



VIRGINIA DEPARTMENT OF
ENVIRONMENTAL QUALITY



An Ecological Framework for Reviewing Compensatory Mitigation Oversight & Compliance

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Contents

- Background
- Oversight & Compliance Tools
- Case Studies
- TIPS

Background

Commonwealth of Virginia

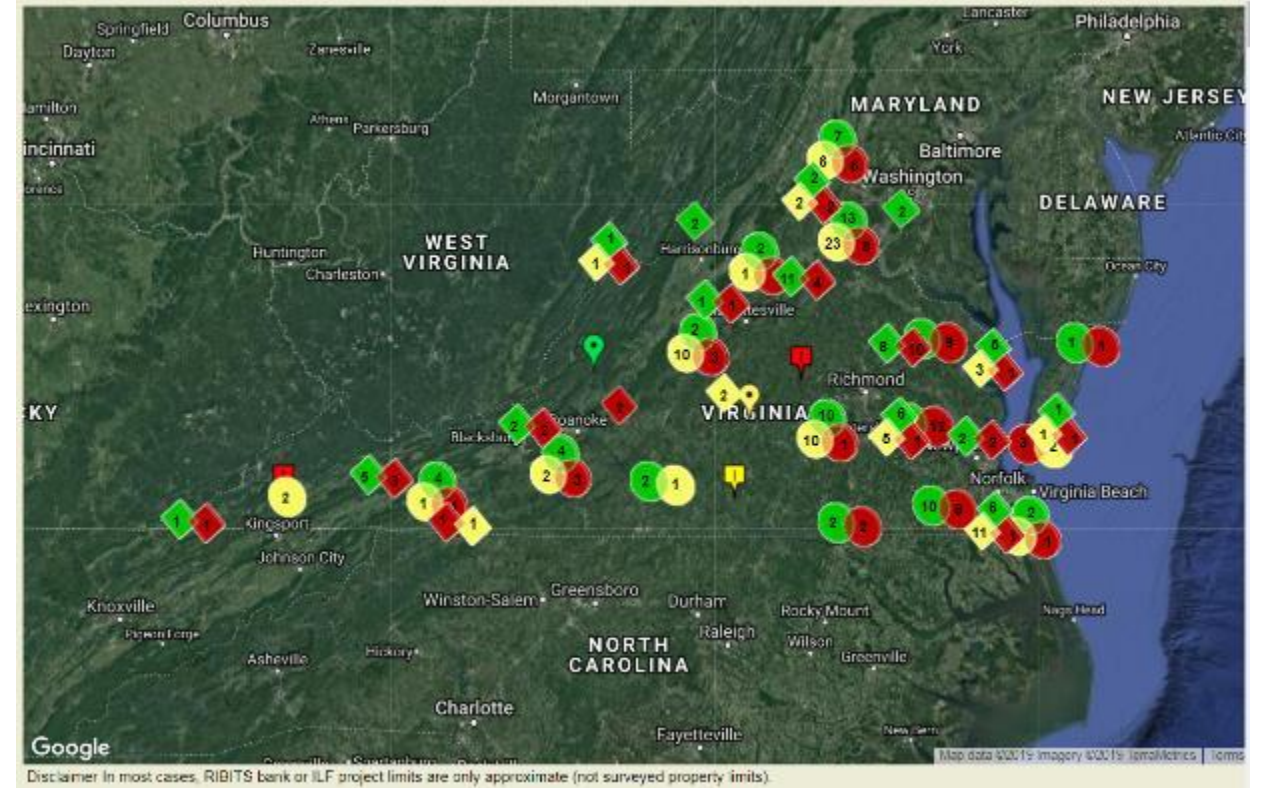
- Code of Virginia – State law
- Virginia Water Protection Permit Program – State regulations (DEQ)
- Virginia Tidal Wetland Banking Guidelines – State regulations (MRC)
 - No net loss
 - Final compensatory mitigation plan
 - Performance and monitoring
 - Site protection
 - Financial Assurances
 - Geographic service area requirements
- Corps' Norfolk District
- 2018 Mitigation Banking Instrument (MBI) template
- 2018 Site Selection Criteria



