

Mitigation

The Ecosystem Marketplace's Daily Coverage of the 2007 Mitigation/Conservation Banking Conference

Wednesday, April 11, 2007

Volume 2, Issue No. 1

Trust Busted?

As the IRS conducts more than 400 audits into the use of conservation easements across the US, we look at what this might mean for the Land Trust movement.

Page 1

Welcome!

Like last year, the Ecosystem Marketplace will once again produce a daily conference newsletter to keep you informed and help you catch up on sessions you may have missed

Page 2

Don't know us?

The Ecosystem Marketplace is a news and information service covering environmental markets (carbon, water, biodiversity). Visit us on the Web.

Page 2

Banking 101 and Stream Banking

Attendees arrived on Tuesday to get a primer on banking and to hear about stream mitigation. Find out what happened.

Page 7

North Carolina's EEP

A reader recently asked the Ecosystem Marketplace why the North Carolina EEP hasn't yet "caught on". We asked our readers to respond.

Page 4

Today's Agenda

A handy version of today's official agenda

Page 8

Trust Busted?

by Erik Ness

The Land Trust Alliance released a 5-year summary of land trust activity in the United States in late 2006. The report called the land trust movement "one of the fastest-growing and most successful conservation movements in American history." So what does a troubling series of approximately 400 Internal Revenue Service audits, mostly in Colorado, portend? The Ecosystem Marketplace investigates.

While you curse the IRS this tax season, perhaps you can take some solace in knowing that the Service also occasionally has deadline troubles on April 15. This year the IRS is facing a statute of limitations in many of the roughly 250 cases involving conservation easements in Colorado from the 2003 tax year.

Conservation easements are the primary tool of the land trust movement. Easements, which place legal restrictions on the development of a piece of land, are generally thought to be a cost-effective way to preserve land since they are cheaper than purchasing land outright. And because federal law counts

easement donations as tax deductible, the incentive for landowners is significant. In 2003, the value of conservation easements claimed for federal tax deductions was about \$1.5 billion.

The eye-popping number caught the attention of IRS Commissioner Mark Everson. In 2004, on the heels of an audit of The Nature Conservancy, his agency began to investigate the use of easements. "We've uncovered numerous instances where the tax benefits of preserving open spaces and historic buildings have been twisted for inappropriate individual benefit," Everson said when announcing the Services intention to clamp down on misuse of easements. "Taxpayers who want to game the system and the charities that assist them will be called to account."

Everson's statement raised eyebrows in land trusts throughout the United States, but, with almost a quarter century of active practice and case law on their side, many were too busy to worry. Since 2000, the number of land trusts nationwide grew 32 percent, to 1,667, and land trusts now protect more than 37 million acres, an area 16 1/2 times the size of Yellowstone National Park. That's a 54 percent increase over the area protected in 2000.

In a hot market, Colorado is a fire-starter. According to the 2005 LTA census it ranked second only to Maine for total acres under easement and in the amount of land protected from 2000 to 2005. In part,



As proposed, the new regulations would promote wetland mitigation banks by requiring developers planning their own mitigation to meet the tighter, more expensive rules governing mitigation bankers.

GATEWAY TO THE FUTURE

In 1947, a committee held a national competition to select a design for the Jefferson National Expansion Memorial in St. Louis, Missouri. The design needed to speak to St. Louis' history as a Gateway to the West, a spot where pioneers such as Meriwether Lewis and William Clark once gathered before setting out to explore new territory.

When Eero Saarinen won the competition with his 630-foot stainless steel Gateway Arch, the award committee initially called to congratulate his father Eliel Saarinen – also an architect who had submitted an entry – by accident. His father opened a bottle of champagne to celebrate his success and then received word that it was actually his son who had won the competition. He opened a second bottle and happily toasted his son's future.

As the National Mitigation & Conservation Banking Conference (NMCB) celebrates its 10th Anniversary, it seems appropriate that we are gathered here at the Millennium Hotel beneath Saarinen's Gateway Arch. Just as the towering structure celebrates the spirit of exploration, so too does this meeting. And just as Eliel Saarinen happily toasted the next generation of innovation, so too does the first generation of bankers toast the next decade of innovation in this industry.

The last year has seen mitigation bankers investigate new models of finance, new kinds of credit and new types of habitat. One of the Ecosystem Marketplace's primary goals is to ensure that the lessons and opportunities unearthed by these investigations are shared in ways that strengthen the economic and environmental integrity of this industry as a whole. Since there is no better place to support the transfer the ideas in the mitigation banking industry than at this conference, we are happy to announce our daily coverage of this year's NMCB sessions.

