

DO WETLANDS REGULATIONS HELP PROTECT PARK RESOURCES?

By JOEL WAGNER

NATIONAL PARK SERVICE EMPLOYEES may have mixed feelings about federal wetlands regulations. At times, the regulations implementing Section 404 of the Clean Water Act and the NPS guidelines implementing Executive Order 11990 (Protection of Wetlands) seem unnecessarily convoluted—just more hurdles that slow progress on needed NPS construction and maintenance projects. At other times, these are the tools of choice for protecting park resources from destruction. So I pose the question: Do wetlands regulations facilitate or hinder the NPS mission?

SECTION 404 AS A RESOURCE PROTECTION TOOL

Section 404 of the Clean Water Act includes a permit requirement for discharging dredged or fill material into “waters of the United States,” including wetlands. Commonly known regulated activities include construction of building pads or road beds in aquatic habitats, but a court has recently ruled that mechanized land clearing and excavation activities are also regulated. The law applies to federal agencies, so we must comply with the same permit procedures required of private builders.

In evaluating the adverse impacts of a proposed activity during the permit review process, the U.S. Army Corps of Engineers (COE) must consider both on-site impacts (i.e., the amount and type of habitat directly displaced by fill) and off-site impacts (e.g., effects of drainage facilities on adjacent property or changes in downstream water quantity or quality). This latter aspect, consideration of off-site impacts, opens the door to NPS input and involvement in COE decisions on permits for projects that, although not on NPS property, may adversely impact NPS resources.



Figure 1. Construction of this drainage ditch in a housing development bordering Gulf Islands National Seashore was halted using provisions in Section 404 of the Clean Water Act. Water Resources Division and park staff showed that this ditch would have drained a valuable park pine savannah wetland (right).

A proposed housing development bordering the Davis Bayou Unit of Gulf Islands National Seashore, Mississippi, provides a recent illustration of how the 404 permit process can be used as a tool for protecting park resources. In this case, the subdivision design submitted to the Corps called for a stormwater detention and drainage ditch immediately outside the park boundary (fig. 1). Unfortunately, the Corps did not contact the park regarding this proposal, and permitted the developer to proceed with construction during 1994 under the presumption that there would be no unacceptable impacts on NPS resources. The park first learned of the project after observing ditch construction and landclearing along the park boundary. After consulting with the NPS Water Resources Division regarding 404 regulatory procedures and effects of the project on the hydrology of pine savannah wetlands at Gulf Islands, the park convinced the Corps to issue a stop work order pending evaluation of impacts on this valuable wetland ecosystem.

The halt created some breathing room, during which we conducted groundwater drawdown analyses, provided additional policy-regulatory support to the park, and installed a network of observation wells to evaluate effects of the proposed development on pine savannah wetland hydrol-

ogy (fig. 2). The Water Resources Division also is funding a park-proposed study to analyze vegetation, soil, ground water hydrology, endangered species, and water quality components of this wetland ecosystem. Both the park and the Water Resources Division believe that through the 404 permit process, we can negotiate an alternative plan with the developer that assures that park resources will not be degraded.

A word to the wise: contact the appropriate COE regulatory office to ensure that they will notify the superintendent whenever a regulated activity is proposed in the vicinity of your park.

NPS WETLAND GUIDANCE IN PARK FACILITIES PLANNING

Executive Order 11990 is the basis for most NPS wetlands policy. The order recognizes the loss of over 50% of national wetland resources, and directs each federal agency to develop procedures to “minimize the destruction, loss, or degradation of wetlands, and to preserve . . . the natural and beneficial values of wetlands in carrying out the agency’s responsibilities.” In response, the National Park Service developed the NPS Floodplain Management and Wetlands Protection Guidelines (45 Federal Register 35916). These guidelines direct NPS managers to avoid actions with the



Figure 2. This Gulf Islands pine savannah wetland was recently spared impacts from adjoining development outside the park.

potential for adversely impacting wetlands when there is a practicable alternative, and to preserve, enhance, and minimize degradation of wetlands when no such alternatives exist. If a project will adversely impact wetlands, staff must attach a statement of findings to either the finding of no significant impact or final environmental impact statement. The brief statement explains the reason for no practicable alternatives to the proposed action and outlines mitigating measures to compensate for wetland loss.

The wetlands guidelines acknowledge that our agency mission is both to provide for enjoyment of the resources and to protect them in perpetuity. That is, they do not say that we absolutely must not impact wetlands in the course of constructing visitor facilities or that we absolutely must restore all wetlands that have been impacted in the past. Rather, they facilitate a balance in the mission with respect to wetland resources, requiring only that NPS project planners seek locations and designs that avoid or minimize wetland impacts, while still meeting project objectives. The

guidelines also provide managers with guiding principles when considering external proposals for activities or facilities in NPS units.

EASING COMPLIANCE

One important step in streamlining NPS wetlands compliance occurred in 1994. In response to reports of delays in obtaining required approval signatures for wetlands statements of findings, the director delegated signature authority to regional directors, with Water Resources Division concurrence. Early indications are that this change has eased the compliance process.

Another way to minimize compliance workload is to gather wetland data early in the park planning process. National Wetland Inventory maps, while not of sufficient scale and accuracy for final compliance purposes, are useful as a first step in eliminating undesirable development sites from consideration. Subsequent steps may include wetland reconnaissance by a knowledgeable NPS employee or obtaining services of a professional wetland delineation contractor.

Experience shows that it is far easier to avoid wetlands impacts (and the need for subsequent compliance steps) when adequate data are available as alternatives are being developed.

Section 404 of the Clean Water Act clearly facilitates NPS resource protection as illustrated by the Gulf Islands case. For NPS-proposed facilities with potential impacts on wetlands, internal wetlands guidance also facilitates our mission by helping to strike a balance between visitor use and resource protection. The National Park Service has taken steps recently to streamline our internal compliance procedures, and the Water Resources Division will continue to look for opportunities to make the process more efficient.

P

Joel Wagner is the Wetlands Program Leader for the Water Resources Division in Lakewood, Colorado. His phone number is (303) 969-2955.