

PREPARED FOR:
BUNROOTIS, LLC
400 SOUTH RECORD
SUITE 1250
DALLAS, TX 75202

CHEROENHAKA WETLAND AND STREAM MITIGATION BANK

MITIGATION BANKING INSTRUMENT

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FINAL FOR SIGNATURE



PREPARED BY:
TIMMONS GROUP 
YOUR VISION ACHIEVED THROUGH OURS.

1001 BOULDERS PARKWAY, SUITE 300
RICHMOND, VIRGINIA 23225
PHONE: 804.200.6500
FAX: 804.560.1648
WWW.TIMMONS.COM
TIMMONS GROUP PROJECT NO. 27127

CHEROENHAKA WETLAND AND STREAM BANK MITIGATION BANKING INSTRUMENT

This Mitigation Banking Instrument, which describes the establishment, use, operation, and maintenance of the Cheroenhaka Wetland and Stream Bank (hereinafter, the "Bank") is an agreement (the "Agreement") made and entered into by and among Bunrootis, LLC (hereinafter, "Sponsor"), the U.S. Army Corps of Engineers ("Corps"), the U.S. Environmental Protection Agency ("EPA"), the U.S. Fish and Wildlife Service ("FWS"), the Virginia Department of Environmental Quality ("DEQ"), the Virginia Department of Game and Inland Fisheries ("VDGIF"), the Virginia Department of Conservation and Recreation ("DCR"), and the Virginia Department of Forestry ("DOF").

I. PREAMBLE

- A. Purpose: Whereas, the purpose of this Banking Instrument is to establish guidelines and responsibilities for the establishment, use, operation, and maintenance of the Bank. The Bank will be used for compensatory Mitigation for unavoidable impacts to waters of the United States including wetlands that result from activities authorized under Sections 401 and 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act and Section 62.1-44.15:20-23 of the Code of Virginia provided such activities have met all applicable requirements and are authorized by the appropriate authority.
- B. Goals and Objectives: Whereas, the goals and objectives of the Bank are to improve the functions and values of wetlands and streams by the restoration, creation, and enhancement of wetlands; the restoration and enhancement of streams; and the preservation of wetlands, forested buffers, and streams for the purpose of generating compensation credits.
- C. Location and Ownership of Parcel: (1) Whereas, the Sponsor has acquired or secured by easement or other sufficient property agreement, 240.9 acres of land in Southampton, Virginia, as shown on the vicinity map (Exhibit A) and as depicted on a plan prepared by Timmons Group, dated March 2008 (Exhibit B). Said or secure parcels are hereinafter referred to as the "Property." (2) The Sponsor may elect to acquire additional lands to be incorporated into the Bank by proposing a Mitigation Site Plan for each new parcel as an amendment to this Banking Instrument.

The Sponsor is required to obtain a title search to show all liens, easements, rights of way, or other encumbrances as well as the history of Property ownership that will affect rights to develop the Property as planned and the ability to place deed restrictions on the Property.

- D. Project Description: Whereas, in accordance with this Banking Instrument, the Sponsor will establish and/or maintain aquatic habitats and upland buffers on the Property (hereinafter referred to as the "Site") in compliance with the provisions of this Banking Instrument and the Mitigation Site Plan (Exhibit C), and shall then maintain each phase of the Bank in such condition for ten (10) years. The Bank Sponsor shall be responsible

for compliance with this Mitigation Banking Instrument and the Mitigation Site Plan until the Bank is closed in accordance with the Bank Closure Procedures or until all Credits are sold, whichever is later. The Bank Site shall consist of a mixture of wetland creation, enhancement, and preservation, as well as, stream restoration, enhancement, and preservation including riparian buffers as described in Exhibit C.

- E. Site Selection Factors: Whereas, the Bank Site has been evaluated in terms of the Virginia Offsite Mitigation Site Location Guidelines (dated February 12, 2008 or subsequent versions).
- F. Baseline Conditions: Whereas, the Bank Site has been cultivated for at least 100 years. In the late 1930s, the streams on the Site were straightened, ditches were dug and the Site was outfitted with a series of drainage tiles to drain areas of hydric soils to gain farmable land. The Site has been used for growing soybeans, peanut, and cotton crops and a no-till management plan has been in place. Currently the Site is still being cultivated. These features will be modified so as to reestablish wetland conditions and functions and to restore, enhance, and preserve an existing wetland and stream system on this Site.
- G. Establishment and Use of Credits: Whereas, in accordance with the provisions of this Banking Instrument and upon satisfaction of the Success Criteria contained herein, Mitigation Credits determined in accordance with Exhibit D of this Banking Instrument will be available to be used as Mitigation in accordance with all applicable requirements for permits issued under Sections 401 and 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act and Section 62.1-44.15:20-23 of the Code of Virginia. The number of Credits available will be determined based upon the final approved design and the resulting habitats planned for each phase of the Bank in accordance with the terms and conditions contained herein.
- H. Interagency Review Team: Whereas, as of the date of the Agreement and subject to execution of the Agreement by a duly authorized representative of the respective agencies described below, the Interagency Review Team (IRT) consists of:
 - 1. Corps, Chair, represented by Mr. George Janek; and
 - 2. EPA, represented by Ms. Carol Petrow and Mr. Mark Douglas ; and
 - 3. FWS, represented by Ms. Kimberly Smith; and
 - 4. DEQ, represented by Ms. Bettina Rayfield; and
 - 5. VDGIF, represented by Ms. Amy Ewing; and
 - 6. DCR, represented by Mr. David Aho; and
 - 7. DOF, represented by Mr. Edward Zimmer.

Each entity represented on the IRT may replace its representative upon written notice to the IRT Chair, the other IRT members, and the Sponsor.

- I. Disclaimer: Whereas, this Banking Instrument does not in any manner affect statutory authorities and responsibilities of the signatory parties.

J. Exhibits: Whereas, the following Exhibits are incorporated by reference to this Banking Instrument:

1. "Exhibit A," Vicinity Map;
2. "Exhibit B," Initial Phase Plan;
3. "Exhibit C," Mitigation Site Plan;
4. "Exhibit D," Crediting and Debiting Procedure for the Bank;
5. "Exhibit E," Service Area Map;
6. "Exhibit F," Declaration of Restrictions;
7. "Exhibit G," Financial Assurance - Escrow Agreement; and
8. "Exhibit H," Long-Term Management Plan.

NOW, THEREFORE, the parties hereto agree as to the following:

II. 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 establishment, Restoration, Creation, Enhancement, and/or Preservation of aquatic resources and associated upland buffers on the Bank Site.
3. **BANKFULL EVENT** – The storm event that corresponds with the stream stage at its incipient point of flooding. The bankfull discharge associated with the Bankfull Event is the flow that transports the majority of a stream's sediment load over time and thereby forms and maintains the channel dimension, pattern, and profile.
4. **BUFFER** – Those areas located adjacent to and landward of either the stream's Ordinary High Water Mark (OHWM) top of a stream bank or wetlands. A buffer is an upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, streams, lakes, marine, and estuarine systems from disturbances associated with adjacent land uses.
5. **BUFFER ENHANCEMENT** – Improvements to buffers areas including supplemental plantings.
6. **BUFFER RESTORATION** – Establishment of buffer areas where none are currently present. Buffer establishment includes planting native species and associated measures such as fencing, posting, and livestock exclusion.
7. **BUFFER REESTABLISHMENT** – Removal of invasive species in a buffer and then replanting with native species.
8. **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 aquatic resource Preservation, Restoration, or Creation.
9. **CREATION** – The establishment of an aquatic resource, such as a wetland where one did not formerly exist.
10. **CREDIT** – A unit of measure representing the accrual or attainment of aquatic resource function, condition, or other performance at a Mitigation Bank.
11. **DEBIT** – A unit of measure representing the reduction of credits at the Mitigation Bank corresponding to the impact at the project site.

12. **ESCROW AGREEMENT**- An agreement by which two parties assent to the deposit of a sum of money with a third party for conditional delivery under stipulated circumstances.
13. **FINANCIAL ASSURANCES** – A mechanism or instrument used to guarantee some aspect of the Bank. Financial Assurances may include an escrow account or other mechanism acceptable to the IRT. There may be three (3) different Financial Assurances associated with a Mitigation Bank: a) A mechanism to guarantee an advance release of Mitigation Bank Credits; b) The Maintenance and Monitoring Fund; and (c) The Catastrophic Event and Long-Term Management Fund.
14. **FUNCTIONS** – The physical, chemical, and biological processes that occur in ecosystems of an aquatic resource without regard to their importance to society.
15. **INTERAGENCY REVIEW TEAM (or IRT)** – An interagency group of federal, state, tribal, and/or local regulatory and resource agency representatives which participate in the development of a Mitigation Banking Instrument and oversee the establishment, use, and operation of a Mitigation Bank with the Corps serving as chair.
16. **LEDGER** – An accounting of Credits and Debits.
17. **LONG-TERM STEWARD** – The landowner or easement holder of the Bank lands 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. In some cases, the Sponsor may also be the Long-Term Steward.
18. **MITIGATION** – Sequentially avoiding impacts, minimizing impacts, and compensating for remaining impacts to aquatic resources.
19. **MITIGATION BANK or BANK**– A site, or suite of sites, where aquatic resources are restored, created, enhanced, and/or preserved for the purpose of providing compensatory mitigation for authorized impacts to similar resources.
20. **MITIGATION BANK INSTRUMENT (MBI) or INSTRUMENT**- the legal document governing the establishment, operation, and use of a commercial mitigation bank, a single-client mitigation bank, or a single-user mitigation bank.
21. **MITIGATION SITE PLAN** – The overall plan governing Restoration, Creation, Enhancement, and/or Preservation of aquatic resources and associated upland buffers on each Mitigation Bank Site.
22. **MITIGATION PERFORMANCE** – The outcome of applying success criteria to a mitigation site in terms of identified goals and objectives.
23. **MONITORING YEAR 1 (ONE)** – The end of the first complete growing season following completion of construction activities, including planting.
24. **ORDINARY HIGH WATER MARK**- That line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.
25. **PRESERVATION** – The protection of ecologically important aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation will include protection of upland areas adjacent to wetlands and/or riparian areas adjacent to stream channels or other aquatic resources as necessary to ensure protection and/or Enhancement of the aquatic ecosystem.

26. STREAM PRESERVATION-Protection of ecologically important streams in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation includes the protection of riparian areas adjacent to streams as necessary to ensure protection or enhancement of the overall stream. The stream system must be a high quality, relatively undisturbed system that requires little or no enhancement activities.

27. STREAM ENHANCEMENT

Stream Enhancement and Bank Stabilization – This activity includes physical alterations to the channel that do not constitute Restoration but directly augment channel stability, water quality, and stream ecology in accordance with a reference condition, where appropriate. These activities may include in-stream and/or streambank activities, but fall short of restoring one or more of the geomorphic variables: dimension, pattern and profile. Included in Stream Enhancement are habitat structures, bio-remediation activities, streambank plantings (below top of bank), and creation of bankfull benches.

Stream Enhancement with Structures - This activity includes structures that are specifically designed and result in grade control and/or bank stabilization. Accepted structures include, but are not limited to cross-vanes, j-hook vanes, native material revetments, W-rock weirs, rock vortex weirs, log-vanes, constructed riffles, and step-pools. These structures may be created out of appropriate sized rock or logs, boulders or cobbles based on the size of the stream and the flow regime.

28. STREAM REACH – The length of a stream identified as representing a uniform set of physical, chemical, and biological conditions. It is the principal sampling unit for collection physical, chemical, and biological data. In practice, a reach is often defined by a repeating sequence of channel units (riffle-pool-run sequence), by a sampling convention of channel units (e.g. 25 stream widths), or by the length of uniform mitigation activities (restoration, enhancement, or preservation).

29. STREAM RESTORATION - Converting an unstable, altered, or degraded stream corridor, including adjacent riparian zone (buffers) and flood-prone areas, to its natural stable condition considering recent and future watershed conditions. This process should be based on a reference condition/reach for the stream valley type and includes restoring the appropriate geomorphic dimension (cross-section), pattern (sinuosity), and profile (channel slopes), as well as reestablishing the biological and chemical integrity, including transport of the water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium.

30. SUCCESS CRITERIA – The minimum standards required to meet the objectives for which the Bank was established

31. WETLAND ENHANCEMENT – Activities conducted in existing wetlands, which increase one or more aquatic functions.

32. WETLAND RESTORATION – Re-establishment of wetland characteristics or function(s) at a site where they have ceased to exist, or exist in a substantially degraded state.

III. AUTHORITIES The establishment, use, operation and maintenance of the Bank is carried out in accordance with the following authorities:

A. Federal:

1. Clean Water Act (33 USC 1251 et seq.);
2. Rivers and Harbors Act (33 USC 403);
3. Fish and Wildlife Coordination Act (16 USC 661 et seq.);
4. Regulatory Programs of the Corps of Engineers, Final Rule (33 CFR Parts 320-332);
5. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 CFR Part 230);
6. Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army concerning the Determination of Mitigation Under Clean Water Act, Section 404 (b)(1) Guidelines (February 6, 1990);
7. Regulatory Guidance Letter No. 05-01. U.S. Army Corps of Engineers, February 14, 2005; and
8. Regulatory Guidance Letter No. 08-03. U.S. Army Corps of Engineers, October 10, 2008.

B. Commonwealth of Virginia:

1. Sections 62.1-44.15:20-23 of the Code of Virginia;
2. Virginia Water Protection Permit Regulation (9 VAC 25-210); and
3. Guidelines for the Establishment, Use, and Operation of Tidal Wetland Mitigation Banks in Virginia (4 VAC 20-390-10 et seq.).

IV. ESTABLISHMENT OF THE BANK

- A. Scope of Work: The Sponsor agrees to perform all necessary work, in accordance with the provisions of this Banking Instrument, to establish and maintain aquatic habitats and associated uplands buffers, as described in Exhibit C, until it is demonstrated to the satisfaction of the agencies represented on the IRT (acting through the Chair) that the project complies with all provisions contained herein, or until all Credits are sold, whichever is later. Work as described above shall include implementing the Mitigation Site Plan (Exhibit C). Prior to any Debiting, the Mitigation Site Plan for the phase of the Bank proposed for Debiting must be approved by the IRT, the site for that phase must be secured, and appropriate Financial Assurances (escrow agreement) for that phase must be established.
- B. Permits: The Sponsor will obtain all appropriate permits or other authorizations needed to construct and maintain the Bank, prior to Debiting any advance Credits. This Banking Instrument does not fulfill or substitute for such authorization.

The Sponsor agrees not to utilize a non-reporting Nationwide Permit or State Program General Permit under Section 10 of the Rivers and Harbor Act, Section 404 of the Clean Water Act or state general permits under VWPP regulations to impact any Waters of the

United States and/or State Waters on the Property. Notification to the appropriate permitting authorities shall be required for the proposed use of any Nationwide Permit, State Program General Permit, Regional Permit, or state general permit under VWP permit regulations.

- C. Mitigation Site Plan: Establishment of the Bank may be performed in phases as described in the Mitigation Site Plan (Exhibit C), and the Credits will become available in accordance with the schedule specified in Part V, Sections F and G of this Banking Instrument.

D. Financial Assurance Requirements:

1. For the advance release of Credits (not to exceed 15% of the total number of Credits that could be derived from this site) the Sponsor agrees to provide adequate Financial Assurances (e.g. escrow agreement, performance bond, letter of credit or other mechanism approved by the IRT) to ensure that aquatic resources would be restored or established on the Bank Site.

The amount of the Financial Assurances must be sufficient to acquire sufficient replacement compensatory mitigation to offset the initial release of credits through an approved bank or in-lieu fee program in the event of a default as determined in the sole discretion of the IRT. The Bank Sponsor must either fully fund the Financial Assurance prior to the initial release of credits or provide an escrow account in which all monies received from sales of the initial credits shall be deposited until a monitoring report is submitted to the IRT showing that a portion of the Bank Site meets success criteria that is sufficient to offset the initial release of credits.

