



**US Army Corps  
of Engineers®**

St. Paul District

# Public Notice

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## **Guidance on the Compensatory Mitigation Siting Sequence in Northeastern Minnesota (Wetland Bank Service Areas 1 and 2)**

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1. **Purpose.** The purpose of this public notice is to reiterate existing U.S. Army Corps of Engineers, St. Paul District (Corps) rules and policy regarding the wetland compensatory mitigation siting sequence, pursuant to Section 404 of the Clean Water Act. The siting sequence is an essential component of the Corps' implementation of the watershed approach to compensatory mitigation, as described in the *St. Paul District Policy for Wetland Compensatory Mitigation in Minnesota* (2009)<sup>1</sup> and the Federal Mitigation Rule at 33 CFR 332 (2008).

While this public notice focuses on wetland compensatory mitigation in the Great Lakes Basin and the Rainy River Basin (Bank Service Areas [BSAs] 1 and 2, respectively), the guidance herein is generally applicable to all BSAs in Minnesota. The enclosed Figure 1 shows the BSAs in Minnesota, which are based on 6-digit USGS hydrologic unit code (HUC) watersheds. Figure 2 illustrates the Corps wetland compensatory mitigation siting sequence in the form of a flowchart.

2. **Applying the Preferential Siting Sequence.** As shown in the flowchart, the first step in the siting sequence is to obtain mitigation credits from a wetland mitigation bank within the same 8-digit HUC watershed as that of the impact site. The Federal Mitigation Rule also states a preference for in-kind compensation (i.e., same wetland type); however, locating wetland compensation within the same watershed is given higher priority than the in-kind versus out-of-kind determination. If obtaining compensation within the same 8-digit HUC is not practicable, then the second step in the siting sequence applies, and so forth. Practicable is defined as, "available and capable of being done after taking into consideration costs, logistics and existing technology in light of overall project purposes."<sup>2</sup> This includes an analysis of opportunities for all methods of compensatory mitigation: restoration, enhancement, creation, preservation and associated upland buffers.

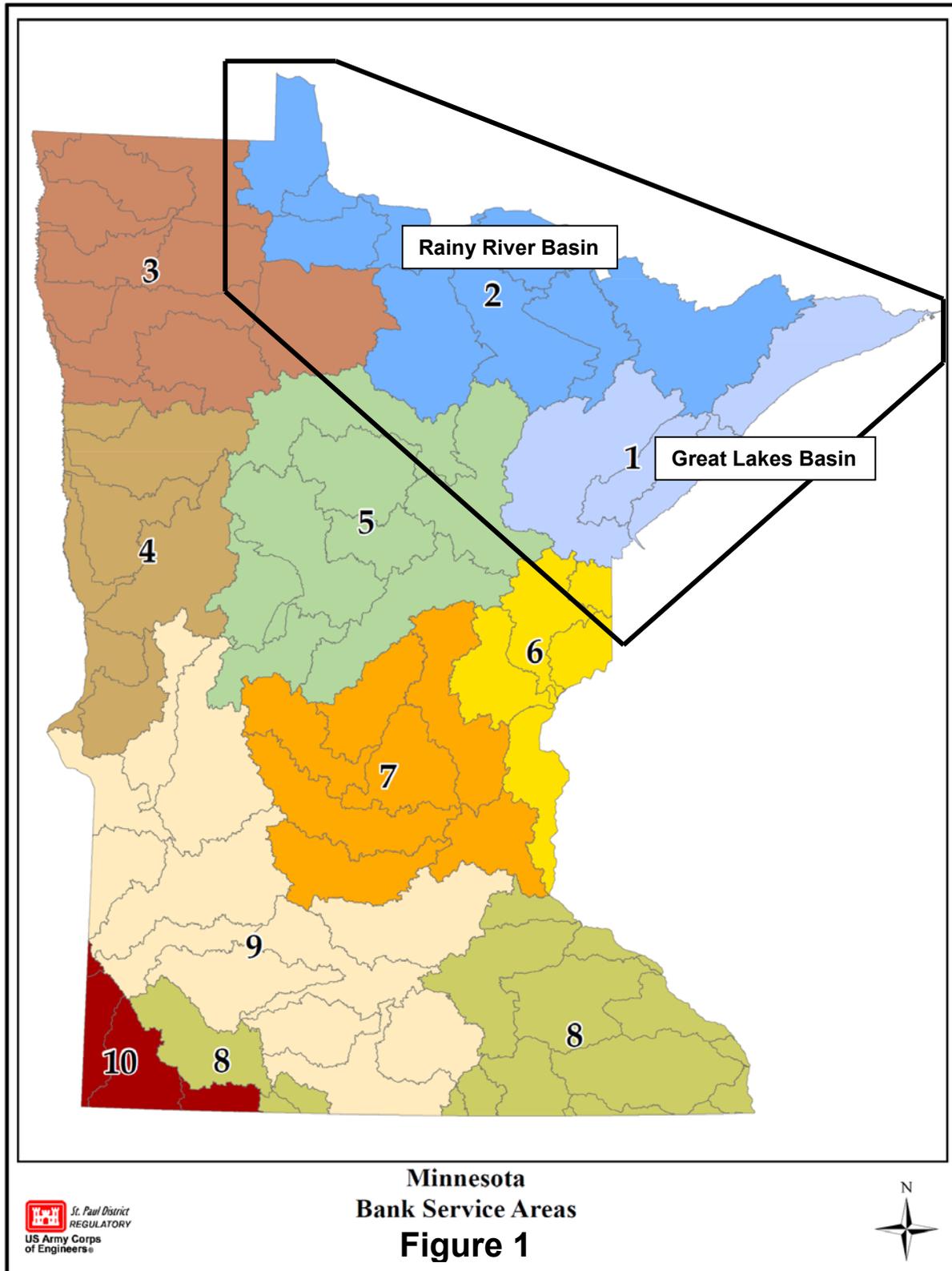
Practicable compensation sites are not limited to those that are least difficult to establish and/or lowest cost. Sites that have greater difficulties and/or higher costs may be practicable, particularly if they are optimal sites that would meet the fundamental goal of compensatory mitigation.

