to hibernation. Research has shown that bats exhibiting this “swarming” behavior will range up to five miles from chosen hibernacula during this time. For hibernation, the Indiana bat prefers limestone caves, sandstone rockshelters, and abandoned underground mines with stable temperatures of 39 to 46 degrees F and humidity above 74 percent but below saturation.

Because we have concerns relating to the Indiana bat on this project and due to the lack of occurrence information available on this species relative to the proposed project area, we have the following recommendations relative to Indiana bats:

- The project proponent can design or modify the proposed project to eliminate or reduce impacts to potential Indiana bat roost trees. If this is not practicable, we would recommend that the project proponent only remove potential roost trees within the project area between October 15 and March 31 in order to avoid directly impacting summer roosting Indiana bats. Removing trees during the specified “unoccupied” period avoids direct effects to Indiana bats.
- Based on the presence of numerous caves, rock shelters, and underground mines in Kentucky, we believe that it is reasonable to assume that other caves, rock shelters, and/or abandoned underground mines may occur within the project area, and, if they occur, they could provide winter habitat for Indiana bats. Therefore, we would recommend that the project proponent survey the project area for caves, rock shelters, and underground mines, identify any such habitats that may exist on-site, and avoid impacts to those sites pending an analysis of their suitability as Indiana bat habitat by this office.

If your project schedule requires the clearing of potential Indiana bat roosting trees during the period of April 1 to October 14, you have two primary options for addressing impacts to Indiana bats:

- The project proponent can survey the project site to determine the presence or absence of Indiana bats within the project area in an effort to determine if potential effects are likely. A qualified biologist who holds the appropriate collection permits for the Indiana bat must undertake such surveys, and we would appreciate the opportunity to approve the biologist’s survey plan prior to the survey being undertaken and to review all survey results, both positive and negative. If any Indiana bats are identified, we would request written notification of such occurrence(s) and further coordination and consultation.
- The project proponent can enter into a Conservation Memorandum of Agreement (MOA) with the Service to gain flexibility in project timing with regard to the removal of suitable Indiana bat habitat. In exchange for this flexibility, the Cooperator provides recovery-focused conservation benefits to the Indiana bat through the implementation of minimization and mitigation measures as set forth in the Indiana Bat Mitigation Guidance for the Commonwealth of Kentucky. For additional information about this option, please notify our office.

Gray bat

Gray bats roost, breed, rear young, and hibernate in caves year round. They migrate between summer and winter caves and will use transient or stopover caves along the way. Gray bats eat a variety of flying aquatic and terrestrial insects present along streams, rivers, and lakes. Low-flow streams produce an abundance of insects, and are especially valuable to the gray bat as foraging habitat. For hibernation, the roost site must have an average temperature of 42 to 52

degrees F. Most of the caves used by gray bats for hibernation have deep vertical passages with large rooms that function as cold air traps. Summer caves must be warm, between 57 and 77 degrees F, or have small rooms or domes that can trap the body heat of roosting bats. Summer caves are normally located close to rivers or lakes where the bats feed. Gray bats have been known to fly as far as 12 miles from their colony to feed.

Because we have concerns relating to the gray bat on this project and due to the lack of occurrence information available on this species relative to the proposed project area, we have the following recommendations relative to gray bats.

- Based on the presence of numerous caves, rock shelters, and underground mines in Kentucky, we believe that it is reasonable to assume that other caves, rock shelters, and/or abandoned underground mines may occur within the project area, and, if they occur, they could provide winter/summer habitat for gray bats. Therefore, we would recommend that the project proponent survey the project area for caves, rock shelters, and underground mines, identify any such habitats that may exist on-site, and avoid impacts to those sites pending an analysis of their suitability as gray bat habitat by this office.
- Sediment Best Management Practices (BMPs) should be utilized and maintained to minimize siltation of the streams located within and in the vicinity of the project area, as these streams represent potential foraging habitat for the gray bat. A plan for BMP implementation should be submitted to our office for approval.

Globe bladderpod

Globe bladderpod is a federal candidate species, which means the Service has sufficient information on its biological status and threats to propose globe bladderpod as endangered or threatened under the ESA, but for which development of a proposed listing regulation is precluded by other higher priority listing activities. Candidate species receive no statutory protection under the ESA. The Service encourages cooperative conservation efforts for these species because they are, by definition, species that may warrant future protection under the ESA.

