

MIDDLE PENINSULA CHESAPEAKE BAY PUBLIC ACCESS AUTHORITY

DISCUSSION DOCUMENT OF THE PRINCIPLES FOR ESTABLISHING A TIDAL WETLANDS BANK

This draft document begins to describe the operating concepts for the establishment, use, operation, and maintenance of a Tidal Wetlands Bank (hereinafter, the "Bank"). This document is an agreement (the "Agreement") made and entered into by and among the participating members of the Middle Peninsula Chesapeake Bay Public Access Authority (hereinafter, the "PAA"), and its member localities ("Localities"). The provisions outlined in this document are open for discussion and therefore, nonbinding.

I. Terms and Conditions

A. Purpose: The purpose of this document is to discuss the operating principles for the establishment, use, operation and maintenance of the Bank. The Bank will be used for compensatory mitigation for unavoidable impacts to tidal wetlands as required by the Virginia Marine Resource Commission's Tidal Wetlands Mitigation Compensation Policy.

B. Goals and Objectives: The PAA recognizes that mitigation banking has a number of advantages over traditional permittee-responsible compensatory mitigation because of the ability of mitigation banking to:

- 1) Assemble and apply extensive financial resources, planning, and scientific expertise not always available to many permittee-responsible compensatory mitigation proposals,
- 2) Reduce permit processing times and provide more cost-effective compensatory mitigation opportunities,
- 3) Enable the efficient use of limited government resources in the review and compliance monitoring of compensatory mitigation projects because of consolidation, and
- 4) Reduce uncertainty over whether the compensatory mitigation will be successful in offsetting project impacts.

C. Ownership of Land: The PAA is a political subdivision of the Commonwealth and was established pursuant to Virginia State Code 15.2-6600 through 15.2-6625. The PAA is enabled to acquire any interest in land within participating localities for a variety of uses to fulfill the mission of the Authority, which is to identify, acquire and manage public water access opportunities in the region that can be used by the general public for passive and active activities. The PAA anticipates using land that it owns in fee simple as well as land that is leased for the development of a tidal wetlands mitigation Bank within the Middle Peninsula.

Lands anticipated to be used for a tidal wetland mitigation Bank are described below with any specific terms and conditions associated with the land. Section C of this document will be amended from time to time to account for additional land dedicated for use as a wetland mitigation Bank site. The following tracts of land will be used by the PAA for the Bank:

1. Fee Simple: Land Owned by the PAA

Shank Parcel

A 14 acre parcel located along the southwest branch of the Severn River identified as Gloucester County Tax Map Number 46-128. No special conditions exist for use of this parcel.

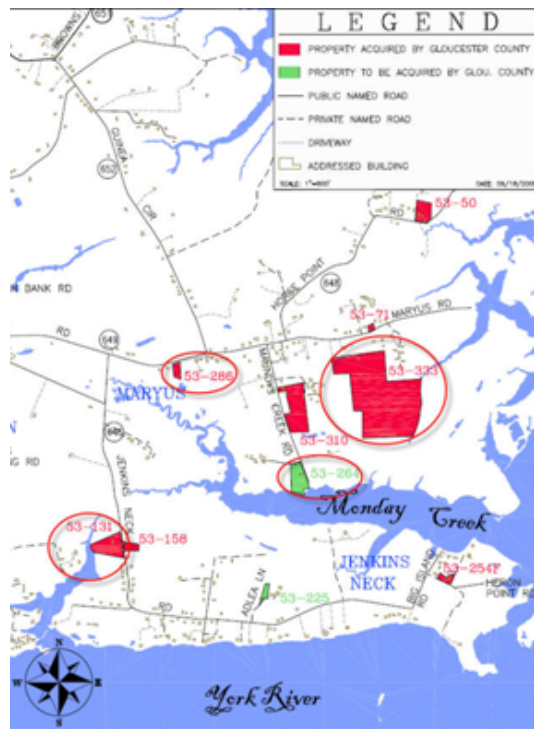
2. Leased Land: Land leased to the PAA from participating localities under certain terms and conditions

Gloucester County Leased Sites

Several parcels located in Gloucester County have been acquired by the Gloucester County Board of Supervisors under the FEMA Mitigation Assistance Program. These sites have been visited and evaluated as potential wetland mitigation sites by staff from the Virginia Institute of Marine Science, Virginia Marine Resource Commission and the Gloucester County Codes Compliance Environmental Program.

Leased sites are described as follows:

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|----|----------|-----------------------|---------------------------|
| 1. | 35 acres | Tax Map Number 53-333 | 10412 Maryus Road |
| 2. | 1 acre | Tax Map Number 53-286 | 10124 Maryus Road |
| 3. | 4 acres | Tax Map Number 53-131 | 2164 Jenkins Neck Road |
| 4. | 3 acres | Tax Map Number 53-264 | (working towards closing) |



Gloucester County proposes certain terms and conditions in exchange for leasing these parcels to the PAA for wetland mitigation Bank use. These terms follow:

1. Upon selling all wetland Bank credits and upon reaching the end of the VRMC required monitoring period, each lease could terminate with an option to renew. If the option to terminate is invoked, full control of each parcel reverts back to Gloucester County.
2. Before any construction on a leased wetland Bank parcel, the PAA will provide the Gloucester County Board of Supervisors with a conceptual use plan for the site. The plan will include, at a minimum, a site drawing indicating all uses proposed on the site. If the PAA desires to add passive recreational improvement (foot bridge, canoe launch etc, the PAA will provide the Board of Supervisors with an infrastructure improvement schedule and plan. The Board can discuss proposed improvement and veto proposed improvement)
3. As the host locality and lessor of the FEMA parcels, certain benefits will accrue to Gloucester County. Specific host locality benefits will be negotiated during the lease development in consultation with the Chief Administrator officer for the host locality.
4. If the PAA, using enabling authority, joint powers agreement or any other tool, is unable to receive permit approval for the development of a wetland mitigation bank on any Gloucester County leased parcels, the lease is canceled and full usage of the parcel reverts back to the Gloucester County Board of Supervisors.

These terms are as follow:

II. General Principles for Establishing a Tidal Wetlands Bank

- A. Scope of Work:** The PAA agrees to perform all necessary work, in accordance with required provisions, to establish and maintain a tidal wetland mitigation Bank, including aquatic habitats and uplands, until it is demonstrated to the satisfaction of the agencies represented on the MITIGATION BANK REVIEW TEAM (MBRT) that the project complies with all required regulatory provisions, or until all credits are sold, whichever is latter.

The MBRT is an interagency group of federal, state, tribal, and/or local regulatory and resource agency representatives which are signatory to a wetland banking instrument and oversee the establishment, use, operation and maintenance of a mitigation Bank with an agency representative serving as chair, as determined by the VMRC regulations.

- B. Permits:** The PAA will obtain all necessary permits and other authorizations needed to construct and maintain the Bank, prior to debiting any credits.

- C. Bank Development Plan:** The PAA will develop a Bank Development Plan that must be approved by the MBRT. If the Bank is to be developed in phases, the phases

will be described in the Bank Development Plan.

D. Project Process: The PAA anticipates the following general steps necessary for the implementation of a wetlands Bank.

- **Land acquisition:** The PAA assembles various parcels for conversion or phasing into a wetland mitigation Bank.
- **Wetlands Bank Business Plan:** The plan will assist with the actual development of a mitigation Bank on existing owned or leased public land. Just as a builder uses a blueprint to ensure that a building will be structurally sound, the process of creating and writing a "blueprint" for a wetland mitigation Bank business -- called a business development plan -- will help determine and articulate a description of the business. It will include details about how it will operate, how it will conduct market research, how it will evaluate of financing options (revenue bonds, grant funding, and loans), develop a revenue structure, provide financial forecasts as well as other business issues necessary to develop a successful publicly held wetlands mitigation Bank.
- **Geotechnical Work:** An assessment of existing site conditions including an analysis of wetland communities, soils, hydrologic conditions, etc.
- **Physical Site Design:** Engineering, site design, regulatory approval and permitting.
- **Financing:** Assemble various financial partners utilizing revenue bonds, grant funding, and loan funds to finance the construction of the project.
- **Long Term Administration and Maintenance Plan:** Develop estimates and plans for ongoing expenses.
- **Construction:** Build the Bank.
- **Wetland Bank Operations & Post Operation Plan:** Respond to regulatory requirements to ensure the ongoing and long term operation (monitoring and maintenance) are successful.
- **Wetland Bank Operation:** Bank credits will be made available for purchase by participating localities.

III. DEFINITIONS

1. BANK SPONSOR – Any public or private entity responsible for establishing, and in most circumstances, operating a mitigation Bank.
2. BANK DEVELOPMENT PLAN – The overall plan governing the establishment, restoration, creation, enhancement, and/or preservation of aquatic resources and associated upland buffers on the Bank site.

3. COMPENSATION – Actions taken which have the effect of substituting some form of aquatic resource for those lost or significantly disturbed due to a permitted development activity; generally, habitat preservation, restoration or creation.
4. CREATION – The establishment of an aquatic resource, such as a wetland, where one did not formerly exist.
5. CREDIT – A unit of measure representing an accrual or attainment of aquatic functions at a mitigation Bank.
6. DEBIT – A unit of measure representing the reduction of credits at the mitigation Bank corresponding to the impact at the project site.
7. ENHANCEMENT – Activities conducted in existing wetlands or other aquatic resources, which increase one or more aquatic functions.
8. LONG-TERM STEWARD – The landowner or lease holder of the Bank property charged with long-term maintenance and management responsibility. A Long-Term Steward may be designated once success criteria monitoring (typically monitoring for 10 years following completion of grading) has been completed.
9. MITIGATION – Sequentially avoiding impacts, minimizing impacts, and compensating for remaining impacts to aquatic resources.
10. MITIGATION BANK – A site or sites where wetlands and/or other aquatic resources are restored, created, enhance, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.
11. MITIGATION BANK REVIEW TEAM (or MBRT) – An interagency group of federal, state, tribal, and/or local regulatory and resource agency representatives which are signatory to a banking instrument and oversees the establishment, use, and operation of a mitigation Bank with the Corps of Engineer representative serving as chair.
12. MITIGATION SITE PLAN – A detailed portion of the Bank Development Plan that identifies specifically how aquatic resources and associated upland buffers will be restored, created, enhances, or preserved in the mitigation Bank.
13. PRESERVATION – The protection of ecologically important aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands or other aquatic resources as necessary to ensure protection and/or enhancement of the aquatic ecosystem.
14. RESTORATION – Re-establishment of wetlands or other aquatic resource characteristics and function(s) at a site where they have ceased to exist, or exist in a substantially degraded state.
15. SUCCESS CRITERIA – The minimum standards required to meet the objectives for which the Bank was established.

