

JOINT STATE/FEDERAL
ADMINISTRATIVE PROCEDURES FOR
THE ESTABLISHMENT AND OPERATION OF WETLAND
MITIGATION BANKS IN SOUTH CAROLINA

developed by the

U.S. Army Corps of Engineers - Charleston District

U.S. Environmental Protection Agency - Region IV

U.S. Fish and Wildlife Service - Charleston Ecological Services Office

S.C. Department of Natural Resources

S.C. Department of Health and Environmental Control
(Bureau of Water Pollution Control)
(Bureau of Ocean and Coastal Resource Management)

U.S. Department of Agriculture - Natural Resources Conservation Service

July 1996

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JOINT STATE/FEDERAL ADMINISTRATIVE PROCEDURES FOR THE ESTABLISHMENT AND OPERATION OF WETLAND MITIGATION BANKS IN SOUTH CAROLINA

I. PURPOSE AND SCOPE:

This document provides coordinated state/federal guidance on the development and operation of freshwater wetland mitigation banks in the State of South Carolina, the area for which the offices of the participating agencies have jurisdiction.

This guidance is provided to assist the participating agencies, bank sponsors and other interested parties in meeting the goals of the Clean Water Act and the goals of the State of South Carolina to restore and maintain the chemical, physical, and biological integrity of the Nation's waters and wetlands and associated natural resource values.

In addition to mitigation banks, the procedures and policies set forth in this document will also be used to site other forms of off-site mitigation and to establish mitigation ratios and documentation requirements.

II. DEFINITIONS

For the purposes of this guidance, the following terms are defined:

Banking Committee: A group comprised of one principal representative from each appropriate State and Federal regulatory or resource agency and may also include ex-officio agency representatives, members of environmental organizations, and other participants. The primary purpose of the committee is the establishment and periodic review of this Memorandum of Agreement, policies for defining bank credits and debits, and the State strategy for mitigation siting and off-site mitigation.

Banking Instrument: Document drafted by the bank sponsor in coordination with the Mitigation Bank Review Team (MBRT) to describe in detail the physical and legal characteristics of the bank, and how the bank will be established and operated. The document is subject to concurrence of the MBRT and is the enabling document for the bank.

Bank Sponsor: Any public or private entity responsible for establishing and, in most circumstances, operating a mitigation bank.

Compensatory Mitigation: For purposes of this MOA, the restoration, enhancement or in exceptional circumstances, preservation or creation of wetlands and/or aquatic resources expressly for the purpose of compensating for adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Compensation Requirement: The type and number of mitigation credits required to offset wetland impacts resulting from a proposed project for which compensation is required.

Consensus: A process by which a group synthesizes its position to form a common collaborative agreement acceptable to all members.

Creation: The establishment of a wetland where one did not formerly exist (e.g. convert an upland to wetland).

Credit: A unit measure representing the accrual or attainment of aquatic and/or wetland functions at a mitigation bank. Credit measurements may be in the form of acres of wetlands, habitat units or other functional units.

Debit: A unit measure representing the compensation requirement arising from the loss of aquatic and/or wetland functions due to a construction activity at an impact or project site or other wetland impact that reduced/eliminates the area's ability to perform existing functions. In a given bank, debit units should be in the same form as credit units and be determined using the same assessment method.

Debiting Plan: A portion of the banking instrument which defines the formulas and processes for translating compensation requirements into debits. Unless otherwise specified, the MBRT will use the most current edition of the U.S. Army Corps of Engineers - Charleston District's Standard Operating Procedure for Compensatory Mitigation Plan to define the formulas and process.

Enhancement: Activities conducted in or contiguous to existing wetlands or other aquatic resource areas to achieve specific management objectives or provide conditions which previously did not exist, and which increase one or more aquatic functions.

Function: Any number of physical or biological processes which take place in wetland areas. Commonly recognized functions are food chain production, provision of fish and wildlife habitat, shoreline protection, storm and floodwater storage, groundwater recharge and discharge, and water quality maintenance.

