

Mitigation Banking Overview



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Discussion Topics

- Regulatory Framework
- Permitting a Mitigation Bank
- Operations



Regulatory Framework - Federal

- **The 1990 Memorandum of Agreement concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines (Mitigation MOA);**
- **The 1995 Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (Banking Guidance);**
- **The 2000 Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Act (ILF Guidance);**
- **The 2002 Corps Regulatory Guidance Letter (RGL) 02-2, Guidance on Compensatory Mitigation Projects for Aquatic Resource Impacts.**
- **Joint Mitigation Rule Compensatory Mitigation for the Loss of Aquatic Resources – April, 10, 2008**



Regulatory Framework - Federal



Federal Register

Thursday,
April 10, 2008

Part II

**Department of
Defense**

Department of the Army, Corps of
Engineers
33 CFR Parts 325 and 332

**Environmental
Protection Agency**

40 CFR Part 230
Compensatory Mitigation for Losses of
Aquatic Resources; Final Rule



Regulatory Framework - Federal

- The Rule
 - **Rule** not Guidance
 - Applies to all forms of Mitigation
 - On site
 - Off site in kind
 - In lieu fee
 - Mitigation Banks



12 Fundamental Components

1. Objectives
2. Site Selection Criteria
3. Site Protection Instruments
4. Baseline Information
5. Credit Determination Methodology
6. Mitigation Work Plan
7. Maintenance Plan
8. Ecologic Performance Standards
9. Monitoring Requirements
10. Long Term Management Plan
11. Adaptive Management Plan
12. Financial Assurances



Regulatory Framework - Federal

- Federally Permitted Mitigation Banks require:
 - A Mitigation Banking Instrument (“MBI”)
 - Section 10/404 Permit
- Both Permits are processed through the Inter Agency Review Team (“IRT”) process



IRT Process

- Appropriateness Determination
- Site inspection / scoring
- Federal (404, NWP)

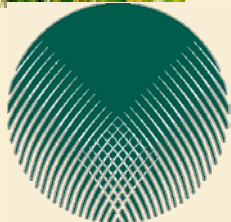


With and Without Bank

With out Bank



With Bank



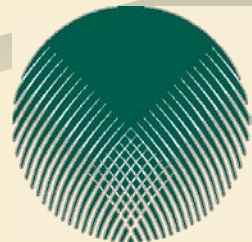
Permitting a Mitigation Bank Credit Calculation

Example: 100 Acres				
Original Function		Restored Function		Lift
0.75		0.85		0.10
Lift	X	Acres	=	Credits
0.10	X	100	=	10