To summarize, a move from one step in the mitigation siting sequence to the next step requires a determination that there are no practicable options to accomplish wetland compensation via the preceding step. The applicant completes the siting analysis and the Corps will make the practicability determination.

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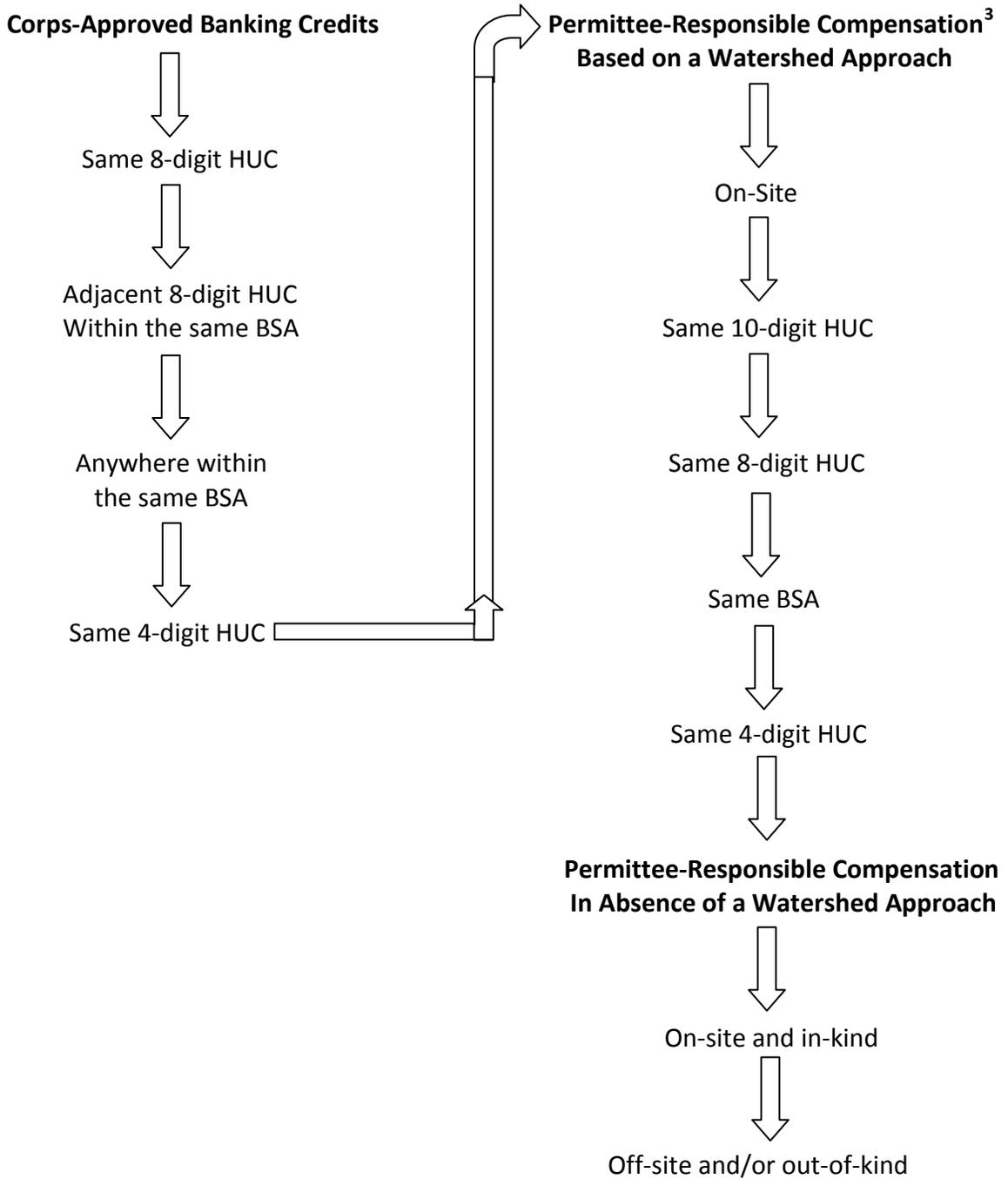
<sup>1</sup> See <http://www.mvp.usace.army.mil/regulatory/>