The Bank Sponsor may request an initial release of Credits in increments up to a total of 15% of the Credits that could be derived for the Site as defined in the Mitigation Site Plan, and the amount of the Financial Assurances shall be increased with the initial Credits so released. The Bank Sponsor agrees to make no more than 2 requests for initial release of credits for each phase of the Bank. Release of funds from this Financial Assurance will be recommended by the IRT once it has reviewed and approved the annual monitoring report for the year the initial release of Credits occurred, which demonstrates that Success Criteria have been met for the type of credits previously released (i.e. stream or wetland). Complete release of the Financial Assurances may only occur if the submitted report demonstrates that sufficient area met the specific Success Criteria (as stated herein) to offset the initial release of Credits.

At the time of Financial Assurance final release, ninety percent (90%) of the funds will be released to the Sponsor, eight percent (8%) will be transferred to the Maintenance and Monitoring Fund (as specified in Part IV.D.3.a.) and two

percent (2%) will be transferred to the Catastrophic Event and Long-Term Management Fund (as specified in Part IV.D.3.b.

2. The Sponsor shall establish an escrow account/performance bond with the following law firm/title company/surety company who will act as specified under this Banking Instrument:

Regions Bank
951 East Byrd Street, Suite 930
Richmond, VA 23219
ATTN: Barry Musselman

The Sponsor may, at its discretion, replace this escrow agent/surety company with a different law firm, title, or surety company registered to do business in the Commonwealth of Virginia. The provisions of the new instrument shall conform with the provisions of the former instrument.

3. For any sale of Mitigation Credits consummated by the Sponsor:
 - a. 8% of all cash proceeds from said transactions shall be placed in a separate escrow account (or an equivalent amount placed in a performance bond) to be called the Maintenance and Monitoring Fund. If the required monitoring or maintenance is not conducted as specified in Section VI of this instrument and the Mitigation Site Plan, then the IRT, acting through the Chair shall request release of funds to an IRT agency or its designee from this account sufficient to cover the necessary monitoring or maintenance activities. One-sixth of this fund (that is 1.3% of the total cash proceeds) shall be released to the Sponsor on each February 1st after the IRT reviews and approves the most recently submitted monitoring report (see Section VI C) that documents that part or all of the Restoration/Creation/Enhancement portion of the Site satisfies the Success Criteria (see Part V E) to cover the expected costs of maintenance and monitoring over the required 10 year monitoring period. The remainder of the fund shall be held until the final monitoring report (Year 10 or until all success criteria are met, whichever comes later) is submitted and approved, at which point the balance of the fund will be conveyed to the Bank Sponsor and, thereafter in accordance with Section VI. H no further payments into the fund will be required.
 - b. 2% of all cash proceeds from said transactions shall be placed within a separate escrow account to be called the Catastrophic Event and Long-Term Management Fund. These funds shall be placed in a federally insured financial institution in an interest bearing account. In the event of a catastrophic event, as determined by the IRT, that effects the long term viability of the Mitigation Bank, the IRT can cause the appropriate corrections to occur by either: (i) directing the Sponsor, if said event occurs while the Sponsor's maintenance period is in effect, to implement corrections which will be funded by release of an appropriate amount of said funds, (ii) recommend the escrow agent release the necessary funds to the

Long-Term Steward of the Mitigation Bank to make necessary corrections and/or manage the Property, or (iii) recommend the escrow agent release the funds to an Agency represented on the IRT or its designee to effect the necessary corrections. Any unspent funds shall remain in this fund if not utilized to repair the Mitigation Bank from a catastrophic event or for long-term management of the Bank Site. This Catastrophic Event and Long-Term Management Fund will be transferred to the designated Long-Term Steward of the land for use in addressing future catastrophic events or land management requirements once all monitoring has been completed and all Credits from the Bank have been Debited.

4. Long-term (that is, after the completion of the ten year monitoring period) maintenance requirements will be determined on a site-specific basis. However, any such activities shall be the responsibility of the Long-Term Steward. The Catastrophic Event and Long-Term Management Fund, shall provide a funding source for any maintenance requirements or repairs necessitated by natural disasters or other catastrophic events as defined in paragraph E below that the Sponsor or Long-Term Steward must address.

E. Catastrophic Event and Long Term Management Fund: As described above, a portion of all cash proceeds from said transactions shall be placed in an escrow account called the Catastrophic Event and Long Term Management Fund. Damages from the catastrophic events identified below are permitted to be repaired using the principal and interest accumulated in the Catastrophic Event and Long Term Management Fund by either the Sponsor or the Long-Term Steward of the land, the funds being provided to whichever entity has responsibility to repair the resulting damages. Expenditures shall be approved by the IRT if the damage occurs within the 10-year monitoring period associated with Bank establishment. The Sponsor is responsible for demonstrating to the IRT's satisfaction that catastrophic damage has taken place. Expenditures may be approved to address the following issues:

1. Floods greater than a presently projected 100-year flood, where "flood" refers to a runoff event;
2. Tornado of F2 or greater magnitude on the Fujitsu scale;
3. Hurricane of Category 2 or greater magnitude on the Saffir-Simpson scale;
4. Earthquakes of a magnitude greater than 6.5 on the Richter Scale;
5. Extreme drought (Drought Monitor Classification of D3 or greater or Palmer Drought Index of -4.0 or less) if such event has broad regional impact, and is not endemic to the Bank and its immediate locale;
6. Drought, insect damage, or animal damage to planted vegetation that occurs across a majority of the site at a magnitude such that the vegetation fails to achieve the Success Criteria described in Section V.E after each respective phase of planting has surpassed the contractor's one-year warranty (if a one-year warranty was required);
7. Breach of any berms, embankments or spillway and/or damage to outlet structures, washout of stream stabilization structures (including cross vanes, J hooks, rock weirs, imbricated riprap, vegetated stream banks, coir logs, fascines, and riparian plantings) from a 100 year or greater magnitude storm event;

8. Fire or other Force Majeure event as defined in Section VIII. A; or
9. Any long-term maintenance requirements necessitated under paragraph IV D (4) and Section VI. I and J.

In the event of a catastrophic event that affects the long-term viability of the Mitigation Bank during the initial 10 year monitoring period, the Bank Sponsor shall submit a written request to the IRT for release of funds from the Catastrophic Event Fund. The Bank Sponsor is responsible for demonstrating to the IRT's satisfaction that catastrophic damage has taken place and the requested funding amount is appropriate to repair the sustained damage. The IRT, acting through the Chair(s) shall have sixty (60) days to review and approve or comment on the Bank Sponsor's request. Following approval, the Bank Sponsor shall direct the escrow agent to release the designated amount of funds from the Catastrophic Event Fund to the Bank Sponsor.

Should a catastrophic event occur after the initial 10-year monitoring period, the Long-Term Steward shall submit a written request to the escrow agent for release of funds from the Catastrophic Event Fund.

- F. Real Estate Provisions: The Sponsor shall record a restrictive covenant on each Mitigation Bank Site and provide a copy of the recorded instrument to the IRT prior to sale of any Credits in favor of any permittee. The restrictive covenant shall be recorded in the chain of title for the bank property and ensure the right of ingress and egress for the Bank Sponsor, IRT, and Long-Term Steward of the Bank Site. A template declaration of restrictions is attached in Exhibit F. The IRT, acting through the Chairs agrees that if a conservation easement approved by the IRT is recorded over the property with a non profit conservation organization named as easement holder, credit composition will be revised so that 5% less land area is required to generate a mitigation credit than would be required under a restrictive covenant. Any proposed changes in credit composition must be proposed in the MBI. A copy of the recorded document shall be provided to the Corps within 30 days of recordation. Notwithstanding anything in this Agreement or any related documents or Agreements, such as the Bank Development Plan, in NO EVENT can any credits be released or sold or debited or credited until the Chair(s) receives proof of recordation of approved Restrictive Covenants on the portions of the Property over which credits are sought; and the Restrictive Covenants may not be altered, amended, terminated or vacated without written approval of the Chairs.

If a conservation easement approved by the IRT, is recorded over the property with a non-profit conservation organization or government conservation organization named as easement holder, credit yield for the proposed mitigation will be increased by 5% over the credit amount that would be generated under a restrictive covenant for the same mitigation activities. The conservation organization must meet the following criteria:

- May hold easements which are perpetual in duration in accordance with the Virginia Conservation Easement Act (has had a principal office in the Commonwealth of Virginia for at least five years and

- Is a charitable corporation exempt from taxation pursuant to 26USCA 501 (c)(3), and a “qualified organization” and an “eligible donee” under Section 170(h)(3) of the internal Revenue Code and Treasury Regulation §1.170A-14(c)(1), whose purposes include those specified in the Virginia Conservation Easement Act, and has had a principal office in the Commonwealth of Virginia for at least five years.

The Sponsor or Long-Term Steward shall provide the Chair(s) with 60 day advance notice before any action is taken to modify the conservation easement, restrictive covenant, management plan, or long-term protection mechanism, EXCEPT THAT the conservation easement, restrictive covenant, management plan, or long-term protection mechanism MAY NOT be altered, amended, modified, vacated or terminated in whole or in part in any way without the express written approval of the IRT, acting through the Chair(s).

G. As-Built Report:

1. For both Wetlands and Streams: The Sponsor agrees to submit an as-built report to the IRT within 60 days following completion of the grading for each phase of the Bank Site. The as-built will depict the completed portions of the Bank Site for that operational year, including a survey showing finished grades, the elevation of any constructed structures (e.g. berms, weirs, etc.), and will describe in detail any substantial deviations from the requirements described in the Mitigation Site Plan submitted to the IRT in accordance with the Mitigation Site Plan (Exhibit C).
2. For Streams Only: The Stream as-built information will be used as a comparative measure for streambank stability and will be referenced in each Monitoring Report, in accordance with the terms found in Section VI.B and C. of this MBI.

V. OPERATION OF THE BANK

- A. Service Area: The Bank is established to provide Mitigation to compensate for impacts to Waters of the United States and/or State Waters, including wetlands, within the service area depicted on the excerpt of the USGS Hydrologic Unit Map as shown in Exhibit E (hereinafter referred to as the “Service Area”). This Service Area shall include Hydrologic Unit Codes from the Meherrin, Nottoway, and Blackwater River watersheds including all or a portion of the following cities and counties: Dinnwiddie, Prince George, Prince Edward, Nottoway, Mecklenburg, Lunenburg, Brunswick, Greensville, Isle of Wright, Sussex, Southampton, and Surry within Hydrologic Unit Codes 03010201, 03010202, 03010203, and 03010204.

A specific geographic limit of applicability in no way compromises any federal agency’s ability to accept or reject the use of a bank site for any given Section 404 or Section 10 impact. Thus, at the sole discretion of the IRT, acting through its Chair, the Bank may be used to compensate for impacts outside the Service Area on a case-by-case basis through project specific permit decisions.

- B. Access: The Sponsor will allow, or otherwise provide for, access to the Site by members of the IRT or their agents or designees, as reasonably necessary, for the purpose of inspection, compliance monitoring, and remediation consistent with the terms and conditions of this Banking Instrument throughout the period of Bank establishment, monitoring, and operation. Inspecting parties shall not unreasonably disrupt or disturb activities on the Property.
- C. Projects Eligible to Use the Bank: The following types of projects may be eligible to use the Mitigation Bank:
1. All activities regulated under Section 10 of the Rivers and Harbors Act, Sections 401 and 404 of the Clean Water Act and/or the Virginia Water Protection Permit Regulations (9 VAC 25-210) located within the Service Area of this Mitigation Bank may be eligible to use one or more Mitigation Banks as compensatory mitigation for unavoidable impacts.
 2. Use of Credits may only be authorized when adverse impacts have been avoided and minimized to the extent practicable.
 3. Credits may be used to compensate for environmental impacts under other programs (civil works, Superfund removal and remedial, supplemental environmental projects for state and Federal enforcement actions, etc.).
 4. For projects in the Service Area of this Mitigation Bank that require authorization with a Nationwide Permit (NWP) under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act, Norfolk District State Program General Permit (SPGP), and/or a Virginia Water Protection Permit, and if said authorizations requires compensatory Mitigation, Credits from this Mitigation Bank may be permitted to be used to satisfy these compensatory Mitigation requirements if the Sponsor and the third party permittee reach a mutually acceptable financial agreement and subject to regulatory approval on a case by case basis.
 5. For projects in the Service Area of this Mitigation Bank that require authorization with an Individual Permit (IP) under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act and/or Virginia Water Protection Permit, the Corps and DEQ, in consultation with the other regulatory and resource agencies, will determine the eligibility of such projects to use the Bank on a case-by-case basis. Mitigation may be provided by the use of Mitigation Credits from the Mitigation Bank as determined by the Corps and/or DEQ for each agency's respective permits if the Sponsor and the third party permittee reach a mutually acceptable financial agreement.
- D. Assessment Methodology: Credits and Debits will be assessed using measurements of the area of impacts and the Mitigation land area.

The number of wetland mitigation Credits created by development of this Mitigation Bank is determined by a combination of land area and habitat type (e.g. Cowardin Classification) provided in the Mitigation Site Plan (Exhibit C) as described in Exhibit D.

The number of stream mitigation Credits created by development of this Mitigation Bank is determined by linear feet of each activity and the corresponding credits for those activities outlined in the Unified Stream Methodology (January 2007 or most current version) or other acceptable tools as provided in the Mitigation Site Plan (Exhibit C) and the associated USM forms.

The amount to be debited for each impact will depend upon the area of wetlands or waters to be impacted as determined during the permitting process.

E. Success Criteria: The following criteria will be used to assess project success:

1. Submittal of required documentation, including monitoring reports, semi-annual ledgers, as-built drawings, proof of escrow deposits and withdrawals in accordance with Section VI. C. and D.
2. In all Wetland and Buffer Preservation areas:
 - a. Proof of recordation of the restrictive covenant or a conservation easement.
 - b. The final monitoring report (Year 10) shall document that all preserved areas are intact in their approved condition.
 - c. No more than 5% cover per stream segment, and/or buffer cell, field, or block may be made up by invasive species such as *Typha latifolia*, *Phragmites australis*, *Lonicera japonica*, *Puerraria lobata*, or *Ailanthus altissima*. *Invasive species are identified on the Virginia Department of Conservation and Recreation's Invasive Alien Plant list. This list of invasive plants may be found at http://www.dcr.virginia.gov/natural_heritage/documents/invlist.pdf.*
3. In all Buffer Restoration, Creation, and Enhancement areas:
 - a. A minimum of 400 woody stems of native trees and shrubs per acre (including volunteers) from the top of the stream bank landward and/or within the wetland shall be achieved by the end of the first growing season following planting and maintained each monitoring year until canopy coverage is 30%. Canopy coverage shall be at least 30% each monitoring year thereafter.
 - b. Native non-invasive herbaceous plant coverage shall be at least 60% by the end of the first growing season, and at least 80% each monitoring year thereafter. Any seeds used for plant establishment should conform to the Virginia Seed Law (Sections 3.1-262 Code of Virginia) and Virginia Seed Regulations (2 VAC 5-290-10 et seq) and shall be free of tall fescue, Bermuda grass, and other

allelopathic turf grass species, as well as plant species on the Virginia Department of Conservation and Recreation's Invasive Alien Plant List.