Globe bladderpod is one of the rarest plants in Kentucky. This plant species may occur within the proposed project area, and is known to occur in the vicinity of the project area. It inhabits dry rocky slopes in the Bluegrass Region. The Service recommends assessing the project area to determine if suitable globe bladderpod habitat, as described above, would be impacted as a result of the proposed project. Should the proposed project alter habitat required for this species (*i.e.*; dry rocky slopes), we recommend that those areas be surveyed for its presence; and, notifying this office with the results of any assessments and/or surveys for this species.

Addressing the needs of globe bladderpod before the regulatory requirements associated with a listed threatened or endangered species come into play, would allow entities greater management flexibility to stabilize or restore the species and its habitat for future projects. In addition, as such threats are reduced and populations are increased or stabilized, priority for listing can be

shifted to those species in greatest need of the ESA's protective measures. Ideally, sufficient threats can be removed to eliminate the need for listing.

Running buffalo clover

Running buffalo clover may occur within the proposed project site. This species requires periodic, moderate disturbances to reduce competition and maintain open or semi-open habitat conditions. Disturbed areas such as old pastures, moderately grazed fields, road rights-of-way, and power line rights-of-way that are mechanically maintained are known to provide suitable habitat for these species. Additionally, running buffalo clover is known to occur in habitats ranging from stream banks and low mesic (moderately moist) forests to lawns and cemeteries. If the proposed project(s) require alteration of habitat that coincides with the habitat required for this species, an on-site inspection or survey of the area must be conducted to determine if the listed species is present or occurs seasonally. Surveys should be done by qualified personnel and be conducted during the appropriate time of day and/or year to ensure confidence in survey results. Please notify this office with the results of any surveys and an analysis of the "effects of the action," as defined by 50 CFR 402.02 on any listed species including consideration of direct, indirect, and cumulative effects.

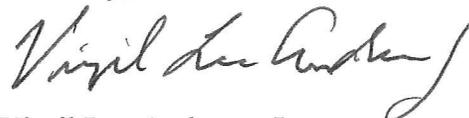
A survey for running buffalo clover would not be necessary if sufficient site-specific information was available that showed that: (1) there is no potentially suitable habitat within the project area or its vicinity or (2) the species would not be present within the project area or its vicinity due to site-specific factors.

Migratory Bird Treaty Act comments

There are a number of migratory non-game birds that are tolerant of and dependent upon light to moderate amounts of disturbance to maintain open habitat conditions (i.e. right-of-way habitat) for breeding, nesting, and foraging habitat. The Service recommends that activities involving disturbance (e.g. bush-hogging) to areas used by migratory nongame birds for breeding be restricted from April 15th through August 31st.

Thank you again for your request. Your concern for the protection of endangered and threatened species is greatly appreciated. If you have any questions regarding the information that we have provided, please contact Jessi Miller at (502) 695-0468 extension 104.

Sincerely,



Virgil Lee Andrews, Jr.
Field Supervisor

APPENDIX I
CROSS-CUTTER CORRESPONDENCE

Revised March 2013

SEWER SERVICES CONTRACT

This SEWER SERVICES CONTRACT made and entered into this 19th day of February, 2013, by and between the **City of Danville**, Kentucky, a Kentucky municipal corporation of the third class, situated in Boyle County, Kentucky, hereinafter referred to as "**Danville**", and **Mercer County Sanitation District**, a special district of Mercer County, Kentucky pursuant to KRS 220.010 et seq, hereinafter referred to as the "**District**", situated in Mercer County Kentucky.

WITNESSETH

WHEREAS, Danville is the owner and operator of sewage treatment and disposal facilities located within Boyle County, Kentucky; and

WHEREAS, District intends to make certain improvements to its sewer lines and facilities and is undertaking to finance said improvements, and in order to satisfy the requirements of the financing, requires obtaining treatment of its wastewater by Danville, and the parties mutually desire to enter into a contract for a term of forty (40) years, under which Danville will provide wastewater treatment services for and on behalf of Mercer County Sanitation District, with the payments for said services to begin upon connection;

NOW, THEREFORE, in consideration of the foregoing and in further consideration of the mutual promises and agreements contained herein, the parties hereto do now agree to the following terms and conditions;

1. Term of Contract.

The term of this contract shall be a period of forty (40) years, commencing effective the date on which this is executed by both parties.

