

Mitigation Banking

A guide to how the market works, how banks generate returns, and what investors should understand before committing capital.



Bottom line: A mitigation bank is a real asset (land + restoration) that produces a regulated commodity (credits) sold to a buyer pool legally required to purchase. The regulatory preference hierarchy limits competition from alternative mitigation forms. Demand is consistent and driven by regulatory requirements.

1. What Is Mitigation Banking?

Federal law requires any developer who destroys wetlands or streams to offset that damage. Mitigation banks do that work in advance, by restoring ecosystems, earning credits, and selling those credits to developers who need them.

THE CORE IDEA

A regulated environmental marketplace

Under Section 404 of the Clean Water Act, **the Army Corps of Engineers (USACE) must issue a permit before any wetland or stream can be filled or damaged.** As a condition of that permit, developers must "mitigate" the loss. Losses are mitigated either by doing their own restoration or by purchasing pre-approved credits from a *mitigation bank*. The majority elect to buy credits. That is the market.

THE 2008 RULE & MITIGATION HIERARCHY

Banks sit at the top of the regulatory preference order

Federal regulations (33 CFR 332, the "2008 Rule") establish three types of compensatory mitigation: Mitigation Banking, In-Lieu Fee programs, and Permittee-Responsible Mitigation. **Mitigation Banks receive explicit first preference.** If appropriate credits exist within a bank's service area, the USACE strongly favors them over all alternatives. **This regulatory priority is a structural demand protection that benefits investors directly.**

TWO DEMAND DRIVERS

Federal and state requirements both generate credit demand

Section 404 is the primary federal driver, but many states have independent mitigation requirements for impacts to aquatic resources, regardless of federal jurisdictional status. **This means credit demand can exist in a service area even for impacts that fall outside federal Waters of the United States (WOTUS) jurisdiction,** providing a partial buffer against federal regulatory changes.

TWO CREDIT TYPES

Wetland credits and stream credits

Wetland credits are measured in acres; stream credits are measured in linear feet. Both are authorized, priced, and sold within a defined geographic service area set by regulators. **Credits cannot be used outside that boundary, which constrains supply and supports pricing power.**

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Annual US mitigation credit market

2,000+

Active banks in the US

Required

Demand is driven by regulation

2. The Lifecycle of a Mitigation Bank

From raw land to sold credits, a bank moves through nine regulatory phases. Each phase involves milestones that gate both capital deployment and credit release. The timeline from site identification to first credit sale typically runs 2 - 4 years.

1

Prospectus submission

The sponsor identifies a suitable site and submits a Prospectus to the USACE. If deemed complete, the USACE issues a 30-day public notice and schedules a site visit with the Interagency Review Team (IRT). A positive Letter of Initial Evaluation (IEL) follows. Banks with positive IEL are nearly always approved.

2

Baseline monitoring & data collection

Environmental measurements, cultural resource surveys, protected species surveys, and topographic surveys establish existing conditions and refine the restoration approach. Scope is defined in the Prospectus and refined by IEL comments.

3

Draft Banking Instrument (BI)

Using baseline data, a 60% design is prepared and submitted with the Draft Banking Instrument, which is a complete mitigation plan establishing credit types, quantities, service area, performance standards, and the credit release schedule.

4

Final Banking Instrument

Following IRT review, the BI is finalized with 90–100% design. Site protection instruments, financial assurances, and stewardship endowments are also finalized. The USACE issues a Letter of Intent to Approve as a final IRT checkpoint.

5

Bank approval & initial credit release

Upon approval, conservation easements are recorded, endowments are funded, financial assurances are posted, and the first tranche of credits is released and available for sale - before construction begins. This is the first revenue opportunity.

6

Construction

Physical restoration begins within two years of approval: earthwork and planting. Construction typically takes 3–10 months depending on project scale. A second credit tranche is released upon approval of the As-Built report.

7

Monitoring & incremental credit release

Banks are monitored for 5–10 years post-construction (varies by USACE district). Remaining credits are released incrementally as the site meets performance standards defined in the BI, directly linking ecological success to investor revenue.

8

Credit sales (ongoing)

Credits are listed in RIBITS (the USACE national registry) and sold throughout the monitoring period. Credits can be reserved in advance via non-refundable deposits, providing early revenue and demand visibility. Environmental consultants typically source credits on behalf of permit holders.

9

Long-term stewardship

After all credits are released and sold, the site transitions to the Long-Term Steward identified in the BI — typically a land trust or government entity — funded by the stewardship endowment. This concludes the active investment period.

Key point: Credits are released in tranches - at approval, at As-Built, and incrementally through the monitoring period. Revenue is distributed over time, not lump-sum. The credit release schedule in the Banking Instrument is one of the most important financial documents to underwrite.

3. The Economics

The financial model is straightforward: spend capital to build a bank, earn credits through restoration, sell those credits at market rates. The spread between cost and revenue, and the timing of credit releases, drives returns.

REVENUE DRIVER

Credit price × credit volume

Credit prices vary enormously by geography, credit type, and local supply. Markets with limited bank supply and active development command the highest prices. Credits can also be reserved via non-refundable deposits, providing early revenue and reducing price risk on committed volume.

COST STRUCTURE

Land, construction, carry, and endowment

Primary costs: (1) land or easement acquisition, (2) baseline monitoring and permitting, (3) restoration construction, (4) annual monitoring during the performance period (5–10 years), and (5) the stewardship endowment funded at closeout. Carry costs during the permitting phase, before any credit sales, are the most capital-intensive and lowest-return period.

