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REGULATORY UPDATE

Mark Sudol
Chief, Regulatory Program

February 15, 2005

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Regulatory Issues

- SWANCC
- Wetland Mitigation
- Performance Measures
- Watersheds and EGIS

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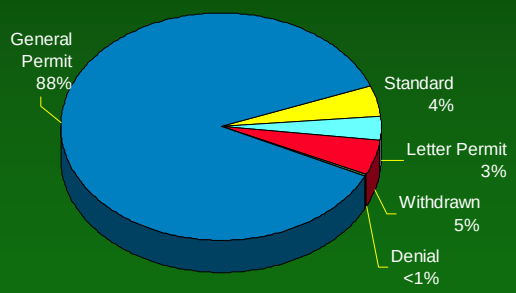
Permit Summary

ALL PERMIT DECISIONS
FY 2003



TOTAL NUMBER EVALUATED

	FY02	FY03
Standard Permits	4,023	4,035
Nationwide	35,768	35,317
Regional	38,125	43,486
Ltrs of Permission	3,258	3,040
Denials	128	299
Withdrawn	*4,143*	*4,494*
TOTAL	**81,302**	**86,177**

Average time for completing a permit decision in Fiscal Year 2003: 32 days

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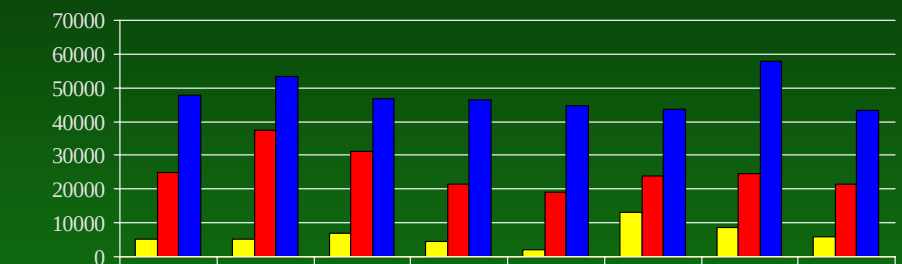
Wetland Impacts and Mitigation

Wetland Acreage Impacts
Includes Verified General Permits



	FY 96	FY 97	FY 98	FY 99	FY 00	FY01	FY02	FY03
Avoided	5090	5030	6940	4600	1990	13310	8520	5800
Permitted	25000	37400	31090	21560	18900	24070	24650	21330
Mitigated	47900	53400	46630	46430	44760	43830	57820	43380

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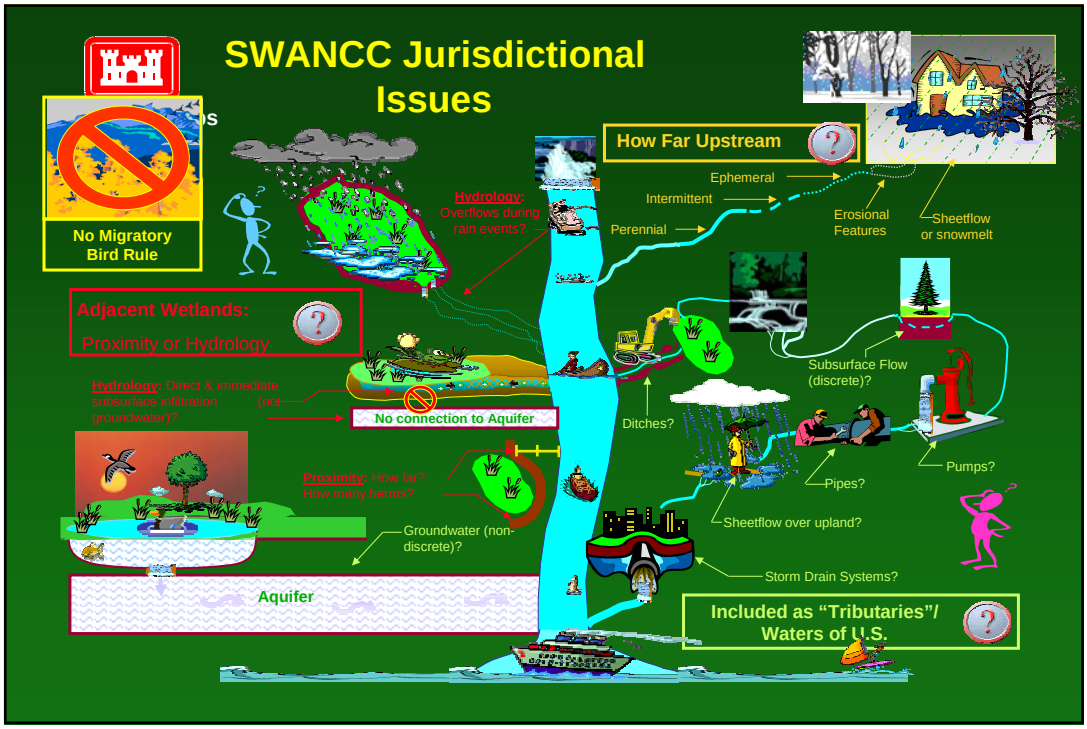
SWANCC

