

MEMORANDUM

Subject: VARTF Program Audit
To: Corps, DEQ, IRT members
From: Karen Johnson
Date: December 14, 2015

Below is the provision of the 2011 VARTF program instrument that requires that the program is audited every five years. Attached to this memo are two proposals that, together, would meet this requirement.

The Conservancy shall hold any funds collected pursuant to this Agreement in the Account, which shall be an interest-bearing account in a federally-insured financial institution to maximize the safety and preservation of the principal funds in the Account. Funds may not be invested without express written approval of the Corps and DEQ. The Conservancy shall account for the funds so held in accordance with generally accepted accounting principles, and the Account shall be subject to audit by the Corps and DEQ from time to time, as determined by the Corps and DEQ, at the expense of the party requesting such audit. Notwithstanding the foregoing, the Program shall be audited once each five years by an independent auditor, the cost of which shall be an administrative expense of the Program. The parties shall endeavor to cause such independent audit to occur prior to the expiration of the Agreement. Interest and any other earnings produced by the Program, and proceeds from the sale of Mitigation Site lands, shall remain in the Account until approved for use by the IRT.

The Environmental Law Institute (ELI) has submitted a proposal to evaluate the success of the VARTF in meeting program goals. ELI is uniquely qualified to conduct this aspect of the audit, due to its deep understanding of the complex nature of ILF programs, credits, liabilities and regulatory process. The proposal provided by ELI is comprehensive and could be used to set standards for other ILF programs across the country. The attached proposal has been updated to include comments submitted by the IRT to TNC on December 9, 2015. Deliverable dates are based on a start date of early January 2016.

Hantzmon Wiebel LLP has submitted the attached proposal to audit the financial aspect of VARTF. The Conservancy solicited proposals from several firms in Charlottesville and Richmond areas, and Hantzmon Wiebel was the only firm interested in submitted a proposal to TNC. We have met with them and they appear to be well qualified in financial audits, as well as keenly interested in understanding the nature of the VARTF program. The attached proposal has been updated to include comments submitted by the IRT to TNC on December 9, 2015.

The Nature Conservancy will compile the requested information regarding adequacy of credit fee schedules, advance credits in each watershed, and watersheds with pending credit needs.

The total cost for these audits will not exceed \$72,500. The Conservancy is requesting that payment of the audit costs are approved from the General funds of VARTF. There is currently \$1.3M available in the General fund.

Environmental Law Institute
Proposal to Audit the Program Activities of the
Virginia Aquatic Resources Trust Fund (2011 to 2015)

October 15, as revised December 9, 2015

The Environmental Law Institute (ELI) proposes to conduct an independent, five-year audit of the Virginia Aquatic Resources Trust Fund Program (Trust Fund), as sponsored by The Nature Conservancy of Virginia (Conservancy). ELI will perform the audit for a fixed fee of \$45,000 over the course of sixteen weeks, from December 2015 through April 2016. ELI will submit the final program audit report to the Conservancy no later than April 29, 2016.

Trust Fund Program Audit: Scope and Approach

The Trust Fund Program Instrument (PI), Sec. IV.D, mandates that an independent program audit be conducted once every five years. ELI proposes to undertake the *non-financial* component of this required audit.¹ ELI's objective is to assess the Trust Fund's substantial compliance with the mandatory, objective program criteria established by (1) the PI, and (2) applicable regulations governing in-lieu fee programs—in particular, the regulations at 33 CFR parts 325 & 332, 40 CFR part 230, and 9 VAC § 25-210-116. ELI will further verify that material representations contained in the Conservancy's public reports are supported by documentation. The proposed period of review for the program audit is July 14, 2011, through November 30, 2015.

ELI will begin the audit by presenting the Conservancy with a detailed workplan for the 16-week process. ELI anticipates that this workplan will comprise the following major phases of work: (1) review PI and governing federal and state regulations to identify all mandatory, objective program criteria with which the Trust Fund must comply; (2) perform comprehensive review of records, reports, files, or other documents (hardcopy and/or electronic) in the custody of the Conservancy that are relevant to programmatic assessment of compliance during the audit review period; (3) assess (a) whether the Trust Fund's program activities have substantially complied with the requirements of the PI and applicable legal authorities, (b) whether material representations contained in public reports are verifiable by reference to documentation, and (c) whether any findings of non-compliance are warranted, and submit draft program audit report for review; and (4) prepare and submit final program audit report. All document review and analysis will be carried out by ELI senior staff, with administrative support provided by closely supervised junior staff.

