

# City of Columbia

701 East Broadway, Columbia, Missouri 65201



**Agenda Item Number:** REP 90-14

**Department Source:** Public Works

**To:** City Council

**From:** City Manager & Staff

**Council Meeting Date:** September 15, 2014

**Re:** Compensatory Mitigation

## Documents Included With This Agenda Item

Council memo

**Supporting documentation includes:** None

## Executive Summary

Staff has prepared a report discussing creation of a mitigation bank to fund mitigation work in Columbia watersheds as required by the United States Army Corps of Engineers, for construction impacts to wetlands and streams. The purpose of this report is to summarize requirements for compensatory mitigation, discuss current City procedures, outline potential options, and present a recommendation for addressing future mitigation requirements.

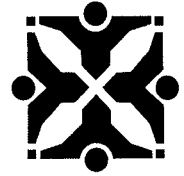
## Discussion

A U.S. Army Corps of Engineers (Corps) Department of Army (DA) authorization permit is required for most City construction projects that cross or impact a regulated stream or wetland. During the permit and design process for every construction project, appropriate and practicable steps are taken to avoid and minimize adverse impacts to regulated aquatic resources. For unavoidable impacts, if a proposed project disturbs a regulated stream or wetland, it is possible the Corps will require compensation for those impacts, to meet the requirements of Section 404 of the Clean Water Act. The Corps is responsible for determining the appropriate form, wetland or stream, and amount of compensatory mitigation required. The overall goal of compensatory mitigation is to replace aquatic ecosystem functions that would be lost or impaired because of proposed construction or other activity authorized by the Corps.

DA permit applicants accomplish compensatory mitigation in one of the following three ways:

**1. Mitigation Banks:** A permit applicant may purchase credits from a Corps approved mitigation bank. A mitigation bank is a wetland, stream, or other aquatic resource area that has been restored, established, enhanced, or preserved. The Corps determines the form, wetland or stream, and amount of credits offered by the mitigation bank. The mitigation bank sells credits to pay for maintenance, cost recovery, and the continued success of the resource area.

**2. In-Lieu Fee Mitigation:** A permit applicant may make a payment to an in-lieu fee program that will conduct wetland, stream, or other aquatic resource restoration, creation, enhancement, or preservation



activities. The in-lieu fee program uses specific stream or wetland payments to construct and maintain like aquatic resource project as required by the Corps.

**3. Permittee-Responsible Mitigation:** A permit applicant may provide compensatory mitigation through an aquatic resource restoration, establishment, enhancement, and/or preservation activity. This compensatory mitigation may be provided at, or adjacent to, the impact site, on-site mitigation, or at another location, usually within the same watershed as the permitted impact, off-site mitigation. The permit applicant retains responsibility for the implementation and success of the mitigation project.

Mitigation banks, and in-lieu fee mitigation, are forms of “third-party” compensation because the third party (the bank or in-lieu fee sponsor) assumes responsibility from the DA permit applicant for the implementation and success for the compensatory mitigation.

Nationwide, the Corps emphasizes using mitigation banks and in-lieu fee programs for compensatory mitigation. Third-party arrangements are preferred because they employ multi-resource agency planning and oversight to create a more accountable and sustainable mitigation plan than smaller permittee-responsible plans. The Corps wants successfully implemented, high quality, aquatic resource projects. The Corps prefers restoring and establishing ecological function to a single multiple acre site instead of multiple projects of less than an acre.

The City has constructed many smaller mitigation projects due to construction impacts. One project, Gans Road & I-63 interchange improvement, required payment to an in-lieu fee program. Time constraints tied to project funding prevented locating and designing an acceptable permittee-responsible mitigation site within the watershed. Payment into an in-lieu fee program provided the City an expedient method for handling the required mitigation. Paying into an in-lieu fee program also relieved the City of the continued costs to maintain, monitor, and report on the mitigation as required by the Corps, and allows conservation experts to replace aquatic ecosystem functions.

The in-lieu fee mitigation program that the City paid into was the Missouri Conservation Heritage Foundation’s Stream Stewardship Trust Fund (SSTF). At the time, it served the entire state of Missouri and was the only third party program that served the Columbia area. The SSTF uses payments to fund stream improvement projects and is responsible for maintaining and monitoring all work they perform. In the past, the SSTF worked with the Greenbelt Coalition to fund improvements to the Moon Valley Lake area of Hominy Branch in Columbia.

Current and previous City Council members expressed interest in ensuring mitigation monies remain in Columbia watersheds, so as needs arise, Public Works identifies stream corridors or wetland locations within the affected watershed that need restoration or enhancement for permittee-responsible mitigation. For Public Works projects, costs for acquiring easements, designing, constructing, monitoring and maintaining the mitigation plan are incorporated into the cost of the project causing the impact. Both Phase I and II of the Scott Boulevard road construction projects required mitigation. Public Works utilized staff and consultants to develop permittee-responsible mitigation plans that met the requirements of the Corps and retained mitigation work in the project watershed.

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Recent mitigation sites are usually small and their contribution to overall goals of improving our watersheds and riparian areas are minimal. If the City were to have its own mitigation bank, it could direct those resources to a high quality environmental project that could have a significant impact in a watershed. Currently, there are no mitigation banks that serve the Columbia and Boone County area. There is a proposed mitigation bank awaiting Corps approval near California, Missouri, that the City of Columbia could be required to pay into for future impacts to regulated streams or wetlands.

