# *Mobile District Mitigation Bank Instrument Template*

# *This template is provided by the Mobile District IRT to aid in the timely development of a standardized Mitigation Banking Instrument (MBI) for a Mitigation Bank. It is intended to provide the preferred document format and structure that already contains approved language required for all mitigation banks. Italicized sections require project-specific information be inserted. If any provided language in the template is altered, it must be underlined or bolded to clearly show each and every alteration. If any of the content of the inserted Mobile District success criteria/performance standards and stream mitigation requirements are changed, these changes must also be bolded to clearly show each and every alteration. The applicant may make formatting alterations such as italics, underline, and to the font size within this document.*

# Cover Page Requirements

# *A. Title of Document (Final Mitigation Banking Instrument)*

## B. Official Bank Name, Corps Permit Number

## C. Bank Sponsor Name, Full Mailing Address, Telephone Number

***D. Name and Address of Party that Prepared Document***

## E. Actual Submission Date (month/day/year)

***F. Mobile District IRT Agencies Document Submitted to***

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B. Letter of Credit (can be inserted later)

C. Corps of Engineers Wetland Delineation Verification Letter

D. USFWS Endangered Species Verification Letter

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G. Mobile District 2012 Stream SOP

H. Mobile District Pine Savannah Success Criteria

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K. Completed baseline WRAP wetland assessment and credit calculation worksheets.

L. Completed baseline stream channel and riparian buffer credit calculation worksheets.

M. Completed upland reference site assessment worksheets.

N. Stream cross-sectional drawings for impacted streams.

O. 60% Stream Design Plans

# I. Project Description

## A. Type and Purpose of Bank and Banking Instrument (Regarding Federal and State Regulations)

(Name of mitigation bank) is organized to provide compensatory mitigation for U.S. Army Corps of Engineers (Corps) permits for unavoidable impacts to Waters of the United States, including **wetland and stream impacts** which result from activities authorized under section 404 of the Clean Water Act, **and Section 10 of Rivers and Harbor Act** provided such has met all applicable requirements and is authorized by appropriate regulatory authorities. The U.S. Army Corps of Engineers will issue a Nationwide No. 27 permit to (owner of mitigation bank) for the purpose of conducting restoration and enhancement activities in degraded **pine savannah wetlands, bottomland hardwood wetlands, Bayhead drain wetlands, perennial streams, and intermittent streams** at the (name of mitigation bank) site. USACE approval of this Instrument constitutes the regulatory approval required for the [INSERT NAME OF THE MITIGATION BANK OR IN-LIEU FEE PROGRAM] to be used to provide compensatory mitigation for Department of the Army permits pursuant to 33 C.F.R. 332.8(a)(1). This Instrument is not a contract between the Sponsor or Prope1iy Owner and USACE or any other agency of the federal government. Any dispute arising under this Instrument will not give rise to any claim by the Sponsor or Property Owner for monetary damages. This provision is controlling notwithstanding any other provision or statement in the Instrument to the contrary.

## B. Project Description

### 1. Bank Location and Legal Description

#### *a) Location: include township, range, section, location and distance relative to nearest town, names of adjacent or nearest roads, acreage size, provide central GPS position, and description of access points onto tract.*

# *b) Legal Description of property that includes parcel acreage.*

## 2. Historical, Current, and Proposed Site Conditions - General Restoration Overview (a table showing overview acreages/linear feet is recommended).

#### *a) Summarize regional physiographic and geologic setting*

#### *1. Soils, hydrology,*

#### *2. Native endemic wetland types, stream types, upland habitats*

#### *b) Briefly summarize current wetland impacts*

#### *c) Briefly summarize current stream impacts and riparian buffer impacts*

#### *d) Briefly summarize current upland impacts*

#### *e) Identify target wetland, upland, and stream types*

#### *f) Summarize current and historical land uses*

#### *g) Describe expected future land uses without mitigation bank versus as a mitigation bank*

### C. Ownership

### 1. Owner/Sponsor

#### *a) Describe the ownership interest in the bank property during the active management phases.*

#### *b) Discuss ownership and long term stewardship strategy upon completion of management activities.*

### 2. Liens and Mortgages

*Include in this section a detailed statement identifying any liens, mortgages, or security interests on the property. A survey and abstract of title are required. The abstract shall consist of a full summary of all consecutive grants, conveyances, wills, records and judicial proceedings affecting title to the specific parcel of real estate, together with a statement of all recorded liens and encumbrances affecting the property and their present status. Any and all liens and encumbrances affecting the property must be subordinated to the conservation easement, and documentation provided.  A statement shall also be included to acknowledge that any transfer to the long-term steward shall include restrictions on the property as necessary to sustain the property consistent with the final ecological requirements/success criteria required by the Mitigation Banking Instrument (MBI). Bankers are strongly encouraged to provide the survey and abstract of title to the Mitigation Banking Interagency Review Team (IRT) early in the bank development process to allow for full and complete disclosure, and sufficient time for any necessary issue resolution.*

The (name of mitigation bank) shall protect approximately XXX acres in a natural state in perpetuity which is to be guaranteed by the execution of a legally binding conservation easement. There are no liens, mortgages, or security interests on the property. To ensure that the conservation easement is conveyed without encumbrances that would affect the viability of the mitigation bank. The (name of mitigation bank) will provide the following:

a. A title insurance policy updated to the date of conveyance, after the recording of the conservation easement of the bank.

b. A survey or plat and legal description of the area showing all existing easements and encumbrances, if any, as identified in the title document. This information will be submitted in recordable form.

c. A publicly recorded certified copy of the conservation easement.

d. Any liens, mortgages, or security interests of any type on the property must be subordinated to the conservation easement, and subordination agreements provided by the bank sponsor to verify that any liens, mortgages and security interests of any type on the property are subject to and bound by the conservation easement established for the property.

The owner intends to transfer the property, fee simple, to the long-term steward, and shall include restrictions on the property as necessary to sustain the property consistent with the final ecological requirements/success criteria required by the MBI.

### 3. Subsurface and Mineral Rights

The mineral owners, which are separate from the surface owners, shall maintain subsurface mineral rights (with the exception of sand and gravel), in perpetuity as dictated by the mineral laws of the State of (AL or MS). To insure transparency and cooperation, the IRT and site steward will be duly notified in writing, at least thirty (30) days prior to initiation of any mineral activity, and consulted thereafter regarding oil and gas exploration strategies if they are to occur within the legal boundaries of the (Name of bank) according to applicable statutes. Coordination will allow for the determination and implementation of least damaging feasible alternative methodologies, as well as assessment of unavoidable impacts associated with a proposed activity, according to all applicable laws and regulations. The project site will be restored to pre-project conditions after abandonment. Any activity subject to Section 404 jurisdiction will be permitted through the Mobile District, Army Corps of Engineers and (State Regulatory Agency) Restoration and compensatory mitigation for unavoidable impacts will be coordinated with the IRT and made part of any Corps permit.

