

Mitigation Bank Program

A mitigation bank is an environmental enhancement and preservation project that is conducted by a public or private entity (“banker”) to provide mitigation for unavoidable wetland impacts within a defined region (mitigation service area). The bank is the site itself, and the currency sold by the banker to the impact permittee is a credit, which represents the wetland ecological value equivalent to the complete restoration of one acre. The number of potential credits permitted for the bank and the credit debits required for impact permits are determined by the permitting agencies, using the Uniform Mitigation Assessment Method ([Chapter 62-345, F.A.C.](#)). A mitigation bank permit is also an Environmental Resource Permit.

Legal Authority

[Chapter 373.4135](#) Florida Statutes states: “Mitigation banks and offsite regional mitigation should emphasize the restoration and enhancement of degraded ecosystems and the preservation of uplands and wetlands as intact ecosystems rather than alteration of landscapes to create wetlands. This is best accomplished through restoration of ecological communities that were historically present.”

[Sections 373.4135 and .4136, F.S.](#) directed the Department and the water management districts (WMDs) to adopt rules governing mitigation banking throughout the state and provide the statutory basis for those rules. The Department’s mitigation banking rule [Chapter 62-342, F.A.C.](#) went into effect on February 2, 1994. This rule is the basis for permitting mitigation banks by the Department, St. Johns River Water Management District (SJRWMD), Southwest Florida Water Management District (SWFWMD), and South Florida Water Management District (SFWMD).

Procedure

Mitigation Banks are permitted by the department or one of three water management based on the location of the bank and the agreements between the Department and the water management districts.

[Operating Agreement for Regulation under Ch. 373, Part IV - SJRWMD](#)

[Operating Agreement for Regulation under Ch. 373, Part IV - SFWMD](#)

[Operating Agreement for Regulation under Ch. 373, Part IV - SWFWMD](#)

All proposed banks within the Northwest Florida or Suwannee River Water Management Districts are reviewed by the department.

Additionally, a mitigation bank requires federal authorization in the form of a Mitigation Bank Instrument (MBI) signed by several agencies, with the Corps of Engineers as lead. The mitigation bank applicant is strongly encouraged to have at least one pre-application meeting with an Interagency Review Team (IRT), consisting of all state and federal agencies that will be involved in processing the permit. The agencies that would generally make up the IRT are:

- U.S. Army Corps of Engineers, Jacksonville District (Corps)
- National Marine Fisheries Service (NMFS)

- U.S. Fish and Wildlife Service (FWS)
- Environmental Protection Agency (EPA)
- Florida Fish and Wildlife Conservation Commission (FFWCC)
- Florida Department of Environmental Protection (DEP) or
- St. Johns River Water Management District (SJRWMD) or
- South Florida Water Management District (SFWMD) or
- Southwest Florida Water Management District (SWFWMD)

The applicant benefits from participation in the joint state/federal process by getting feedback and consensus from all agencies involved in permitting. For pre-application review, the applicant should provide, at minimum, the information on the federal prospectus checklist. This is the information that the IRT requires for initial review in order to provide technical and policy-level guidance regarding the feasibility of the proposed bank.

The Corps maintains a website for federally approved or under-review wetland Mitigation Banks called "[RIBITS](#)".

Mitigation Bank Permitting Requirements

Section 373.4136(1) establishes the following requirements for a mitigation bank:

- improve ecological conditions of the regional watershed;
- provide viable and sustainable ecological and hydrological functions for the proposed mitigation service area;
- be effectively managed in the long term;
- not destroy areas with high ecological value;
- achieve mitigation success; and
- be adjacent to lands which will not adversely affect the long-term viability of the mitigation bank due to unsuitable land uses or conditions.

Permit Application Requirements

Chapter 62-342.450, F.A.C. specifies the information that must be included in a mitigation bank permit application to demonstrate that the above criteria are met. The following information is required:

- (1) A description of the location of the proposed Mitigation Bank which shall include:
 - a) A map at regional scale showing the project area in relation to the regional watershed and proposed mitigation service area;
 - b) A vicinity map showing the project area in relation to adjacent lands and offsite areas of ecologic or hydrologic significance which could affect the perpetual viability or ecological value of the bank;
 - c) An aerial photograph identifying boundaries of the project area;
 - d) A highway map showing points of access to the Mitigation Bank for site inspection; and
 - e) A legal description of the proposed Mitigation Bank.
- (2) A description of the ecological significance of the proposed Mitigation Bank to the regional watershed in which it is located.

