

STATE OF NORTH CAROLINA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
ENVIRONMENTAL MANAGEMENT COMMISSION

REPORT OF PROCEEDINGS  
FOR PROPOSED REVISIONS TO THE SCHEDULE OF FEES FOR THE NC ECOSYSTEM  
ENHANCEMENT PROGRAM (15A NCAC 2R .0101, .0201, .0203.0401 and .0402)

PUBLIC HEARINGS

New Bern, NC  
January 8, 2007

Raleigh, NC  
January 9, 2007

Morganton, NC  
January 11, 2007

## REPORT OF PROCEEDINGS

### REPORT OF PROCEEDINGS

#### Table of Contents

Background	3
Summary of Rule-Making Proceedings	5
Rule Proposal Published in December 2006	5
Hearing Participation and Comments Received	7
Major Issues and Staff Responses	7
Comments on Proposed Fee Categories	7
Comments on Fee Values	8
Miscellaneous Comments	9
Rule Proposals Published in March 2007	9
Alternate Proposal #1 – Single Statewide Fee	9
Alternate Proposal #2 – Two-Fee System	9
Comments Received and Agency Response	10
Comments on the Two Alternates	10
Hearing Officers’ Recommendations	11
Important Considerations	11
Recommendation	13
Majority Recommendation	13
Minority Report	13
APPENDIX 1 – Public Notice from NC Register (December 15, 2006)	14
APPENDIX 2 – Announcement of Public Hearings	18
APPENDIX 3 – List of Attendees of Public Hearings	21
APPENDIX 4 – Written Comments Received in Response to December 15, 2006 NC Register Publication	23
APPENDIX 5 – Public Notice from NC Register (March 15, 2007)	38
APPENDIX 6 – Announcement of Alternate Rule Proposals	42
APPENDIX 7 – Comments received on March 15, 2007 NC Register publication	46
APPENDIX 8 – Current mitigation fees (effective July 1, 2007)	57
APPENDIX 9 – Results of ILF survey	59

## BACKGROUND

In North Carolina, individuals and entities required to offset permitted unavoidable impacts to aquatic resources may choose to meet their regulatory permit requirement to provide compensatory mitigation in one of three ways:

1. Provide the compensatory mitigation themselves;
2. Purchase compensatory mitigation credits from an approved bank serving the area in which the impacts will occur; or
3. Make a specified payment to the N.C. Ecosystem Enhancement Program.

The N.C. Ecosystem Enhancement Program (EEP) administers a voluntary In-Lieu Fee (ILF) program whereby permittees may comply with Federal and State regulatory requirements through payment to the program. Based on the magnitude and type of the mitigation required by regulatory agencies, payment to the EEP transfers an applicant's mitigation responsibility to EEP. The money paid into the program is used to implement stream and wetland restoration projects to meet regulatory requirements.

EEP continually evaluates the cost of meeting assumed mitigation responsibilities through stream and wetland restoration projects and proposes adjustments to the established fees as needed. It is critical to program success and effectiveness that fees assessed reflect actual costs incurred to provide acceptable mitigation and meet regulatory requirements. Additionally, inadequate fees endanger the program's financial viability. EEP restoration projects include a number of steps, all of which contribute to overall project cost. Project components include:

- Project identification and development.
- Land or conservation easement acquisition.
- Project design.
- Project construction.
- Monitoring project for 5 years to ensure success.
- Maintenance activities as needed.

The most recent revision to mitigation fees became effective in April 2003. This revision resulted in an increase in the fee for stream mitigation credit and established a process to annually adjust stream and wetland fees to keep pace with inflation. EEP's current mitigation fee schedule is provided for reference in Appendix 8.

Since April 2003, the program has expanded to the extent that there are currently over 700 EEP-managed restoration projects in various phases of development. This large number of projects has provided EEP with data to compare existing fees to actual project costs. The analysis revealed a substantial discrepancy between actual project costs and payments received. Project costs have been rising due to increasing land values and escalating project design and construction costs. EEP also implements a number of more costly projects in urban or urbanizing areas where higher land prices and infrastructure constraints increase costs of design and construction. Increasing project costs led EEP to the conclusion that fees for stream, riparian wetlands and non-riparian wetlands must be increased to keep pace with actual restoration costs and for EEP to continue to operate an In-Lieu Fee mitigation program as an option for developers and other permit applicants statewide.



## SUMMARY OF RULE-MAKING PROCEEDINGS

Rule-making to revise the Ecosystem Enhancement Program's (EEP) compensatory mitigation fees was initiated in late 2006. Hearings were held in January 2007 and comments were received through mid-February of 2007. The hearing officers (Environmental Management Commission members Peterson, Waldroup and Westall) considered all comments received from the initial hearing process and determined that two alternate rule proposals should be published for consideration. This publication occurred in March 2007 and comments were received until May 15. The following sub-sections provide details on each of the rule alternatives published and comments received on the proposals.

### ***Rule Proposal Published in December 2006***

Notice was published in the December 15, 2006 issue of the North Carolina Register to solicit comments on proposed revisions to the schedule of fees for EEP's compensatory mitigation program. Fee increases were proposed for streams, riparian and non-riparian wetlands. No increase for coastal wetlands fees was proposed. Proposed revisions also included adjustments in nomenclature to accurately reference EEP as the name of the program (the existing rules reference EEP's predecessor, the Wetlands Restoration Program) and an increase in the fee assessed when EEP is asked to hold protected mitigation properties for stewardship purposes. The notice (replicated in Appendix 1) also communicated the time and location of three public hearings held in January of 2007. A public announcement was also developed and distributed to interested parties via electronic mailings to communicate the nature of the proposed rule revisions and the time and place of the public hearings (see Appendix 2).

The rule published on December 15, 2006 proposed a three tier fee system based on county boundaries. Currently, fees are uniform across the state and are intended to reflect the average cost of mitigation. The three-tier fee proposal was based on varying costs incurred in different parts of the state. Costs vary in different locations due to a variety of factors. The three-tiered system was designed to capture variable costs associated with urban environments and increased costs associated with escalating land prices in coastal North Carolina.

The proposed categories were Urban, Rural and Coastal and were based on county boundaries.

- Urban counties were selected according to their connection to the state's largest municipalities and their designation as an urban or urbanizing area in relation to the Phase II stormwater rules. EEP proposed defining 31 counties that would be subject to fees associated with urban areas.
- Coastal counties were identified as those in eastern North Carolina that have higher project costs because of escalating real estate values. EEP proposed defining 17 counties as Coastal.
- Rural counties were all counties not defined as Urban or Coastal.

The following map illustrates the location and distribution of counties proposed for definition as Urban, Rural or Coastal under the original rule proposal.

Proposed Fee Category by County



The following fees were proposed based on a combination of information including statistical analyses of EEP design-bid-build project data, per-unit cost analysis of EEP full-delivery project data, and data on coastal land costs. No changes were proposed to the fee for Coastal Wetland mitigation.

**Stream Fees – cost per linear foot**

Existing	Proposed		
	Urban Counties	Rural Counties	Coastal Counties
\$232	\$332	\$232	\$232

**Riparian Wetland Fees – cost per acre**

Existing	Proposed		
	Urban Counties	Rural Counties	Coastal Counties
\$27,847	\$56,000	\$32,000	\$38,000

**Non-Riparian Wetland Fees – cost per acre**

Existing	Proposed		
	Urban Counties	Rural Counties	Coastal Counties
\$13,924	\$21,000	\$21,000	\$24,000

**Land Management Fees:** EEP is sometimes asked to assume the responsibility of long-term monitoring and maintenance of properties preserved in perpetuity for projects not constructed, built, and monitored by EEP. The Department of Environment and Natural Resources’ Office of Conservation and Community Affairs has established a program that focuses on the long-term stewardship of properties protected for mitigation purposes. Therefore, the revision of this part of the fee rule was proposed to direct payments for this service to the Conservation Grant Fund

Endowment. The fee was proposed to be revised from \$397 per acre to \$1,000 per acre, with a minimum payment of \$1,000.

#### Hearing Participation and Comments Received

There were a total of 37 attendees and 6 speakers at all three public hearings. A list of attendees at each hearing is provided in Appendix 3. The following information summarizes attendance and speakers by each hearing:

New Bern – 11 attendees; 0 speakers  
Raleigh – 22 attendees; 5 speakers  
Morganton – four attendees; one speaker

A total of seven written comments were received by the end of the comment period. These written submissions are reproduced for reference in Appendix 4.

#### Major Issues and Staff Responses

This section provides a summary of major issues that were conveyed during the commenting process on the proposed rule. The comments and agency responses are presented in three sections: comments related to proposed fee categories; comments related to proposed fee values; and miscellaneous comments.

#### ***Comments on Proposed Fee Categories (Comment summaries are underlined followed by a brief response )***

An impacter might pay an urban fee but the restoration could occur in an area subject to rural fees. Urban payments should require replacement in urban environments.

EEP is required to provide replacement of impacts within the same 8-digit catalog unit (CU). Under the proposed three tier system based on county boundaries, more than one fee type can occur within one 8-digit CU. Under this proposal, someone could pay an urban fee but replacement may occur in a non-urban designated county. Originally, staff considered defining the fee categories based on 8-digit CU boundaries, but proposed fee categories based on county boundaries to make it easier for users of the program.

Mountain areas are also experiencing increasing land values similar to what is happening in coastal NC. In addition, restoration opportunities in the mountains can be limited. For these reasons, fees in mountains should be higher.

EEP concurs with the assessment that land values and the limited number of restoration opportunities can influence project costs.

Harnett County should not be defined as urban.

Upon further examination, it appears that Harnett County has been defined by EPA as urban/urbanizing because it has a small amount of urban area within its boundaries. Hoke County and Stokes County are similarly classified. If this three-tiered system were to be pursued, these three counties should be defined as rural.

Hearing officers should consider defining fee areas based on watersheds (8-digit catalog units) instead of counties.

A fee system that varies based on county boundaries was proposed with the intent of making the application of fees more predictable for program participants. EEP believes that a tiered system

based on watershed boundaries is also feasible and is willing to make available resources that would help users locate the watershed within which the impact is occurring.

### **Comments on Fee Values**

EEP's project costs are inflated because the program does not manage costs effectively.

EEP takes care to manage project costs to keep them as reasonable as possible.

Specifically, EEP does the following to manage project costs:

- EEP has declined to award full-delivery project proposals when unit costs were considered to exceed the program's fee schedule significantly.
- For each restoration project, EEP develops a budget that is based on the fee schedule and strives to adhere to that budget.
- EEP has taken actions to increase competition for full-delivery projects and construction contracts to allow the open market to define actual costs. An example of this is EEP has offered training to construction contractors to increase the bidder pool. This not only increases competition, but it also enhances project quality, reducing potential maintenance costs.
- Each contract scope is reviewed by EEP staff to ensure that no unnecessary services are included and that the amount of time assigned by the consultant to various tasks is reasonable. EEP also ensures that the consultant team uses resources appropriate to each task.
- It is EEP's policy to conduct restoration activities in a way that minimizes maintenance costs. An example of this is our partnership with the Carolina Vegetation Survey, with whom we are working to develop a database of the types of vegetation that are planted on our project sites and the success rates of the plantings. To the extent we can improve planting success, this collaboration may minimize the need for with secondary planting efforts and reduce costs.
- When appropriate, EEP seeks to implement projects that do not require a large amount of engineering and construction to reduce per-unit project costs. Examples of this can be seen in costs for dam-removal projects, which are below the fee schedule.
- EEP maximizes economic efficiencies by meeting multiple mitigation requirements through larger, more cost-effective projects statewide.

The proposed fee increases are excessive and arbitrary.

The proposed fee revisions are based on actual project cost data.

EEP is performing a service that would be more efficiently completed by the private sector.

EEP contracts with private-sector businesses to design, construct and monitor mitigation sites. So, many of the benefits of private-sector participation are already being realized. In addition, because EEP must adhere to state contracting guidelines, more companies have the opportunity to compete to provide the services needed. Through competitive outsourcing, EEP brings to bear the benefits of both the private and public sectors. EEP does not deliberately compete with private mitigation providers and has directed ILF program applicants to mitigation banks when they are known to be an option. Although private mitigation opportunities exist in some areas, EEP is the only program that provides mitigation statewide in all hydrologic units and operates on a watershed-needs basis. Nothing related to the operational practices and existence of EEP limits or prohibits the establishment of private mitigation banks.

### Miscellaneous Comments

Before fees are raised, EEP should disclose funds collected, funds expended, amount dedicated to administrative purposes and detailed project costs including project budgets.

EEP provides detailed revenue and cost information in quarterly and annual reports published via the Web at [www.nceep.net](http://www.nceep.net).

### Rule Proposals Published in March 2007

As indicated earlier in this report, the hearing officers gave consideration to comments received on the December proposal and determined that two additional fee proposals should be considered in order to respond to the comments. These proposals were:

- Maintain a flat fee structure to resolve issues associated with a variable fee system; and
- Adopt a two-tier fee system based on hydrologic unit boundaries to address concerns that replacement in higher fee areas be provided within the same area and to respond to comments that other factors besides the urban environment and high land costs in coastal areas contribute to higher project costs.

The proposals as published in the N.C. Register are included in Appendix 5. The announcement of the alternate proposals sent to interested parties is included in Appendix 6.

#### Alternate Proposal #1 – Single Statewide Fee

For this fee system, EEP would maintain a single statewide fee set at the 85<sup>th</sup> percentile of statistics related to project cost data (these project statistics are included in the document provided in Appendix 6).

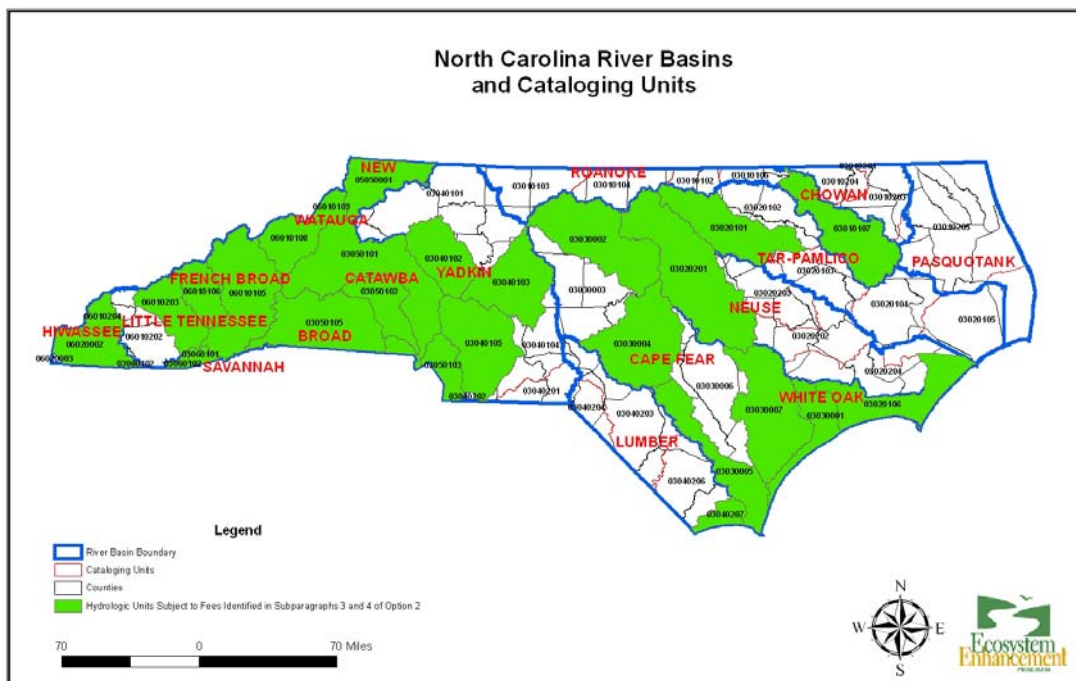
Mitigation Type	Stream	Riparian Wetland	Non-riparian Wetland
Mitigation Unit	linear foot	acre	acre
Fee	\$300	\$57,725	\$32,450

#### Alternate Proposal #2 – Two-Fee System

Under this proposal, EEP would administer a two-fee system based on eight-digit hydrologic units (as defined by the U. S. Geological Survey). The higher fee would be used in hydrologic units where project costs are increased due to factors such as urban constraints, higher land costs and limited mitigation opportunities. The higher fees were proposed at the 90<sup>th</sup> percentile of all project statistics (see Appendix 6) and lower fees are equal to the originally proposed rural fee, adjusted for inflation.

