



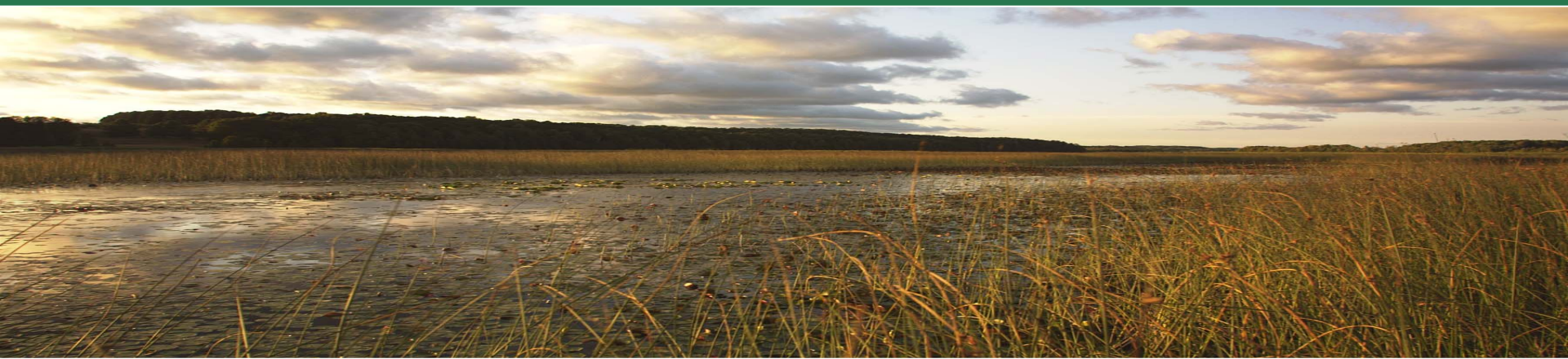
September 21, 2004
4rd Stakeholder Forum on
Federal Wetlands Mitigation
Tampa, FL

National Mitigation Action Plan

Guidance on the Use of Preservation as
Compensatory Mitigation

Mitigation Action Plan:

“To ensure the appropriate and consistent use of preservation as compensatory mitigation, the agencies will develop specific guidance that will clarify the exceptional circumstances described in current guidance in which preservation may serve as an effective and environmentally appropriate approach to satisfy compensatory mitigation requirements.”



Background

- 1990 MOA Army/EPA
- 1995 Mitigation Banking Guidance
- RGL 02-2



1990 Army/EPA MOA

- o purchase or preservation of existing aquatic resources only in exceptional circumstances
- o EPA and Army will develop specific guidance for preservation



1995 Mitigation Bank Guidance

- ❑ Credit given when preservation done in conjunction with restoration, creation or enhancement activities, AND
- ❑ when demonstrated that preservation augments functions of the restored, created or enhanced aquatic resources.

- ❑ **Preservation as the sole basis for generating credits in banks only in exceptional circumstances.**



1995 Mitigation Bank Guidance

Is Preservation Appropriate?

o Is preservation of the aquatic resource's physical and/or biological functions important to the Region?

o Is there a demonstration of substantial degradation?

“ ... clear evidence of destructive land use changes which are consistent with local and regional land use trends and are not the consequences of actions under the control of the bank sponsor.”

Christmas RGL

Regulatory Guidance Letter 02-2

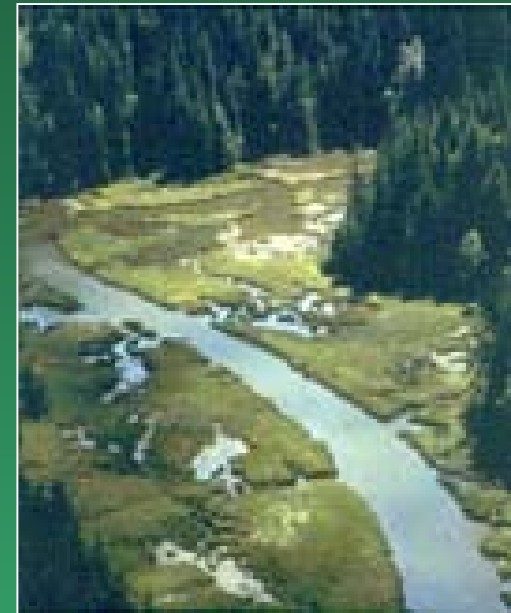
- Use watershed and ecosystem approaches when determining compensatory mitigation requirements
- Protection/Maintenance/Preservation = removal of a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland



Regulatory Guidance Letter 02-2

- ❑ Credit given when preservation done in conjunction with restoration, creation or enhancement activities, AND
- ❑ when demonstrated that preservation augments functions of the restored, created or enhanced aquatic resources.