Commonwealth of Virginia

Mitigation Sites (Banks/ILF)

- Pending – 41
 - Approved – 144
 - Sold-out – 59
 - Withdrawn or Terminated – 65
-
- 1st “Bank” Mitigation Area – 1982
 - 1st Mitigation Bank - 1994
 - 1st In-Lieu Fee Program – 1995



https://ribits.usace.army.mil/ribits_apex/f?p=107:2

Oversight & Compliance Tools

Oversight & Compliance Tools

Most decisive tool is an approved and signed MBI:

- Federal and state law and regulation references
- Site protection
- Financial assurances (FA)
- Mitigation work plan (MWP)
- Maintenance & monitoring reports (MMR) – As-built & performance
- Other reports – Credit ledgers, credit sales, FA
- Release from monitoring / site closure
- Long-term management plan (LTMP) & funding
- Noncompliance



Oversight & Compliance Tools

Noncompliance:

“If the IRT determines that the Sponsor is in noncompliance with any provision of this Instrument or that the mitigation [site] is otherwise not meeting Performance Standards, the [IRT] Chairs may take appropriate action, including but not limited to suspending Credit sales, initiating Adaptive Management, decreasing Available Credits, utilizing Financial Assurances, and/or terminating the Instrument.” ~ Norfolk District MBI template (2018)

BONUS:

Modifying the Instrument / Performance Standards
Requiring Alternative Compensation

Oversight & Compliance Tools

- Overall compliance
- Credit releases
- Monitoring & Maintenance Reports (MMRs)
- MMR summary sheets
- MMR template
(in near future)
- Internal audits – credit sales
- IRT meetings
- **SITE VISITS!**



Oversight & Compliance Tools

Site/Bank Name	Phase	Other Financial Assurances in place (M&M, LTMP, Catastrophic, if required)	Signed LTMP & LTS Identified	First Planting/Initiation (As-built report sometimes)	Year 1 MMR
Coan Mill	Phase 1				20
	Phase IA - Pond				20
Coverly Mitigation Bank	Phase 1			March 2005	
	Phase 2			2007	2008
	Phase 3			2008	20
Creeds Bank (City of Virginia Beach)	Site			Fall of 1998	July 1999 and March 200
Crooked Run Mitigation Site (Potomac River Mitigation Bank)	Wetlands			Nov. 2004	Sept 2005
	Streams				2010
Cypress Springs Mitigation Bank	Bank	no		2002	2003
Daley Site (LBAMA)	Site			credits released on 2/26/08	
Davis Wetland Bank LLC	Bank			planted 1999; remedial planting March 2000	March 2000
Dover Farms	Bank			2009	2010
Dry Fork	Bank	Yes	Yes	2019/2020	2020
Dundee Wetland Mitigation Bank	buffer				2011
	wetlands			11/09-3/10	2010

Oversight & Compliance Tools

(Mitigation Site) - Wetlands	(Date revised)	(Year) Release:					(Add Release columns as needed)	Total Percent of Credits Requested/Released
Mitigation Type	MBI or SDP Credit Total	As-built Credit Total	Initial Release (15%) + Preservation (100%)	(Year) Release: As-built (10%)	(Year) Release: Year 1 (up to 90% cumulative)	(Year) Release: Year 5 (up to 100% cumulative)		
Phase I								
Wetland Restoration								#DIV/0!
Wetland Creation								#DIV/0!
Wetland Enhancement								#DIV/0!
Wetland Preservation								#DIV/0!
Upland Buffer Restoration								#DIV/0!
Upland Buffer Preservation								#DIV/0!
5% Conservation Easement								#DIV/0!
TOTAL	0.00	0.00	0.00	0.00	0.00	0.00		#DIV/0!
Phase II								
Wetland Restoration/Creation								#DIV/0!
Wetland Enhancement								#DIV/0!
Upland Buffer Restoration								#DIV/0!
TOTAL	0.00	0.00	0.00	0.00	0.00	0.00		#DIV/0!
(Add Phases or rows, if needed)								
GRAND TOTAL (Match with RIBITS)	0.00	0.00	0.00	0.00	0.00	0.00		#DIV/0!
<i>RIBITS</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>		
							Total Credit Released T	0.00

