

SECTION 2 - State/Federal Mitigation Bank Review Team Process

STATE/FEDERAL MITIGATION REVIEW TEAM PROCESS FOR FLORIDA

1. This section describes the joint State/Federal process for the evaluation of wetland mitigation banks in Florida and should be used in conjunction with the attached flow diagram. This process was developed cooperatively by the following agencies:

- 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)
- Natural Resources Conservation Service (NRCS)
- Florida Department of Environmental Protection (DEP)
- St. Johns River Water Management District (SJRWMD)
- South Florida Water Management District (SFWMD)
- Southwest Florida Water Management District (SWFWMD)

2. Background: In February 1994, the DEP and WMDs issued rules for wetland mitigation banking. State recognition of a mitigation bank is through issuance of a Mitigation Bank Permit. In November 1995, the Corps, NRCS, EPA, FWS and NMFS jointly issued Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (herein referred to as the "Federal Guidance"). A key point of the Federal Guidance is that proposed mitigation banks should be evaluated by an interagency Mitigation Bank Review Team (MBRT). Federal recognition of a mitigation bank is through a Mitigation Banking Instrument (MBI) signed by the federal MBRT members and the Banker. Therefore, a mitigation bank in Florida should have both a State permit and a Federal MBI (a Corps construction permit may also be necessary). The goal of the MBRT is to obtain consensus on issues related to the establishment, use, and operation of the banks under review. The State/Federal interagency team developed the MBRT process for Florida in order to streamline the respective evaluation processes and reduce redundancy between the State and Federal reviews.

3. Applicability:

a. General - The MBRT process is a Federal requirement for the evaluation of mitigation banks. The process described herein is based on the procedures described in the Federal Guidance with some minor modifications to allow consistency with State review procedures. The MBRT process is a true joint State/Federal coordinated pre-application phase. However, once the State application has been formally filed and is deemed complete, differing regulatory requirements may not allow for true joint processing to continue. Nevertheless, the interagency team believes it is to the advantage of all parties to participate in the MBRT process because it provides a mechanism for maximum interagency coordination with minimum logistical

complexity. It is anticipated that this will contribute to quick and consistent agency determinations in a cost effective manner.

b. State applicability - Participation in the MBRT process by prospective Bankers is voluntary for the purposes of obtaining required State approval or permits. The MBRT guidance document is not a part of the regulatory requirements or review procedures of the State agencies nor is it intended by the State agencies to be a rule or statement of general applicability. Although participation in the MBRT process will likely streamline the State review process, approval by the MBRT does not constitute or guarantee a State approval or permit.

4. Agency Roles: At the Federal level, the Corps will serve as the MBRT Chair, except in cases where the bank is proposed solely for the purpose of complying with the Food Security Act (i.e., “Swampbuster” provisions), in which case the NRCS will serve as Chair. In accordance with State rules and statutes, either the DEP or a WMD will be the State permitting authority and will serve as the MBRT Co-Chair.

5. Logistics: Due to the overlapping geographic responsibilities of the involved agencies, the variety of ecosystems statewide, and the relatively high volume of mitigation banking activity in Florida, four regional MBRT Forums have been set up as follows:

Forum Name	Geographic Area	Meeting Frequency
St. Johns River MBRT	SJRWMD boundaries	Monthly
South Florida MBRT	SFWMD boundaries	Monthly
Southwest Florida MBRT	SWFWMD boundaries	Monthly
Panhandle - Big Bend MBRT	SRWMD and NFWWMD boundaries	Bi Monthly

Hosting of the regional MBRT Forums will be on a rotational basis between the State and Federal Co-Chairs. Meeting dates will be scheduled in advance with the host agency responsible for distribution of the meeting agenda. *[Note: At the Federal level, each mitigation bank will have its own project-specific MBRT made up of the appropriate Federal agency representatives (See section IIC3 page 58610 of the Federal Guidance for more on agency roles and coordination). The project specific MBRTs should not be confused with the MBRT Forums since a given Forum will usually address more than one mitigation bank. Thus, the agency representatives at a given MBRT Forum could change depending on the agenda item. In most cases however, the same individuals will be members of multiple project-specific MBRTs.]* The regional MBRT Forums should be the primary vehicle for the evaluation of all phases of a mitigation bank (e.g., pre-application presentations, pending application discussions, post-permit issues). The agencies will strive to accomplish all important interactions with Bankers in the MBRT Forums in order to maximize interagency coordination.