Mitigation Type	Stream	Riparian Wetland	Non-riparian Wetland
Mitigation Unit	linear foot	acre	acre
Fee 1	\$323	\$59,600	\$43,000
Fee 2	\$244	\$33,696	\$22,113

Under proposal two, the shaded hydrologic units in the map shown below would be subject to the higher fees. These catalog units were chosen based on project costs, known factors contributing to higher costs and public comments received during the first comment period.



### Comments Received and Agency Response

After publication of the two alternate rule proposals, EEP received six written comments which are reproduced for reference in Appendix 7. This section provides a summary of major comments received that have not been captured and addressed in the section summarizing comments on the original rule proposal.

### Comments on the Two Alternates (*Comment summaries are underlined followed by a brief response*)

#### All three fee structures received some level of support.

The comments received did not offer overwhelming support for any single proposal made. Individual comments expressed support for a tiered system based on counties, a tiered system based on hydrologic units, and a flat-fee system.

#### Use of the 85<sup>th</sup> percentile should be justified.

The 85<sup>th</sup> percentile of the project cost data was used in the proposal for the single-fee system for a number of reasons. One is that the annual inflation adjustments have not kept pace with project costs, and a fee that does not account for that issue will lead EEP to revise fees again in the near future. In addition, the fee needs to reflect the fact that the mitigation requirements and associated payments that EEP accepts are normally made in small increments relative to restoration project size (for example 100 feet of stream impact versus a 3,000-foot restoration project). EEP must sometimes build a project larger than accumulated mitigation requirements. Not only are there cost efficiencies associated with larger projects, but there are also environmental benefits and increased success rates associated with holistic development of restoration sites. There is also a goal based on the preferences of regulatory agencies for EEP to be able to, to the extent possible, provide mitigation in advance of environmental impacts to avoid temporal loss of functions associated with wetlands and streams. Setting fees at an

appropriate level helps to ensure the program can balance sound restoration project development with the demand for mitigation credit and thus sustain the program. An additional factor in the growth of fees beyond inflation is the diminishing opportunities for building mitigation in areas where land values are growing. Without a forward looking fee setting process the program's financial viability cannot be sustained.

Fees proposed are not high enough to support the implementation of projects in urban areas. Implementation of projects in urban areas is important because impacts to aquatic resources often occur in these locations.

EEP implements projects in watersheds identified as needing restoration. The program prioritizes watersheds where impairment to water quality and other watershed functions exists. Inevitably, degraded urban watersheds are often identified as priorities. EEP is committed to implementing projects where they will generate the greatest environmental benefit, and that includes doing projects in urban areas. EEP manages project costs across the total program – it is unusual for an individual project cost to exactly match the per unit cost specified in program fees. Project costs can either be above or below the fee. As such, EEP will continue to implement some projects in urban areas for costs above the fee schedule. EEP has determined that the fee schedule proposals under consideration will allow urban mitigation projects where those opportunities exist.

Is a list of mitigation banks available?

While EEP does not maintain a complete list of private mitigation banks or other private mitigation opportunities available, the U.S. Army Corps of Engineers has information on approved mitigation banks in North Carolina.

What percentage of the fee is dedicated to EEP administration?

EEP administration costs have consistently accounted for approximately six percent of total program expenditures.

It was suggested that the EMC conduct a close examination of EEP operations.

An analysis of EEP operations is beyond the scope of the examination and revision of the program's schedule of fees. It is noted however that the NC General Assembly recently conducted a study of a potential merger between the Clean Water Management Trust Fund and the EEP. This study included a thorough examination of EEP operations. EEP is prepared to present an overview of the program and the findings of this study to the EMC at the Commission's request.

## **HEARING OFFICERS' RECOMMENDATIONS**

The hearing officers have deliberated carefully and with considerable discussion on the issues surrounding the revision of EEP's fees for compensatory mitigation. During these deliberations, a number of important issues were raised and considered as part of the recommendation-making process. These issues and the resulting recommendation are outlined below.

### ***Important Considerations***

In making their recommendation, the hearing officers want to ensure the following:

The fees established through this revision should allow EEP to operate effectively while maintaining financial viability without initiating another fee revision in the near future. Fees

should be sufficient to support the ILF program without the need for continual adjustment and essentially an ongoing rule making process. Annual inflation adjustments alone are not keeping pace with escalating costs of implementing projects. Despite annual adjustments since 2003, it is clear that costs will continue to exceed revenues without a fee increase. Setting the fee at the 85<sup>th</sup> percentile level above the current mean cost should satisfy this concern. It is impossible to predict the growth in fees outside of inflationary factors. With the key components of the program, land costs, design, construction and monitoring, likely to continue to grow beyond current program costs, it is prudent to logically consider these increasing costs in a fee setting process.

Restoration should occur in both urban and rural environments.

Significant concerns surround the fact that EEP project data and other information revealed in the hearing process demonstrate that restoration projects in the urban environment exceed the fee schedule and can drive EEP to concentrate lower cost projects in rural environments. Under a tiered fee system, higher fees for some areas would be established in part because of the presence of urban areas, within which project implementation would be more expensive. Regardless of the fee schedule that is adopted, EEP would continue to implement projects based on a watershed approach and priorities identified in EEP's planning processes. The hearing officers agreed strongly that urban projects should be promoted and that every effort should be made by EEP to find ways to build standard mitigation credits and apply innovative mitigation credit approaches within urban and developing areas.

EEP should seek mitigation credit for non-traditional mitigation projects.

EEP is committed to implementing urban projects where they are deemed important to the restoration of watersheds. Costs can be a constraining factor in EEP's ability to implement urban projects, as can the limited opportunities for traditional mitigation in urban settings. EEP has been working to gain approval from State and Federal regulatory agencies to get mitigation credit for non-traditional mitigation projects (such as stormwater retrofits and other best management practices) in urban areas to offset watershed functions lost to impacts to aquatic resources. Key to this effort is agreement on the amount and type of mitigation credit that a non-traditional project would generate. Just as the program cannot invest in a project before there is sufficient confidence that we will receive payments to cover project costs, EEP cannot invest in a project without assurance of adequate mitigation credit. The hearing officers unanimously expressed their support for projects in urban areas as well as a resolution to what mitigation credit these projects would yield. EEP is available to report to the EMC or the Water Quality Committee on the issues related to providing mitigation in urban environments. The hearing officers indicated they would urge the EMC to request such a presentation.

The fee adjustment should be sufficient to allow EEP to continue to provide an ILF option.

The hearing officers acknowledged that EEP provides an important service to the regulated community in North Carolina. The importance of this service was recently validated in responses to a survey that EEP issued to customers of the ILF program in early 2007 (see Appendix 9). This particular survey was sent to agents hired by ILF customers, such as residential and commercial developers, individual homeowners, local and federal agencies and non-profits. The survey found that customers electing to pay into the ILF program were highly satisfied with their experience using EEP. In addition, some respondents noted that in many areas of the state other mitigation options were either unavailable, inconvenient, more expensive or not viable for them. If fees are not set at a level sufficient for EEP to comply with transferred regulatory requirements, the option of satisfying these requirements through payment to EEP

may no longer be available to the regulated community. The hearing officers also noted that EEP experiences difficulty at entering into conservation agreements with willing landowners when fees are not adequate to compensate for land costs at existing property value levels.

#### Management and operation of the EEP program.

Several comments were made concerning the operation and efficiency of the EEP program. The hearing officers agreed that the revised fees proposal process is directly related to the costs of providing mitigation credits under the ILF approach administered by EEP and that this issue is not within the scope of considering revised fees. Additionally, as noted within this document, the cost of administration represents only six percent of the mitigation process as a whole. The program is already being looked at under a legislative process in relation to EEP's organizational location and composition. Based on information presented to the hearing officers by EEP staff, this evaluation is looking at some of these issues. The hearing officers certainly did not note any operational efficiency issues with EEP and would only recommend that the EMC request a briefing from EEP on the results of the legislative evaluation.

#### ***Recommendation***

During the deliberations conducted in order to develop a recommendation on this rule revision, the hearing officers converged on consideration of two of the three proposals presented: the two-tier fee based on watershed boundaries the maintenance of a single, yet higher fee, for the whole state. All three hearing officers had sympathy with each of the two alternatives yet differed among one another in the degree of support for each option. This resulted in two hearing officers favoring a dual fee structure and one favoring a single fee structure. All three hearing officers wanted the full commission to be aware of and carefully consider the choice between these two options so that when motions are made in support of the dual fee or the single uniform fee, the policy distinction will be clear and the will of the majority can prevail. Therefore, the recommendation in this report includes a majority recommendation and a minority report as presented below.

#### Majority Recommendation

Based on consideration discussed above, a majority of the hearing officers recommend adoption of the two-tiered fee system with boundaries defined by hydrologic units. The rule language for this option is presented as Option 2 in Appendix 5.

#### Minority Report

Because of concerns that a variable fee system would result in some users of the program paying higher prices that may not result in projects in urban areas, one hearing officer is in favor of the single fee system (Option 1 in Appendix 5) and does not support the majority recommendation.

The discussions among the hearing officers concerning which approach to take were related only to procedural and administrative concerns. The hearing officers unanimously agreed on the need for the fee increases and for the use of the 85<sup>th</sup> percentile fee level. The consideration of the two alternatives reflected no basic disagreement on the basis and supporting information justifying the fee increase. It was agreed that both options would be presented in the recommendation and presented to the full commission for consideration of all members.

**APPENDIX 1 – PUBLIC NOTICE FROM NC REGISTER (DECEMBER 15, 2006)**

shall take place within 10 calendar days of the request for hearing and not less than three days written notice. If a District First Sergeant removes a wrecker service from the rotation wrecker list, the wrecker service may appeal the removal to the Troop Commander (or his designee), or designee, in writing, within 20 calendar days of receipt of the notice. The Troop Commander, Commander or designee, in his-their discretion, may conduct a hearing or review the record. If the Troop Commander or designee decides to conduct a hearing, he-they will give the wrecker service not less than 10 calendar days notice. He-The Troop Commander or designee shall render a decision, in writing, within 10 calendar days of receipt of the appeal or date of the hearing, whichever occurs last. The Troop Commander's Commander or designee's decision, if unfavorable, may be appealed to the Office of Administrative Hearings (OAH) (OAH), within 30 calendar days, pursuant to the provisions of G.S. 150B.

(d) Hearings conducted by District First Sergeants and/or Troop Commanders or their designee's shall be informal and no party shall be represented by legal counsel.

(e) A wrecker service that is removed from the rotation wrecker list and subsequently placed back on the list, for any reason, shall not be entitled to additional calls, priority listing or any other form of compensation.

(f) Ordinarily, a wrecker service shall-may remain on the rotation wrecker list pending a final decision of the Troop Commander, Commander or designee. A District First Sergeant, with the concurrence of the Troop Commander, Commander or designee, may, however, summarily remove a wrecker service from the rotation wrecker list in those cases where there exists reasonable grounds to believe a violation enumerated in 14A NCAC 09H .0321(a)(12), (a)(20), or (a)(31) or any other violation relating to licensing, registration, insurance requirements or the safe and proper operation of the business or which may jeopardize the public health, safety or welfare.

Authority G.S. 20-184; 20-185; 20-187; 20-188.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02R .0101, .0201, .0203, .0401 - .0402.

Proposed Effective Date: May 1, 2007

Public Hearing:

Date: January 8, 9, and 11, 2007

Time: 6:30 p.m.

Location:

New Bern, NC (Jan. 8 – Craven County Cooperative Extension); 300 Industrial Drive, New Bern, NC

Raleigh, NC (Jan. 9 – Archdale Building; Ground Floor Hearing Room), 512 N. Salisbury Street, Raleigh, NC

Morganton, NC (Jan. 11 – Western Piedmont Community College), 1001 Burkemont Avenue, Morganton, NC

Reason for Proposed Action: To revise fees associated with stream and wetland restoration and the fee for monitoring and maintenance of casements (not associated with restoration) to reflect the actual costs for these activities being incurred by the program.

Procedure by which a person can object to the agency on a proposed rule: You may attend the public hearing and make relevant verbal comments, and /or submit written comments, data or other relevant information by February 13, 2007. The Hearing Officer may limit the length of time that you may speak at the public hearing, if necessary, so that all those who wish to speak may have an opportunity to do so. The EMC is very interested in all comments pertaining to the proposed fee revisions. All persons interested and potentially affected by the proposal are strongly encouraged to read this entire notice and make comments on the proposed revisions. The EMC may not adopt a rule that differs substantially from the text of the proposed rule published in this notice unless the EMC publishes the text of the proposed different rule and accepts comments on the new text (see General Statute 150B 21.2 (g)). Written comments may be submitted to Suzanne Klimek of the Ecosystem Enhancement Program at the postal address, e-mail address, or fax number listed in the notice.

Comments may be submitted to: Suzanne Klimek, 1652 Mail Service Center, Raleigh, NC 27699-1652, phone (919) 715-1835, fax (919) 715-2219, email Suzanne.klimek@ncmail.net

Comment period ends: February 13, 2007

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- [X] State 15A NCAC 02R .0402
[X] Local 15A NCAC 02R .0402
[X] Substantive (>=\$3,000,000) 15A NCAC 02R .0402
[X] None 15A NCAC 02R .0101, .0201, .0203, and .0401

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02R - WETLANDS RESTORATION

PROGRAM

SECTION .0100 - PURPOSE AND DEFINITIONS

15A NCAC 02R .0101 PURPOSE

This Section establishes the North Carolina ~~Wetlands Restoration Program~~ Ecosystem Enhancement Program pursuant to G.S. 143-214.8 through 143-214.13.

Authority G.S. 143-214.8; 143-214.9; 143-215.3.

SECTION .0200 - BASINWIDE RESTORATION PLANS

15A NCAC 02R .0201 PURPOSE

The purpose of the Basinwide Restoration Plans is to identify wetlands and riparian areas within each of the 17 major river basins of the state that have the potential, through restoration, enhancement, creation or preservation, to contribute to the goals of the ~~Wetlands Restoration Program~~ Ecosystem Enhancement Program.

Authority G.S. 143-214.10; 143-215.3.

15A NCAC 02R .0203 PUBLIC INVOLVEMENT; AVAILABILITY

(a) The Secretary, or the Secretary's designee, shall provide interested parties an opportunity to review and comment on the proposed Basinwide Restoration Plans.

(b) The Basinwide Restoration Plans shall be available for review ~~in the offices of the Wetlands Restoration Program, Division of Water Quality, 512 North Salisbury Street, Raleigh, NC 27604~~ through the Ecosystem Enhancement Program's website at www.nceep.net.

Authority G.S. 143-214.10; 143-215.3.

