Technical Advisory Group
Position Paper

Subject: Mitigation Banks

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Issue: Hillsborough County currently has very few mitigation banks other than for transportation projects. Should the Environmental Protection Commission consider taking steps to encourage the development of private and/or public banks?

Hillsborough County currently has one permitted mitigation bank (Tampa Bay Mitigation Bank). Mitigation banks should be encouraged on a watershed/regional scale. Both public and private mitigation banks should be developed in Hillsborough County. Banks should be well distributed throughout the county, should be focused on preserving existing habitats now, rather than on complex re-engineering to acquire credits in the future. It will/can be difficult to encourage both public and private banks in the same area. Private banks typically cannot compete with public banks due to land costs. Also, since public lands are already in preservation, there is more net benefit to encouraging private banks (dissenting opinion: public lands are already in the public trust and should be managed with sufficient annual budgets to assure best management practices and restoration of wetland and upland habitats as necessary). Banks are a good way to reward good land stewards and offer conservation opportunities and options to private landowners seeking development.

- List and provide examples of systems used by Federal, State or other local agencies that could serve as a model.
  1. See Process Subcommittee topic paper.
  2. See the EPA State Wetland Development Protection Program. The EPA is currently developing rules for compensatory mitigation that appear to be a good model.
  3. The Tampa Bay Estuary Program (TBEP) is initiating an effort to identify wetland mitigation opportunities in the bay and its watershed. A grant application has been submitted to EPA to compete for funds to develop this combined regulatory planning effort. EPC should work with TBEP to develop wetland mitigation opportunities.
  4. The Corps of Engineers (COE) information concerning COE's involvement in mitigation banking is located at http://www.saj.usace.army.mil/regulatory/permitting/mitigation/mBanks.htm.
  5. The state's ERP program has a good template for mitigation banking, but the Florida Department of Environmental Protection and Southwest Florida Water Management District programs should be compared to St. John's River Water Management District or South Florida Water Management District to ensure consistency.
  6. EPCHC should be knowledgeable about and evaluate banks throughout Florida, and nationwide. The banking industry developed in the early 1990s, and discussions reported from the many regional and national conferences since then provide templates for future banks.

- What is the Net Environmental Benefit, if any?
  1. Urban planning has been evolving, ecosystem planning needs to catch up. Net benefits include the isolation of created wetland types of particular local value (e.g. wading bird

foraging near rookeries and nesting habitats), diversified wildlife corridor protection (upland and wetland preservation, creation and restoration) and mosaic of habitat creation within watersheds at the landscape scale, TMDL regional planning in large treatment areas or reclaimed water wet weather storage lagoons can be placed upstream of protected or created wetlands in banks to assure hydrology and combine public benefits, focuses private money in larger, easier to manage banks.

2. Potential creation of greenways corridors.
3. Net positive results and benefits of banks are: wetland restoration or creation up front, with impacts to occur later; potential water quality and quantity benefits that can be designed in that would be in addition to the wetland creation benefits; preservation of larger tracts of land vs. small mitigation parcels that are typically not managed in the long term; easier maintenance that at small isolated areas; more likely to be successfully maintained and produced desired ecosystem benefits in the long term.
4. Large regional systems, especially if targeting critical habitats (i.e. isolated freshwater – coastal wetlands) provide better ecological functions while protecting and establishing identified habitats of importance; they potentially better support more species rich wildlife communities (based on typical species-area curves) and breeding territories for species with larger territory requirements.
5. Preservation of existing habitats, hydrology, functions, etc. Reduction in risk.

- What are the positive attributes of mitigation banking?
  1. Cost efficiency.
  2. Time expediency (after creation) for users desiring mitigation credits to allow development.
  3. Flexibility.
  4. Mitigation banks can serve multiple purposes, from flood control in upper reaches of watersheds, to water quality benefits and flood control in lower reaches.
  5. Marketplace competition.
  6. Larger functional systems, better tracking and maintenance potentials.
  7. See above. Restoration and preservation opportunities on large, ecologically viable tracts that will be managed in the long term. Rules that are much more stringent apply to banks than to individual site mitigation projects, and no credits may be release until certain goals are met, unlike individual projects, where often the impacts occur, but there is no mitigation for some time, if ever.
  8. Rational review and planning, cost and time efficiency, collective oversight.