In-Kind Compensation: The replacement of the functional losses at the impacted site with a functional gain in wetland type possessing the same physical and biological characteristics.

MBRT: See “Mitigation Bank Review Team”

Mitigation: The lessening of the adverse environmental impacts of a development project which includes a process to avoid, minimize or compensate for the impacts of the development projects. Mitigation includes the following considerations, listed sequentially: (a) avoiding the impact altogether by not taking a certain action or parts of an action; (b) minimizing impacts by limiting the degree of magnitude of the action and its implementation; (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and (e) compensating for the impact by replacing or providing substitute resources or environments. *An alternative analysis of locations is often an element of this process.*

Mitigation Bank: A site where wetlands are restored, enhanced, created, and/or preserved expressly for the purpose of providing compensatory mitigation.

Mitigation Bank Review Team (MBRT): The interagency group of Federal, State, or local regulatory and resource agency representatives whose agencies are signatory to a banking instrument and monitor the establishment, use and operation of a mitigation bank.

Operation: The actual conduct of credit withdrawal transactions in a functioning wetland mitigation bank in order to compensate for unavoidable wetland losses. Operation also includes activities such as monitoring, remediation, etc. In order to operate a bank, it first must be proven to be successful based upon the bank’s specific pre-established success criteria.

Out-of-Kind Compensation: Replacement of a specific wetland type with wetlands possessing different physical and biological characteristics.

Priority Management Areas: Areas of the State identified by the S.C. Department of Natural Resources, S.C. Department of Health and Environmental Control, U.S. Fish and Wildlife Service, National Marine Fisheries, U.S. Environmental Protection Agency, U.S. Army Corps of Engineers and other entities as specific target areas for the preservation, restoration and/or enhancement of natural resource values. These areas may be associated with wildlife refuges, heritage trust sites, national estuarine sites, wildlife habitat focus areas, and other similar habitat management programs and high risk wetland sites.

Practicable: Feasible and possible to practice or perform. Available and capable of being done after taking into consideration cost, existing technology and logistics in light of overall project purposes.

Preservation: The protection of ecologically important wetlands or other aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands as necessary to ensure protection and/or enhancement of the aquatic resource.

Restoration: Re-establishment of previously existing wetland or other aquatic resource character and function(s) at a site where they have ceased to exist, or exist only in a substantially degraded state.

Service Area: Based on hydrologic, edaphic and biotic criteria, the designated area (service unit) wherein a bank can reasonably be expected to provide appropriate compensation for impacts to wetlands and/or aquatic resources.

Service Unit: Defined for the purpose of mitigation management as a geographical grid formed using the major soil groupings of the State which are oriented basically parallel to the coast, overlain by the four major river basins of the State (Savannah, Ashepoo-Combahee-Edisto, Pee Dee, and Santee), which are oriented basically perpendicular to the coast. Each resulting unit is defined as a service unit which defines the area or areas which can be serviced by a mitigation bank (see Attachment B).

Success Criteria: The standards required to meet the objectives for which a bank was established such as, but not limited to, hydrology, soil condition and vegetative community. The success criteria is specific to each banking agreement.

Wetlands: Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. For the purposes of this guidance, the U.S. Army Corps of Engineers' current delineation guidelines will be used to identify and/or delineate wetlands.

III. MITIGATION BANKING POLICY

A. National policy and regulation establish criteria for mitigation which must be met for activities to be permitted under Section 404 of the Clean Water Act. These criteria are found in the Section 404(b)(1) guidelines, and in the "Memorandum of Agreement (MOA) between the EPA and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines" (February 6, 1990). The U.S. Fish and Wildlife Service Mitigation Policy (January 23, 1981), provides Service policy guidance which can be referenced in establishing criteria for mitigation banks. A Memorandum to the Field signed August 23, 1993, (Regulatory Guidance Letter 93-2) and the most current Federal Guidance for the "establishment, use and operation of mitigation banks" published in the Federal Register, set forth a framework for federal regulatory and resource agency policy for the establishment and use of mitigation banks.