Each morning we will run this short column – looking at a new development in the mitigation and conservation banking industry – as well as coverage of the previous day's events, an in-depth feature, a guest editorial and the day's schedule. And so if you are presenting in one session but are also interested in the shop-talk across the hall, don't worry – we've got you covered.

Welcome to St. Louis and to the 10th Annual NMCB Conference, where we join you in celebrating this industry's Gateway to the Future.

The Ecosystem Marketplace Team

Trust Busting

(continued from page 1)

this is because Colorado is one of two states—the other is Virginia—to sweeten the federal deduction with an additional state easement deduction that can be sold, allowing land-rich but cash-poor individuals to take advantage of the credit. According to figures from the Colorado Department of Revenue (CDOR), between fiscal year 2001 and 2003, state conservation easement deductions were \$2.3, 8.6, and 7.5 million. From 2003 to 2006—after the sale of credits was approved—they rose to \$31.7, 57.3, and 85.1 million.



Under Scrutiny

Unfortunately, the state laws enabling the sale of conservation easement tax credits did not deal with the record-keeping or enforcement needs at CDOR. As the agency sorted through the surge in deductions they noted appraisals that seemed off or obviously wrong. They borrowed an appraiser from another state agency, who agreed there might be problems. Then, lacking resources to investigate further alone, the agency asked the IRS to look into the case.

With an already active investigation into the use of easements, the IRS jumped at the chance to dig into the issue in Colorado. Steven Miller, commissioner for tax exempt and government entities, detailed the scope of the nationwide probe early in 2006: “We are examining over 500 easement donors [and] have many more cases under review. [T]he level of our activity in this area is unprecedented. As we proceed, we are prepared to use every civil and criminal tool at our disposal.”

By law, audits are a private matter between taxpayers and the IRS. And while few individuals are eager to disclose that they are under scrutiny, landowners typically develop close working relationships with the land trusts that hold their easements. News of the IRS actions filtered quickly from the affected landowners into the land trust community in Colorado, where some 250 cases are under investigation according to a document released by the



Denver IRS office. The same document suggests most of the cases involve valuation disputes and that, “In a significant number of these cases, conservation purpose and the satisfaction of the ‘relatively natural habitat’ or ‘open space’ requirement are at issue.”

On December 18 2006, the IRS stirred the pot further when a budget briefing from the Joint Budget

Committee of the Colorado Legislature published a summary on the situation that included a lengthy but vague email message from the IRS about its investigation: “To date we have found very few cases that appear to have complied with the statute and have a realistic valuation of the ease-

ment...The preliminary indications are that in most cases there is little or no decrease in the value of the property after the easement is created and that the methodology used to determine the before value by the taxpayers' appraisers did not result in a realistic value on which to base the deductions.”

The next day U.S. Senator Ken Salazar sent a concerned letter to the IRS, arguing that its campaign “appears to be advancing a redefinition of how conservation easements qualify for a deduction



under IRC 170(h.), one that is not at all consistent with past audits, private letter rulings, or practice by the IRS...It is particularly troubling to me that the Service would advance this new policy not through regulations or even written guidance to taxpayers, but rather through mass audits in one state. Even if this new interpretation was rejected by the courts (as, so far, it has been), its use in this manner could have serious consequences for my state and the protection of its farm and ranch lands, open space and other natural resources, by casting a pall over donations that have been and continue to be an important contributor to Colorado's conservation heritage.”

The Glass Case

Under pressure from Colorado lawmakers to further clarify just what the agency was investigating, the IRS conducted a briefing in the Denver offices of Senator Salazar. Jill Ozarski, who attended the meeting as the newly hired director of the Colorado Coalition of Land Trusts, says the IRS revealed it was

scrutinizing the conservation value in over 100 cases using the same interpretation employed in a case called *Glass v. Commissioner*.

In 1999, the IRS challenged easements along Lake Michigan donated by the Charles and Susan Glass to the Little Traverse Conservancy in the early 1990s. The easement protected a small portion of a bluff that was habitat for bald eagles, Lake Huron Tansy and Pitcher's thistle—all endangered species. The IRS challenged whether the easements actually protected "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem" as required by 170(h), the section of the IRS code that governs conservation easements.

On December 21, 2006 the IRS lost the *Glass* case on appeal in the Sixth Circuit Court. That might have forced an end game by the IRS, except that by this time it is believed that most Colorado landowners had already waived the statute of limitations, which for many landowners expires April 15, 2007. The IRS would not confirm this or otherwise break down the status of the investigation but acknowledged that it had begun notifying taxpayers of decisions.