### 4. Utility and Transportation Corridors

## Identify and describe any utility of transportation corridors within the mitigation bank boundaries. Describe how this acreage is accounted for. Describe if the corridor will have any influence on the management strategies for target wetlands and streams within the mitigation bank.

#### The mitigation bank sponsor will not encourage the placement of a utility or transportation corridor such as to impact the mitigation bank property. In the event all or part of this property is taken by exercise of the power of Eminent Domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate the conservation easement in whole or in part, the mitigation bank sponsor or long-term steward is responsible for replacing any wetland mitigation credits lost with in-kind wetland mitigation credits. The USACE will review the proposed corridor, the amount of functional loss, and decide on the appropriate compensation.

## D. Conservation Easement (CE) Holder

## 1. Identification of primary CE Holder (must be identified by name). The CE holder cannot be the long-term steward.

#### *2. Identification of potential Secondary CE Holder. In the event that the first holder of the Conservation Easement becomes unable to hold the easement this should name a secondary party that could hold the CE. This party may be a long-term holder or a temporary holder while a new long term holder is identified. One possible method if for a non-profit to temporarily hold the CE while a new permanent CE holder is identified.*

#### *3. The U.S. Army Corps of Engineers shall hold third party enforcement rights in the CE.*

#### *4. (Instructional) The conservation easement is a legal contract document that must be prepared by the mitigation bank's attorney, whose name will be provided with the draft CE when it is submit to the USACE for review.  A model CE, approved by the IRT member agencies, is available at the Mobile District RIBITS site. Please coordinate early with the selected CE holder to verify they are able to accept the use the Mobile District conservation easement template. Deviations from the model must be identified clearly in the submittal, and justification provided. Early coordination of approval of the CE is also strongly encouraged, as many bankers are eager for the initial credit release upon approval of the MBI, and CE approval and recordation is required for the first credit release. Any changes in the holder of the CE must be approved by the USACE.*

# II. Authorities

## A. Standard Rules and Regulations

The establishment, use, and operation of the (name of mitigation bank) is carried out in accordance with the following authorities:

Federal:

1. Section 404 Clean Water Act (33 USC 1251 et. seq.)

2. Section 10 Rivers and Harbors Act (33 USC 403)

3. Fish and Wildlife Coordination Act (16 USC 661 et. seq.)

4. Regulatory Programs of the U.S. Army Corps of Engineers, Final Rule (33 CFR parts 320-330)

5. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 CFR part 230)

6. Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army concerning Determination of Mitigation Under the Clean Water Act, Section 404 (b)(1) Guidelines (February 6, 1990)

7. Compensatory Mitigation for Losses of Aquatic Resources (33 CFR 332)

8. Army Corp of Engineers RGL 05-01, and RGL 08-03.

State:

9. Coastal Wetlands Protection Act and Costal Zone Consistency with the (**select either Alabama or Mississippi**) Coastal Program **(if in coastal zone).**

10. Wastewater Regulations for National Pollutant Discharge Elimination System (NPDES) Permits, Underground Injection Control (UIC) Permits, Water Quality Based Effluent Limitations and Water Quality Certification (40 CFR 122, 123, 124, 125, 144, 146, 403, and 503).

## B. Nationwide 27 permit

Since the work required to restore/enhance wetlands (and streams) at the (name of mitigation bank) site will impact jurisdictional waters of the United States, a Section 404 permit will need to be obtained prior to commencement of work at the site. Once the Mitigation Banking Instrument is approved, the terms and conditions of the Mitigation Banking Instrument will be adopted and the Corps will issue a Nationwide 27 Permit (Stream and Wetland Restoration Activities), which has already received programmatic state certifications.

## C. Mitigation Bank Review Team (IRT)

## 1. IRT Member Agencies

The IRT is comprised of 13 individuals representing five states and three federal agencies as listed below. **This list is subject to change and should be updated based on most current IRT e-mail list**.

|  |  |
| --- | --- |
| **Agency** | **Representative** |
| US Army Corp of Engineers | Mike Moxey, James Cherry |
| US Environmental Protection Agency | Bill Ainslie |
| US Fish and Wildlife Service | Josh Rowell, Paul Necaise, David Felder |
| Mississippi Dept. of Wildlife, Fisheries, and Parks | Andy Sanderson |
| Mississippi Dept. of Marine Resources | Jennifer Wittmann, Greg Christodoulou |
| Mississippi Dept. of Environmental Quality | Florance Bass |
| Alabama Dept. of Environmental Management | Dylan Hendrix, Randy Shaneyfelt Charlie Hoffman |

## 

## 2. Oversight

The following is a list of oversight responsibilities that the members of the IRT agree to along with all other responsibilities as charged by the Compensatory Mitigation for Losses of Aquatic Resources regulations (33 CFR 332):

a. The agencies represented on the IRT agree to provide appropriate oversight in carrying out the provisions of this banking instrument.

b. The agencies represented on the IRT agree to review and provide comments on all project plans, annual monitoring reports, credit review reports, contingency plans, and necessary permits for the bank in a timely manner. Comments will be reviewed and transmitted to the Sponsor in accordance with the review times specified in 33 CFR 332.8(g) from the date of receipt of a complete submittal (except for good cause).

c. The agencies represented on the IRT agree to review and confirm reports on the evaluation of success criteria prior to approving credit releases within the (name of mitigation bank).

d. The agencies represented on the IRT will conduct compliance inspections, as necessary, as determined by the Corps in consultation with the Sponsor, to verify credits available in the bank, recommend corrective measures, if any, in perpetuity.

## 3. Responsibilities

#### a. Review of Reports

In accordance with review times specified in 33 CFR 332.8(d), the U.S. Army Corps of Engineers, through the Mobile District IRT, will provide written comments within 30 days of receipt of reports. See the IRT Timeline for Bank Approval on the Mobile District RIBITS site.

**b. Credit Release Approval**

The U.S. Army Corps of Engineers, through the Mobile District IRT, will make a good faith effort, within 30 days (except for good cause) of receipt of the written request for release and success determination, to either approve the request for release and success determination or provide the Sponsor with a written explanation of why the determination has been denied.

#### c. Inspections

The IRT will conduct site inspections jointly to determine the progress of the project for purposes of release and success determinations, and other general compliance. If the IRT is unable to meet within a reasonable time, those representatives that can, will conduct inspections in a timely manner when responding to written requests to release or success determination. Inspections may be requested by the applicant at any time significant changes have occurred and include inspections for compliance, as-built, and for adaptive management changes.

## 4. Provisions for Site Inspections

The IRT will have full access to the mitigation bank to perform inspections, provided reasonable notice is given. Regular inspections will be scheduled, at a minimum, following major events such as completion of any major earthmoving work and before credit releases occur.

# III. Management Plan

## A. Standard Regulatory Requirements

## 1. Cultural Resources

A. Current Certification. A cultural survey of the (name of mitigation bank) has been conducted and the findings approved by UISACE. The archaeological survey report and approval letter of that survey by the USACE and the State Historic Preservation Office appears as Appendix X. **Provide USACE and SHPO clearance letter.** Due to their size, official Phase I surveys should not be submitted as part of the MBI, but should be referenced.

