



Implementation of N.C. General Assembly Session Law 2008-152

The purpose of this document is to communicate to N.C. Department of Environment and Natural Resources partners and customers how the department will implement SL 2008-152, *An Act to Promote Compensatory Mitigation by Private Mitigation Banks*. This document describes what actions will be taken by the Division of Water Quality (DWQ) and the Ecosystem Enhancement Program (EEP), two NCDENR agencies whose policies and procedures are affected by the law. The act places additional obligations on permit applicants before they can access the EEP In-Lieu Fee (ILF) program.

Applicability and Regulatory Effect

- The requirements of the law complements existing statutory and rule requirements, and will be applied to mitigation for streams, wetlands, isolated wetlands, buffers and nutrient offset.
- The law totally or partially overrides the following existing DWQ rules: 15A NCAC 2H .0506(h)(1); 15A NCAC 2H .0506(h)(3); 15A NCAC 2H .1305(g)(1); and 15A NCAC 2H .1305(g)(3)
- Applicant-provided mitigation is still approvable by DWQ, when suitable, even when a private bank has credits available in the hydrologic unit.
- The law is applicable to mitigation that is required for compliance associated with violations.
- Mitigation banks developed by public entities are not subject to preferences expressed in the law for private mitigation banks.

Definitions

"Available mitigation credit" is considered to mean that credits in the amount requested have been released for sale at the time of the request. If credits are available through a private mitigation bank, applicants are required to use the bank to fulfill their compensatory-mitigation requirements (unless they choose to provide the mitigation themselves).

Procedures

The flow charts on subsequent pages are intended to offer a step-by-step guide to permit applicants needing to comply with this law. In general the following process will be followed:

1. Permit applicants will be responsible for ensuring compliance with the law. EEP and DWQ will assist applicants by notifying them of the new requirements and directing them to applicable information on the Web. EEP and DWQ both will provide updated links and information on their Web sites: http://www.nceep.net/pages/ILF_Program_intro.html and http://h2o.enr.state.nc.us/ncwetlands/documents/mitigation_banks.doc
2. DWQ will provide on their Web site a listing of approved mitigation banks, their locations, contact information and credit types available as a reference for permit applicants (see Web links in previous item). Applicants to EEP's ILF programs will need to refer to this Web site for up-to-date information on banks in their hydrologic unit prior to submitting a request to EEP for mitigation.

3. Applicants will need to contact mitigation banks operating in the eight-digit hydrologic unit where the impact will occur directly to determine credit availability prior to submitting an ILF request form to EEP for mitigation.
4. Beginning Oct. 1, 2008, users of EEP's Nutrient Offset Program will need to provide evidence of their compliance with SL 2008-152 prior to obtaining a letter of verification from their local government. Payments into the Nutrient Offset Program cannot be accepted without written verification of compliance with SL 2008-152 from the local government. Payments approved by local governments prior to Oct. 1, 2008 are not subject to this law. Those participants may access EEP's ILF program as planned, or pursue other options to satisfy their nutrient reduction requirements.
5. Applicants will be asked to verify that they have complied with SL 2008-152 upon submittal of an ILF request form to EEP. EEP's mitigation request form has been updated to include written acknowledgement by the applicant of the law's requirements and compliance with it.
6. EEP's acceptance letters and receipts have been revised to include the following statement: "You must also comply with all other state, federal or local government permits, regulations or authorizations associated with this activity including SL 2008-152, An Act to Promote Compensatory Mitigation by Private Mitigation Banks."
7. Once an applicant has determined that credits are not available from a private mitigation bank, the applicant may use EEP's ILF program, as long as the EEP acceptance letter is current (i.e., unexpired). EEP's acceptance letters currently expire nine months from issuance and can be renewed upon request from an applicant.
8. Mitigation acceptance letters that were issued by EEP prior to Oct. 1, 2008 and that are unexpired are considered valid and will be honored.
9. Credits secured through EEP's ILF program are not transferable to another applicant.