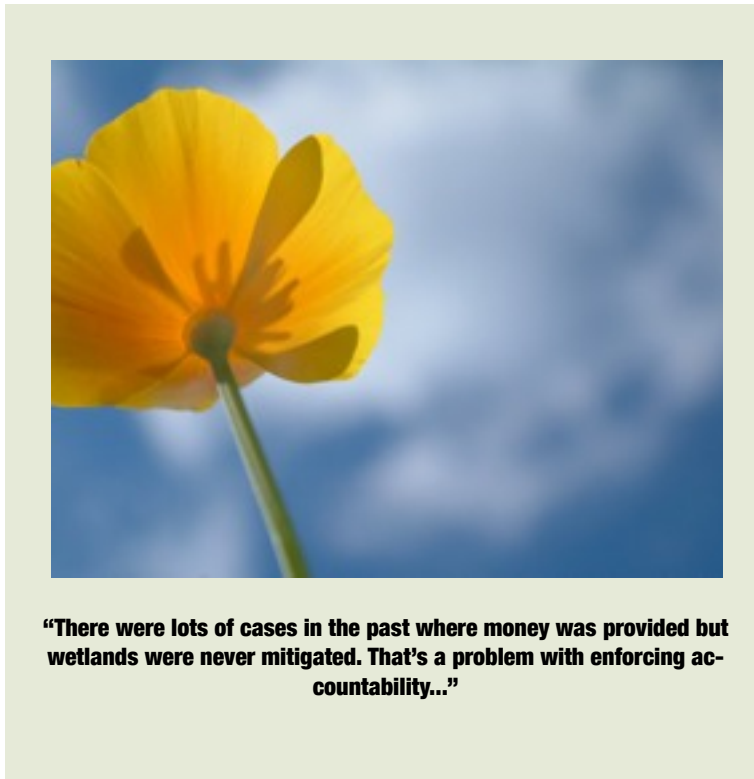
Throughout the state, land trust officials, appraisers, tax credit brokers, trust lawyers, and land trust politicians have been trying to walk a very fine line between safeguarding privileged information and sharing enough information to gain insight into the IRS' ongoing investigation. Jay Fetcher, a cattle rancher and founder of the Colorado Cattleman's Agricultural Land Trust, says the audits have been very hard on the landowners with whom he works. "They are so on edge. Most of our clients are not rich. They are using this tool because they believe so strongly about keeping their land the way it is."

Russ Shay, director of Public Policy for the Land Trust Alliance, also worries that the IRS' approach has taken its toll on Colorado landowners. "They seem to be trying to create a policy in the courts. Instead of dealing with this as a policy matter we've got 250 taxpayers on the line who are basically being put in the wringer. Pay us or pay an attorney," he says. "That's how our policy is going to be made. No debate, no elucidation of alternatives, no discussion. Just who cracks and who doesn't."

New Legislation

It's impossible to trace the history of taxation to its very beginning, but it's a fair bet that the history of cheating on taxes probably goes back just as far. And there have been problems in Colorado. One couple conducting conservation appraisals, for example, was fined and required to get further education before working in the field again.

Carl Spina, a tax credit broker, says his firm has occasionally refused to accept credits for market because the transaction underpinning them didn't meet his criteria. Sometimes the transactions were put in order and he later accepted them, but others were probably sold elsewhere. "I think that there needs to be some way for some group to set the bare standard requirements, the minimums to go into a conservation easement, in order for credits to be salable in Colorado," he argues. "The conservation community, not just in Colorado but nationally, needs to take a proactive position. I don't know that all land trusts have



"There were lots of cases in the past where money was provided but wetlands were never mitigated. That's a problem with enforcing accountability..."

the expertise and wherewithal to really manage the stewardship of land in perpetuity."

To address that very problem the Land Trust Alliance is developing an accreditation program. Meanwhile, the Colorado Coalition of Land Trusts has developed its own proposal to improve the system.

The proposed legislation will add reporting requirements to make enforcement easier and will raise the bar for conservation easement appraisers. Organizations that hold conservation easements must publicly report the number and acreage of easements held, sign an acknowledgment that the trust is committed to the conservation purpose of its easements, and guarantee that the trust has adequate staff and resources to monitor that easement. The bill also requires the public disclosure of lands preserved using the tax credit.