SECTION .0400 - WETLANDS RESTORATION FUND

15A NCAC 02R .0401 PURPOSE

This Section establishes the ~~Wetlands~~ Ecosystem Restoration Fund pursuant to G.S. 143-214.12.

Authority G.S. 143-214.11; 143-214.12; 143-215.3.

15A NCAC 02R .0402 SCHEDULE OF FEES

(a) The amount of payment into the Fund necessary to achieve compliance with compensatory mitigation requirements shall be determined in accordance with Subparagraphs (1) through ~~(3)~~ (6) of this Paragraph. ~~Paragraph (b).~~ The fee shall be based on the acres and types of compensatory mitigation specified in the approved certifications issued by the Department under 33 USC 1341; and permits or authorizations issued by the United States Army Corps of Engineers under 33 USC 1344. Payments shall be rounded up in increments of linear feet for streams and in 0.25 acre increments for wetlands, e.g. for streams, 520.3 linear feet of compensatory mitigation would be considered as 521 feet, and for wetlands, 2.35 acres of required compensatory mitigation would be considered as 2.5 acres for the purpose of calculating the amount of payment.

(b) Payments made pursuant to Subparagraphs (4) and (5) of this Paragraph will be subject to the following fee categories: Urban, Coastal and Rural.

(1) Urban fees shall be applied to the following counties: Alamance, Alexander, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cumberland, Davidson, Davie, Durham, Edgecombe, Forsyth, Franklin, Gaston, Guilford, Harnett, Haywood, Henderson, Hoke, Mecklenburg, Nash, Orange, Pitt, Randolph, Rowan, Stokes, Union, Wake, Wayne

(2) Coastal fees shall be applied to the following counties: Beaufort, Brunswick, Camden, Carteret, Craven, Currituck, Dare, Hyde, Jones New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, Washington

(3) Rural fees shall be applied to all counties not defined in Subparagraphs (b)(1) and (2) as Urban or Coastal

~~(4)~~ (4) Classified surface waters other than wetlands as defined in 15A NCAC 02B .0202. The payment shall be ~~be two hundred dollars (\$200.00) per linear foot of stream.~~

(A) Three hundred and thirty-two dollars (\$332.00) per linear foot of stream in Urban counties;

(B) Two hundred and thirty-two dollars (\$232.00) per linear foot of stream in Coastal counties;

(C) Two hundred and thirty-two dollars (\$232.00) per linear foot of stream in Rural counties.

~~(5)~~ (5) Class WL wetlands as defined in 15A NCAC 02B .0101(c)(8). The payment shall be:

(A) Twelve thousand dollars (\$12,000.00) per acre for ~~For non-riparian wetlands-~~ wetlands:

(i) Twenty-one thousand dollars (\$21,000) per acre in Urban counties;

(ii) Twenty-one thousand dollars (\$21,000) per acre in Rural counties;

(iii) Twenty-four thousand dollars (\$24,000) per acre in Coastal counties.

(B) Twenty four thousand dollars (\$24,000.00) per acre for ~~For riparian wetlands-~~ wetlands:

(i) Fifty-six thousand dollars (\$56,000) per acre in Urban counties;

(ii) Thirty-two thousand dollars (\$32,000) per acre in Rural counties;

(iii) Thirty-eight thousand dollars (\$38,000) per acre in Coastal counties.

~~(3)(6)~~ Class SWL wetlands as defined in 15A NCAC 02B .0101(d)(4). The payment shall be ~~one hundred twenty thousand dollars (\$120,000.00)~~ one hundred and thirty-nine thousand and two hundred and thirty-five dollars (\$139,235) per acre.

~~(b)(c)~~ The fees outlined in Subparagraphs ~~(a)(1)-(b)(4)~~ through ~~(a)(3)-(b)(6)~~ and Paragraph ~~(d)(e)~~ of this Rule shall be reviewed annually by the Department and compared to the actual cost of restoration activities conducted by the Department, including planning, monitoring and maintenance costs. Based upon this annual review, revisions to Paragraph ~~(a)(b)~~ of this Rule shall be recommended to the Commission when adjustments to this Schedule of Fees are deemed necessary to ensure that the Schedule of Fees reflects the actual costs of restoration activities.

~~(e)(d)~~ The fees outlined in Subparagraphs ~~(a)(1)-(b)(4)~~ through ~~(a)(3)-(b)(6)~~ of this Rule shall be adjusted for inflation on an annual basis using the Civil Works Construction Cost Index System published by the US Army Corps of Engineers. This adjustment shall occur at the end of each calendar year as follows: the fees in Subparagraphs ~~(a)(1)-(b)(4)~~ through ~~(a)(3)-(b)(6)~~ and Paragraph ~~(d)(e)~~ of this Rule for each year shall be multiplied by the annual composite Civil Works Construction Cost Index yearly percentage change issued in September of each year and the result shall be the increase to that fee for the next fiscal year. The revised fees shall be made available via the NC Wetland Restoration Ecosystem Enhancement Program's web site (~~h2o.enr.state.nc.us/wrp/index.htm~~) (www.nceep.net) and become effective on the following July 1<sup>st</sup>. ~~The first adjustment shall be made at the close of calendar year 2003 to become effective July 1, 2004. This process shall continue annually thereafter.~~

~~(d)(e)~~ For properties and easements donated to the NC Wetlands Restoration Program, Department of Environment and Natural Resources, a fee of ~~three hundred fifty dollars (\$350.00)~~ one thousand dollars (\$1,000) per acre shall be charged at the time the land or easement is transferred to the ~~program~~ Department's Conservation Grant Fund Endowment to cover costs of long-term management of the property. For properties that are less than one acre in size, the minimum payment shall be one thousand dollars (\$1,000). This charge applies only to properties and easements donated to the program for the sole purpose of property or easement maintenance. This does not apply to properties or easements donated to the program in association with restoration projects conducted by the program.

Authority G.S. 143-214.11; 143-214.12; 143-215.3.

\*\*\*\*\*

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10A .1001; 10F .0327 and .0350.

Proposed Effective Date: April 1, 2007

Public Hearing:

Date: January 3, 2007

Time: 10:00 a.m.

Location: Wildlife Resources Commission 5<sup>th</sup> floor conference room, 1751 Varsity Drive, Raleigh, NC

Reason for Proposed Action:

15A NCAC 10A .1001 is amended to add to the list of offenses for which a warning may be issued.

15A NCAC 10F .0327 is amended to add two new no wake zones to Lake Tillery.

15A NCAC 10F .0350 is amended to add a no wake zone at Falls Lake.

Procedure by which a person can object to the agency on a proposed rule: Any person who wishes to object to a proposed rule may do so by writing (or emailing) the person specified in connection with a given rule within the public comment period set up for this rule. For this rule, the contact person is Joan Troy.

Comments may be submitted to: Joan Troy, 1701 Mail Service Center, Raleigh, NC 27699-1701

Comment period ends: February 13, 2007

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10A - WILDLIFE RESOURCES COMMISSION

SECTION .1000 - WARNING TICKETS

15A NCAC 10A .1001 PARTICULAR OFFENSES

(a) Warning Tickets Prohibited. Wildlife Enforcement Officers shall not issue warning tickets for the following offenses, classes of offenses or offenses committed in a particular manner:

**APPENDIX 2 – ANNOUNCEMENT OF PUBLIC HEARINGS**

**PROPOSED REVISION TO RULE 15A NCAC 2R .0402:  
PUBLIC HEARINGS: January 8, 9 and 11, 2007**

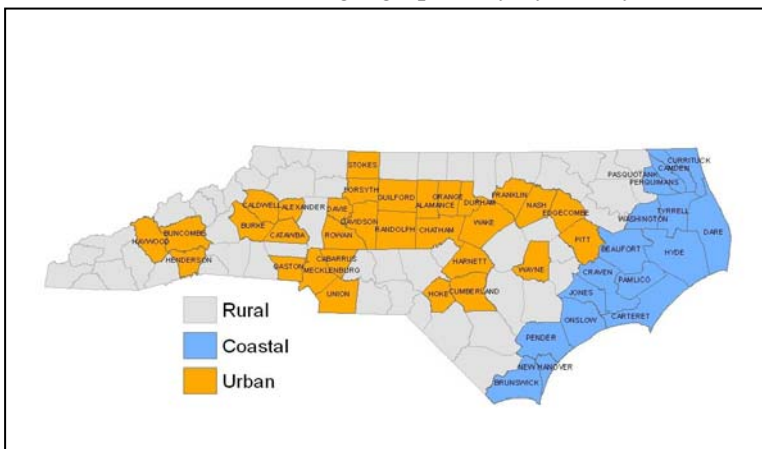
The N.C. Department of Environment and Natural Resources will conduct three public hearings on behalf of the Environmental Management Commission (EMC) in order to receive public comments on proposed revisions to the rule that establishes the Schedule of Fees for the NC Ecosystem Enhancement Program (EEP) (15A NCAC 2R .0402). The proposed revisions are to establish fee categories for and adjust fees for streams, riparian wetlands and non-riparian wetlands. In addition, an increase in the fee for the management and maintenance of properties donated to EEP is proposed. Also proposed are revisions to 15A NCAC 2R .0101, .0201, .0203 and .0401 to accurately reflect the name of the responsible agency.

**SUMMARY OF THE PROPOSED RULE REVISION**

In accordance with N.C. General Statute § 143-214.12, EEP has established a fee schedule for payments made to the Ecosystem Restoration Fund. Individuals, agencies, and companies that choose to use EEP to meet compensatory mitigation requirements for stream and wetland impacts pay these fees. The fees cover the costs of stream and wetlands restoration including site acquisition, project design and project construction. Data and information on the actual cost of over 100 restoration projects indicates that current fees are too low. Project cost data also show that restoration in urban and coastal environments is more expensive than in rural environments. Therefore EEP is proposing three fee categories to capture these differences. Specifically, the proposed rule revisions include:

1. Establishment of three fee categories (urban, coastal and rural) defined geographically by county boundaries. Urban counties are those designated as urban or urbanizing by the U.S. Environmental Protection Agency; coastal counties are those that have the presence of waterfront properties that have higher real estate costs; and rural counties are all other counties in the state not otherwise defined (see map).
2. Overall raise fees for wetlands and also raise fees for stream restoration in urban counties (see table).
3. Raise the fee for the monitoring and maintenance of easements and

<b>PUBLIC HEARINGS</b>	
<b>Hearing #1 – New Bern</b>	
Location:	Craven County Cooperative Extension Office 300 Industrial Drive New Bern, N.C. 28562
Date:	Monday, January 8th, 2007
Time:	6:30 p.m.
<b>Hearing #2 - Raleigh</b>	
Location:	Ground Floor Hearing Room Archdale Building 512 N. Salisbury St. Raleigh, N.C.
Date:	Tuesday, January 9th, 2007
Time:	6:30 p.m.
<b>Hearing #3 - Morganton</b>	
Location:	Western Piedmont Community College -- Moore Hall/Leviton Auditorium 1001 Burkemont Ave. Morganton, N.C.
Date:	Thursday, January 11th, 2007
Time:	6:30 p.m.



properties donated to the program (not in association with restoration projects) from \$397 per acre to \$1,000 per acre with a minimum payment of \$1,000.

4. Other minor revisions to reference the current name of the program – the Ecosystem Enhancement Program (formerly known as the Wetlands Restoration Program).

The full text of the proposed rule revision can be accessed via the internet at:

<http://www.oah.state.nc.us/rules/register/>. The text has been published in Volume 21, Issue 12 of the *North Carolina Register*.

### Proposed Fee Revisions

Mitigation Type	Existing Fee	Proposed Fee		
		Urban	Rural	Coastal
Stream (per linear foot)	\$232	\$332	\$232	\$232
Riparian Wetland (per acre)	\$27,847	\$56,000	\$32,000	\$38,000
Non-Riparian Wetland (per acre)	\$13,924	\$21,000	\$21,000	\$24,000

**List of Proposed Urban Counties:** Alamance, Alexander, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cumberland, Davidson, Davie, Durham, Edgecombe, Forsyth, Franklin, Gaston, Guilford, Harnett, Haywood, Henderson, Hoke, Mecklenburg, Nash, Orange, Pitt, Randolph, Rowan, Stokes, Union, Wake, Wayne

**List of Proposed Coastal Counties:** Beaufort, Brunswick, Camden, Carteret, Craven, Currituck, Dare, Hyde, Jones New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, Washington

### FEEDBACK SOLICITED

The Environmental Management Commission is seeking constructive feedback on the rule revision as proposed. The submission of data on actual restoration project costs and land maintenance costs to support comments related to fees is strongly encouraged. The Commission will consider setting fees higher or lower than those presented in the proposed revised rule based on comments and data received.

### HOW TO SUBMIT COMMENTS

The purpose of this announcement is to encourage those interested in this proposal to provide comments. You may provide relevant verbal and/or written comments at the public hearings, or you may submit written comments by the close of the comment period. The deadline for submitting written comments is **February 15, 2007**. All relevant comments received by the deadline will be public record and will be considered by the Environmental Management Commission during the rule-making process. Please submit comments, questions and/or requests for additional information to:

Suzanne Klimek

DENR-Ecosystem Enhancement Program  
1652 Mail Service Center  
Raleigh, N.C. 27699-1652

Tel: (919) 715-1835

E-mail: [suzanne.klimek@ncmail.net](mailto:suzanne.klimek@ncmail.net)

**APPENDIX 3 – LIST OF ATTENDEES OF PUBLIC HEARINGS**

## Participants in Public Hearings

<i>Public Hearing</i>	<i>Name of Attendee</i>	<i>Attendee Affiliation</i>
New Bern – January 8, 2007		
	<b>Dave Inscoc</b>	<b>Carteret EDC</b>
	<b>Don Baumgardner</b>	<b>Craven Co. Planning</b>
	<b>Ray Harris</b>	<b>NCSU</b>
	<b>Charlie Humphrey</b>	<b>NCSU</b>
	<b>Tim Buck</b>	<b>Pamlico Co</b>
	<b>Jonas Hill</b>	<b>Pamlico County Planning</b>
	<b>Jason Frederick</b>	<b>Craven Co.</b>
	<b>Steven Krpata</b>	<b>SAK Development</b>
	<b>Stephanie Currier</b>	<b>Craven County Planning</b>
	<b>Bill Price</b>	<b>Morehead City resident</b>
	<b>Jack Best</b>	<b>Goldsboro-Developer</b>
<b>Raleigh- January 9, 2007</b>		
	<b>Jay Burke</b>	
	<b>Jim Halley</b>	
	<b>Jennie Atkins</b>	<b>NCDWQ</b>
	<b>David Lee</b>	
	<b>David Godley</b>	<b>EBX</b>
	<b>Sarah Mercer</b>	<b>ETD</b>
	<b>Reuben Jones</b>	<b>Milone and MacBroom</b>
	<b>Allistair McCaulay</b>	<b>NC Homebuilders' Assoc.</b>
	<b>Chris Burkhardt</b>	
	<b>William Sessions</b>	<b>Clemson</b>
	<b>Travis Hamrick</b>	<b>Restoration Systems</b>
	<b>Gary Morton</b>	<b>City of Raleigh</b>
	<b>Jay Sikes</b>	<b>City of Raleigh</b>
	<b>Mick Greeson</b>	
	<b>Kristin Walker</b>	<b>NCGA</b>
	<b>John Preyer</b>	<b>Restoration Systems</b>
	<b>Deborah Anderson</b>	<b>NCDOT</b>
	<b>Cherri Smith</b>	<b>NCDOT</b>
	<b>Carol Hollenkamp</b>	<b>NCDWQ</b>
	<b>Kevin Yates</b>	<b>John R. McAdams Co.</b>
	<b>John Braxton</b>	<b>Wake Stone Corp.</b>
<b>Morganton- January 11, 2007</b>		
	<b>Neill Yelverton</b>	<b>WNR</b>
	<b>David ?</b>	<b>WNR</b>
	<b>Karla Hammer Knotts</b>	<b>Knotts Development</b>
	<b>Brian?</b>	<b>Martin Marietta</b>

**APPENDIX 4 – WRITTEN COMMENTS RECEIVED IN RESPONSE TO  
DECEMBER 15, 2006 NC REGISTER PUBLICATION**

February 7, 2007

DENR - Ecosystem Enhancement Program  
1652 Mail Service Center  
Raleigh, North Carolina 27699-1652

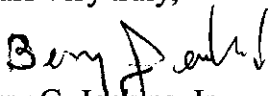
Subject: Comments on Proposed Revision to Rule 15A NCAC2R.0402  
Ecosystem Enhancement Program

Following are comments pertaining to the proposed rulemaking under consideration by the Environmental Management Commission referenced above.

