

**JOINT STATE/FEDERAL
ADMINISTRATIVE PROCEDURES FOR
THE ESTABLISHMENT AND OPERATION OF
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

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

September, 2002

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

Table of Contents

	<u>Page</u>
I. Purpose and Scope	1
II. Mitigation Banking Guidance and Procedures	2
A. Bank Development Process	2
B. Mitigation Bank Siting and Design Criteria	3
C. Development of the Banking Instrument (Agreement)	4
D. Operation of the Bank	5
E. Standards for Use of the Bank	7
III. Other Procedures	9
IV Existing Approved Mitigation Banks	9
Definitions	10
Signatory Page	13

Attachments

A. Basic outline of Mitigation Banking Instrument	14
B. Priority Management Areas	15
C. Service Unit Map	16

For additional information on mitigation banking and the Mitigation Banking Review Team (MBRT), contact:

U.S. Army Corps of Engineers, Regulatory Branch
69A Hagood Avenue
Charleston, SC 29403-5107
(843) 329-8044

For additional copies of this publication, contact:

S.C. Department of Health and Environmental Control
Bureau of Water, EQC
2600 Bull Street
Columbia, SC 29201
(803) 898-4173

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

I. PURPOSE AND SCOPE:

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.

Within the framework established by national guidance, this document provides coordinated state/federal guidance on the development and operation of mitigation banks in the State of South Carolina for the purposes of providing alternatives for compensatory mitigation for unavoidable impacts to waters of the United States authorized by the Corps of Engineers and State of South Carolina regulatory programs.

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 may also be useful in siting other forms of off-site mitigation and establishing mitigation ratios and documentation requirements.

This document is designed to be used in conjunction with the Charleston District's Standard Operating Procedures for Compensatory Mitigation (SOP) and other MBRT produced guidance documents (e.g., Preservation Guidelines, In Lieu Fee Guidelines) all of which contain additional procedural guidance important to establishing compensatory mitigation programs.

II. MITIGATION BANKING GUIDANCE AND PROCEDURES

A. Bank Development Process

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

- a. Identify the bank sponsor.
- b. Contact the Mitigation Banking Review Team (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.)
- c. Following preliminary conceptual approval by the MBRT, arrange an onsite visit for the MBRT.
- d. Identify the parties responsible for acquiring, developing, managing and monitoring the mitigation bank site, including the responsibility for accounting of bank credits.
- e. Complete a thorough environmental assessment of the proposed mitigation bank site and its associated proximal watershed. This assessment is needed to provide assurance that the overall environmental condition of the bank will not be jeopardized by environmental contaminants or changes in hydrological function over the projected life of the bank. This requirement can normally be satisfied by a Phase I Environmental Site Assessment under ASTM Standard (E-1527-97) performed by a qualified Environmental Professional. This requirement may be waived by the MBRT upon presentation of sufficient information for review and approval of the MBRT.
- f. Develop an individual mitigation banking instrument (see Attachment A and Section C below) in coordination with the MBRT and the guidance in this and other MBRT guidance documents.

2. The MBRT shall evaluate and seek consensus on all major elements of the banking proposal. Typically, such elements include siting, development plans, success criteria, usage criteria, available credits, 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 dispute resolution procedures in accordance with current federal guidance.

B. Mitigation Bank Siting and Design Criteria

1. In general, selection of a mitigation bank site should be based on restoration, enhancement, preservation or creation potential, existing resource value, size, location (e.g., geographic proximity to State priority management areas), 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 wetlands or aquatic systems that can be restored or enhanced. Since the majority of past impacts within the State have been in forested wetland systems and this trend is expected to continue, banks that focus on the restoration of forested wetlands would be expected to have more in-kind mitigation credits available. However, replacement of certain in-kind functions of specific aquatic systems (e.g., scrub-shrub wetlands, emergent wetlands, pocosins, savannahs, headwater streams, piedmont streams and associated bed and bank systems, etc.) will not be provided by, for example, a bottomland hardwoods bank. To recoup functions of these systems, habitat-specific banks may be needed, or project by project individual compensatory mitigation may be required.
3. The State of South Carolina has identified a number of priority management areas located throughout the State (see Attachment B). Mitigation banks located within or adjacent to these areas are encouraged.
4. The restoration of converted or degraded wetlands or other aquatic systems is preferred over the creation of such systems from uplands. In cases where creation is undertaken, strong consideration will be given to establishing mitigation banks on sites that have minimal existing ecological values. Creation as the sole method of establishing a mitigation bank will generally not be accepted.
5. Preservation of existing wetlands, aquatic systems and/or upland buffers will be considered when it is proposed in conjunction with restoration, and/or enhancement of wetlands and/or aquatic systems; or when the mitigation bank or other form of off-site mitigation is enhancing a State priority management area (see Attachment B). Separate guidance exists which establishes criteria under which a preservation bank would be acceptable (see current version of "South Carolina Mitigation Bank Review Team Guidelines for Siting Preservation Mitigation Banks").
6. 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.
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 will be made only when the MBRT determines that adequate procedures exist to insure the permanent viability of the bank site.

