

Livable Delaware Activity

Activity/Policy/Program Name: Wetlands Mitigation/Banking

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Purpose: Replace wetlands affected/disturbed by transportation construction activities. Make new streams, marshes and forested wetlands to replace those that need to be filled in for building new roads.

Enabling Laws: There are no state laws directing or affecting this activity, other than the general laws permitting the Delaware Department of Transportation to acquire property for its projects, e.g., 17 Del. C. § 137.

Policies: There are no adopted policies affecting this activity

History: Compensatory wetland mitigation is required for unavoidable impacts to waters and wetlands resulting from The Delaware Department of Transportation's highway related construction activities. A wetland banking system is intended for use only when it has been demonstrated that there is no practical alternative to construction in a wetland, that all practical measures to avoid and minimize impacts to wetlands have been incorporated in the project, and that off-site compensation is determined to be appropriate.

Current Situation: This is a program to build wetlands, in advance, for the purpose of wetland mitigation. This would apply to those cases where the process of avoidance and minimization of project related wetland impacts has been exhausted and replacement for impacted wetlands through mitigation is required. Wetland banks would provide an alternative to project specific mitigation for each project having wetland impacts. Recent changes in wetland regulations require that project related wetland impacts in excess of 1/10 acre must be mitigated. To date, most of our mitigation projects have been project specific. We have on occasion developed consolidated mitigation sites to compensate for several projects in a general area. We have also maximized the development of a site to create advanced mitigation to hold for use for a future project. We have worked with regulatory agencies to evaluate a couple of banking initiatives, however, issues relating to public concerns for flooding consequences on one site, and contamination issues on another have put these on hold.

This activity supports several Livable Delaware Goals including; protect important farmlands and critical natural resource areas, protect the states water supplies, open spaces, by encouraging revitalization of existing water systems and construction of new systems, and promoting mobility.

Revisions/Actions Needed: Wetland mitigation banking needs to be done in order to support the Department's Capital Transportation Improvement Program. One suggestion to improve the value of the investment is to partner with the Department of Natural Resources and Environmental Control in site identification and selection. While the sites have to be

acceptable to federal regulatory agencies for use, and the costs for purchase and/or site development need to be reasonable; we could look to Department of Natural Resources and Environmental Control for guidance to use the program as a means to implement state priorities for preservation, restoration and enhancement.

Resources Needed to Create/Revise: Wetland mitigation is already a compliance requirement of the Department's program.

Process for Creation/Revision: Maintain coordination with Department of Natural Resources and Environmental Control as they develop their Biodiversity Conservation Partnership Program. As their program identifies resource preservation, restoration and enhancement needs and priorities; evaluate these sites for use as wetland mitigation banks. Have the Department of Natural Resources and Environmental Control's support when soliciting agency approval for bank development and use. Develop a list of candidate wetland bank sites based on the state's environmental priorities.

Schedule: The implementation timeline for the State's Biodiversity Conservation Program calls for completing priority action items including mapping and management plans for biodiversity conservation and restoration by fall 2002. When available, this information will be used to select and prioritize wetland mitigation siting.

Measures to Guide Progress: Track the progress of the State's Biodiversity Conservation Program. Track ratio of wetlands created to wetlands destroyed by Delaware Department of Transportation projects.

Interactions or Inter-relationships with Other Agencies or Units of Government: There are a number of state and federal laws dealing with the protection of wetland resources. Most notably, those that affect The Delaware Department of Transportation's program are Section 404 of the Clean Water Act, administered by the U.S. Army Corps of Engineers permit program, and the Delaware Wetlands Act (7 Del. C.c.60), administered by the Delaware Department of Natural Resources and Environmental Control. The Transportation Equity Act for the 21st century also encourages the use of wetland banking. Presently there is a Bill in Congress (H.R. 1474) to amend the Federal Water Pollution Control Act relating to wetland mitigation banking, to encourage wetland mitigation banking as a means to mitigate unavoidable loss of wetlands. To date, we have developed a Wetland Banking Memorandum of Agreement signed by The Delaware Department of Transportation, the Delaware Department of Natural Resources and Environmental Control, the Federal Highway Administration, and federal regulatory agencies, which outlines the conditions for development and use of mitigation banks.