## 2. Threatened and Endangered Species

A) Current Certification. The XXMB was surveyed for the *(your list may include but is not limited to threatened gopher tortoise (Gopherus polphemus), the endangered Louisiana quillwort (Isoetes louisianensis), and the threatened bald eagle (Haliaeetus leucocephalus))* during (date). Based on the surveys, there was no evidence that any of the above listed species occur within the XXMB. The U.S. Fish and Wildlife Service concurred with this and the USACE determination. **Provide USFWS clearance letter and USACE determination.**

B) Potential Use of Site by T & E Species

*(Describe any potential use of the site by endangered or threatened species.)*

## 3. Jurisdictional Waters of the United States

The (name of mitigation bank) was delineated using the 1987 Corps of Engineers Wetland Delineation Manual and regional supplement for jurisdictional waters of the United States during *(date).* The U.S. Army Corps of Engineers concurred with the wetlands determination.  **Provide Corps letter.** A copy of the wetland delineation paperwork must be included as an appendix with MBI.

## B. Establishment of Habitat Management Polygons

*The entire mitigation bank should be separated into management polygons based on habitat types (e.g. pine savannah, bottomland hardwood, uplands), management strategies (e.g. restoration, enhancement, preservation), and physical separation (polygon must be single undivided habitat). The entire stream component of the mitigation bank should be reflected as discrete stream reaches and associated riparian buffer management polygons. Stream reaches should be based on stream type, order, and required work to be performed.*

***1) Wetlands****. Provide summary table identifying wetland polygon ID, size, habitat type, and management strategy (restoration, enhancement, preservation). If WRAP is used, provide WRAP delta scores, WRAP credits per polygon.*

***2) Streams****. Provide summary table identifying streams reach, stream type (perennial, intermittent, or ephemeral), and current Rosgen Stream Type, and in-channel restoration or enhancement if appropriate.*

***3) Riparian Buffers****. Provide summary table with polygon ID, width, habitat type, and management strategy (restoration, enhancement, preservation).*

***4) Uplands****. Uplands in the mitigation bank should be separated into management polygons based on habitat types, management strategies, and location.*

## C. Functional Assessment of Habitat Management Polygons

*If a WRAP or Stream SOP functional assessment is used in determining credits generated by work on-site, the methodology and summary worksheets should be included here. Assessment scores should be described for individual polygons or stream reaches. For WRAP, summary data worksheets can be provided in this section, and the actual WRAP assessment worksheets included as an appendix.*

## D. Justification for Habitat Management Strategies for Polygons

## This section requests sponsor address three basic questions. What is it now (current condition)? What is the target conditions/habitat (what will it become)? What land management actions are required to achieve the required improvement (how will the change be accomplished)? The answers to these questions are usually based on site history and research of the wetland system that historically would have existed on the site in this polygon prior to any impacts occurring. Similar polygons may be grouped and described together. All data collected should clearly justify the need for the proposed wetland, upland, and stream management actions being proposed. If habitat preservation is proposed, you must demonstrate in writing how each of the 5 requirements of 33 CFR 332.3(h) has been met. Wetlands and streams should have separate sections in this MBI.

### 1. Historical and Current Baseline Condition

**A) Historical Land Use.** Discuss uses that caused degradation

**B) Historical wetland/stream types.** This section should reflect the target wetland or stream type. *Discuss site history and research the wetland type that historically would have existed on the site in this polygon.*

**C) Current wetland/stream type.** *Wetlands must be assessed using Mobile District habitat success criteria/performance criteria, or functional assessment metrics and sampling protocols.* *Streams must be described using SOP Existing Condition criteria, Rosgen stream type, and Rosgen stream type classification metrics.**The data should justify the proposed functional lift and restoration/enhancement actions proposed by the mitigation banker.*

#### 1. Current Hydrology. *If hydrology is altered, monitoring wells are required in both the mitigation bank polygon and the reference site. Enough data is required to demonstrate a consistent alteration to frequency, duration, and magnitude.*

**2. Current Soils/substrates.** *This section should discuss soil types,* ***identify if hydric or non-hydric****, any alterations)*

**3. Current Vegetation Composition.** *Discuss using habitat success criteria metrics and measuring protocols for appropriate habitat.*

**a) Trees per plot, Species composition and diversity, Percent canopy cover**

**b) Shrub coverage and composition, density, diversity**

**c) Herbaceous coverage, diversity, composition**

**d) Vine layer coverage and Species**

**4. Current stream condition.** *Streams must be described using SOP Existing Condition criteria, Rosgen stream type, and Rosgen stream type classification metrics.*

**2. Target wetland habitat or stream type.** *This area needs to accurately describe the target wetland habitat and ecological conditions, and stream type and target parameters that will be improved per SOP scoring criteria. The proposed functional lift should support the restoration or enhancement strategy success criteria proposed by the applicant.*

**1. Target Hydrology**. *If hydrology is altered, monitoring wells are required in both the mitigation bank polygon and the reference site. Enough data is required to demonstrate a consistent reference site based frequency, duration, and magnitude.*

**2. Target Soils**

**3. Target Vegetation Composition.** *Wetlands must using Mobile District habitat success criteria/performance criteria and sampling protocols.*

**a. Trees per plot, Species composition and diversity, Percent Canopy Cover**

**b. Shrub coverage and composition, density, diversity**

**c. Herbaceous coverage and Species composition, density, diversity**

**d. Vine layer coverage and Species composition**

**4. Target stream type.** *Streams must be described using SOP Existing Condition criteria, Rosgen stream type, and Rosgen stream type classification metrics.*

### 3. Uplands. *Uplands in the mitigation bank must be identified using polygons.* *This area needs to accurately describe the assessment strategy and protocols, standardized metrics and data collection protocols. Uplands must be described using Mobile District habitat metrics for forested or non-forested systems, and adjusted using field data from an approved TFT reference site.*

### E. Specific Land and Stream Management Actions.

### This section should describe specific management action performed by the mitigation bank sponsor that are required to correct existing impacts, alterations, and will achieve target success criteria metrics for wetlands, streams, and riparian buffers. Wetland restoration projects proposing improvements to hydrology will require monitoring wells in the project site and reference sites and enough data to demonstrate measurable changes and direct causal effect to dependent ecological improvements.