- c. No more than 5% cover per stream segment, and/or buffer cell, field, or block may be made up by invasive species such as *Typha latifolia*, *Phragmites australis*, *Lonicera japonica*, *Puerraria lobata*, or *Ailanthus altissima*. Invasive species are identified on the Virginia Department of Conservation and Recreation's Invasive Alien Plant list. This list of invasive plants may be found at http://www.dcr.virginia.gov/natural_heritage/documents/invlist.pdf.
 - d. The final monitoring report (Year 10) shall contain documentation by cell, field, or block that demonstrates that all vegetation within the Buffer area is healthy and thriving and the average tree height of all planted trees is at least 5 feet in height
4. In vegetated Wetland Restoration and Creation areas success shall be evaluated by each cell, field, or block as follows:
 - a. Wetland hydrology, defined as saturation of the major part of the root zone (in the upper 12 inches of the soil profile) or ponding upon the soil surface for at least twelve and one-half percent (12.5%) of the growing season must be achieved (for the purpose of this determination, the growing season is defined as the period in which temperatures are expected to be above 28°F in 5 out of 10 years. This is the period between March 24 and November 7 in Southampton County; or the period during which the soil temperature in a wetlands in Southampton County is greater than biological zero (5°C) at a depth of 50 cm (19.6 inches) if such data is available).
 - b. Wetland vegetation dominance, defined as a vegetation community where more than 50% of all dominant species are facultative ("FAC") or wetter, excluding FAC- plants, using "routine delineation methods" as described in the "Corps of Engineers Wetland Delineation Method," Technical Report 87-1 ("1987 Manual"), must be achieved.
 - c. Plant density in forested and shrub/scrub wetland areas of at least 400 living woody stems per acre of trees and shrubs must be achieved by the end of the first growing season following planting and maintained through the end of the monitoring period until canopy coverage of woody species is greater than 30%. No more than 5% aerial cover of invasive species such as *Typha latifolia* or *Phragmites australis* may be present in each cell, field, or block. Invasive species are identified on the Virginia Department of Conservation and Recreation's Invasive Alien Plant list. This list of invasive plants may be found at http://www.dcr.virginia.gov/natural_heritage/documents/invlist.pdf; Once these cover requirements are met, woody species counts may be halted.
 - d. Plant coverage in emergent wetland areas of at least 60% must be achieved by the end of the first growing season, 65% must be achieved by the end of the second

growing season, and 80% must be achieved by the end of the third growing season and maintained through the end of the monitoring period with no more than 5% aerial cover of invasive species such as *Typha latifolia* or *Phragmites australis* in each cell, field, or block. *Invasive species are identified on the Virginia Department of Conservation and Recreation's Invasive Alien Plant list. This list of invasive plants may be found at http://www.dcr.virginia.gov/natural_heritage/documents/invlist.pdf.*

- e. Plant coverage in floating aquatic areas of at least 5% must be achieved during a portion (July and August) of the first growing season, 10% must be achieved during a portion of the second growing season, and 20% must be achieved during a portion of the third growing season and maintained during a portion of each subsequent growing season (i.e., these plants do not persist in colder periods of the growing season, thus this requirement only pertains to the middle portion of the growing season).
- f. The average height of all woody stems including volunteers in each cell, field, or block must increase by not less than 10% during each successive monitoring period after the first monitoring report, until canopy coverage of woody species exceeds 30%.
- g. Soil Success Criteria shall be evaluated for Wetland Creation areas located on non-hydric soils. In that event, the following success criteria shall be followed:
 - 1) For coarse textured (sandy) surface soils, positive indicators of hydric soil formation must be demonstrated within 6 inches of the soil surface. Groundwater monitoring may be used as the positive indicator for the first 2 years after reaching the final grade, in which case, wells must demonstrate free water within 6 inches of the surface for 15 consecutive days during the growing season.
 - 2) For fine textured soils (silts, clays, loams), positive indicators of hydric soil formation must be demonstrated within 12 inches of the soil surface. Groundwater monitoring may be used as the positive indicator for the first 2 years after reaching the final grade, in which case, wells must demonstrate free water within 12 inches of the surface for 15 consecutive days during the growing season.
 - 3) Positive indicators of hydric soil formation may include redoximorphic features including, but not limited to redox concentrations, redox depletions, reduced matrices, positive tests with α, α , diperydyl, or other field indicators contained in the Field Indicators of Hydric Soils of the U.S.
 - 4) A complete soil morphologic description shall be documented pre and post construction and at the 3rd year following construction and each subsequent mandatory monitoring year to document changes in overall soil morphology,

particularly the development of redoximorphic features over time (such as a reduction in matrix chroma or development of redox depletions), to demonstrate that soils at the site are progressing towards hydric soil conditions. At a minimum, soil profiles shall be described within 30 feet of each well.

5. **Stream Success Criteria:** The overall goal for the stream Success Criteria is to ensure that the dimension, pattern, and profile of the Stream Enhancement and Restoration areas remain within the natural range of variability present in the reference data obtained for the design. The IRT will use best professional judgment, visual observations and monitoring reports to evaluate attainment of Success Criteria and in determining whether part or all of the Bank Site is successful or whether corrective actions are warranted.
 - a. **Stream Preservation Areas:** For the linear footage of stream in which no instream or bank work is accomplished, but Stream Preservation is done (regardless of riparian area activities) (as described in Section II), the following Success Criteria will apply:
 - 1) **Dimension** - The analysis of representative riffle cross-section shall indicate that it has neither aggraded, degraded, widened, nor narrowed to the point where it has become unstable or will cause instability. The following measurements will be used to aid in making this determination each monitoring year:
 - a) The Width/Depth Ratio Stability Rating (measured Width/Depth Ratio divided by the baseline Width/Depth Ratio) shall not be greater than 1.3. If the channel is incising, then the Width/Depth Ratio Stability Rating shall not be less than 0.7.
 - b) The Bank Height Ratio shall not increase or decrease by an amount greater than 0.2 of the baseline Bank Height Ratio.
 - c) Other measurements to consider include cross-sectional (bankfull) area of the channel, floodprone elevation, bankfull elevation, floodprone width, entrenchment ratio, mean depth, bankfull width, and hydraulic radius.
 - b. **Stream Enhancement Areas:** For the linear footage of Stream with stream Enhancement activity (as defined in Section II), the following Success Criteria will apply in addition to those outline in Section V.E.5.a:
 - 1) **Stream Reach Stability** - The analysis of the streambank from the top of the bank to the ordinary high water mark shall indicate a significant amount of natural protection to prevent streambank erosion that could jeopardize the stability of the streambank or the stream reach.

The following measurements will be used to aid in making this determination each monitoring year:

- a) Where streambank plantings were undertaken: The numbers of live stakes, planted, or volunteer woody species providing bank stabilization from the top of bank to ordinary high water mark shall be at least 1 living stem per 10 square feet per sample plot by the end of the first growing season following planting and maintained each monitoring year until canopy coverage is 50% for any identified reach. Canopy coverage shall be at least 50% each monitoring year thereafter.
 - b) The individual Index Values of the Bank Erodibility Hazard Index (BEHI) rating for any identified reach shall be equal to or less than the previous year's Index Value. In addition, the Total Score shall be equal to or less than the previous year's Total Score, and shall have a Total Score of "Moderate" by Monitoring Year 3, and a Total Score of "Low" by Monitoring Year 5, and maintained at "Low" throughout the remainder of the monitoring period.
 - c) The U.S. Forest Service Stream Reach Inventory and Channel Stability Evaluation (Pfankuch, 1975) rating shall be "Good" each monitoring year, beginning with Year 2.
- 2) Pattern - The analysis of the plan-view survey or field measurements shall indicate that the stream is not migrating significantly to the point where it will cause significant bank erosion and cause instability.

The following criteria will be used to aid in making this determination each monitoring year:

- a) The sinuosity of the stream shall not increase or decrease by an amount greater than 0.1 of the approved as-built pattern.
 - b) The centerline of each channel cross-section will not move by more than 10% of the width of the approved as-built channel width in any given year.
 - c) The Radius of Curvature/Width Ratio shall remain within the range of variability present in the reference data.
- 3) Habitat Structures - The analysis of each habitat structure shall indicate that it is maintaining its structural integrity, performing its intended function, and not adversely affecting the stream.

The following measurements will be used to aid in making this determination each monitoring year:

- a) Absence of under cutting, washing around, or erosion of the bank, backfill or stream bed associated with any habitat structure.
- b) The visual observation that the structure is used by the intended species.
- c. Stream Enhancement with Structures: For the linear footage of stream with Stream Enhancement with structures activities (as defined in Section II), the following success criteria will apply in addition to those outlined in Sections V.E.5.a and V.E.5.b:
 - 1) Structures - The analysis of each instream structure shall indicate that it is maintaining its structural integrity, performing its intended function, and not adversely affecting the stream.

The following measurements will be used to aid in making this determination each monitoring year:

- a) Absence of under cutting, washing around, or erosion of the bank, backfill or stream bed associated with any instream structure.
- b) The invert elevation (controlling elevation) of the header rocks or logs of any vane, j-hook, cross-vane, W-weir, or other structure shall remain unchanged from the approved as-built.
- 2) Materials - The analysis of the pebble count data shall not show a significant change in streambed materials to the point that indicates a shift in bedload material due to stream instability.

The D50 size particle shall remain within its approved as-built size class (silt, sand, gravel, cobble, boulder).

- d. Stream Restoration: For the linear footage of stream with Stream Restoration activities (as defined in Section II), the following success criteria will apply in addition to those outlined in Sections V.E.5.a, V.E.5.b, and V.E.5.c:
 - 1) Profile - The analysis of the longitudinal profile shall indicate that the bed elevation has neither aggraded nor degraded to the point where it will cause instability.

The following criteria will be used to aid in making this determination each monitoring year:

- a) The analysis of the Longitudinal Profile shall not indicate significant alterations in the locations, depths, and slopes of stream features (riffle, run, pool, glide).

- b) Bankfull Shear Stress, and Mean Depth and Slope (calculated using Critical Dimensionless Shear Stress) shall be appropriate for transporting the D100 of either the bar sample or the sub-pavement sample.
 - c) The slope of the longitudinal profile shall not increase or decrease by an amount greater than 0.1% of the approved as-built slope.
- 6. At the written request of the Sponsor, the IRT will perform a compliance visit to determine whether all Success Criteria have been satisfied.
- F. Schedule of Credit Availability: Upon submittal of all appropriate documentation by the Sponsor, and subsequent approval by the IRT, the IRT Chair will provide in writing the release of Credits to the Sponsor in accordance with the following schedule:
 - 1. Up to fifteen percent (15%) of anticipated Credits per phase or site will be available for Debiting upon implementation of the following:
 - a. Approval of this Banking Instrument and the Mitigation Site Plan described in Exhibit C;
 - b. Implementing Financial Assurances (e.g. posting a performance bond or execution of an Escrow Agreement substantially in accordance with the sample Escrow Agreement provided in Exhibit G) covering the advance release of credits;
 - c. Securing the Property proposed for the Mitigation Bank (fee simple acquisition, lease, easement, etc.);
 - d. Approval and recordation of the real estate instrument that protects the site in perpetuity is provided to the IRT;
 - e. Submission of a schedule to the IRT that shows that the initial (i.e. Phase I) physical and biological improvements will be completed no later than the first full growing season following initial Debiting from the Bank; and
 - f. Submission of an electronic version of this MBI, the Mitigation Site Plan and associated exhibits is submitted to the IRT chair and/or uploaded to the Corps Regional Internet Bank Information Tracking System (RIBITS).

The first phase of the bank site should be large enough to offset this initial credit release. The first phase shall begin construction within one year of the first sale or transfer of the initially released credits. No additional releases of credits will take place until a sufficient amount of compensatory mitigation meets success criteria to offset all debits from this initial release of credits.

2. Wetland Credits beyond 15% advanced credits can be released by the IRT (acting through the Chair) on the following schedule: 75% of potential credits (90% cumulative) shall be released upon meeting the success criteria in Section V 4.(a), (b), (c), (d), and (e) for intended forested wetlands. The remaining credits for intended forested wetland areas (10% or 100% cumulative), shall be released at Monitoring Year 5 upon meeting success criteria (g) for wetlands.
3. Stream and/or Buffer Preservation: For those credits derived from riparian Buffer and Stream Preservation, 100% of total credits will be released upon meeting the conditions in Section V.E.2.
4. Buffer Enhancement/Restoration/Reestablishment Area: For those credits associated with buffer area enhancement/restoration/re-establishment activities (as defined in Section II), release of credits beyond the initial 15% will adhere to the following schedule:
 - a. After Construction Completion: An additional ten percent (10%) of total credits (25% cumulative) of the total compensation credits will be available upon completion of all initial physical and biological improvements made pursuant to the mitigation plan.
 - b. After Monitoring Year 1: Seventy-five (75%) of total Credits (100% cumulative) will be available for debiting after Monitoring Year 1 has been successfully completed and the report, which documents compliance with Success Criteria (Section V E. 3), is approved by the IRT.
5. Stream Restoration and Enhancement: For those Credits associated with Stream restoration and enhancement activities (defined in Section II), release of Credits beyond 15% will adhere to the following schedule:
 - a. After Construction Completion: An additional ten percent (10%) (for a total of 25% released) of the total Credits will be available upon completion of all initial physical and biological improvements made pursuant to the Mitigation Site Plan.
 - b. After Monitoring Year 1 following completion of construction:
 - 1) If a bankfull event has not occurred this year, the channel is stable and all Success Criteria are met, another ten percent (10%) (35% cumulative) of Credits will be available; or
 - 2) If a bankfull event has occurred this year, the channel is stable and all Success Criteria are met, another twenty-five percent (25%) credit release (50% cumulative) will be available after monitoring year 1 has been successfully completed and the report approved by the Corps.
 - c. After Monitoring Year 2 following completion of construction:

- 1) If a bankfull event has not occurred, channel is stable and all Success Criteria are met, another ten percent (10%) (45% cumulative) of Credits will be available; or
 - 2) If a bankfull event has occurred in monitoring year 1 or 2, the channel is stable and all Success Criteria are met, another twenty-five percent (25%) credit release (75% cumulative) will be available after monitoring year 2 has been successfully completed and the report approved by the Corps.
- d. After Monitoring Year 3 following completion of construction:
- 1) If a bankfull event has not occurred, channel is stable and all Success Criteria are met, another ten percent (10%) (55% cumulative) of Credits will be available; or
 - 2) If a bankfull event has occurred in monitoring year 1, 2, or 3, the channel is stable and all Success Criteria are met, another twenty-five percent (25%) credit release (100% cumulative) will be available after monitoring year 3 has been successfully completed and the report approved by the Corps.
- e. After year 4 following completion of construction:
- 1) If a bankfull event has not occurred, channel is stable and all Success Criteria are met, another ten percent (10%) (65% cumulative) of Credits will be available; or
 - 2) If a bankfull event has occurred, channel is stable and all Success Criteria are met, one hundred percent (100%) of the total compensation credits shall be available after monitoring year 4 has been successfully completed and the report approved by the Corps.
- f. No additional Credits will be released after Monitoring Year 4 until a bankfull event occurs. For each additional Monitoring Year, no more than 25% of total Credits will be released not to exceed the remaining available Credits if a bankfull event occurs that year, the channel is stable, and all Success Criteria are met.
- G. Conditions on Debiting: Any Credits Debited before achieving the Success Criteria (e.g. the 15% advance release of Credits) shall require conformance with the Financial Assurance requirements described in Section IV.D, and execution of an Escrow Agreement in substantial conformance with the agreement found in Exhibit G to provide sufficient Financial Assurance to assure performance and to cover contingency actions in the event of partial or total failure. Aside from the advance release of Credits, if the number of Credits Debited exceeds the number created, then no further Credit sales shall be permitted by the IRT until additional Credits are released by the IRT acting through the Chair.

H. Provisions For Uses of the Mitigation Bank Area: The Sponsor shall not use or authorize the use of areas within the Bank or areas surrounding the Bank over which the Sponsor has control for any purpose that interferes with its conservation purposes. In addition to implementation of the terms of this instrument, the following activities are permissible:

1. Monitoring of vegetation, soils and water;
2. Maintenance of wetlands, restored/enhanced stream segments, riparian buffers, trails, bridges, berms, dams, outlet and spillway structures, and other appurtenant facilities;
3. Hunting and fishing and other passive recreational uses such as hiking and bird watching;
4. Ecological education;
5. Compliance with applicable Federal, State, or local regulations or appropriate court orders;
6. Removal of diseased trees and alien invasive species, construction of fire breaks, conducting controlled burns and other activities associated with maintaining a healthy forested ecosystem; and
7. Creation and monitoring/maintenance of habitat structures for endangered or threatened species.

