

APPENDIX E: SPECIAL MBRT FORUM POLICY CONSIDERATIONS FOR PROPOSED MITIGATION BANKS IN ALABAMA AND MISSISSIPPI

BACKGROUND: To streamline the evaluation of mitigation bank proposals within the Mobile District regulatory boundaries, State and Federal permitting and resource protection agencies have agreed to work together through the joint State/Federal Mitigation Bank Review Team (MBRT) process. The joint process is designed to evaluate the technical aspects of mitigation banking through a team approach. Experience to date has shown that during the technical evaluation of certain mitigation banking proposals, policy issues have been raised that requires detailed coordination of policy level decision makers of the respective agencies. It is important these potential policy conflicts be identified and discussed at an early stage so that the permitting and natural resource agencies, as well as the applicants, have a full understanding of the implications of these mitigation banking proposals. To resolve these policy conflicts, a **MBRT Special Forum** is usually convened.

The **MBRT Special Forum** includes mid-level supervisors up to top-level executives. This Forum may convene a meeting of the appropriate agency representatives or coordinate via a conference call or other forms of communication.

PURPOSE: The purpose of this procedure is to provide a mechanism for the early identification of mitigation bank proposals that may require special handling in terms of agency policy interpretation and/or special interagency coordination. Projects that are identified through this procedure, as requiring policy interpretation and/or special study should not be reviewed for technical sufficiency until the identified issues are resolved. This will prevent not only the MBRT but also the applicant from expending valuable staff and fiscal resources on proposals that are unlikely to be authorized.

EACH OF THE FOLLOWING POLICY ISSUES MUST BE CONSIDERED FOR EACH MITIGATION BANK PROPOSAL:

- I. PRESERVATION IS THE SOLE BASIS FOR GENERATING CREDITS IN THE BANK**
- II. THE BANK IS WHOLLY OR PARTIALLY SITED ON PUBLIC LANDS.**
- III. THE BANK HAS A NEXUS TO A PUBLIC PROJECT.**
- IV. THE BANK SUPPLANTS A PUBLIC PROJECT PLANNED OR IN PLACE.**

I. PRESERVATION IS THE SOLE BASIS FOR GENERATING CREDITS IN THE BANK

- A. Preservation is not the sole basis for generating credits.....Go to II
- B. Federal Policy: In accordance with federal policy on compensatory mitigation for wetland impacts, the preservation of existing wetlands and/or other aquatic resources in perpetuity may be authorized as the sole basis for generating credits in mitigation banks only in exceptional circumstances.
- C. Determination: In determining whether preservation is appropriate as the sole basis for generating credits, careful judgment is required regarding a number of factors. **The following items must be addressed regarding the area proposed for preservation:**
 - Do the wetlands and/or other aquatic resource perform physical, chemical, or biological functions, the preservation of which is important to the region?
 - Are these aquatic resources under demonstrable threat of loss* or substantial degradation due to human activities* that might not otherwise be expected to be restricted?
 - The existence of a demonstrable threat will be based on clear evidence of destructive land use changes that are consistent with local and regional land use trends and are not the consequence of actions under the control of the bank sponsor.

II. THE BANK IS WHOLLY OR PARTIALLY SITED ON PUBLIC LANDS

- A. The proposed bank is not wholly, or partially, sited on public lands.... Go to III.
- B. To aid the MBRT in determining whether the bank proposal is consistent with each agency's policy on mitigation on public land, the agencies are encouraged to develop guidance, either singly or jointly, on this issue.

Policy consideration (II):

- The **MBRT Special Forum** must determine if the mitigation bank proposal conforms to the joint or individual policies of the MBRT and/or agency that owns or manages the subject lands.

- Further study of input by experts may be necessary for the **MBRT Special Forum** to make its final determination.

C. Final Determination: Based on interagency coordination and the recommendations of respective staff and/or the specialized study team the **MBRT Special Forum** determines:

- The proposal is consistent with the agency’s public land policies.....Go to III.
- The proposal is NOT consistent with the agency’s public land policies and therefore is inappropriate.