"This reporting will let the public see where their tax dollars are going and will help Colorado track success over

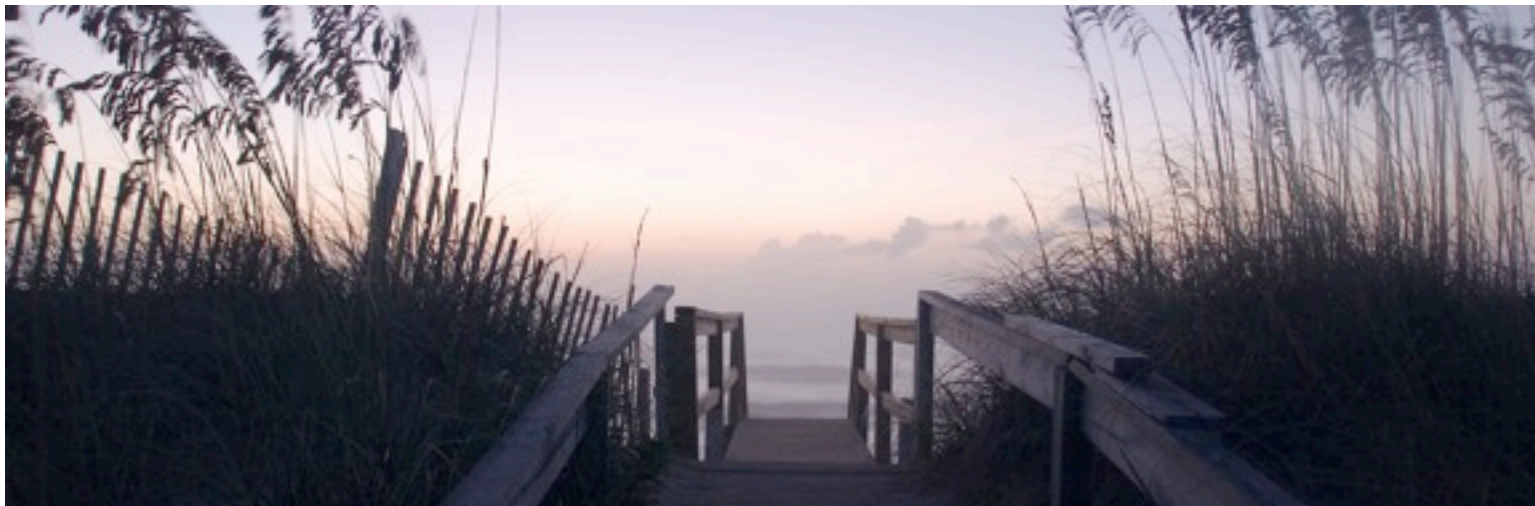
time," says CCLT executive director Jill Ozarski. "If there is any tax abuse, we should identify and stop it."

What's needed now is some transparency from the IRS, who may have had good reason to lay a chilling hand on one of the most successful land conservation efforts in the country, but has yet to make a public case. "They are talking about their analysis to folks like [the Joint Budget Commission] without giving anybody information so we can understand where they are coming from. It's hard for us to respond," says Ozarski. "That's not the way public policy should be made."

Erik Ness is a regular contributor to the Ecosystem Marketplace. He may be contacted through his website: <http://erikness.com>



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EM Dialogue: North Carolina's EEP

We recently received a very interesting question about the North Carolina Ecosystem Enhancement Program's value as a model for statewide mitigation programs. We thought our readers would be interested in sharing their knowledge of statewide mitigation programs and learning about the views of others. Below are excerpts from some the insightful responses we received.

The Question:

"The North Carolina Ecosystem Enhancement Program (EEP) has received a lot of favorable attention. But I don't know of any other states that have followed this model, although the model was created several years ago. Why hasn't it 'caught on'? At our organization we are often in the position of recommending policy changes to state governments re: land and water protection. Should we be including the N.C. model in our recommendations?"

The Responses:

From: George Kelly
Environmental Banc & Exchange

The NCEEP has not caught on because it is not necessary if there is a properly functioning mitigation banking marketplace. In North Carolina, mitigation banking was subject to very restrictive standards different from other forms of mitigation. There were very restrictive credit release standards that made banking uneconomic due to the back-end loaded credit release schedule. In addition, there existed an in-lieu fee program, the Wetland Restoration Program that had accumulated significant dollars but had not delivered significant mitigation. As a result, there was significant infrastructure and funding that was available to evolve into the NCEEP. Moreover, a strong Corps and State environmental framework mandated that mitigation be accomplished appropriately and North Carolina was held responsible for meeting historical impacts where no mitigation had been provided by the in-lieu fee program. North Carolina also has a state law that requires restoration for every acre of impact. This requires significant help from private enterprise in the delivery of mitigation, because 'preservation only' is not an option.

