

Oversight and Compliance ??????



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Brief Recap

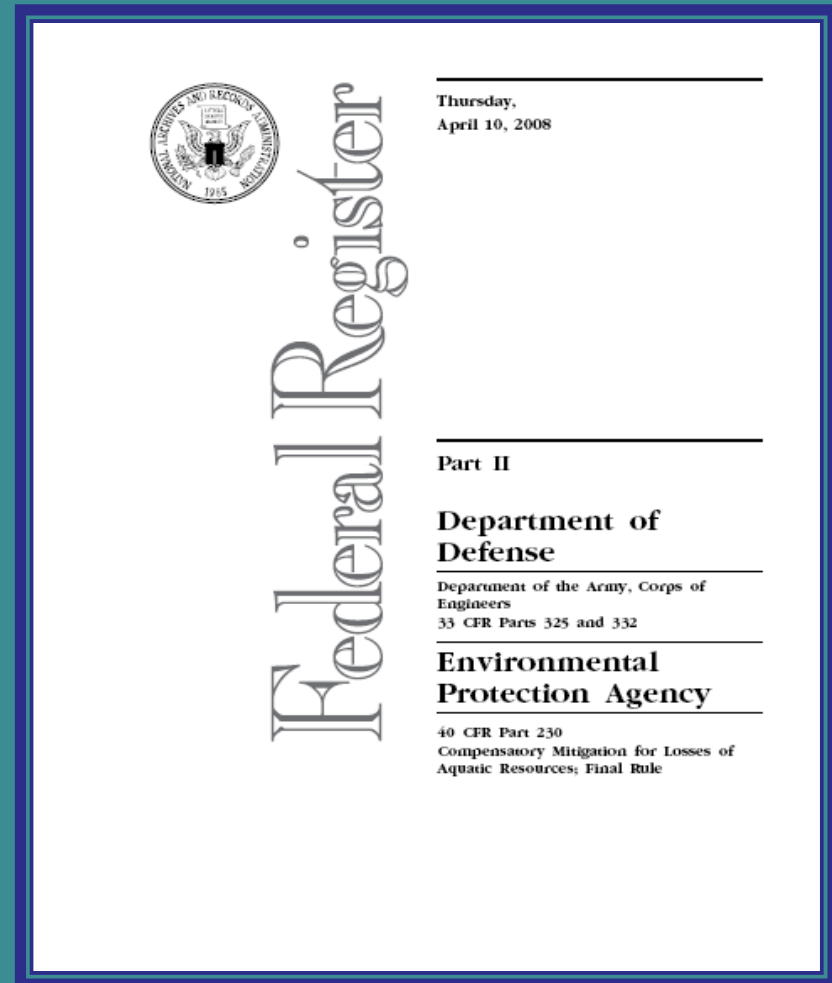
- Mitigation Bank
 - ▶ Governed by an instrument
 - ▶ Public or Private Sector
 - ▶ Site secured and project initiated before debits
 - ▶ For profit enterprise
- In Lieu Fee Program
 - ▶ Governed by an instrument/site development plans
 - ▶ Governmental or non profit
 - ▶ Monies typically received prior to project identification/implementation



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Mitigation Plan Components

1. Objectives
2. Site selection
3. Site protection instrument
4. Baseline information
5. Determination of credits
6. Mitigation work plan
7. Maintenance plan
8. Performance standards
9. Monitoring requirements
10. Long-term management plan
11. Adaptive management plan
12. Financial assurances



Effective Compliance Program

- Have a plan before you begin
 - ▶ Where
 - ▶ Who, How
 - ▶ When
 - ▶ Then what



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Where to Start

- Know the instrument & associated documents
- Identify responsible parties and the responsibilities of those parties



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Instrument Review

- ▶ Periodic
- ▶ Prior to site inspections
- ▶ Prior to monitoring report review
- ▶ Prior to credit release
- ▶ Prior to any request for modification



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Corps Responsibilities

Corps is responsible for all aspects of
program oversight and compliance

Unless a Joint Bank



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IRT Responsibilities

- Ensure instruments/mitigation plans are followed
- Review documents in a timely manner
- Participate in compliance inspections
- Comment on credit release requests
- Recommend and/or review remedial action plans
- Review modifications



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Sponsor/Land Owner/Manager Responsibilities

- Ensure project is constructed/managed/maintained
- Cover all costs associated with establishment & operation
- Allow access for easement holder, Corps, & IRT members
- Timely submittal of reports
- Reading their MBI/PI



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EXERCISE 1

- This Long-Term Management fund may be funded through a single lump sum payment upon approval of the MBI or through an IRT approved schedule of payments to be completed within five (5) years of approval of the MBI.
- This MBI may be considered null and void by the IRT if the physical improvements identified in the mitigation plan (excluding the recordation of real estate instruments) have not been completed within 5 years of the last date of signature approval. The Sponsor may reinitiate the process by submitting a new prospectus consistent with the latest MBI template approved for use in VA.