Credit Release Schedule

ASSESSMENT AREA	TOTALS		RISK ADJUSTMENT	
ACRES	9025.93			
FUNCTIONAL IMPROVEMENT DELTA	0.20358			
FUNCTIONAL CREDITS	1801.81			
SSI	0.08			
TOTAL POTENTIAL CREDITS	1945.96			
CRITERIA SPECIFIC CREDIT RELEASES	CREDITS	%	LAG RISK	NET CREDITS
FILING OF CONSERVATION EASEMENT & FINANCIAL ASSURANCE	194.60	10.00%	1.00	194.60
EXOTIC ERADICATION	194.60	10.00%	1.00	194.60
RESTORATION PLANTINGS	58.38	3.00%	0.80	46.70
SUCCESSFUL CONTROLLED BURNING	58.38	3.00%	0.80	46.70
EXOTIC ERADICATION - MAINTAINED FOR 2 YR @ <2%	194.60	10.00%	1.00	194.60
ACHIEVE COVERAGE OF PLANTINGS PER CONDITION 24.b	162.90	8.37%	1.00	162.90
RESTORATION PLANTINGS ACHIEVE 80% COVERAGE	97.30	5.00%	0.90	87.57
EXOTIC-NUISANCE MAINT /SUCCESSFUL BURN / ACHIEVE WATER SCORES	116.56	5.99%	1.00	116.56
HYDROLOGIC RESTORATION CONSTRUCTION ACTIVITIES (BELOW)	389.19	20.00%	0.70	272.43
PHYSICAL FEATURE REMOVAL: FILL SEADADE CANAL; REMOVE ROADS & BERMS				
HYDROLOGIC RESTORATION:				
L3-1E VERTEBRAE SYSTEM				
S-20 OUTFALL STRUCTURE AND RELATED IMPROVEMENTS				
CARD SOUND WEIR				
TALLAHASSEE ROAD CULVERTS				
LIP BERM				
HYDROLOGIC RESTORATION SUCCESS CRITERIA (BELOW)				
ACHIEVE TARGET FRESHWATER VOLUMES PER CONDITION 24.c.i	155.45	7.99%	0.90	139.91
ACHIEVE 25% SPATIAL ZONE SHIFT PER CONDITION 24.c.ii	55.18	2.84%	0.90	49.67
ACHIEVE 50% SPATIAL ZONE SHIFT PER CONDITION 25.c.ii	55.18	2.84%	0.90	49.67
ACHIEVE TARGET FRESHWATER VOLUMES PER CONDITION 23.e.ii	20.90	1.07%	1.00	20.90
ACHIEVE CUMULATIVE SPATIAL ZONE SHIFT PER CONDITION 23.e.iii	45.97	2.36%	1.00	45.97
WILDLIFE ENHANCEMENT ACTIVITIES				
CONSTRUCT AA 9 CROCODILE SANCTUARY	2.52	0.13%	1.00	2.52
DOCUMENTED CROCODILE UTILIZATION	11.89	0.61%	1.00	11.89
DOCUMENT CROCODILE NESTING ACTIVITIES	3.79	0.19%	1.00	3.79
CONSTRUCT AA 10 ESSENTIAL FISH HABITAT	9.72	0.50%	1.00	9.72
DOCUMENT SEAGRASS/MACRO-ALGAE COVER	2.30	0.12%	1.00	2.30
DOCUMENTED SITEWIDE WILDLIFE UTILIZATION (WATER)	116.56	5.99%	1.00	116.56



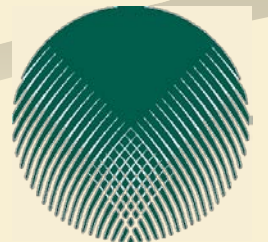
Key Permit Clauses

- Service Area
- Time Lag and Risk
- Credit Sales



Service Area Considerations

- Parameters evaluated:
 - Benefit to the regional ecologic network
 - Provides for long term viability of T&E Species
 - Reasonable expectation of offsetting wetland impacts within the service area
- Service Area's are non exclusive
- Service Area exceptions



Time Lag & Risk

- Time Lag – The time lag between the loss of actual function at the impact site as compared to the gain in function at the mitigation site
- Risk – The uncertainty that mitigation activities will reach their projected levels



Credit Sales “Like Kind”