VI. MAINTENANCE AND MONITORING OF THE BANK

A. Maintenance Provisions: The Sponsor agrees to perform all necessary work to maintain the Bank consistent with the maintenance criteria established in the Mitigation Site Plan. The Sponsor shall continue with such maintenance activities until completion of the monitoring period described in Section VI.B. Deviation from the monitoring and maintenance provisions in the approved Mitigation Bank Instrument and the Mitigation Site Plan is subject to review and written approval by IRT, acting through the Chair.

B. Monitoring Provisions: The Sponsor agrees to perform all necessary work to monitor the Bank to demonstrate compliance with the Success Criteria established in this Banking Instrument. Monitoring may be terminated or the extent of monitoring may be reduced over part or all of the Site at the discretion of the IRT.

1. Timing. Monitoring activities shall occur during the growing season for Wetland, Stream, and Buffer Restoration or Creation, and for Stream Enhancement, monitoring activities should occur at least once during the 1st, 2nd, 3rd, 5th, 7th and 10th growing seasons following completion of grading. For Wetland and Buffer Enhancement, monitoring activities shall occur as above until applicable Success Criteria have been achieved. For Wetland, Stream and Buffer Preservation, monitoring activities shall occur in the tenth growing season.

In addition, monitoring shall adhere to the following schedules:

- a. For any year in which planting was conducted, monitoring of woody vegetation shall take place no sooner than 1 year following planting.

- b. Otherwise, monitoring of vegetation (herbaceous and woody species) shall be conducted during the growing season.
 - c. If all performance criteria have not been met in the 10th year, then a monitoring report shall be required for each consecutive year until two sequential annual reports indicate that all criteria have been successfully satisfied.
 - d. Submittal of a final monitoring report (typically prepared the 10th growing season following completion of grading).
2. Monitoring may be terminated over part or all of the Site at the discretion of the IRT.
3. The monitoring program for **Preservation areas** shall consist of visual observations. Visual observations shall be provided with each monitoring report through a written discussion of the condition of the Wetland, Stream, or Buffer Preservation area, any significant changes to the area, and photographic documentation, as necessary to further describe the area condition.
4. The monitoring program **for upland Buffer Restoration, Enhancement and/or Reestablishment areas** shall consist of:
 - a. Visual Description. Visual descriptions shall be provided with each monitoring report by one of the following means: (i) ground level photographs, taken facing north, south, east and west, from stations located adjacent to each vegetation plot [permanent markers shall be established to ensure that the same locations (and view directions) are monitored in each monitoring period], or (ii) one color aerial photograph (8" x 10" or larger) depicting the entire site. An aerial photograph should be taken once the site has been graded, planted, and stabilized (preferably in the 3rd or 5th year following final grading).
 - b. Vegetation. Sample plots shall be located on a stratified random basis over the site in order to sample all habitat areas of upland Buffer at locations adjacent to each photo location marker. The following minimum numbers of samples will be required:
 - 1) If the Buffer area is < 5 acres, then a minimum of 3 plots/acre is necessary.
 - 2) If the buffer area is > 5 acres but less than 20 acres, then a minimum of 2 plots/acre is necessary.
 - 3) If the buffer area is > 20 acres, then a minimum of 1 plot/acre is necessary.

However, all cells, fields, or blocks shall be sampled. Each plot shall be of a size no less than 400 square feet for woody plants and 3'x3' for herbaceous plants (or circular with approximately the same surface area). Alternative

sampling methods (*for instance use of point-line, point frame, or line-intercept sampling techniques; use of species-area curves or sample size analyses to establish numbers of samples, etc.*) may be submitted for IRT review and approval. The vegetation data shall be collected during the growing season and shall include:

- a) Vegetation species identification by common and scientific name;
- b) Estimates of percentage cover overall, and for each species utilizing the following cover classes:

Cover Class, Range and Midpoint Used in Data Analysis

Description	Range	Midpoint
Cover class 1	1-5	2.5
Cover class 2	6-25	15
Cover class 3	26-50	37.5
Cover class 4	51-75	62.5
Cover class 5	76-95	85
Cover class 6	95-100	97.5

***Mueller-Dombois and Ellenberg (1974).**

Cover class data shall be relativized within each plot to 100% cover to allow for comparison between plots of varying sizes;

- c) Identification of dominant species in each vegetation stratum;
- d) Species Richness – the number of species found at the site at time of data collection (include all species found in a plot with individual % cover estimates);
- e) Counts of woody stem density by species (per plot and #/acre);
- f) Survival of planted species (per plot and per acre);
- g) % cover of non-native/invasive vegetation in each vegetation layer; and
- h) Average height of planted woody species in each sample plot and percent change in height by species since previous monitoring event.

5. The monitoring program for **Wetlands Restoration, Creation and Enhancement** shall follow the guidelines established below:
- a. Visual Description. Visual descriptions shall be provided with each monitoring report in narrative form along with documentation by one of the following means: (i) ground level photographs, taken facing north, south, east and west, from stations located adjacent to each vegetation plot and hydrology monitoring station [permanent markers shall be established to ensure that the same locations (and view directions) are monitored in each monitoring period], or (ii) one color aerial photograph (8" x 10" or larger) depicting the entire site. An aerial photograph should be taken once the site has been graded, planted, and stabilized (preferably in the 3rd or 5th year following final grading).
 - b. Hydrology. For surface saturation driven systems located on top of a clayey substrate, soil saturation measurement devices may be used in lieu of groundwater wells and other secondary hydrology indicators to determine groundwater elevations and/or hydro period in these wetlands areas. Specific details on the soil saturation measurement device and location or groundwater monitoring wells shall be provided in the Final Construction Documents for IRT approval as described in Exhibit C. For each monitoring report, either 60 days of continuous automated monitoring, or 8 consecutive weekly measurements shall be provided during the growing season to demonstrate achievement of the hydrology performance criterion (actual monitoring may be of longer duration, as needed, to obtain proof of wetland hydrology).
 - c. Vegetation. Sample plots shall be located on a stratified random basis over the site in order to sample all areas of restored/constructed wetlands at locations adjacent to each photo location marker. The following minimum numbers of samples will be required:
 - 1) If the site is < 5 acres, then a minimum of 3 plots/acre is necessary.
 - 2) If the site is > 5 acres but less than 20 acres, then a minimum of 2 plots/acre is necessary.
 - 3) If the site is > 20 acres, then a minimum of 1 plot/acre is necessary. However, all cells, fields, or blocks shall be sampled. Each plot shall be of a size no less than 400 square feet for woody plants and 3'x3' for herbaceous plants (or circular with approximately the same surface area). Alternative sampling methods may be submitted for IRT review and approval. The vegetation data shall be collected in each plot during the growing season and shall include:
 - a) Vegetation species identification by common and scientific name and wetland indicator status (Reed 1988);

- b) Estimates of percentage cover overall, and for each species utilizing the same cover classes required for upland buffer restoration presented above. Cover class data shall be relativized within each plot to 100% cover to allow for comparison between plots of varying sizes;
- c) Identification of dominant species in each vegetation stratum;
- d) Species Richness – the number of species found at the site at time of data collection (include all species found in a plot with individual % cover estimates);
- e) Counts of woody stem density by species (per plot and #/acre);
- f) Survival of planted species (per plot and per acre);
- g) % cover of non-native/invasive vegetation in each vegetation layer; and
- h) Average height of planted woody species in each sample plot and percent change in height by species since previous monitoring event.

6. The monitoring program for **streams** shall follow the guidelines established below:

- a. Stream Channel Preservation - For the linear footage where no instream work was accomplished (regardless of riparian buffer activities), the following monitoring shall occur:
 - 1) Permanent cross-sections shall be established to ensure that the same locations are used each monitoring year. A minimum of one cross-section per 1,000 linear feet will be required. Total number required will vary depending on project length and complexity. Additional cross-sections may be required to show areas where aggradation, degradation, erosion, and mid-channel bars have developed. Cross-sectional measurements shall include streambanks, streambed, water surface, bankfull, and adjacent floodplain elevations.
 - 2) Ground level photographs shall be provided with each monitoring report for the purpose of documenting vegetation and stream stability. The photographs will be taken twice annually (summer/winter) at representative cross-sections and will clearly show the channel upstream and downstream, the riparian buffer area, and each stream bank.
 - 3) A stream gage shall be placed in each stream to document bankfull events.
- b. Stream Enhancement - For the linear footage of stream with Stream Enhancement activities (as defined in Section II), the following monitoring will occur in addition to those outlined for Stream Preservation areas:

- 1) Permanent cross-sections shall be established to ensure that the same locations are used each monitoring year. Representative cross-sections (with permanent markers established during the first monitoring interval) will be surveyed at 500-foot intervals on a representative sample of riffles, runs, glides, and pools. Total number required will vary depending on project length and complexity. Additional cross-sections may be required to show areas where aggradation, degradation, erosion, and mid-channel bars have developed.
 - 2) Sample plots for stream bank vegetation (10 square feet in size) shall be located on each bank at 500-foot intervals within representative sections of streambank where streambank plantings were completed.
 - 3) The Bank Erodibility Hazard Index (BEHI) will be assessed at each permanent cross-section and additional locations to provide a representative assessment.
 - 4) Beginning with Monitoring Year 2, The U.S. Forest Service Stream Reach Inventory and Channel Stability Evaluation (Pfankuch, 1975) will be performed at each permanent cross-section and additional locations to provide a representative assessment.
 - 5) Bankfull event gage documentation.
 - 6) Photographs documenting the structural integrity and function at each habitat structure. Documentation of use by intended species.
- c. Stream Enhancement with Structures - For the linear footage of stream with Stream Enhancement with Structures activities (as defined in Section II), the following monitoring will occur in addition to those outlined for Stream Preservation and Stream Enhancement areas. Each instream structure shall have the following data collected:
- 1) Photographs documenting structural integrity and function.
 - 2) Surveyed profile documenting invert elevation.
 - 3) Wetted-perimeter cross-section pebble count at constructed riffles.
- d. Stream Restoration: For the linear footage of stream with Stream Restoration activities (as defined in Section II), the following monitoring will occur in addition to those outlined for Stream Preservation, Stream Enhancement, and Stream Enhancement with Structures areas:
- 1) A surveyed longitudinal profile of the stream within the thalweg with measurements of the locations, depths, and slopes of riffles, runs, pools, and

glides. A separate profile will be prepared depicting all previous longitudinal profiles superimposed.

- 2) Radius of curvature within a representative longitudinal profile.
- 3) Sinuosity of representative sections.
- 4) Bankfull Shear Stress, and Mean Depth and Slope (calculated using Critical Dimensionless Shear Stress).
- 5) Stream classification pebble count, including:
 - a) Bar sample of pavement/sub-pavement sample;
 - b) Wetted-perimeter cross-section pebble count of representative riffles (not constructed riffles); and
 - c) The D50 analysis of the pebble count data.

C. Reports: The Sponsor shall submit to the IRT reports describing the conditions of the Bank and relating those conditions to the Success Criteria as well as the provisions of Section VI B. Reports will be submitted to the IRT and an electronic version shall be submitted to the Chair and/or uploaded to the Corps' Regional Internet Banking Information Tracking Systems (RIBITS) by November 30th of each monitoring year. Monitoring reports shall include at a minimum the following:

1. A Title page indicating the bank name, (umbrella bank name if applicable), site name (if applicable), bank phase (if applicable), monitoring year, any requested action (e.g. credit release, IRT review) Bank Sponsor identification (name, address, phone number and email address), and Preparer identification (name, address, phone number and email address).
2. An aerial photograph, taken either the 3rd or 5th year following final grading (if allowed in accordance with national security provisions) during the growing season, depicting the completed phases of the Mitigation Bank with the photo date and approximate scale noted, and ground level photographs as described in Section VI.B.
3. A detailed narrative summarizing the condition of the Bank and all regular maintenance and monitoring activities.
4. A drawing based upon the grading plans of the Site that depicts topography, and the location of wells, sampling plots, cross-section, and permanent photo stations.
5. For Preservation activities including Buffer Preservation: Photographic documentation and discussion of visual observations.

6. For Buffer Restoration/Enhancement/Reestablishment activities: Results of vegetation survey including visual estimates of percentage (%) overall cover and % cover by each vegetation layer, species diversity, % non-native/invasive vegetation in each vegetation layer, total % “facultative” and total % “upland” species in each vegetation layer, survival rate of planted vegetation, an estimate of natural revegetation, average height of woody species in each sample and percent change in height since previous monitoring event, and a qualitative estimate of plant vigor as measured by evidence of reproduction.
7. For Wetland Restoration, Creation and Enhancement activities: Results of vegetation monitoring including visual estimates of percentage (%) overall cover and % cover by each vegetation layer, species diversity, % non-native/invasive vegetation in each vegetation layer, total % “facultative” and total % “upland” species in each vegetation layer, survival rate of planted vegetation, an estimate of natural revegetation, average height of woody species in each sample and percent change in height since previous monitoring event; soils data (for wetland creation areas, and the results of hydrology measurements, including depth of standing water and daily precipitation data for the monitoring period from March 24th to November 7th with a comparison to historical average precipitation.
8. For Stream Preservation, Restoration and Enhancement activities: The Sponsor agrees to monitor the Bank to demonstrate compliance with the Success Criteria established in this Mitigation Bank Instrument. Monitoring shall be completed using previously documented or approved stream assessment techniques (i.e. EPA RBP, Rosgen, ICEM). Monitoring reports shall present yearly data in tabular and graphical format comparing as-built, current, and previous years monitoring data.
9. Monitoring reports shall include a discussion of any deviation from as-built or previous year's data.
10. A summary of Credits created by the Bank and the permits that have been Debited against these Credits cumulatively and for this monitoring year.
11. As-Built Report: An as-built report shall be submitted to the IRT within 60 days of completion of mitigation activities depicted in the Mitigation Site Plan (Exhibit B). The report shall include:
 - a. Plan view of the constructed/restored wetlands, streams, and adjacent buffers with location of all permanent sampling stations, photo stations, monitoring wells, instream and stream bank structures, and all permanent cross-sections and profiles;
 - b. Photographs of the completed Site taken from permanent photo stations;
 - c. Profiles of instream structures, cross-sections, and longitudinal stream profiles taken from permanent locations and compared to design plans;

- d. Pebble counts and summary geomorphologic data;
 - e. Planting zones, phases, and densities;
 - f. Stream gage locations; and
 - g. As-built elevations.
12. A map depicting areas associated with previous credit releases and the year of those releases, as well as the location and extent of current requests for credit release.
13. Each monitoring report will include detailed resource documentation and a revised summary table of actual wetland and stream Credits based on field measurements.

D. Accounting Procedure: The Sponsor shall submit a statement to the Corps and DEQ each time Credits are Debited or additional Credits are approved. If requested, the Corps will distribute the statement to other members of the IRT. The Sponsor or its agent shall update credit ledgers on RIBITS no less than once every three (3) months. In addition, the Sponsor shall submit a semi annual Ledger to the Corps for distribution to all members of the IRT, showing all transactions at the Bank for the previous 6 months and a cumulative tabulation of all transactions to date. At a minimum, each Ledger must include the following information: permittee, permit number, type of permit, locality, type of impacted system (Cowardin Classification), amount of impacts, amount of Debit from Mitigation Bank, USGS HUC Catalog Unit, date of transaction). The IRT will review the semi annual report and adjust the Credit composition to assure no net loss of wetlands acreage. Semi-annual Ledgers and transaction reports shall be submitted to the IRT as long as Credits remain in the Bank and/or the Bank remains operational.