The existence of a mitigation bank will not be used as a substitute for an alternatives analysis. Moreover, it is important to recognize that there are circumstances where the impacts of a project are so significant that even if alternatives are not available, the discharge may not be permitted regardless of the compensation proposed.

B. It shall be the policy of the undersigned agencies that mitigation banking may be an appropriate form of compensation for the following projects and/or under the following circumstances:

1. Projects that have met the avoidance and minimization sequencing criteria and can be clearly demonstrated by the applicant to have: (1) no practicable on-site mitigation opportunities and off-site mitigation has been determined to be appropriate, (2) limited on-site mitigation opportunities where a mixture of on-site and off-site mitigation is needed to meet mitigation requirements, or (3) off-site mitigation would clearly be more environmentally beneficial than the use of on-site mitigation.

2. Categories of projects identified by the agencies which are appropriate for mitigation through mitigation banks without consideration of on-site mitigation, such as minor impacts associated with home construction on a private single family lot which is not part of a subdivision.

3. Linear projects, such as highways or pipelines, that generally result in numerous minor impacts, which cumulatively could be considered more than minimal.

4. Projects with substantial adverse impacts that cannot be mitigated on site will be reviewed on a case by case basis to determine the most environmentally beneficial method of mitigation.

C. After the fact projects and unauthorized projects. After the fact projects and unauthorized projects that cannot be mitigated on site as defined in B. above may be debited at higher ratios than pre-approved projects because of the difficulty of determining the pre-impact form and function of the wetland.

D. Utilization of mitigation banks. Once off-site mitigation has been determined acceptable for a given project, the applicant may choose the mitigation bank or propose other off-site alternatives to be utilized for compensatory mitigation in accordance with the procedures set forth in this document.

E. Applicable Environmental Laws and Regulations. Projects deemed appropriate for off-site compensation in a mitigation bank must demonstrate full compliance with existing Federal statutes and regulations as well as consistency with applicable policies, including, but not limited to:

1. Clean Water Act [33 U.S.C. 1251 et seq.].
2. National Environmental Policy Act [42 U.S.C. 4321 et seq.] and implementing regulations.
3. The Fish and Wildlife Coordination Act [16 U.S.C. 661-666(c)].
4. The Rivers and Harbors Act of 1899 [33 U.S.C. 403].
5. Section 404(b)(1) Guidelines [40 C.F.R., Part 230]; including interpretations of the Guidelines in the Memorandum of Agreement between EPA and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines [February 6, 1990].
6. Federal Permit Regulations [33 C.F.R., Part 320 to 330] including interpretive guidance provided by the U.S. Army Corps of Engineers.
7. Magnuson Fishery Conservation and Management Act [16 U.S.C. 1852]
8. Coastal Zone Management Act [16 U.S.C. 1451 et. seq.]
9. S.C. Coastal Management Program [SCCMP, ratified by S.C. General Assembly February 19, 1979 (Ratification No. 19)]
10. S.C. Regulation 61-101, Water Quality Certification.
11. Endangered Species Act, as amended [16 U.S.C. 1531-1543]

12. Federal Agriculture Improvement and Reform Act of 1996 [7 U.S.C. 7201]

F. Basic Standards for Mitigation Banks:

1. Each mitigation bank must be supported by a formal, written banking instrument, developed in cooperation with the MBRT, that includes all involved parties as signatories. This instrument may be in the form of a Memorandum of Understanding (MOU) or other document as applicable, and should contain the information contained in Attachment A, the basic outline of a banking instrument. Depending upon the nature of the bank, a permit for wetland alteration may be required as a condition of the banking instrument.

2. Mitigation banks generally must be functioning, consistent with the success criteria developed for each particular bank, prior to the withdrawal of credits. In certain instances, limited withdrawal of credits may be allowed prior to demonstrating functional success. All of the following requirements must be satisfied prior to pre-function early credit withdrawal: (a) the bank sponsor has performed a functional assessment on the bank site and demonstrated to the MBRT that the site has a high probability for functional success; (b) banking instrument and final mitigation plans have been approved; (c) bank site has been secured; and (d) appropriate financial assurances have been established.