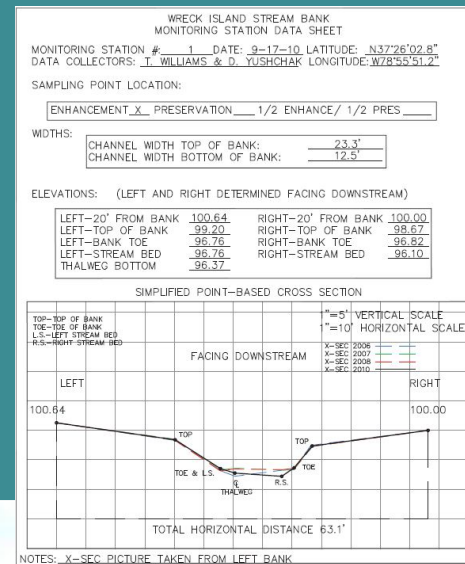
YOU HAVE ONE MINUTE TO REACH CONSENSUS!



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Includes

- Review initial activities
- Construction
- Monitoring
- Maintenance
- Site inspections
- Credit releases
- Accounting/Reporting
- Maintaining RIBITS files
- Adaptive management
- Modifications to Bank/ILF
- Bank or site closure
- Noncompliance
- Long-term Management
- What else could happen?



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Finance/Real Estate/Legal????

- Legal Title/Property Rights
- Site Protection Documents (recorded)
- Short Term Financial Assurances
- Land Management/Endowment Account
- ILF Fund Account



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EXERCISE 2

- Approved Mitigation Bank
- Multiple Landowners
- Receive call from one of the landowners
 - ▶ Who is the Sponsor?
 - ▶ Who signed the MBI?
 - ▶ Who has the authority to sign for the company?

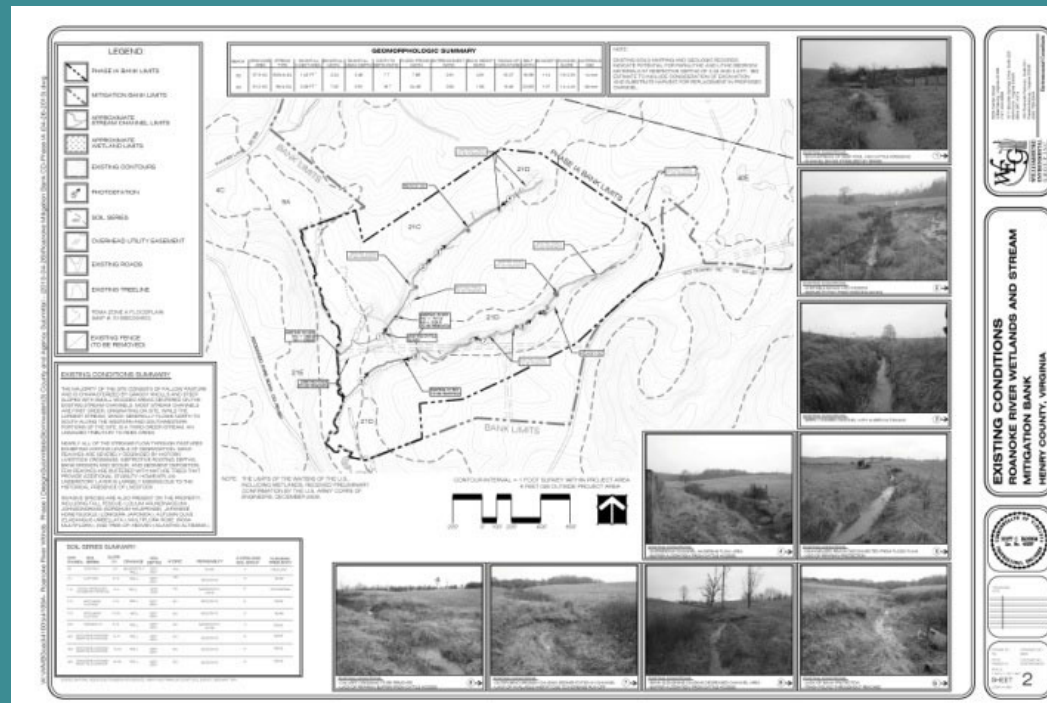
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Plan Review