1. Wetlands

2. Stream Channels

3. Riparian Buffers

4. Uplands not generating mitigation credits

### F) Implementation Timetable Example

Table X. Estimated implementation timetable for management activities at MB.

|  |  |  |
| --- | --- | --- |
| **Activity** | **Area** | **Estimated Completion Date** |
| Recordation of Conservation Easement | All | Year 1 |
| Stream Channel Restoration Design | Streams  1, 2, 3, 5, 6S, 8, 9, 10, 11, 14  R4T2, R4T3, R4RR, R10RR | Year 1 |
| Monitoring (Baseline) | All | Year 1 |
| Report 1 | All | Year 1 |
| Exotic Species Control | All | As Necessary |
| Tree Planting Design | All | Year 1 |
| Removal of Planted Pines | All Stream Buffer Zones  Wetlands: N2A, N3A, N4, N5, N6, S2, S3, S4, S5 | Year 1 |
| Wetland Hydrologic Enhancement | Wetlands  N2, S4 | Year 1 |
| Stream Channel Restoration Construction | Streams  1, 2, 3, 5, 6S, 8, 9, 10, 11, 14  R4T2, R4T3, R4RR, R10RR | Year 2 |
| Wetland Hydrologic Restoration/Enhancement | Wetlands  S2 | Year 1 |
| Tree Planting – Wetlands | Wetlands  N2, N3, N4, N5  N6, N7, S3, S4 | Year 1 |
| Tree Planting – Stream Buffers | Streams  4, 6N, 7, 13  R2T1, R2T2, R2T3, R4T1 | Year 2 |
| Monitoring 1 | All | Year 1 |
| Report 1 | All | Year 1 |
| Tree Planting – Stream Buffers | Streams  1, 2, 3, 5, 6S, 8, 9, 10, 11, 14  R4T2, R4T3, R4RR, R10RR | Year 2 |
| Tree Planting – Wetlands | Wetlands  S2, S5 | Year 1 |
| Monitoring 2-Completion | All | Year 2-Completion |
| Reports 2-Completion | All | Year 2-Completion |

### G. Surrounding Land Use

#### *1. Describe all surrounding land uses contiguous with site.*

#### *2. Describe the potential influence of surrounding land uses to the project management.*

# IV. Bank Operations

## A. Service Area

### 1. Description of Service Area. The primary service area for the (name of Mitigation Bank) will include all portions of (name) Counties, within 8-digit hydrologic units (Appendix X). The (name of mitigation bank) will compensate future unavoidable impacts to in-kind wetlands (*Habitat 1*), (*Habitat 2*), and to out-of kind wetlands on a case-by-case basis (streams if appropriate). Credits are not intended to offset loss of tidal wetlands. The work to be implemented as described in this document is to be used as mitigation for future wetland impacts.

**2. Use of Proximity Factor.** Mitigation outside of the primary service area will be allowed on a case-by-case basis and by using the proximity multiplier method (reference Appendix).

## B. Assessment of Wetland Credits

## 1. In this section, identify the wetland assessment protocol used. Describe any unique circumstances that affected scoring such as temporal loss calculations or specific WRAP SSI worksheet variables affecting scoring.

## 2. Calculation of wetland credits or ratios. Provide summary table of wetland credit or ratio generated (insert appropriate functional assessment worksheets).

***(Ratio Method Example)***

Table X. Activities by Acreage

|  |  |  |
| --- | --- | --- |
| **Mitigation Action** | **Affected Area**  **(Acres)** | **% of Total Area** |
| **Restoration** | 200.00 | 66.66 |
| **Enhancement** | 0 | 0 |
| **Preservation** | 100.00 | 33.33 |
| Total | 300.00 | 100% |

Table X: Ratio Method Credit Calculations for XX Mitigation Bank

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Type** | **%** | **Low/LxAA** | **Med/LxAA** | **High/LxAA** |
| **Restoration** | 0.666 | 1:2 = 1:1.33 | 1:3 = 1:2 | 1:4 = 1:2.66 |
| **Enhancement** | 0.00 | 1:3 = 0.00 | 1:5 = 1:0.00 | 1:9 = 1:0.00 |
| **Preservation** | 0.333 | 1:7 = 1:2.33 | 1:12 = 1:4 | 1:23 = 1:7.66 |
| **TOTAL** | 1.0 | 1:3.66 | 1:6.0 | 1:10.32 |

Table X: Compensatory Ratios for XX Mitigation Bank

|  |  |  |  |
| --- | --- | --- | --- |
| **Compensatory Ratios** | **Low** | **Medium** | **High** |
| (1 acre =1[acre] credit) | 1:3.5 | 1:6 | 1:10 |

## C. Assessment of Stream Credits

## 1. In this section, identify the assessment protocol (SOP Year) metrics used. Describe any unique circumstances that affected scoring such as use of complex riparian buffer credit calculation method.

## 2. Calculation of Stream Credits. Provide SOP worksheets supporting how stream credits are being generated.

## D. Conditions on Debiting

Credits will be withdrawn from the mitigation bank to provide compensatory mitigation for approved permitted projects under Section 404 and 401 of the Clean Water Act (**and the Mississippi/Alabama Coastal Wetlands Protection Act if appropriate)**. The Sponsor will coordinate with applicants for *wetland and stream* impacts to provide information on the service area calculations and available credits. The responsibility for demonstrating that the (name of mitigation bank) credits constitute adequate and appropriate compensation for proposed impacts lies with the impact applicant. The presence or proposed use of the mitigation bank will not affect the requirement that a project go through the process of avoidance and minimization.

Once the applicant/permittee has secured (purchased) the required number of and type of mitigation credits from the bank sponsors, and the proper documentation which includes the permit number and the number of and type of credits purchased has been submitted and received by the District Engineer, the sponsor of the mitigation bank will assume responsibility for providing the required compensatory mitigation.

At the written request of the Sponsor, the IRT will perform a compliance visit to determine whether target success criteria have been met.

In-kind versus Out-of-kind

It is understood that "in-kind" compensation for wetland resources is preferred particularly within the same watershed. "Out-of-kind" compensation and compensation for impacts outside the service area/watershed should be considered on a case-by-case basis by the regulatory agencies depending on the needs of the watershed. In the interest of achieving functional replacement, in-kind compensation of aquatic resource impacts should generally be required. Mitigation outside of the primary service area/watershed will be allowed on a case-by-case basis and by using the proximity factor method.

Out-of-kind compensation may be acceptable if it is determined to be practicable and environmentally preferable to in-kind compensation (e.g., of greater ecological value to a particular region). However, non-tidal wetlands are not intended to compensate for the loss or degradation of tidal wetlands. Decisions regarding out-of-kind mitigation are typically made on a case-by-case basis during the permit evaluation process by the regulatory agencies.

## E. Performance Standards

**1. Wetland Performance Standards**

a. Insert the Mobile District wetland habitat success criteria for each wetland type. Include introductory paragraph if diversity and species changes are made as a result of using an approved TFT site.

b. Insert the appropriate credit release schedule found in each of the Mobile District wetland habitat success criteria being used. Include introductory paragraph if changes are made to the schedule.

### For all credit release schedules:

1. If the sponsor intends to retain ownership of the site and management of the site will be coordinated by a long-term stewardship board, a requirement of the second credit release is the sponsor must provide a formal agreement document signed by the selected board members who must be named by agency/profession and name. See Section VI Long Term Management on the composition requirements of the Long-Term Stewardship Board.

2. The long-term stewardship endowment must be fully funded by the next to last credit release.

3. Preservation Credit Release: After the initial 20% release, preservation credits will be authorized in direct proportion to the percentage of funding of the long-term stewardship endowment (30% of all preservation credits requires 30% funding of endowment).