3. It is the responsibility of the applicant (entity seeking mitigation credit) and/or the bank sponsor to demonstrate to the permitting agencies that project-related impacts will be successfully offset prior to use of the bank.

4. Generally, in-kind compensation is preferable to out-of-kind compensation unless the out-of-kind ecosystem is one which is generally regarded to be more desirable than the impacted ecosystem as determined by the permitting agencies.

5. Mitigation bank credits used for a particular project must provide maximum practicable replacement of the (otherwise uncompensated) functions lost as a result of the activity (i.e., no overall net loss of functions).

6. Where impacts from an activity will be offset by reliance in whole or in part on a mitigation bank, the permit or certification shall include purchase of bank credits as a condition.

7. Individual site-specific banking agreements must specify that the bank sponsor is responsible for the long-term success, perpetual protection and/or passive management of the bank or for providing alternative compensation if the bank fails.

8. Individual site-specific banking agreements must authorize Right-of-Entry to any representative of the MBRT.

IV. IMPLEMENTATION PROCEDURES

A. It is imperative that all participants in the banking process understand how the bank is to be sited, constructed and operated. The criteria developed below are intended to minimize the potential for misunderstanding while adding predictability to the process.

B. Coordination. Parties interested in establishing a mitigation bank should follow the steps below when coordinating bank development.

1. Identify the bank sponsor.

2. Contact the MBRT via the U.S. Army Corps of Engineers or the USDA Natural Resources Conservation Service to participate in planning of the mitigation bank (i.e. site selection, development plan design, success criteria designation, monitoring and remediation plan development, etc.)

3. Identify the parties responsible for acquiring, developing, managing and monitoring the mitigation bank site, including the responsibility for accounting of bank credits.

4. Develop an individual mitigation banking instrument (see Attachment A) in coordination with the MBRT.

C. Development of Individual Mitigation Banking Agreements. A written mitigation banking agreement is central to the successful establishment of each individual mitigation bank because it formalizes consensus among the signatory parties with respect to site selection, development and operation of the bank. Without this interagency consensus, some of the benefits potentially derived from banking are foregone, including reduced permit processing time and increased predictability in the permitting process.

1. Individual site-specific banking agreements must, at a minimum, address the elements identified in Attachment A, to include identification of: (a) members of the participating agency; (b) entities responsible for acquiring, developing, managing, operating and monitoring the mitigation bank, to include the responsibility for accounting of bank credits; (c) design of the bank development, management and post-construction monitoring plan; (d) detailed success criteria; (e) specific remediation plans in the event the bank fails to fully satisfy the success criteria; and (f) a legally binding mechanism (i.e., conservation easement or deed restriction) to insure

that no interest in the property can be conveyed which would jeopardize the objectives of the bank or the continued protection and/or function of the wetland system.

2. The MBRT shall evaluate and seek MBRT consensus regarding all major elements of the banking proposal. Typically, such major elements include bank siting, bank development plans, bank success criteria, bank usage criteria, credits available within the bank, requirements for monitoring plans and reports, and contingency and remediation plans. Any major element which the MBRT does not reach a consensus agreement on may require use of the dispute resolution procedures specified in this document.

3. Individual site-specific banking agreements must specify that the mitigation bank developers/managers are accountable for all bank-related project costs including costs associated with acquisition, administration, development, management and maintenance, long-term monitoring, and, where applicable, remedial measures. Procedures and funding sources should be identified in the agreement for undertaking the above activities.

4. Based upon the specific success criteria for a bank, individual site-specific banking agreements must also specify that if the condition of the bank changes and all or part of the bank stops providing the intended functions (i.e., partial or total failure of the bank) following approval of credit withdrawal, the MBRT will suspend the agreement to allow use of the bank. Following remedial action, use of the bank may be resumed, subject to approval of the MBRT.