8. A bank established without the consensus of the MBRT may be of little value. It is recognized that some proposed mitigation banks are of little value and should not be pursued.

C. Development of the Banking Instrument (Agreement)

1. A written mitigation banking agreement is essential 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. 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 or other aquatic system alteration may be required.

2. Individual site-specific banking agreements must, at a minimum, address the elements identified in Attachment A, to include identification of: (a) entities responsible for acquiring, developing, managing, operating and monitoring the mitigation bank, including the responsibility for bank credit accounting; (b) design of the bank including development, management and post-construction monitoring plans; (c) detailed success criteria; (d) credit determination and debit accounting methodology; (e) aquatic resource types and geographic scope of applicable potential projects which may or may not use the bank; (f) specific remediation plans in the event the bank fails to fully satisfy the success criteria; and (g) a legally binding mechanism (i.e., conservation easement or transfer in fee title to a conservation entity) 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 aquatic system.

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. 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 available in a specific bank. The MBRT, based on review of sponsor reports and/or site inspections, will determine the exact number of available credits within the bank. These determinations will be included in the banking instrument. Establishment of credits and determination of needed credit withdrawals from the bank

on a project by project basis will utilize the same methodology.

5. The banking instrument will consider in-kind compensation preferable to out-of-kind compensation unless the out-of-kind ecosystem is one which is regarded to be more desirable than the impacted ecosystem as determined by the MBRT.

6. Based upon the specific success criteria for a bank, individual site-specific banking agreements must specify that if the condition of the bank changes and all or part of the bank stops providing the intended functions following approval of credit withdrawal, the MBRT may suspend credit withdrawals from the bank. Following remedial action, use of the bank may be resumed, subject to approval of the MBRT.

7. Mitigation banking instruments shall contain a schedule and criteria governing withdrawal of credits from the bank. It shall specify the maximum credit withdrawals allowed based on 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.

8. 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.

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

10. Treatment of National Register eligible historic properties (historic properties) should be considered in conjunction with the restoration, enhancement and/or creation of wetlands or other aquatic sites. The inclusion of historic properties in a mitigation bank site is desirable. Historic properties preservation is compatible with the preservation of wetlands and other aquatic sites.

11. When considering creation or restoration actions at a proposed bank site, care should be taken to avoid disturbance or destruction of historic properties. If such avoidance is not feasible, or if additional help is needed in ascertaining the presence of historic properties, the State Historic Preservation Office, SC Dept of Archives and History, should be consulted.

D. Operation of the Bank

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 for credit withdrawal specified in the bank instrument.

3. Mitigation banks must be functioning, consistent with the success criteria specified in the banking instrument, prior to the withdrawal of credits. In certain instances,

limited withdrawal of credits may be allowed prior to demonstrating full functional success. All of the following requirements must be satisfied prior to 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 success; (b) the banking instrument has been approved; (c) bank site has been secured (required protection attained through acquisition and/or easements); (d) appropriate financial assurances have been established; and (e) interim success criteria specified in the banking agreement have been satisfied.

4. 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 will be continued at an interval to be determined by the MBRT until all success criteria have been met. In instances where it is deemed preferable by the MBRT, the five basic required monitoring events may be spaced out such that a greater period of time is covered (e.g. 7 to 10 years). Monitoring will provide sufficient written and graphic descriptions of bank conditions for the MBRT 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 the bank has met all the required success criteria.

