

# BROWNFIELD & MITIGATION BANK

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# What are Brownfields in Florida?

- A “Brownfield Site” is real property, the expansion, redevelopment or reuse of which may be complicated by **actual or perceived** environmental contamination. § 376.79(3) F.S.



# What are Brownfields in Florida?

- A “Brownfield Area” is a contiguous area of one or more brownfield sites, some of **which may not be contaminated**, and which has been **designated by a local government by resolution**. §376.79(4) Florida Statutes (F.S.)



# Who is involved with Brownfields?

- PRFBSR – Person responsible for brownfield site rehabilitation
- Local government – City or County can designate a Brownfield Area by resolution
- Florida Department of Environmental Protection (FDEP) - State regulatory authority – Brownfield Site Rehabilitation Agreement (BSRA)

## Usual Brownfield Project Team:

- Environmental Counsel
- Geologists and Engineers



# What is the Brownfield Process?

Brownfield Area  
Designation

Identification of  
PFRBSR

Execution of a  
BSRA

Implementation of  
BSRA

SRCO

PRFBSR - Person  
responsible for brownfield  
site rehabilitation

BSRA - Brownfield Site  
Rehabilitation Agreement

SRCO - Site Rehabilitation  
Completion Order

# Why Involve the Brownfields Program?

## State of Florida Brownfield Program Incentives

- Job Creation Bonus Refund
  - Up to \$2500 per job created\*
- Tax exemption on building materials for affordable housing projects
- Loan guarantee program
  - 50% loan guarantee on site rehabilitation and development
  - 75% for affordable housing/health care providers
- Voluntary Cleanup Tax Credits (VCTC) for tasks “directly related to site rehabilitation”

# Voluntary Cleanup Tax Credits

<b>Tax Credit</b>	<b>Application Frequency</b>	<b>Maximum Credits for Costs Incurred</b>	
Site Rehabilitation	Annually	50%	\$500,000
No Further Action Bonus (SRCO)	Once	25%	\$500,000
Affordable Housing Bonus	Once	25%	\$500,000
Health Care Facility Bonus	Once	25%	\$500,000
Solid Waste	Once	50%	\$500,000



## Hypothetical Site

Investor Group (client) wants to redevelop the industrial portion of this site, but seller says whole property must be purchased.



# Hypothetical Site

KH discusses potential BF and mitigation bank with agricultural fields

Phase I/II completed to evaluate potential environmental impacts

Phase II identified arsenic and OCPs in the soil along abandoned rail spur bisecting the property

Client approaches the City about designating the property as a BF Area

City Resolution passes and client enters into BSRA with FDEP to remove impacted soil

Assessment and cleanup of impacted soil completed

FDEP issues SRCO



# Hypothetical Site Timeline

## Brownfields

- Phase I/II – 2-3 months or shorter
- BF Area designation/BSRA – 2-3 months
- Site Assessment – 2-3 months
- Remediation – 6-9 months
- SRCO – 1 month
- VCTC reimbursement – 2-3 years

## Mitigation Bank

**Compensatory Mitigation Rule  
Timeline for Bank or ILF Instrument Approval\***

		Event	# of Days**	
Phase I		Optional Preliminary Review of Draft Prospectus	30	DE provides copies of draft prospectus to IRT and will provide comments back to the sponsor within 30 days.
	<b>Sponsor Prepares and Submits Prospectus</b> -DE must notify sponsor of completeness w/in 30 days of submission-			
<b>Complete Prospectus Received by DE</b>				
Phase II	Day 1**	Public notice must be provided within 30 days of receipt of a complete prospectus	30	
	Day 30	30-Day Public Comment Period	30	
	Day 60	DE must provide the sponsor with an initial evaluation letter within 30 days of the end of the public comment period.	30	15
Day 90				
<b>Sponsor Considers Comments, Prepares and Submits Draft Instrument</b> -DE must notify sponsor of completeness w/in 30 days of submission-				
<b>Complete Draft Instrument Received by IRT Members</b>				
Phase III	Day 1	30-day IRT comment period begins 5 days after DE distributes draft instrument to IRT members	30	90
	Day 90	DE discusses comments with IRT and seeks to resolve issues - # of days variable-	60	
<b>Sponsor Prepares Final Instrument</b> -Sponsor provides copies to DE and all IRT members-				
<b>Final Instrument Received by DE &amp; IRT</b>				
Phase IV	Day 1	DE must notify IRT members of intent to approve/not approve instrument within 30 days of receipt.	30	45
	Day 30	Remainder of time for initiation of dispute resolution process by IRT members	15	
Day 45	<b>INSTRUMENT APPROVED/NOT APPROVED, or DISPUTE RESOLUTION PROCESS INITIATED</b>			