### c. Wetland Monitoring Procedures. Insert the appropriate monitoring requirements found in each of the Mobile District wetland habitat success criteria being used. Include introductory paragraph if changes are made to the schedule. Wetland monitoring should, at a minimum, address status all of the habitat success criteria metrics and parameters, including hydrology when required by the IRT.

*1. Applicant must provide actual monitoring protocol that includes number of plots per polygon, plot sizes, and strategy for determining location of changing random plots within each polygon. Specific procedures must be defined in this document. Actual GPS referenced locations of fixed plots and complete baseline data generated with monitoring protocol should be included in the monitoring report. Additional sampling plots may be required by the IRT on a polygon-by-polygon basis.*

*2. All pictures used for documentation purposes must include location GPS coordinates.*

*3. Monitoring will address all of the Mobile District required wetland habitat success criteria parameters and follow the same format from year to year. The mitigation bank will provide actual monitoring plot locations and GPS numbers prior to the preparation of the report and subsequent monitoring reports. The center of the permanent monitoring plots must be marked using a metal pipe or a steel fence post. Any proposed variation from the following requirements will be submitted for IRT approval prior to gathering baseline data.*

### a. Example language from the Pine Savannah Success Criteria

### Sampling and reporting is to include one fixed location and one location chosen at random within each wetland assessment area (WAA) or 100ha (247 acres). Random monitoring plots should be located using a grid system and random number table or software equivalent. Monitoring will be assessed in 4 nested plots at each location - 1m2 plot, 2m radius, 10m radius, and 100m radius. A Functional Capacity Index (as previously defined in the Mitigation Performance Standards for Wet Pine Flats) will be calculated.

### b. Example language from the Bottomland Hardwood Success Criteria

### Sampling and reporting is to include atleast one fixed location, and one location chosen at random within each 75 acres of contiguous habitat within each WAA/polygon (ex. a 150-acre polygon will require atleast 2 fixed and 2 random plots). Random monitoring plots should be located using a grid system and random number table or software equivalent. Information on vegetative strata will be reported and analyzed. Tree genera, indicator status, number, and size will be recorded using 1/5-acre radius plots. Genera, indicator status, and percent cover will be recorded within a 2m2 quadrat for woody shrubs/vines and herbaceous cover. For any WAA that significant hydrological manipulation is to occur, monitoring well data and a hydrograph analysis (minimum of weekly sampling rate) will be generated along five points and compared to appropriate Target Forest Type (TFT) utilizing accepted methods of statistical analysis. Three points will be established perpendicular to the midpoint of the impacted water course (floodway center, midpoint of floodplain, and margin of floodplain), and two additional points will be placed along the water course (upper and lower reaches of water course).

**2. Stream Performance Standards**

a. Insert success criteria developed in accordance with Mobile District Guidance for Development of Stream Performance Standards, found in the Mobile District Stream SOP.

b. Riparian Buffer: For wetlands and upland habitat type, insert Mobile District approved habitat success criteria. If appropriate adjust metrics using TFT data for diversity and species list.

c. Credit Release Schedule

1. *Insert the credit release schedule found in the SOP (Appendix E) for each stream mitigation project with both in-stream and riparian work. Each in-stream channel project will have its own credit release schedule which will be instituted when work begins on that reach.*

2. *For stream mitigation projects proposing riparian buffer work only, insert the credit release schedule contained in the appropriate Mobile District wetlands habitat success criteria. If appropriate, adjust metrics using TFT data for diversity and composition.*

### For all credit release schedules:

1. If the sponsor intends to retain ownership of the site and management of the site will be coordinated by a long-term stewardship board, a requirement of the second credit release is the sponsor must provide a formal agreement document signed by the selected board members who must be named by agency/profession and name. See Section VI Long Term Management on the composition requirements of the Long-Term Stewardship Board.

2. The long-term stewardship endowment must be fully funded by the next to last credit release.

3. Preservation: after the initial 20% release, preservation credits will be authorized in direct proportion to the percentage of funding of the long-term stewardship endowment (30% of all preservation credits requires 30% funding of endowment).

d. Stream Channel Monitoring Procedure

1. Stream Channel. Insert monitoring protocol that complies with requirements found in the Mobile District Stream SOP for each stream mitigation project with in-stream work.

**a. Example language for Baseline Stream Channel Monitoring Language when Riparian Buffer Work Only Proposed.**

Stream buffer restoration and preservation is proposed along streams in the (name of mitigation bank); no in-stream work is proposed. Buffer monitoring will provide the same information as the wetland monitoring requirements for the mitigation bank. For ensuring stable streams within the mitigation bank, permanent monitoring points will be established at one riffle and one pool on each credit-generating stream reach. The Year 1 (name of mitigation bank) monitoring report will include measurement of the following four parameters for each monitoring point, along with maps showing locations of all stream monitoring points.

1. Entrenchment Ratio: Per the methods described in Applied River Morphology (Rosgen, 1994), the stream entrenchment ratio will be determined as well as the stream type (i.e. C, D, E).

2. Width to Depth Ratio: Per the methods described in Applied River Morphology (Rosgen, 1994), the width to depth ratio of the stream will be determined.

3. Maximum pool depth to mean depth ratio: Per the methods described in Applied River Morphology (Rosgen, 1994), the maximum pool depth to mean depth ratio of the stream will be determined.

4. Existing Condition - Channel Condition: Per the USACE Mobile District Stream SOP, the Existing Condition of the stream will be determined and reported. Channel condition will be assessed and reported by visually observing "channel incision, access to the original or created floodplain, channel widening, channel depositional features, rooting depth compared to streambed elevation, stream bank vegetative protection, and stream bank erosion." The channel will then be assigned an SOP Existing Condition category based on the most characteristic conditions.

5. Measurements at each point will be collected and analyzed annually following Year 1.

**b. Example Stream Channel Monitoring when In-stream Work Proposed**

For non-credit release monitoring, the Stream SOPs Existing Condition will be evaluated and reported. In addition, monumented cross sections along new channel shall be established and measured following each bankfull event or annually, whichever is more frequent. The first monitoring event shall occur immediately following the construction of the new channel and will serve as the “as-built”.

Monumented cross sections will be established and monitored at every fourth riffle and every fourth pool along the new channel. At each cross section, the standard channel stability measurements will be measured, which includes the following measurements: Bank Height Ratio, Width/Depth Ratio, Entrenchment Ratio, Bank Erosion Hazard Index (BEHI), lateral stability, floodplain connectivity, measures of bed aggradation or degradation. In addition, cross sectional profiles shall be produced from the cross sections at every fourth riffle and fourth pool.

Visual assessments shall be conducted along non-monumented riffles and pools to ensure aggradation or degradation of the stream bed or banks is not excessive. In the event the visual assessments indicate excessive aggradation or degradation of the stream bed or banks, cross sections shall be conducted to document the level of instability. Appropriate actions shall be taken to address the deviation.