- ❑ **Preservation as the sole basis for generating credits in banks only in exceptional circumstances.**



Stakeholder Forum 2003

Considerations

- Net loss of acres and functions
- Significance of resources preserved
- Reality of “threats”; why “at-risk”
- Importance in regional/watershed basis
- How to credit? Ratios/Function Lift/...
- Preference for restoration/
enhancement/creation?



Stakeholder Forum 2003

Questions & Issues

- Does overlapping protection really protect?
- On public lands?
- Supplanting of public lands acquisition?
- Allowable uses of protected wetlands?
- Only use in excess of no net loss?
- Use rarely - e.g. for threatened unique resources?
- Substantial buffers needed?



Draft 2004 Preservation Guidance

I. Purpose

- Definitions of Protection/Maintenance (Preservation) and Demonstrable Threat
- Taken from RGL 02-2

II. Existing Policy and Guidance

- 1995 Banking Guidance
- RGL 02-2

Draft 2004 Preservation Guidance

III. Additional Recommendations

A. Preservation as Component of Mitigation Plan

B. Preservation as Sole Method of Compensation

C. General Guidelines for Selecting Area

D. Credit for Preservation

Draft 2004 Preservation Guidance

III. Additional Recommendations

A. Preservation as Component of a Mitigation Plan

- o Preserved resources will demonstrably augment or be integral in sustaining the functions of newly established, restored, or enhanced aquatic resources.
- o Preserved resources not contiguous, may serve to augment the function of those components through protection of associated functions within appropriate region.

Draft 2004 Preservation Guidance

III. Additional Recommendations

B. Preservation as Sole Method of Compensation

- o Regionally Important Functions:
 - o adjacent to or connect important public lands
 - o specially designated aquatic areas
 - o old growth/climax communities with unique habitat structural complexity likely to support rare native plants or animals
 - o habitat for listed species
 - o Source Water Protection Areas
- o Demonstrable Threat of Degradation or Loss:
 - o not the consequences of actions under control of applicant
 - o extent of potential adverse impact or loss
 - o source of threat and seriousness
 - o is aquatic resource protected by current rules and regulations

Draft 2004 Preservation Guidance

III. Additional Recommendations

C. General Guidelines for Selecting Area

- o consider watershed objectives;
- o target lands that coincide with land acquisition and conservation programs;
- o protect lands in or adjacent to areas of national, state, or regional ecological significance;
- o provide connectivity to other systems and take advantage of refuges, buffers, green spaces...;
- o consider protecting difficult to acquire parcels;
- o Permanently Protect preserved parcels.

Draft 2004 Preservation Guidance

III. Additional Recommendations

D. Credit for Preservation

- o Does not directly replace aquatic resource areas or functions - compensation credit may be less.
- o Consider extent of probable adverse impact.
- o Consider value of hydrological relationships between preserved wetlands, other surface waters, and uplands.
- o Consider proximity to areas of ecological importance and ability of parcel to provide connectivity.
- o Consider ability to meet watershed objectives.

Draft 2004 Preservation Guidance

IV. Relationship to Other MAP Guidance

Use of Holistic Watershed Plan is best tool for planning compensatory mitigation.

Without such plan, use a watershed-based approach which takes into account a wide range of factors.

As part of the MAP, Watershed Context Guidance is being developed and will incorporate recommendations of other MAP guidance documents.



Discussion Time





1990 Army/EPA MOA

“Simple purchase or ‘preservation’ of existing wetlands resources may in only exceptional circumstances be accepted as compensatory mitigation. EPA and Army will develop specific guidance for preservation in the context of compensatory mitigation at a later date.”

1990 Army/EPA MOA

Memorandum of Agreement concerning the determination of mitigation under the CWA S.404(b)(1) Guidelines

“Appropriate and practicable compensatory mitigation is required for unavoidable adverse impacts which remain after all appropriate and practicable minimization has been required.”



1995 Mitigation Bank Guidance

Federal Guidance for the Establishment, Use and Operation of Mitigation Banks

“Mitigation banking means the restoration, creation, enhancement, and in exceptional circumstances preservation of wetlands and/or other aquatic resources expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.”



1995 Mitigation Bank Guidance

- “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.”*
- “In addition, the preservation of existing wetlands and/or other aquatic resources in perpetuity may be authorized as the sole basis for generating credits in banks only in exceptional circumstances...”*