Total Required Federal Review (Phases II-IV): \$225 Days

\*Timeline also applies to amendments

\*\*The timeline in this column uses the maximum number of days allowed for each phase.

EPA/Corps draft 4/02/08

# What is Mitigation Banking?

One form of providing compensatory mitigation, which is the offset of the chemical, biological, and physical functions from permitted impacts to aquatic resources.

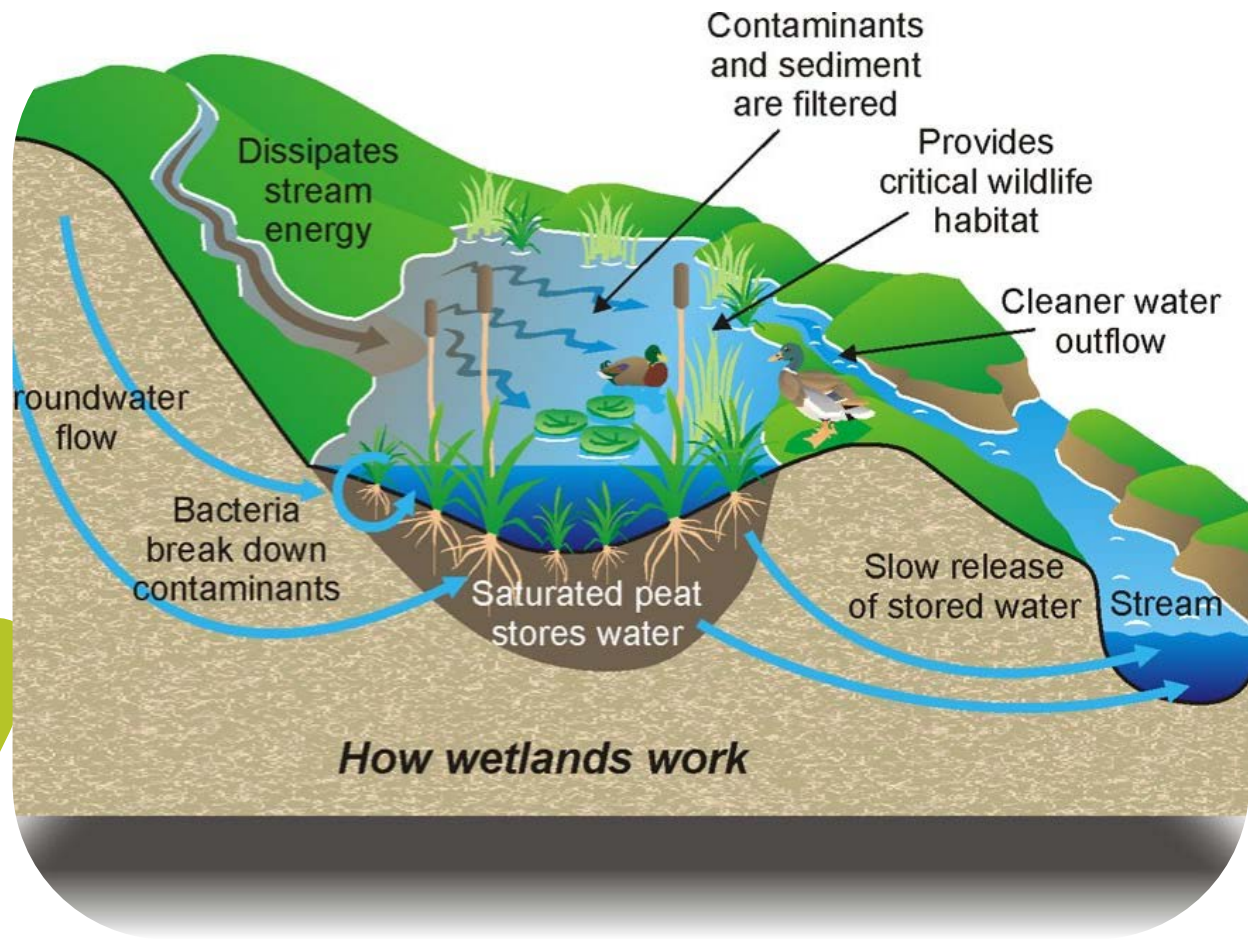
## Key Points:

1. Mitigation Banks are profitable businesses which sell mitigation “credits” to those impacting wetlands in development.
2. “Credits” prices: \$100,000 to \$400,000 each

# That's a whole lot to unpack . . .

Key difference between mitigation and brownfield programs = brownfield programs are incentive based to encourage redevelopment, while buying mitigation is compensation for impacting wetlands and streams.





## Why protect aquatic resources?

(full disclosure – image from the internet.)

# But, still, what is mitigation?

- Clean Water Act (1972)
- Florida Environmental Reorganization Act (1993)
- Compensatory Mitigation Rule (2008)


*Hierarchy for permitting –  
avoid, minimize, then mitigate*

# Methods of Mitigation (in order of preference)

1. Mitigation Banks
2. In lieu fee Programs
3. Permittee Responsible Mitigation



# Mitigation Banks

- Provide functional uplift in advance of impacts
  - Large scale
  - Accountability
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- A decorative graphic on the right side of the slide, consisting of a large, rounded green shape at the bottom and a smaller, pointed orange shape above it, both pointing towards the right.



# Key Components

- Draft Prospectus
  - Prospectus
  - Mitigation Banking Instrument
  - Mitigation Plan
  - Conservation Easement
  - Financial Assurances
  - Long-Term Management
  - Stewardship Funding
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# Key Players

- Bank Sponsor
- Landowner
- Conservation Easement Holder
- Interagency Review Team
  - U.S. Army Corps of Engineers, Jacksonville District (Corps)
  - National Marine Fisheries Service (NMFS)
  - U.S. Fish and Wildlife Service (FWS)
  - Environmental Protection Agency (EPA)
  - Florida Fish and Wildlife Conservation Commission (FFWCC)
  - Florida Department of Environmental Protection (DEP) or
  - St. Johns River Water Management District (SJRWMD) or
  - South Florida Water Management District (SFWMD) or
  - Southwest Florida Water Management District (SWFWMD)



Back to our hypothetical . . .

## PROJECT TEAM FOR BROWNFIELD / MITIGATION BANKING

1. Environmental Counsel
2. Geologists/Engineers
3. Wetlands Professionals
4. Hydrologists

# Talk to the Client – Investor Group

- Who will be the sponsor?
  - What does the market for “credits” look like – supply and demand?
  - What will the project cost?
  - What are the risks?
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# Speaking 2 Languages

## Brownfields

- Credits – tax credits to offset costs of remediation
- Monitoring – collecting samples over time to evaluate contamination
- Financial Assurance – make sure PRFBSR has means to remediate
- Perpetuity – the length of responsibility

## Mitigation

- Credits – mitigation bank product
- Monitoring – hydrology, plant growth, stability, credit release
- Financial Assurance – make sure the mitigation is there.
- Perpetuity – the length of responsibility

# More Information

Florida Process –

<http://dep.state.fl.us/water/wetlands/mitigation/synopsis.htm>

USACE RIBITS –

[https://ribits.usace.army.mil/ribits\\_apex/f?p=107:2](https://ribits.usace.army.mil/ribits_apex/f?p=107:2)

FDEP's Brownfield Homepage:

<http://www.dep.state.fl.us/waste/categories/brownfields/default.htm>