Visual assessments of installed structures shall be conducted to ensure the structures are stable and functioning. The structure will be considered stable and functioning when:

- No log material has migrated or moved from the point of installation;

- There is no loss of integrity of the structure by excessive undercutting of the channel bed;

- There is no erosive loss of the channel bank immediately upstream, immediately

downstream or adjacent to the structure at the near bank or far bank region;

- If coir matting is used, it is in contact with the channel bank.

All structures will be inspected annually or following every bankfull event (whichever is more frequent). The stage gage will be moved and correlated to the new floodplain elevations.

For credit release monitoring, each stream reach will be measured for the metrics listed above and a report will be completed and submitted. Additionally, Appendix B data summary form will be included from the (date) Stream SOP and an assessment of the in-stream habitats that are present.

**3. Riparian Buffer Zones.** Insert the monitoring requirements contained in the *appropriate Mobile District wetlands habitat success criteria. If appropriate, TFT data may be used to adjust species diversity and composition only.*

**4. Upland Performance Standards**

1. *Insert appropriate forested or non-forested Mobile District wetland habitat success criteria metrics and measurement protocols. Adjust metrics such as species diversity and composition using data from approved upland TFT site. Discuss TFT site and location.*

2. Monitoring. *Insert the appropriate monitoring requirements found in each of the appropriate Mobile District forested or non-forested wetland habitat success criteria. Upland monitoring should, at a minimum, address status all of the vegetation criteria metrics including exotic species presence.*

## F. Contingency Plans / Remedial Actions

1. If the authorizing agencies determine that the bank is operating at a credit deficit, debiting by the sponsor of credits shall immediately cease, and the authorizing agencies, in consultation with the IRT and the sponsor, will determine what remedial actions are necessary to correct the situation. Any failure by the sponsor to fully and promptly cooperate with the IRT in correcting such a deficit may be deemed by the USACE to constitute a condition of a Default under this Instrument.

2. In accordance with 33 CFR 332, the sponsor is responsible for demonstrating compliance with all the terms of the mitigation banking instrument. In the event the mitigation bank or a specific phase of the bank is not implemented, or fails to meet any performance standards or requirements as specified in the banking instrument, the USACE will notify the sponsor in writing of the specific requirements such as performance standard or standards the bank that they have failed to achieve. The sponsor shall have three months to develop, submit to and obtain IRT approval of remedial actions to be taken. In accordance with 33CFR332.8(l) such actions may include additional land management actions, modifications to the instrument, including adaptive management, revisions to the credit release schedule, and alternatives for providing compensatory mitigation to satisfy any credits that have already been sold. In the event the sponsor fails to develop appropriate contingency plans and obtain IRT approval within three months after notification by the Corps, the USACE will notify sponsor and the appropriate authorizing agencies and recommend appropriate remedial actions, including but not limited to applying the financial assurances, or declaring the bank to be in default (See Section VII(D). For good cause shown, the sponsor may request the USACE for additional time to develop and have such contingency plans approved by the IRT.

3. As determined by the Chair in coordination with the IRT and the sponsor, if conditions at the bank site do not improve or continue to deteriorate one year from the date that the IRT approved remedial plans have been implemented, the USACE may take such steps as it deems necessary to remedy the situation. Such steps can include, among other things, applying the he financial assurances to undertake corrective measures, or declaring the bank to be in Default.

## G. Annual Reporting (Include Outline in Appendix)

### 1. Responsible Party

a. The Annual Report is a summary of the yearly monitoring for success and an assessment of the degree to which the bank is attaining success. This report shall be submitted annually to the IRT until the mitigation bank has determined to be successful by USACE. The outline for the minimal information required in the Annual Progress Report for the project is included in Appendix XX. The monitoring report shall also include:

1. A statement regarding the status of the financial assurance requirements and current amount in the project accounts.

2. A statement addressing current and future ability to meet the implementation timetable reflected in the MBI, and any proposed changes needed.

### 2. Due date to Agencies

a. Annual Monitoring Reports are due to the IRT Chair on September 15 of each year.

**H. Credit Sales Ledgers**

**1. Current Credit Sales Ledgers**. Full credit sales ledgers will be provided to the IRT Chair on January 15, May 15, and September 15 of each year. Ledgers must reflect the data requirements of the RIBITS ledgers. This information generally includes the transaction date, permittee name, Corps permit number, number of credits purchased, type of credit purchased (wetland type or stream), and balance of released credits.

**2. ILF Ledgers.** In addition to full credit sales ledgers, ILF projects must provide full cost accounting financial ledgers to the IRT Chair on January 15 of each year.

**I. Construction Financial Assurances**

**1. Types of Financial Assurances.** In accordance with 33 CFR 332.3(n), construction financial assurances may be in the form of performance bonds, escrow accounts, casualty insurance, letters of credit, legislative appropriations for government sponsored projects, or other appropriate instruments, subject to the approval of the district engineer. The district engineer shall require sufficient financial assurances to ensure a high level of confidence that the compensatory mitigation project will be successfully completed, in accordance with applicable performance standards. The sponsor may choose, subject to USACE approval, the type of financial assurance that will be used. For an Escrow Account, the sponsor shall establish an account with an entity legally entitled to hold such accounts, acceptable to the USACE, who will act as an Escrow Agent for this Banking Instrument.

### 2. Level of Funding. The applicant should provide itemized quotes for the work to be completed on a per-acre/ linear-foot basis until the mitigation bank is functionally mature. All activities including (but not limited to) earthwork, fire-lanes, bed-leveling, prescribe burning, tree removal, planting, replanting, exotic eradication, road repair, monitoring etc. should be included in the quotes. The USACE shall make the final determination on the amount of funding that will be required. A higher amount may be required for high-risk mitigation banks and lower amounts for those with a greater likelihood of success. The amount should be sufficient to pay a third-party to accomplish the work and not the applicants cost.

**3. Purpose of Funding.** If the required land management, monitoring or maintenance actions are not conducted as specified in the MBI, and contingency and remediation actions have failed, then the USACE may make the determination the bank is Default and request release of the financial assurance funds to an approved designee from this account sufficient to cover the costs of paying a third party to accomplish these required tasks.

### 4. Procedure for Reducing Level of Funding. As major activities are done, the amount of the performance bond can be reduced by the amount originally proposed that would have paid for that activity. For example if proposed earthwork was estimated to cost $20,000, and that earth work has been completed and approved by the IRT, the performance bond can be reduced by $20,000. The Corps will be notified within 60 days of the final expiration of the financial assurance policy.

***NOTE: The quotes used for Justification for Level of Funding are also used to determine long-term management funding. Please see VI. Long-Term Management Section.***

## J. Adaptive Management

The IRT accepts that all ecological restoration projects are site specific, that multiple endpoints are possible owing to the stochastic nature of ecological processes, and that human activities offsite and beyond the control of the mitigation bank may influence the course of restoration. For these reasons, the IRT and Sponsor may review the restoration strategy, objectives, and the performance standards and monitoring protocols at any time prior to full project release. Proposed changes to the MBI must be made in writing and must qualify as adaptive management in response to site-specific conditions and must be approved by the IRT. If approved, the conditions of the Banking Instrument may only be amended or modified in accordance with procedures specified at 33 CFR 332.8(g). The mitigation bank must demonstrate good-faith efforts to comply with restoration requirements and cannot invoke an alleged need for adaptive management as a pretext for slovenliness.