Oversight & Compliance Tools

Wetland Credit Certificate

This is to certify that Virginia Department of Transportation
has purchased
305 stream credits in the

This stream credit purchase is designated for use in connection with
Virginia Department of Transportation Permit Number: WP4-12-4084



Annual Mitigation Monitoring Report Summary Sheet For WETLANDS

Overview

Date:	
Mitigation Site Name:	
Phase Monitored:	
Monitoring Year:	
Credit Release Request?	
CRR supported by DEQ?	
Adaptive Management Proposed?	
Other Compliance Notes:	
DEQ Reviewer:	

Wetland Restoration/Creation/Enhancement

Parameter	Plots Meeting Performance*	Performance Standard
Hydrology		>12.5% Growing Season
Wetland Vegetation Dominance		= or > 50% Wetland Vegetation Dominance
Woody - Native Stems		400 stems/acre or 30% Canopy Cover
Woody - Oak Species		150 stems/acre (Year 1-3)
Woody - Height		Height - or > 5 ft (Year 5-10) or 30% Canopy Cover
Herbaceous - Native Coverage		60% (Year 1); 80% (Year 2-10) or 30% Canopy Cover
Invasive/Nuisance Species		<5% or ¼ Acre Aerial Coverage
Floating Aquatic Habitats (Optional)		Site-specific standards for floating aquatics
Soils (Creation in non-hydric soils only)		Hydric Soil Formation within depth of the soil: Sand - 6 in; Silt/Clay/Loam - 12 in.
Total Plots Meeting ALL Performance		

*Please signify parameters that were not required to be monitored with N/A.

Wetland Preservation

Parameter	Plots Meeting Performance*	Performance Standard
Preserved Condition		Year 10 - Preserved area intact, in its approved condition
Invasive/Nuisance Species		<5% or ¼ Acre Aerial Coverage
Total Plots Meeting ALL Performance		

*Please signify parameters that were not required to be monitored with N/A.

Case Studies

Case Studies

All “life stages” of a mitigation site have challenges:

- Development
- Implementation
- Monitoring
- Long-Term Management

PRM, too!

Development: Case Study

- Challenge: Financial assurance requirements / mechanisms
- Trigger: MBI template
- Sponsor: Locality
- Site: Public single-user mitigation site
- Communication:
 - 2nd draft MBI, with comment response from 1st draft MBI
 - IRT meeting – Re-introduce
 - Conference call – FA

Development: Case Study

MBI Template
FA Mechanisms

- Initial Release (optional) - Bond or letter of credit
- M&M – Escrow account or casualty insurance
- LTMP – Endowment or escrow account

Proposed
FA Mechanisms

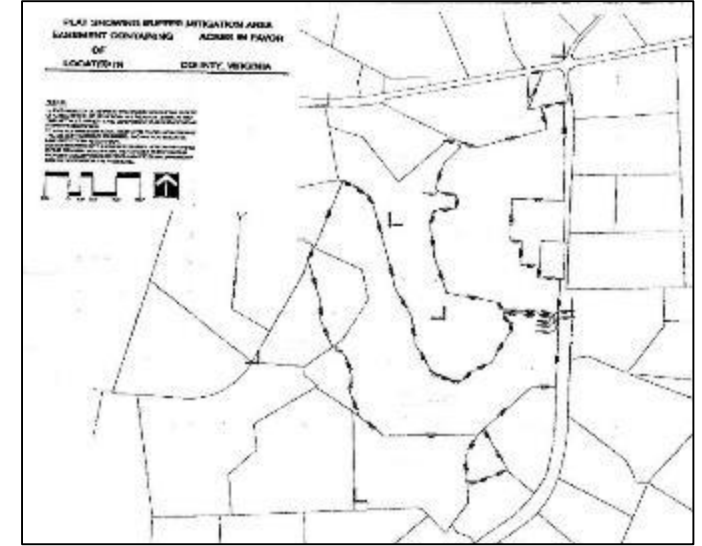
- Initial Release - Capital Improvement Program
- M&M – Capital Improvement Program
- LTMP – Capital Improvement Program