Our view is that the NCEEP model is not necessary if there is a properly functioning banking program. The NCEEP requires significant investment from the state in both personnel and funding that is not necessary if mitigation is being properly provided through other avenues. The NCEEP works in North Carolina because: other mitigation options were not present; there was a predecessor in-lieu fee program that had failed; and regulatory agencies demanded that North Carolina live up to its mitigation obligations.

Each state has unique issues, including state law and the personality of the Corps District. Many states have functioning mitigation banking markets and there is no need to create a programmatic state-wide approach to mitigation. If there were equivalent standards for all forms of mitigation and consistent application of those rules, an EEP-type program would not be necessary.

From: Timothy A. Acker
Applied Technology Wetlands & Forestry Consultants

I think there are several reasons why North Carolina's Ecosystem Enhancement Program (EEP) has not 'caught on'.

First, it is difficult to get all the state and federal agencies on the same page when it comes to setting up a program such as EEP (see D'Ignazio et al., 2004).

Second, I think there is hesitation on the part of state legislatures to create a new bureaucracy. The agencies we currently have running the regulatory programs are not exactly models of efficiency and effectiveness.

Third, initial financing for EEP came from North Carolina's Department of Transportation. My understanding here in Oregon is that the Department of Transportation (ODOT) can't even buy mitigation credits in advance of impacts - every dollar spent must be related to a specific project, and "hoarding" credits for future projects is considered speculative and therefore is not allowed.

Fourth, EEP bridged the gap between current needs and future credit production once the mitigation projects came online with conservation - locking up existing high quality sites. Although laudable from an ecological standpoint, this requires compromising "no net loss." Some states may be less willing to make this leap.

Fifth, my experience is that existing mitigation bankers resist anything new that they perceive will negatively impact their enterprises, and the EEP model looks like government competition. The regulatory agencies in particular kowtow to the mitigation bankers because the banks' instruments are seen as legal contracts, and the agencies are afraid of getting sued.

There are some parts of EEP that I think could and should be widely emulated. First, the watershed assessments resulting in geospatial identification of what needs to be done, where it needs to be done, and why the project fits into the bigger picture is pure gold. Almost everybody talks about this; EEP did it and they should be applauded for it. Secondly, EEP developed a calculus for setting priorities for their mitigation projects – again, a necessary item. Third, EEP developed what I perceive as clear, objective, and measurable standards for what constitutes project success and failure. And lastly, EEP has broken down the old paradigm of “certain impact – concurrent promises and temporal loss” and replaced it with an advance mitigation model that works. I think this is EEP’s most important contribution and it should have other states scratching their collective heads and saying, “How can we do that?”

Having worked in both the public and private sectors, I admit I have a bias towards the latter. EEP represents one approach to the problem of inefficient and ineffective compensatory mitigation: empower the government to do it. Another approach, and the one I favor, would be to remove the obstacles that prevent the private sector from doing it. In Oregon right now, the only way to effect mitigation prior to impact is through the mitigation bank/MBRT process. Because the MBRT process is so time consuming and costly to get through, it represents a significant barrier to entry. And because there is advance release of credits, there are complex bonding and risk management mechanisms. Effective monitoring, long-term protection, an over-reliance on wetland enhancement and the need to define the “watershed context,” round out the list of unresolved issues associated with mitigation banking in Oregon.

I think the ideal compensatory mitigation program would have: clear, objective, and measurable standards of success and failure (like EEP); a regulatory notification process to signal the agencies that proposed activities are intended to produce compensatory wetland mitigation credits for use or sale; and agency oversight only at the point when the proposed credits are presented for approval against standards (certification). Such a program would be completely outcome-based, with no credit certified or used against an impact until the restoration work underpinning the credit was completed. An ideal program would also incentivize the achievement of ecological and watershed priorities by awarding larger service areas for increasing performance. In this way the ecological/watershed priorities “pull” mitigation performance in a manner that is truly meaningful to the provider (a larger potential market). Long-term protection would still be required, and monitoring would be on a standardized/audit basis in order to focus agency resources at the critical few decision points.

What makes this program different is that it removes much of the regulatory agency oversight that saps agency and provider resources but adds little or no value to the outcome on-the-ground. It focuses oversight at the critical decision points – did the project work? Is it wet-

land? Is it functionally equivalent to the impact? Is it equivalent in terms of acreage? It leaves the potential for both risk and reward in the hands of the mitigation provider, and it does so without the need to add more government.