Following is a summary of the likely content and timing for each phase of this work:

(1) Identification of mandatory, objective program criteria against which compliance will be assessed (Weeks 1-2). After developing a detailed workplan, ELI will analyze the PI and applicable federal and state regulations to identify all mandatory, objective program criteria with which the Trust Fund activities must comply. ELI will compile these criteria

¹ ELI understands that the Conservancy will separately retain an independent financial auditor. However, ELI may request access to the Trust Fund's financial documentation if needed to assess compliance with programmatic criteria (e.g., Reporting Protocols (PI, Sec. VI)).

and use them as the benchmark against which the Trust Fund's activities during the audit period are assessed. These criteria may include, for example:

- Maintenance of an approved system for accurately tracking the calculation of credits in relation to projects, the debit or sale of both advance and released credits, and financial transactions in relation to credits between the Conservancy and permittees (PI, Sec. IV.E);
- Accurate programmatic-level, basin-level, and project-level tracking of all credit transactions (both advance and released credits) (PI, Sec. IV.E);
- Confirmation of existing project-specific geographic service areas (for all projects approved or proposed since the 2011 instrument) to applicable federal and state regulations.
- Completion of project-specific land acquisition and initial physical and biological improvements by third full growing season after the first advance credit in the service area is sold or debited (PI, Sec. V.C);
- In instances where program monies are used for mitigation projects, presence of recorded land protection documents for land associated with mitigation sites (PI, Sec. V.E);
- Presence of Long-Term Management and Maintenance Plan and adaptive management plan for each mitigation project and sufficiency of each identified element (PI, Sec. V.G); and
- Satisfaction of program reporting protocols (*i.e.*, quarterly financial statements, annual ledger report, individual mitigation project ledgers, and any other reporting required by the U.S. Army Corps of Engineers, Norfolk District (Corps), or the Virginia Department of Environmental Quality (Va. DEQ)) (PI, Sec. VI).
- Compliance with Compensation Planning Framework (*e.g.*, is site selection consistent with the Compensation Planning Framework for all projects approved or proposed since the 2011 instrument)

(2) *Comprehensive review of program documentation (Weeks 3-10)*. During this second phase of work, ELI will review records, reports, files, and other documents (hardcopy and/or electronic) in the custody of the Conservancy that are relevant to whether, and if so how, the Trust Fund has satisfied the objective, mandatory program criteria identified in the first phase. Although the emphasis of the audit will be on the programmatic level, ELI also will review basin-level and site-specific records.² ELI will review information obtained from the Conservancy as well as information available online in the Regulatory In-lieu Fee and Bank Information Tracking System (RIBITS). Much of this records review work will be carried out as a desk review from ELI's Washington, DC, offices. ELI expects to conduct at least one in-person visit to the Conservancy offices in Charlottesville to access and review Trust Fund files and to conduct brief interviews with staff to review what programmatic procedures are being followed, what internal controls

² Should records prove too voluminous to allow for a complete examination covering all activities at the program-, basin-, and site-level for the five-year audit review period, ELI may perform aspects of the record review by way of a random, representative sampling. Any such samples could then be broadened as necessary.

(non-financial) are in place, and whether staff comply with these internal controls and understand what to do should they suspect fraud, waste, or abuse.³

(3) *Analysis and assessment of compliance; preparation of draft program audit report, responses by Conservancy to findings (if any) (Weeks 11-15)*. ELI will assess the reviewed materials to determine whether the Trust Fund is in substantial compliance with the PI and relevant law. Additionally, ELI will verify that material representations made by the Conservancy as Trust Fund sponsor in public reports are supported by documentation. ELI will synthesize and incorporate all of this information, including any findings of non-compliance, in a draft program audit report and submit it to the Conservancy for review and response. The Conservancy will be afforded at least two weeks to review the draft program audit report and present written responses to findings (if any) for inclusion in the final program audit report. Such responses might include, for example, a description of steps that will be taken to remedy any instance of non-compliance.