- The listing of several counties in the urban category that have extremely limited urbanization (possibly one town in the county) does not appear reasonable. With the significant fee increases proposed for the urban designated counties, this appears to be derived to produce significant new fee income rather than be based upon more identifiable logic. Examples would be Haywood, Wayne, Pitt and Stokes.
- The significant fee increases proposed for urban counties has not been justified. This will have a significant cost impact on infrastructure improvements and development activities in the urban counties. With other inflationary cost impacts already being experienced in development activities due to fuel, concrete, and steel prices necessary for development, this is an additional burden that is difficult to accommodate.
- A current audit of EEP activities should be performed and made available to the public to substantiate effectiveness, efficiency, and performance prior to considering such dramatic fee increases.
- The financial impact to the N. C. Department of Transportation's already strapped budget is a major concern. While it may be implied that the fee increases will not have any short term impact on DOT costs, we believe that in the long term, those increases will be absorbed in DOT costs.

Thank you for the opportunity to comment on the proposed rules.

Yours very truly,



Berry G. Jenkins, Jr.  
NC Highway Director



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY  
GOVERNOR

**RECEIVED**  
FEB 15 2007  
NC ECOSYSTEM  
ENHANCEMENT PROGRAM

LYNDO TIPPETT  
SECRETARY

February 15, 2007

Ms. Suzanne Klimek  
Director of Operations  
DENR – Ecosystem Enhancement Program  
1652 Mail Service Center  
Raleigh, NC 27699-1652

**Subject:** Comments on Proposed Revisions to the Ecosystem Enhancement Program  
(EEP) Schedule of Fees

Dear Suzanne:

The North Carolina Department of Transportation (NCDOT) appreciates the opportunity to comment on the EEP's proposed revisions to the Schedule of Fees. Although we realize that we are invoiced in accordance with the MOA, we also believe that these proposed increases in the fee schedule would ultimately increase our costs. While the NCDOT does not object to fee revisions to reflect higher land costs in coastal areas and increased costs in urban areas, we offer suggestions to more accurately define these two situations. We also request an explanation of how these new fees were calculated based on higher land and project costs.

The EEP plans to apply the higher fees to entire counties based on the EPA's designated urban counties for their Phase II stormwater rules which are, in turn, based on the definition of an Urbanized Area by the 2000 U.S. Census Data. A closer look at the maps of these Urbanized Areas, however, shows that Alexander, Davie, Edgecombe, Franklin, Harnett, and Stokes Counties only have one municipality that is part of a larger Urbanized Area. The vast majority of the land base in these six counties is still rural. The rest of the designated urban counties have at least two or more municipalities that are part of a larger Urbanized Area, whereby a greater proportion of the land base is urban. The NCDOT, therefore, suggests that a county must have at least two municipalities that are part of a larger Urbanized Area to be designated as urban for the purposes of the EEP Schedule of Fees. We also have concerns about designating Pitt and Wayne Counties as urban, since, except for Greenville and Goldsboro, these counties are still primarily rural.

**MAILING ADDRESS:**  
NC DEPARTMENT OF TRANSPORTATION  
PROJECT DEVELOPMENT AND ENVIRONMENTAL ANALYSIS  
NATURAL ENVIRONMENT UNIT  
1598 MAIL SERVICE CENTER  
RALEIGH NC 27699-1598

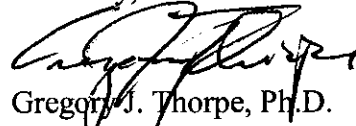
TELEPHONE: 919-715-1334 or  
919-715-1335  
FAX: 919-715-5501  
WEBSITE: [WWW.NCDOT.ORG](http://WWW.NCDOT.ORG)

**LOCATION:**  
PARKER LINCOLN BUILDING  
2728 CAPITAL BLVD. SUITE 240  
RALEIGH NC 27604

The NCDOT requests an explanation for the inclusion of Jones County in the list of counties proposed as coastal, since there is no coastal waterfront property associated with this county and it is not a county under the jurisdiction of the Division of Coastal Management (DCM) for CAMA permits. In addition, we are not aware that land costs are particularly high in this county. For the rest of the counties listed as coastal, we are aware of higher land prices on the barrier island, sound, estuarine, coastal shoreline, and public trust portions of these counties. Inland from these coastal resources, land prices drop dramatically and are comparable to the rest of the rural coastal plain. We suggest that the coastal designation be limited to within 575 feet of the normal high water line of the sound, estuarine, coastal shoreline, and public trust waters. This distance is consistent with the Outstanding Resource Water Area of Environmental Concern that is currently regulated by the DCM. In addition, we request that Hyde County mainland, Tyrell, and Washington Counties not be considered as coastal counties since land prices are still relatively low in these counties.

Thank you for your consideration of our comments and suggestions. I would appreciate a written response to our comments. If you have any questions regarding these comments, please let me know.

Sincerely,



Gregory J. Thorpe, Ph.D.  
Branch Manager

Project Development & Environmental Analysis Branch

GJT/cs

cc: W. F. Rosser, PE  
Debbie Barbour, PE  
Phil Harris, NCDOT  
Gordon Cashin, NCDOT

# NORTH CAROLINA HOME BUILDERS ASSOCIATION

A-  
27



February 9, 2007

Ms. Suzanne Klimek  
NC DENR  
1652 Mail Service Center  
Raleigh, NC 27699-1652

Dear Ms. Klimek,

On behalf of the North Carolina Home Builders Association (NCHBA), I thank you for the opportunity to comment on the proposed amendments to the Ecosystem Enhancement Program (EEP) fees. I submit the following comments on the proposed rules cited as 15A NCAC 2R .0101, .0201, .0203, and .0401-.0402 and noticed in the December 15, 2006 issue of the North Carolina Register.

The North Carolina Home Builders Association supports a fee in lieu program that protects water quality where that protection is not already being accomplished on site. However, we do not believe that the EEP has justified the need for a fee increase. According to the EEP 2006 Annual Report, the unencumbered balance of each of the funds managed by the EEP ranges between \$1 million and \$10 million. The existing fees established by the EEP appear to be unrelated to the actual cost of the work completed. For example, while fees are based on the value of the project, mitigation is allowed to occur far distant from the project, often on land with a much lower value. When that occurs, excess fees are not refunded to the applicant. The EEP 2006 Annual Report also states that the EEP spends approximately 70 percent of its project money on Full Delivery mitigation projects and 30 percent on Design-Bid-Build. The Annual Report fails to specify which of the two processes results in more project failures over time. NCHBA questions how much of the EEP budget is used to re-design, re-construct, or re-plant projects, especially projects completed through the Design-Bid-Build process which does not require warranties.

EEP staff has increased significantly since the program's inception. The EEP has not specified what proportion of the proposed fee increase reflects administrative costs. We question whether increased administrative fees will directly result in more efficient delivery of mitigation projects. Further, under 15A NCAC 2R .0402(d), fees are adjusted for inflation on an annual basis using the Civil Works Construction Cost Index System. There is no statutory authority for an "automatic" fee increase. The fact that this language exists in the rules and is proposed for amended is irrelevant. The entire section is unauthorized and must be removed.

NCHBA does not support a fee increase arbitrarily based on negotiations made during a legislative process unrelated to the EEP. Under 15A NCAC 2R .0402(b), the following counties are designated as "urban counties" where fees would significantly increase:



Natural Resources  
Restoration & Conservation

February 12, 2007

Mrs. Suzanne Klimek  
North Carolina Ecosystem Enhancement Program  
Program Manager  
1652 Mail Service Center  
Raleigh, NC 27699-1652

Dear Mrs. Klimek:

I am writing on behalf of Restoration Systems in support of the Ecosystem Enhancement Program's (EEP) effort to revise the In-Lieu Fee schedule for stream and wetland restoration projects.

In addition to the already proposed fee increases, I suggest that an additional category be designated for Mountain stream and wetland projects where costs can equal or exceed those in Coastal areas. As you are well aware, our firm specializes in Full Delivery mitigation projects where we are constantly identifying and securing potential mitigation sites. It has been our experience for the past 2-3 years that land values in the Mountain areas in North Carolina are in many cases substantially higher than those in Coastal areas. The revised fee structure should recognize this reality.

At a meeting you organized on September 18<sup>th</sup> 2006 to discuss the proposed increases in the fee schedule there was a pie chart representing the average costs for various components of the 44 Design-Bid-Build projects surveyed. Land cost was listed as a 4% component cost of the overall project. As I referenced in my comments at the meeting, this number is significantly lower than is realistic and is explained only by the sample containing a substantial number of sites with no land cost. I believe the number given in the meeting was 16 sites that had no land cost, but I have been unable to confirm this. Regardless, including so many sites with no land cost skews the sample and, consequently, all of the revised fees currently proposed are lower than what is appropriate.

Restoration Systems (RS) has closed on land for 20 projects under contract to NCDENR for stream, wetland, and riparian buffer restoration, excluding dam removal projects. The average land cost of this sample group is 36% as a component cost of the overall project. If the sample is limited to only wetland and stream projects the land cost is 26% as a component cost of the overall project. In another example outside of NCDENR work, RS performed all of the off-site wetland and stream restoration as part of the FedEx Cargo project at the Piedmont Triad Airport. The land cost in this project was 28% of the overall project cost.

**Subject:** RE: Harnett County Classification  
**From:** "Lee Anne Nance" <lnance@harnett.org>  
**Date:** Wed, 3 Jan 2007 10:37:09 -0500  
**To:** "Suzanne Klimek" <Suzanne.Klimek@ncmail.net>  
**CC:** "Neil Emory" <nemory@harnett.org>, "Randy McLean" <rmclean@harnett.org>, "Penny Drouillard" <pdrouillard@harnett.org>, "Joseph Jeffries" <jjeffries@harnett.org>

Suzanne,

Thank you for your prompt response. I have looked at the link and appreciate you pointing me to this information.

I am very concerned about Harnett County being re-classified as an "urban" county. The fee increase is substantial and will most likely have a very negative impact on our county's development.

Harnett County, by all other accepted measures, is "rural." When I look further at the EPA's definition of "urban," I see that the requirement is a density of 1,000 people per square mile. Our density, according to the 2000 census, is 171 people per square mile – a substantial difference. Also, when you look at the EPA's detailed maps of the Raleigh and Fayetteville area, it seems that there is one very small designated overlapping piece in the western part of our county, near Fayetteville. This appears to be the reason that we are designated as phase II by the EPA.

EPA Definition – An **urbanized area** is a land area comprising one or more places — central place(s) — and the adjacent densely settled surrounding area — urban fringe — that together have a residential population of at least 50,000 and an overall population density of at least 1,000 people per square mile.

EPS Maps:

[http://www.epa.gov/npdes/pubs/ua\\_raleigh.pdf](http://www.epa.gov/npdes/pubs/ua_raleigh.pdf)

[http://www.epa.gov/npdes/pubs/ua\\_fayetteville.pdf](http://www.epa.gov/npdes/pubs/ua_fayetteville.pdf)

So, I have two questions:

1. Is this an appropriate guideline for determining "urban" versus "rural" for the EEP's revised fee schedule? (This is not just an issue for Harnett. For example, Hoke and several of the other counties listed as Phase II counties are definitely rural by all measures. Charging the same price for mitigating land in Wake versus counties such as Harnett and Hoke does not seem reasonable.)
2. How are the public hearings being publicized? I just happened to hear about them when I spoke from Kelly yesterday, but wondered who received notice and how?

Thank you very much. I do appreciate your guidance on this issue.

Lee Anne Nance  
910-893-7524

---

**From:** Suzanne Klimek [mailto:Suzanne.Klimek@ncmail.net]  
**Sent:** Wednesday, January 03, 2007 8:45 AM  
**To:** Lee Anne Nance  
**Cc:** Neil Emory; Randy McLean; Penny Drouillard  
**Subject:** Re: Harnett County Classification

Hi Lee Anne -- Our proposed definition of urban/urbanizing counties is based on an EPA designation used for Phase II stormwater rules. The following link (through the Division of Water Quality web site) provides the listing for NC counties which is based on census data:

[http://h2o.enr.state.nc.us/su/NPDES Phase II designated counties.htm](http://h2o.enr.state.nc.us/su/NPDES_Phase_II_designated_counties.htm). Please let me know if you have any additional questions.

Suzanne

Lee Anne Nance wrote:

Suzanne,

I noticed that Harnett County was proposed to be classified as an "urban" county in the proposed fee revisions for streams and wetlands. Can you provide information regarding the criteria used for classifying Harnett County as urban? Thank you.

**Lee Anne Nance, Director**

Harnett County Economic Development

PO Box 1270, 907 South Main Street

Lillington, NC 27546

910-893-7524 (office)

910-893-7589 (fax)

910-890-4515 (cell)

[www.harnettedc.org](http://www.harnettedc.org)



**2007 NCHBA OFFICERS**

9 February 2007

**President**  
 PAUL MULLICAN  
 Winston-Salem  
 (336) 768-1431

Ms. Suzanne Klimek  
 NC DENR  
 1652 Mail Service Center  
 Raleigh, NC 27699-1652

**President-Elect**  
 RAY RHODES  
 Sanford  
 (919) 776-0129

**First Vice-President**  
 FRANK WIESNER  
 Raleigh  
 (919) 420-7400

**Vice President, Region I**  
 JOE TARASCIO  
 Atlantic Beach  
 (252) 726-2578

**Vice President, Region II**  
 GLENN MORRISON  
 Washington  
 (252) 321-1813

**Vice President, Region III**  
 WARREN SMITH  
 Raleigh  
 (919) 841-4901

**Vice President, Region IV**  
 RALPH DOGGETT  
 Burlington  
 (336) 570-9142

**Vice President, Region V**  
 JIM GRAVES  
 Fayetteville  
 (910) 482-8100

**Vice President, Region VI**  
 LARRY AIREY  
 Charlotte  
 (704) 815-3507

**Vice President, Region VII**  
 ERIK ANDERSON  
 Winston-Salem  
 (336) 772-4818

**Vice President, Region VIII**  
 GARY FAULKENBURY  
 Lincolnton  
 (704) 736-4335

**Vice President, Region IX**  
 MARTY-JO WILSON  
 Boone  
 (828) 264-1143

**Vice President, Region X**  
 BUDDY SMITH  
 Cashiers  
 (828) 743-6888

**Secretary/Treasurer**  
 RICK SHIELDS  
 Charlotte  
 (704) 494-2745

**Immediate Past President & NAHB Executive Committee State Rep.**  
 DAVE STORMONT  
 Kitty Hawk  
 (252) 261-8724

**NAHB Executive Committee**  
 JONATHAN ELLIOT  
 Fayetteville  
 (910) 864-1082

**Executive Vice President**  
 MIKE CARPENTER

Dear Ms. Klimek,

On behalf of the North Carolina Home Builders Association (NCHBA), I thank you for the opportunity to comment on the proposed amendments to the Ecosystem Enhancement Program (EEP) fees. I submit the following comments on the proposed rules cited as 15A NCAC 2R .0101, .0201, .0203, and .0401-.0402 and noticed in the December 15, 2006 issue of the North Carolina Register.