D. Criteria for the Siting and Design of Mitigation Banks:

1. In general, selection of a mitigation bank site should be based on restoration, enhancement, preservation or creation potential (i.e., soil type and water availability), existing resource value, size, location, cost, adjacent land uses, presence of contaminants, potential for human intrusion and the ability to protect aquatic and/or wetland functions over the long-term.

2. Potential bank sponsors should place a high priority on siting banks in previously drained or degraded forested wetlands that could be restored or enhanced. The MBRT recognizes that the majority of past wetland impacts within the State have been in wooded wetland systems and this trend is expected to continue. Due to this trend, banks that focus on the restoration of forested wetlands would be expected to more often have in-kind mitigation credits available. Restoration of forested wetlands would also be expected to result in a higher potential for the development of bank credits. However, it is important to recognize that certain in-kind functions of specific wooded wetland types will not be met through a bottomland hardwood bank (e.g., scrub-shrub pocosins, savannahs, headwater streams, piedmont streams and

associated bed and bank systems, etc.) To recoup functions of these systems, habitat-specific banks may be needed, or project by project individual compensatory mitigation may be required.

3. To the maximum extent possible, mitigation banks should be located in the same service unit as anticipated impacted sites (see Attachment B). The following guidance would apply to proposals for a service area that would include out of service unit credit use:

a. Use of credit from a bank located in one service unit will generally not be considered acceptable as mitigation for an impact in an adjacent service unit. However, in certain instances, the MBRT may determine that out-of-service unit credit use would be the most environmentally beneficial method of mitigating a particular impact.

b. Use of credit will generally be considered acceptable for the portion of each watershed that is located within a single service unit. There will generally be an associated incremental increase in the applicable credit ratio required to mitigate an impact for each watershed sub-basin boundary that is crossed between the bank and the impact site, and a distance factor may be defined in the banking instrument.

c. The State of South Carolina has identified a number of priority management areas located throughout the State (also addressed in Attachment B). Wetland mitigation banks located within or adjacent to these area will be encouraged.

4. Selection of a former wetland as a mitigation bank site and restoring the site increases the likelihood that a wetland will develop. Every effort should be made to establish banks on former wetland sites prior to attempting to establish banks on sites that require wetland creation as a portion of the bank. In those cases where wetland creation is undertaken, strong consideration should be given to establishing mitigation banks on sites that have minimal existing ecological values. Wetland creation as the sole method of establishing a mitigation bank will not generally be accepted.

5. Preservation of existing wetlands and/or upland buffers will be considered when it is proposed in conjunction with restoration, enhancement and/or creation of wetlands; or when the mitigation bank or other form of off-site mitigation is enhancing a State priority management area (see Attachment B). Preservation of existing wetlands will be allowed on a case by case basis in these circumstances.

6. Whenever possible, mitigation banks should incorporate management strategies that contribute to overall water quality improvements in the ecosystem and that protect the ecological integrity of adjacent habitats (e.g., use of buffers, acquisition of easements). Where practicable, provision should be made for fish and wildlife migrational corridors between mitigation banks and other high quality aquatic and

upland habitats. In addition, mitigation banks should be designed to reduce negative impacts that may result from the location of low-quality habitats immediately adjacent to high quality habitats.

7. Mitigation banks should be ecologically and administratively self-sustaining. Every effort should be made to avoid establishing banks which require regular and intensive maintenance. Exceptions should be made only when the MBRT determines that adequate procedures exist to insure the permanent viability of the bank site.

8. Mitigation banking instruments shall contain a schedule and criteria governing withdrawal of credits from the bank. It shall specify the maximum credit withdrawals allowed prior to interim or final success determinations, as appropriate. Permitting agencies shall assure that withdrawal of credits from a bank will be in accordance with the schedules and criteria contained in the banking agreement.

