



7.02.09: Mitigation Bank Credit Sales Policy

A. Policy Statement

The McHenry County Conservation District (herein District) mitigation banking sales policy (herein policy) outlines the mitigation banking procedures for determining pricing, and sales execution of mitigation credits in the public/private marketplace. This policy is applicable to the sales of both stream and wetland credits.

B. Policy Scope and Authorities

The policy documents the District procedures and authorization processes for communicating mitigation bank credit availability, credit pricing, marketing, and sales procedures to the public and permittees (herein purchasers). The policy applies to price negotiations and sales execution of any publicly offered mitigation bank credits. The policy is not applicable to any permittee-responsible mitigation provided by the District. The policy does not supersede any of the authorities, terms, or conditions specified in the mitigation bank instrument.

C. Procedures

1. Primary Contact

All inquiries associated with mitigation bank credit sales will be directed to the Director of Land Preservation and Natural Resources. The Director of Land Preservation and Natural Resources will serve as the primary public contact for mitigation bank credit sales.

2. Sales Review Team

The Director of Land Preservation and Natural Resources will create an internal Sales Review Team, consisting of a minimum three, but not to exceed five members, to assess potential sales requests or offers to purchase credits and will include the NRM Special Projects Coordinator, Director of Administration and Finance and Land Administration and Preservation Manager. The Sales Review Team will be responsible for following the Mitigation Banking Instrument (herein MBI) and District policy processes.

3. Pricing
 - a. Upon approval of a MBI, District staff will prepare a price recommendation for the sale of wetland and/or stream mitigation credits applicable per the unit of measurement for the credit type offered. The price recommendation will consider the District's cost to complete the construction, performance, long-term maintenance, and management of bank operations as well as the current mitigation credit market forces of competition, supply (internal and external), and demand. The pricing recommendation will be submitted to the Board of Trustees for consideration. The Board of Trustees shall establish approved prices for the marketing and sale of said credits by passing a Resolution(s) pertaining to same.
 - b. Due to changing market forces, District staff will review the prices for any active bank on an annual basis or more frequently if needed. Accordingly, staff will prepare any price adjustment recommendations as may be deemed appropriate and present them to the Board of Trustees for consideration from time to time.

4. Price Discount

In the interest of intergovernmental cooperation and shared public service coordination, and upon approval of the Board of Trustees, the District may establish discounted mitigation credit prices to government partners.

5. Marketing
 - a. Credit availability will follow an approved MBI credit release schedule.
 - b. The RIBITS website <https://ribits.ops.usace.army.mil> identifies Corps approved mitigation banks. RIBITS provides District contact information for customers and a credit ledger summary for an active bank.
 - c. The District will provide approved mitigation credit availability, linear pricing, and contact information on the agency website, and notify the District maintained list of ecological consultants of credit availability.

6. Sales Procedure
 - a. Potential purchasers of wetland credits will provide written requests to the District's internal Sales Review Team indicating intent to purchase mitigation credits. The requests will be reviewed by the Sales Review Team and those deemed to be in the District's best interest to consider will be presented to the Board of Trustees through the Executive Director with a recommendation for action. The written request must include:

- i. Purchaser Identification - information shall include names of all individuals with more than a 7 ½ % beneficial interest in the entity or organization purchasing credits
 - ii. Name of the District's Active Bank(s) applicable to the request
 - iii. Project Name and USACE Permit Number for which the credits are to be utilized
 - iv. Type of Credits (wetland or stream)
Total Quantity of Credit Units (acres for wetland or linear feet for stream)
 - v. Price to be paid per applicable type of credit per unit
- b. The Executive Director will be authorized to execute any and all sales agreements approved by the Board of Trustees.
 - c. The District will establish and follow Board of Trustees approved accounting procedures for an active bank.
 - d. All executed sales are considered final.

7. Sales Forms

The District and purchaser must complete an approved mitigation credit sales form for each transaction. Approved forms are located in the MBI of an active bank.

D. Policy History

Initial Policy adopted on July 20, 2021 through Ordinance #21-59.

E. Definitions

Active Bank: An approved mitigation bank with approved and available credits for sale.