<sup>2</sup> See 40 CFR 230.3



Note: Bank Service Areas are based on 6-digit HUC watersheds

**FIGURE 2**  
**Preferential Siting Sequence:**  
**Compensation Site in Relation to Impact Site**



HUC: Hydrologic Unit Code (USGS Watersheds)

BSA: Bank Service Areas

<sup>3</sup>Also known as “project-specific compensation”

**3. Priority for Accomplishing Wetland Compensation within the Great Lakes Basin (BSA 1) and Rainy River Basin (BSA 2).** As noted above, both St. Paul District Policy and the Federal Mitigation Rule require compensation for wetland/aquatic resource impacts in the Great Lakes Basin and Rainy River Basin to be sited within the basin where the authorized impacts occur, unless the Corps makes a determination that all practicable options, including preservation, have been fully considered and utilized. Based on new information related to the availability of wetland compensatory mitigation sites within BSAs 1 and 2 (e.g., soil survey mapping, comprehensive wetland preservation guidance), there may be additional opportunities for siting practicable mitigation within these BSAs.

**4. Consult with the Corps.** Before investing substantial resources towards a compensation site for Clean Water Act purposes, it is advisable for prospective bank sponsors or permit applicants to consult with the Corps. The Corps will provide a preliminary review of the suitability of the site for establishing compensation and the areas for which that compensation could be used. To initiate this review, prospective bank sponsors or permit applicants should provide maps of the site and a description of what actions would be taken to establish wetland compensation.

***Permit applicants or bank sponsors who do not consult with the Corps prior to investing in a compensation site are proceeding at their own risk.***

**5. Consideration of Current Proposals for Compensation Sites.** Bank sponsors or permit applicants who coordinated with Corps staff prior to making substantial investments in a compensation site, but have not received final Corps approval for that site, will be given equitable consideration with regard to flexibility in use of that site to compensate for wetland impacts outside of the watershed in which the impacts occur.

**6. Summary.** Both the Federal Mitigation Rule (33 CFR 332.3(c)) and the *St. Paul District Policy for Wetland Compensatory Mitigation in Minnesota* (2009) require a watershed approach to siting compensation for wetland/aquatic resource impacts. In accordance with both rule and policy, our goal is to site compensation within the impacted watershed to the extent practicable. This notice outlines the necessary compensatory mitigation siting sequence, and encourages coordination with Corps staff when siting wetland compensatory mitigation to satisfy Clean Water Act Section 404 permit requirements.

**7. Questions or Comments.** The St. Paul District contact is Steve Eggers, Senior Ecologist, Regulatory Branch, (651) 290-5371 or [steve.d.egggers@usace.army.mil](mailto:steve.d.egggers@usace.army.mil).



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