## IV. Long Term Stewardship

## A. Long Term Steward

### 1. Name Long-Term Steward Party/Parties.

a) Once the mitigation bank(name) has demonstrated compliance with the terms of this document and the last credits are released and sold, the (Bank Owner) intends, in accordance with 33 CFR 332.7, to transfer ownership of the property and the funds necessary for long term management to a long term steward (LTS).

b) If the banker will retain ownership of the property and act as the long-term steward, the banker must form a 5-member long-term stewardship board. The board must represent a balance between the owner’s interest and conservation interests. The banker is entitled to elect two representatives to the board, and it is recommended board include the holder of the conservation easement and two representatives from conservation land management organizations. A formal agreement signed by all members of the long-term stewardship board agreeing to this role, must be presented to the IRT as a requirement of the second credit release for all credit release schedules.

### 2. Responsibilities of Steward

The Long-Term Steward (LTS) and USACE will develop and sign a Long-Term Stewardship agreement outlining the strategy for perpetually maintaining the property in its restored state by conducting required land management actions. Such actions include but are not limited to (**specific for each bank:** introduction of prescribed fire, tree planting and application of mechanical and chemical means to control and eliminate exotic and nuisance species) as described elsewhere in this MBI. The LTS agrees to perform all work necessary to maintain the mitigation bank (name), in perpetuity, in an ecological condition consistent with the final ecological requirements/success criteria required by this Mitigation Banking Instrument. The LTS will also oversee the property to insure that restrictions within the conservation easement are not breached. The Long-Term Stewardship Agreement will specify how the funds from the Long-Term Stewardship Fund may only be used for the purpose of managing the property.

The steward is responsible for long-term monitoring requirements of the site, submitting monitoring reports to the IRT every two years as detailed below, and for providing access to the site for the IRT as required for inspections and for managing and reporting on the long-term stewardship endowment. The outline for the long-term monitoring report is included in (reference Appendix).

## B. Long-term Stewardship Endowment

As credits from (name) Mitigation Bank are sold, a portion of the revenue from credit sales will be placed in a non-wasting interest bearing account as a long-term stewardship endowment to insure the performance and long-term maintenance of the bank. The amount of the long-term stewardship endowment has been determined based on known and projected costs and has been reviewed by the prospective LTS for this site. The (name) Mitigation Bank proposes to set aside approximately $amount per credit as credits are sold for an estimated maximum total principal contribution to the LTS fund of $amount. A more detailed quantification for this endowment is included in the table below. The following activities will be required of the LTS as perpetual management measures:

(List specific actions needed for bank)

Spot control of invasive and/or exotic species

Road maintenance and erosion control

The long-term stewardship endowment will be established pursuant to a trust agreement for a non-wasting interest bearing account suitable to the sponsor, the long-term steward and the USACE. Upon transfer of maintenance responsibility to the long-term steward, all benefits of the fund including the interest bearing non-wasting account will be transferred to the long-term steward. Upon transfer of the ownership of the account to the long-term steward, the funds must remain or be transferred to a similar non-wasting interest bearing account approved by the USACE. The long-term steward will inherit the benefits of the interest generated by the account for the sole purpose of long-term management of the mitigation bank property. Any proposed use of the principle requires the approval of the USACE. At the time that ownership of the bank is transferred by sponsor to the long-term steward, the sponsor will be released of all of its obligations, including all financial assurances, outlined in this MBI.

Justification for Level of Funding TABLE F

|  |  |
| --- | --- |
| LONG-TERM BURNING | $X (up to X acres @ $X/acre/3years) |
| ROAD MAINTENANCE | $X (approx. $X/year) |
| EXOTIC SPECIES CONTROL | $X (approx. $X/year) |
| CONTINGENCY | $X (10% of management costs) |
| ADMINISTRATION | $X (22% of management costs) |
| Principle based on a 3% return |  |
| TOTAL | $X |

## C. Long Term Stewardship Monitoring & Reporting Requirements (Outline in Appendix II) (An outline of the information required in the biennial monitoring report from the long-term steward is provided.)

## 1. Site Maintenance Requirements

### A. Work Required

### a. Habitat Work Performed. *Detail specific and on-going activities on the site such as burning, monitoring and treatment of invasive exotic plants, and any other foreseeable activities.*

### b. Infrastructure Work Performed. *This section should detail reasonable activities required to maintain site access such as road repair, gate/fence repairs, culvert monitoring/replacement, etc.*

**2. Biennial Reporting Requirements**

The long-term steward is responsible for the preparation and submission of biennial reports to the Chair of the IRT by September 15th of the year they are required. The report will be based on the outline provided by the IRT and will include other information as needed to describe activities on the mitigation bank site. The outline for the Long Term Monitoring Report is included in Appendix II.

## D. Provisions Covering the Use of the Land

Use of the land will be restricted as detailed in the conservation easement (Appendix X). However, uses compatible with the purpose of the bank may be specifically authorized by the USACE. Examples of such uses might include conduct of academic research. In the event an individual seeks such a use, application in writing must be made to the IRT detailing the proposed activity. The USACE will reply, in writing, granting (or denying) the proposed use within 30 days.

*(This is an optional section left to the decision of the mitigation bank sponsor. Hunting leases are a common and accepted use of mitigation banks provided the sponsor accepts responsibility for any damage to the property from hunter’s use such as vehicle rutting.)*

The Sponsor also intends to manage the wildlife population by leasing the hunting rights to private individuals. The use of ATV’s for hunting or recreational purposes will be prohibited. Any damage to the vegetation, soils, or hydrology due to hunting activities will be the responsibility of the Sponsor. By allowing the land to be hunted, the additional people with access to the land will serve as a way to limit the potential for vandalism, poaching, etc.

## V. Other Provisions

## A. Force Majeure Clause

Nothing herein shall be construed to authorize proceedings against the bank sponsor for any damages to the bank property caused by a Force Majeure event such as acts of war, terrorism or acts of terror, civil disturbance, strikes, accidental nuclear releases, contamination, earthquake, fire, flood, storm, hurricane, drought, pestilence, acts of God, or similar occurrences. In the event of a force majeure event, the bank sponsor will notify the members of the IRT and work with the IRT to determine the degree of impact to the bank by the event. To the extent that all or any portion of the bank is deemed to have suffered a Force Majeure event that renders resumption of bank operations unreasonable, the sponsor shall be relived of its obligations under this document for that portion of the bank. However, if the Force Majeure event does not preclude the bank sponsor from resuming operations of all or any portion of the bank without unreasonable expense, then it shall not be relieved of its obligations under this document with respect to all or such portion.  Any impact to future credit releases or numbers of credits available for sale shall be discussed and determined by the USACE at that time.