6. Interagency Policy Coordination: The joint MBRT process is designed to evaluate the technical aspects of mitigation banking through a team approach. Experience to date has shown that during the technical evaluation of some mitigation banking proposals, policy issues were raised that needed close coordination of policy level decision makers of the respective agencies. Mitigation banks can often be related to public projects already planned or in place. These proposals usually need the input of agency specialists directly involved in the public project to determine if the proposed bank will be compatible. An interagency policy coordination procedure has been developed for the early identification of such proposals (See Appendix E). All mitigation bank proposals should be run through the policy coordination procedure. Projects that are identified as needing special attention should not be reviewed by the MBRT for technical sufficiency until the identified issues are resolved.

State/Federal Mitigation Bank Review Team Process

MBRT=Mitigation Bank Review Team
 DMBI=Draft Mitigation Banking Instrument
 MBI=Mitigation Banking Instrument

PACP=Pre-Application Coordination Phase
 MSA=Mitigation Service Area
 RAI=Request for Additional Information

FIRST CONTACT

- Banker's initial inquiry forwarded to MBRT Chair.
- Chair adds project to MBRT Forum tentative agenda.
- Chair sends banker info-package on State/Fed MBRT process and copies MBRT members.

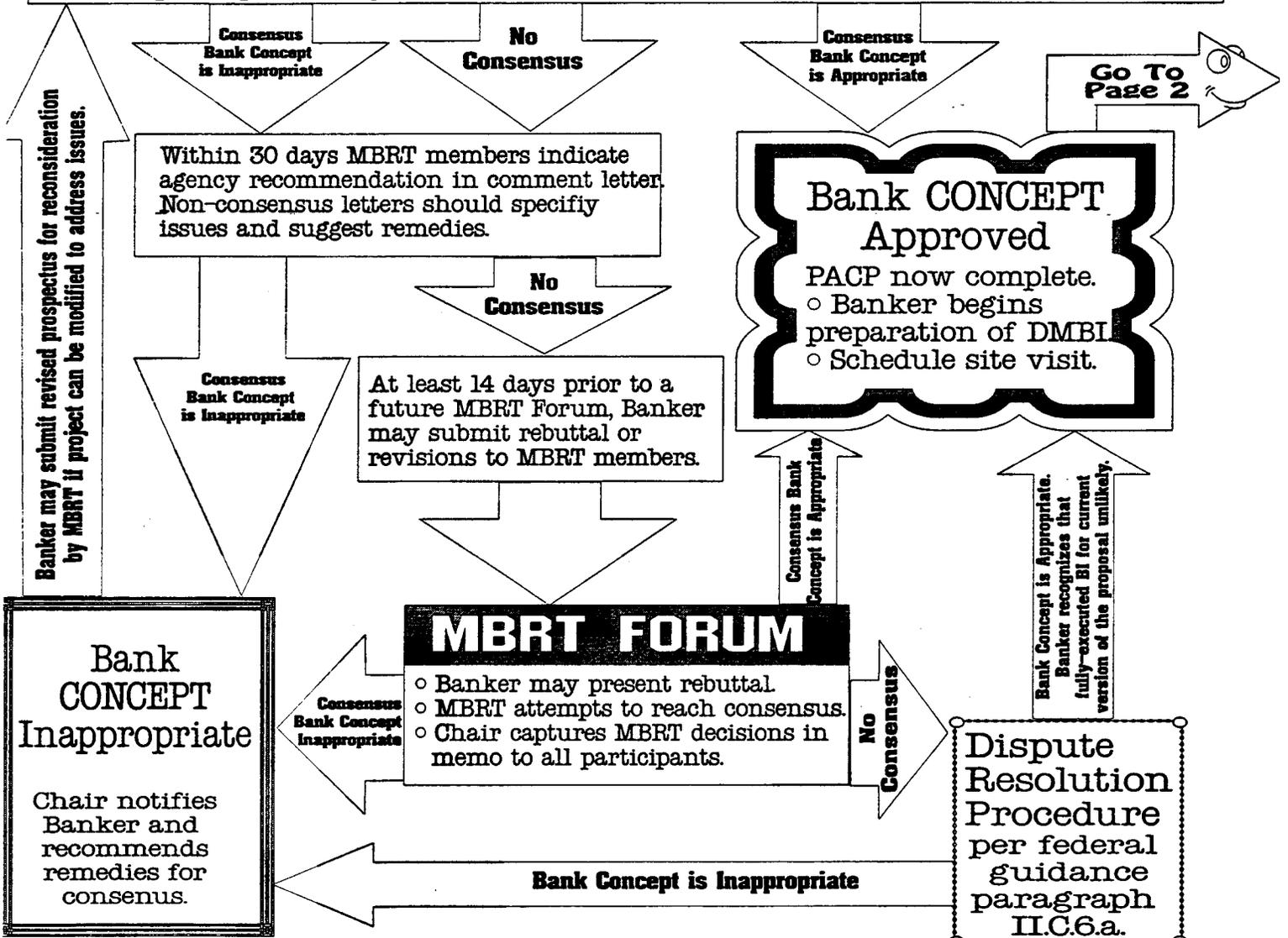
Banker's submittal of prospectus begins the Pre-Application Coordination Phase (PACP). Banker sends prospectus to MBRT members at least 14 days prior to MBRT Forum.

