



# Memorandum

U.S. Department  
of Transportation  
**Federal Highway  
Administration**

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Subject: **ACTION:** Financial Assurances for  
Wetland Mitigation Banks

Date: April 30, 1997

From: Executive Director

Reply to  
Attn. of: HEP-40

To: Regional Administrators  
Federal Lands Highway Program Administrator

Under the provisions of the Intermodal Surface Transportation Efficiency Act (Sections 1006 and 1007), the FHWA can participate in the establishment of wetland mitigation banks developed by State highway agencies to compensate for wetland impacts associated with future Federal-aid highway projects. Additionally, current White House policy on wetlands has placed increased emphasis on mitigation banking. The issuance on November 28, 1995, of the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (the Guidelines), developed as an interagency effort by Federal natural resource agencies, provided an administrative framework for interagency cooperation to successfully implement mitigation banks.

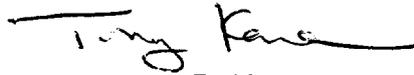
With the initiation of banking agreements under the Guidelines, questions have arisen regarding some of its provisions. One such inquiry relates to the requirement for State highway agencies or the FHWA to provide financial assurances, as described in Section E.5 of the Guidelines, to cover contingency actions in the event of bank default or failure. This issue has been discussed with the United States Army Corps of Engineers (USACE) Headquarters Regulatory Branch staff and agreement has been reached that such assurances are not required for wetland banks established with Federal-aid participation by State highway departments primarily for Federal-aid highway projects. To reach this agreement, we assured the USACE that the FHWA will fulfill its responsibilities as signatories of wetland banking agreements, as we do with any mitigation commitment on our projects.

Where Federal-aid highway funds are used to develop and establish wetland mitigation banks, the FHWA field offices will take appropriate administrative action, within the legal authority of the agency, to ensure that wetland mitigation commitments established to compensate for wetlands impacts due to Federal-aid highway projects are completed or achieved. These include meeting agreed-upon performance objectives, as specified in banking instruments or mitigation agreements, carrying out monitoring programs, and performing necessary modifications or remediation on mitigation projects required to establish wetlands' functions and environmental benefits. Federal-aid participation in such activities has been previously addressed in the Headquarters memorandum titled Funding for the Establishment of Wetland Mitigation Banks, dated October 24, 1994.

This policy applies to the following: 1) wetland mitigation banks established by State highway agencies or on their behalf by other State or Federal Agencies to mitigate wetland impacts of Federal-aid highway projects; 2) privately-owned wetland mitigation banks only for wetland mitigation credits acquired by State highway agencies with Federal-aid highway funds for wetland impacts caused by Federal-aid highway projects; 3) wetland mitigation banks independently developed and operated by other State or Federal Agencies only for credits acquired by State highway agencies as mitigation for impacts to wetlands on Federal-aid highway projects.

This memorandum does not supersede any part of the Guidelines. It is intended to clarify the Guidelines' recommendations regarding the need for financial assurances from State highway agencies which are establishing wetland mitigation banks with Federal-aid participation solely for wetlands impacts attributed to Federal-aid highway projects.

For further information regarding this matter, please contact Fred Bank, (202) 366-5004, or Paul Garrett, (202) 366-2067, of the Office of Environment and Planning, Natural and Cultural Resources Team.



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