E. Financial Report: The Sponsor shall submit to the IRT a financial report by November 30th of each monitoring year. An electronic version of this report shall be submitted to the IRT Chair or uploaded to RIBITS concurrently with this submittal. The report shall contain the following:

- 1. Documentation of balance in the escrow account referred to in IV(D)(2)(a) as the "Maintenance and Monitoring Fund" The balance in this account (principal balance without earned interest) must match the amount required to be set aside in IV (D)(2)(a).
- 2. Documentation of balance in the escrow account referred to in IV(D)(2)(b) as the "Catastrophic Event and Long-Term Management Fund". The balance in this account (principal balance without earned interest) must match the amount required to be set aside in IV(D)(2)(b).

F. Contingency Plans/Remedial Actions: The Sponsor shall develop necessary contingency plans and implement appropriate remedial actions in coordination with the IRT to address

the likelihood that the Bank or a specific phase of the Bank may fail to achieve the Success Criteria specified in Part V, Section E of this Banking Instrument. In the event the Sponsor fails to implement necessary remedial actions within one growing season (by November 1 of the following year) after notification by the Corps and/or DEQ of necessary remedial action to address any failure in meeting the Success Criteria, the IRT (acting through the Chair) will notify the Sponsor and the appropriate authorizing agency(ies) and direct appropriate remedial actions or take action including suspension/revocation of available Mitigation Credits.

If the IRT acting through the Chair determines that the Bank is operating at a deficit, or has failed to meet the criteria at Section IV parts D, E, F, or G, debiting by the Sponsor of Credits shall immediately cease, and the Chair in consultation with the IRT and the Sponsor will determine what remedial actions are necessary to correct the situation. As determined by the Chair in coordination with the IRT and the Sponsor, if conditions at the Bank Site do not improve or continue to deteriorate within one growing season from the date that the need for remediation was first identified in writing to the Sponsor by the Chair of the IRT, the IRT (acting through the Chair), shall request the escrow agent to transfer the amount necessary to correct the deficiency from the Monitoring and Maintenance Funds to a party acceptable to the IRT, to undertake corrective measures. The IRT may also suspend credit transactions until the deficiency(ies) is (are) corrected (see VI.G. below).

Following implementation of remedial measures and at the written request of the Sponsor, the IRT will perform a compliance visit to determine whether all Success Criteria have been satisfied.

- G. Default: Should the IRT, acting through the Chairs, determine that the Sponsor is in material default of any provision of this Agreement, the IRT, acting through the Chairs may notify the Sponsor that the sale or transfer of any Credits is suspended until the appropriate deficiencies have been remedied. Upon notice of such suspension, the Sponsor agrees to immediately cease all sales or transfers of Credits until the IRT informs the Sponsor that sales or transfers may be resumed. If the Sponsor fails to submit one or more required monitoring reports, and such failure continues for more than ninety (90) days after written notice from the Chair, an additional year of monitoring and submittal of the associated report to the IRT will be required to document Bank compliance. Should the Sponsor remain in default, the IRT, acting through the Chair, may terminate all future credit transactions. Upon termination, the Sponsor agrees to perform and fulfill all obligations under this Agreement relating to Credits that were sold or transferred prior to termination.
- H. Bank Closure: Within 90 days following the end of the 10-year monitoring period and upon satisfaction of the Success Criteria, as determined by the IRT, the Chairs shall issue a written certification of satisfaction to the Sponsor and the escrow agent, and thereafter any remaining Monitoring and Maintenance Fund (see Section IV D (3)(a)) will be released to the Sponsor. After Bank Closure and subject to review and approval by the IRT, the Sponsor may request and the IRT may agree in writing to remove from the Bank

that portion of the Bank lands that have not had Credits Debited from it (i.e. Restoration, Creation, Enhancement, or Preservation lands) provided the removal and any subsequent utilization does not adversely impact the areas from which Credit has been Debited. The IRT will determine, in its sole discretion, whether any such removal or utilization of Bank lands adversely impacts Bank lands for which credits were transferred or debited and whether any such removal is approved. If removed from Bank lands, that portion that is removed is no longer subject to the provisions of this MBI.

Prior to closure of a Bank or Bank Site, the IRT will perform a final compliance inspection to evaluate whether all Success Criteria have been achieved. Upon the Chairs determining, in consultation with the other members of the IRT and the Sponsor, that:

1. All applicable Success Criteria prescribed in Section V.E. for the Bank or Bank site have been achieved;
2. All released Credits for the Bank or Bank Site have been Debited;
3. The Sponsor has prepared a Long-Term Management and Maintenance Plan that has been approved by the IRT, pursuant to Section VI J.;
4. The Sponsor has prepared and submitted to the IRT and the appropriate locality a GIS shape file or similar exhibit depicting the location and extent of the Bank.
5. The Sponsor has either: (i) assumed responsibilities for accomplishing the Long-Term Management and Maintenance Plan, in which case the Sponsor will fulfill the role of Long-Term Steward, or (ii) has assigned those responsibilities to another Long-Term Steward pursuant to Section VI. I. of this Instrument;
6. The Catastrophic Event and Long-Term Management Fund has been funded pursuant to Section IV D;
7. The Long-Term Steward has been made the beneficiary of the Catastrophic Event and Long-Term Management Fund; and
8. The Bank has complied with the terms of this Instrument, the Bank or Bank Aite will close and the period of Long-term Ownership and Preservation will commence.

I. Long-Term Ownership and Preservation:

1. The Sponsor shall develop a Long-Term Management and Maintenance Plan within one (1) year of the approval of this instrument and the Mitigation Site Plan by the Chair that is consistent with the guidelines and objectives specified in Section J below, and submit the Plan for approval by the Chair, in consultation with the other members of the IRT. The Sponsor is responsible for execution of the approved Long-Term Management and Maintenance Plan. The Sponsor may only deviate from the

approved Plan upon written approval of the Chair, following consultation with the IRT.

2. The Sponsor may assign its long-term management and maintenance responsibilities to a third party assignee at the end of the active monitoring period, which will then serve as Long-Term Steward in place of the Sponsor. The identity of the assignee, his or her qualifications, and the terms of the long-term management and maintenance agreement between the Sponsor and the assignee must be approved by the Chairs, following consultation with the IRT, in advance of assignment. The Bank Sponsor shall provide to the Long-Term Steward a copy of the approved MBI, BDP, all exhibits and addenda associated with this site, as well as the approved Long-Term Plan and the final monitoring report.
 3. At that time, the Sponsor shall be responsible for managing the Bank in perpetuity in accordance with the terms of the Long-term Management and Maintenance Plan, the Mitigation Site Plan, and real estate provisions, including the terms of the recorded restrictive covenant or conservation easement, a sample of which is provided in Exhibit F. If the Sponsor or its successor declines to accept stewardship responsibility for the Bank and the associated Long-Term Management Fund, the Sponsor shall then transfer stewardship responsibility for the Bank and the associated Long-Term Management Fund to a public resource agency or non-profit agency engaged in conservation activities, subject to written approval of the receiving entity by the IRT. If no public resource agency or non-profit agency engaged in conservation activities is willing to accept management responsibility for the Bank lands, then the Sponsor will be the Long-Term Steward until another party acceptable to the IRT agrees to accept management responsibility for the Bank Property.
 4. If the Sponsor and/or Long-Term Steward elect to assign responsibility for the Long-Term Management and Maintenance Plan to a Long-Term Steward, the assignment agreement will reflect that the assignee has assumed the obligation, owed to the IRT, of accomplishing the Long-Term Management and Maintenance Plan. In exchange for the assignee's commitment to implement the Long-Term Management and Maintenance Plan, contemporaneously with the assignment of long-term management and maintenance responsibilities, the Sponsor will direct disbursement of the full amount of funds in the Catastrophic Event and Long-Term Management Fund, established pursuant to Section IV.D. of this Instrument, to the Long-Term Steward. In the event the responsibility for executing the Long-Term Management and Maintenance Plan is not assigned to a third-party assignee, upon closure of the Bank in accordance with Section VI H. of this Instrument, the full amount of funds in the Catastrophic Event and Long-Term Management Fund will be disbursed to the Sponsor.
- J. Long-Term Management and Maintenance Plan: The Long-Term Management and Maintenance Plan will contain specific objectives that address the long-term management of the Bank Site. The Long-Term Steward will document that it is achieving each objective or standard by submitting status reports to the IRT on a schedule approved by

the IRT. A primary goal of the Bank is to create a self-sustaining natural aquatic system that achieves the intended level of aquatic ecosystem functionality with minimal human intervention, including long-term site maintenance. Natural changes to the vegetative community, other than changes caused by non-native/invasive weeds, that occur after all Bank performance standards have been met are not expected to require remediation.

The Long-Term Management Plan will include as appropriate the following provisions for:

1. Periodic patrols of the Bank Site for signs of trespass and vandalism. Maintenance will include reasonable actions to deter trespass (*e.g. mark property boundaries and post "No trespass"*) and repair vandalized Bank features (*e.g. collect and dispose of rubbish including "white goods" and roofing shingles*).
2. Monitoring the condition of structural elements and facilities of the Bank Site such as signage, fencing, roads, and trails. The Long-Term Management and Maintenance Plan will include provisions to maintain and repair these improvements as necessary to achieve the objectives of the Bank and comply with the provisions of the real estate instrument providing protection to the site. Improvements such as access roads, berms, or water control structures that are no longer needed to facilitate or protect the ecological function of the Bank Site may be removed or abandoned if consistent with the terms and conditions of the recorded real estate instrument.
3. Inspection biannually of the Bank Site prone to establishment of invasive species. Any invasive plant species discovered on the Bank Site and occupying more than 5% cover in any given cell, field, or block shall be controlled. In the event the IRT determines that the watershed or drainage basin within which the Bank is located becomes infested with these species in the future, so that their effective control on the Bank site is either no longer practicable or unreasonably expensive, the IRT will consider appropriate changes to the Long-Term Management Plan.

Funds from the Catastrophic Event and Long-Term Management Fund may be used for provisions (1)-(3) above in accordance with the approved Long-Term Management Plan. The maximum amount of funds released annually shall not exceed 4% of the fund's value. No funds shall be released if monitoring was not conducted, as evidenced by the submittal of a report to the IRT.

The Bank Sponsor or Long-Term Steward may modify the Long-Term Plan, subject to review and written approval by the IRT.

Upon execution of a long-term management and maintenance assignment agreement, the transfer of the contents of the Catastrophic Event and Long-Term Management Fund, the transfer of management responsibility for the Bank Property to the Long-Term Steward, and upon satisfaction of the remaining requirements for Bank Closure under Section H. of this Instrument, the Sponsor shall be relieved of all further long-term management and maintenance responsibilities under this Instrument.

VII. RESPONSIBILITIES OF THE MITIGATION BANK REVIEW TEAM

- A. Oversight: The agencies represented on the IRT agree to provide appropriate oversight in carrying out provisions of this Banking Instrument.
- B. Comments: The agencies represented on the IRT agree to review and provide comments on all project plans, proposed additions of land to the Bank, annual monitoring reports, credit review reports, contingency plans, and necessary permits for the Bank. Comments, if any, on the final construction documents for each phase as described in Exhibit C, additions of land to the Bank, monitoring reports, credit review reports, contingency plans, and permits for Mitigation Bank construction and operation will be reviewed within ninety (90) calendar days from the date of complete submittal. The Chair of the IRT shall coordinate such review with members of the IRT so that comments can be provided within the ninety (90) calendar day comment period.
- C. Ledger Updates: The Chair or the Corps RIBITS Administrator shall update the Credit ledger for the Bank in RIBITS, within 30 days of receiving reports or credit ledgers, unless the Sponsor updates the Bank ledger in RIBITS.
- D. Evaluation of Success: The agencies represented on the IRT agree to review and approve reports on evaluation of Success Criteria prior to approving Credits within each phase of the Bank.
- E. Compliance: The agencies represented on the IRT shall conduct compliance inspections, as necessary to verify Credits available in the Mitigation Bank, assess site conditions, and recommend corrective measures (if any) to the Bank Sponsor, until the terms and conditions of the Mitigation Site Plan have been determined to be fully satisfied or until all Credits have been sold, whichever is later.

VIII. OTHER PROVISIONS

- A. Force Majeure: The Sponsor shall be responsible for repair and remediation of any portion of the Bank except upon events of Force Majeure. Force Majeure shall mean, flood, tornado, hurricane, earthquake, fire, or extreme drought which has an irreparable material and detrimental impact on much of the Bank over which the Sponsor or any entity controlled by the Sponsor has no control.
 - 1. The Sponsor shall bear the burden of demonstrating:
 - a. That the Force Majeure event was caused by circumstances beyond the control of the Sponsor and/or any entity controlled by the Sponsor, including its contractors and consultants;
 - b. That neither the Sponsor nor any entity controlled by the Sponsor, including its contractors and consultants, could have reasonably foreseen and prevented such an event; and

- c. The damage was caused by such circumstances.
 - d. The damage is irreparable.
- 2. Reasonably foreseeable technical problems, or unanticipated or increased costs or expenses associated with the implementation of actions called for by this MBI, or changed financial or business circumstances in and of themselves shall not serve as the basis for modifications of this MBI or an excuse from the performance of the requirements of this MBI.
 - 3. Compliance with any requirement of this MBI by itself shall not constitute compliance with any other requirement. An extension of one growing season for compliance based on a particular incident or for one portion of the Site shall not necessarily result in the extension of a subsequent or other compliance date or dates. The Sponsor must make an individual showing of proof regarding the cause of each delayed step or requirement for which an extension is sought.
- B. Eminent Domain: If the **Bank** is taken in whole or in part through eminent domain, the Bank Sponsor shall provide replacement compensation to offset the loss of the conservation functions, services, and values. This replacement compensation shall occur within the same service area and **must be** approved by the IRT.
- C. Dispute Resolution: Resolution of disputes about application of this Banking Instrument shall be in accordance with those stated in the Department of the Army and Environmental Protection Agency regulations entitled "Compensatory Mitigation for Aquatic Resources" (33 CFR Parts 325 and 332 and 40 CFR Part 230), as well as any federal or state regulations governing mitigation bank operation as applicable. Disputes related to satisfaction of Success Criteria may be subject to independent review from government agencies or academia that are not part of the IRT. The IRT will evaluate this input and determine whether the Success Criteria are met.
- D. Validity, Modification, and Termination of the Banking Instrument: This Banking Instrument will become valid on the latter date of either the Sponsor's signature or the signature of the representative of the Corps.

This Banking Instrument may only be amended or modified with the written approval of all signatory parties. In the event the Sponsor determines that modifications must be made in the Mitigation Site Plan to ensure successful establishment of the Bank, the Sponsor shall submit a written request for such modification to the IRT, through the Chair, for approval. The IRT, through the Chair, agrees to not unreasonably withhold or delay such approval. Documentation of implemented modifications shall be made consistent with this agreement. Any proposed substantial change to the Bank or Bank Site, including but not limited to addition of lands to the Bank, establishment of additional bank sites, additions of different types of mitigation credit resources (e.g. stream or wetland credits), or alteration of Success Criteria will require amendment of the

approved Banking Instrument to comply with the most current approved MBI template in use in Virginia.

Any of the IRT members may terminate their participation upon written notification to all signatory parties without invalidating this Banking Instrument. Participation of the IRT member seeking termination will end 30 days after written notification.

This Banking Instrument will be considered null and void if implementation of the Mitigation Site Plan (excluding the recordation of real estate instruments) has not been initiated within five (5) years of the last date of signature. The Sponsor may reinstate the process by proposing a new banking instrument consistent with the latest mitigation banking instrument template approved for use in Virginia.