(4) *Final program audit report (Week 16)*. ELI will submit the final program audit report to the Conservancy, with copies to the IRT, no later than April 29, 2016.

As this will be, to the best of ELI's knowledge, the first formal audit to assess programmatic compliance for an approved in-lieu fee program, ELI will design and implement the audit with an eye toward making the process readily usable for the Trust Fund and other such approved in-lieu fee programs in the future. ELI intends to be guided, though not bound, in its implementation of this audit by the Generally Accepted Government Auditing Standards published by the U.S. Government Accountability Office (GAO)—also known as the GAO *Yellow Book*.⁴

The Environmental Law Institute

ELI possesses the substantive expertise and competence to perform this programmatic audit. ELI's Wetlands Program is a key player in shaping wetlands protection through its research, convening, training, and outreach activities. Our research on wetlands law, policy, and practice examines the range of practice and highlights and informs best practices in protecting aquatic resources, including developments in wetland restoration and protection and innovations in watershed planning. ELI is the leading research institution to evaluate compensatory mitigation required to offset adverse impacts to wetlands. ELI has conducted multiple studies of all compensatory mitigation mechanisms, including mitigation banking, in-lieu fee mitigation, and permittee-responsible mitigation, and performed foundational work on the magnitude of compensatory mitigation and new approaches to improve its effectiveness.

Since the issuance of regulations on compensatory mitigation in 2008, ELI has been working to help states, tribes, and local governments; conservation organizations; and other interested groups to develop and refine rigorous in-lieu fee programs that yield ecologically effective and sustainable compensatory mitigation. In 2009, ELI published [In-Lieu Fee Mitigation: Model Instrument Language and Resources](#). The report describes the process that prospective in-lieu fee providers must undertake if they opt to seek approval for their programs, offers model language

³ ELI does not anticipate the need to visit mitigation sites. However, if any aspect of ELI's records review suggests the need to broaden the audit to include one or more in-person site visits, ELI will do so.

⁴ The current version of the *Yellow Book* is the 2011 Revision, available at <http://gao.gov/products/GAO-12-331G>.

and examples for programs developing a new in-lieu fee instrument, and provides resources to prospective in-lieu fee sponsors. The publication remains the only technical resource available to those seeking approval for in-lieu fee programs under the terms of the 2008 Rule. In 2013, ELI designed and hosted the In-Lieu Fee Mitigation Training Webinar Series, providing in-depth technical support on the topics of most interest to the agencies and organizations administering and overseeing ILF programs. The topics were identified with the assistance of an Advisory Committee based on an assessment of the needs of states, tribes, and local governments and conservation organizations seeking approval for or overseeing the approval of statewide or regional in-lieu fee programs. These webinars drew 681 attendees nationwide, indicating that the series fulfilled a significant, unmet need.

HANTZMON WIEBEL LLP

C e r t i f i e d P u b l i c A c c o u n t a n t s

L. Peyton Humphrey
Lawrence J. Martin
Phillip W. Shiflett
Dean A. Martinelli
Richard M. Busofsky
W. Keith Haney
Kevin L. Keller
Glenn M. Lankford
Alfred L. Layne, Jr.

P.O. Box 1408 • 818 East Jefferson Street • Charlottesville, VA 22902
(434) 296-2156 • FAX (434) 977-4629 • www.hantzmonwiebel.com

Jennifer S. Lehman
P. Frank Berry
Kendra L. Stribling
Jeffrey D. Ulmer
Helene H. Downs
Edward J. Schmitz

• Consultants •
Robert F. German
Robert A. Foster

December 11, 2015

Ms. Karen Johnson, Program Director
The Nature Conservancy in Virginia
490 Westfield Road
Charlottesville, VA 22901

Dear Ms. Johnson:

We greatly appreciate the opportunity to submit our proposal for the audit of the Virginia Aquatic Resources Trust Fund Program (VARTF). Brian and I enjoyed meeting with you and the Program team and learning more about the program and getting a sense of your needs and desired schedule. The following proposal briefly touches upon areas we feel may be of interest and we are happy to provide any additional information that you may require.