“Simply put, the establishment and long-term success of a program like EEP requires incredible leadership, diligence, and cooperation.”

**From: Lisa Creasman
Conservation Trust for North Carolina**

I’m Lisa Creasman and I work for Conservation Trust for North Carolina (CTNC), a land trust currently under contract with EEP to help facilitate the submission of potential preservation mitigation during the program’s two-year start up transition. All agencies involved with establishing and approving the EEP program agreed to allow, during the two-year transition, preservation mitigation to supply the majority of the immediate mitigation credits needs, although it also had to be augmented with 1:1 restoration by the end of the two year period.

CTNC worked with the other 23 local and regional land trusts in the state to facilitate the submission of preservation mitigation proposals to be reviewed by EEP and partner agencies, and if accepted, brought to closing with a permanent conservation easement protecting the property. The

transition period is now complete, and our contract with EEP expires June 30, 2007. Thus far, through our cooperative project, high quality riparian habitat along approximately 161 miles of stream has been permanently protected, as well as approximately 1887 wetland acres. In addition, restoration occurred on a 1:1 basis for each stream foot or wetland acre mitigated through preservation. So, from the conservation point of view, the EEP program has created a very effective pathway for helping preserve high priority stream and wetland habitats, while meeting the mitigation needs of the state.

I can only respond to the question regarding why the EEP model has not spread across the country from the perspective I’ve developed over the past few years working on preservation mitigation during the transition period. Simply put, the establishment and long-term success of a program like EEP requires incredible leadership, diligence, and cooperation. Developing something at this scale requires the approval of so many agencies (not to mention the dedication and reallocation of tremendous resources) that few governments have the time or inclination to pursue it. In North Carolina, the directors of the relevant state and federal agencies were fully behind the EEP and have maintained that support through to implementation. Staff at all levels of the federal and state agencies

(including regulatory, natural resource, and transportation agencies) have been challenged to look beyond their respective agency’s immediate goals to work cooperatively to respond to the EEP’s needs.

In addition to leadership and a commitment to implementation at every staff level, developing a new program of this scale and complexity requires taking some risks and allowing for re-adjustments as lessons are learned. Further, mitigation programs are unavoidably vulnerable to competing interests and pressing deadlines.



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Considering the organizational and resource restructuring that a program like EEP requires, and the fact that the program is still relatively young and still working through many issues, I would imagine many interested states, particularly those with mitigation programs that are functioning well enough, are waiting for the “how to” manual to be completed.

**From: Suzanne Klimek
North Carolina Ecosystem Enhancement Program**

The Ecosystem Enhancement Program believes that the program offers many successful attributes that are worth recommending to other states. Key reasons that other states have not established similar programs are likely to include:

1. EEP is a young program and has tangibly demonstrated its success in the last couple of years – program development and establishment takes time;
2. Other states may not possess the unique characteristics that exist in N.C. that made the state a good candidate for a mitigation ‘overhaul’; and
3. It currently may not be in the best interest of other states to pursue an in-lieu fee mitigation model until the result of the federal rule-making process that may affect such programs is revealed.

EEP’s success has only been tangibly demonstrated in the last two years.

EEP was established in July 2003 and went through a proscribed two-year transition period during which much energy was invested in establishing the organization. During this time, EEP not only ramped up the development of compensatory mitigation for projected Department of Transportation needs, but it also went through the process of establishing positions, hiring staff, setting up office space, developing relationships with regulatory agencies, and building policies, processes and procedures from the ground up. At the end of the transition (July 2005), EEP reported substantial compliance with all regulatory requirements and no delays to transportation delivery related to compensatory mitigation. The most recent reporting milestone occurred in July 2006; again, compliance statistics were very high, delays to transportation delivery were non-existent and the program was able to demonstrate substantial progress toward advancing mitigation ahead of permitted impacts. Actual results are what will compel other states to take on the difficult task of substantial change, and EEP now has the results to show that the change is worthwhile.

Other states may not share the same characteristics

In the 1990s, North Carolina faced “a perfect storm” around compensatory mitigation. Our storm was caused by (among other things): a large number of transportation and development projects stemming from increased growth; monetary concerns; permitting delays; a lack of communication and understanding; an inability to meet regulatory requirements in a timely manner; and passionate water-quality concerns. The following important characteristics were present and made the state ripe for the significant change accomplished through the establishment of EEP:

- A large magnitude of impacts to aquatic resources from new road and development projects;
- A significant amount of water-quality resources to protect, enhance and restore;

- Executive level commitment to implementing change;
- A seven- year road development plan that could be used to forecast impacts to aquatic resources; and
- An opportunity for advanced funding.