2. Danville to Accept Wastewater from Mercer County Sanitation District

Danville agrees to collect and accept for treatment the wastewater from a portion of the area served by the District. The area is identified, described and outlined within the KY Division

of Water approved "Mercer County Sanitation District Regional Wastewater Facilities Plan" (hereinafter "Mercer Facilities Plan") dated November 2006, which defines the area around the City of Burgin and Herrington Lake as the "City of Burgin Service Area and the Herrington Lake Service Area" that extends south from Burgin to the existing planning boundary of the "City of Danville, Boyle County Regional Facilities Plan" as updated in January 2006. It is understood that the boundary lines for the District and Danville adjoin. In the areas that are currently not sewered along this boundary, where Danville sewer infrastructure exists or the potential customers are currently Danville Utility Customers, Danville must first agree not to extend sanitary sewer service prior to the District providing the service. The receiving point for the wastewater flow is identified as the Danville Mock's Creek Waste Water Pumping Station inlet manhole.

3. Limitation of Amount of Mercer County Sanitation District Wastewater.

Danville agrees to collect all wastewater emanating from and under the District's jurisdiction provided that said wastewater meets all standards as to strength and concentration as set forth in Danville's sewer use ordinance, as may be amended from time to time. Notwithstanding the above, however, it is understood by both parties that the maximum flow of wastewater emanating from the District may of necessity be restricted or limited during the term of this contract by virtue of the capacity limitations of Danville's sewage transmission and treatment facilities. Danville may place limits on the number of taps or the amount of wastewater collected from the District if such limitations are necessary to remain in compliance with any applicable laws, rules, regulations, or mandates of any regulatory agency having jurisdiction over the subject matter, but in such event it is understood that the District shall not alone bear the burden of such limitations, and that said limitations shall be allocated or shared by the District and other users of the Danville Mocks Creek Watershed. The pumping station along with the contributing area is identified within the "City of Danville, Boyle County Regional Facilities Plan" as updated January 2006. In the event that the limiting restriction is related exclusively to the Danville Waste Water Treatment Plant capacity or performance, then the limitations shall be allocated to

all utility customers deriving service from the facility. Throughout the term of this contract, and commencing immediately, the District shall have no right to connect any industrial sewer customer unless financial consideration is given to account for the additional reserve capacity within the transmission system being consumed and the recovery of the original cost of the infrastructure as required by Danville's Sanitary Sewer Use Ordinance and bond covenants, the District shall provide Danville written notice at least sixty (60) days in advance of any proposed industrial connection so as to provide adequate notice and ensure adequate capacity to serve. It is further agreed that any categorical industry which exists within the District's sewer system, either at present or in the future, shall meet all requirements of the Danville's Sewer Use Ordinance, as amended from time to time, and shall comply with the permitting requirements and all other requirements of Danville's pretreatment program and its enforcement response plan, as may be amended from time to time.

4. Billing to Mercer County Sanitation District.

Danville shall furnish to the District a monthly statement for the services rendered pursuant to this contract, which statement shall include the reading date, due date and penalty for non-payment. The terms and conditions of such billing shall be the same as is applicable to other customers in the Danville system. It is specifically agreed and understood that the dates for billing and payment, penalties, and other procedural matters may be amended during the term of this contract at Danville's discretion. Written notice of any such amendments shall be provided to the District sixty (60) days in advance of any change.

5. Additional Obligations of Danville.

Danville will at all times operate and maintain its sewage collection facilities in an efficient manner and will take such actions as may be necessary to collect and dispose of the sewage emanating from the District. Temporary or partial failure in performance by Danville shall be remedied with reasonable dispatch. Any reduction in service and/or efficiency over an extended period of time shall occur in the same ratio or proportion as is the reduction of service to other

users of the Mocks Creek Pumping Station or watershed customers as previously identified in numerical paragraph 3 above.

