



**US Army Corps
of Engineers**®
New England District

696 Virginia Road
Concord, MA 01742-2751

PUBLIC NOTICE

Date: August 16, 2022
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MODIFICATION TO THE NEW ENGLAND DISTRICT REGULATORY DIVISION COMPENSATORY MITIGATION STANDARD OPERATING PROCEDURES

This notice concerns standard operating procedures (SOP) for compensatory mitigation for impacts to aquatic resources associated with Department of the Army permits in New England.

The New England District (District) has periodically revised and updated its compensatory mitigation guidance, most recently in 2020. One of the overall goals of the SOP and the 2008 Federal Mitigation Rule is to ensure that compensatory mitigation projects replace aquatic functions that are lost as a result of Department of the Army permits.

Upland buffers offer significant benefits to neighbouring aquatic resources. Upland buffers are also vulnerable to impacts and degradation as these resources are generally not regulated under Section 404 of the Clean Water Act. The District has understood the need for, and importance of upland buffers associated with compensatory mitigation projects. The purpose of this modification is to ensure that upland buffer mitigation credit is generated commensurate with the amount of aquatic resources being restored, enhanced, created, or preserved on-site.

The following changes will be made in the document:

2. General Compensatory Mitigation Requirements. i. Buffers

Below will be included as the third paragraph:

*Upland buffers shall generate wetland mitigation credit, however the wetland mitigation credit generated by the buffers **cannot** exceed the mitigation credit generated by the actual wetland or aquatic resource itself. Stream buffers may generate stream mitigation credit consistent with the requirements in Appendix C Table C5.*

Appendix C – Multiplier/Ratio Tables

Table C1- Recommended Compensatory Mitigation Ratios for Direct Permanent Impacts to Wetlands: Footnote 7, of the table, discusses buffer requirements and prohibited uses in the buffer when they are used as part of a compensatory mitigation project. Language will be included in Footnote 7 that will state “wetland mitigation credit generated from upland buffers cannot be greater than wetland mitigation credit generated from wetlands”.

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Enclosed in this public notice are two examples that demonstrate how the change will affect compensatory mitigation projects and why the change is warranted.

Example 1 has 27 acres of wetland and 256 acres of upland on-site. The current Mitigation SOP ratios for wetland credit generation are 20 acres of preserved wetland generate one credit, and 15 acres of preserved upland generate one credit. This could allow for the generation of $18.46(256/15 + 27/20)$ wetland credits. When evaluating the project most of the wetland is located along the western portion of the parcel, while the rest of the parcel is upland. The proposed modification would ensure that credits generated would be commensurate with the aquatic resources on site. The mitigation credit generated from wetland on this site would be $1.35(27/20)$, and since upland buffer credit cannot generate more than wetland credit the upland buffer would cap at 1.35 as well. Under this modification this proposal would generate 2.70 wetland credits.

Example 2 has approximately 51.6 acres of wetland and 81.9 acres of upland on-site. Under the current Mitigation SOP this could generate $8.04(51.6/20+81.9/15)$ wetland credits through the preservation of wetlands and their riparian buffer. When evaluating this project there are streams and wetlands located throughout the parcel. The mitigation credit generated from wetland on this site would be $2.58(51.6/20)$, and since upland buffer credit cannot generate more than wetland credit the upland buffer would cap at 2.58 as well. Under this modification this proposal would generate 5.16 wetland credits.

These changes will take effect on September 16, 2022, 30 days from the date of this public notice. Any projects that have been submitted to the Corps prior to this date are not subject to this change. All projects submitted to the Corps after this date will be subject to the changes in the SOP.

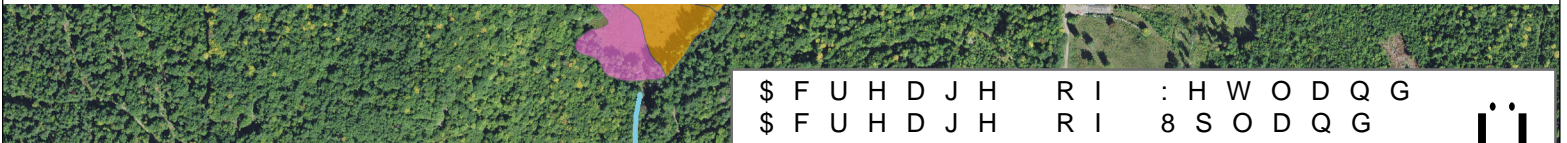
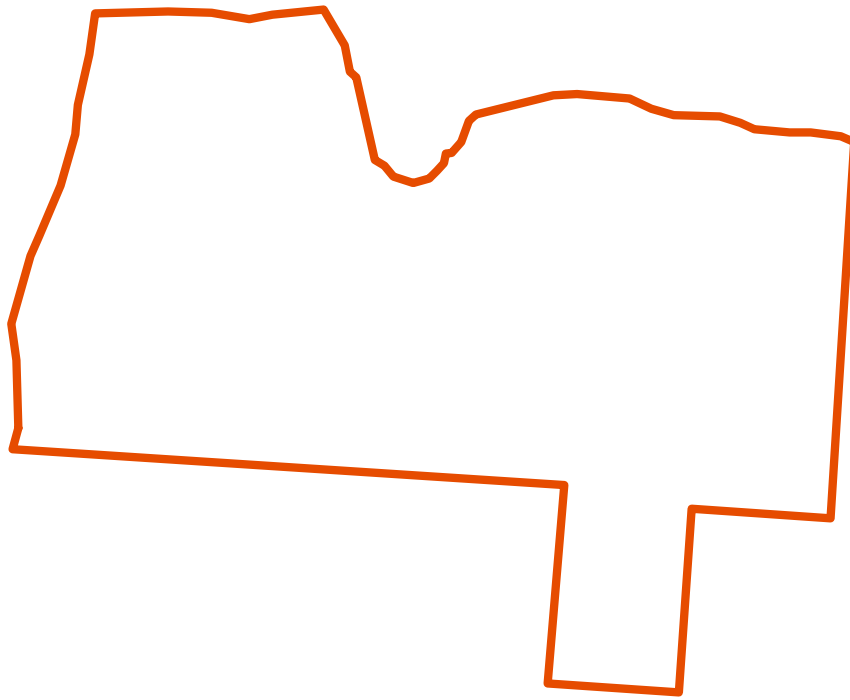
Taylor Bell

Taylor M. Bell
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If you would prefer not to continue receiving Public Notices, please contact Ms. Tina Chaisson at (978) 318-8058 or e-mail her at bettina.m.chaisson@usace.army.mil. You may also check here () and return this portion of the Public Notice to: Bettina Chaisson, Regulatory Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751.

NAME: _____

ADDRESS: _____



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-  Project Area
-  PFO - Forested
-  Stream/River
-  PSS - Scrub shrub
-  PEM - Emergent
-  PUB - Unconsolidated Bottom

