



DATE: August 31, 2020

MEMO TO: John Wasik, Chair
Planning Committee

FROM: James L. Anderson
Director of Natural Resources

REQUEST: Provide Policy Direction regarding using mitigation banks as a means for restoration of various preserves.

STRATEGIC DIRECTIONS SUPPORTED: Conservation; Leadership; Organizational Sustainability.

FINANCIAL DATA: If approved by the District, the mitigation bank(s) will consist of (at no cost to the District) new or restored wetlands and restored uplands at a District Forest Preserve or Preserves. If a mitigation bank(s) were approved, the District would also enter into an agreement with the mitigation bank developer that would require the developer to provide funds for the District's long-term management of the mitigation bank. After the bank receives final sign-off, the District would be required to maintain the bank, in perpetuity,

BACKGROUND: Recently, mitigation bank developers have approached the District and the Lake County Stormwater Management Commission about the possibility of locating a mitigation bank on District land. Current interest is within the Upper Des Plaines River Watershed, where there are no existing wetland mitigation credits available. Credits are available in the Fox River Watershed and other governmental agencies are discussing mitigation banks in the Lake Michigan Watershed.

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 values of the restored, enhanced, or created aquatic resources will be purchased by various real estate developers or governmental agencies completing public works projects to mitigate, and as compensation for, the unavoidable impacts of their development projects to aquatic resources, all 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 are administered by the Interagency Review Team (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 values of the restored, enhanced, or created aquatic resources within a mitigation bank are defined in "compensatory mitigation credits." As stated above, the mitigation bank developer creating and managing the mitigation bank would sell these credits to developers to offset, or mitigate, the impact on wetlands of developments. In some cases, the "developer" causing the impact is another governmental agency constructing a road, trail, or other public works project. The "compensatory mitigation credits" includes the following costs: land value, costs of permit application and approval, costs of monitoring and management, and the funding of an escrow account for long-term management.

The IRT, for all mitigation banks, require the mitigation bank developer to provide for the perpetual ecological management of the bank, either through the owner of the mitigation bank or through the designation of a long-term land management party.

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 than smaller parcels of mitigated wetlands to succeed and provide functioning wetlands.
- The mitigation bank developer would restore wetlands and uplands, and manage them for 5-10 years, all 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 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 were given to move forward, the District would issue a Request for Proposals, asking mitigation bank developers to submit conceptual proposals for mitigation banks at District preserves, identified by the developers. After assessing the responses, District staff would report back to the Committee, which could include a recommendation that Committee authorize staff to pursue one or more of the conceptual mitigation bank proposals from a selected firm or firms.

If the project moves forward, the process would include at least the following steps:

- The mitigation bank developer would prepare detailed development plans for the mitigation bank, consistent with the concept plan in its proposal, all subject to review and approval by the IRT and the District.
- The banking firm 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 the mitigation bank developer allowing it 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 possibility of a mitigation bank for the restoration of Forest Preserve land at no cost to the District.

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