6. Mercer County Sanitation District to Install Meter.

The District agrees to furnish, install, and replace when needed at its own expense at the point of delivery the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly metering the quantity of sewage collected by Danville, and to calibrate such metering equipment whenever reasonably requested by Danville, but not more frequently than once every twelve (12) months. Danville shall certify and maintain the metering equipment after it has been furnished and installed by the District. A meter registering not more than two percent (2%) above or below the test results shall be determined to be accurate. The previous readings of any meter disclosed by test to be inaccurate shall be corrected for the three previous months to such tests in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period of time, the amount of sewage collected during such period shall be deemed to be the amount of sewage collected in the corresponding period immediately prior to the failure, unless the parties agree upon a different amount. An appropriate official of Danville and the District shall at all reasonable times have access to the meter for the purpose of verifying the readings.

7. Mercer County Sanitation District to Maintain Facilities.

The District agrees to maintain at its own expense the necessary facilities, right-of-ways, and easements as are necessary to connect its system to the Danville facility and to continue to maintain said connection at the agreed point of receiving.

8. Sewer Treatment Rate and Adjustments Thereof.

From the effective date of this contract until forty (40) years thereafter, the rate for sewage collection and treatment by Danville of sewage emanating from the District shall consist of a minimum monthly charge in addition to \$1.87 per 1,000 gallons of sewage as measured by the flow meter. The minimum monthly charge shall be \$3.95 per connected customer until such

time that the minimum monthly charge exceeds the minimum bill for a regular wholesale customer, at which time the minimum monthly charge shall be changed to the amount equal to that of a regular wholesale customer. The current minimum bill for a wholesale customer is \$462.91 per month.

It is specifically agreed and understood that Danville Utility Ordinance Section 18-87 indicates the said sewage treatment rate shall be adjusted annually in accordance with KRS 83A.075, as may be amended from time to time, so as to allow automatic cost of living adjustments (hereinafter "COLA") based on the purchasing power of the dollar as computed by the State of Kentucky Finance and Administration Cabinet. This COLA shall affect all sewer customers served by the Danville sewer system and will be effective July 1st each year, which is the beginning of new fiscal year for Danville. Notification of the new rate will be provided no less than sixty (60) days in advance of the COLA.

It is specifically agreed and understood that other rate adjustments may occur at any time during the calendar year and shall not be restricted to any particular anniversary date; provided, however, that a rate adjustment may not occur until at least twelve (12) months have elapsed from and after the effective date of the last non-COLA adjustment. In the event of a non-COLA rate adjustment, Danville shall give written notification of same to the District at least sixty (60) days in advance of the revision. Any non-COLA rate adjustment shall be based upon a cost of service study performed by a professional engineer consistent with the methodologies identified within the current version of the AWWA-M1 guidance document. Notwithstanding the need to perform a review for some other reason, Danville shall conduct a cost of service study not less than once every three years commencing on the effective date of this contract and adjust the rate according to the needs determined within the study.

9. Maintenance and Repair of Mercer County Sanitation District's Facilities.

The District agrees to maintain and repair and keep all of its mains, pipes, services, pumps and facilities in reasonably good and satisfactory condition so as to enable it to continue to

purchase its sewer treatment service from Danville. More specifically, the District shall, throughout the term of this contract, make reasonable efforts to effectively remove and prevent the infiltration of storm water into the wastewater system.

10. Rates of Mercer County Sanitation District's Customers.

The District shall have sole right and authority to set and receive rates and charges to its own customers. The District shall have the right and authority to impose such rules and regulations as are reasonable and necessary with regard to billing, payments, discounts, penalties, and the termination of service to its own customers.

11. Mercer County Sanitation District to Continue to Require Connections to Sewer System.

The District, in implementation of its duties to provide sanitary health facilities for its customers, hereby covenants and agrees that it will maintain in effect its existing sewer connection and regulatory policies, compelling the owner, owners or occupants of each and every parcel or tract of land within the District's service area whereon there are located improvements capable of generation of flowable sewage wastes, where a sanitary sewer line is available, to join to and be served by said sewer line and that said policies will not be repealed or amended so as to reduce such mandatory requirements, without the consent of Danville, so long as this contract is in effect.