Regulator

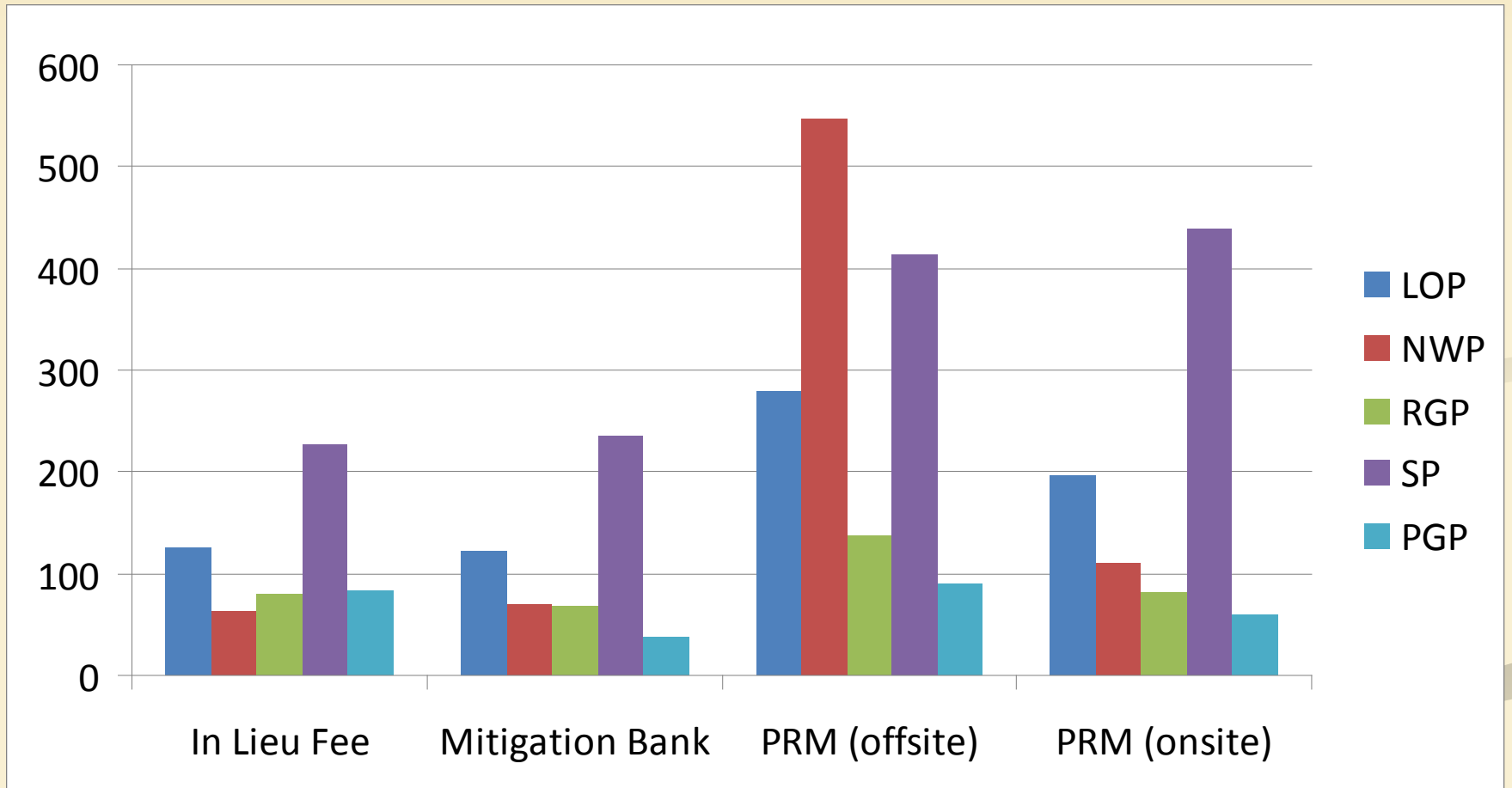


They don't look the same to me

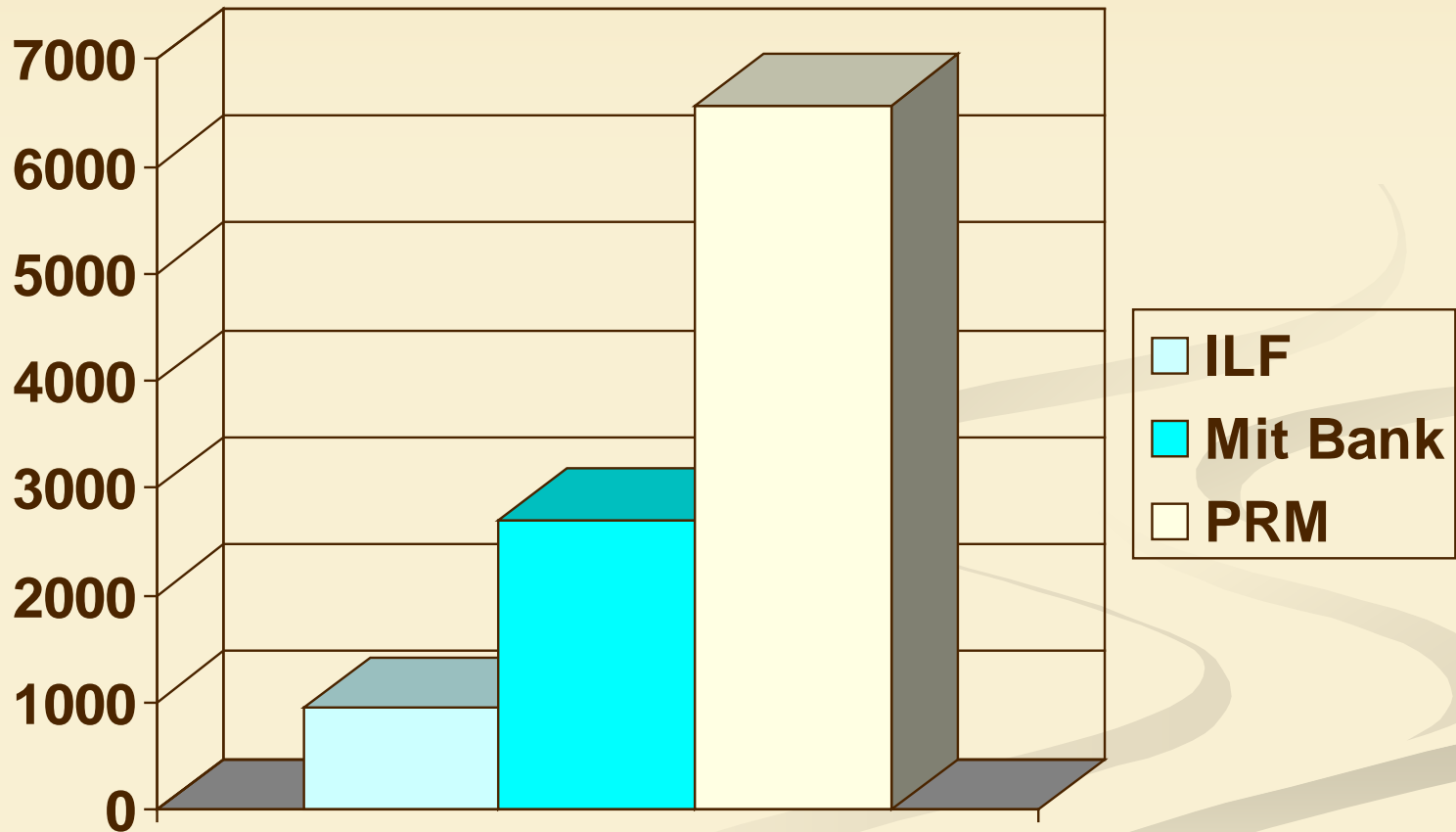
Developer



United States Days to Permit



United States Mitigation Actions by Type