9. To evaluate the long term success of operational mitigation banks, annual monitoring and reporting will generally be required for the first five years of bank operation. Thereafter, reporting should be continued at a regular interval, to be determined by the MBRT. Monitoring should provide sufficient written and graphic descriptions of bank conditions for the banking committee to evaluate the effectiveness of bank management and verify the availability of compensation credits. Reporting requirements may be discontinued after all credits have been withdrawn from the bank, provided that a minimum of five years has elapsed since the bank was determined to be functioning successfully.

E. Criteria for Operation of Mitigation Banks:

1. The MBRT will monitor operation of the bank.

2. Prior to use of the mitigation bank, the MBRT will determine if the bank is functioning, consistent with the success criteria specified in the bank instrument.

3. The bank sponsor will propose and utilize an assessment methodology [e.g. Hydrogeomorphic (HGM), Habitat Evaluation Procedures (HEP), or Corps' Standard Operation Procedures (SOP) for Mitigation as approved by the MBRT] to determine the projected credits to eventually be available in a specific bank. The MBRT, based on review of monitoring reports and/or site inspections, will determine the exact number of available credits within the bank.

4. Based on the bank sponsors method of assessment, the MBRT will establish a process or formula (debiting plan) for translating compensation requirements into debits. Unless otherwise specified the MBRT will use the current U.S. Army Corps of

Engineers - Charleston District's Standard Operating Procedures for Compensatory Mitigation Plans for establishing the debiting plan.

5. During the permit review process the applicant and/or the bank sponsor will perform an assessment of the project site in order to determine the necessary compensation required for a proposed project. This assessment methodology must be the same that was used to assign credit to the bank.

6. The MBRT will use the established process or formula (debiting plan) for translating compensation requirements into debits on a project by project basis.

F. Dispute Resolution. Dispute resolution will be addressed in accordance with current federal guidance. However, a bank established without agency consensus is of little value. The guidance document should be realistic and acknowledge that some proposed mitigation banks are of little value and should not be pursued.

V. OTHER PROCEDURES

A. This guidance may be subject to change subsequent to the receipt of additional national guidance on this issue.

B. Within one year of issuance, the Banking Committee will review this guidance for adequacy, applicability and/or acceptability. Any proposed modifications, additions or deletions to this guidance will be considered by the Banking Committee, and upon consensus, necessary changes will be made. Thereafter, review will take place at a minimum every two years.

C. Nothing in this guidance is intended to diminish, modify, or otherwise affect the statutory or regulatory authorities of the agencies involved.

D. Subsequent guidance related to the development and operation of mitigation banks will be issued as the need arises.

VI. EXISTING APPROVED MITIGATION BANKS

At the drafting of this document, four mitigation banks have been approved and permitted by state and federal agencies: (1) Vandross Bay, a private bank in Georgetown County, (2) Faulkenberry, a State bank in Clarendon County for use by the S.C. Department of Transportation, (3) Sandy Island, a State bank in Georgetown County for use by the S.C. Department of Transportation, and (4) Friends' Neck, a private bank in Kershaw County. These banks, as permitted, will operate in accordance with their permitted procedures and previously defined service areas.

-- End --

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VII. SIGNATORY PAGE

We, the undersigned, agree to abide by this joint state/federal administrative procedures for the establishment and operation of wetland mitigation banks in South Carolina to the extent that it does not violate the existing laws or regulations of the individual agency.

<u>Signatory</u>	<u>Date</u>
_____ (U.S. Army Corps of Engineers - Charleston District)	9/18/96
_____ (U.S. Environmental Protection Agency - Region IV)	Undated
_____ (U.S. Fish and Wildlife Service - Charleston)	7/19/96
_____ (S.C. Department of Natural Resources)	10/10/96
_____ (S.C. Department of Health and Environmental Control)	7/31/96
_____ (U.S. Department of Agriculture - Natural Resources Conservation Service)	9/5/96

Original signed copies of the agreement are on file at the Office of Ocean and Coastal Resource Management, S.C. Department of Health and Environmental Control, 1362 McMillan Avenue, Suite 400, Charleston, SC 29405 - (803) 744-5838.

