

# What Is Mitigation Banking?

Mitigation banking is defined in the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks Federal Register: November 28, 1995 (Volume 60, Number 228) Pages 58605-58614 as:

Wetland restoration, creation, enhancement, and in exceptional circumstances, preservation undertaken expressly for the purpose of compensating for unavoidable wetland losses in advance of development actions, when such compensation cannot be achieved at the development site or would not be as environmentally beneficial. It typically involves the consolidation of small, fragmented wetland mitigation projects into one large contiguous site. Units of restored, created, enhanced or preserved wetlands are expressed as "credits" which may subsequently be withdrawn to offset "debits" incurred at a project development site.

Mitigation banking unites sound environmental and economic practices to restore and enhance wetlands and other natural resources. Mitigation bankers restore, enhance, create and preserve wetlands or other significant natural areas and assume responsibility for their long-term maintenance, earning mitigation credits, recognized by the regulatory agencies, for their efforts. Mitigation bankers can then sell these mitigation credits to permittees and others who must compensate for having impacted wetlands or other natural areas. The sale of wetland credits legally transfers the liability for wetland mitigation from the permittee to the wetland banker.

Before a bank can be permitted, and approved for wetland credit sales, federal and state government regulatory agencies form a Mitigation Banking Review Team (MBRT) that must approve plans for building the bank, from the hydrological and planting design to maintenance and monitoring arrangements. The MBRT also approves the number of mitigation credits that may be earned by the Banker.

For example, a mitigation banker purchases a tract of degraded wetlands or prior converted wetlands and undertakes the design and permitting process to restore, create, enhance and/or preserve the wetlands, and monitor them to assure the site's long-term success.

Who buys those credits? An applicant who has applied to the federal and/or state agency responsible for wetland permitting, and has provided adequate justification of a need to impact wetlands. The applicant must also provide evidence that the use of wetland bank credits are the most environmentally preferable method.

An example: A private developer needs to impact 2 acres of existing wetland for commercial purposes. Once federal and state regulatory agencies have agreed that the developer cannot avoid or even minimize the effect on those 2 acres, the developer must compensate – hence, the word mitigation – for the wetlands' loss by purchasing credits in a mitigation bank or securing regulatory agency approval for some other form of mitigation (e.g., on-site, off-site, fee-in-lieu, etc

Why buy credits in a mitigation bank instead of creating a wetland on- or off-site? Purchasing credits gives the developer these major benefits:

- Save time and money: The developer, after following the 404(B)(1) Guidelines to try to avoid or then minimize wetland impacts, then does

not have to go through the time-consuming permit approval process to create or restore a wetland. One of the benefits described in the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks is that "Use of mitigation banks may reduce permit processing times and provide more cost-effective compensatory mitigation opportunities for projects that qualify." The developer may not be experienced in wetland restoration, which requires expertise and equipment the developer may not possess. For the long term, buying credits in a bank is usually less costly than "doing your own", particularly when an investment in additional land is required for mitigation and the cost of the additional permitting process is added to the construction task.

- Eliminates risk and responsibility: The credit transaction legally transfers all responsibility for mitigation of wetlands to the mitigation banker.

And purchasing credits in a mitigation bank brings one more highly significant benefit for the environment:

- The mitigation bank assures that the mitigation works – and lasts. Too often, wetlands built on-site eventually fail because the landowner does not have sufficient incentive or know how to maintain them. Mitigation bankers assume total responsibility for the mitigation and guarantee perpetual maintenance of the bank's environmental assets. Mitigation is typically performed prior to the wetland impacts, therefore reducing or eliminating temporal loss of wetland functions.
- Mitigation is always assured to occur within one year of wetland impacts and financial securities and conservation easements are in place prior to wetland impacts.

There are hundreds, if not thousands, of wetlands mitigation banks currently operated across the United States. Conservation banks are now being used to help restore other kinds of natural resources as well. Their growing popularity reflects the fact that mitigation banking is more cost effective as a means of restoring natural resources, can reduce delays in permitting, eliminates the temporary loss of natural resources during development and assures maintenance of these vital natural areas forever.

Source: National Mitigation Banking Association.  
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