

What is mitigation Banking

Mitigation Banking is an instrument established by Federal and State regulation to reverse the deterioration of the nation's wetlands at the same time that it enables permitting of development projects. The goal is to replace essential aquatic functions of wetlands which would be lost due to authorized/permitted activities such as development projects. At the same time mitigation banking eases the burden on developers by allowing them to efficiently compensate for the impact of their development on wetlands.

Mitigation offsets the impact of a project on the environment by setting aside land for restoration, enhancement, creation and in certain circumstances preservation of wetland acreage. The method works like a "credit" and "debit" process. The wetland restoration activity of a mitigation bank creates "credits" which can be applied to offset the "debits" caused by a development project. The assigned numerical value of these "credits" and "debits" is given by Federal and State agencies. On the Federal side the Army Corps of Engineers assigns the credits of a mitigation bank after assessing the feasibility, impact value and magnitude of the replacement acreage. In the State of Florida, mitigation credits from the state are assigned by the Water Management Districts. The particular WMD depends on the location of the mitigation bank and the area that it services.

The Service Area of the mitigation bank is the region where development projects can apply for mitigation credits. If developers have a project in a mitigation bank's service area, the developers can obtain mitigation credits from the mitigation bank in order to comply with the requirements for issuing permits for their project.

Prior to approval of "debiting" against a mitigation bank "the following requirements should be satisfied: (1) banking instrument and final mitigation plans have received approval; (2) bank site has been secured; and (3) appropriate financial assurances have been established". (quoted from the joint congressional testimony of the Dept. of Army, EPA and DOA on March 14, 1996).

Advantages of Mitigation Banking:

Mitigation banking affords the following advantages to those involved in development or in the protection of the environment:

1. Mitigation banking helps developers by reducing the time that the process to secure permits may take when development is occurring in environmentally sensitive areas.
2. Mitigation banking helps conserve government agency resources which may be used in evaluating compliance with mitigation by consolidating that mitigation within a mitigation bank.

3. Mitigation banks have a better chance of restoring and maintaining a wetland with respect to individual projects due to the relative sizes of the mitigation bank acreage versus the development parcel. This is so because wetlands are complex biomes with many biological interrelationships and the larger the parcel the better the chance to encompass all the necessary biological functions.

4. Mitigation banks have a better economy of scale of such resources as scientific expertise, intensity of planning and financial commitment.

A Brief History of Mitigation Banking

The concept of mitigation banking has been in limited use for about 20 years. It has only been in the past decade that federal and state regulations have helped establish a framework for commercial mitigation banking. Initially most mitigation banks were for the sole benefit of the developer which was also its owner. Recent regulations have enabled the development of the "commercial" mitigation bank concept where the established credits can be sold on the open market thereby allowing investors to recover the cost of the wetland restoration.

The water resources act of 1990 provided the initial push for a wetlands mitigation banking study by the U.S. Army Engineer Institute for Water Resources. The study was begun on December 1991 and the first phase, which was concluded in 1992, was key in seeding the ideas for commercial mitigation banking.

On August 23, 1993, the Clinton Administration released a comprehensive 40 point wetlands protection plan. The plan included a provision endorsing mitigation banking and endorsed the development of a "market based" wetlands mitigation program. The plan's goals were to protect and restore wetlands by increasing cooperation by private landowners, streamlining wetlands permitting, wetlands restoration and preservation based on scientific methods and increasing participation by states, tribes and local governments. An interagency team was established by the White House to prepare comprehensive wetland mitigation banking guidelines. A draft version of the resulting interagency policy was promulgated in the Federal Register. Feedback was gathered by the agencies and a final policy guidance was prepared. This guidance was published on November 28, 1995, in the Federal Register, with an effective date of December 28, 1995. This policy guidance applies to all mitigation banking proposals that have been submitted to the Army Corps of Engineers since December 28, 1995.