MBRT FORUM

Banker may present project and receive informal MBRT feedback. Provided that a complete prospectus was submitted in advance, MBRT members should be prepared to take a position on:

- Bank site is/is not appropriate.
- Long-term sustainability of the bank is/is not feasible.
- Mitigation plan is/is not appropriate/feasible.
- Banker's proposed method to assess eco-lift is/is not acceptable (actual scoring later in process).
- Basis for Mitigation Service Area limits is/is not appropriate (may fine tune map later).

(NOTE: A site visit may be needed before MBRT members are able to address these issues.)
 Chair captures preliminary MBRT decisions in memo to all participants within 7 days.

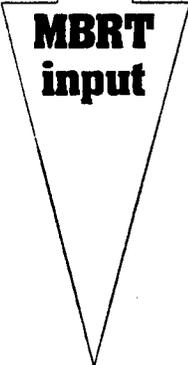




MBRT SITE INSPECTION

- Using the agreed upon functional assessment method, MBRT scores ecological lift between the without-bank and with-bank scenarios.
- MBRT provides additional informal feedback to Banker to aid in preparation of the DMBI.

COMPLETENESS LOOP



- State/Federal Co-Chairs Request Additional Information (RAI) within 30 days.
- All MBRT members will strive to coordinate completeness concerns with respective chairs.
- To the extent possible, State/Fed Co-Chairs will combine concerns for a joint RAI.



- 1) Banker submits DMBI to MBRT members.
- 2) Banker submits State/Federal construction permit applications to respective Chairs.