RETURN PROFILE

Strong, predictable margins with multiple exit paths

Confluence Partners targets projects with investor margins of 45% or greater - a function of disciplined site selection, low-cost land acquisition, and efficient project execution. Returns build as credits are released and sold over a 3–8 year horizon. Importantly, mitigation banks are marketable assets at any stage of development: investors who prefer an earlier exit can realize returns through a bank sale, with valuation based on the present value of remaining credit inventory. This combination of strong operating margins and transaction liquidity options makes mitigation banking an attractive alternative asset for patient capital.

What drives value

The most critical factors when underwriting a mitigation bank investment:

FACTOR 1

Service area demand

A bank is only valuable if permitted developers inside its service area need credits. Key question: how much active Section 404 permitting is occurring in this watershed? Infrastructure investment, housing growth, and industrial development drive demand. Awareness of upcoming permitted projects is a significant competitive advantage in credit sales.

FACTOR 2

Competitive credit supply

How many approved or prospective banks operate in the same service area? A service area with one operating bank is fundamentally different from one with five. The USACE and IRT control bank entry, providing some protection for incumbents. The regulatory hierarchy also limits competition from In-Lieu Fee programs.

FACTOR 3

Sponsor track record

Experienced sponsors move through permitting faster, negotiate better credit release schedules, and manage restoration to ecological milestones more efficiently. Sponsor quality is the single most important non-market variable in determining whether a bank performs as projected.

FACTOR 4

Credit release schedule

The BI determines how quickly credits are released. An aggressive schedule accelerates cash flows; a conservative one delays revenue and increases carry. This is negotiated with regulators and reflects their confidence in the sponsor and site design. Early releases — including the initial release at approval — are a key driver of overall project IRR.

4. Risk Factors

Mitigation banking is not without risk. Below are the primary categories investors should evaluate before committing capital.

High	Permitting timeline	Banking Instrument approval can stretch well beyond projections. Regulatory agencies are understaffed and processes are iterative. Capital committed during this phase earns nothing.
High	Ecological performance	Credits are released only if the site meets ecological milestones. Poor hydrology, invasive species, or weather events can delay or reduce credit releases, directly impairing projected revenue. Realistic, carefully constructed performance standards can minimize this risk.
Medium	Credit price volatility	Credit prices are set by negotiation, not an exchange. New competing banks or slowdowns in development activity can compress prices from projections.
Medium	Regulatory change (WOTUS)	Changes in the definition of "waters of the US" can expand or contract which impacts require Section 404 permits. WOTUS has been repeatedly litigated across administrations. State-level requirements provide a partial buffer.
Low	Demand disappearing	As long as infrastructure is built in the US, Section 404 impacts will occur. The structural need for mitigation is embedded in federal law and unlikely to disappear, though it can contract during permitting rollbacks. During permitting rollbacks, increases in public/private development tend to offset contractions.
Low	Land value loss	The underlying property retains value as conservation land. Even if credit sales underperform, the land asset typically holds residual value through conservation easement sales or tax deductions or resale as an enhanced recreational property.

Investor takeaway: Mitigation banking rewards early conviction. **Investors who enter at the ground floor, before regulatory approval, access the highest potential returns.** While the pre-permit phase involves regulatory navigation, experienced sponsors with a track record of successful Banking Instrument (BI) approvals convert that uncertainty into opportunity. **A positive Letter of Initial Evaluation is a strong signal; banks that receive one are nearly always approved.** Once the BI is executed and initial credits are released, the project transitions from development-phase risk to execution, and the bulk of the credit inventory, tied to construction and monitoring milestones, represents the core of investor returns.

5. Key Terms

Section 404 / Clean Water Act

The federal statute requiring USACE permits before filling or dredging waters of the US, including wetlands. The legal foundation for all mitigation demand.

USACE (Army Corps of Engineers)

The federal agency that issues Section 404 permits and approves mitigation banks. District offices have significant discretion in credit methodology and release schedules.

IRT (Interagency Review Team)

The multi-agency panel — EPA, US Fish & Wildlife, state agencies, and others — that reviews and approves Banking Instruments alongside the USACE.

The 2008 Rule (33 CFR 332)

The federal regulation that codifies compensatory mitigation requirements, defines the three mitigation types, establishes the preference hierarchy favoring banks, and sets required elements for Banking Instruments and service areas.

Banking Instrument (BI)

The legal agreement between the bank sponsor and regulators establishing all terms: service area, credit methodology, release schedule, monitoring requirements, and stewardship obligations. The governing document of the bank.

Letter of Initial Evaluation (IEL)

Issued by the USACE after the Prospectus site visit. A positive IEL signals the project has merit and is a strong predictor of eventual approval.

Service area

The geographic boundary within which a bank's credits can be used. Typically defined by HUC (hydrologic unit code) watershed boundaries. Buyers must be within the service area to purchase.

Credit release schedule

The milestone-based schedule in the BI specifying what percentage of credits are released, and therefore sellable, at each stage of restoration and monitoring. Releases occur at approval, As-Built, and incrementally through monitoring.

RIBITS

Regulatory In-lieu fee and Bank Information Tracking System, the USACE's national database of approved banks and available credits. The official marketplace where developers and consultants source credits.

Credit reservation

A mechanism allowing developers to reserve credits before formally needed, secured by a non-refundable deposit. Provides early revenue to the bank and demand visibility for investors.

Conservation easement

A legal restriction (held by a land trust or government agency) that permanently limits land use to conservation purposes. Required for all mitigation bank sites.

WOTUS (Waters of the US)

The regulatory definition determining which water bodies fall under Section 404 jurisdiction. Changes to WOTUS — which have been frequent — directly affect the universe of impacts requiring mitigation and thus credit demand.