



DATE: August 3, 2020

MEMO TO: John Wasik, Chair
Planning Committee

FROM: James L. Anderson
Director of Natural Resources

RECOMMENDATION: Provide Policy Direction regarding a potential mitigation bank at one of various preserves, proposed by Resource Environment Solutions (RES).

STRATEGIC DIRECTIONS SUPPORTED: Conservation; Leadership; Organizational Sustainability;

FINANCIAL DATA: If approved by the District, Interagency Review Team (IRT), and RES, the mitigation bank will consist of (at no cost to the District) new or restored wetlands and restored uplands at a District Forest Preserve. As part of the mitigation bank agreements, RES would be required to provide funds for long-term management of the mitigation bank. The District would be required to maintain the bank, in perpetuity, after IRT approves the bank and after RES receives final signoff from the IRT.

BACKGROUND: A mitigation bank is a wetland, stream, or other aquatic resource area that has been restored, established, enhanced, or (in certain circumstances) preserved by a mitigation bank developer, with the intent that the restoration values are purchased by other developers as compensation for the unavoidable impacts of the other developers' projects to aquatic resources, to the extent permitted under Section 404 of the federal Clean Water Act, or a similar state or local wetland regulations.

The approval and administration of mitigation banks is completed by the IRT which is a three-member team with representatives from the US Army Corps of Engineers, US Fish and Wildlife Service and US Environmental Protection Agency.

The value of a bank is defined in "compensatory mitigation credits." As stated above, the developer of the mitigation bank would sell these credits to developers to offset, or mitigate, the impact on wetlands of their developments. In some cases, the "developer" causing the impact is another governmental agency constructing a road, trail, or other public works project. All mitigation banks require the mitigation bank developer to provide for the perpetual ecological management of the bank, either through the land owner or through the designation of a long-term land management party.

Recently, RES, a global renewable energy corporation, approached the District and the Lake County Stormwater Management Commission about the possibility of locating a mitigation bank on District land. RES has conducted a preliminary analysis and selected three preserves (Dutch Gap, Prairie Stream, and Duck Farm) as possible locations for a mitigation bank. All three preserves are located in the Des Plaines River watershed, which has the need for wetland mitigation credits. There are no credits available in the Des Plaines River Watershed at this time.

The advantages of allowing a mitigation bank to be created on District land include:

- Mitigation banks, by design, create larger wetland complexes. Examples of larger wetland complexes are Pine Dunes (a tollway mitigation project), Sedge Meadow (an IRT approved bank) and Rollins Savanna (grant funded restoration) Forest Preserves.
- Mitigation banks, because they are larger, are more likely to succeed and provide functioning wetlands than smaller parcels of mitigated wetlands.
- The mitigation bank developer would restore wetlands and uplands, and manage them for 5-10 years, at no cost to the District. Sometimes, the developer will also provide public access facilities.
- The mitigation bank developer must post a cash escrow for the long-term management of the mitigation bank before turning it over to the District. The amount of the cash escrow is a percentage of the value of the mitigation bank credits, as determined by the IRT.

The concerns about allowing a mitigation bank on District land might include:

- The existence of the mitigation bank would provide a legal means of impacting and in some cases filling smaller remote wetlands.
- A developer who causes a wetland impact in one watershed, may purchase mitigation credits from a mitigation bank outside the impacted watershed (although it will be required to pay more to purchase credits outside the impacted watershed). When that happens, the original watershed experiences a net loss from the impact (e.g., reduced wetland size or functionality) that might never be directly mitigated.
- The existence of the mitigation bank “encourages” increased development elsewhere in the watershed or outside the watershed
- The District would be responsible for perpetual management of the mitigation bank after sign-off by the IRT. Any costs that exceed the escrow account would be the District’s responsibility.
- The District would be establishing long-term contractual relationships and commitments with a private mitigation bank developer and the IRT and (as the District has experienced) it is possible that disputes and expenses will arise from those relationships.
- The District could be perceived as facilitating or promoting development.

If policy direction is given to move forward with the due diligence process, the process would include at least the following steps:

- RES would develop concept plans and (if the project moves forward) detailed development plans for the mitigation bank concept, all subject to review and approval by the IRT and the District.
- RES would work with the IRT regarding the amount and value of banking credits available in the mitigation bank.
- The proposed project would be subject to final approval by the IRT.
- The District would negotiate a project agreement with the IRT, and a license agreement with RES allowing them to develop, operate, and maintain the mitigation bank on District property. Both agreements would be subject to Committee recommendation and Board approval.

In summary, if policy direction is given to move forward, the District will be able to investigate the restoration of one of the proposed locations at no cost to the District.

REVIEW BY OTHERS: Executive Director, Chief Operations Officer, Director of Finance, Corporate Counsel.