The North Carolina Home Builders Association supports a fee in lieu program that protects water quality where that protection is not already being accomplished on site. However, we do not believe that the EEP has justified the need for a fee increase. According to the EEP 2006 Annual Report, the unencumbered balance of each of the funds managed by the EEP ranges between \$1 million and \$10 million. The existing fees established by the EEP appear to be unrelated to the actual cost of the work completed. For example, while fees are based on the value of the project, mitigation is allowed to occur far distant from the project often on land with a much lower value. When that occurs, excess fees are not refunded to the applicant. The EEP 2006 Annual Report also states that the EEP spends approximately 70 percent of its project money on Full Delivery mitigation projects and 30 percent on Design-Bid-Build. The Annual Report fails to specify which of the two processes results in more project failures over time. NCHBA questions how much of the EEP budget is used to re-design, re-construct, or re-plant projects, especially projects completed through the Design-Bid-Build process which does not require warranties.

EEP staff has increased significantly since the program's inception. The EEP has not specified what proportion of the proposed fee increase reflects administrative costs. We question whether increased administrative fees will directly result in more efficient delivery of mitigation projects. Further, under 15A NCAC 2R .0402(d), fees are adjusted for inflation on an annual basis using the Civil Works Construction Cost Index System. There is no statutory authority for an "automatic" fee increase. The fact that this language exists in the rules and is proposed for amended is irrelevant. The entire section is unauthorized and must be removed.

**RECEIVED**

FEB 13 2007

**PAST PRESIDENTS**

EUGENE A. GULLEDGE (1964)  
 C. PHIL ROBINSON, JR. (1966)  
 CARL W. JOHNSON (1967)  
 JOHN CROSLAND, JR. (1968)  
 \*J.M. DAUGHTRIDGE (1969)  
 \*HOMER BARRETT (1970)  
 \*JAMES W. LESTER (1971)  
 CHARLES C. McLAURIN (1972)  
 J. VAUGHN KLUTTS (1973)

C.L. REAVIS (1974)  
 JOHN T. BELL (1975)  
 WILLIAM T. BOYD (1976)  
 LaRUE HAMBRICK (1977)  
 J. RAY SPARROW (1978)  
 SHERRILL FAW (1979)  
 MARK E. TIPTON (1980)  
 M. DUNWOOD STEPHENSON (1981)  
 J. WATTS ROBERSON (1982)

NELSON CALLAHAN (1983)  
 PAUL D. TROLLINGER (1984)  
 RICK BATCHELOR (1985)  
 BURIL LANCE (1986)  
 LARRY SUMMER (1987)  
 HERSHEL REDDING (1988)  
 JAMES FORD (1989)  
 STEVE NASH (1990)  
 HARRIS B. GUPTON (1991)

RUSS DAVIS (1992)  
 CHUCK MILLER (1993)  
 CHARLES MULLEN (1994)  
 ROBERT INGRAHAM (1995)  
 DAVID PRESSLY, JR. (1996)  
 DONALD W. BETSWORTH (1997)  
 GEORGE HENSON (1998)  
 ROBERT YATKO (1999)  
 DANNY ADAMS (2000)

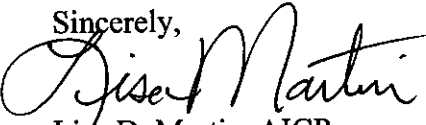
**NC ECOSYSTEM ENHANCEMENT PROGRAM**

DON CROOM (2002)  
 GREG ISENHOUR (2003)  
 RICK JUDDSON (2004)  
 BUDDY HUGHES (2005)  
 DAVE STORMONT (2006)

\*Deceased

NCHBA does not support a fee increase arbitrarily based on negotiations made during a legislative process unrelated to the EEP. Under 15A NCAC 2R .0402(b), the following counties are designated as "urban counties" where fees would significantly increase: Alamance, Alexander, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cumberland, Davidson, Davie, Durham, Edgecombe, Forsyth, Franklin, Gaston, Guilford, Harnett, Haywood, Henderson, Hoke, Mecklenburg, Nash, Orange, Pitt, Randolph, Rowan, Stokes, Union, Wake and Wayne. The designation is based on the presence of a Metropolitan Planning Organization (MPO) and Session Law 2006-246 which specifies municipal separate storm sewer systems (MS4s) that may be subject to the federal Phase II stormwater program and the associated state requirements. The purpose of the legislative process that crafted Session Law 2006-246 was not to define urban and rural areas of the state for any reason other than the potential implementation of the NPDES Phase II and state stormwater requirements. In fact, SL 2006-246 further refines criteria under which the EMC may designate an area using population and density. The mere categorization of urban and rural areas and the associated EEP fee increase based on the presence of a MPO or negotiation of SL 2006-246 is arbitrary and not indicative of land availability or reflective of mitigation costs. The EEP must justify the proposed fee increase using tangible criteria. In other words, if the EEP fee increase is justified and is based on SL 2006-246, then the project paying the "urban" fee would have to be located in a hydrologic unit that has either a population of more than 10,000 or more than 4,000 housing units and either a population density of 1,000 people per square mile or more or more than 400 housing units per square mile.

Thank you again for the opportunity to comment. If you have any questions as to our position, please contact me.

Sincerely,  
  
Lisa D. Martin, AICP  
Director of Regulatory Affairs



Natural Resources  
Restoration & Conservation

February 12, 2007

Mrs. Suzanne Klimek  
North Carolina Ecosystem Enhancement Program  
Program Manager  
1652 Mail Service Center  
Raleigh, NC 27699-1652

Dear Mrs. Klimek:

I am writing on behalf of Restoration Systems in support of the Ecosystem Enhancement Program's (EEP) effort to revise the In-Lieu Fee schedule for stream and wetland restoration projects.

In addition to the already proposed fee increases, I suggest that an additional category be designated for Mountain stream and wetland projects where costs can equal or exceed those in Coastal areas. As you are well aware, our firm specializes in Full Delivery mitigation projects where we are constantly identifying and securing potential mitigation sites. It has been our experience for the past 2-3 years that land values in the Mountain areas in North Carolina are in many cases substantially higher than those in Coastal areas. The revised fee structure should recognize this reality.

At a meeting you organized on September 18<sup>th</sup> 2006 to discuss the proposed increases in the fee schedule there was a pie chart representing the average costs for various components of the 44 Design-Bid-Build projects surveyed. Land cost was listed as a 4% component cost of the overall project. As I referenced in my comments at the meeting, this number is significantly lower than is realistic and is explained only by the sample containing a substantial number of sites with no land cost. I believe the number given in the meeting was 16 sites that had no land cost, but I have been unable to confirm this. Regardless, including so many sites with no land cost skews the sample and, consequently, all of the revised fees currently proposed are lower than what is appropriate.

Restoration Systems (RS) has closed on land for 20 projects under contract to NCDENR for stream, wetland, and riparian buffer restoration, excluding dam removal projects. The average land cost of this sample group is 36% as a component cost of the overall project. If the sample is limited to only wetland and stream projects the land cost is 26% as a component cost of the overall project. In another example outside of NCDENR work, RS performed all of the off-site wetland and stream restoration as part of the FedEx Cargo project at the Piedmont Triad Airport. The land cost in this project was 28% of the overall project cost.

NC ECOSYSTEM  
ENHANCEMENT PROGRAM

FEB 14 2007

RECEIVED

The In-Lieu Fee schedule for stream and wetland restoration projects needs to be further revised and increased beyond the proposed prices to reflect land cost in the 25-30% range as a component cost of the overall project.

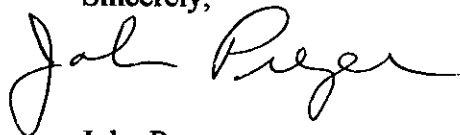
As a public policy note it should be recognized that the best available sites for wetland and stream restoration offering the greatest likelihood of long term ecological success are rarely, if ever, free. This was true ten years ago and it is even more so today.

It is prudent for policy makers to expect land cost to be in line with what is currently being paid in the market and to use this as an indication of its true component cost of the overall project. It is not prudent to base land cost on an artificially low number, which results in the In-Lieu Fee schedule being further skewed in a way that does not allow for the accounting of the real cost of stream and wetland restoration. This would in effect allow the state to subsidize the cost of development by having a fee schedule well below the actual cost to perform the work. While this subsidy might be cheered by some in the development community it is clearly not good public policy for the state nor is it good for our environmental resources.

The Environmental Management Commission and its staff needs to increase the In-Lieu Fee schedule to a greater degree than what is currently proposed and add a Mountain classification, as well. If not, then it will surely have to address this same issue again in the future as it is currently doing after having failed to get the appropriate level of fee increase for stream restoration in 2002.

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "John Preyer". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

John Preyer  
Vice-President



January 11, 2007

DENR-Ecosystem Enhancement Program  
 Attn: Suzanne Klimek  
 1652 Mail Service Center  
 Raleigh, NC 27699-1652

Re: Proposed changes to rule that establishes the NC Ecosystem Enhancement Program

I support a fee in lieu program that protects and enhances water quality where that protection is not already being accomplished on site. On the contrary, I oppose both the proposed restructuring into regions and the fee increase for the following reasons:

- **Neither the Environmental Management Commission (EMC) nor the Ecosystem Enhancement Program (EEP) has the authority to adjust the fees schedule automatically each year.** Fee increases must be completed through the rule making process and are subject to legislative review.
- **The EMC's proposed fee increases are excessive and arbitrary.** No justification has been given for the 43%, 72% and 101% increase. The EMC provided no technical or scientific justification for designating an area as urban, rural or coastal and such designations are completely unrelated to the actual cost of mitigation.

The Summary of the Proposed Rule Revision states that the costs of stream and wetland restoration have increased, but from research it appears that the emphasis given to The Nature Conservancy stream preservation projects, with a cost 30 times more expensive than stream restoration, is what is triggering the 'cost' increases. These special interest projects are not sufficient reason to raise the in-lieu fees.

- **The current fee program is flawed because it already overcharges for stream impacts.** Following the policy of Avoid, then Minimize, then Mitigate, it may be necessary for me to disturb 153 feet of stream. The Clean Water Act allows 150 feet of disturbance. I should only have to mitigate the 3 feet that is in excess of the 150 feet covered by the nationwide permit. This request is not out of line with how DWQ handles other programs
- **The EEP is performing a service that would be more efficiently completed by the private sector.**  
 Other states have successful fee-in-lieu programs that use the private sector with the state agencies serve only an oversight and permitting role. EEP has a virtual monopoly on third

party mitigation and has fixed prices that it keeps raising. This tactic is not good for the citizens or the businesses in NC. A- 36

I have taken time on many previous occasions to provide comment to proposed rule changes. The process never notifies the interested parties when the comments result in changes to the documents being reviewed. I am formally requesting that I be notified of any changes resulting from this series of Public Hearings.

Respectfully submitted,

  
Karla Hammer Knotts, *MIRM*



Statement of Objection To The Proposed Fee Increases For The EEP

To: The North Carolina Environmental Management Commission

Date: 9 January 2007

From: Don d'Ambrosi, Managing Partner

Elam, Todd, d'Ambrosi

I object to the proposed increases to the impact fees which fund the EEP.

First, I can not support any fee increases for this program until there is a full accounting, and public disclosure to this body and the Legislature of:

- The total funds collected thus far and the current fund balance;
- The amount that has been expended to date on actual restoration work (stream and wetlands);
- The amount expended for administrative purposes;
- The projects that have been completed and their total cost
- The projects that are in progress, their costs to date and remaining budget;
- Projects which are planned along with their proposed budgets and time tables;
- A breakdown on each project (completed, in progress and planned) indicating what portion of the total land area was, or is to be, purchased (either in fee or in easement), its average price per acre and what if any portion of the fund for the project was donated.

This level of disclosure will help everyone to have a better understanding of the accomplishments of the program and the true costs that are being encountered. This will not only build trust in the program but also justify the amount of any fee increase.

**APPENDIX 5 – PUBLIC NOTICE FROM NC REGISTER (MARCH 15, 2007)**

SECTION .0700 – FEES

13 NCAC 15 .0706 ELEVATOR CERTIFICATE OF OPERATION REINSTATEMENT FEE

If a certificate of operation is revoked pursuant to 13 NCAC 15 .0306, a reinstatement fee of two hundred dollars (\$200.00) shall be paid, in addition to all overdue inspection fees, prior to reinstatement of the certificate of operation.

Authority G.S. 95-107; 95-110.5; 95-110.6.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02R .0402 with changes from the proposed text noticed in the Register, Volume 21, Issue 12, pages 1087-1088.

Proposed Effective Date: September 1, 2007

**Reason for Proposed Action:** In accordance with the Administrative Procedures Act, the Environmental Management Commission (EMC) is re-publishing proposed revisions to the rule establishing the schedule of fees for the Ecosystem Enhancement Program to accept comments for an additional 60 days. This re-publication is required as a result of substantial changes made to the text of the original proposed rule, which was published in the December 15, 2006 edition of the North Carolina Register. Based on comments received after the original publication, two proposed versions of rule text are being published for comment. Each of these proposals is substantially different than the original version published in that fees are being proposed to apply to the entire state (single flat fee) or to be applied based on watershed boundaries (two separate fees for different parts of the state). Please be aware that as a result of this re-publication and the comments received, the EMC may modify the fees proposed as well as how separate fees are applied to different parts of the state. The EMC may adopt either of the two rule revision options published in this notice.

**Procedure by which a person can object to the agency on a proposed rule:** All persons interested and potentially affected by the proposal are strongly encouraged to read this entire notice and make comments. The EMC may not adopt a rule that differs substantially from the text of the proposed rule published in this notice unless the EMC publishes the text of the proposed different rule and accepts comments on the new text (see General Statute 150B-21.2(g)). Written comments may be submitted to Suzanne Klimek of the Ecosystem Enhancement Program at the postal address, e-mail address, or fax number listed in this notice.

Written comments may be submitted to: Suzanne Klimek, 1652 Mail Service Center, Raleigh, NC 27699-1652, phone (919) 715-1835, fax (919) 715-2219, email [suzanne.klimek@ncmail.net](mailto:suzanne.klimek@ncmail.net)

Comment period ends: May 15, 2007

**Procedure for Subjecting a Proposed Rule to Legislative Review:** Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6<sup>th</sup> business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact:** A copy of the fiscal note can be obtained from the agency.

