

§ 777.7

23 CFR Ch. I (4–1–11 Edition)

§ 777.7 Evaluation of impacts.

(a) The reasonableness of the public expenditure and extent of Federal participation with title 23, U.S. Code, funds shall be directly related to:

(1) The importance of the impacted wetlands and natural habitats;

(2) The extent of highway impacts on the wetlands and natural habitats, as determined through an appropriate, interdisciplinary, impact assessment; and

(3) Actions necessary to comply with the Clean Water Act, Section 404, the Endangered Species Act of 1973, and other relevant Federal statutes.

(b) Evaluation of the importance of the impacted wetlands and natural habitats shall consider:

(1) Wetland and natural habitat functional capacity;

(2) Relative importance of these functions to the total wetland or natural habitat resource of the area;

(3) Other factors such as uniqueness, esthetics, or cultural values; and

(4) Input from the appropriate resource management agencies through interagency coordination.

(c) A determination of the highway impact should focus on both the short- and long-term effects of the project on wetland or natural habitat functional capacity, consistent with 40 CFR part 1500, 40 CFR 1502.16, 33 CFR 320.4, and the FHWA's environmental compliance regulations, found at 23 CFR part 771.

§ 777.9 Mitigation of impacts.

(a) Actions eligible for Federal funding. There are a number of actions that can be taken to minimize the impact of highway projects on wetlands or natural habitats. The following actions qualify for Federal-aid highway funding:

(1) Avoidance and minimization of impacts to wetlands or natural habitats through realignment and special design, construction features, or other measures.

(2) Compensatory mitigation alternatives, either inside or outside of the right-of-way. This includes, but is not limited to, such measures as on-site mitigation, when that alternative is determined to be the preferred approach by the appropriate regulatory agency; improvement of existing de-

graded or historic wetlands or natural habitats through restoration or enhancement on or off site; creation of new wetlands; and under exceptional circumstances, preservation of existing wetlands or natural habitats on or off site. Restoration of wetlands is generally preferable to enhancement or creation of new wetlands.

(3) Improvements to existing wetlands or natural habitats. Such activities may include, but are not limited to, construction or modification of water level control structures or ditches, establishment of natural vegetation, re-contouring of a site, installation or removal of irrigation, drainage, or other water distribution systems, integrated pest management, installation of fencing, monitoring, and other measures to protect, enhance, or restore the wetland or natural habitat character of a site.

(4) Mitigation banks. In accordance with all applicable Federal law (including regulations), with respect to participation in compensatory mitigation related to a project funded under title 23, U.S. Code, that has an impact on wetlands or natural habitat occurring within the service area of a mitigation bank, preference shall be given, to the maximum extent practicable, to the use of the mitigation bank, if the bank contains sufficient available credits to offset the impact and the bank is approved in accordance with the Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks, or other agreement between appropriate agencies.

(b) Mitigation banking alternatives eligible for participation with Federal-aid funds including such measures as the following:

(1) Mitigation banks in which mitigation credits are purchased by State DOTs to mitigate impacts to wetlands or natural habitats due to projects funded under title 23, U.S. Code, including privately owned banks or those established with private funds to mitigate wetland or natural habitat losses.

(2) Single purpose banks established by and for the use of a State DOT with Federal-aid participation; or multipurpose publicly owned banks, established with public, non-title 23 Federal highway funds, in which credits may be