

# Announcement

## Re-publication 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 N.C. 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/Public\\_hearing\\_announcement\\_fee\\_change\\_12\\_13\\_06.pdf](http://www.nceep.net/pages/Public_hearing_announcement_fee_change_12_13_06.pdf)

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:

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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.