- E. Specific Language of Banking Instrument Shall Be Controlling: To the extent that specific language in this document changes, modifies, or deletes terms and conditions contained in those documents that are incorporated into the Banking Instrument by reference, and that are not legally binding, the specific language within the Banking Instrument and any associated Mitigation Site Plans shall be controlling.
- F. Notice: Any notice required or permitted hereunder shall be deemed to have been given either (i) when delivered by hand, or (ii) three (3) days following the date deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, or (iii) the first business day after the day sent by Federal Express or similar next day nationwide delivery system, addressed as follows (or addressed in such other manner as the party being notified shall have requested by written notice to the other party):

Bunrootis, LLC
400 South Record, Suite 1250
Dallas, TX 75202
ATTN: David Gibbons

U.S. Army Corps of Engineers Norfolk District
Regulatory Branch
803 Front Street
Norfolk, VA 23510
ATTN: George Janek

Department of Environmental Quality
Central Office
629 East Main Street
Richmond, VA 23219
ATTN: Bettina Rayfield

U.S. Environmental Protection Agency Region 3
1650 Arch Street
Philadelphia, PA 19103-2029
ATTN: Carol Petrow and Mark Douglas

U.S. Fish and Wildlife Services
Virginia Field Office
6669 Short Lane
Gloucester, VA 23061
ATTN: Kimberly Smith

Virginia Department of Game and Inland Fisheries
4010 West Broad St.
Richmond, VA 23230
ATTN: Amy Ewing

Virginia Department of Conservation and Recreation
101 North 14th Street, 11th Floor Monroe Building
Richmond, VA 23219
ATTN: David Aho

Virginia Department of Forestry
135 Bank Street
PO Box 198
Waverly, VA 23890
ATTN: Edward Zimmer

- G. Entire Agreement: This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements or undertakings.
- H. Invalid Provisions: In the event any one or more of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.
- I. Headings and Captions: Any paragraph heading or captions contained in this Agreement shall be for convenience of reference only and shall not affect the construction or interpretation of any provisions of this Agreement.
- J. Counterparts: This Agreement may be executed by the parties in any combination, in one or more counterparts, all of which together shall constitute but one and the same instrument.
- K. Binding: This Agreement shall be immediately, automatically, and irrevocably binding upon the Sponsor and its heirs, successors, assigns and legal representatives upon

execution by the Sponsor and the Corps, even though it may not, at that time or in the future, be executed by the other potential parties to this Agreement. The execution of this Agreement by EPA, DEQ, or the USFWS, or other agency, city or county shall cause the executing agency to become a party to this Agreement upon execution, even though all or any of the other potential parties have not signed the Agreement. Execution does not signify the agencies' agreement with the use of Credits in the Bank in connection with any specific permit or project.

- L. Transfer of Mitigation Responsibility: For projects in the service area of this Mitigation Bank that require Department of the Army authorization pursuant to Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, or the Virginia Water Protection Permit Regulations (9 VAC 25-210), if such authorizations require compensatory mitigation, credits from this Mitigation Bank may be used to satisfy those compensatory mitigation requirements if the Bank Sponsor and the Permittee reach a mutually acceptable financial agreement, subject to Corps and/or DEQ written approval on a case-by-case basis. **Notwithstanding anything in this Agreement to the contrary, the Corps and DEQ have sole discretion over how many and what type of credits are required for permits each agency issues and whether credits from this Bank are acceptable as mitigation.**

In consideration of the Sponsor's agreement to be bound by the terms of this Instrument, the Corps and other IRT agencies acknowledge that upon approval of a proposal by a Permittee to secure mitigation bank credits through a contract with this Bank to satisfy all or part of the compensatory mitigation requirements for that Department of the Army and/or Department of Environmental Quality permit, a fully executed contract between the Sponsor and the Permittee shall act to transfer to this Bank the responsibility for the required compensatory mitigation to be provided by the Bank in accordance with the permit.

- M. No Liability of Regulatory Agencies: The responsibility for financial success and risk to the investment initiated by the Bank Sponsor rests solely with the Bank Sponsor. The regulatory agencies that are parties to this agreement administer their regulatory programs to best protect and serve the public's interest in its waterways, and not to guarantee the financial success of Banks, specific individuals, or entities. Accordingly, there is no guarantee of profitability for any individual Mitigation Bank. Bank Sponsors should not construe this agreement as a guarantee in any way that the Agencies will ensure sale of Credits from this Bank or that the Agencies will forgo other Mitigation options that may also serve the public interest. Since the Agencies do not control the number of Mitigation Banks proposed or the resulting market impacts upon success or failure of individual Banks, in depth market studies of the potential and future demand for Bank Credits are the sole responsibility of the Bank proponent.
- N. Third Party Resale or Brokerage of Credits: In the event of third party resale or brokering of mitigation Credits, the Sponsor remains responsible for the Bank and all applicable provisions of the approved MBI and Mitigation Site Plan. Credits must be used in the same service area as the Bank site that generated the Credits. There is no guarantee that

transferred Credits will be approved by the Corps or DEQ for use with a specific permit. Approval by the Corps and/or DEQ for use of said Credits as mitigation for a given permit is on a case-by-case basis.

The permit number shall be placed on every credit bill of sale. For bills of sale associated with bulk sales and other sales where there is no associated permit number, the Sponsor shall include a special provision in the bill of sale that states that those credits cannot be utilized to satisfy a Corps or DEQ permit requirement unless the broker (and any subsequent broker) provides a written "bank ledger allocation statement" to the Corps, DEQ, and the Sponsor. This bank ledger allocation statement will state that the associated credit(s) was part of a bulk sale to a specific party and has been allocated for use with the Lakota Mitigation Bank.

- O. Transfer of Bank.MBI Ownership: In the event of sale or transfer of the Bank and/or MBI to a third party, the transfer provision of the MBI must be completed and filed with the IRT. The Bank's Sponsor shall first notify the Chair(s) no less than 60 days prior to transfer. Once the transfer has been executed by the Sponsor/Owner, the Transferee/new Owner remains responsible for the Bank and all applicable provisions of the approved MBI and Mitigation Site Plan.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date herein below last written.

Sponsor

Date

INTERAGENCY REVIEW TEAM

U.S Army Corps of Engineers, Norfolk District

Date

By: _____

Its: _____

Virginia Department of Environmental Quality

Date

By: _____

Its: _____

When the land and/or MBI associated with this Mitigation Bank is transferred, the terms and conditions of this MBI will continue to be binding on the new Bank Sponsor and owner(s) of the property. To validate the transfer of this MBI and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(Transferee)

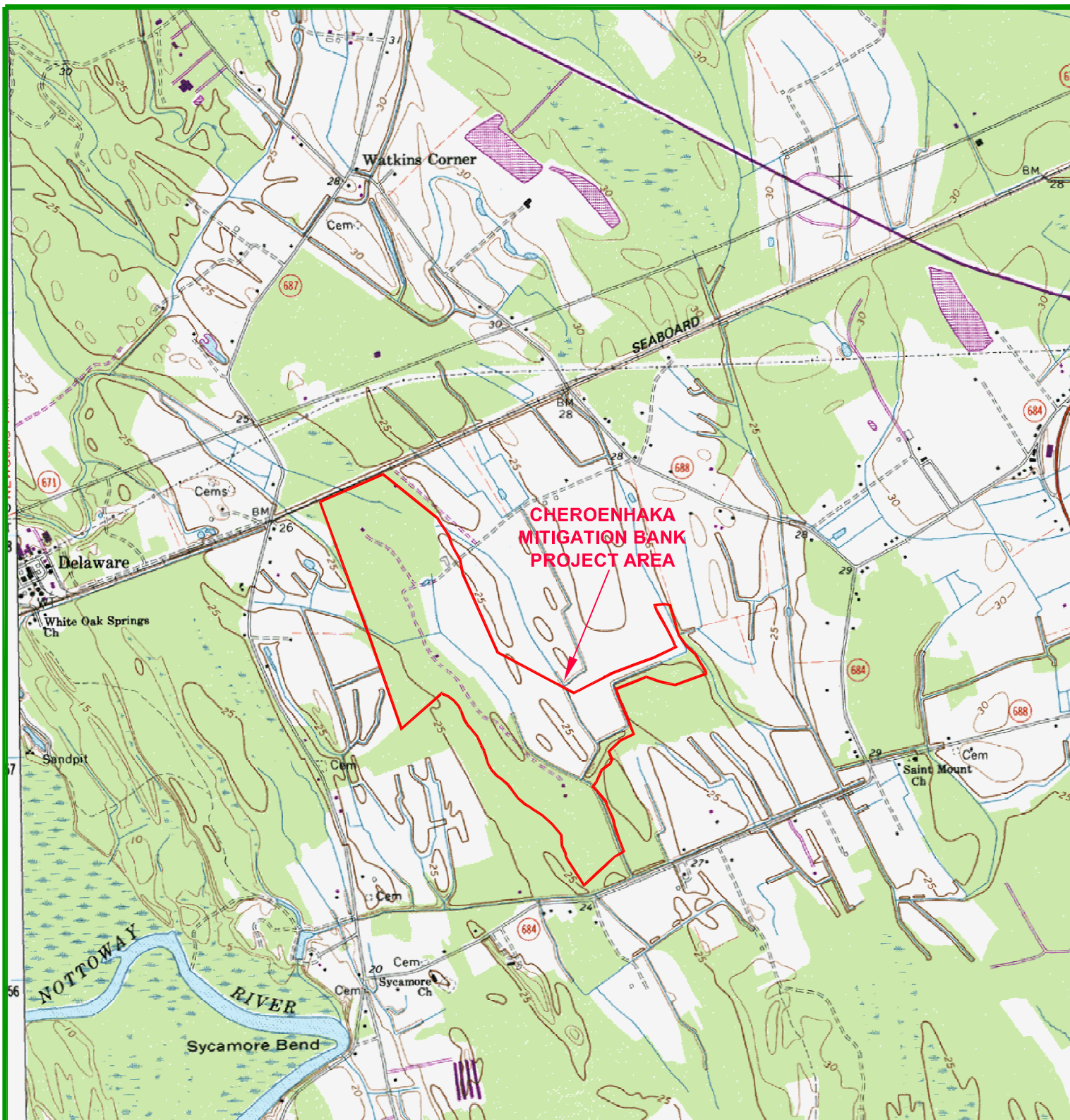
(Date)

When the responsibility for Long-Term Stewardship associated with this Mitigation Bank is assumed by a party other than the Bank Sponsor, the terms and conditions of this MBI will continue to be binding on the Long-Term Steward of the property. To validate the transfer of this responsibility and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(Long-Term Steward)

(Date)

EXHIBIT A: VICINITY MAP



VICINITY MAP OF CHEROENHAKA MITIGATION BANK

SOUTHAMPTON COUNTY, VIRGINIA

JOB NUMBER: 27127

DATE: 6/17/09

SITE AREA: +/-253 ACRES

LATITUDE: 36°38'59" N

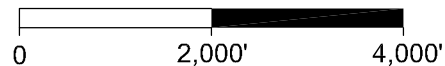
LONGITUDE: 76°58'26" W

TIMMONS GROUP

YOUR VISION ACHIEVED THROUGH OURS.



SCALE 1"=2,000'

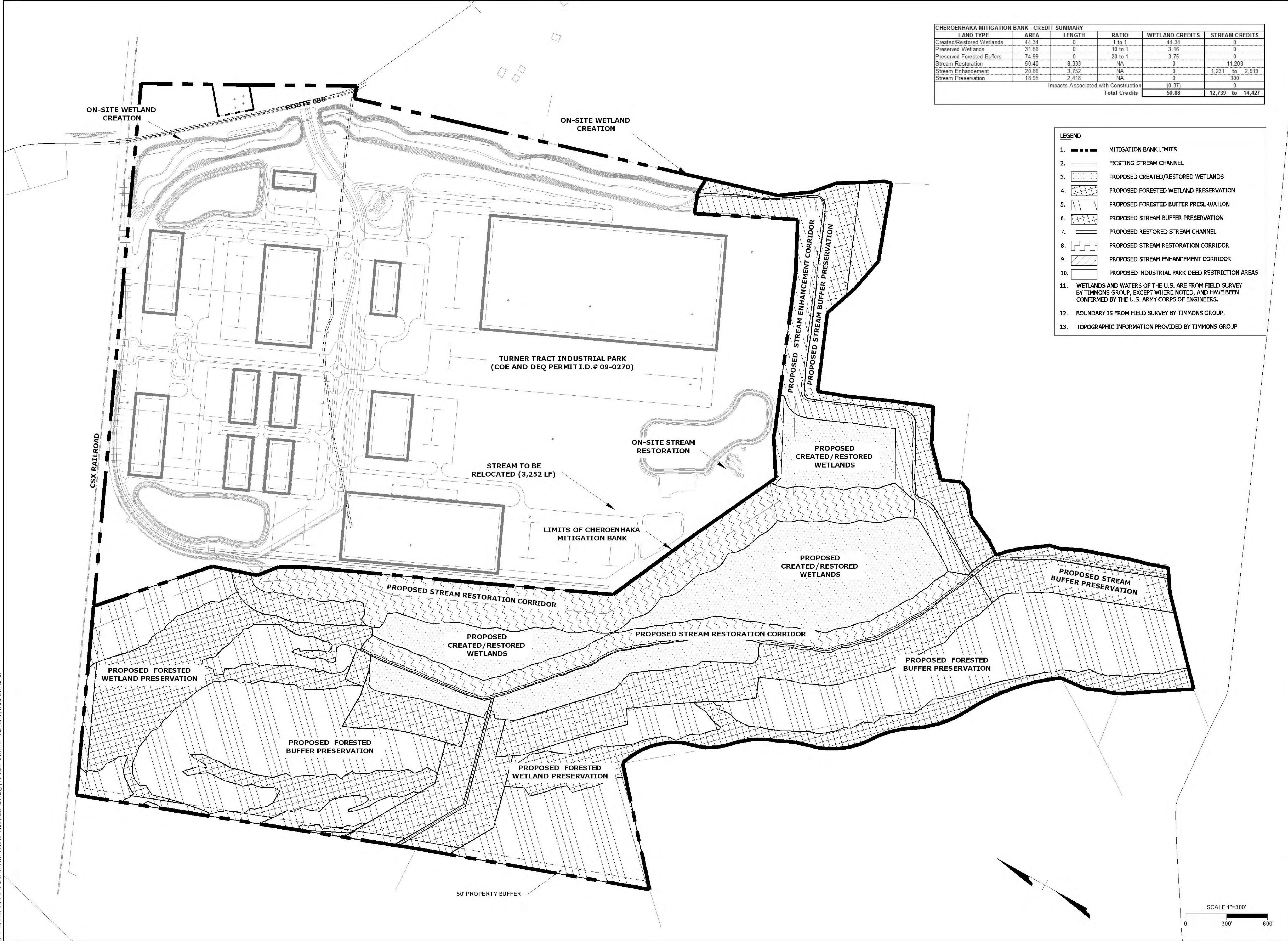


U.S.G.S. QUADRANGLES: FRANKLIN

NOTTOWAY WATERSHED (HUC 03010201)

EXHIBIT B: INITIAL PHASE PLAN

O:\2712\DWG\Sheet\chb\CRAWLING 5 CREDIT ANALYSIS 010510.dwg | Plotted on 11/22/2010 11:30 AM | by Rebecca Crasler



CHEROENHAKA MITIGATION BANK - CREDIT SUMMARY					
LAND TYPE	AREA	LENGTH	RATIO	WETLAND CREDITS	STREAM CREDITS
Created/Restored Wetlands	44.34	0	1 to 1	44.34	0
Preserved Wetlands	31.56	0	10 to 1	3.16	0
Preserved Forested Buffers	74.99	0	20 to 1	3.75	0
Stream Restoration	50.40	8,333	NA	0	11,208
Stream Enhancement	20.66	3,752	NA	0	1,231 to 2,919
Stream Preservation	18.95	2,418	NA	0	300
Impacts Associated with Construction				(0.37)	0
Total Credits				50.88	12,739 to 14,427

- LEGEND
1. --- MITIGATION BANK LIMITS
 2. --- EXISTING STREAM CHANNEL
 3. [Pattern] PROPOSED CREATED/RESTORED WETLANDS
 4. [Pattern] PROPOSED FORESTED WETLAND PRESERVATION
 5. [Pattern] PROPOSED FORESTED BUFFER PRESERVATION
 6. [Pattern] PROPOSED STREAM BUFFER PRESERVATION
 7. --- PROPOSED RESTORED STREAM CHANNEL
 8. [Pattern] PROPOSED STREAM RESTORATION CORRIDOR
 9. [Pattern] PROPOSED STREAM ENHANCEMENT CORRIDOR
 10. [Pattern] PROPOSED INDUSTRIAL PARK DEED RESTRICTION AREAS
 11. WETLANDS AND WATERS OF THE U.S. ARE FROM FIELD SURVEY BY TIMMONS GROUP, EXCEPT WHERE NOTED, AND HAVE BEEN CONFIRMED BY THE U.S. ARMY CORPS OF ENGINEERS.
 12. BOUNDARY IS FROM FIELD SURVEY BY TIMMONS GROUP.
 13. TOPOGRAPHIC INFORMATION PROVIDED BY TIMMONS GROUP

EXHIBIT C: MITIGATION SITE PLAN

EXHIBIT C
CHEROENHAKA WETLAND AND STREAM BANK
MITIGATION SITE PLAN

- A. Introduction: This Mitigation Site Plan has been developed in accordance with the Cheroenhaka Wetland and Stream Mitigation Bank Mitigation (hereinafter the “Bank”) Banking Instrument (hereinafter the “MBI”) and will provide general guidelines and responsibilities for the establishment, use, operation, and maintenance of the first phase of the Cheroenhaka Wetland and Stream Mitigation Bank (hereinafter, the “Bank Site”). Bunrootis, LLC, the Bank Sponsor, proposes to establish this Bank Site on an approximately 240.9 acres of a 492.2-acre parcel located in Southampton County, Virginia. A vicinity map showing the property boundary is included as Exhibit A: Vicinity Map of the MBI.

