



# The Landscape of Mitigation in North Carolina

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# Mitigation Past



# Origins of Mitigation

- Clean Water Act
- Rivers and Harbors Act
- Memorandum of Agreement on Mitigation between EPA and DOA
- Federal Guidance on the Establishment, Use and Operation of Mitigation Banks

# NC Wetlands Restoration Program (WRP)

- State in-lieu-fee program founded in 1997
- Eventually tasked with encompassing all NCDOT mitigation needs in addition to private needs



# NC Ecosystem Enhancement Program (EEP)

- Born out of a process improvement initiative from 2001
- Established in 2003
- Broader scope than WRP
- Proactive mitigation focus



# NC Environmental Restoration Association (NCERA)

- Founded by Mitigation Bankers
- Members include contractors, consultants, surveyors, and plant suppliers
- Competitors with common goal of promoting fairness in the mitigation marketplace

# Mitigation Present



# 2008 Federal Register: 40 CFR Part 230, Section 404 (b)(1)



Emphasizes a watershed approach.

Applies equivalent standards to all 3 types of mitigation to the maximum extent practicable.

- permittee-responsible compensatory mitigation,
- mitigation banks, and
- in-lieu fee mitigation

Significantly revises the requirements for in-lieu fee programs.

# Emphasizing a Watershed Approach

Improves the planning, implementation, and management of compensatory mitigation projects by

- emphasizing a watershed approach in selecting project locations, and
- requiring measurable, enforceable ecological performance standards and regular monitoring for all types of compensation within the watershed

# Equivalent Standards for all 3 types of Mitigation

This rule applies **equivalent** standards to permittee-responsible compensatory mitigation, mitigation banks and in-lieu fee mitigation to the maximum extent practicable.

Since a mitigation bank must have an approved mitigation plan and other assurances in place before any of its credits can be used to offset permitted impacts, this rule **establishes a preference** for the use of mitigation bank credits, which reduces some of the risks and uncertainties associated with compensatory mitigation.

# Revises the requirements for in-lieu fee programs

This rule also significantly revises the requirements for in-lieu fee programs to address concerns regarding their past performance and equivalency with the standards for mitigation banks and permittee-responsible compensatory mitigation.

Mitigation projects provided by all three mechanisms are required to have mitigation plans which include the same 12 fundamental components:

- objectives;
- site selection criteria;
- site protection instruments (e.g., conservation easements);
- baseline information (for impact and compensation sites);
- credit determination methodology;
- mitigation work plan;
- maintenance plan;
- ecological performance standards;
- monitoring requirements;
- long-term management plan & adaptive management plan; \*\*\*
- and financial assurances \*\*\*

# NC State Legislation

State legislation for riparian buffer and nutrient offset

## 2008 Senate Bill 1885

- Promotes compensatory mitigation by private banks for streams and wetlands
- Excluded DOT

## 2009 Senate Bill 755

- Revision of 2008 Bill to include riparian buffer and nutrient offset mitigation
- Provides government entities with a new option

# Mitigation Future



# Interagency Agreement at Federal & State Levels

## NC Wetland Assessment Method (NCWAM)

- Began in 2009



## NC Stream Assessment Method (NCSAM)

- Anticipated in 2011

# Best Management Practices (BMPs)

- Currently used for nutrient offset mitigation
- Potential future use in urban retrofitting for mitigation?



# EEP

- Current initiative comparing Design Bid Build vs. Full Delivery procurement methods
- Ensuring compliance with Federal and State regulations
- Ongoing process improvements to ensure quality mitigation in conjunction with necessary quantities

# Credit Stacking

- Federal Regulations legislate wetland and stream mitigation.
- NC State Regulations legislate riparian buffer and nutrient offset mitigation.
- Efforts are underway by the State to disallow the ability of mitigation credit to be given for more than one effort per one action.

# Consolidated Buffer Rule

Seeks to unify many of the individual buffer rules throughout the state:

- Neuse
- Tar Pamlico
- Catawba
- Jordan Lake Rules
- Not the Goose Creek Rules



Perhaps set State-wide minimum standards for future buffer rules.



Thank you!