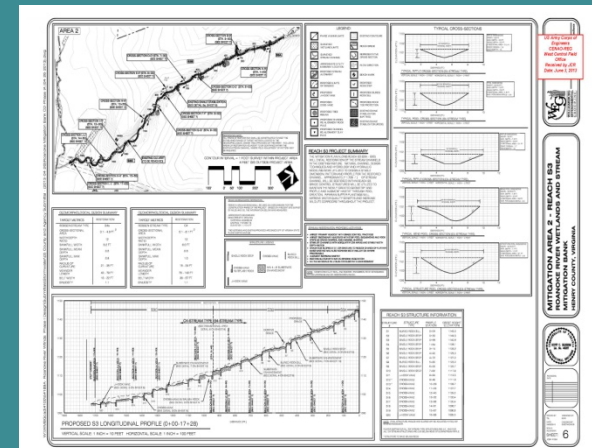
- Mitigation plan review
- Construction/contract plan review



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Construction

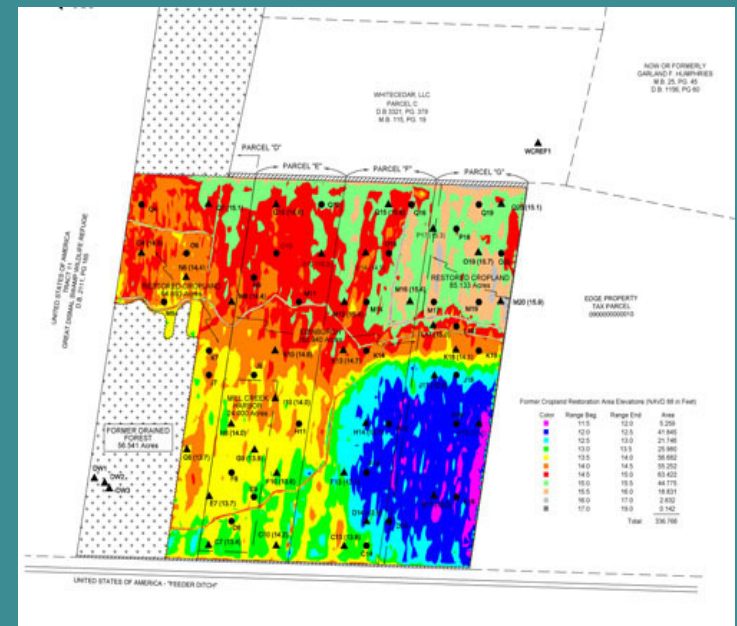
- Not specifically addressed in regulations
- Tools include:
 - ▶ Mitigation work plan/Site development plan
 - ▶ As-built drawings
 - ▶ Site visits
 - ▶ Assurances



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As-Built

- Project drawings that may depict
 - ▶ Pre & post construction conditions
 - ▶ Elevations
 - ▶ Cross-sections and profiles
 - ▶ Monitoring stations
 - ▶ Plant data (counts, etc.)
 - ▶ Stream gage locations
 - ▶ Geomorphic data (incl. pebble counts)
 - ▶ Bankfull
 - ▶ MHW
 - ▶ Planting Plans
 - ▶ Well locations



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EXERCISE 3

- MBI
 - ▶ 200 credits from stream enhancement activities on 800 linear feet of stream channel

- AS-BUILT CREDIT RELEASE REQUEST
 - ▶ 800 credits from stream restoration activities on 900 linear feet of stream channel

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Reporting Protocols

- Monitoring reports - 332.6(c)
- Credit transaction notifications - 332.3(l)(3)
- Annual program reports
 - ▶ Program account (financial) reporting -332.8(i)(3)
 - ▶ Ledger (credit) reporting - 332.8(q)(1)
- Annual financial assurances and long-term management funding report - 332.8(q)(3)



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Monitoring

Why?

- Determine if performance standards met
- Early indication of potential problems
- Determine need for remedial actions
- Provide data to evaluate credit releases

When?

- Until performance standards are met or 5 years, WHICHEVER IS LONGER
- Extend for slow developing resource types

What?