QUALIFICATIONS:

Hantzmon Wiebel LLP (HW) has served the region for over 85 years. As one of the largest independent firms in the state, we have a staff of approximately 60 professionals focused on meeting client needs for audit and assurance, tax, and consulting services. The areas of audit and accounting and taxation represent the primary lines of service for HW and the majority of professional staff are devoted to these areas. We work with 150 non-profit organizations providing a full array of services including numerous organizations with grant fund programs and regularly conduct program specific audits. Continuous training and development of all our professional staff is a core philosophy of HW. We tailor our training and continuing education programs to meet the areas that we serve. The team assigned to your engagement has extensive experience working with non-profit organizations and undergo annual programs to insure they remain abreast of current developments in the industry. Each assurance engagement is subject to HW's formal quality control process. To insure that our audit services adhere strictly to professional standards, each engagement undergoes a review by our Technical Review department. As a further commitment to professional standards, HW participates in the professions peer review program. The firm of Smith Elliot and Kearns conducted our most recent peer review and we received a pass rating. A copy of our peer review report is attached.

Members

American Institute of Certified Public Accountants • Virginia Society of Certified Public Accountants • Private Companies Practice Section of AICPA

SCOPE OF SERVICES:

We will conduct an audit of the Virginia Aquatic Resource Trust Fund Program for the period January 1, 2012 through December 31, 2014 with purpose of issuing an opinion on the material accuracy of the VARTF receipts and disbursements for the period under examination. We will report any finding for the overall summary report for the period as well as each of the three annual reporting periods. The funds will be audited on the programmatic level which consists of program categories of General, Contingency, Statewide Development, Non-tidal Wetlands, and Tidal Wetlands and Streams. The proposed engagement applies to 9 projects. Also, as part of the engagement, we will document our understanding of the internal controls in place applicable to the program and perform walk-throughs of selected transactions to confirm our understanding of the internal controls in place. The objective in this process is to assess whether the controls are designed effectively and to allow us to identify the proper audit procedures and scope of testing. We will make a determination of materiality based on VARTF expenditures at the total fund level and at the program level and a comparison of actual project expenses to budgeted project expenses and use this both as a starting point for selecting transactions for testings and as one metric to evaluate the results of audit testing. The final reporting package will consist of the following reports:

1. Fund financial statements
2. Report to The Nature Conservancy and the Interagency Review Team

The format of the financial reports shall mirror the formats used on the VARTF annual reports. Project level reporting shall reflect the VARTF budget tracking and include budget category level reporting.

If there are reportable findings in internal control, we will issue a management letter to identify those findings. If we do not identify any reportable internal controls findings, we will issue a letter to the effect that no material weaknesses were identified.

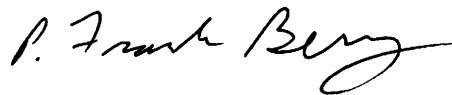
The purpose of the engagement is the expression of an opinion on the reported VARTF assets, liabilities, and activity. While we will gain an understanding of internal controls and verify the controls are in place, we do not contemplate expanded tests of the internal controls and we will not issue an opinion on the operating effectiveness of the internal controls.

ENGAGEMENT TEAM, SCHEDULE, AND FEE:

Frank Berry will be the engagement partner and Brian Howe will be in-charge of the engagement. Copies of biographies for Mr. Berry and Mr. Howe accompany this proposal. We anticipate starting the engagement as soon as practical after we receive a signed engagement letter. We expect the engagement field work and all required reviews to require approximately 2 to 3 weeks with issuance of draft reports for your review thereafter. This schedule is dependent on your ability to provide us with requested documentation necessary for the audit on a timely basis. The fee for the engagement will be based on actual time required at our standard hourly rate. Due to the nature of the engagement, development of a precise time budget is much more challenging than budgeting a recurring engagement. We estimate the cost of the engagement will range between \$22,500 and \$27,500 based on expected cooperation of The Nature Conservancy staff. Should the engagement not require the expected time commitment, the fee will be adjusted to reflect the actual time spent. In order to provide a more precise fee range including a "not to exceed" fee cap, we could spend some time doing preliminary planning to refine our estimate of the extent of testing required.

