

Mitigation Criteria for Tampa Bay

Prepared for

The Agency on Bay Management and the Tampa Bay National Estuary Program

Prepared by

The Mitigation Criteria Working Group

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Revised and finalized by

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ESTABLISHING MITIGATION CRITERIA FOR TAMPA BAY

BACKGROUND

In 1996, at the request of the Tampa Bay National Estuary Program, the Agency on Bay Management organized a Working Group to discuss and recommend mitigation criteria for Tampa Bay. Discussions were based on Action BH-2 (attached) from *Charting The Course*, the Comprehensive Conservation & Management Plan (CCMP) for Tampa Bay, which was approved by local governments and agencies for implementation in April 1997.

Recommendations from the ABM Working Group were presented to the Tampa Bay Estuary Program Technical Advisory Committee in 1998, which identified several items for further discussion and clarification. The following recommendations include the original recommendations from the ABM Working Group and further clarifications from the TBEP Working Group. These recommendations were approved for recommendation to the TBEP Management Board by the TBEP TAC Working Group on February 11, 1999.

OBJECTIVE

Action BH-2 calls for the establishment and implementation of special mitigation criteria for the Tampa Bay watershed and efforts to direct mitigation to priority areas identified by TBEP partners in *Restoring the Balance*, the bay's habitat restoration and protection master plan. The ABM Working Group considered a number of mitigation and mitigation banking issues, including criteria for on- and off-site mitigation; safeguards to protect productive native upland habitats from conversion to wetlands; bank siting, management and associated cost issues; and whether mitigation conducted by local governments and private developers should count toward overall habitat restoration goals established for the bay. Additionally, the action called for the development of an updated map which would identify sites suitable for restoration.

It is the intent of the TBEP and the Working Group that final recommendations for mitigation criteria in Tampa Bay be adopted and used by local government and agency partners in the TBEP.

DRAFT RECOMMENDATIONS

While various issues were discussed, the ABM Working Group focused in on two: criteria to decide when on- or off-site mitigation is appropriate and siting considerations to be followed for off-site mitigation. Preliminary recommendations on these points are provided below, along with overall policies suggested for adoption. Also below is a concept for establishing a purchase-credit or in-lieu-of fee program within a suitable local entity to facilitate quality mitigation in the Tampa Bay watershed. Special thanks to Jim Beever of the Florida Game & Fresh Water Fish Commission and Assistant Pinellas County Administrator Jake Stowers for outlining ideas for group discussion.

Overall Recommendations Regarding Mitigation:

- Before compensatory mitigation can be considered, impacts should be avoided or minimized.
- Restoration and enhancement should be emphasized *before* creation because of the higher failure rates associated with habitat creation and because creation often involves converting an existing habitat.
- Local government or private mitigation which results in a net increase in valuable estuarine, oligohaline or native upland habitats should "count" toward the overall restoration goals for Tampa Bay. That portion of a project which is to be credited to mitigation should be agreed upon and clearly stated up front in the contract between an agency and local government.
- Native upland habitats should not be converted to wetlands as mitigation. Exotic-dominated uplands can be converted. First consideration should be given to restoring the upland to a natural state.
- Conversion of one non-nuisance native wetland type to another native wetland type does not constitute mitigation. For example, replacing high marsh with mangroves. Conversion of a monoculture of nuisance species is countable as mitigation..
- The mitigation site should be publicly-owned or provide an easement, initially or ultimately to provide its perpetual conservation. For example, a private mitigation banker would be required to provide a permanent conservation easement to public conservation entities.

On-Site Mitigation:

On-site mitigation is preferred when it is capable of:

1. offsetting the lost functions and values that the mitigation is to remedy;
2. providing those functions and values in perpetuity without reductions in functions and values as a result of changes in conditions on-site or on adjacent properties, including changes in hydrology, water quality and land use;

3. being maintained against infringement and modification by on-site activities, including structures, dumping, invasive exotic plants, nuisance native plants, incompatible human uses, etc.

In order to meet these criteria, the on-site mitigation must be of sufficient size and hydrology to provide sustainable functions and values.

If on-site mitigation is unable to satisfy criteria above, then off-site mitigation should be considered.