- **2001 Supreme Court Decision in Solid Waste Agency in Northern Cook County (SWANCC) vs. USACE.**
  - **Corps determined CWA jurisdiction over abandoned gravel pits by Migratory Bird Rule (MBR).**
  - **Supreme Court holding is to not assert jurisdiction based <u>solely</u> on use of MBR over intrastate, non-navigable, isolated waters.**



Isolated Wetlands Post-SWANCC

Prairie pothole

New England vernal pool

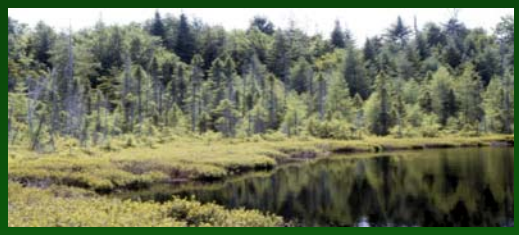
Delmarva pothole wetland in the Spring

Great Basin Salt Flat wetlands

Dry River Canyon

Isolated Wetlands Post-SWANCC

Texas playa lake



Northeast kettle-hole bog

California vernal pool

Sandhill Wetlands - Nebraska

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Strategic Developments

- Mitigation Improvements
  - Mitigation RGL
  - NWMAP
- New Performance standards
- New Database with GIS
- Watershed Initiatives
- Mitigation Rule

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Mitigation RGL

- Functional assessment
- Stream mitigation
- Improving Mitigation Plans
- Preservation and buffers as mitigation
- NRC Guidelines

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Mitigation Action Plan

- Corps and EPA lead multi-agency effort to promote achievement of no net loss goal for wetlands
- 17 components
- Support watershed approach for compensatory mitigation
- Improve data collection and data availability
- Update guidance on mitigation

Mitigation Action Plan - Microsoft Internet Explorer

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Address http://www.mitigationactionplan.gov/

National Wetlands Mitigation Action Plan

Main

Background

Mitigation Action Plan

Status of Action Items

Stakeholder Coordination

Fact Sheet

Related Links

Agency Contacts

Site Map

Welcome to the Home of the National Wetlands Mitigation Action Plan. In response to independent critiques of the effectiveness of wetland compensatory mitigation for authorized losses of wetlands and other waters under Section 404 of the Clean Water Act, the Environmental Protection Agency, the Army Corps of Engineers, and the Departments of Agriculture, Commerce, Interior, and Transportation released the National Wetlands Mitigation Action Plan on December 26, 2002. The Plan includes 17 tasks that the agencies will complete by 2005 to improve the ecological performance and results of compensatory mitigation.

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Mitigation Action Plan - Status of Action Items: - Microsoft Internet Explorer

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Address http://www.mitigationactionplan.gov/actionitem.html