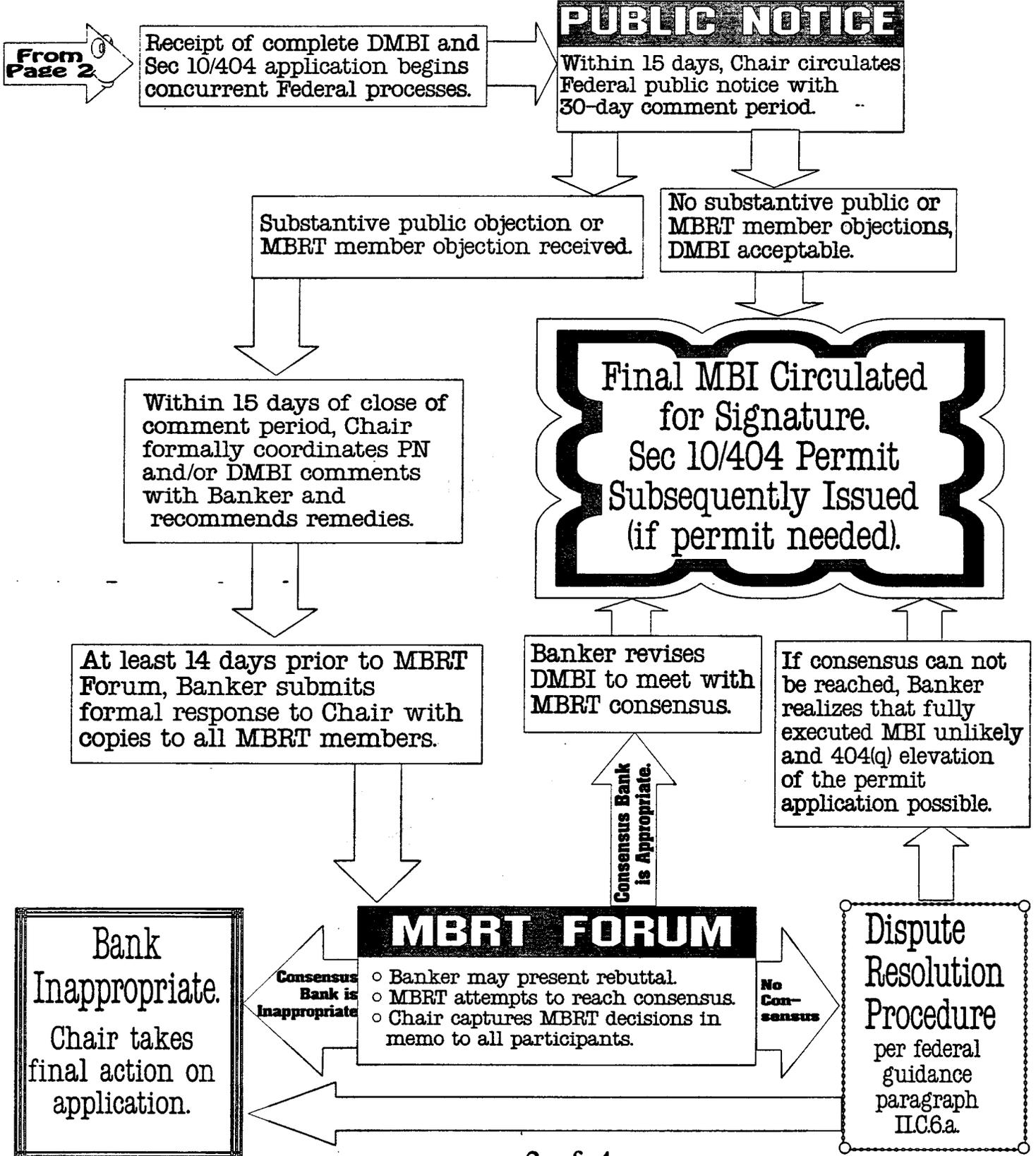
NOTE: differing legal requirements (e.g. time-frames, public notification) of the State and Federal processes may not allow for true joint processing. However, all MBRT members will continue to coordinate issues that surface in order to find compatible solutions.

Receipt of complete DMBI and Sec 10/404 application begins concurrent Federal processes.

Receipt of complete application per WMD/DEP rules begins final State process.



(Federal Processes)



(State Process)