5. During the permit review process, the permit applicant will perform an assessment of the project site in order to determine the necessary compensation required for a proposed project. If a bank is to be used to satisfy the mitigation debt, the assessment methodology must be the same that was used to assign credit to the bank. However, required credits for unavoidable impacts will be subject to agency review and adjustment.

6. An account ledger shall be maintained by the bank sponsor detailing each transaction (withdrawal from the bank). This ledger shall be submitted to the MBRT annually summarizing bank activity and balances for the preceding calendar year.

E. Standards For Use of the Bank

1. 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.

2. All projects using mitigation banking shall have met the Section 404 avoidance and minimization sequencing criteria and the following on-site mitigation determination sequence: (1) no practicable on-site mitigation opportunities exist and off-site mitigation has been determined to be appropriate; (2) limited on-site mitigation opportunities exist and 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.

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

- Clean Water Act [33 U.S.C. 1251 et seq.].
- National Environmental Policy Act [42 U.S.C. 4321 et seq.] and implementing regulations.
- The Fish and Wildlife Coordination Act [16 U.S.C. 661-666(c)].
- The Rivers and Harbors Act of 1899 [33 U.S.C. 403].
- 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].
- Federal Permit Regulations [33 C.F.R., Part 320 to 330] including interpretive guidance provided by the U.S. Army Corps of Engineers.
- Magnuson Fishery Conservation and Management Act [16 U.S.C. 1852]
- Coastal Zone Management Act [16 U.S.C. 1451 et. seq.]
- S.C. Coastal Management Program [SCCMP, ratified by S.C. General Assembly February 19, 1979 (Ratification No. 19)]
- S.C. Regulation 61-101, Water Quality Certification.
- S.C. Pollution Control Act [48-1-10, et seq, S.C. Code of Laws, 1976]
- Endangered Species Act, as amended [16 U.S.C. 1531-1543]

- Federal Agriculture Improvement and Reform Act of 1996 [7 U.S.C. 7201]
- Permits for Construction in Navigable Waters [SCDHEC Reg. 19-450]
- National Historic Preservation Act of 1966, as amended [16 U.S.C. Sec. 470]
- Protection of Historic Properties (36 CFR Part 800]

4. To minimize the net loss of wetland or aquatic system functions on a watershed and ecosystem level, use of an established bank will be limited to projects within its designated Service Area. Service areas for each bank will be established utilizing the South Carolina Ecoregions and 8-Digit Hydrologic Units Map in Attachment B. The MBRT will assign the bank's Service Area based on its location on a case-by-case basis, generally falling within the following guidelines.

- a. The primary Service Area for the bank will be bounded by the 8-Digit HUC code and the physiographic province in which its located.
- b. Secondary Service Areas for the bank may be established in adjacent 8-Digit HUC units within the same physiographic province and same hydrologic unit sub-regional boundary (i.e., same 3-digit HUC code or same major drainage basin).
- c. A Tertiary Service Area for the bank may be established in nonadjacent 8-digit HUC units that are within the same physiographic province and same hydrologic unit sub-regional boundary. However, the bank may not be used to mitigate for impacts in the Tertiary Service Area if the impact site is located in the Primary or Secondary Service Area of any other currently operating bank which is suitable for the impact type.
- d. Since physiographic provinces do not follow HUC unit boundaries and vary substantially in size, the Service Area boundaries for the bank may be adjusted slightly to the physiographic boundaries. The major "hard" physiographic boundary lines are the Coastal Plain, Sandhills, Piedmont and Mountains. Also the HUC units may be divided on a case by case basis where deemed warranted by the MBRT.
- e. The use of the bank outside the Primary Service Area will include an associated incremental increase in the credits required to mitigate an impact in accordance with the compensatory mitigation SOP and the banking agreement.
- f. Use of the bank outside the authorized Service Areas will only be allowed on a case-by-case basis.

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). It is the responsibility of the permit applicant to demonstrate to the permitting agencies that project-related impacts will be successfully offset by the bank prior to its use. Key elements for no net loss functional replacement determinations are: (1) within watershed replacement (see number 4 above); and (2) in-kind resource replacement based on wetland or aquatic resource type.

