

Wetlands mitigation: what the law requires

A good environmental consulting firm can help you avoid problems, or take care of those that have cropped up.

by John B. Calsin, Jr.

■ "Our approach to the wetlands creation process is not to dictate where the created wetlands should be, but rather to have the landscape 'tell us' where it can succeed," says Mark Gutshall.

Ideally, this is how Gutshall works. Realistically, the ideal is not always attainable. Sometimes there is a problem.

Gutshall is president of Landstudies Inc. of Oxford, Pa., an environmental consulting firm that specializes in technical, and regulatory planning and services concerning wetlands and forests.

One of the typical problems, Gutshall says, is when a state, county, township or neighbor "blows the whistle" on work that was previously done to a former wetland. If it was filled improperly or impacted upon without a permit and has to be restored, then an enforcement action or after-the-fact permit is required.

Why would a landscaper, golf course superintendent or developer want a wetland created? Are the services of an environmental consulting firm necessary? How are wetlands created? And what is involved in the permit process?

Some answers—A wetland is more than just damp soil or a water-filled hole in the ground that some government regulator is making you sweat bullets over.

At an office campus or golf course, a wetland can be incorporated into an open water irrigation pond to eliminate the sterile look.

Wetlands can be integrated into a golf course or multi-unit complex, such as a townhouse landscape, for wildlife habitat or to enhance the presentation of a hole or tee.

In a community, a wetland can be used to create a nature center.

If you understand that none of these happen overnight, and then follow the

plans of an environmental consulting firm, the process can be much easier.

If you are about to enter into a wetlands project, you might want to maximize your property use while minimizing any risk exposure. You will also expect all proper permits to be submitted to avoid

tion, both federal and state;

- mitigation/restoration;
- habitat evaluations;
- stream macroinvertebrate studies;
- water quality analysis;
- land planning and feasibility studies;

and

• forest stand delineations and forest conservation plans in compliance with state legislation.

The permit process—While the balance of power has shifted in Washington, and there is talk of easing some environ-



If you are about to enter into a wetlands project, consider maximizing your property use while minimizing any risk exposure.

potential enforcement actions against the project. And that's where an environmental consulting firm comes into play.

The first step is an investigation by the firm to determine the presence or absence of wetlands in the study area and to give their approximate size and location. According to Gutshall, the search is usually relatively inexpensive and extremely informative.

When some type of wetlands action is necessary, the consulting firm should be a major player throughout the project's life. Gutshall recommends finding a firm that can provide:

- wetlands delineations;
- agency coordination/permit prepara-

mental restrictions, it cannot be counted on for some time. The qualified wetlands consultant understands the rules and responsibilities that federal and state agencies have concerning wetlands regulations and permit reviews.

The wetlands consultant ordinarily works with the Army Corps of Engineers, the EPA, the Fish and Wildlife Service and other various state and local agencies with which you may not personally have experience.

The requirements for obtaining a permit varies with the project's degree of difficulty, the size and type of impact being proposed. For instance, a golf cart crossing is much easier to secure than filling a wetlands to place a green or tee. Quality of the wetlands is also considered in this process.

As painful as it might sound, Gutshall believes in involving regulatory agencies

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in all phases of a project. Environmental consultants, like his, schedule pre-application meetings, on-site inspections, permit preparation requirements, project presentations and follow-ups—before restoring or creating the wetland.

"We are creating wetlands more often than restoring them," Gutshall observes.

The actual restoration or creation is not just sticking a shovel in the ground, moving dirt and channeling water, either. Some additional considerations:

- Site selection, collection and interpretation of hydrologic data, and plant community association. (Hydrologic data directly affects site location because both surface and groundwater and their ability to be directed, redirected or managed dictate wetland placement.)

- Soil analysis and suitability, such as the capability of retaining and perched water.

- Construction coordination with contractors.

- Selection and planting of native plant material.

- Non-cooperative weather.

Some problems that might arise—some of which can be foreseen and some which cannot—are:

- Time scheduling for site grading may

Site selection (above) and planting of native plant material (below) are appropriate considerations when dealing with wetlands.



not coincide with the availability of plant material, leading to not planting the desired plants at the appropriate time.

- Too much precipitation at the time construction is scheduled.

- Once the actual work begins, the site itself may not be exactly the way the cursory finding indicated, and modifications may be necessary. This requires flexibility from the design team and the permitting agencies. (This is where a good consultant is necessary.)

If someone is in trouble because a permit was not obtained and an enforcement

Definitions

Compensatory mitigation:

the actual creation of a wetland, following the mitigation process

Delineation:

the process of designing the boundary between wetlands and non-wetlands

Enforcement action:

a regulatory agency's requirement that a wetland be restored or a similar amount of wetland created, following a report of non-permitted work

Hydrologic data:

measuring or observing the amount, frequency and duration of water that's either on site or under ground to assess or predict what the level of amount of water would be for a given time or season

Mitigation:

avoiding, modifying and minimizing the impact of new construction on wetlands, as required by regulatory agencies

Perched water table:

clay layer underneath the surface at any given depth in which water becomes trapped between the surface and clay layer; occurs naturally or can be man-made

Restoration:

the enhancement or recovery of a degraded or low quality wetland

—J.C.

action is initiated, an environmental consulting firm can be especially helpful. With its help, a sound compensatory mitigation plan and prudent interaction with regulating agencies may pull a superintendent or contractor out of the regulatory quagmire.

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