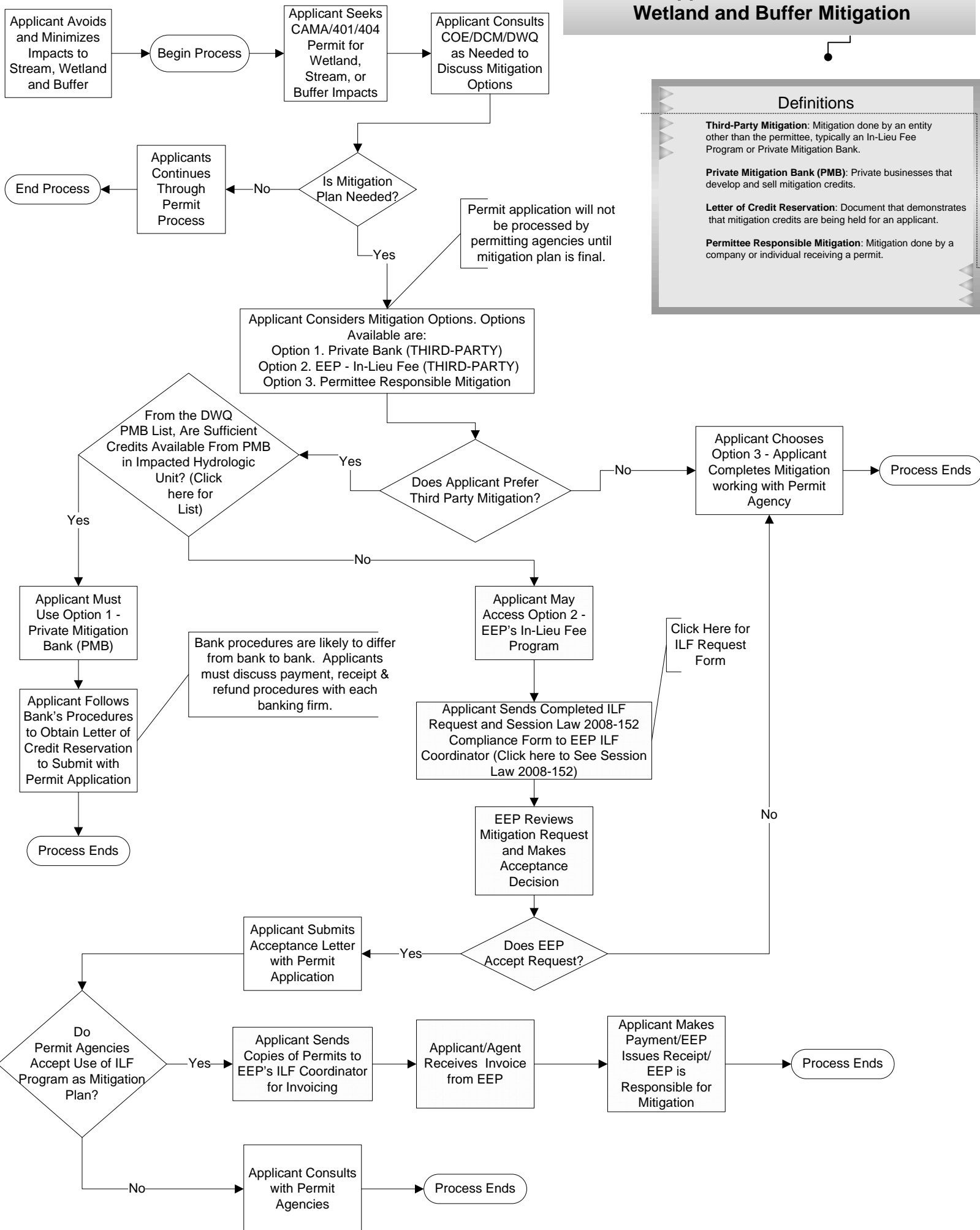
Contacts

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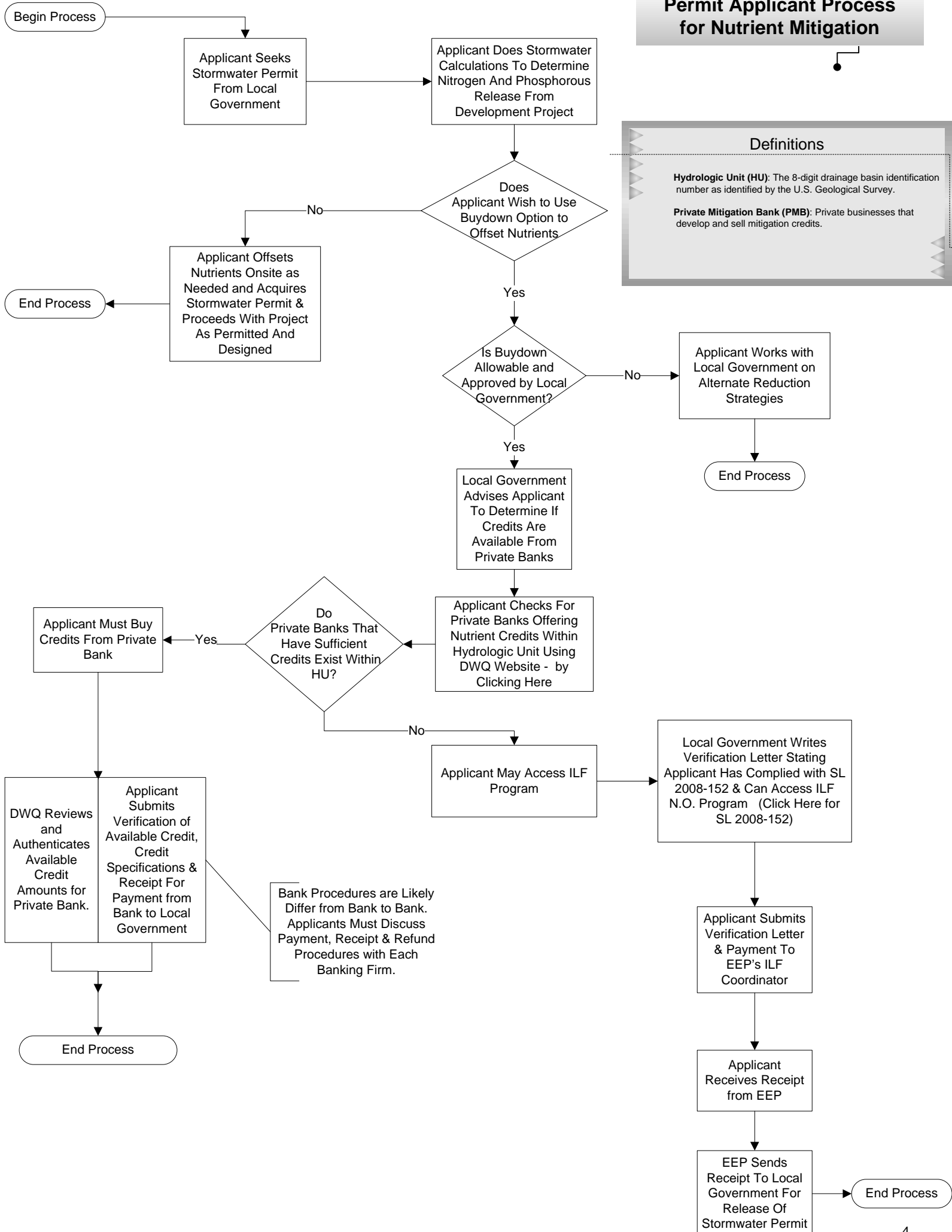
Permit Applicant Process for Stream, Wetland and Buffer Mitigation



Definitions

- Third-Party Mitigation:** Mitigation done by an entity other than the permittee, typically an In-Lieu Fee Program or Private Mitigation Bank.
- Private Mitigation Bank (PMB):** Private businesses that develop and sell mitigation credits.
- Letter of Credit Reservation:** Document that demonstrates that mitigation credits are being held for an applicant.
- Permittee Responsible Mitigation:** Mitigation done by a company or individual receiving a permit.

Permit Applicant Process for Nutrient Mitigation



Definitions

Hydrologic Unit (HU): The 8-digit drainage basin identification number as identified by the U.S. Geological Survey.

Private Mitigation Bank (PMB): Private businesses that develop and sell mitigation credits.

Bank Procedures are Likely Differ from Bank to Bank. Applicants Must Discuss Payment, Receipt & Refund Procedures with Each Banking Firm.