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.

III. OTHER PROCEDURES

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

B. The MBRT and the Banking Committee will review this guidance biannually for adequacy, applicability and/or acceptability. Any proposed modifications, additions or deletions to this guidance will be considered by the Banking Committee at the request of the MBRT, and upon consensus, necessary changes will be made.

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.

IV. EXISTING APPROVED MITIGATION BANKS

Previously approved banks will generally operate in accordance with their permitted procedures and previously defined service areas. However, the MBRT, in their operational monitoring role, may through consensus, modify operation and use of these banks if success criteria are not being met and/or such operation no longer results in satisfactory provision of compensatory mitigation.

While the MBRT will strive for consistency in establishment of mitigation banks following the guidance provided in this document, it is important to note that individual mitigation banking agreements reflect site-specific considerations and temporal state-of-the art design. Therefore, existing banks, particularly those established prior to this and earlier guidance documents, should not be viewed as precedent setting relative to decisions on acceptability, service area, crediting, debiting, and other factors.

-- End --

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 local governments and/or tribes. The primary purpose of the committee is the establishment and periodic review of these procedures, 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 to wetlands and/or aquatic resources 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 or aquatic system impacts resulting from a proposed project for which compensation is required.

Creation: The establishment of a wetland or other aquatic system where one did not formerly exist (e.g. convert an upland to wetland or Water of the U.S.).

Credit: A unit measure representing the aquatic and/or wetland functions gain at a mitigation bank.

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 aquatic system impact that reduces/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.

Enhancement: Activities conducted in or contiguous to existing wetlands or other aquatic resource areas that increase one or more aquatic functions.

Function: Physical or biological processes that take place in wetland and aquatic 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.

Historic Properties: Historic and prehistoric sites, districts, buildings, structures and objects.

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

MBRT: See "Mitigation Bank Review Team"

Mitigation: The reduction of adverse environmental impacts from development projects which involves a process to avoid, minimize or compensate for project induced impacts. 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 alternatives analysis is often an element of this process.

Mitigation Bank: A site where wetlands or Waters of the U.S. are restored, enhanced, created, and/or preserved expressly for the purpose of mitigating unavoidable adverse wetland or aquatic site losses in advance of development actions when compensatory mitigation at the development site is impracticable or not as environmentally beneficial.

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

National Register Eligible: A term used to designate significant historic properties that have the potential to be listed in the National Register of Historic Places based on the National Historic Preservation Act of 1966, as amended (16 U.S.C. Section 470).

Operation: The actual conduct of credit withdrawal transactions in a functioning mitigation bank in order to compensate for unavoidable losses to wetlands or other Waters of the U.S. 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 or aquatic system type with wetlands or aquatic system types 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 or aquatic 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 or other aquatic resources 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.

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.

SIGNATORY PAGE

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

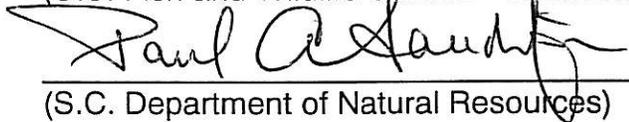
Signatory

Date

(U.S. Army Corps of Engineers - Charleston District)

(U.S. Environmental Protection Agency - Region IV)

(U.S. Fish and Wildlife Service - Charleston)



(S.C. Department of Natural Resources)

3/18/02

(S.C. Department of Health and Environmental Control)

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

Original signed copies of the agreement are on file at the S.C. Department of Health and Environmental Control, Bureau of Water, EQC, 2600 Bull Street. Columbia, SC 29201

SIGNATORY PAGE

We, the undersigned, agree to abide by this joint state/federal administrative procedures for the establishment and operation of 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)	_____
_____ (U.S. Environmental Protection Agency - Region IV)	_____
_____ (U.S. Fish and Wildlife Service - Charleston)	_____
_____ (S.C. Department of Natural Resources)	_____
<u>C. Earl Hunter</u> (S.C. Department of Health and Environmental Control)	<u>7/8/02</u>
<u>Brian M. Stiles</u> (U.S. Department of Agriculture - Natural Resources Conservation Service)	<u>6-12-02</u>