If on-site mitigation can satisfy criteria above, but all interested parties (including permittees, permittees and commenters) agree that superior ecological benefits can be achieved by off-site mitigation, than option may be considered.

Off-Site Mitigation:

Off-site mitigation must provide at least the functions and values for which the mitigation was intended. For example, mitigation for a filled ditch may be construction of a marsh, where the values of the ditch plus others would be gained. Additionally:

1. Off-site mitigation should occur at a suitable site within reasonable proximity to the area of impact. A tiered approach to site location should be used as follows: Tier 1 (first choice) should be within the subbasin (as defined by SWFWMD) in which the impact will occur. Tier 2 (second choice) should be within the basin in which the impact will occur. Basin boundaries are defined as those adopted by the TBEP (see attached map), which are modified from USGS boundaries and coincide with SWFWMD defined boundaries. The TBEP working group recommends that the Boca Ciega Bay basin be defined as an element of the Coastal Tampa Bay basins, and that Terra Ceia Bay be considered an element of the Manatee River Basin.
2. Off-site mitigation should be directed to priority areas and habitats identified in Restoring the Balance - the NEP's habitat restoration and protection master plan, and the Florida Game & Fresh Water Fish Commission's Regional Wildlife Habitat Plan, to maximize environmental benefits.
3. Mitigation may be non type-for-type, as long as it helps to achieve the regional goals outlined in Restoring the Balance.
4. Mitigation credits shall not be granted for the cost of managing or maintaining the off-site mitigation area.
5. Mitigation credits shall not be granted solely for the purchase of an off-site mitigation area. Credits for purchase shall be granted after successful mitigation is demonstrated.

Managing Mitigation in the Tampa Bay Watershed:

A purchase-credit or in-lieu-of fee program might be established to maximize the environmental benefits to Tampa Bay from mitigation conducted in the watershed. The program could be housed within a suitable public entity responsible for implementing the mitigation, such as SWIM, FDEP, GC, USFWS, TBEP, or a combination of these organizations. Users would purchase credits at a set price established by acre, restoration/creation costs, and habitat type. The public entity would acquire, then plan and conduct the restoration as mitigation. The land could be pre-purchased or acquired after sufficient funds are obtained.

This is an extension of the DOT-SWFWMD mitigation fund concept but improved to include GC upland bank design features. This could be made available to local governments (as bankers or buyers) with appropriate review by permitting entities. The off-site banks would meet all prior conditions outlined in this paper.

The TBEP Working Group seeks direction from the TBEP Management Board on whether a "bank", fines repository, or some other funding mechanisms be used for mitigation in the Tampa Bay area should be further examined. Issues to be examined may include:

- How to administer and who takes the money?

- Need clear evidence that money will be used for managing the site.

- Need to ensure that mitigation banking does not replace the management effort..

- Need to ensure that the money isn't "raided" or taken for other purposes.

- Need to address public perception of buying credit for destruction of habitat or perception of paying for a permit.

Mitigation Ratios vs. Functional Assessments:

The TBEP Working Group has recommended that the "functional assessment method" be used for determining mitigation credits as opposed to mitigation ratios, because most agencies already are moving toward this approach as a means of evaluating mitigation banks. Additionally, functional assessments make it easier to assess functions being impacted and replaced. The U.S. Army corps of Engineers is developing a hydrogeomorphic (hgm) functional assessment method for Florida. In Tampa Bay, data has been collected for depressional freshwater wetlands, and a mangrove model will begin this year.

The TBEP Working Group encourages accelerated development of a standardized method for the functional assessment of coastal wetlands for completion by the Florida "A Team" in 2002, using the congressionally mandated Hydrogeomorphic Methodology. In the interim, use best available functional assessment tools.

Mitigation Map:

As part of this effort, the Tampa BayWatch and FMRI are developing a GIS map based on the maps of priority restoration areas presented in Restoring the Balance and the Regional Wildlife Plan, and incorporating any further refinements that result from a series of workshops organized by Tampa BayWatch in 1998-1999. The map will include appropriate public and private lands which are suitable for restoration. The map will be available for use by anyone and will be completed by April 1, 1999.

The ABM Working Group recommends that the TBEP follow up with a functional assessment of these sites in order to further identify the restoration potential and possible target habitats for each site, for an estimated total cost not to exceed \$50,000.