**BASIC OUTLINE OF MITIGATION BANKING INSTRUMENT
COVER PAGE**

1. Purpose of the document.
2. Title of document and official name of bank.
3. List of signatories.
4. Effective date.

I. PREAMBLE

1. Purpose of bank and it's relationship to Corps and other involved regulatory programs.
2. Location and size of bank, ownership, and identity of bank sponsor.
3. Makeup, role, and responsibility of the MBRT.
4. Mitigation bank goals and objectives.
5. Bank size and classes of wetlands and/or other aquatic resources proposed for inclusion.
6. Type of bank (e.g. single client, general use, joint-project proprietary): identity of sponsor.
7. List of exhibits, including all appropriate supporting technical plans and documents.

II. ESTABLISHMENT OF THE BANK

1. Mitigation Plan
 - a. Ecosystem goals.
 - a. Description of baseline and reference conditions.
 - b. Description of work to be done.
2. Performance Criteria
3. Implementation timetable.
4. Type of real estate interest to be secured by the sponsor.
5. Financial assurances to be secured by the sponsor.
6. Provisions covering long term use of the land (incompatible activities), transfer of ownership of bank lands and/or easements.
7. Debiting Plan (crediting and debiting procedure).
8. Types and amounts of credits projected to be available at designated time intervals.

III. OPERATION OF THE BANK

1. Provisions for sale and transfer of credits (determination of credit availability, timing of credit withdrawal and factors to be considered in determining compensation ratios).
2. Types of projects or activities that may use the bank.
3. Procedures for release of financial assurance.
4. Provisions for site audits by MBRT.
5. Accounting procedures.

IV. LONG-TERM MANAGEMENT AND MAINTENANCE

1. Type and level of maintenance.
2. Record keeping and monitoring requirements (schedules and techniques, reporting requirements).
3. *Force majeure* clause (identification of catastrophic events beyond sponsor's control).
4. Long-term management responsibilities.
5. Contingency actions in event of partial or total bank failure.
6. Provisions pertaining to validity, modification, and termination of the Banking Instrument.

V. DEFINITION OF TERMS (optional)

VI. SIGNATURE PAGE

**SERVICE UNITS FOR MITIGATION BANKING
AND OTHER OFF-SITE MITIGATION**

(See map on page 2, Attachment B)

Service Unit 1 - Appalachian Region

- A. Savannah (1A)
- B. Saluda (1B)

Service Unit 2 - Piedmont

- A. Savannah (2A)
- B. Santee (2B)
- C. Pee Dee (2C)

Service Unit 3 - Sandhills

- A. Savannah (3A)
- B. Ashepoo, Combahee, Edisto (3B)
- C. Santee (3C)
- D. Pee Dee (3D)

Service Unit 4 - Coastal Plain

- A. Savannah (4A)
- B. Ashepoo, Combahee, Edisto (4B)
- C. Santee (4C)
- D. Pee Dee (4D)

Service Unit 5 - Lower Coastal Plain (Outside
of the State's Critical Area)

- A. Savannah (5A)
- B. Ashepoo, Combahee, Edisto (5B)
- C. Santee (5C)
- D. Pee Dee (5D)

Note: Service units are based upon the General Soil Map of South Carolina (SCS soil map 48) and the Hydrologic Unit Map of South Carolina (SCS September 1981 4-R-37669)

PRIORITY MANAGEMENT AREAS

Priority management areas are areas of the State identified by State and Federal natural resource agencies as specific target areas for the preservation, restoration and/or enhancement of natural resource values. While a specific list has not been compiled at this time, these areas may be associated with wildlife refuges, heritage trust sites, national estuarine reserves, wildlife habitat focus areas, outstanding resource waters and similar habitat management programs areas. High risk wetlands associated with rapidly growing urban areas may also be included in this category. For the present, any questions regarding potential mitigation sites and their association with priority management areas should be brought before the MBRT.