Background

Mitigation Action Plan

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Site Map

MAP ACTION ITEM	DATE	STATUS
Regulatory Guidance Letter Revision	2002	Completed
Integrating Mitigation into a Watershed Context		
On Site/Off Site & In-kind/Out-of-kind Guidance	2003	Internal Draft, Anticipate Release by 3/2004
Vegetated Buffer Guidance	2004	Compiling Information
Preservation Guidance	2004	Compiling Information
Watershed-Context Guidance	2005	Compiling Information
Improving Accountability		
TEA-21 Banking Guidance	2003	Completed
Grants to Improve Mitigation	2002+	Completed and Ongoing
Guidance for Aquatic Resources that are Difficult to Replace	2004	Compiling Information
Stream Mitigation Guidance	2003	Internal Draft, Anticipate Release by 3/2004
Clarifying Performance Standards		
Model Mitigation Checklist	2003	Completed
Adapt NAS-Guidelines to 404 Program	2003	Completed
Analysis of Existing Performance Standards Research/Literature	2003	Internal Draft, Anticipate Release by 3/2004
Clarify Performance Standards Concepts	2005	Compiling Information
Performance Standards Guidance	2005	Compiling Information
Improving Data Collection and Availability		
Evaluate Existing Mitigation Databases	2003	Compiling Information
Develop Common Mitigation Database	2005	Compiling Information
Annual Mitigation Report Card	2005	Compiling Information

Internet

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Mitigation Rule

- Corps directed by defense bill
- Specifics to include:
  - Use of mitigation banks by DOD facilities
  - Level playing field for all mitigation
  - Evaluate procedures for approval of mitigation banks
- Completion date set for November 2005
- Status:
  - Internal draft complete
  - Formal economic analysis pending
  - Anticipate starting interagency review late spring

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Success Criteria

Goal: Improve compensatory mitigation

- Ecologically driven, enforceable mitigation success criteria
- Apply to ALL mitigation projects

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Mitigation Summary

- **Mitigation will be much more complex**
- **Simple acre for acre replacement will not be norm**
  - Combinations: restoration + water quality + preservation
  - Functional assessment
  - True watershed context: landscape implications
- **Use all forms of mitigation with similar success criteria**
  - Mitigation banks
  - In lieu Fee arrangements
  - Site specific plans

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Program Objectives

- **No Net Loss of Aquatic Resources**
- **Avoidance and Minimization of Impacts to Aquatic Resources**
- **Expedite Permit Processing**

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Performance Measures

Performance measures linked to objectives

- **Expedite Permit Processing**
  - Individual permits: XX% < 120 days
  - General permits: XX% < 60 days
- **Avoidance and Minimization of Impacts**
  - Compliance visits on XX% of Individual permits
  - Compliance visits on XX% of General permits

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Performance Measures (cont)

- **No Net Loss of Aquatic Resources**
  - Compliance visits on XX% of Individual permits
  - Compliance visits on XX% of General permits
  - Compliance visits on XX% of Mitigation sites
  - Compliance visits on XX% of Mitigation bank/In-Lieu Fee programs
  - Resolve XX% of permits not in compliance
  - Resolve XX% of enforcement cases

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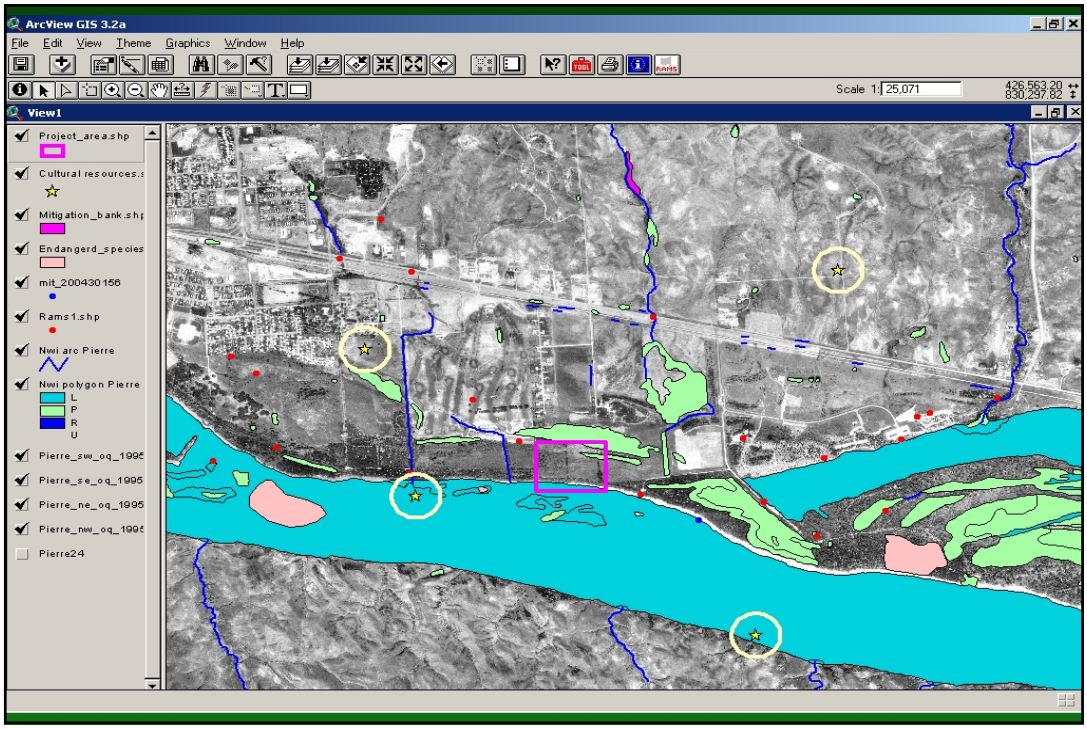
Information Systems and GIS