The purpose of the Bank is to provide offsite compensation for the unavoidable loss of streams, wetlands, and their functions as a result of unavoidable aquatic resource impacts resulting from development projects authorized under Section 401 and 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act and Section 62.1-44.15:20-23 of the Code of Virginia provided such activities have met all applicable requirements and are authorized by the appropriate agencies.

The Bank will be planned and designed in phases with one phase having been identified to date. Phase I, as shown in Exhibit B of the MBI, is established to provide Mitigation to compensate for impacts to Waters of the United States and/or State Waters, within the service area depicted on the excerpt of the USGS Hydrologic Unit Map included as Exhibit E of the MBI. Additional parcels may be contracted for purchase and proposed for inclusion in the Bank by the Bank Sponsor by submission of a concept plan, including the proposed service area for that phase, to the IRT.

- B. Overall Site Plan: The Bank Site is part of a large development plan referred to as the Turner Tract property. The Turner Tract property is approximately 492.2 acres in size and zoned M-2 for light industrial uses. Since this property is rail accessible, the County intends to develop approximately 251.3 acres of the site into an industrial complex (accommodating nearly 2.2 million square feet of gross floor area) proposed for port related activities while facilitating the Sponsor’s establishment of the Bank on approximately 240.9 acres.

The Master Plan for the Turner Tract property incorporates an overall Stormwater Management Plan (included as Exhibit 1).

- C. Mitigation Project Goals and Objectives: The goal of the Bank is to establish created/restored wetlands; restore streams; and preserve self-sustaining, functional stream and wetland corridors including the preservation of wetlands and forested upland buffers. Some of the targeted functions include wildlife habitat, water quality, and flood conveyance and storage. The Bank Site is anticipated to restore, enhance,

and preserve unnamed tributaries to the Nottoway River, adjacent floodplain, forested wetlands, and riparian buffers which have been degraded through historical land use practices. In the late 1930s, the onsite streams were straightened wetland areas that were drained by outfitting the site with a series of ditches and drainage tiles so the site would be more suitable for crop production of soybean, peanut, and cotton which is prevalent within this watershed. Improvements to streams and wetlands within the Bank will greatly enhance the existing drainage basin and the quality of water flowing to the Nottoway River.

The Bank Sponsor proposes to restore 8,333 linear feet, enhance 3,752 linear feet of unnamed perennial tributary streams to the Nottoway River that flow through the property. Restoration and enhancement modifications may include but are not limited to Natural Channel Design techniques, channel cross section and pattern alterations, bank stabilization and bioengineering techniques, grade control and in-stream structures, and establishment and/or preservation of native forested riparian buffers.

Wetland restoration and creation activities are proposed to include the restoration/creation of forested riparian wetlands and the preservation of existing mature PFO wetlands. Approximately 44 acres of wetlands will be restored/created by methods including but not limited to grading, invasive species removal and control, reforestation, and the removal of direct anthropogenic alterations (e.g., ditching, drain tiling). The wetland creation plan will utilize grading to encourage surface soil horizon access to shallow groundwater resources and known onsite groundwater discharge features (seeps and springs). Potential to interrupt the connectivity of currently functioning groundwater drainage structures (i.e. terra cotta drain tiles) may provide further opportunity to facilitate wetland creation and provide hydrology for enhancement efforts. Additional field and research efforts to characterize the presence and extent of these onsite drainage features will be an integral part of the feasibility and design phase of the Bank.

Additionally, approximately 32 acres of forested wetlands, 75 acres of mature forested buffers, and 2,418 linear feet of stream channel are proposed to be preserved as part of the Mitigation Plan.

- D. Site Selection: The hydrology of the Bank Site has historically been altered in order to produce more suitable farmland for the production of crops. Onsite streams were straightened, ditches were dug and the site was outfitted with a series of drainage tiles to drain areas of hydric soils. These conditions offer great opportunity for creating/restoring wetlands and restoring streams and are ideal in establishing self-sustaining, functional stream and wetland corridors including the preservation of wetlands and forested upland buffers.

The Virginia Conservation Lands Needs (VCLNA) Model, developed by the Virginia Department of Conservation and Recreation (DCR), was reviewed to assess how vulnerable the Bank Site is to potential growth (see enclosed Exhibit 2: Overall Vulnerability Map). The Vulnerability model was created to anticipate urban,

suburban, and rural growth in Virginia. It is intended to demonstrate potential future land use change to a higher density condition by predicting growth patterns. Regions are color coded to indicate threat/vulnerability to development with '1' representing the lowest threat and '8' representing the highest. The Bank Site was rated a '6/7,' which is a moderately high threat area. The proposed Mitigation Plan and the associated preservation mechanisms will preserve the Bank Site in perpetuity, thus eliminating the threat of development to this 253-acre parcel of land.

The location of this Bank Site will provide compensatory mitigation options to counties within Virginia which are vulnerable for high growth in the state. The primary Geographic Service Area (GSA) for this Bank Site is located within the Nottoway Watershed as defined by Hydrologic Units Code (HUC) 03010201. The proposed secondary GSA would include HUCs adjacent to the primary service area. This includes HUCs from the Meherrin, and Blackwater River watersheds including all or a portion of the following cities and counties: Dinwiddie, Prince George, Prince Edward, Nottoway, Mecklenburg, Lunenburg, Brunswick, Greenville, Isle of Wright, Sussex, Southampton, and Surry within Hydrologic Unit Codes 03010202, 03010203, and 03010204. A HUC map illustrating the Geographic Service Area of the proposed project is included as Exhibit E: Service Area Map of the MBI.

- E. Site Protection Instrument: The Bank Sponsor will record a restrictive covenant, easement, or similar protection agreement for the Bank by amendment. This agreement may also be transferable to an acceptable conservation organization upon fulfillment of project objectives with Bank Site ownership remaining with the titled owner. The Bank Sponsor will provide for the perpetual protection and preservation of the Bank Site through maintenance agreements, restrictive covenants or conservation easements. These provisions will conform to the current Norfolk District, COE guidance with language to allow for road easements, road/bridge crossings, hike/bike trails, and other activities. Each real estate instrument used must be approved by the IRT.

Consistent with the conditions of the MBI, a protective agreement, conservation easement or declaration of restrictive covenants will be recorded prior to the sale of any credits to assure preservation of these lands in perpetuity. Copies of documents of long term protection measures will be sent to the IRT. The approved and debited credits in the Bank Site will be retained in perpetuity by the Bank Sponsor.

- F. Baseline Information: Historically, the majority of the Bank Site has been cultivated for at least 100 years. In the late 1930s, the onsite streams were straightened, ditches were dug and the site was outfitted with a series of drainage tiles to drain areas of hydric soils and gain farmable land. The Site has been used for growing soybean, peanut, and cotton crops and a no-till management plan has been in place; however, after harvest, the Site has been sprayed with a weed control spray. Frequent fertilization of the fields have resulted in algal blooms in the streams.

The remainder of the Site, typically along the southwestern site boundary, consists of a mixture of upland and wetland wooded areas.

A wetland delineation of the was conducted by Timmons Group to indentify the presence and location of jurisdictional wetlands and other waters of the U.S. (WUS) in accordance with the guidance provided by the U.S. Army Corps of Engineers (COE) 1987 Delineation Manual and subsequent issued COE guidances. The COE confirmed the wetland delineation with a wetland and stream verification issued on December 13, 2006 (COE #NAO-2006-6650). A copy of the confirmation letter is enclosed as Exhibit 3.

The Bank Site is located southeast of the confluence of the Nottoway River and Nottoway Swamp. The proximity to this confluence is a probable explanation for the broad range in soil characteristics observed across the site. The soils onsite were formed from loamy and/or sandy alluvium and marine deposits. The parent material and method of deposition were observed as stratified horizons of alternating textures in the soil profiles assessed onsite.

The soils within the Bank Site are mapped as Bojac loamy sand (5B), Munden loamy sand (15A), Nimmo sandy loam (19A), Roanoke loam (23A), Seabrook loamy sand (25A), Tarboro loamy sand (28B), and Tomotley sandy loam (29A). The observed onsite were characterized by loam; sand; or clay loam and silty clay loam. The soils observed during the onsite field investigation were mostly consistent with the Soil Survey mapping.

The Soil Survey maps (as shown on Exhibit 4: Environmental Inventory Map) the following soils onsite:

- Bojac loamy sand (5B), 2 to 6 percent slopes, very rarely flooded, well drained, Hydrologic Soil Group B. The Bojac loamy sand mapping unit is listed as containing a one percent (1%) hydric component of the Tomotley series in depressions on stream terraces and drainageways on stream terraces.
- Munden loamy sand (15A), 0 to 2 percent slopes, rarely flooded, moderately well drained, Hydrologic Soil Group B. The Munden loamy sand mapping unit is listed as containing a two percent (2%) hydric component of the Nimmo series on stream terraces; and a one percent (1%) hydric component of the Tomotley series in depressions on stream terraces and drainageways on stream terraces.
- Nimmo sandy loam (19A), 0 to 2 percent slopes, poorly drained, Hydrologic Soil Group D. The Nimmo sandy loam mapping unit is listed as eighty percent (80%) hydric on stream terraces. It is also listed as containing a two percent (2%) hydric component of the Roanoke series on flood plains and stream terraces; and a one percent (1%) hydric component of the Tomotley series in depressions on stream terraces and drainageways on stream terraces.
- Roanoke loam (23A), 0 to 2 percent slopes, occasionally flooded, poorly drained, Hydrologic Soil Group D. The Roanoke loam mapping unit is listed as ninety five percent (95%) hydric on flood plains and stream terraces. It is also listed as

containing a one percent (1%) hydric component of Chastain, frequently flooded on floodplains; a one percent (1%) hydric component of the Dorovan series in swamps and on flood plains; a one percent (1%) hydric component of the Myatt series in depressions and drainageways on marine terraces; and a one percent (1%) hydric component of the Tomotley series in depressions on stream terraces and drainageways on stream terraces.

- Seabrook loamy sand (25A), 0 to 2 percent slopes, moderately well drained, Hydrologic Soil Group C.
- Tarboro loamy sand (28B), 0 to 6 percent slopes, somewhat excessively drained, Hydrologic Soil Group A. The Tarboro loamy sand mapping unit is listed as containing a two percent (2%) hydric component of the Nimmo series on stream terraces.
- Tomotley sandy loam (29A), 0 to 2 percent slopes, rarely flooded, poorly drained, Hydrologic Soil Group B/D. The Tomotley sandy loam mapping unit is listed as ninety percent (90%) hydric in depressions and drainageways on stream terraces. It is also listed as containing a one percent (1%) hydric component of Chastain, frequently flooded on floodplains; a one percent (1%) hydric component of the Dorovan series in swamps and on flood plains; a one percent (1%) hydric component of the Nimmo series on stream terraces; and a one percent (1%) hydric component of the Roanoke series on flood plains and stream terraces.

The natural drainage class referred to in the Soil Survey Manual is the frequency and duration of wet periods similar to the conditions under which the soil formed. The Soil Survey doesn't consider alterations of the water regime by human activities, either through drainage or irrigation, unless they have significantly changed the morphology of the soil. The seven recognized classes of natural soil drainage are: excessively drained, somewhat excessively drained, well drained, moderately well drained, somewhat poorly drained, poorly drained, and very poorly drained.

Hydrologic soil groups are based on estimates of runoff potential. Soils are assigned to four groups (A, B, C, and D) and three dual classes (A/D, B/D, and C/D) according to the rate of water infiltration when the soils are not protected by vegetation, are thoroughly wet, and receive precipitation from long-duration storms. These groups are defined below:

Group A soils have a high infiltration rate when thoroughly wet and therefore have a low runoff potential. These consist mainly of deep, well drained to excessively drained sands or gravelly sands, and have a high rate of water transmission.

Group B soils have a moderate infiltration rate when thoroughly wet. These consist of moderately deep or deep, moderately well drained or well drained soils that have moderately fine texture to moderately coarse texture. These soils have a moderate rate of water transmission.

Group C soils have a slow infiltration rate when thoroughly wet and have a slow rate

of water transmission. These consist mainly of soils with a layer that impedes the downward movement of water or soils of moderately fine to fine texture.

Group D soils have a very slow infiltration rate when thoroughly wet and therefore have a high runoff potential, and a very slow rate of water transmission. These consist chiefly of clays that have a high shrink-swell potential, soils that have a high water table, soils that have a claypan or clay layer at or near the surface, and soils that are shallow over nearly impervious material.

Dual hydrologic groups (A/D, B/D, or C/D) are soils with a very slow rate of water transmission that have been manipulated by human activity and drained. The first letter refers to drained areas while the second refers to undrained areas. Only soils that are in group D in their natural condition are assigned to dual classes.

- G. Determination of Credits: In accordance with the provisions of the MBI and upon satisfaction of the success criteria specified therein, mitigation credits determined in accordance with Exhibit D of the MBI will be available to be used as mitigation in accordance with all applicable requirements for permits issued under Sections 401 and 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act and Section 62.1-44.15:20-23 of the Code of Virginia. The number of credits available will be determined based upon the final approved design and in accordance with the terms and conditions contained in the MBI.

Based on the methodologies described in Exhibit D of the MBI and the current Initial Phase Plan (Exhibit B of the MBI), 50.88 wetland credits and 12,739 to 14,427 stream credits are anticipated to result from this Mitigation Site Plan. The Compensation Crediting Form of the Unified Stream Methodology was used to calculate the anticipated stream credits (copies are enclosed as Exhibit 5: Compensation Crediting Forms). Please note that there are two forms for Stream Reach 3:

- Reach 3A credits are based on preservation of the left bank riparian buffer and planting of a riparian buffer on the right bank.
- Reach 3B potential credits will be assessed during the 3rd monitoring year when the IRT will review the monitoring data and field conditions to determine if stream enhancement with structures and/or bankfull bench construction is warranted.