Resulting
FA Mechanisms

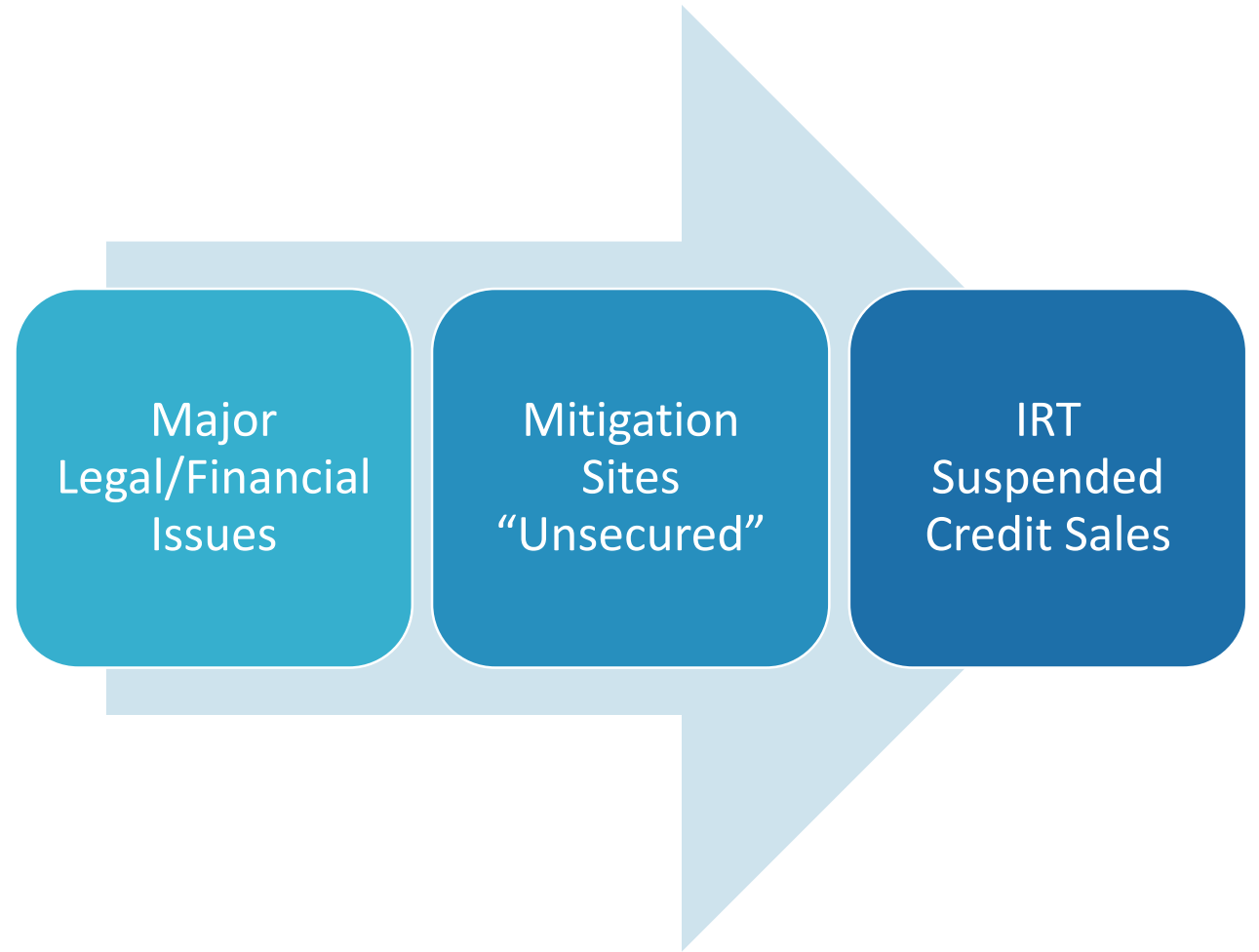
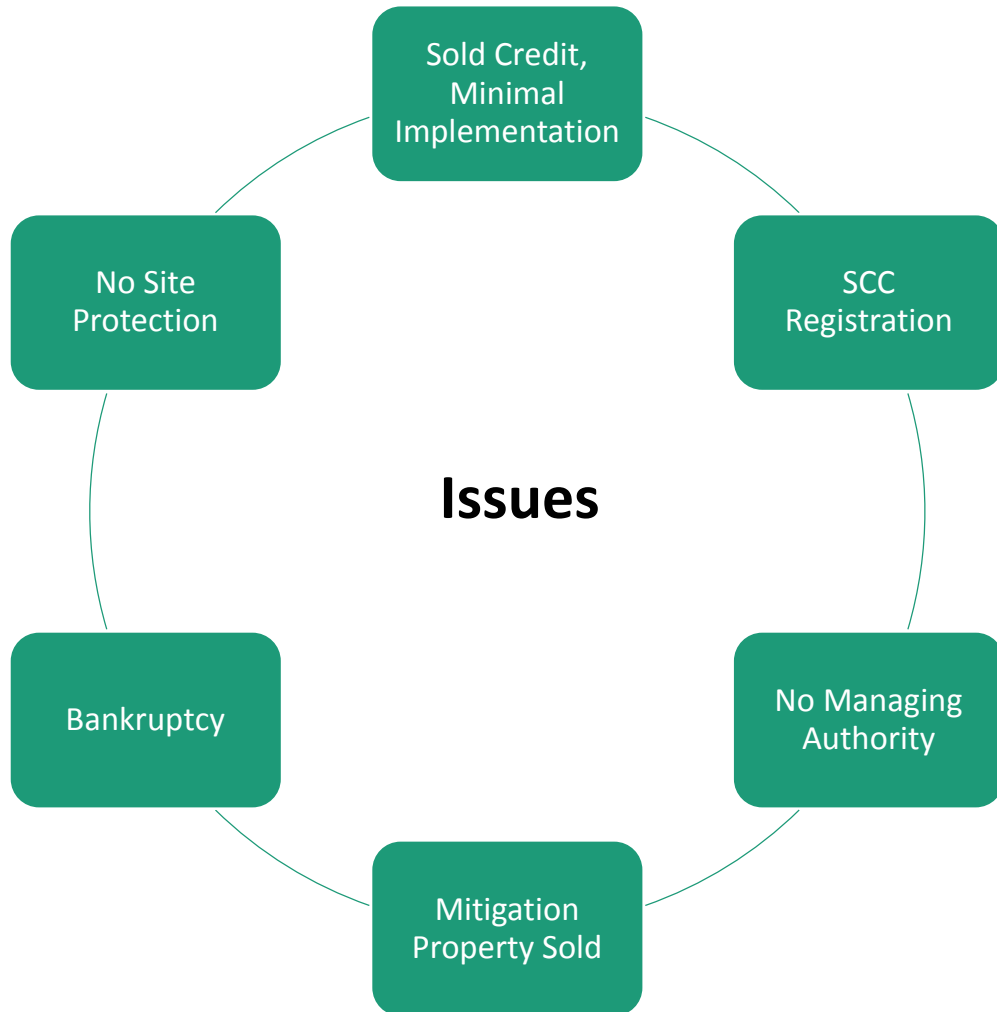
- Initial Release – N/A
- M&M – Capital Improvement Plan
- LTMP – Locality management plan & budget

Implementation: Case Study

- Challenge: Property and site protection
- Trigger: Anonymous tip, compliance spreadsheet
- Sponsor: Private LLC – “Mitigation Development Agreement” between 5 property owners (2 of which were LLCs with 2+ controlling parties)
- Site: Private third-party mitigation site
- Communication:
 - Anonymous tip from banking community, large scale mitigation audit
 - Regulators did some research on sites, flagged for compliance
 - MANY phone calls, meetings, and emails!
 - Continue to communicate....



Implementation: Case Study



Implementation: Case Study

For suspension resolution, sponsor required to provide:

- Redrawn mitigation site limits excluding properties not eligible
- Written approval from all Sponsor LLC parties concurring with reinstatement of mitigation operations
- Subordination agreements associated with the site protection of all properties
- Submit updated State Corporation Commission information
- Documentation that LLC never guaranteed any loans
- All credits generated from at least one property were removed from ledger

- Confirm credit ledger
- New schedule for implementation of mitigation activities
- Updated proof of financial assurances (escrow account statements)
- Submit required monitoring reports

Monitoring: Case Study

- Challenge: Failure to meet performance standards
- Trigger: MMR tracking spreadsheet
- Sponsor: Private LLC between 2 property owners
(both LLCs with multiple controlling parties)
- Site: Private third-party mitigation site
- Communication:
 - Submit monitoring report, corrective action plan
 - Site visit, conference call, and emails
 - Termination proceedings

Monitoring: Case Study

MBI

- Site protection recorded
- Financial assurance posted (performance bond)
- Initial credits released

Year 0

- Phase I wetland creation constructed
- Credits released

Year 1

- Monitoring → Performance standards met
- Credits released
- Financial assurance released

Year 2

- Monitoring → Large-scale woody stem mortality → IRT suspended bank
- Old mining site → Soil infertility
- Corrective action plan and delayed monitoring → IRT approved



Photograph 12: Vegetation Plot #3, View West.

Monitoring: Case Study

Year 4

- No monitoring report submitted
- Compliance → IRT requests bank status
- No corrective action completed; No further interest in banking

Site/Task Name	Phase	Other Financial Assurance in place (1990 - 2000) (Yes/No)		First Financial Institution (No built report sometimes)	
		Phase 1 (MBI 2) (Yes/No)	Phase 2 (MBI 2) (Yes/No)	Year 1 (MBI)	Year 2 (MBI)
Case MBI	Phase 1 Phase 2 (Bond)				20
County Mitigation Bank	Phase 1 Phase 2 Phase 3			March 2000 2007 2008	2006 2008
Greene Bank (City of Virginia Beach)	Site			Fall of 1998	July 1998 and March 2000
Crooked Run Mitigation Site (Pocomoke River Mitigation Bank)	Wetlands Streams			Nov. 2004	Sept 2005 2010
Expansive Storage, Stagnant River	Site	Yes		2000	2005
Daily Site (DADA)	Site			credits released on 2/26/08	
Dave Woodard Bank LLC	Bank			started 1990; remedial planting March 2002	March 2000
East Pointe	Bank			2008	2010
Tray Falls	Bank	Yes	Yes	2016-2020	2020
Darden Wilford Mitigation Bank	Bank Wetlands			11/09-3/10	2011 2010

- Sponsor terminated the MBI:
 - Formal request from two sponsor LLCs (signatures of all members)
 - Proof that individuals representing LLCs are authorized
 - Permits and location of three impacts for which credits were sold
 - Bill of sale from another approved mitigation site to cover impacts
 - Acknowledgement from financial institution holding a lien on property
 - Vacate the site protection (declaration of restrictions)
 - Release the financial assurances (two escrow accounts) back to sponsor

Long-Term Management: Case Study

- Challenge: Long-term management tasks & funding
- Trigger: Site closure, compliance spreadsheet
- Sponsor: Private incorporated company
- Site: Private, umbrella, third-party mitigation sites (4 sites)
- Communication:
 - Discussions between regulators, sponsor, consultant, and conservation easement holder
 - Site visits, conference calls, and emails
 - Bank closure proceedings

Long-Term Management: Case Study

2003

MBI Approval

- Sponsor agrees to long-term management requirements for each site:
 - Find conservation easement holders
 - Establish endowments for perpetual management

2018

Bank Closure

- Sponsor ready to comply, but needs more guidance
- Regulators supplied current LTMP template
- Interested easement holder: “Wait, we cannot perform all these tasks!”

Long-Term Management: Case Study

- Current LTMP template may not be appropriate for older mitigation sites with limited long-term management requirements and funding
- Some long-term management is better than none!
- IRT recommended the sponsor work with easement holder to determine long-term management tasks:
 - Annual site visit to ensure no trespass
 - Replace fences, gates, signs
 - Annual report (use easement holder's template)
 - Added – Defense of easement
 - Removed – Observe wetland mitigation, invasive species management

TIPS

Thoroughly Informed Practices for Sanity (TIPS)

- Listen!
- Refer sponsors to their MBI
- Refer permittees to their final mitigation plan
- Clearly specify information you need
- Focus on solutions, not blame
- Collaborate.....Until it's time to mandate
- Use lessons learned to improve program



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