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02R - WETLANDS RESTORATION PROGRAM

SECTION .0400 - WETLANDS RESTORATION FUND

15A NCAC 02R .0402 SCHEDULE OF FEES

OPTION 1:

(a) The amount of payment into the Fund necessary to achieve compliance with compensatory mitigation requirements shall be determined in accordance with Subparagraphs (1) through (3) of this Paragraph. The fee shall be based on the acres and types of compensatory mitigation specified in the approved certifications issued by the Department under 33 USC 1341; and permits or authorizations issued by the United States Army Corps of Engineers under 33 USC 1344. Payments shall be rounded up in increments of linear feet for streams and in 0.25 acre increments for wetlands, e.g. for streams, 520.3 linear feet of compensatory mitigation would be considered as 521 feet, and for wetlands, 2.35 acres of required compensatory mitigation would be considered as 2.5 acres for the purpose of calculating the amount of payment. Fees will be assessed according to mitigation type as follows:

- (1) Classified surface waters other than wetlands as defined in 15A NCAC 02B .0202. The payment shall be ~~two hundred dollars~~

- (2) ~~(\$200.00)~~ three hundred dollars (\$300.00) per linear foot of stream
- (2) Class WL wetlands as defined in 15A NCAC 02B .0101(c)(8). The payment shall be:
- (A) ~~Twelve thousand dollars (\$12,000.00)~~ Thirty-two thousand four hundred and fifty dollars (\$32,450) per acre for non-riparian wetlands.
- (B) ~~Twenty four thousand dollars (\$24,000.00)~~ Fifty-seven thousand seven hundred and twenty-five dollars (\$57,725) per acre for riparian wetlands.
- (3) Class SWL wetlands as defined in 15A NCAC 02B .0101(d)(4). The payment shall be ~~one hundred twenty thousand dollars (\$120,000.00)~~ one hundred forty-six thousand six hundred and fifteen dollars (\$146,615) per acre.

(b) The fees outlined in Subparagraphs (a)(1) through (a)(3) and Paragraph (d) of this Rule shall be reviewed annually by the Department and compared to the actual cost of restoration activities conducted by the Department, including planning, monitoring and maintenance costs. Based upon this annual review, revisions to Paragraph (a) of this Rule shall be recommended to the Commission when adjustments to this Schedule of Fees are deemed necessary to ensure that the Schedule of Fees reflects the actual costs of restoration activities.

(c) The fees outlined in Subparagraphs (a)(1) through (a)(3) and Paragraph (d) of this Rule shall be adjusted for inflation on an annual basis using the Civil Works Construction Cost Index System published by the US Army Corps of Engineers. This adjustment shall occur at the end of each calendar year as follows: the fees in Subparagraphs (a)(1) through (a)(3) and Paragraph (d) of this Rule for each year shall be multiplied by the annual composite Civil Works Construction Cost Index yearly percentage change issued in September of each year and the result shall be the increase to that fee for the next fiscal year. The revised fees shall be made available via the NC Wetland Restoration Ecosystem Enhancement Program's web site ([h2o.enr.state.nc.us/wrp/index.htm](http://h2o.enr.state.nc.us/wrp/index.htm)) ([www.nceep.net](http://www.nceep.net)) and become effective on the following July 1<sup>st</sup>. ~~The first adjustment shall be made at the close of calendar year 2003 to become effective July 1, 2004. This process shall continue annually thereafter.~~

(d) For properties and easements donated to the NC Wetlands Restoration Program, Department of Environment and Natural Resources, a fee of ~~three hundred fifty dollars (\$350.00)~~ one thousand dollars (\$1,000) per acre shall be charged at the time the land or easement is transferred to the ~~program~~ Department's Conservation Grant Fund Endowment to cover costs of long-term management of the property. For properties that are less than one acre in size, the minimum payment shall be one thousand dollars (\$1,000). This charge applies only to properties and easements donated to the ~~program~~ Department for the sole purpose of property or easement maintenance. This does not apply to properties or easements donated to the ~~program~~

Department in association with restoration projects conducted by the ~~program~~ Department.

**OPTION 2:**

(a) The amount of payment into the Fund necessary to achieve compliance with compensatory mitigation requirements shall be determined in accordance with Subparagraphs (1) through ~~(3)~~(7) of this Paragraph. The fee shall be based on the acres and types of compensatory mitigation specified in the approved certifications issued by the Department u n d e r 33 USC 1341; and permits or authorizations issued by the United States Army Corps of Engineers under 33 USC 1344. Payments shall be rounded up in increments of linear feet for streams and in 0.25 acre increments for wetlands, e.g. for streams, 521 linear feet of compensatory mitigation would be considered as 521 feet, and for wetlands, 2.35 acres of required compensatory mitigation would be considered as 2.5 acres for the purpose of calculating the amount of payment.

(b) Payments made pursuant to Subparagraphs (3) through (6) of this Paragraph shall be subject to separate fees determined by which eight-digit hydrologic unit (as defined by the United States Geological Survey) the permitted impact is located. Fees will be assessed according to the location of the permitted impact and mitigation type as follows:

- (1) Fees in Subparagraphs (3) and (4) shall be applied to the following eight digit hydrologic units organized by river basin: Broad: 03050105; Cape Fear: 03030002, 03030004, 03030005, 03030007; Catawba: 03050101, 03050102, 03050103; French Broad: 06010106, 06010105, 06010108; Hiwassee: 06020002; Little Tennessee: 06010202, 06010203, 06010204; Neuse: 03020201; New: 05050001; Roanoke: 03010107; Savannah: 03060101, 03060102; Tar-Pamlico: 03020101; Watauga: 06010103; White Oak: 03030001, 03020106; Yadkin: 03040102, 03040103, 03040105, 03040202

(2) Fees in Subparagraphs (5) and (6) of this Paragraph shall be applied to all other eight digit hydrologic units not listed in Subparagraph (1) of this Paragraph.

~~(1)~~(3) Classified surface waters other than wetlands as defined in 15A NCAC 02B .0202. The payment shall be two hundred dollars (\$200.00) three hundred and twenty-three dollars (\$323.00) per linear foot of stream.

~~(2)~~(4) Class WL wetlands as defined in 15A NCAC 02B .0101(c)(8). The payment shall be:

- (A) ~~Twelve thousand dollars (\$12,000.00)~~ Forty-three thousand dollars (\$43,000) per acre for non-riparian wetlands.
- (B) ~~Twenty four thousand dollars (\$24,000.00)~~ Fifty-nine thousand and six hundred dollars (\$59,600) per acre for riparian wetlands.

(5) Classified surface waters other than wetlands as defined in 15A NCAC 02B .0202. The

- payment shall be two hundred and forty-four dollars (\$244.00) per linear foot of stream.
- (6) Class WL wetlands as defined in 15A NCAC 02B .0101(c)(8). The payment shall be:
- (A) Twenty-two thousand one hundred and thirteen dollars (\$22,113) per acre for non-riparian wetlands.
- (B) Thirty-three thousand six hundred and ninety-six (\$33,696) per acre for riparian wetlands.
- ~~(3)~~(7) Class SWL wetlands as defined in 15A NCAC 02B .0101(d)(4). The payment shall be one hundred twenty thousand dollars (\$120,000.00) one hundred forty-six thousand six hundred and fifteen dollars (\$146,615) per acre.

(b)(c) The fees outlined in Subparagraphs ~~(a)(1)~~ (b)(1) through ~~(a)(3)~~ (b)(7) and Paragraph ~~(d)~~ (e) of this Rule shall be reviewed annually by the Department and compared to the actual cost of restoration activities conducted by the Department, including planning, monitoring and maintenance costs. Based upon this annual review, revisions to Paragraph (a) of this Rule shall be recommended to the Commission when adjustments to this Schedule of Fees are deemed necessary to ensure that the Schedule of Fees reflects the actual costs of restoration activities.

~~(e)~~(d) The fees outlined in Subparagraphs ~~(a)(1)~~ (b)(1) through ~~(a)(3)~~ (b)(7) and Paragraph ~~(d)~~ (e) of this Rule shall be adjusted for inflation on an annual basis using the Civil Works Construction Cost Index System published by the US Army Corps of Engineers. This adjustment shall occur at the end of each calendar year as follows: the fees in Subparagraphs ~~(a)(1)~~ (b)(1) through ~~(a)(3)~~ (b)(7) and Paragraph ~~(d)~~ (e) of this Rule for each year shall be multiplied by the annual composite Civil Works Construction Cost Index yearly percentage change issued in September of each year and the result shall be the increase to that fee for the next fiscal year. The revised fees shall be made available via the NC Wetland Restoration-Ecosystem Enhancement Program's web site ([h2o.enr.state.nc.us/wrp/index.htm](http://h2o.enr.state.nc.us/wrp/index.htm)) ([www.nceep.net](http://www.nceep.net)) and become effective on the following July 1<sup>st</sup>. ~~The first adjustment shall be made at the close of calendar year 2003 to become effective July 1, 2004. This process shall continue annually thereafter.~~

~~(d)~~(e) For properties and easements donated to the NC Wetlands Restoration Program, Department of Environment and Natural Resources, a fee of three hundred fifty dollars (\$350.00) one thousand dollars (\$1,000) per acre shall be charged at the time the land or easement is transferred to the program-Department's Conservation Grant Fund Endowment to cover costs of long-term management of the property. For properties that are less than one acre in size, the minimum payment shall be one thousand dollars (\$1,000). This charge applies only to properties and easements donated to the program-Department for the sole purpose of property or easement maintenance. This does not apply to properties or easements donated to the program-Department in association with restoration projects conducted by the program-Department.

Authority G.S. 143-214.11; 143-214.12; 143-215.3.

TITLE 25 – DEPARTMENT OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to adopt the rules cited as 25 NCAC 010 .0102 - .0106, amend the rule cited as 25 NCAC 010 .0101, and repeal the rules cited as 25 NCAC 010 .0201 - .0206.

Proposed Effective Date: September 1, 2007

Public Hearing:

Date: May 2, 2007

Time: 10:00 a.m.

Location: 116 West Jones Street, Raleigh, NC, Office of State Personnel Conference Room, Administration Bldg., 3<sup>rd</sup> floor

Reason for Proposed Action: *The current performance management system has been in place, with minimal changes, for 17 years. In this time, HR professional practices have evolved. The proposed revision is intended to allow greater flexibility in how the performance management process is conducted in the agencies while retaining the requirements established in GS 126-7. To that end, the rules contain less prescriptive detail and encourage agencies to design their performance management systems around the nature of the work being managed and the increasingly results-oriented nature of today's workplaces.*

Procedure by which a person can object to the agency on a proposed rule: *A person may object to these proposed rules by one of the following methods: a written letter to Peggy Oliver, HR Policy Administrator, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331; an email to [peggy.oliver@ncmail.net](mailto:peggy.oliver@ncmail.net); a telephone call to Peggy Oliver at (919) 807-4832.*

Comments may be submitted to: *Peggy Oliver, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331, email [peggy.oliver@ncmail.net](mailto:peggy.oliver@ncmail.net)*

Comment period ends: *May 14, 2007*

Procedure for Subjecting a Proposed Rule to Legislative Review: *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions*

**APPENDIX 6 – ANNOUNCEMENT OF ALTERNATE RULE PROPOSALS**

## Announcement

### Republication of Proposed Revisions to 15A NCAC 2R .0402 Schedule of Fees Applied to the Ecosystem Enhancement Program

#### Background

On December 15, 2006, the Ecosystem Enhancement Program published proposed revisions to 15A NCAC 2R .0402; Schedule of Fees Applied to the Ecosystem Enhancement Program in the NC Register. In January of 2007, three public hearings were held to receive comments on these revisions. The hearings were held in New Bern, Raleigh and Morganton. Written comments on the proposed revisions were accepted through February 15, 2007.

#### Summary of Comments Received

All comments received on the proposed revisions were focused on the rule that establishes EEP's monetary rates for in lieu fee payments for compensatory mitigation. The specific proposal was to establish three fee categories across the state (urban, coastal and rural) and to increase fees for streams, riparian wetlands and non-riparian wetlands. The original proposal is available for reference at: <http://www.nceep.net/pages/mitigate.htm>

Most of the comments received questioned how the fee categories were established.

Concerns with the fee categories included:

- Some counties defined as urban should not be defined as such.
- An in-lieu fee program client could pay an urban fee, but EEP could put the restoration project in a rural area.
- The fee-category framework does not capture non-urban areas where mitigation costs are higher for other reasons.
- The fee-category framework should be based on watersheds instead of counties.

In addition to comments regarding the fee categories, concerns were raised about increasing mitigation costs and the justification for increasing costs was questioned.

#### Response to Comments

The following data presents statistics related to EEP's project cost data. These data have been central to developing the proposed rule revisions.

#### **Project Cost Data**

	<b>Stream</b>	<b>Riparian Wetland</b>	<b>Non-riparian Wetland</b>
Number	106	28	15
Mean	\$258.61	\$37,214.29	\$26,878.67
Median	\$249.00	\$28,500.00	\$23,000.00
Standard Deviation	\$105.86	\$16,416.35	\$16,809.22
80 <sup>th</sup> Percentile	\$295.00	\$43,100.00	\$32,100.00
85 <sup>th</sup> Percentile	\$300.11	\$57,725.00	\$32,450.00
90 <sup>th</sup> Percentile	\$322.68	\$59,600.00	\$43,000.00
95 <sup>th</sup> Percentile	\$391.92	\$65,000.00	\$57,050.00

### Two Alternate Proposals Developed

In response to the comments received, the hearing officers have developed two alternate fee proposals for consideration and comment. These proposals have been published in the March 15, 2007 edition of the N.C. Register. Written comments will be accepted through May 15, 2007 (see comment procedure at the end of this document).

#### ***Alternate Proposal #1 – Single Statewide Fee***

For this fee system, EEP would maintain a single statewide fee set at the 85<sup>th</sup> percentile of statistics related to project cost data.

Mitigation Type	Stream	Riparian Wetland	Non-riparian Wetland
Mitigation Unit	linear foot	acre	acre
Fee	\$300	\$57,725	\$32,450

#### ***Alternate Proposal #2 – Two Fee System***

Under this proposal, EEP would administer two fees separated by eight-digit hydrologic units (as defined by the U. S. Geological Survey). One fee would be higher to reflect the parts of the state where project costs are increased due to factors such as urban constraints, higher land costs and limited restoration opportunities. The higher fees are proposed at the 90<sup>th</sup> percentile of all project statistics and lower fees are equal to the originally proposed rural fee, but they have been adjusted for inflation.

Mitigation Type	Stream	Riparian Wetland	Non-riparian Wetland
Mitigation Unit	linear foot	acre	acre
Fee 1	\$323	\$59,600	\$43,000
Fee 2	\$244	\$33,696	\$22,113

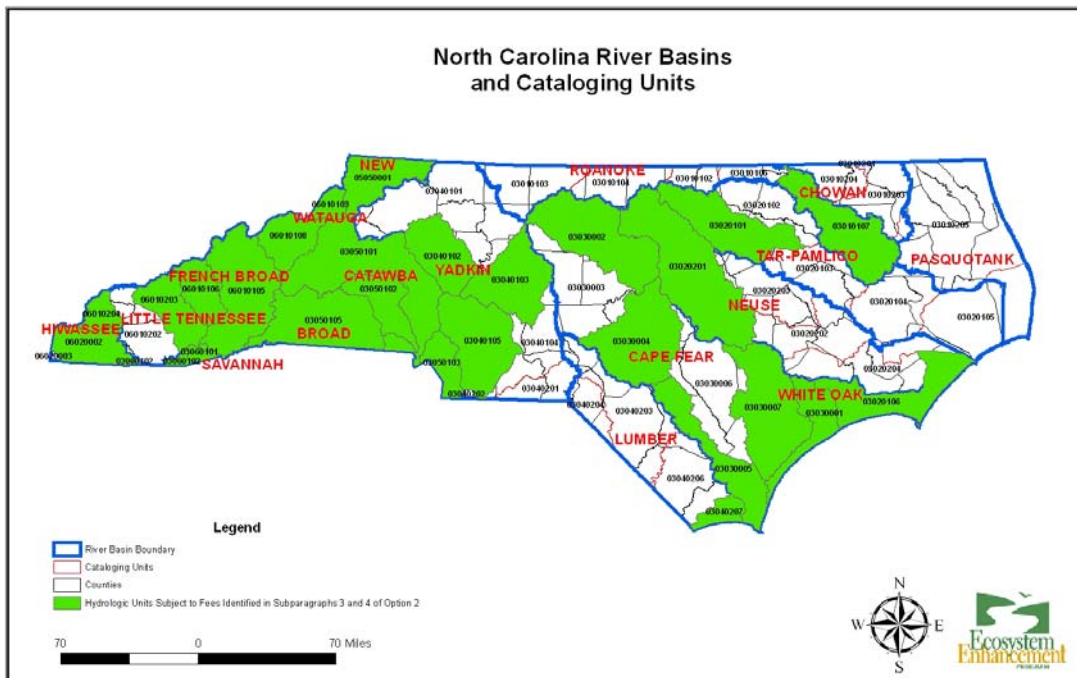
Within this system, the shaded hydrologic units in the map shown at the end of this document would be subject to the higher fees. These catalog units were chosen based on project costs, known factors contributing to higher costs and feedback during the first comment period.