12. Mercer County Sanitation District Shall Not Permit Storm Water to Enter Sewer System.

The District agrees that due to the limited capacity of its own sanitary sewers and collection system and the limited capacity of Danville's treatment facilities, no storm water drains, roof downspouts or ground water shall be introduced into the sanitary sewers and connections to be constructed as a part of the District's system, and that connections on the properties of customers of the sewer system shall be made with

water tight joints, in accordance with local and state plumbing code requirements.

13. Future Extensions.

The District shall have the right to make future extensions, additions and improvements to its sewer system and to dispose of said sewage in the same manner as applicable to the original sewer system of the District, upon the same terms and conditions as herein set out, but specifically to the limitations set forth in numerical paragraph 3 herein.

14. Excusable Nonperformance by Danville.

The District agrees that Danville shall not be liable for any failure, interruption or other nonperformance or any loss or damage occasioned in whole or part by any cause beyond the control of Danville.

15. Mercer County Sanitation District's Successors or Court Appointed Receiver May Take Over The District's Rights.

In the event of any occurrence rendering the District incapable of performing under this contract, any successor of the District, whether the result of legal process, assignment, or otherwise, shall succeed to the rights of the District hereunder. The District agrees to transfer to any bona fide receiver or other subsequent operator of the District's sewer system pursuant to any valid court order in a legal proceeding brought to enforce collection of payment of's obligations, all rights of the District under this contract (including any amendment or supplement hereto) for such time and for such time only, as such receiver or operator shall operate by authority of the Court. The District further agrees that any such receiver shall be subrogated to all of the rights of the District in and to this contract and any amendments or extensions hereto made.

16. General Covenants of the Mercer County Sanitation District.

The District assumes all responsibility for its own billing and for maintenance of its own sewer system; the responsibility of Danville being solely to collect sewage from the District at the agreed point. The District will assume the burden and cost of collecting sewage of its customers from its various sewage gathering lines and of delivering such sewage to Danville through the

master meter to the receiving point. The entire cost of such lift stations and pumps will be borne by the District provided, however, that if and to the extent that such lift stations and/or pumps shall be required in order to enable such sewage to be transported from the receiving point to the sewage treatment and disposal facilities of Danville, the cost thereof will be borne by Danville.

17. Classification and Requirements.

The District agrees it is classified as a significant industrial user in Danville's sewer use ordinance and therefore agrees to submit certain quarterly and annual reports as outlined in Danville's sewer use ordinance and adhere to all other requirements of a significant industrial user.

18. No Transfer or Assignment Except by Mutual Agreement.

This contract shall in no event be transferred or assigned by either party, without the written consent of the other party, unless required by law, and in such event, this contract shall inure to and be binding on both parties, their successors and assigns.

19. Subject to Applicable Regulations.

The parties hereto specifically acknowledge that they are subject to certain rules, regulations and laws of the Commonwealth of Kentucky and the United States of America, and that said rules, regulations and laws may from time to time be changed or amended. In such event, the parties specifically acknowledge they shall be bound by all such applicable rules, regulations and laws, and that the specific terms of this contract shall be amended to such extent as is necessary to maintain compliance therewith.

20. Paragraph Headings Are Not Part of Contract.

Any headings or titles of the paragraphs set forth herein are intended merely for the purpose of convenience to the reader and shall not be interpreted as a substantive part or provision hereof.

21. Severability of Clauses.

If any section, paragraph or clause of this contract be held invalid, the invalidity of such section, paragraph or clause shall not affect any of the remaining provisions of this contract.

IN WITNESS WHEREOF, the parties hereto, pursuant to the authority granted by their respective governing bodies, have caused this contract to be duly executed in several counterparts, each of which shall constitute an original, all effective as of the date first written herein.

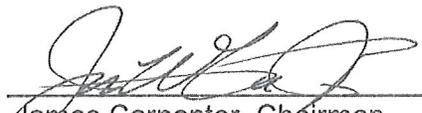
CITY OF DANVILLE, KENTUCKY

BY: 
Bernie Hunstad, Mayor

ATTEST:


Donna Peek, City Clerk

MERCER COUNTY SANITATION DISTRICT

BY: 
James Carpenter, Chairman

ATTEST:


David Weber, Secretary
D. Rice

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