Operations

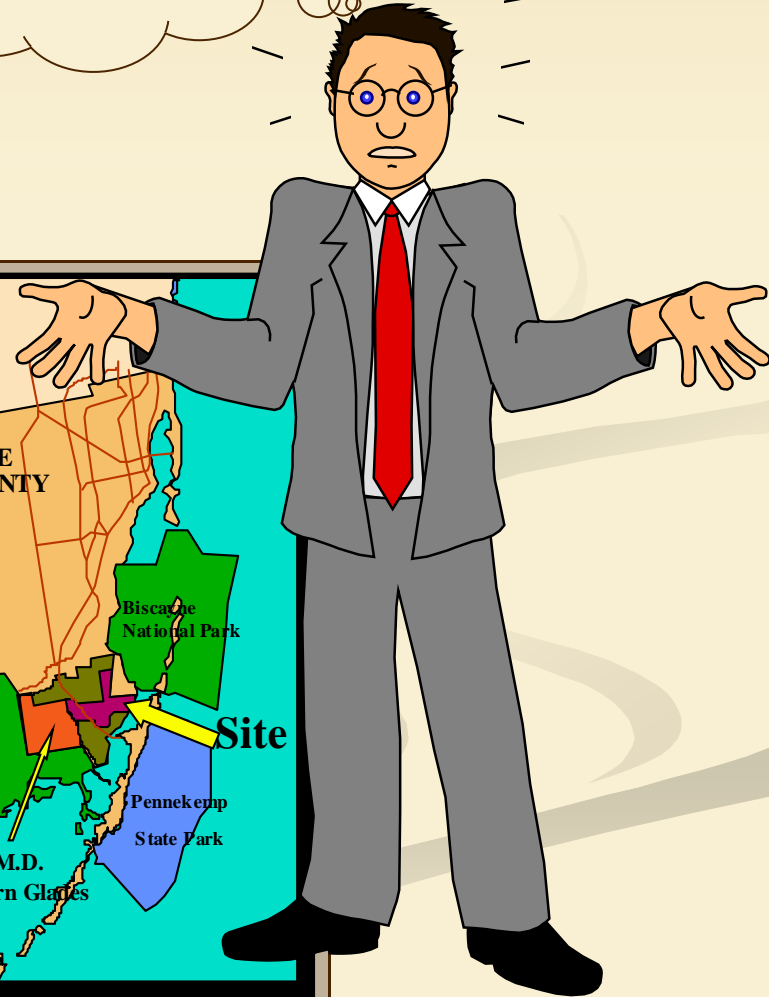
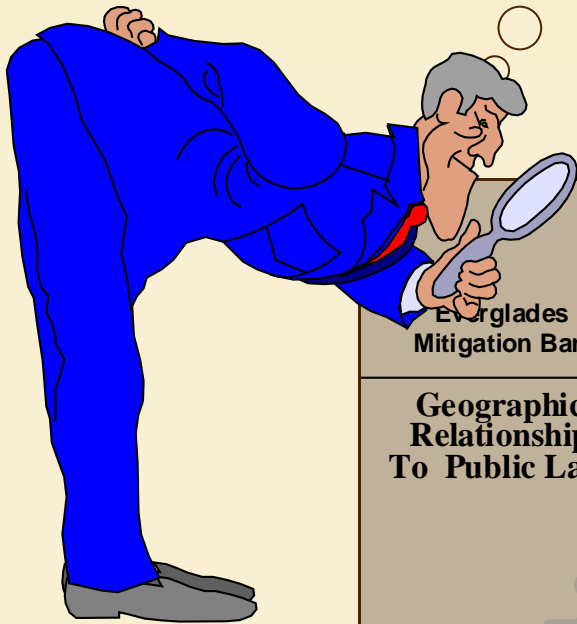
- Measure Twice Cut Once
 - Location
 - Restoration plan
 - Regulatory climate



