

July, 2000 NMBA NEWS

The National Association of Mitigation Bankers (NMBA) has been busy. This newsletter provides an update on our major projects.

1. In Lieu Fee Guidance. The Corps, EPA, National Marine Fisheries Service and Fish and Wildlife Service are close to completing guidance for the use of in lieu fees. We have been actively lobbying for guidance that imposes strict standards on in lieu fees. We are optimistic that this guidance, when issued, will impose appropriate limitations on in lieu fees. None of the agencies will provide an expected date of issuance, but we have been told to expect the guidance soon.

What can you do to help? Any member can call or write to Mike Davis, who is responsible for this Guidance within the Army, and urge him to issue the final guidance. The information is: *Michael L. Davis, Deputy Assistant Secretary of the Army (CW), 108 Army Pentagon, Washington, D.C. 20310-0108, 703-695-1370.*

2. National Academy of Sciences Study. The National Academy of Sciences (NAS) has convened a committee of experts to evaluate compensatory wetland mitigation projects and practices, in particular in lieu fee practices. A number of NMBA members met with this committee as it has held meetings around the country. The last full meeting of the committee is scheduled for Irvine, California Sept 19-21, 2000. There will be an open session; check the schedule at <http://www.nas.edu/nrc/> or by calling Leah Probst at 202-334-2540. The NMBA has provided the NAS committee with information about over 15 mitigation

banks, from documents submitted by members.

The NAS committee is scheduled to have its report completed by early 2001.

3. General Accounting Office Investigation. The General Accounting Office (GAO) was asked by the Congress to investigate the practices of the Corps of Engineers in accepting in lieu fee payments for compensatory wetland mitigation. GAO has a team of investigators researching both wetland mitigation banking and in lieu fee examples. They are interested in assembling as much information as possible about these compensatory mitigation practices. GAO investigators have met with some NMBA members in assembling preliminary information. The NMBA has provided the GAO with information about over 15 mitigation banks, from documents submitted by members.

At this point, GAO estimates that it will complete its investigation in the late fall of 2000. Their investigators may contact our members as their work continues.

4. Environmental Law Institute Study. The Environmental Law Institute (ELI), who published a report on Wetland Mitigation Banking in 1993, has received a grant to update and enhance a study of mitigation banking. Central to the new project are plans for an internet accessible database. The database would include federal and state laws, regulations and policies dealing with wetland mitigation banking. The study will try to review information about all approved, existing wetland mitigation banks.

NMBA will make information available to the ELI study, including the library of documents collected for the GAO and NAS studies. The ELI project will not

be completed before the end of 2001 and more likely in early 2002.

5. Federal Highway Administration Regulations. Congress has repeatedly required the Federal Highway Administration to provide a preference for mitigation banks to compensate for authorized wetlands impacts from highway projects. The Federal Highway Administration has been implementing that preference without the benefit of revised regulations. Through contacts with the agency, we have been told that the regulations are in the final stages of review.

6. On the Hill. As in previous years, the annual Water Resources Bill has a provision setting a preference for mitigation banking to compensate for impacts to wetlands from Corps water resources projects. NMBA has been active in protecting that preference. For the first time this year, certain groups tried to add language indicating Congressional support for appropriate in lieu fee programs. So far, NMBA has successfully thwarted those efforts. The Water Resources Bill, along with other funding measures, will work its way through the House and Senate over the next few months. These funding bills should be passed prior to the new fiscal year, beginning October 1. However, in many years the budget and funding legislation goes down to the wire and beyond. NMBA will remain active in these legislative efforts.

7. Member Support. As the Association works for the members, we seek member support in various ways. The library of mitigation banking documents has been highly effective in getting our message out. **If you sent your bank documents, THANK YOU. If you have not sent bank documents, or could add materials, please do so.**

Our Washington Representative, *Peggy Strand*, maintains the banking library in Washington, D.C. Please send materials to her at:

Oppenheimer Wolff Donnelly & Bayh, LLP
1350 Eye Street N.W.
Washington, D.C. 20005
ph: 202-312-8415
fax: 202-312-8315
email: mstrand@oppenheimer.com

What should you send? Banking charters or agreements, work plans, work plan approvals, progress reports, sale approvals, credit ledgers, plant or fauna studies, etc., etc., -- in short, any publicly filed and publicly available documents that reflect the standards and obligations your bank must meet. These documents tell our story well, clearly demonstrating the high standards of mitigation banking.

8 On the Horizon. Other than the funding bills, this Congress will not be taking up any legislation addressing mitigation banking. In this election year, the big issues of tax relief and health care have dominated over environmental concerns. NMBA expects that the 2000 elections may significantly change the picture. A new administration will mean new challenges for mitigation banking. We urge all members to look carefully at the environmental record of their own Representatives, to assure that we continue to have support in Congress.

All members will be receiving a dues statement in the near future. The Board has delayed sending out the dues statement in an effort to get all members on the same payment schedule. Please pay your dues promptly to insure that the Association can continue to positively influence the mitigation banking industry. Questions or comments? Contact any of your Board members.

John Ryan, President (847-692-17170, jryan@lawrinc.com); -- Craig Denisoff Vice President(916-331-8810,denisoff@wildlandsinc.com), - Ray Pavelka, Treasurer (941-481-2011, raymond.pavelka@marinerproperties.com), - Rich Mogensen, Secretary (704-655-9707, rich.k.mogensen@williams.com) - Lew Lautin, Past-President (954-462-1707, llautin@wetlandsbank.com).

Comment: