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SPECIAL REPORT

BLUEPRINTS

NORTH CAROLINA is attracting a new breed of bankers

By Richard R. Rogoski

LIQUID ASSETS

From left, Environmental Banc & Exchange's Norton Webster, George Kelly nd Randy Wilgis at one of the company's wetlands mitigation bank locations in the Bentonville area of North Carolina

STEVE WILSON

These bankers deal in a complex currency. They assemble blocks of wetlands from which developers and governmental agencies can make withdrawals if construction projects unavoidably damage other wetlands.

Such transactions are being fueled by the intersection of development and environmental law - and they are fueling the growth of a different kind of banking industry in North Carolina.

Wetlands and streams are protected under the federal Clean Water Act of 1972, state statutes and local zoning ordinances. Overseeing and enforcing the federal law is the role of the U.S. Army Corps of Engineers.

The law now allows development to damage a stream or wetland area as long as the developer agrees to compensate for the loss by restoring, creating or enhancing wetlands within the same watershed.

Given the regulatory hoops a developer must jump through - the costs involved in acquiring suitable land for the trade-off and the complexity of hydrologic engineering - developers often outsource that work to special management companies that can facilitate the wetlands mitigation process.

Wetlands created, enhanced or preserved through the process are called "mitigation banks."

North Carolina is home to 19 wetland mitigation bank locations, Army Corps of Engineers data shows.

One company cashing in on the demand is Environmental Banc & Exchange. In June, EBX announced that it had won six new stream and wetlands restoration projects with a combined value of more than $11 million from the North Carolina Environmental Enhancement Program. The projects will restore and preserve more than seven miles of streambeds and 28 acres of wetlands. Based in Owings Mills, Md., with offices in Durham and San Rafael, Calif., EBX has restored more than 20 miles of streams and preserved 1,500-plus acres of wetlands in North Carolina at a cost of more than $40 million.

Other companies affiliated with mitigation banks in North Carolina include The Louis Berger Group, Baltimore-based Rummel Klepper & Kahl, Winter Park, Fla.,-based EcoBank and Raleigh-based Restoration Systems.

The companies make money by selling mitigation bank credits to developers and to government agencies. The price of those credits can vary drastically based on factors such as land acquisition costs, the scope of the project and the mitigation partner.

In North Carolina, the cost of credits can range from $30,000 an acre to upward of $56,000 an acre.

Before launching EBX, George Kelly was an attorney whose practice focused on environmental law.

EBX President Dixon Harvey came to the business through his work as a developer. Harvey also runs Black Oak Associates, a company that specializes in retail and mixed-use projects within a 100-mile radius of Baltimore.

Kelly says he helped create EBX because he wanted to unlock the value inherent in land. But he also saw a way to profit from the business opportunity.

"There was a strong belief that this was a positive trend," Kelly says.

EBX has signed contracts with private developers, municipalities, pipeline authorities and mining companies.

Kelly would not disclose the names of clients, but he says that 90 percent of the work done in North Carolina is for the state or, more specifically, for the state's Ecosystem Enhancement Program, which is under the auspices of the North Carolina Department of Environment and Natural Resources.

EEP was established in 2003 under an agreement among NCDENR, the North Carolina Department of Transportation and the U.S. Army Corps of Engineers.

When DOT is planning road construction that will damage streams or wetlands, EEP requests proposals from companies such as EBX delineating the scope of the project and the specific requirements needed for mitigation within the watershed.

The winning bidder bears the responsibility for identifying appropriate sites and contacting landowners to see if they are willing to sell land as a conservation easement that protects that piece of property in perpetuity.

Once suitable land is purchased, the mitigation partner then seeks bids for the engineering and construction phase of the project, says Norton Webster, EBX's project manager in Durham.

FORM VERSUS FUNCTION

Mitigation banking, and the wetlands and stream damage that drives it, is something the state attempts to avoid, says Jeff Jurek, the project control and research director at EEP.

"The first rule is avoidance, then to minimize the impact," Jurek says.

More often than not, though, the impact to any given wetland is too great to mitigate at the same site, so other sites within the same watershed that could serve as replacements are carefully evaluated.

"There are 54 watersheds in North Carolina," Jurek says. "Some are larger than others. We find the watersheds in need of repair."

Jurek says that his agency has worked with a team of federal and state regulators as well as environmental groups. By working with public and private organizations, EEP has succeeded in preserving more than 30,000 acres of land statewide, including 7,000 acres of wetlands and more than 130 miles of streams.

There are approximately 400 stream and wetland restoration jobs under way across North Carolina that are being funded by $160 million in state money over the next two years, he says.

The use of credits is based on a ratio of impacted land to new land. For restoration work, the ratio is one acre to one acre. For wetlands that are enhanced, the ratio is 2:1, meaning that for every acre that is impacted, two acres must be enhanced, resulting in one credit. For newly created wetlands, the ratio is 3:1. And for land that is being preserved, the ratio is 5:1.

Mitigation banking has its critics. Most of the complaints are focused on the latitude given to developers to swap one area of wetland for another.

"You want to mitigate where the harm has been done, so mitigation should occur in the same basin," says Molly Diggins, state director of the Sierra Club's North Carolina chapter.

"We've been big supporters of restoration, but we'd prefer that wetlands not be destroyed," in the first place, she says.

David McNaught, the senior policy analyst for Environmental Defense in Raleigh, questions the benefit of trading off wetlands that can be miles apart.

"The intention is to restore the ecological function," he says. "Clearly that has not been achieved in the recent past. Mitigation banking was an ideal. But a lot of what has been passed off as mitigation banking has not been sufficiently applied."

McNaught says wetlands have site-specific functions that include a natural filtration system for water and natural habitats for plants and animals. Once the functionality is lost, it's lost forever, he says.

Part of the solution, McNaught suggests, is to first assess the full function of the wetland that may be destroyed. And mitigation sites should be as close to the impacted wetland as possible.

EBX's Webster says he's aware of these issues and the delicate balance involved in wetlands mitigation. "When you build these systems, you're dealing with Mother Nature," Webster admits. "We do in-kind mitigation, but it will never be the same."

North Carolina prohibits the banks and their customers from using only one method for wetland mitigation.

"At least 50 percent has to be (wetland) preservation," rather than creation, restoration or enhancement, Webster says.

Mitigations bankers are blocked by from selling 100 percent of the credits created by a project until certain milestones are met.

"Completion of restoration work is a major milestone, upon which approximately 65 percent of credits are available for sale. The remaining 35 percent of the credits are released over the following five-year performance monitoring period," says EBX director Randy Wilgis. "The timing of credit releases is a major factor in the economics of our business, particularly regarding cash flow and project financing requirements."

Alan Zibel, a staff writer with Baltimore Business Journal, *contributed to this story.*