- Past: Limited data and no public access
- Present and future: ORM and GORM

- ORM: next generation permit database

- GORM: 3rd generation GIS+ORM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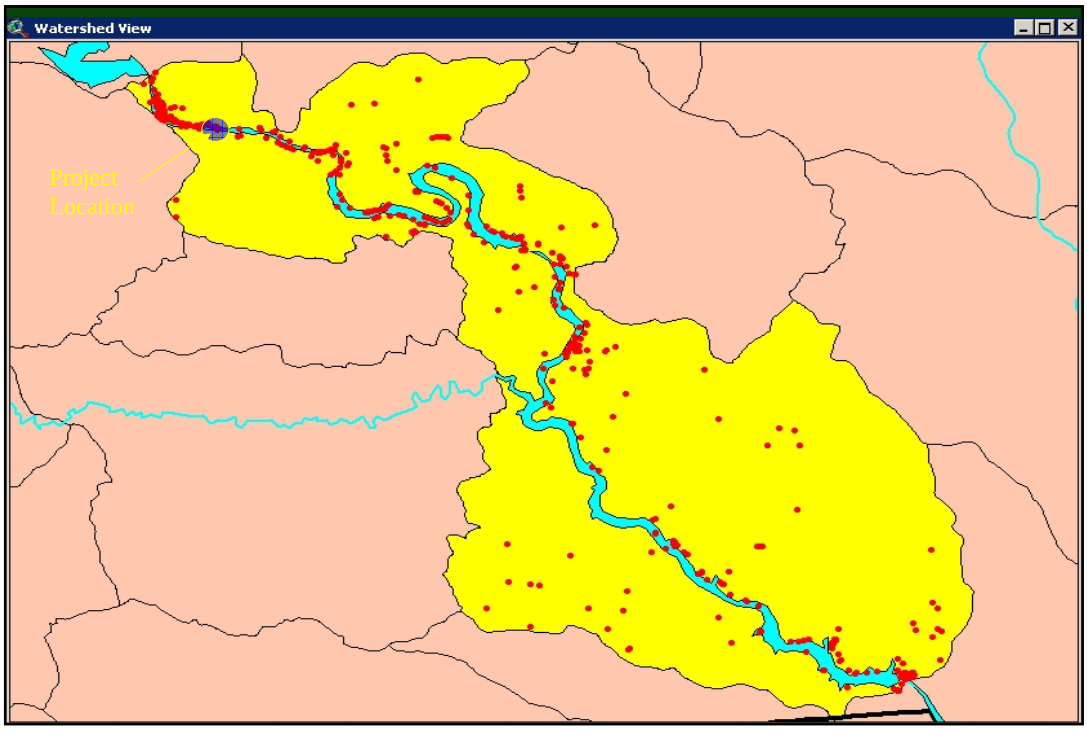
Watershed View
Project
Location

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Questions?

Contact Information

http://www.usace.army.mil
"Services for the Public"
"Regulatory/Permits"

Mark.F.Sudol@hq02.usace.army.mil
202-761-4664