Again, we greatly appreciate the opportunity to submit this proposal. We would be happy to discuss any items or provide any additional information you may require. Upon acceptance of our proposal, we will draft a formal engagement letter with the above terms for your signature.

Sincerely,

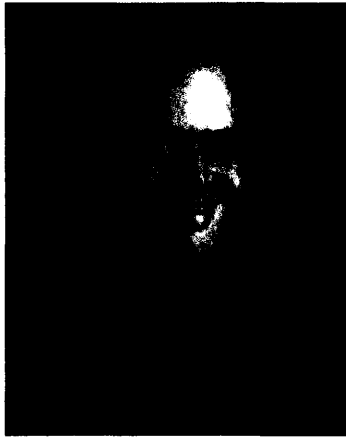
A handwritten signature in black ink that reads "P. Frank Berry". The signature is fluid and cursive, with the first name "P." and last name "Berry" clearly visible.

P. Frank Berry

PFB/cb

Enclosures

P. FRANK BERRY, CPA



POSITION

Partner, Accounting and Auditing Department

EDUCATION

B.B.A., Concentration in Accounting and Finance, James Madison University

AREAS OF PROFESSIONAL SERVICE

Accounting and Auditing

MAJOR CLIENTS SERVED

Manufacturers, Retailers, Not-for-Profit Organizations, Historic/Tourist Sites,
Governmental Entities

WORK EXPERIENCE

Hantzmon Wiebel: 1995 - present

Regional firms: 1985 - 1995

PROFESSIONAL ACTIVITIES

American Institute of Certified Public Accountants (AICPA)

Virginia Society of Certified Public Accountants (VSCPA)

Maryland Association of Certified Public Accountants (MACPA)

PROFESSIONAL RECOGNITION

2006, 2007, 2008 *Virginia Business* "Super CPA"

PERSONAL AND CIVIC ACTIVITIES

2004 Leadership Charlottesville

Small Business Development Center Advisory Council

Instructor, The University of Virginia School of Professional and Continuing Education,

Certificate in Non-Profit Management program

E-MAIL

fberry@hantzmonwiebel.com

BRIAN HOWE

POSITION

Supervisor, Accounting and Auditing Department

EDUCATION

M.S. in Accounting, James Madison University

B.B.A. in Accounting with Mathematics minor, James Madison University

AREAS OF PROFESSIONAL SERVICE

Accounting and Auditing

MAJOR CLIENTS SERVED

Not-for-Profit Organizations, Contractors, Vineyards and Wineries

WORK EXPERIENCE

Hantzmon Wiebel: 2013 - present

National accounting firm in Bethesda, MD, and New York, NY: 2010 - 2013

Local accounting firm in Honolulu, HI: 2009 - 2010

PROFESSIONAL ACTIVITIES

American Institute of Certified Public Accountants (AICPA)

Virginia Society of Certified Public Accountants (VSCPA)

E-MAIL

bhowe@hantzmonwiebel.com

(SAMPLE REPORT)

INDEPENDENT AUDITOR'S REPORT

To the Program Administrators
The Nature Conservancy
Charlottesville, Virginia

We have audited the accompanying schedule of Virginia Aquatic Resource Trust Fund receipts disbursements and fund assets activity of THE NATURE CONSERVANCY as of December 31, 2014, and the related notes.

Management's Responsibility for the Schedule

Management is responsible for the preparation and fair presentation of this schedule in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of the schedule that is free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on the schedule based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the schedule is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the schedule. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the schedule, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the schedule in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the schedule.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

To the Program Administrators
The Nature Conservancy

Opinion

In our opinion, the Virginia Aquatic Resource Trust Fund receipts disbursements and fund assets activity referred to above presents fairly, in all material respects of THE NATURE CONSERVANCY as of December 31, 2014, in accordance with accounting principles generally accepted in the United States of America.

Charlottesville, Virginia
_____ 2015