### Comment Procedure

The purpose of this announcement is to encourage those interested in this proposal to provide comments. You may submit written comments by the close of the comment period. The deadline for submitting written comments is **May 15, 2007**. Comments may be sent via postal mail or e-mail. All relevant comments received by the deadline will be public record and will be considered by the Environmental Management Commission during the rule-making process. Based on the comments received, the EMC may adopt: 1) the proposed rule originally noticed on December 15, 2006; 2) one of the alternate proposals provided herein and published in the N.C. Register on March 15, 2007; or 3) some combination of all of the proposals provided. The EMC may set fees higher or lower than those published in the N.C. Register. Please submit comments, questions and/or requests for additional information to:

Suzanne Klimek DENR-Ecosystem Enhancement Program Tel: (919) 715-1835  
 1652 Mail Service Center  
 Raleigh, N.C. 27699-1652  
 E-mail: [suzanne.klimek@ncmail.net](mailto:suzanne.klimek@ncmail.net)

Map showing hydrologic units that would be subject to Fee 1 under the proposed Two-Fee system. In the proposed rule language in the N.C. Register, these are identified in Option 2. See <http://www.oah.state.nc.us/rules/register/> to review the language published in the March 15, 2007 register.



**APPENDIX 7 – COMMENTS RECEIVED ON MARCH 15, 2007 NC REGISTER  
PUBLICATION**



600 E. Fourth<sup>A</sup> Street  
Charlotte, NC 28202<sup>47</sup>  
Fax 704.336.6586

May 15, 2007

Suzanne Klimek  
DENR-Ecosystem Enhancement Program  
1652 Mail Service Center  
Raleigh, N.C. 27699-1652

Dear Ms. Klimek,

The City of Charlotte, Storm Water Services (CSWS) is pleased to submit comments on the Republication of Proposed Revisions to 15A NCAC 2R .0402 that details the schedule of fees applied to the Ecosystem Enhancement Program (EEP). CSWS applauds the EEP for their proposal to raise fees in urban areas, but does not believe that the proposal goes far enough in defining urban areas or represents the true costs of urban projects. Specifically, the areas deemed "urban" are not representative of true urban conditions and the rates proposed for the urban areas are not representative of costs encumbered by CSWS over the past five years. Reference is made to the earlier comments submitted to your attention on the original fee increase proposal, dated February 15, 2007, which shows that the average linear foot of stream credit costs the City of Charlotte \$466.00. These data clearly indicate that restoration of streams in urban areas is significantly more expensive than the rates being proposed by the Ecosystem Enhancement Program (EEP) for urban areas.

The City of Charlotte is the largest city in the State of North Carolina and the Charlotte continues to experience rapid growth. The Charlotte area has grown by almost 160,000 new residents in the past five years, and more than 350,000 new residents are projected to move to Charlotte by 2030. This growth places a large demand on Charlotte's natural resources, especially water resources, as forest is converted into neighborhoods and streams are piped for roads, schools, parks and neighborhood amenities. The cost of providing mitigation for these impacts is much higher in Charlotte than most other surrounding areas due to land costs, site constraints and other factors. The US Army Corps of Engineers (USACE) requires that mitigation must be provided in the same 8-digit United States Geological Survey (USGS) Hydrologic Unit Code (HUC) as the impacts. Since there are three USGS 8-digit HUCs in Mecklenburg County, current USACE policy allows mitigation of impacts in Charlotte to be completed in adjacent counties or distant counties nowhere near the location of the impacts. As impacts take place in Charlotte and mitigation is completed outside of Charlotte, the pollutant treatment and removal capacity of Charlotte's drainage network and Charlotte's ability to meet State water quality standards is reduced. This presents a major challenge for the City of Charlotte and most likely other major cities that are experiencing rapid growth.



To report pollution, call: 704.336.5500  
To report drainage problems, call: 704.336.RAIN  
<http://stormwater.charmeck.org>





STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY  
GOVERNOR

LYNDO TIPPETT  
SECRETARY

May 15, 2007

Ms. Suzanne Klimek  
Director of Operations  
DENR – Ecosystem Enhancement Program  
1652 Mail Service Center  
Raleigh, North Carolina 27699-1652

Subject: Comments on Re-Publication of Proposed Revisions to the  
Ecosystem Enhancement Program (EEP) Schedule of Fees

Dear Ms. Klimek:

The North Carolina Department of Transportation (NCDOT) would like to reiterate the comments that we submitted in a letter dated February 13, 2007 on EEP's original proposed revisions to the Schedule of Fees. We would also like to repeat that, although we realize that we are invoiced in accordance with the MOA, we believe that these proposed increases in the fee schedule will ultimately increase our costs.

As you discussed in the previous proposal, your data on project costs show that restoration in urban and coastal environments is more expensive than in rural areas. Designating urban counties based on actual census data has more validity than designating areas for higher fees based on U.S. Geological Survey eight-digit hydrologic units. Higher costs are based on constraints imposed by the urban nature of certain areas of this state and are not based on watershed boundaries.

We offered suggestions to further refine the distinction between rural and urban counties based on the number of municipalities within each county. The NCDOT suggested that a county have at least two municipalities that are part of a larger Urbanized Area to be designated as urban for the purposes of the EEP Schedule of Fees. We also had concerns about designating Pitt and Wayne Counties as urban, since these counties are still primarily rural, except for Greenville and Goldsboro, respectively.

**MAILING ADDRESS:**  
NC DEPARTMENT OF TRANSPORTATION  
PROJECT DEVELOPMENT AND ENVIRONMENTAL ANALYSIS  
NATURAL ENVIRONMENT UNIT  
1598 MAIL SERVICE CENTER  
RALEIGH NC 27699-1598

TELEPHONE: 919-715-1334 or  
919-715-1335

FAX: 919-715-5501

WEBSITE: [WWW.NCDOT.ORG](http://WWW.NCDOT.ORG)

**LOCATION:**  
PARKER LINCOLN BUILDING  
2728 CAPITAL BLVD. SUITE 240  
RALEIGH NC 27604

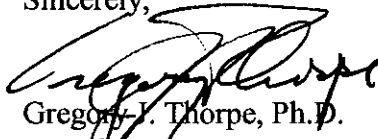
In addition, we suggested that the coastal designation be limited to within 575 feet of the normal high water line of the sound, estuarine, coastal shoreline, and public trust waters to reflect higher land prices in areas adjacent to these coastal resources. We also requested that Hyde County mainland, Tyrell, and Washington Counties not be considered as coastal counties, since land prices are still relatively low in these counties. There may be areas in the mountains with higher land prices, but these areas are associated with urban areas and areas popular for development of resorts and retirement communities, and are not based on watershed boundaries.

Since we believe that the two fees determined by eight-digit hydrologic units in Alternate Proposal #2 are not based on sound planning principles, the NCDOT cannot support this proposal. We also cannot support the single statewide fee as it is currently presented in Alternate Proposal #1. The proposal contains no justification for choosing a single statewide fee set at the 85<sup>th</sup> percentile of statistics related to cost data instead of numbers closer to the mean of project costs.

I would like to request that you provide the NCDOT with a more in-depth cost analysis that evaluates the cost of mitigation projects that are managed by EEP staff versus those that are purchased through the full delivery process. The Department has concerns regarding mitigation costs that appear to be increasing rapidly.

We appreciate your consideration of our comments and request a written response to them.

Sincerely,



Gregory J. Thorpe, Ph.D.  
Branch Manager

Project Development and Environmental Analysis Branch

GJT/bp

cc: W.F. Rosser, PE  
Jon Nance, PE  
Deborah Barbour, PE  
Bruce Dillard, CPA  
Phil Harris, PE

## **Mid-Atlantic Mitigation's Comments on:**

### **Announcement of Re-publication of Proposed Revisions to 15A NCAC 2R.0402**

Mid-Atlantic Mitigation, LLC is based in Concord, NC and is a Full-Delivery mitigation provider to the NCEEP. In regards to the Fee Revisions in the referenced Announcement we offer the following comments.

Taking into account all three proposed revisions to the In Lieu Fee Payment Schedule, Mid-Atlantic Mitigation, LLC endorses Alternative Proposal #2 – Two Fee System. Because most impacts take place in more challenging and costly urban watersheds it is appropriate that permittees impacting these watersheds should pay higher fees. Also, the watershed approach is much preferred over the county approach because mitigation is done on a watershed basis, not a county basis. While urban projects do pose challenges that increase costs, such as high land values, utility constraints, and greater public involvement resulting in public meetings and interaction, in our experience a major factor in project cost is size. Large tracts for mitigation purposes in urban settings are hard to find, this results in smaller projects with higher per unit costs for both wetlands and streams.

Mid-Atlantic Mitigation has developed several stream and wetland mitigation sites for EEP and private clients in both urban and more rural areas. The average cost for urban projects ranges from \$250 to \$300 per linear foot which includes land, design, permitting and construction. This doesn't include the costs for site searches, technical proposals and monitoring or the time value of money. The costs for both stream and wetland restoration continues to increase as landowners become more knowledgeable and suitable land becomes more difficult to find. Construction and engineering costs as well as monitoring costs continue to increase.

Thanks you for allowing us to comment on these proposed revisions.



# NORTH CAROLINA HOME BUILDERS ASSOCIATION

P.O. BOX 99090 • RALEIGH, N.C. 27624-9090  
PHONE (919) 676-9090 • TOLL FREE 1-800-662-7129 • FAX (919) 676-0402  
www.nchba.com www.21buildingexpo.com

A-51

## 2007 NCHBA OFFICERS

May 14, 2007

### President

PAUL MULLICAN  
Winston-Salem  
(336) 768-1431

Ms. Suzanne Klimek  
NC DENR – Ecosystem Enhancement Program  
1652 Mail Service Center  
Raleigh, NC 27699-1652

### President-Elect

RAY RHODES  
Sanford  
(919) 776-0129

### First Vice-President

FRANK WIESNER  
Raleigh  
(919) 420-7400

Dear Ms. Klimek,

### Vice President, Region I

JOE TARASCIO  
Atlantic Beach  
(252) 726-2578

On behalf of the North Carolina Home Builders Association (NCHBA), I thank you for the opportunity to comment a second time on the revised proposal for an increase to the Ecosystem Enhancement Program (EEP) fees. I submit the following comments on the proposed rules cited in Volume 21, Issue 18 (March 15, 2007) of the North Carolina Register.

### Vice President, Region II

GLENN MORRISON  
Washington  
(252) 321-1813

### Vice President, Region III

WARREN SMITH  
Raleigh  
(919) 841-4901

As stated in our February 9, 2007 comments, the North Carolina Home Builders Association supports a fee in lieu program that protects water quality where that protection is not already being accomplished on site. However, we still do not believe that the EEP has justified the need for a fee increase.

### Vice President, Region IV

RALPH DOGGETT  
Burlington  
(336) 570-9142

While payments tied to hydrologic units as proposed in Option 2 cited in the NC Register is a better approximation of the fees necessary to complete the projects, justification for those projects has not been made. The fees collected not only fund the EEP's projects, they also fund the administration of the program. A number of questions remain unanswered as to the operation of the EEP and the projects chosen for mitigation purposes. First, while the EEP's enabling legislation does allow for private sector competition, it appears that the EEP holds the mitigation monopoly. Does the EEP prevent the operation of private mitigation banks? Is a list of mitigation banks available for our members to use instead of paying into the EEP? Our members and the public at large would benefit from competition in the mitigation marketplace.

### Vice President, Region V

JIM GRAVES  
Fayetteville  
(910) 482-8100

### Vice President, Region VI

LARRY AIREY  
Charlotte  
(704) 815-3507

### Vice President, Region VII

ERIK ANDERSON  
Winston-Salem  
(336) 772-4818

### Vice President, Region VIII

GARY FAULKENBURY  
Lincolnton  
(704) 738-4335

### Vice President, Region IX

MARTY-JO WILSON  
Boone  
(828) 264-1143

### Vice President, Region X

BUDDY SMITH  
Cashiers  
(828) 743-6888

### Secretary/Treasurer

RICK SHIELDS  
Charlotte  
(704) 494-2745

### Immediate Past President & NAHB Executive Committee State Rep.

DAVE STORMONT  
Kitty Hawk  
(252) 261-8724

### NAHB Executive Committee

JONATHAN ELLIOT  
Fayetteville  
(910) 864-1082

### Executive Vice President

MIKE CARPENTER

According to the EEP 2006 Annual Report, the unencumbered balance of each of the funds managed by the EEP ranges between \$1 million and \$10 million. The EEP 2006 Annual Report also states that the EEP spends approximately 70 percent of its project money on Full Delivery mitigation projects and 30 percent on Design-Bid-Build. The Annual Report fails to specify which of the two processes results in more project failures over time. NCHBA questions how much of the EEP budget is used to re-design, re-construct, or re-plant projects, especially projects completed through the Design-Bid-Build process which does not require warranties.

**RECEIVED**

MAY 16 2007

NC ECOSYSTEM  
ENHANCEMENT PROGRAM

### PAST PRESIDENTS

EUGENE A. GULLEDGE (1964)  
C. PHIL ROBINSON, JR. (1966)  
CARL W. JOHNSON (1967)  
JOHN CROSLAND, JR. (1968)  
\*J.M. DAUGHTRIDGE (1969)  
\*HOMER BARRETT (1970)  
\*JAMES W. LESTER (1971)  
CHARLES C. McLAURIN (1972)  
J. VAUGHN KLUTTS (1973)

C.L. REAVIS (1974)  
JOHN T. BELL (1975)  
WILLIAM T. BOYD (1976)  
LaRUE HAMBRICK (1977)  
J. RAY SPARROW (1978)  
SHERRILL FAW (1979)  
MARK E. TIPTON (1980)  
M. DURWOOD STEPHENSON (1981)  
J. WATTS ROBERSON (1982)

NELSON CALLAHAN (1983)  
PAUL D. TROLLINGER (1984)  
RICK BATCHELOR (1985)  
BURL LANCE (1986)  
LARRY SUMMER (1987)  
HERSCHEL REDDING (1988)  
JAMES FORD (1989)  
STEVE NASH (1990)  
HARRIS B. GUPTON (1991)

RUSS DAVIS (1992)  
CHUCK MILLER (1993)  
CHARLES MULLEN (1994)  
ROBERT INGRAHAM (1995)  
DAVID PRESSLY, JR. (1996)  
DONALD W. BETSWORTH (1997)  
GEORGE HENSON (1998)  
ROBERT YATKO (1999)  
DANNY ADAMS (2000)

DON STROM (1999)  
GREG ISENHOUR (2003)  
RICK JUDSON (2004)  
BUDDY HUGHES (2005)  
DAVE STORMONT (2006)

\*Deceased

EEP staff has increased significantly since the program's inception. The EEP has not specified what proportion of the proposed fee increase reflects administrative costs. We question whether increased administrative fees will directly result in more efficient delivery of mitigation projects. Further, under 15A NCAC 2R .0402(d), fees are adjusted for inflation on an annual basis using the Civil Works Construction Cost Index System. There is no statutory authority for an "automatic" fee increase. The fact that this language exists in the rules and is proposed for amended is irrelevant. The entire section is unauthorized and must be removed.

