Environmental Mitigation:
Taking It to the Bank

BY BRANDI SMITH

In 2016, mitigation banking will celebrate its 33rd year as a tool to aid development and preserve the environment. Offered in all parts of the country, these banks can create opportunities and challenges for developers.

What is a mitigation bank?

In 1983, U.S. Fish and Wildlife helped create the first mitigation banks, which were primarily generated as environmental mitigation for state agencies, such as Departments of Transportation.

"Mitigation often takes the form of restoring degraded environmental resources, such as streams, wetlands or species habitat, to a condition that closely matches its natural, historic condition," said Travis L. Hamrick, Restoration Systems' vice president of its southwest division. Restoration Systems oversees more than 50 banks and restoration sites throughout the U.S., including the Katy Prairie Stream Mitigation Bank.

A decade later, with assistance from the Environmental Protection Agency and U.S. Corps of Engineers, programs were available to offset on-site and single-project, off-site compensatory mitigation. The banks received further support when they were mentioned in the White House Office of Environmental Policy's 1993 Federal Wetlands Plan and Intermodal Surface Transportation Equity Act of 1993.

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"Mitigation banks are tracts of land that an owner/sponsor has set aside to create, restore, or enhance aquatic resources on, such as wetlands, streams, or other special aquatic sites," said Keith Morgan, natural resource group manager for Berg-Oliver Associates, Inc., which manages the Lower Brazos River Wetland Mitigation Bank.

It wasn't until 1995 that the EPA, Corps and other federal agencies released the Federal Guidance on the Establishment, Use and Operation of Mitigation Banks, allowing the creation of state, local and private mitigation banks. Though they could be developed and maintained, banks were not the preferred method of environmental mitigation until 2008.

As of August 2013, there were more than 1,800 mitigation banks in the United States, roughly 50 of which are in Texas, helping offset environmental impact for developers all over the Lone Star State.

How does it work?

"Mitigation banks provide the fastest and most cost effective way to receive a permit, allowing developers to do what they do best, while we worry about the restoration process," said Preston W. Smith, VP of development and sales for Wildwood Environmental Credit Company, LLC, which operates more than 25,000 acres of mitigation properties across the southeastern U.S.

Say a developer has a tract of land on which he'd like to build, but there's a chunk of

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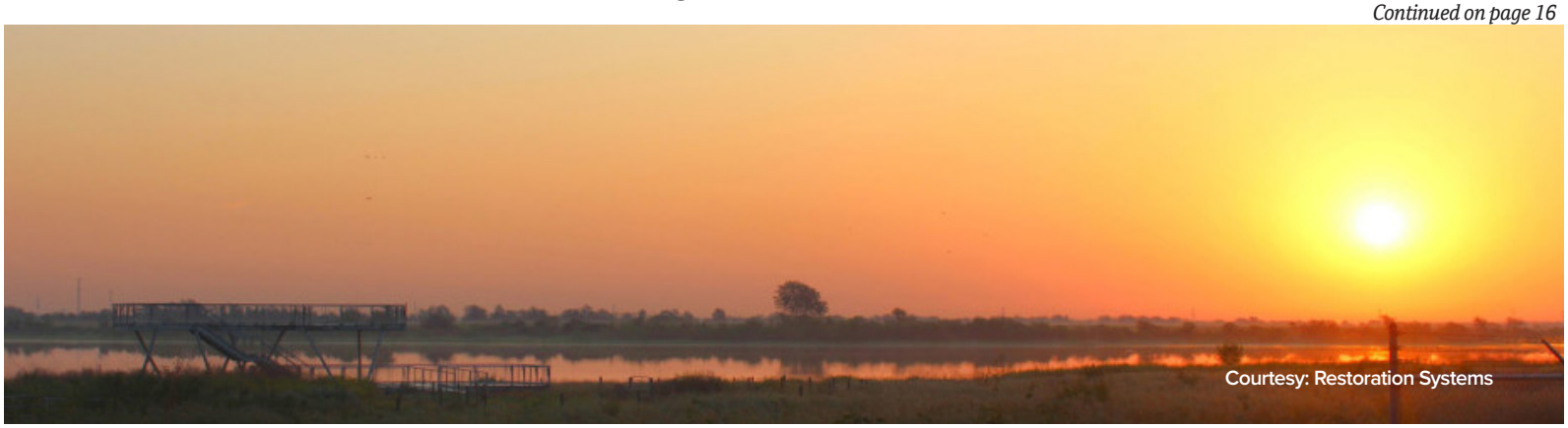

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wetlands in the way. If the wetlands are subject to federal jurisdiction, a permit is required before they can be filled in or cleared, according to Wetlands Professional Services president Jim Coody.

"As a condition of getting that permit, the developer must replace the wetlands that are lost when he builds his project," said Coody. "That is wetland mitigation, which is replacing wetlands that are destroyed by development activities."

"It's really just the law of supply and demand," says Hamrick

The developer is then faced with a choice: create new wetlands on another part of the property or, depending on the type of wetlands being replaced, he can search out credits available at mitigation banks, the Corps' preferred method.

"Our banks provide environmental credit to developers in exchange for a fee associated with the elimination of their environmental debt and the transfer of environmental liabilities to the bank," Smith said.

Issues for developers?

While the process sounds fairly simple, there are a number of challenges that developers can run into when looking for mitigation credits.

The first, as with almost anything else in the development community, is price.

"In general, the higher quality the wetlands is, the more difficult it is to get a permit and the more expensive it is to mitigate," Coody said. That cost is then passed along to anyone interest in purchasing the credits.

"It's really just the law of supply and demand," Hamrick said. "[Restoration Systems] positioned itself in the Houston area and benefited as a result. We are starting to see more competition on the landscape and ultimately that is good for everyone."

Developers can also encounter another issue they're familiar with: location.

"Mitigation banks have to be in the same geographical proximity as the projects that they're mitigating, so that they're creating the same type of wetlands that are being destroyed," Coody said.

The logic behind the proximity requirement ensures that wetlands native to particular climates and ecosystems will be maintained. However, those limitations are sometimes an obstacle for developers, looking for in-demand or regionally unavailable credits.

"In the past, there have been situations in which you had a lot of mitigation banks with credits available, then you had situations where there were none," Coody said. "For instance, when the Grand Parkway was being planned and permitted, the Grand Parkway Association bought up just about all of the available mitigation credits in the Houston area. There were none for a while."

That leaves developers with two options: maintain existing wetlands or rebuild them on another site.

"It's all handled on a case-by-case basis and has to be negotiated with the Corps of Engineers and other regulatory agencies," said Coody. "It's generally a daunting task."

Future of mitigation banking?

The good news is that, because of the Corps' emphasis on mitigation credits being purchased within a small service area, it appears that there could soon be more banks. That, however, may come with a cost.

"Banks take two to three years for approval and require a considerable amount of upfront financial resources with no guarantee of return," said Morgan. "Depending on how this plays out, it could mean lower or higher mitigation costs depending on competition within watersheds."

Just this past December, the Obama administration issued a Presidential Memorandum encouraging private investment in environmental mitigation, which may have a very significant impact on the market.

"I believe professional companies that operate at the national level will strengthen the overall quality of the work being done," Hamrick said. "With more institutional money available, there will be a more relaxed timeframe on realizing a financial return on the investment, which will facilitate ever-larger restoration projects being implemented."

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Because the industry tends to move slowly, it may take a number of years to see any significant changes in the way mitigation banks are managed, how much credits cost and the availability of some credits. For now, they remain a valuable, if sometimes complicated, tool for developers to use when needed. ●

Courtesy: Restoration Systems