- Depends on metric and resource



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Good Monitoring Should

- Be at a level of detail sufficient to evaluate performance standards
- Be Qualitative
 - ▶ Photo Monitoring etc.
- Be Quantitative
 - ▶ What?
 - ▶ Where?
 - ▶ When?
 - ▶ Size?
 - ▶ How Many?



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Qualitative

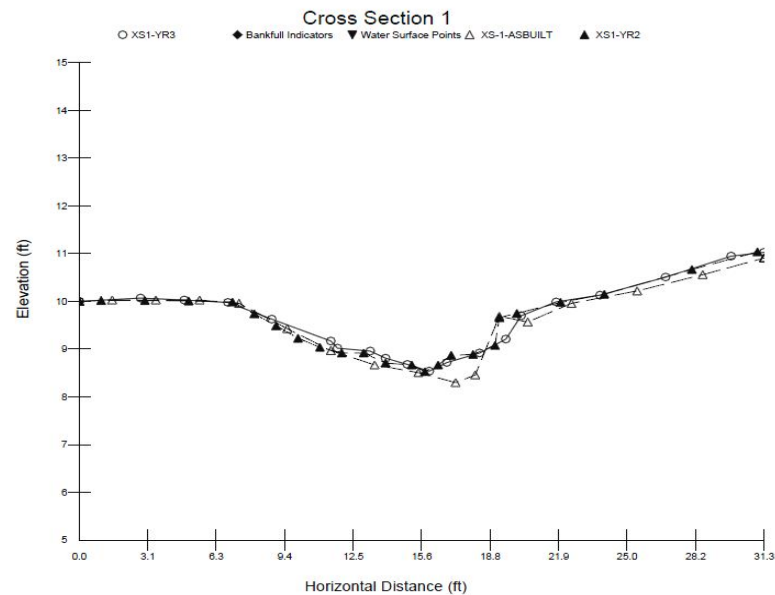


April 2008



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Quantitative



Cell #	Plot#	No Invasive	Woody stems/ac	Hydrophytic Vegetation	Wetland Hydrology	Meets all Criteria
1	1	X	X		X	
2	2	X	X		X	
3	3	X		X	X	
3	46	X	X	X	X	X
4	4	X			X	
5	5	X			X	
6	6	X		X	X	

Monitoring Report Requirements

- Sufficient information to determine that the site is meeting performance standards
- Should include:
 - ▶ Performance standards
 - ▶ Maps/Plans/As-built
 - ▶ Photographs
 - ▶ Data (as-built/previous years/current)
 - ▶ Problems and actions taken to address
 - ▶ Summary/Conclusions
- Monitoring reports are required
 - ▶ Level of detail commensurate with scale of project, aquatic resource type, mitigation type



Cross Section #2 Downstream



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Monitoring Report Review

- Chair/Chairs responsible for making sure IRT has report for review and comment
- IRT reviews and comments to Chair/Chairs
- Conduct site visit-imperative if credit release is requested



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EXERCISE 4

- Year 3 Monitoring Report submitted for review
- Credit release requested
- Site visit scheduled
- 4 acres of riparian buffer bush hogged

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Maintenance

- Plan should provide a description and schedule of maintenance requirements to ensure site success after construction
- Maintenance needs should be identified in monitoring reports and during site inspections
- Financial assurances could be posted to cover maintenance and monitoring



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Credit Release Requests

- Schedule should be specified in instrument/mitigation plan
- Corps coordinates request with IRT
 - ▶ 15 day IRT review
 - Unless site visit required
 - IRT comments due 15 days after site visit
- Corps approves request
- Credit releases requested for:
 - ▶ Initial credits
 - ▶ Approved credits
 - ▶ Performance standards met



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California Credit Release Schedule

Release	Release %	Milestones
1	15%	<ul style="list-style-type: none"> • Agreement • Easement Recorded • Construction Security & Endowment established
2	25%	As Builts & Funding 15% endowment
3	15%	<ul style="list-style-type: none"> • Year 2 Success Standards • <i>Funding 40% endowment principal</i>
4	15%	<ul style="list-style-type: none"> • Year 3 Success Standards • <i>Funding 70% endowment principal</i> • Verified JD
5	15%	<ul style="list-style-type: none"> • Year 4 Success Standards • <i>Full Funding endowment principal</i>
6	15%	<ul style="list-style-type: none"> • Year 5 Success Standards • Verified JD