Thank you again for the opportunity to comment. If you have any questions as to our position, please contact me at 919-676-9090 or [lmartin@nchba.org](mailto:lmartin@nchba.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Martin", with a long horizontal flourish extending to the right.

Lisa D. Martin, AICP  
Director of Regulatory Affairs



May 15, 2007

Ms. Suzanne Klimek  
Ecosystem Enhancement Program  
1652 Mail Service Center  
Raleigh, NC 27699-1652

RE: Comments of Progress Energy Carolinas, Inc. on Rulemaking Proposal to Revise the Schedule of Fees for the Ecosystem Enhancement Program at 15A NCAC 02R .0402 as Published in the *North Carolina Register*, Vol. 21, Issue 18, pp. 1618-1620

Dear Ms. Klimek:

Progress Energy Carolinas, Inc. (PEC), a subsidiary of Progress Energy, provides electricity and related services to more than one million customers in North Carolina (NC). The company is headquartered in Raleigh and serves a territory within North Carolina that encompasses more than 29,000 square miles including the cities of Raleigh, Wilmington, Fayetteville, and Asheville. The construction and maintenance of power generating, transmission and distribution facilities occasionally result in unavoidable impacts to wetlands and streams. Consequently, compensatory mitigation may be required. Accordingly, PEC has interest in the Ecosystem Enhancement Program (EEP) and the opportunity it provides to satisfy possible mitigation requirements. The following comments are being submitted by Progress Energy Service Company, LLC on behalf of PEC.

- Of the two options published, PEC prefers Option 1 with a single flat fee for the entire state. PEC does not doubt that the cost of mitigation is decidedly site specific. Nonetheless, PEC does not believe sufficient information exists to justify the establishment of fees based on watershed boundaries as contemplated for Option 2. In addition, PEC suspects that a two tiered schedule would be confusing to the regulated community and would unnecessarily complicate administration of the program. For instance, a typical 25-mile-long linear project (e.g. transmission line) could easily cross multiple watershed boundaries and even multiple Department of Environment and Natural Resources regional office boundaries.

# Wake Stone Corporation

A-  
54

Quarry Phone Numbers:  
919/266-9266—Knightdale  
919/677-0050—Triangle  
919/775-7349—Moncure  
252/985-4411—Nash County  
843/756-3400—N. Myrtle Beach

Locations:  
U.S. 64 East, Raleigh, N.C.  
I-40 at Harrison Ave., Cary, N.C.  
U.S. 1 at Deep River, Moncure, N.C.  
SR 1527 at I-95, Gold Rock, N.C.  
3990 Hwy. 9 Bus. East, Loris, S.C.

Business Office Address:  
P.O. Box 190  
Knightdale, N.C. 27545  
919/266-1100  
Fax 919/266-1149  
www.wakestonecorp.com

May 14, 2007

Suzanne Klimek  
DENR-Ecosystem Enhancement Program  
1652 Mail Service Center  
Raleigh, North Carolina 27699-1652

RE: Proposed Revisions to 15A NCAC 2R .0402

Ms. Klimek:

We were at a loss to understand the original proposed revisions to 15A NCAC 2R .0402. Establishing “rural-urban-coastal” fee categories based on US EPA designated urban or urbanizing counties was problematic in that it incorporated several predominantly rural counties simply because a small area within the county fell within the urban or urbanizing area. We believe it would have been far more meaningful to utilize US Census Bureau statistics on urban or urbanizing areas to delineate areas of higher costs, but not incorporate entire counties simply because a portion of the county is considered urban or urbanizing. Likewise, classifying entire coastal counties in a higher fee category because of “waterfront properties that have higher real estate costs” was also inappropriate in that there are certainly large areas within these counties where the real estate costs are not at the same level as waterfront areas. During the public hearing process, comments were received that suggested the proposed “rural-urban-coastal” structure did not capture non-urban areas where mitigation costs are higher for “other” reasons (mountain region). One (or more) commenter suggested that the fee-category should be watershed based rather than by county. Others raised concerns about the justification for increasing mitigation costs.

In response to the comments received during the public hearing process, the hearing officers have developed two alternate fee proposal for consideration and comment. *Alternate Proposal #1* provides for “a single statewide fee set at the 85<sup>th</sup> percentile of statistics related to project cost data”. This single statewide fee sounds simple enough, but by choosing the 85<sup>th</sup> percentile of project cost data, everyone will pay more for mitigation. In fact, the fee for Riparian Wetlands would be \$57,725.00/acre regardless of location or actual cost to conduct the mitigation activities. Under the

**RECEIVED**

MAY 15 2007

NC ECOSYSTEM  
ENHANCEMENT PROGRAM

original proposal, even the most expensive “urban” mitigation would be \$56,000.00. That difference makes no sense. We believe a single statewide fee reasonably could be expected to fall somewhere between the less expensive “rural” fee and the most expensive “urban” fee. If the EEP uses actual completed project cost data to generate a statewide fee, it should use the mean cost figure, since that should represent the average cost of mitigation across the state. We also believe adoption of a single statewide fee at \$57,725.00/acre would discourage economic development in rural areas where it is needed most. Perhaps that is the point of all of this, to make the cost of mitigation punitive to the point of slowing or stopping development.

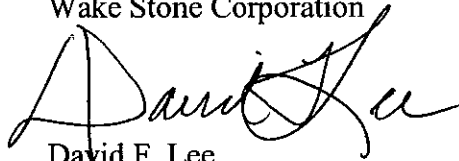
The second proposal, “a Two Fee System,” using hydrologic units as defined by the USGS makes even less sense. It is suggested that the higher fee areas “reflect the parts of the state where project costs are increased due to factors such as urban constraints, higher land costs and limited restoration opportunities.” What do these factors have to do with hydrologic units? In looking at the map illustrating these proposed hydrologic unit-based categories, it appears that the only goal was to put a much larger portion of the state into the higher fee category. And again, the fee is significantly higher than the highest “urban” fee in the original proposal. Not only does the “Two Fee System” cost more for the higher fee areas (which now encompass a larger area), but even the lower fee areas are higher than the lowest “rural” fees in the original proposal. How can the EEP justify these figures?

In studying the original and revised proposed adjustments to the EEP fee schedule, we can’t help but come to the conclusion that perhaps it is time for the entire program to be closely examined by the EMC. Throughout the fee revision process it has been indicated that actual costs from over 100 restoration projects were examined, with that examination concluding that current fees are too low. It was mentioned that all full-delivery projects completed to date were included in that data set and that may in fact be problematic. We have seen first hand how the “RFP” process can result in artificially inflated land values, particularly in the rural areas of the state. We personally have suffered loss in the ability to secure suitable mitigation sites due to full delivery or design build contractors quoting unimaginable prices to land owners for prior converted farmland and degraded wet pasture areas. It seems to us it may be time for the EMC to review how the EEP chooses restoration sites, how the full delivery and design build contractors fit into this equation, and what checks and balances are in place to assure that the program works effectively to the advantage of the environment, the customer (the permit holder who chooses to use the EEP program to satisfy compensatory mitigation), and the citizens of North Carolina.

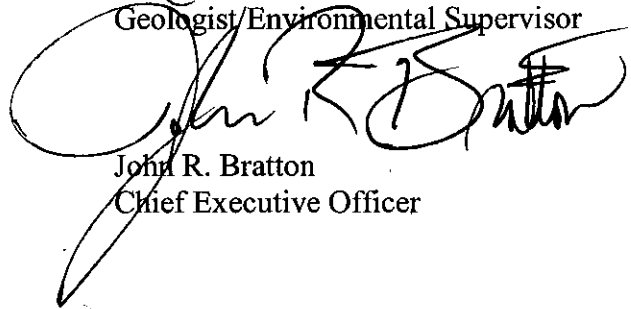
On a similar note, we understand that most EEP projects undertaken are directly related to the NC DOT’s needs for mitigation. We believe this plays a direct role in the costs associated with private industry’s willingness to satisfy its compensatory mitigation requirements through the program. It seems far easier for the NC DOT to absorb the cost of mitigation through the EEP, than it is for private industry, since the DOT is spending the tax payer’s money and has a pressing need for mitigation associated with its road building projects. Private industry would be far more likely to use the EEP for

compensatory mitigation if the rates charged were more reasonable. We believe the EEP can provide a valuable means of satisfying compensatory mitigation needs for our company and others in the private sector if the fees charged are set at reasonable and justifiable levels. We hope the EMC will closely examine the fee schedules and structure of the program to insure that is attained.

Sincerely,  
Wake Stone Corporation



David F. Lee  
Geologist/Environmental Supervisor



John R. Bratton  
Chief Executive Officer

**APPENDIX 8 – CURRENT MITIGATION FEES (EFFECTIVE JULY 1, 2007)**

## NCEEP Schedule of Fees Effective July 1, 2007

<b>Fee Category (unit)</b>	<b>Fee Schedule</b>
<b>Property Management (acre)</b>	<b>\$419</b>
<b>Stream (linear foot)</b>	<b>\$245</b>
<b>Non-riparian Wetland (acre)</b>	<b>\$14,676</b>
<b>Riparian Wetland (acre)</b>	<b>\$29,351</b>
<b>Coastal Wetland (acre)</b>	<b>\$146,754</b>

**APPENDIX 9 – RESULTS OF ILF SURVEY**

**In-Lieu Fee Survey to Agents / Consultants  
Draft Compilation of Survey Results**

Total Surveys Mailed on 2/23/07: 87 Agents of Applicants who have made payments to EEP since July 2006  
 Surveys Returned as of 6/4/07: 41 responses (47%)

1. How did you first learn about the “In-Lieu Fee” (ILF) program?
  - 13 Staff at the US Army Corps of Engineers
  - 3 Staff at the NC Division of Water Quality
  - 17 My own research / experience regarding permit requirements
  - 8 A colleague told me about it
  - 1 The EEP Web site ([www.nceep.net](http://www.nceep.net))
  - 4 Local government regulatory staff
  - 0 Other (please explain) \_\_\_\_\_

Note: some respondents selected more than one answer.

2. Was the Ecosystem Enhancement Program (EEP) staff with whom you worked:

	Not at all		Extremely		
Knowledgeable?	1	2	3(4)	4(16)	5(20)
Polite/Respectful?	1	2	3(1)	4(15)	5(24)
Responsive?	1	2	3(4)	4(10)	5(26)
Helpful?	1	2	3(3)	4(17)	5(20)
Timely?	1	2(1)	3(4)	4(13)	5(23)

3. Overall, how satisfied are you with your experience using the EEP’s ILF program to meet mitigation requirements?

	Not at all Satisfied		Extremely Satisfied		
	1	2	3(2)	4(11)	5(28)

4. Thinking specifically of the most recent time you worked with a client using this program, do you think the fee was reflective of what it would have cost your client, in time and materials, to build a project that satisfied their compensatory-mitigation requirements?

- 9 I don't know.
- 2 No. My client could have provided a compensatory-mitigation project for less.  
Note: One respondent wrote: "(Buffer Impacts – my answer would be different for stream or wetland impacts.)"  
The other said "yes" to question 6.
- 10 The cost was about the same as what it would have cost my client to provide the compensatory mitigation themselves.
- 21 Yes. The fee was very reasonable. It would have cost my client more to do the mitigation themselves.

Note: some respondents selected more than one answer.

5. Again, thinking of your most recent experience, why did you / your client choose to use the EEP ILF Program? (Please check all that apply.)

- 8 My client needed a permit/ variance approved quickly and had no other options.
- 8 The program was less costly or equal in cost to other mitigation options.
- 14 My client's organization is not equipped to directly provide the mitigation that the U.S. Army Corps of Engineers / N.C. Division of Water Quality / local government required.
- 27 It was simply more convenient to pay the fee and let EEP provide the mitigation.
- 23 The client had no opportunity for on-site, in-kind mitigation.

6. Would you recommend that clients use the EEP ILF program in the future?

- 40 Yes.
- 0 No. Why not? \_\_\_\_\_

Note: One respondent did not answer this question. However, that person answered "5" to question #3.

7. Is there anything else you would like to tell us?

1. *I feel like your program has grown and improved considerably since Kelly Williams began working for you. She is, by far, the best ILF coordinator I've worked with.*
2. *Kelly Williams has always been extremely helpful and very timely in responding to requests.*
3. *The minimum amount of mitigation per purchase is 0.25 acres. There should be smaller amounts available for purchase, or at least in 0.10 increments.*
4. *The fee was too high. [This respondent answered "don't know" to #4, and said "yes" to #6.]*
5. *Kelly is awesome. Keep up the good work.*
6. *Kelly Williams is great to work with! Give this lady a raise!*
7. *Most of my clients are developers who do not wish to tie themselves to a subdivision by a 3-5 yr. wetland monitoring requirement. Once their part in development is complete, many will dissolve the corporation – and by extension financial support.*
8. *Less than ¼ ac. increments would help costs for impacts of .10 ac or less.*
9. *To me it would avoid some confusion if "saltwater wetland" designation was changed to "coastal wetland" so it would be consistent with NC Div of Coastal Management's rules and designation.*
10. *Almost all permits are for impacts less than 0.25 acres. It would be more cost effective to purchase less credits.*
11. *We do not suggest the NCEEP Conservation Easements now. Our clients are better served by other conservation easement recipients. EEP is very slow with conservation easements. [Stephanie to contact this respondent.]*
12. *Alexander County should not be considered an Urban County with regards to increasing fees. It has one high school.*
13. *Kelly Williams did a great job.*
14. *Staff was helpful (Kelly Williams) worked with us in a professional manner, and was responsive to our needs.*
15. *The program is good, but please keep the fees reasonable.*
16. *Thanks!*
17. *In the last 6-8 months, the turn around for ILF acceptance has been very timely and coordinator very helpful.*
18. *This was my first experience – excellent help!*
19. *Keep up the good work*
20. *Sometimes inconsistencies between USACE and NCDWQ mitigation requirements for projects cause confusion for everyone when EEP fees are due at different times (ex: NCDWQ requires mitigation payment prior to issuance of USACE permit). I feel this is more of a USACE / DWQ issue rather than EEP; however patience from EEP when changes to project requirements are made is greatly appreciated! Thank you.*

8. Name, Address, Phone Number (Optional)

David Meyer, LSS, 210-6547

Dana Lutheran (SEGI), 910-452-2711

Mark A Russell, Rocky Mt. NC 27804 (check against mailing list)

Wes Fryar, Land Management Group Inc, 910-452-0001

Kim Williams, Land Management Group, Inc., Wilmington

Roxanne & Doug Dorman, Atlantic Env. Consultants, Kitty Hawk

Chris Hopper, Biologist, RJ Goldstein & Assoc., Raleigh

Kendall Turnage, Environmental Professionals, Inc., Kill Devil Hills

Matt Bramblett, Hart & Hickman, 704-586-0007

Debbie Edwards, Raleigh

Alma Bouchard, Southport

Christopher Burkhardt