- What are the negative attributes of mitigation banking?
  1. Service areas are too large, do not reflect landscape function, and are not tied to watersheds or sub-watersheds.
  2. Banks create spatial consolidation of wetlands in the landscape (if enough banks are not created).
  3. There is a potential loss of wetlands in the highly urbanized centers where many of these systems are likely to be impacted. Mitigation banks legitimize the loss of local systems that are replaced by regionally concentrated systems. However, this would likely happen anyway under the current system.
  4. There is political resistance to banking; the public perception of banking is not supportive.
  5. Strong wetland rules preclude new mitigation bank development. As a result, permitting hurdles are substantial and developing a mitigation bank is potentially cost prohibitive. Potentially not enough banks will be available.

6. There is concern that banks will fail (for multiple potential reasons); concern over the potential for large scale failure.
7. Regulatory authorities have implemented regulations that discourage technically accurate mitigation banking, use flawed science, and lack accountability. A particular criticism is the insistence on planting instead of using recognized successional models and validating the success of the wetland mitigation bank design through successional model success. Insufficiently trained staff have oversight.

    - How could these negative attributes be addressed?
        1. Deny permits that propose to impact important local wetland resources.
        2. Provide Incentives.
        3. Bond monitoring/maintenance.
        4. better training and good science.
        5. Encourage <u>some</u> onsite mitigation if possible and if ecologically sound (i.e. functional) at a minimum of 1:1 (dissenting opinion: review mitigation ratios), and the balance could be addressed in a bank.

- Should the EPC choose to encourage banks what would the recommended mechanism be?
    1. Implement proactive selection of desirable locations for mitigation banks through planning.
    2. EPC will be constrained by existing mitigation banking regulations so EPC should seek to implement SWFWMD's and the federal mitigation banking regulations;
    3. Use of the multi-agency 'Green Book'has lapsed. EPC should determine its applicability.
    4. A special permit that mimics the state rules with provisions noted above.

        - Where could it be written into the Wetland Rule, Chapter 1-11? Or should it be implemented into the Basis of Review?
            1. The current draft language in the Basis of Review is: "For some projects off-site mitigation areas may be preferable to on-site mitigation areas. The applicant is encouraged to explore all the mitigation options available on the project site and within the County such as mitigation banks, offsite regional mitigation areas, and other areas that could utilize the UMAM to offset approved wetland impacts."
            2. Some members of the committee questioned the need for rule to be written. If a rule is written can it mimic/copy SWFWMD rules?
            3. Review existing language; however, generally encourage offsite mitigation if functionality would be demonstrated to be greater than an onsite system, while still providing a portion onsite especially if it's adjacent to an existing system. (i.e. expand a functional wetland.)

        - What would be the Standard Operation Procedure (SOP)?
            1. Mimic existing SOPs; procedures are well defined by federal and state processes; Hillsborough County should participate in inter-agency reviews.
            2. Consult staff attorneys for legal advice.

- How should the fees be adjusted for the monitoring and maintenance reports?
    1. There is some concern about duplication of effort if mitigation banks are already regulated by SWFWMD, why would additional fees be necessary?
    2. The applicant would need to frequently (frequency to be determined based on best science; one author suggested monthly monitoring) monitor the system, similar to current rules, with

inspections from EPC staff prior to the release of any credit units with nominal cost for each staff inspection.

3. This could be a cost savings for applicants who use banks because they would not have to pay EPC monitoring and maintenance (M&M) costs.

Other comments, questions, or concerns:

1. Encourage if functionally proven.
2. Encourage onsite (minimum 1:1) if viable.
3. Target critical habitats.
5. Suggest an internal policy to encourage the development and use of private banks. Don't reinvent the wheel. Use procedures and guidelines set up by state and federal agencies otherwise the local process could be too burdensome for many applicants.
6. Re-evaluate the application of UMAM to mitigation banks, modify the process where known flaws exist or newly determined inconsistencies are identified.