III. THE BANK HAS A NEXUS TO A PUBLIC PROJECT.

- A. The proposed bank does not have a nexus to a public project.....Go to IV.
- B. The siting of mitigation banks in locations which further the goals of ecosystems or watershed management plans is encouraged. Many times it will be advantageous from an ecosystem perspective to site a mitigation bank adjacent to existing conservation lands. It must be remembered however, that there may be operational issues associated with the public project that could be incompatible with those of a mitigation bank. In most of these cases, input will be needed from specialists involved with the public project to help the **MBRT Special Forum** determine if establishment of a mitigation bank in conjunction with the public project would be appropriate.

In cases where it is determined that a mitigation bank is compatible with the operational and long-term management goals of the public project, it must also be remembered that credit may only be given to the bank for activities undertaken in conjunction with, *but supplemental to*, such programs in order to maximize the overall ecological benefit of the project. Determining where the benefits of the public program end, so that accounting of the benefits of the mitigation bank can begin, can be difficult.

Policy consideration (III):

- The **MBRT Special Forum** must determine if the mitigation bank is operationally compatible, now and in the future with the public project.
- In most instances, further study or input by experts will be necessary for the **MBRT Special Forum** to make its **final** determination.

C. Final Determination: Based on interagency coordination and the recommendations of respective staff and/or the specialized study team the **MBRT Special Forum** determines:

- The proposal is compatible with the public project.....Go to IV.
- The proposal is NOT compatible with the public project and therefore is inappropriate.

IV. THE BANK SUPPLANTS A PUBLIC PROJECT PLANNED OR IN PLACE.

A. The proposed bank would not supplant a planned or in place public Project.....go to V.

B. The following narrative is a consideration only under Federal requirements for the evaluation of mitigation banks. Tightening fiscal resources are driving new and innovative approaches to accomplish much needed environmental restoration and conservation projects. Clearly, mitigation banking can play an important role. However, it must be recognized that the net effect to the environment will differ depending upon the method through which a given restoration or conservation project is accomplished. By definition, the ecological benefits of a mitigation bank are offset by the incremental losses for which the bank was established to mitigate; a zero-sum gains for the environment. On the other hand, if the same project was accomplished by a public agency for the express purpose of improving the environment in the long-term, the ecological benefits would accrue indefinitely; a true net gain. Therefore, whenever a mitigation bank supplants a public effort the result is a loss of that potential net improvement.

Restoration and preservation efforts at all levels of government must be considered in determining which public programs should not be supplanted by mitigation banks. This can be a controversial question requiring close interagency coordination.

Policy Consideration (IV):

- The **MBRT Special Forum** must determine if the mitigation bank proposal would supplant an environmental improvement or conservation project already planned or in place by a public agency.
- Further study or input by experts may be necessary prior to the **MBRT Special Forum** determination.

C. Final Determination: Based on interagency coordination and the recommendations of respective staff and/or the specialized study team the **MBRT Special Forum** determines:

- The proposed bank would supplant a pre-existing or planned public effort.....Go to V.
- The proposed bank would result in a net-loss to the environment and is therefore inappropriate.

V. FURTHER REVIEW OF MITIGATION BANK PROPOSAL DETERMINED.

- A. If the **MBRT Special Forum** determined that the mitigation bank proposal was inappropriate for one, or more, of the above policy considerations, the MBRT will not resume technical review of the project. The MBRT chair notifies that prospective banker that the **MBRT Special Forum** has determined that the proposed mitigation bank is inappropriate and would not likely be authorized.
- B. If the **MBRT Special Forum** did not identify any policy conflicts with the mitigation bank proposal, the MBRT continues with its technical review of the mitigation bank proposal utilizing guidance from the **MBRT Special Forum** and any findings of study teams formed during the **MBRT Special Forum** evaluation.