Creating EEP required a quantum change that fundamentally altered the way three governmental entities operated and thought about compensatory mitigation: the departments of Environment and Natural Resources (NCDENR) and Transportation (NCDOT), and the U. S. Army Corps of Engineers (USACE). Generally, the amount of change an organization is willing to undertake is proportional to the amount of difficulties they are experiencing. North Carolina’s significant challenges gained the attention of senior decision makers, who realized that it was time for a radical change and so provided the resources (people, time, money) to develop recommendations and implement a solution. The solution that brought about EEP required changes in behaviors from top to bottom.



In the 1990s, North Carolina faced “a perfect storm” around compensatory mitigation.

In order for an exact replica of EEP to be viable in another state, the situation described above must be present. However, even for states that do not share North Carolina’s unique characteristics, EEP’s demonstrated successes can and should be considered for replication on a smaller scale. Items to consider for moderate change might include:

- Mitigation based on watershed planning.
- Mitigation based on estimated transportation and development impacts.
- Mitigation delivery timing that will get ahead of impacts within a few years

- Advanced funding.
- Mitigation delivery that is programmatic in nature. Programmatic delivery provides economies of scale and efficiencies.
- A multi-agency oversight group that meets regularly and can help provide regulatory assurance and guidance on unusual situations.
- Programmatic review, as opposed to project-by-project review.
- Mitigation responsibility within a natural resource agency.
- A continual-improvement philosophy.

The Pending Federal Mitigation Rule

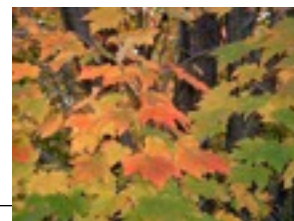
In May 2006, the USACE and the U.S. Environmental Protection Agency launched a rule-making effort that would affect the delivery of compensatory mitigation across the nation. The initial rule that was proposed called for an eventual phase out of in-lieu fee programs. Although EEP’s current framework embraces many of the rule’s components (such as watershed planning and advanced mitigation), it functions through an in-lieu fee model. Other states that have expressed an interest in the EEP model may be waiting to see the final outcome of the rule before investing substantial amounts of time and money

We believe that it is entirely appropriate for other states to consider the EEP model in seeking to improve mitigation in their jurisdictions. EEP stands ready to help other states determine how the EEP model (in whole or in part) can work in their jurisdictions, and to assist them in managing some of the challenges we have encountered.



Banking 101 and Stream Mitigation

By *Trey Schillie and Nathaniel Carroll*



The National Mitigation and Conservation Banking Conference kicked off “The Next Decade of Banking” on April 10, 2007 with two very different sessions. The morning workshop took a big picture look at the basics of the industry, while the afternoon dialed in on the nitty-gritty details of a specific type of mitigation project. In both sessions, however, conference attendees from private, public, and non-governmental sectors swapped ideas with one another and expressed a shared interest in seeing the mitigation industry build on past success.

Since looking back often shines light on the path ahead, the Banking Primer 101 Workshop opened with a short banking history lesson from Robert Brumbaugh of the U.S. Army Corps of Engineers. Brumbaugh highlighted early banking efforts (nearly 25 years ago) and subsequent policy milestones that have shaped the current legal framework surrounding mitigation and conservation banks.

Craig Denisoff and Greg Sutter, from Westervelt Ecological Services based in Sacramento, California, followed Brumbaugh’s introduction by providing an overview of the primary regulatory drivers for conservation (habitat) and wetland banking. The Endangered Species Act (ESA) and The Clean Water Act (CWA), along with other federal, state, and local provisions, provide flexible mechanisms that allow developers to compensate for unavoidable habitat or wetland loss by funding the creation or preservation of habitat at another site.

After a short break, Denisoff and Sutter further explained the differences between conservation and wetland banking. Conservation banks focus on habitat preservation and species viability as primary objectives – directed by Section 7 of the ESA. Wetland

banks, on the other hand, are used to satisfy the no net loss requirement of Section 404 from the CWA. When created in advance of wetland loss – these projects reduce uncertainty and provide buyer confidence by having a proven commodity in place.

Wetland and habitat banking share the common theme of “balancing business and biology,” Denisoff explained. While site selection is firmly rooted in ecological concepts, projects should also complement regional conservation goals. Close coordination with agency regulators is necessary to facilitate habitat and wetland banking projects, but, at the end of the day, business considerations will inform whether or not a mitigation project makes sense.