## B. Dispute Resolution

Resolution of disputes about application of this Banking Instrument will be in accordance with those stated in 33 CFR 332.8(e), Compensatory Mitigation for Losses to Aquatic Resources.

## C. Validity, Modification, and Termination of the Banking Instrument

This MBI will become valid upon issuance of the Corps NW 27 permit and execution of the MBI by the USACE. The initial credit release will be authorized following the recordation of the conservation easement and execution of the financial assurances requirements. This MBI may be amended, altered, released or revoked only in accordance with 33 CFR 332.8(g) and the terms and conditions outlined therein. This MBI may be amended, altered, released or revoked only by written agreement among the parties hereto or their heirs, assigns or successors-in-interest, which amendment will be filed in the public records of (County, State). Any of the IRT members may terminate their participation upon written notification to all signatory parties. Participation of the IRT members will terminate 30 days after written notification.

## D. Default

Default Determination: In the event the mitigation bank or a specific phase of the bank is not implemented, or fails to meet any performance standards or requirements as specified in the banking instrument and has failed to implement IRT approved contingency and remedial actions successfully, the USACE will make the determination whether the mitigation bank is in default for failing to meet any responsibility identified in the MBI. If the bank is determined to be in default, the USACE will notify the bank sponsor in writing of the default determination and request a written response within 15-days detailing how the identified issues will be corrected. If no satisfactory resolution is reached, the USACE will close the subject bank and all remaining credits, either released or not, will be null and void. The bank will no longer be an acceptable source of compensatory mitigation for Department of the Army permits. In accordance with 33 CFR 332.8(l), the USACE, in coordination with the IRT, will make a determination as to what additional strategy or work needs to take place to achieve the mitigation plan’s objective. If additional work is deemed necessary, the financial assurances will be employed to fund the necessary work.

## E. Specific Language of the Banking Instrument will be Controlling

To the extent that specific language in this document changes, modifies, or deletes terms and conditions contained in those documents that are incorporated into the Banking Instrument by reference, and that are not legally binding, the specific language within the Banking Instrument shall be controlling.

## F. Signature Pages

**MISSISSIPPI SIGNATURE PAGE**

*(This signature page example has all of the agencies for Mississippi. While all agencies on the IRT review the MBI, the signature sheet is only signed by Federal agencies and the state agencies in the state of the mitigation bank.)*

**SIGNATORS**

**U.S. Army Corps of Engineers,**

**Mobile District**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Craig J. Litteken, PMP Date

Chief, Regulatory Division

U.S. Army Corps of Engineers

**U.S. Environmental Protection Agency**

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Mr. Tony Able, Chief Date

Wetland Regulatory Section

U.S. Environmental Protection Agency, Region 4

**U.S. Fish and Wildlife Service**

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Mr. Stephen Ricks Date

Field Supervisor-Jackson, MS Ecological Services Office

U.S. Fish and Wildlife Service

**Mississippi Department of Environmental Quality**

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Mr. Richard Harrell, P.E., DEE Date

Director, Office of Pollution Control

Mississippi Department of Environmental Quality

**Mississippi Department of Marine Resources**

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Mr. Jamie M. Miller Date

Executive Director

Mississippi Department of Marine Resources

**Mississippi Department of Wildlife Fisheries and Parks**

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Dr. Sam Polles Date

Executive Director

Mississippi Department of Wildlife Fisheries and Parks

**Sponsor: Company name**

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NAME, Member Date

**ALABAMA SIGNATURE PAGE**

*(This signature page example has all of the agencies for Alabama. While all agencies on the IRT review the MBI, the signature sheet is only signed by Federal agencies and the state agencies in the state of the mitigation bank.)*

**SIGNATORS**

**U.S. Army Corps of Engineers,**

**Mobile District**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Craig J. Litteken, PMP Date

Chief, Regulatory Division

U.S. Army Corps of Engineers

**U.S. Environmental Protection Agency**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Tony Able, Chief Date

Wetlands Regulatory Section

U.S. Environmental Protection Agency, Region 4

**U.S. Fish and Wildlife Service**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Bill Pearson, Field Supervisor Date

Daphne Field Office

U.S. Fish and Wildlife Service

**Alabama Department of Environmental Management**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Anthony Scott Hughes, Chief Date

Field Operations Division

Alabama Department of Environmental Management

**Sponsor:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAME Date

**APPENDIX I: Annual Progress Report**

# Cover Page

## Title of Document

## Official Bank Name and Permit Number

## Bank Sponsor

## Prepared By

## Submission Date

## Agencies Submitted to

# Table of Contents

# Project Description

## Synopsis of Aquatic Resource Conditions Prior to Reporting Period

## Actions Completed

## Any Changes to Site Conditions

## (Break down by Management Polygon and include date of initiation of all actions. Any maps contained in this area, such as burn frequency maps, should clearly show the management polygons and what happened in each.)

## Upcoming Proposed Actions

# 5. Monitoring Report for Managed Polygons

### Summary of Success Criteria Measurements

### Wetlands

### Uplands

### Streams

### 4. Riparian Zone

### ii. Progress made towards final Success Criteria and Credit Releases

*(Include dates when all Success Criteria were met. Show credit release table from MBI and highlight in a different color releases that have occurred). Discuss changes to implementation time schedule in MBI if needed.*

*Example table for credits.*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Wetland Habitat X |  |  |  |  |
| Credit Release Standard | % Release | Credits | Est. Timetable | Status |
| *Initial* | *20 %* | *15.24* | *December 2003* | *Completed* |
| *Incremental #1* | *15%* | *12.58* | *July 04* | *Completed* |
| *Incremental #2* | *15%* | *12.58* | *July 05* | *Planned for July 05* |
| *Incremental #3* | *15%* | *12.58* | *July 06* | *Planned for July 06* |
| *Incremental #4* | *15%* | *12.58* | *July 07* | *Planned for July 07* |
| *Incremental #5* | *20%* | *15.24* | *July 08* | *Planned for July 08* |

*Blue Text indicates completed standards and released credits*

*Red Text indicates completed standards and requested credit releases.*

*Also include Success Criteria from MBI.*

*Also include separate implementation timetable from MBI listing site specific activities.*

# Financial Assurances

## Status of Financial Assurances

## 1. Status of Letter of Credit (such as expiration date and amount.)

**2. Level of Funding of Long-Term Stewardship Funding**

**APPENDIX II: Biennial Long-Term Monitoring Report**

# Cover Page

## Title of Document

## Official Bank Name and Corps Permit Number

## Bank Sponsor

## Prepared By

## Submission Date

## Agencies Submitted to

# Table of Contents

# Project Description

## Synopsis of Site Condition when turned over to Long-Term Steward

## Any Changes to Site Conditions

## Actions taken to Correct Departures from Performance Standards

## Description of Site at Time of Report

# Monitoring of Success Criteria Metrics

## Management Polygon (Repeat for Each Polygon)

### Wetlands

### Uplands

### Streams

### Riparian Zones

# Financial Assurances

## Status of Financial Assurances

# 1. Current Level of Funding of Long-Term Stewardship Funding

# 2. Expenditures

# 