Accounting/Reporting

- Annual Reporting Banks/ILFs should include:
- ILF Fee Schedules
- Long-term Management Funding
- Credit ledgers (33 CFR 332.8(q)(1))
 - ▶ RIBITS Ledger Updates
- Financial assurance report (33 CFR 332.8(q)(3))
 - ▶ Initial credit release
 - ▶ Maintenance and monitoring



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EXERCISE 5

- Annual ledger submitted for review
- Credits sold outside of approved GSA
 - ▶ MBI says any sales outside of approved GSA require IRT approval
- IRT notification not provided







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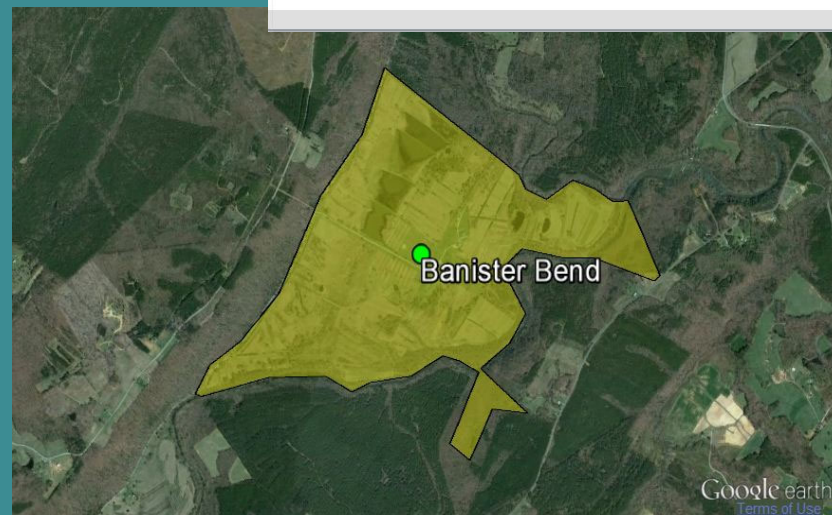
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RIBITS Files

- Bank boundaries
- GSA boundaries
- Cyber Repository
 - ▶ Prospectus
 - ▶ MBI
 - ▶ Plans
 - ▶ Permits
 - ▶ Monitoring Reports
 - ▶ Credit Releases
 - ▶ Other correspondence

Folders For Bank Banister Bend		
	Folder Type	Created
 2010 MMR 2010 MMR	Annual Monitoring	03-FEB-11
 2011 MMR Wetland Phase II Year 7 Wetland Phase III Year 6	Annual Monitoring	18-OCT-11
 2012 MMR 2012 MMR and Credit Release Documentation	Annual Monitoring	08-JAN-13
 2013 MMR 2013 MMR and Credit Release Request Letter	Unspecified	11-DEC-13
 Banister Bend Stream Addendum Stream Addendum Documentation	Unspecified	03-MAR-11
 Bank Establishment Documentation Banister Bend Bank Establishment	Unspecified	01-SEP-09

1 - 6



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Adaptive Management

- Plan on it!!!
- During Construction
- During Monitoring
- During Long-term Management



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EXERCISE 6

- Project Constructed
- Large Storm Event
- Project decimated
- IRT agencies notified
- Site visit conducted