Location

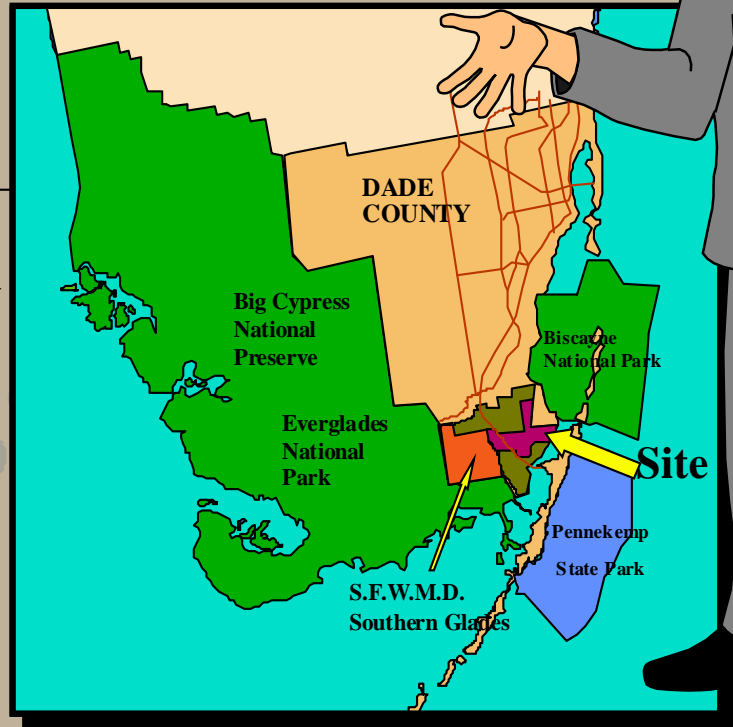
What a great location for a mitigation bank

This is too far away from the impact site!
This will never work



Everglades Mitigation Bank

Geographic Relationship To Public Land



Restoration Plan

- Credits releases are based on Success
 - No success means no credits
- Perpetual maintenance implications
- There is no “walking away”
 - Construction Cost is bonded
 - Perpetual Maintenance is bonded



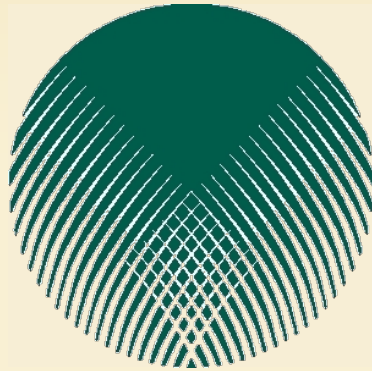
Regulatory Climate

- Regulation Driven Industry
 - Creation
 - Operations
 - Sales
- Ultimate Success
- Be ever vigilant



Questions?

Please contact:



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