

Wetlands Banking: A Good Investment?

by Clyde B. Johnson, SR/WA

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On December 18, 1991, President Bush signed into law the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240. This legislation created sweeping changes in the industry by recognizing and incorporating all modes of transportation into a single legislative package while redefining the roll of federal government involvement. This historic legislation provided important funding to address infrastructure improvements relating to transportation and provide a stimulus to the nation's economy. Also, ISTEA addresses the need for wetland mitigation under Section 1006 (d) (i) (13) and Section 1007, subsection 133 (b) (11) which states:

"In accordance with all applicable federal law and regulations, participation in wetlands mitigation efforts related to projects funded under this title, which may include participation in wetlands mitigation banks; contributions to statewide and regional efforts to conserve, restore, enhance and create wetlands; and development of statewide and regional wet-

lands conservation and mitigation plans, including any such banks, efforts, and plans authorized pursuant to the Water Resources Development Act of 1990 (including crediting provisions). Contributions to such mitigation efforts may take place concurrent with or in advance of project construction. Contributions toward these efforts may occur in advance of project construction only if such efforts are consistent with all applicable requirements of federal law and regulations and state transportation planning processes."

In addition, a May 1992 joint memorandum from the Federal Highway Administration (FHWA), U.S. Army Corps of Engineers, and the Environmental Protection Agency (EPA) recognized the need for "streamlining and improving the efficiency of the environmental review and clearance process, and taking prompt action on Section 404 permit applications," in a desire to respond to the provisions of the ISTEA.

As a follow-up to "Understanding Wetlands and the 404 Process" (*Right of Way*, February 1992), *wetland banking* is a process that allows for the replacement of unavoidable wetlands loss due to any activity that impacts existing wetlands.

This article will focus on the concept of wetland banking as a mitigation tool, public/private sector investment in wetland banking, and ownership alternatives for purchasing wetlands. Other areas of interest center on questions concerning functional quality, acreage replacement requirements, whether a replacement site must be a functional wetland before credits can be allowed, and location of mitigation banks. Each participant in the decision-making process will have a vested interest in these topics and, in order for this procedure to work well, each partici-

pant must be willing to accommodate the needs of others.

In an article entitled "Our Disappearing Wetlands" (*National Geographic*, October 1992), John G. Mitchell points out that the United States loses over 300,000 acres of wetlands each year, and provides a pictorial analysis of the loss of our nation's wetlands. Mitchell provides a somewhat elegant explanation for the origination of the term: "The word 'wetlands' is a relative newcomer to the language, an invention of the age of ecology. Most people used to be content to speak of marshes and swamps, and let it go at that, without even knowing the difference—the difference being that a marsh is a wet place with herbaceous vegetation, while a swamp is a wet place dominated by shrubs and trees. And since there are so many different kinds of each, it behooved some unsung wordsmith to come up with a handle that would carry them all—bogs, sloughs, floodplains, estuarine marshes—to cite just a few. So what did we get for that handle? Wetlands." His article also addresses concerns regarding restoration versus mitigation and, according to one source, the problem with wetland mitigation and restoration is the idea that quantity can be used as a substitute for quality. A restoration turns out to be only half as good as it should be? "No problem," say the sponsors, "we'll just restore twice as much."

Perhaps it would be best to briefly review the status of the delineation manual and the definition of wetlands in light of current congressional debate. The 1989 *Federal Manual for Identifying and Delineating Jurisdictional Wetlands* has been rescinded. The EPA and the Corps of Engineers have returned to the 1987 wetlands manual for the delineation of wetlands. The previous administration,