**Section 1090.90 Transfer and Management of Wetland Compensation Areas**

a) Wetland Compensation Areas

The transfer of wetland compensation areas, associated buffers and the responsibility for operation and maintenance is subject to approval by the Department. Prior to the transfer of responsibilities, the agency or applicant must submit a written request to the Department. The Department shall approve all requests for the transfer of wetland compensation areas unless deficiencies are found in one or more of the conditions outlined below:

1) That the entity has the legal authority to receive, hold, and manage the site;

2) That the entity has the ability to provide competent professional management of the site; and

3) That the entity has executed a legally binding agreement that will fulfill all obligations of the agency or applicant related to the approved wetland compensation plan and provisions of this Part.

b) Transfer to the Department

An agency may request that the Department accept fee simple or easement transfer of a wetland compensation area and an associated buffer area along with the responsibility of managing, operating and maintaining a site. Acceptance of these sites will be at the discretion of the Department. Criteria which the Department may use to decide on the acceptance of a site shall include but not limited to the following:

1) Proximity to existing Department owned/managed lands;

2) Size;

3) Development of a site management agreement;

4) Compatibility with existing and long term site management objectives;

5) Amount of funding provided for the long term operation and maintenance; and

6) Compatibility with Department regional objectives.

c) Transfer of other wetlands to non-State agencies

1) If State-owned property intended for sale, exchange, or release contains wetlands that are not compensation wetlands, the agency proposing the sale, exchange, or release shall require that the buyer grant a conservation easement, which shall contain provisions to protect the wetlands and associated buffer areas from adverse impacts. Such easements shall be written and recorded pursuant to the Real Property Conservation Rights Act [765 ILCS 120].

2) The agency proposing the sale, exchange, or release shall attempt to have a unit of local government be the grantee of the easement. If a unit of local government cannot be obtained, the agency shall attempt to have an acceptable not-for profit corporation or charitable trust be the grantee. The grantee shall agree to monitor and enforce the easement pursuant to the procedure in Section 4 of the Real Property Conservation Rights Act [765 ILCS 120/4]. If the grantee brings a successful action against a violating landowner, neither the agency that sold, exchanged, or released the property nor the Department shall share in the damages.

3) If a unit of local government or a not-for-profit entity cannot be obtained, the agency proposing the sale, exchange, or release shall reserve conservation rights in its deed or release document and transfer those rights to the Department. The Department shall not be prevented from entering into additional agreements with other agencies or entities in complying with its obligations as grantee.

4) Prior to the sale, exchange, or release of these lands, the agency must submit a written request to the Department. The Department shall approve all requests for the sale, exchange or release of these lands, unless deficiencies are found in ability of the grantee to monitor and enforce its obligations. The Department shall provide a decision on a request for the sale, exchange or release of lands within 60 days after receiving the request.