

MDOT Proposal for a Umbrella Mitigation Bank
Comments From Penobscot Bay Alliance
July 10, 2008

Ruth Ladd North East Administrator for ACE

Dear Ms. Ladd,

For some of the reasons detailed below, we would like to request a public hearing in the matter regarding the application of Maine Department of Transportation (MDOT) to create an Umbrella Wetland Mitigation Bank. In addition, we believe that the Army Corps of Engineers should reject the proposal for such an Umbrella Mitigation Bank.

We request a formal Public Hearing in the matter relating to the proposal of an Umbrella Wetlands Mitigation Bank by the Maine Department of Transportation (MDOT)

- 1) An Umbrella Wetlands Mitigation Bank in Maine would be the first such instrument in all of New England. For that reason alone, a public hearing is necessary. It is precedent setting for the entire region. What we do here in Maine will have consequences throughout New England so it behooves us to create the highest possible standards for such an instrument . Comparatively New England is a small region with greater wetland losses just due to greater human densities. Therefore this proposal bears increased scrutiny. One would hope that the Army Corps of Engineers would encourage public participation in order to refine and improve the effectiveness of its purview.
- 2) Maine DOT has proposed using bioregions as service areas for a mitigation bank rather than watershed based service areas as recommended by the federal government. These areas are too large to effectively preserve the functions and values in local ecosystems that wetlands provide. A bioregion approach is sufficiently different from conventional practice to require a public hearing.
- 3) There has been no watershed planning to guide the process of compensatory mitigation No functions and values have been identified for wetlands that may be destroyed, as no sites are involved in the proposal. We believe that these three reasons also warrant a public hearing.

As pertains to the application for an Umbrella Wetlands Mitigation Bank by MDOT, we respectfully submit that the proposal has no merit and should be rejected

- 1) Nationally, wetland habitat losses have resulted in serious consequences. Whether one looks at the horrifying flooding along the entire length of the Mississippi, caused largely by human disregard for wetland functions, or one looks to local fisheries where stock has been seriously reduced directly effected by the loss of aquatic resources, there have been significant impacts to local communities, their economies and aquatic ecosystems directly related to destruction of wetlands. The very fact that MDOT does not propose *avoidance and minimization* as primary goals and also does not propose design requirements to enforce and monitor a program that provides wetland habitat compensation implies disregard

- for the impact of loss on the environment. Creating a wetland mitigation bank prior to finding need effectively puts the cart before the horse.
- 2) MDOT has expressed its desire to streamline and simplify the permitting process by use of mitigation banking. While it may seem expedient to speed up the process of developing projects in the short run, the costs associated to improperly protecting our resources are likely to have far greater impact on our pocketbooks long term. Again we cannot afford to lose these very important resources. Net loss is not acceptable.
 - 3) No watershed planning is proposed to provide performance standards for mitigation projects thereby giving little confidence that enforcement is likely, much less part of the overall expectations for future management.
 - 4) No overall methods for verification and monitoring of mitigation areas have been proposed. The Corps itself states that only 15 percent of its sites are monitored annually and that is a single visit per year. MDOT expects that other agencies will hold easements, without establishing any benchmark for performance. Wetland mitigation banking has a poor record of efficacy in which “the actual amount of wetland impacts offset is only about 20 percent, meaning that the section 404 permitting process has been fostering an 80 percent net loss of wetlands.” (National Wetlands Newsletter 23). Maine cannot afford to lose the functions and values of wetlands that are so critical to local economies and ecologies.
 - 5) The conflict of interest inherent in the proposed MDOT plan which allows the agency to both operate the bank as well as make determinations of its use gives little hope that wetland functions will be maintained overall.
 - 6) Finally, and most importantly, no sites have been proposed within this application which makes it very difficult for the public to evaluate present or future need.

Clearly there is a reason that the Clean Water Act was designed to protect wetlands. They are very important to the functioning of many aquatic habitats. Given the relatively little attention being paid to the costs to the diversity in the aquatic environment, and its direct impact on local economies we believe that the Army Corps of Engineers should hold a public hearing on the MDOT proposal and that ultimately this proposal should be rejected.

Respectfully submitted,
Becky Bartovics
President
Penobscot Bay Alliance
273 North Shore Road
North Haven, ME 04853