Original signed copies of the agreement are on file at the S.C. Department of Health and Environmental Control, Bureau of Water, EQC, 2600 Bull Street. Columbia, SC 29201

SIGNATORY PAGE

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

Signatory

Date

(U.S. Army Corps of Engineers - Charleston District)

(U.S. Environmental Protection Agency - Region IV)

Robert J. Banks

(U.S. Fish and Wildlife Service - Charleston)

6/12/02

(S.C. Department of Natural Resources)

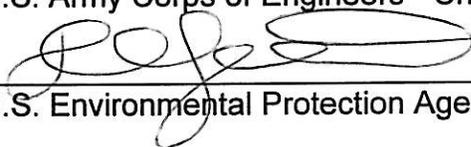
(S.C. Department of Health and Environmental Control)

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

Original signed copies of the agreement are on file at the S.C. Department of Health and Environmental Control, Bureau of Water, EQC, 2600 Bull Street. Columbia, SC 29201

SIGNATORY PAGE

We, the undersigned, agree to abide by this joint state/federal administrative procedures for the establishment and operation of 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) 	_____ 6/18/02
_____ (U.S. Environmental Protection Agency - Region IV)	_____
_____ (U.S. Fish and Wildlife Service - Charleston)	_____
_____ (S.C. Department of Natural Resources)	_____
_____ (S.C. Department of Health and Environmental Control)	_____
_____ (U.S. Department of Agriculture - Natural Resources Conservation Service)	_____

Original signed copies of the agreement are on file at the S.C. Department of Health and Environmental Control, Bureau of Water, EQC, 2600 Bull Street. Columbia, SC 29201

SIGNATORY PAGE

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

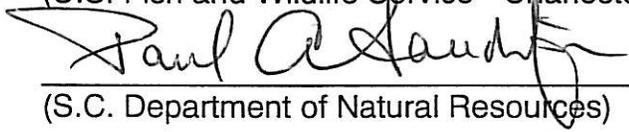
Signatory

Date

(U.S. Army Corps of Engineers - Charleston District)

(U.S. Environmental Protection Agency - Region IV)

(U.S. Fish and Wildlife Service - Charleston)



(S.C. Department of Natural Resources)

3/18/02

(S.C. Department of Health and Environmental Control)

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

Original signed copies of the agreement are on file at the S.C. Department of Health and Environmental Control, Bureau of Water, EQC, 2600 Bull Street. Columbia, SC 29201

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

IV	Purpose of the document.
IV	Title of document and official name of bank.
IV	List of signatories.
IV	Effective date.

I. PREAMBLE

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

II. ESTABLISHMENT AND OPERATION OF THE BANK

1. Mitigation Plan
 - A. Ecosystem goals.
 - B. Description of baseline and reference conditions.
 - C. Description of work to be done including detailed drawings.
2. Performance Criteria
3. Implementation timetable.
5. Financial assurances to be secured by the sponsor.
6. Provisions covering long term protection of bank properties (Conservation Easement).
7. Debiting Plan (crediting and debiting procedure).
 - A. Determination of available credits including methodology used.
 - B. Credit schedule (credit availability at designated time or success criteria intervals).
 - C. Identification of kind and location factors.
8. Provisions for sale and transfer of credits.
 - A. Sequencing requirements
 - B. Service Area
9. Procedures for release of financial assurance.
10. Provisions for site audits by the MBRT.
11. Accounting Procedures.

III. LONG-TERM MANAGEMENT AND MAINTENANCE

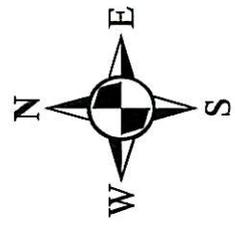
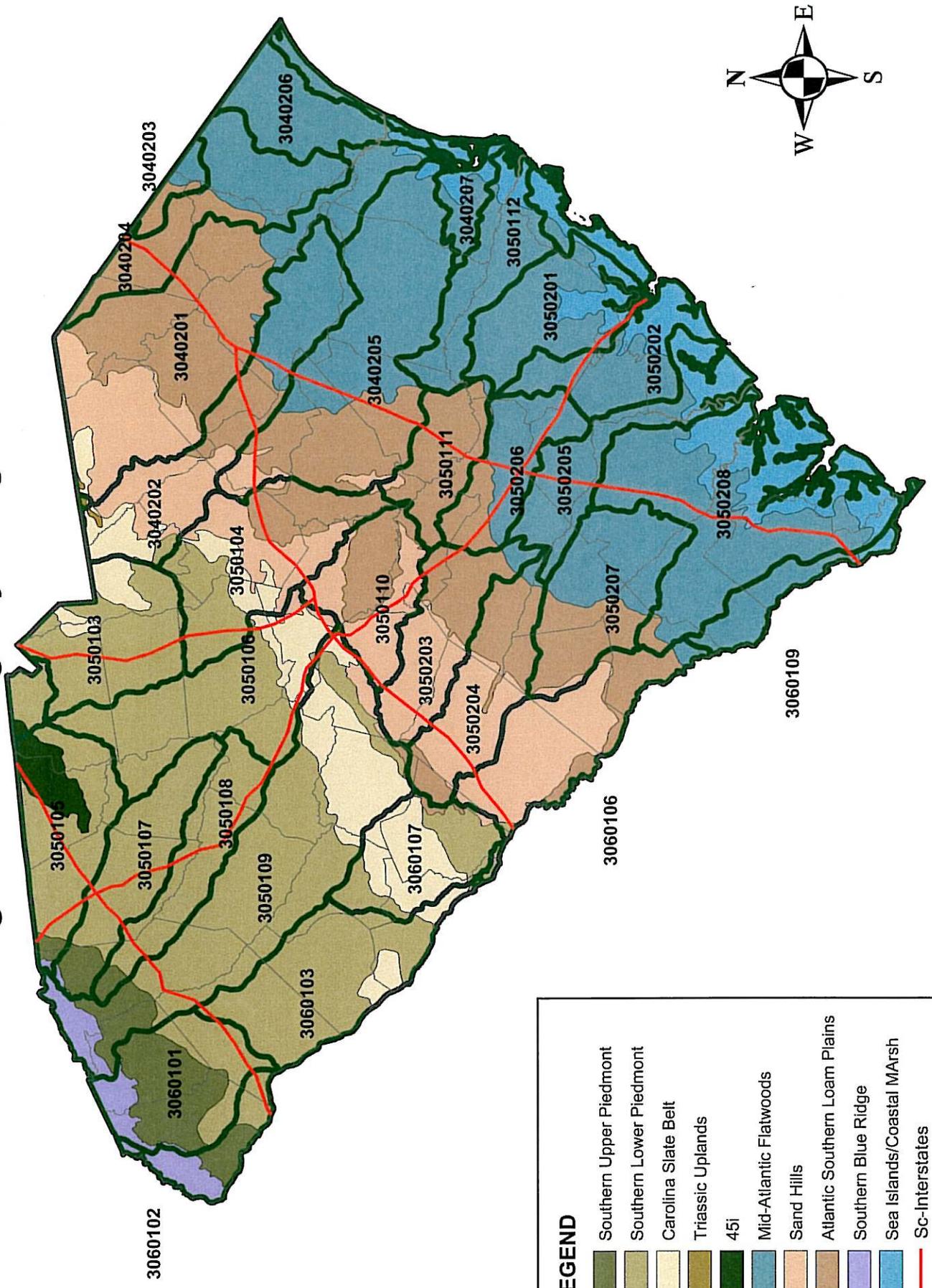
1. *Force majeure* clause (identification of catastrophic events beyond sponsor's control).
2. Long-term management responsibilities.
 - A. Wildlife/habitat management
 - B. Forest management
 - C. Control of exotics.
3. Contingency actions in event of partial or total bank failure.
4. Provisions for bank termination in the event of bank failure.

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 or other aquatic sites 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.

ATTACHMENT C
SERVICE UNIT MAP

South Carolina Ecoregions and 8-Digit Hydrological Units



LEGEND

- Southern Upper Piedmont
- Southern Lower Piedmont
- Carolina Slate Belt
- Triassic Uplands
- 45i
- Mid-Atlantic Flatwoods
- Sand Hills
- Atlantic Southern Loam Plains
- Southern Blue Ridge
- Sea Islands/Coastal MArsh
- Sc-Interstates
- County