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Site Inspections

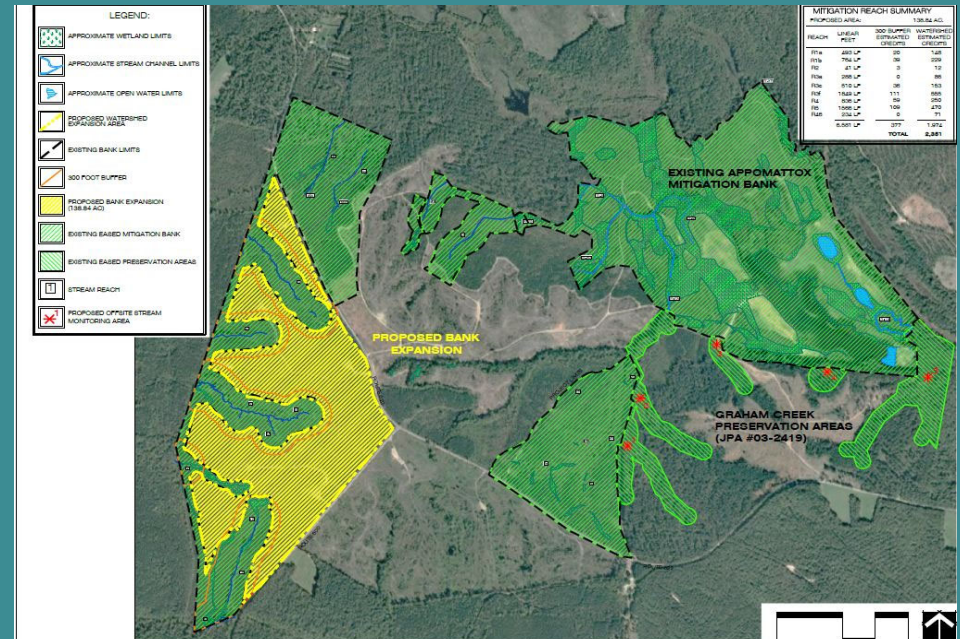
- Useful in review of monitoring reports
- Imperative if credit release is requested
- Focus on questionable areas
- Confirm data presented
- Collect independent data
- Conduct during growing season (preferably)
- IRT should participate



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Modifications

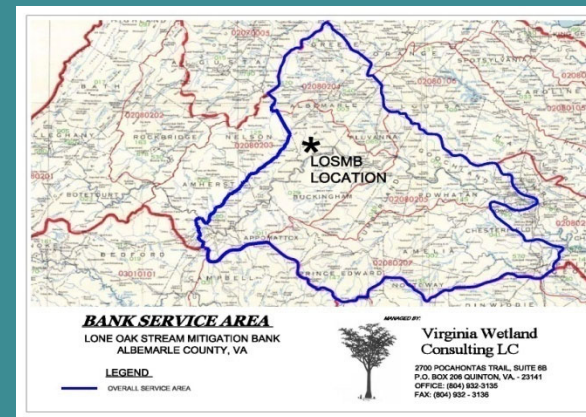
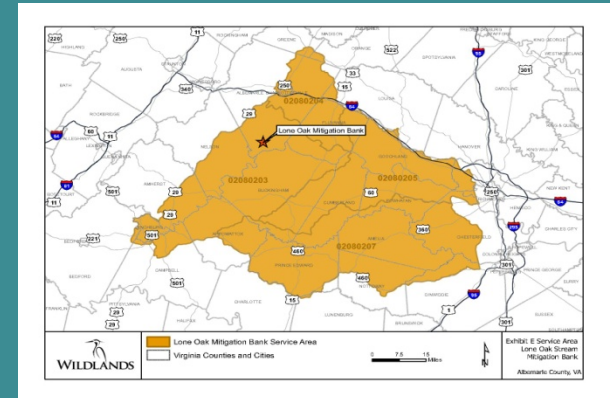
- Modifications
 - ▶ Umbrella bank sites
 - ▶ In-lieu fee project sites
 - ▶ Bank site expansions
 - ▶ New credit types
- Streamlined process
 - ▶ Changes based on adaptive management
 - ▶ Changes in credit release schedules
 - ▶ Changes DE determines are not significant



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Other Modifications

- Change in sponsors
- Change in financial assurances
- Changes in assessment tools
- Change in geographic service area
- Land transfer
- New long-term steward



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Closure

- Performance Standards met
- All available credits debited
- Monitoring completed
- Long-term steward identified
- Long-term management fund fully funded
- Long-term management plan established
- Bank site closure vs. ILF site closure



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Program Audits

Periodic accounting reviews to ensure financial house is in order and mitigation liability is met

Audits may be conducted by a third party

Consider periodic audits as a requirement within the instrument.



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Non-compliance

- Delay release of credits
- Corrective Action Plans
- Decrease available credits
- Suspend credits
- Direct alternative mitigation (ILF)
- Notice of non-compliance
- Suspend operations
- Mobilize financial assurances
- Terminate instrument



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Long-Term Management Tasks

- What tasks are needed?
 - What is the cost of those tasks?
 - Who will pay and how much?
 - Who is responsible for the LTM tasks?
-
- Review reports
 - Evaluate adaptive management needs
 - Conduct site inspection if necessary



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Expect the Unexpected

- Catastrophic Events
 - ▶ Floods
 - ▶ Tornados
 - ▶ Hurricanes
 - ▶ Earthquakes
 - ▶ Drought
- Force Majeure
- Bankruptcy & Defaults



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QUESTIONS?



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