- (3) A description and assessment of current site conditions which shall include:
 - a) A soils map of the project area;
 - b) A topographic map of the project area and adjacent hydrologic contributing and receiving areas;
 - c) A hydrologic features map of the project area and adjacent hydrologic contributing and receiving areas;
 - d) Current hydrologic conditions in the project area;
 - e) A vegetation map of the project area;
 - f) Ecological benefits currently provided to the regional watershed by the project area;
 - g) Adjacent lands, including existing land uses and conditions, projected land uses according to comprehensive plans adopted pursuant to Chapter 163, F.S., by local governments having jurisdiction, and any special designations or classifications associated with adjacent lands or waters; and
 - h) A disclosure by the applicant of any material fact which would affect the contemplated use of the property.
- (4) A mitigation plan describing the actions proposed to establish, construct, operate, manage and maintain the Mitigation Bank which shall include:
 - a) Construction-level drawings detailing proposed topographic alterations and all structural components associated with proposed activities;
 - b) Proposed construction activities, including a detailed schedule for implementation;
 - c) The proposed vegetation planting scheme and detailed schedule for implementation;
 - d) Measures to be implemented during and after construction to avoid adverse impacts related to proposed activities;
 - e) A detailed perpetual management plan comprising all aspects of operation and maintenance, including water management practices, vegetation establishment, exotic and nuisance species control, fire management, and control of access; and
 - f) A proposed monitoring plan to demonstrate mitigation success.
- (5) An assessment of improvement or changes in ecological value anticipated as a result of proposed mitigation actions which shall include:
 - a) A description of anticipated site conditions in the Mitigation Bank after the mitigation plan is successfully implemented;
 - b) A comparison of current fish and wildlife habitat to expected habitat after the mitigation plan is successfully implemented; and
 - c) A description of the expected ecological benefits to the regional watershed.
- (6) Evidence of sufficient legal or equitable interest in the property which is to become the Mitigation Bank to meet the requirements of Rule 62-342.650, F.A.C.
- (7) Draft documentation of financial responsibility meeting the requirements of Rule 62-342.700, F.A.C.
- (8) Any additional information which the Department requests in order to evaluate whether the proposed Mitigation Bank meets the criteria of Section 373.4136, F.S., and this chapter.

Each application should include the above information and all other pertinent information required for a mitigation bank application under the **Environmental Resource Permit (ERP) forms**. In addition, all mitigation banks are assessed using the Uniform Mitigation Assessment Method ([Chapter 62-345, F.A.C.](#)).

How to Apply For a Mitigation Bank Permit:

- A. Follow the instructions for a Joint Application for an Environmental Resource Permit for a mitigation bank, as directed in the **ERP e-permitting portal**.
- B. Alternatively, fill out the appropriate forms for a Joint Application for an **Environmental Resource Permit**. All applications for a mitigation bank require Sections A and G, most require Section C, and may additionally require Section E.
- C. Provide the Part I and Part II **Uniform Mitigation Assessment Method (UMAM) forms** for each type of assessment area within the proposed mitigation bank.
- D. Provide draft Mitigation Bank Financial Assurance forms, along with cost estimates, for (a) construction and implementation and (b) long term management of the mitigation bank. See **financial assurance forms** which are also referenced in ERP Application Section G.
- E. The UMAM and Mitigation Bank Financial Assurance forms should be attached to the joint application forms, along with the additional requisite information for submittal. At the current time, the ERP e-permitting portal has a size limit of 15 MB. If the complete application package exceeds that amount, you can submit the application forms only through the ERP e-permitting, and submit the attachments separately through other electronic means (see [Electronic Submission Instructions](#)). If you filled out the individual Joint Application forms, the complete application package can be submitted electronically following the information provided in the [Electronic Submission Instructions](#).
- F. You can either mail in the applicable fee, in accordance with 62-4.050(4), FAC, or provide the appropriate application fee through the **ERP e-permitting portal**.

You will receive an E-mail confirmation that your application has been received as well as an application number. Once the application is received, the Department has up to 30 days to review for completeness. If deemed incomplete, a request for additional information will be sent to you. When the application is deemed complete, final agency action is due within 60 days of receipt of additional information.

How to Apply For a Mitigation Bank Modification

Mitigation bank permits are often modified throughout the life of the permit for variety of reasons.

- A. Major modification requests are handled the same way as a new application (Rule 62-330.315(3), FAC), with submittal of Joint Application Section A and any other relevant information.
- B. Minor modifications for release of credits based on performance criteria in the permit may be requested electronically or by letter with the required information, per 6.2.1(a), Applicants Handbook, Vol 1, Rule 62-330.315 FAC., and Rule 62-342.470(3), FAC and shall be accompanied by a fee of \$330.
- C. Requests to withdraw or use mitigation bank credits that were previously released may also be requested electronically or by letter, with the information required by Rule 62-342.470(7), FAC. No fee is required for this type of modification.

- D. Any other minor modification of the permit may be requested electronically or by letter with the required information, per 6.2.1(a), Applicants Handbook, Vol 1, Rule 62-330.315 FAC, and accompanied by the appropriate fee (see Rule 62-4.050(5)(h), FAC).

E-Permitting

DEP recommends that ERP applications be submitted through the [ERP e-Permitting system](#) on the DEP Business Portal.

Applications submitted through the e-Permitting system qualify for a reduced processing fee, in accordance with Rule 62-4.050(4)(h)8.a., F.A.C. The e-Permitting system can accept the processing fee at the time of submittal, or after-the-fact.

Through the e-Permitting system you can fill out the Joint ERP Application including Section A (General Information), Section C (Wetlands and Other Surface Waters) and Section G (Mitigation Banks).

Additional required forms, plans, and other information must be completed separately and uploaded to e-Permitting as attachments to the application. See the [Electronic Submission Instructions](#) for information on signing documents and naming conventions.