the Army Corps of Engineers (Corps) or Natural Resources Conservation Service (NRCS)¹ to initiate the planning and review process by the appropriate agencies (e.g., pre-application coordination). The purpose of the prospectus is to provide information to the agencies regarding the general need for and technical feasibility of a bank, as well as its potential for providing compensatory mitigation within a particular watershed or other designated geographic area (i.e., bank service area). Formal agency involvement and review is initiated with submittal of a prospectus. The submittal of a prospectus and establishment of an approved mitigation bank in no way guarantees use of a bank to satisfy compensatory mitigation requirements of any authorized activity.

2. Goal Setting

The overall goal of a mitigation bank should be the establishment or reestablishment of a self-sustaining, functioning aquatic system, which replaces the functions and acreage of wetlands and other aquatic resources anticipated to be adversely affected within a watershed or other designated geographic area. It is desirable to set the particular objectives (i.e., determining the type and character of compensatory mitigation to be developed) for a mitigation bank in advance of site selection. The goal and objectives should be driven by the anticipated mitigation need; the site selection should support achieving the goal and objectives.

3. Site Selection

Consideration should be given to the ecological suitability of a site for achieving the goal and objectives of a bank, i.e., that it possess the physical, chemical and biological characteristics to support establishment of the desired aguatic resources and functions. Size and location of the site relative to other ecological features, hydrologic sources (including the availability of water rights), and compatibility with adjacent land uses and watershed management plans are important factors for consideration. It also is important that ecologically significant upland resources (e.g., mature forests) or cultural sites, or threatened and endangered species habitat are not compromised in the process of establishing a bank. Other factors for

consideration include development trends (i.e., land use changes), habitat status and trends, local or regional goals for the restoration or protection of particular habitat types or functions (e.g., reestablishment of habitat corridors), water quality and floodplain management goals, and establishment of habitat for species of concern.

Banks may be sited on public or private lands. Cooperative arrangements between public and private entities to use public lands for mitigation banks may be acceptable. In some circumstances, it may be appropriate to site banks on Federal, state, tribal or locally owned resource management areas (e.g., wildlife management areas, national or state forests, public parks, recreation areas). The siting of banks on such lands may be acceptable if the internal policies of the public agency allow use of its land for such purposes, and the public agency grants approval. Mitigation credits generated by banks of this nature must be based solely on those values in the bank that are supplemental to the public program(s) already planned or in place, that is, baseline values represented by existing or already planned public programs, including preservation value, may not be counted toward bank credits.

Federally funded wetland conservation projects undertaken via separate authority and for other purposes, such as the Wetlands Reserve Program, Farmers Home Administration fee title transfers or conservation easements, and Partners for Wildlife Program, cannot be used for the purpose of generating credits within a mitigation bank.

4. Technical Feasibility

Mitigation banks should be planned and designed to be self-sustaining over time to the extent possible and pose little risk of failure. The techniques for restoring and creating wetlands and/or other aquatic resources must be carefully selected, since restoration/ creation science is constantly evolving. The restoration of historic or substantially degraded wetlands and/or other aquatic resources utilizing proven techniques increases the likelihood of mitigation success and lessens the loss of valuable uplands due to wetland creation. Thus, restoration should be the first option considered when siting a

In general, banks which involve complex hydraulic engineering features and/or questionable water sources (e.g., pumped) are more costly to develop, operate and maintain, and have a higher risk of failure than banks designed to function with little or no human intervention. The former situations should be avoided to the extent possible. This guidance recognizes that in some circumstances wetlands must be actively managed to ensure their viability and sustainability. Furthermore, long-term maintenance requirements may be necessary and appropriate in some cases (e.g., to maintain fire-dependent plant communities in the absence of natural fire; to control invasive exotic plant species).

Mitigation techniques should be sufficiently well understood and reliable to allow the development of detailed construction plans and specifications for review and approval. When uncertainties surrounding the technical feasibility of a proposed mitigation technique exist, appropriate arrangements (e.g., financial assurances, contingency plans, additional monitoring requirements) should be in place to increase the likelihood of success. Such arrangements may be phased out or reduced once the attainment of prescribed performance standards is demonstrated.

5. Role of Preservation

Credit may be given when existing wetlands and/or other aquatic resources are preserved in conjunction with restoration, creation or enhancement activities, and when it is demonstrated that the preservation will augment the functions of the restored, created or enhanced aquatic resource. Such augmentation may be reflected in the total number of credits available from the bank.

Consistent with existing regulations, policies and guidance, the preservation of existing wetlands and/or other aquatic resources in perpetuity may be authorized as the sole basis for generating credits in mitigation banks only under exceptional circumstances. Under such circumstances, preservation may be accomplished through the implementation of appropriate legal mechanisms (e.g., transfer of deed, deed restrictions, conservation easement) to protect wetlands and/or other aquatic resources, accompanied by implementation of appropriate changes in land use or other physical changes as necessary (e.g., installation of restrictive

Determining whether preservation is appropriate as the sole basis for generating credits at a mitigation bank requires careful judgment regarding a number of factors. Consideration must be given to whether wetlands and/or other aquatic resources proposed for preservation (1) perform physical or biological functions, the preservation of

¹The Corps will typically serve as the lead agency for the establishment of mitigation banks. Bank sponsors proposing establishment of mitigation banks solely for the purpose of complying with the "Swampbuster" provisions of FSA should submit their prospectus to the NRCS.