Tuesday’s second workshop, Stream Mitigation Banking & Restoration, was dominated by a technical discussion of the market, regulatory, and ecological aspects of stream banking. The afternoon’s instructors included George Howard and Tara Allden of Restoration Systems, Cynthia Robinson of Robinsong Ecological Services and Steve Jones of Environmental Services, Inc.

Howard opened the session with a striking visual display of the small area covered by wetlands in North Carolina versus the near-complete coverage by streams in the state. “Streams are omnipresent on the landscape,” he said when stressing the opportunity for more stream mitigation in North Carolina. And while Howard cautioned that stream mitigation banking is, “inherently more technical and complex than wetland banking,” he said it is also “more profitable, and that is something that most people don’t realize.”

Jones tempered the allure of profit with the need for thorough consideration of possible fatal flaws. It is

important, he said, to make sure you can answer some tough questions before launching a stream mitigation project. What is your service area likely to be? What is the market demand? Are there other credit providers in your service area? What is the cost per foot? And finally, what would your start up cost be? Jones also warned “consider water quality issues upstream of the bank ...that’s going to be a big deal in the future.”

Expanding on the theme of how to decide whether or not to engage in stream mitigation, Robinson added, “It is not just how many credits you can generate – it’s also how many credits are going to be required for impacts. This is a hidden, but very important point.”

Once you know the cost/benefit pencil out, Allden described how to site a bank from a banker’s perspective. “As with all real estate the key is location, location, location.”

But she emphasized that “you will not have a successful site unless you have a successful relationship with your landowners.”

The workshop’s overall message was that while stream banking might be the most technical and complex sibling in the mitigation banking family, its promise for ecological uplift and profit make it a worthwhile enterprise for a growing number of bankers.

Trey Schillie is Ecosystem Services Specialist at the USDA Forest Service. Nathaniel Carroll is the Biodiversity project manager for the Ecosystem Marketplace. He can be reached at ncarroll@ecosystemmarketplace.com

Agenda for Today (Wednesday, April 11, 2007)

8:00 AM - 1:00 PM

Optional Field Trips:

1. Big Rivers Wetland Mitigation Bank.

Buses depart Hotel entrance at 8 a.m. Box lunch included.

2. Fox Creek Stream Mitigation Bank.

Buses depart Hotel entrance at 9 a.m. Box lunch included.

3. Southern Illinois Wetland Mitigation Bank

Buses depart Hotel entrance at 8 a.m. Box lunch included.

Noon - 4:00 PM

Exhibitor Set-up

1:00 PM - 3:00 PM

U.S. Army Corps' IRT Training Workshop (Corps IRT staff only) (Meramec Ballroom)

Facilitated by Mark Sudol, U.S. Army Corps of Engi-

neers, and Robert Brumbaugh, Institute for Water Resources, U.S. Army Corps of Engineers.

This workshop is for Corps staff involved in the IRT process and will address the new guidance.

3:00 PM - 5:30 PM

Regulators' Forum (Regulators only) (Meramec Ballroom)

Facilitated by Robert W. Brumbaugh, Senior Policy Analyst, Water Resources Institute, U.S. Army Corps of Engineers

A gathering of regulators involved in mitigation and conservation banking throughout the United States in an effort to share their ex-

periences and address special concerns to regulators.

3:00 - 5:30 PM

Bankers' Forum and National Mitigation Banking Association Meeting (open session) (Miss. Ballroom)

Facilitated by Craig Denisoff, President, NMBA

The National Mitigation Banking Association will hold its annual meeting, with the last part devoted to a forum that allows bankers to share experiences and address special concerns to bankers.

5:30 PM - 7:00 PM

Welcome Reception in Exhibit Area

Hosted by the NMBA, Lake Erie Land Co., Wetlands Forever Co., and Wetland Mitigation of Illinois, LLC



About the Ecosystem Marketplace

The Ecosystem Marketplace is the world's leading source of information on markets and payment schemes for ecosystem services; services such as water quality, carbon sequestration and biodiversity. We believe that by providing solid and trust-worthy information on prices, regulation, science, and other market-relevant issues, markets for ecosystem services will one day become a fundamental part of our economic and environmental system, helping give value to environmental services and thereby helping conserve them.

The Ecosystem Marketplace is a project of:



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Wildlands, Inc. is a habitat development and land management company with projects throughout California and the western United States. Established in 1991, Wildlands is one of the Nation's first private organizations to establish mitigation banks and conservation banks that protect wildlife habitat in perpetuity.

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"When they built this, Jeremy, parks didn't have themes."