Compensatory Mitigation: Replacement of aquatic resources and its functions and values for the purposes of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization of impacts has been achieved. The replacement of the wetland and stream functions and values is generally accomplished through wetland or stream restoration (re-establishment or rehabilitation), creation (establishment), enhancement, or in exceptional circumstances or preservation.

Discount Pricing: A negotiable pricing model requiring Board of Trustees approval prior to sales execution.

Ledger: Document to be used in the accounting of credits and debits. A ledger will be maintained by the District and audited by the Chicago District of the U.S. Army Corps of Engineers on a regular basis.

Linear Pricing: An established pricing model approved by the Board of Trustees.

Interagency Coordination Agreement (herein ICA): A U.S. Army Corps of Engineers-Chicago District (USACE) document of established standards and criteria for the use of mitigation banks to offset wetland and stream loss. The standards and criteria in the ICA maximize credit availability and provide opportunities for mitigation with ecological importance.

Interagency Review Team (herein IRT): An interagency group of Federal, tribal, state, and local regulatory and resource agency representatives that review documentation for the establishment and management of a wetland or stream mitigation bank. The IRT is also an advisory board to the U.S. Army Corps of Engineers (herein Corps) on the establishment of a wetland or stream mitigation bank in accordance with the ICA. Representatives of the U.S. Army Corps of Engineers-Chicago District, the U.S. Fish and Wildlife Service, and the U.S. Environmental Protection Agency is responsible for the evaluation of proposed wetland and stream mitigation banking projects and their continued performance.

Mitigation Bank Credit (herein credit): The unit of measure representing the accrual or attainment of aquatic functions at a compensatory mitigation site. The measure of aquatic functions is based on the aquatic resources restored, established, enhanced or preserved. For the purposes of this document, the unit of measure for credit will be acres for wetlands and linear feet for streams.

Mitigation Bank Debit (herein debit): The unit of measure representing the sale of credit at a compensatory mitigation site. For the purposes of this document, the unit of measure for debit will be acres and linear feet.

Mitigation Banking: A wetland or stream mitigation bank is a wetland or stream area restored, established, enhanced, or preserved, then set aside in permanent protection to compensate for future conversions of wetlands or streams for development activities. Permittees, upon approval of regulatory agencies, can purchase credits from a mitigation bank to meet their requirements for compensatory mitigation. The value of these "credits" is determined by quantifying the wetland functions or acres restored or created. The District is ultimately responsible for the success of the project. Mitigation banking is performed "off-site," meaning it is at a location not on or immediately adjacent to the site of impacts, but within the same watershed. Federal regulations establish a flexible preference for using credits from a mitigation bank over the other compensation mechanisms.

Mitigation Bank Instrument (herein MBI): A written legal document which contains specifications pertaining to the establishment, operation, use and maintenance of a compensatory wetland or stream mitigation bank. The instrument codifies the goals, objectives and procedures of the bank, identifies a long-term manager for the bank site, and incorporates the relevant terms and conditions of the mitigation banking interagency agreement.

Mitigation Bank Prospectus: A plan for a compensatory mitigation bank prepared by the District and submitted for consideration to the IRT. The prospectus provides full discussion of the proposed mitigation bank and serves as the basis for public and IRT review comments.

Permittee-Responsible Mitigation: Restoration, establishment, enhancement or preservation of wetlands undertaken by a permittee in order to compensate for wetland or stream impacts resulting from a specific project. The permittee performs the mitigation after the permit is issued and is ultimately responsible for implementation and success of the mitigation. Permittee-responsible mitigation may occur at the site of the permitted impacts or at an off-site location within the same watershed.

Regulatory In lieu fee and Bank Information Tracking System (RIBITS): Information system developed by the Corps with support from the Environmental Protection Agency, the U.S. Fish and Wildlife Service, the Federal Highway Administration, and NOAA Fisheries to provide better information on mitigation and conservation banking and in-lieu fee programs across the country. RIBITS allows users to access information on the types and numbers of mitigation and conservation bank and in-lieu fee program sites, associated documents, mitigation credit availability, service areas, as well information on national and local policies and procedures that affect mitigation and conservation bank and in-lieu fee program development and operation.