Public Works also provides information for potential mitigation sites to developers and other City departments upon request. Bass Pro Shops is an example of the City of Columbia assisting a private developer in locating areas to mitigate for impacts within the watershed (Hinkson Creek). These approaches keep mitigation monies local. Again, once the Corps approves the mitigation bank in California, Missouri, the Corps will likely require all DA permit applicants (developers, farmers, local governments) to pay into that mitigation bank.

The City of Columbia has the potential to disturb numerous stream corridors and wetlands with future streets, trails, parks and utility capital improvement projects. The City and local developers will continue to be required to perform compensatory mitigation due to impacts on regulated aquatic resources. However, the frequency, form, wetland or stream, amount, and costs of future compensatory mitigation projects are uncertain.

The City of Columbia has three options for addressing future compensatory mitigation needs:

1. Continue with its current approach of finding mitigation sites as needed and only pay into third party arrangements when time constraints dictate.
2. Pay into a mitigation bank or in-lieu fee program every time.
3. Develop its own mitigation bank approved by the Corps.

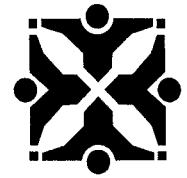
The current approach accomplishes permittee-responsible mitigation in City watersheds as much as possible. City staff is responsible for the design, construction, monitoring, reporting and maintenance of the mitigation project. In order to satisfy permit requirements, the Corps expects all the mitigation plan performance standards to be met, which are typically multi-year targets. Costs to complete permittee-responsible mitigation include initial design and construction costs, plus recurring costs for at least five years after the installation of the mitigation project to maintain, monitor, and report on its performance. It is uncertain if the Corps will continue to allow the City of Columbia to do permittee-responsible mitigation once the California, Missouri mitigation bank is approved.

Paying into a mitigation bank or in-lieu fee program directs monies to a demonstrated successful aquatic restoration. The City would immediately satisfy all Corps requirements for compensatory mitigation by paying into a bank or in-lieu fee program. By allowing aquatic experts to handle mitigation, quality projects are established. The disadvantage is that those monies may not be spent in local watersheds. Costs to complete in-lieu fee mitigation are initial one-time costs only.

Creating a mitigation bank involves larger, more ecologically valuable parcels of land, and more rigorous scientific and technical analysis, planning, and implementation than permittee-responsible mitigation.

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Mitigation bank sites must be planned and designed to be self-sustaining over time, but some active management and maintenance may be required to ensure their long-term viability and sustainability. The Corps must approve all mitigation banks prior to implementation. The Corps also approves the form, stream or wetland, and amount of credits available to sell. Release of credits, and authorization to sell credits, is dependent upon achieving specific milestones outlined in the bank or program schedule. Once an approved bank is established, local DA permit applicants requiring mitigation could pay into the bank to help recover costs and pay for maintenance and monitoring. A benefit is that mitigation dollars are kept local and immediate needs for mitigation by the City or developers can be met if the appropriate form, wetland or stream, and amount of credits are available. Projects with aquatic impacts (including MODOT projects) in Howard, Cooper, Moniteau, Boone and Callaway counties, could be required to pay into a Columbia mitigation bank.

By developing its own mitigation bank, Columbia can achieve multiple benefits. A mitigation bank on Hinkson Creek would provide the opportunity to restore high quality environmental function for the creek. The benefits of high quality natural areas, similar to the 3M Flat Branch Hinkson Creek Wetlands, is creating a wildlife corridor that attracts tourism. This work would also benefit the goals of the Hinkson Creek Collaborative Adaptive Management (CAM) process to improve water quality. The mitigation bank is a mechanism for handling the City's own mitigation needs; and any credits sold could be used to continue to restore creek properties to a high quality ecological function. Currently, there are large parcels of City owned property located next to Hinkson Creek that could be developed into a mitigation bank.

There would be an initial investment of money and resources to establish a mitigation bank before any credits can be sold. Recently, projects by the City that have required compensatory mitigation have been small; therefore, recouping costs could be a long-term proposition. The preliminary planning costs of developing a mitigation bank may not be fully recovered, but actual development and maintenance costs could be recovered by pricing the credits appropriately.

The preliminary planning costs for developing a mitigation bank would primarily include staff time. It is necessary to engage financial, legal, engineering, and natural resource divisions in various City departments to develop a working framework for the mitigation bank. Once a viable preliminary plan is established, it can be presented to Council for funding and approval of continued development. A preliminary plan would provide more detailed short term and long term fiscal impacts, potential credits available, financial, legal, and staff requirements to establish and maintain the mitigation bank.

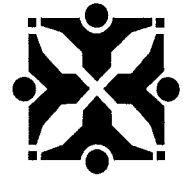
<b>Fiscal Impact</b>
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Short-Term Impact: To be determined.

Long-Term Impact: To be determined.

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## Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Development, Environment, Parks, Recreation and Greenways

Strategic Plan Impact: Economic Development, Growth Management, Infrastructure

Comprehensive Plan Impact: Land Use & Growth Management, Environmental Management, Economic Development

## Suggested Council Action

Make a recommendation for staff to develop a preliminary plan for a City owned mitigation bank that more specifically identifies the short term and long term financial impacts, and necessary requirements.

## Legislative History

10/01/07 (B323-07) - Appropriating funds to cover the expense of an Army Corp of Engineers mitigation requirement relating to the Gans Road interchange project.

  
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Department Approved

  
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City Manager Approved