- H. Mitigation Work Plan: The Sponsor shall submit a Mitigation Work Plan to the IRT for each phase of the Bank and obtain approval by the IRT (in accordance with the MBI) prior to commencement of construction activities.

The Mitigation Work Plan shall include, at a minimum for streams:

1. Cover Sheet.
2. Project Narrative, including a summary of the:
 - a. Nature of the stream restoration concept;

- b. Goals and objectives of restoration;
 - c. Restoration and enhancement activities; and
 - d. Construction impacts.
- 3. Hydrologic/Hydraulic Analyses
 - a. Results of hydrologic modeling of the watershed to verify design flow rates.
 - b. Results of hydraulic modeling of the existing and proposed reaches.
- 4. Design Parameter Summary, which may include:
 - a. Geomorphologic measurements of reference reach and existing and proposed design reach; and
 - b. Proposed restoration and enhancement measures, including both structural and non-structural components.
- 5. Credit Analysis utilizing the Unified Stream Methodology.
- 6. Grading Plan and Profile.
- 7. Structure Details.
- 8. Erosion and Sediment Control Plan.
- 9. Planting Plan.
- 10. Monitoring and Maintenance Plan.

The Mitigation Work Plan shall include, at a minimum for wetlands:

- 1. Cover Sheet.
- 2. Project Narrative, including a summary of the:
 - a. Nature of the wetland mitigation concept;
 - b. Goals and objectives of restoration;
 - c. Restoration and enhancement activities; and
 - d. Construction impacts.
- 3. Credit Analysis.
- 4. Grading Plan at a scale of 1"=50' and providing 0.5 ft contour intervals in wetland restoration areas, or at a more detailed scale. Plans shall use the correct vertical datum, NOS in tidal mitigation areas and NGVD 88 in non-tidal areas.
- 5. Erosion and Sediment Control Plan.
- 6. Waterbudget for a typical, wet, and dry year that includes, on a monthly basis:
 - a. Inputs
 - i. Precipitation
 - ii. Infiltration
 - iii. Surface Flow Runoff
 - b. Outputs
 - i. Evapotranspiration
 - ii. Exfiltration
 - iii. Spillway Outflow
- 7. Planting Plan depicting or listing expected zonation (i.e., POWZ, PEM, PSS, and PFO).
- 8. Vegetation schedule with plants and seeds selected based on habitat value and projected water elevation and duration. Said schedule shall include:
 - a. Species;

- b. Wetland indicator status as specified in the current version of the *National List of Plant Species That Occur in Wetlands: Northeast (Region 1)*
 - c. Plant size and spacing;
 - d. Wildlife value assessment.
 - e. The vegetation shall primarily comprise of a herbaceous wetlands seed mix (at least ten (10) native species commonly found in the region) to reflect the expected community type during the initial growth years of tree and shrub seedlings. Bare root tree seedlings and shrubs shall be randomly planted in restoration areas.
9. Monitoring and Maintenance Plan.

- I. Maintenance Plan: The Bank Sponsor agrees to perform all necessary maintenance to ensure the continued viability of the Bank Site once initial construction is complete. The need to perform maintenance will be assessed during monitoring visits, and if deemed necessary, the appropriate required maintenance will be determined at that time. The need for maintenance activities will be based upon the degree to which the Success Criteria in Part V E have been met. Likely maintenance activities may include replanting riparian vegetation and adjustment/repair of installed structures. However, in the event certain design parameters fall outside ranges contained in the MBI, the IRT may waive the requirement for adaptive management if there is sufficient justification to show that even though success criteria may not be met, the mitigation goals and objectives are being achieved. For example, if not all stream success criteria are achieved but the stream is still assessed as being stable and successful. Likewise, if a restored reach is judged to be unstable even though specific success criteria have been met, some adaptive management may be required by the IRT.

At a minimum the monitoring site visits will occur once prior to the start of the growing season and once during the growing season to collect data for the monitoring report. Additional monitoring events will occur after large storm events to validate bankfull events and to reset bankfull gages, as necessary.

- J. Performance Standards: All terms and conditions set forth in Section V.E of the MBI remain in effect.
- K. Monitoring Requirements: The Sponsor agrees to perform the work specified in the MBI to monitor the Bank to demonstrate compliance with the Success Criteria established in the MBI. Monitoring may be terminated or the extent of monitoring may be reduced over part or all of the site at the discretion of the IRT. Monitoring shall take place in accordance to Section VI.B of the MBI (Monitoring Provisions).
- L. Long-Term Management Plan: The Sponsor will prepare a description of how the mitigation project will be managed after performance standards have been achieved to ensure the long-term sustainability of the resource, including long-term financing mechanisms and the party responsible for long-term management.

The Sponsor shall develop a Long-Term Management and Maintenance Plan within one (1) year of the approval of the MBI and this Mitigation Site Plan by the Chair that is consistent with the guidelines outlined in the MBI, and submit the Plan for approval by the Chair, in consultation with the other members of the IRT. The Sponsor is responsible for execution of the approved Long-Term Management and Maintenance Plan. The Sponsor may only deviate from the approved Plan upon written approval of the Chair, following consultation with the IRT.

The Long-Term Management and Maintenance Plan will contain specific objectives that address the long-term management of the Bank Site. The Long-Term Steward will document that it is achieving each objective or standard by submitting status reports to the IRT on a schedule approved by the IRT. A primary goal of the Bank is to create a self-sustaining natural aquatic system that achieves the intended level of aquatic ecosystem functionality with minimal human intervention, including long-term site maintenance. Natural changes to the vegetative community, other than changes caused by non-native/invasive weeds, that occur after all Bank performance standards have been met are not expected to require remediation.

The Long-Term Management Plan will include as appropriate the following provisions for:

1. Periodic patrols of the Bank Site for signs of trespass and vandalism. Maintenance will include reasonable actions to deter trespass (*e.g. mark property boundaries and post "No trespass"*) and repair vandalized Bank features (*e.g. collect and dispose of rubbish including "white goods" and roofing shingles*).
2. Monitoring the condition of structural elements and facilities of the Bank Site such as signage, fencing, roads, and trails. The Long-Term Management and Maintenance Plan will include provisions to maintain and repair these improvements as necessary to achieve the objectives of the Bank and comply with the provisions of the real estate instrument providing protection to the site. Improvements such as access roads, berms, or water control structures that are no longer needed to facilitate or protect the ecological function of the Bank Site may be removed or abandoned if consistent with the terms and conditions of the recorded real estate instrument.
3. Inspection biannually of those areas of the Bank Site prone to establishment of invasive Species. Any invasive plant species discovered on the Bank Site and occupying more than 5% cover in any given cell, field, or block shall be controlled. In the event the IRT determines that the watershed or drainage basin within which the Bank is located becomes infested with these species in the future, so that their effective control on the Mitigation Bank Site is either no longer practicable or unreasonably expensive, the IRT will consider appropriate changes to the Long-Term Management Plan.

Funds from the Catastrophic Event and Long-Term Management Fund may be used to pay the cost of activities (1) through (3) above.

Upon execution of a long-term management and maintenance assignment agreement, the transfer of the contents of the Catastrophic Event and Long-Term Management Fund, the transfer of management responsibility for the Bank Site to the Long-Term Steward, and upon satisfaction of the remaining requirements for bank closure under Section VI.H of the MBI, the Sponsor shall be relieved of all further long-term management and maintenance responsibilities under the MBI.

- M. Adaptive Management Plan: The Sponsor agrees to perform the work to maintain the Bank consistent with the Maintenance Plan (see Paragraph I, above) and Maintenance and Monitoring Provisions of the MBI (Section VI.A-B). After all success criteria have been met, it shall be the responsibility of the Long-Term Steward to be responsible for managing the bank in perpetuity in accordance with the terms of the Long-term Management and Maintenance Plan as outlined in Section VI.I-J of the MBI.
- N. Financial Assurances: For the advance release of credits (not to exceed 15% of the total number of credits that could be derived from this site) the Sponsor agrees to provide adequate financial assurances (e.g. escrow agreement, performance bond) to ensure that aquatic resources will be restored or established on Site. The amount of the financial assurances should be sufficient to acquire replacement compensatory mitigation through an approved bank or in-lieu fee program in the event of a default (see also Part V. F1 of the MBI). Release of funds from this financial assurance will be recommended by the IRT once it has reviewed and approved the annual monitoring report which demonstrates that success criteria have been met for the type of credits previously released (i.e. stream or wetland). Complete release of the financial assurances may only occur if the submitted report demonstrates that sufficient area met the specific success criteria (as stated herein) to offset the advanced release of credits.

EXHIBIT 1: STORMWATER MANAGEMENT PLAN

LEGEND

1. PARCEL LIMITS (492.3 AC)	7. PROPOSED FORESTED BUFFER PRESERVATION	13. PROPOSED FORESTED WETLAND IMPACTS (0.30 AC)
2. INDUSTRIAL PARK LIMITS (253.9 AC)	8. PROPOSED STREAM RESTORATION	14. PROPOSED OPEN WATER IMPACTS (0.30 AC)
3. GPS LOCATED FARMED WETLANDS (0.59 AC)	9. PROPOSED DITCH IMPACTS (958 LF)	15. PROPOSED LID SYSTEM
4. EMERGENT WETLANDS (0.63 AC)	10. PROPOSED STREAM IMPACTS (3,006 LF)	16. PROPOSED BMP-RETENTION SYSTEM
5. CHEROENHAKA WETLAND AND STREAM MITIGATION BANK (238.4 AC)	11. PROPOSED FARMED WETLAND IMPACTS (3.28 AC)	17. BMP DRAINAGE BOUNDARY
6. PROPOSED FORESTED WETLAND PRESERVATION	12. PROPOSED EMERGENT WETLAND IMPACTS (3.23 AC)	

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EXHIBIT 2: OVERALL VULNERABILITY MAP

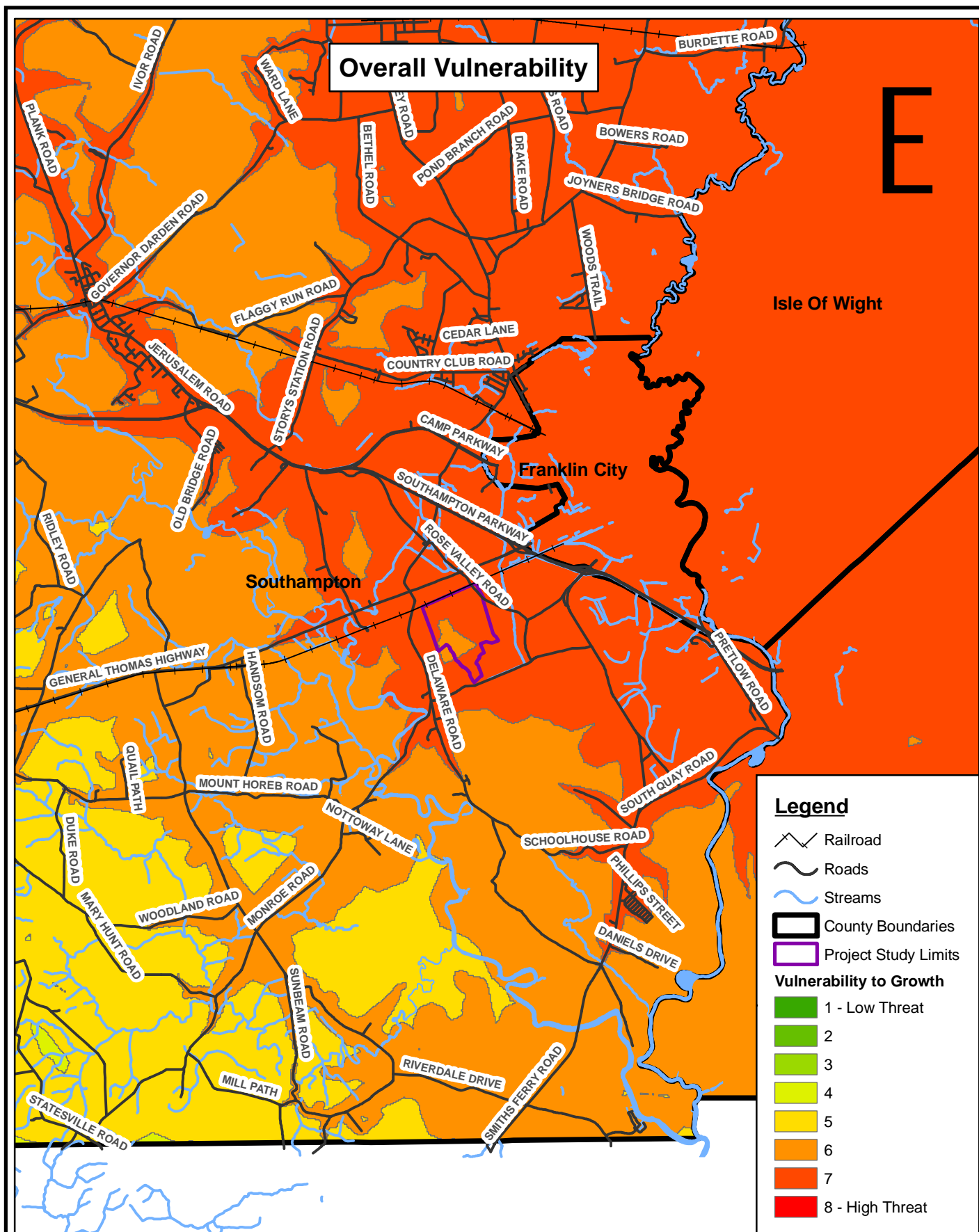


EXHIBIT 3: WETLAND CONFIRMATION



Project Number: NAO-2006-6650

Waterway: Nottoway River

Participant:

Southampton County
c/o Timmons Group
1001 Boulders Parkway, Suite 300
Richmond, VA 23225

2. Authorized Agent:

Timmons Group
1001 Boulders Parkway, Suite 300
Richmond, VA 23225
Attn: Ben Virts

3. Address of Job Site:

A 492 acre parcel known as the Turner Tract, located on Rt 688, south and west of the intersection of Routes 671 and 688 in Southampton County, Virginia

4. Project Description:

You requested confirmation of a wetland delineation on this 492+/- acre property.

5. Findings

On November 20, 2006, Steven Martin of my staff met with representatives of Timmons Group to refine a delineation of this property including the farmed portions of this property. The location and extent of wetlands and channelized streams are accurately flagged in the field and accurately depicted on the drawing entitled "*Wetland Delineation Map, Turner Tract, Southampton County, Virginia*" prepared by Timmons Group, dated 4/14/05 and revised on 11/28/06 (copy attached). These channelized streams and many of the emergent wetland areas are used to convey agricultural runoff. Review of multiple years of aerial photography as well as onsite review indicates that many of these features were developed by channelization of streams and/or wetlands. Our basis for this determination is the application of the Corps' 1987 Wetland Delineation Manual and the positive indicators of wetland hydrology, hydric soils, and hydrophytic vegetation. The channelized streams on site have an ordinary high water mark.

Any mechanized landclearing that disturbs the soil surface, such as with a bulldozer or root rake, or any filling/excavation in the wetlands or streams on this site may require a permit from the Corps. The Virginia Department of Environmental Quality (DEQ) has independent authority over activities in wetlands and streams and should be contacted to ascertain what permits may be required prior to undertaking such activities.

This wetland and stream delineation verification is valid for five years from the date of this letter unless new information warrants revision of the delineation before the expiration date. This letter does not authorize the placement of dredged or fill material or mechanized land clearing in wetlands.

Copy Furnished:

DEQ, Virginia Beach
Southampton Building and Zoning, Courtland
NRCS, Courtland

6. Corps Contact: Steven Martin at (757) 201-7787.

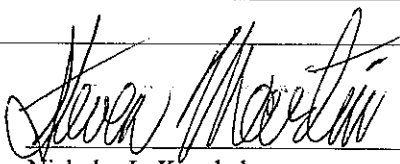

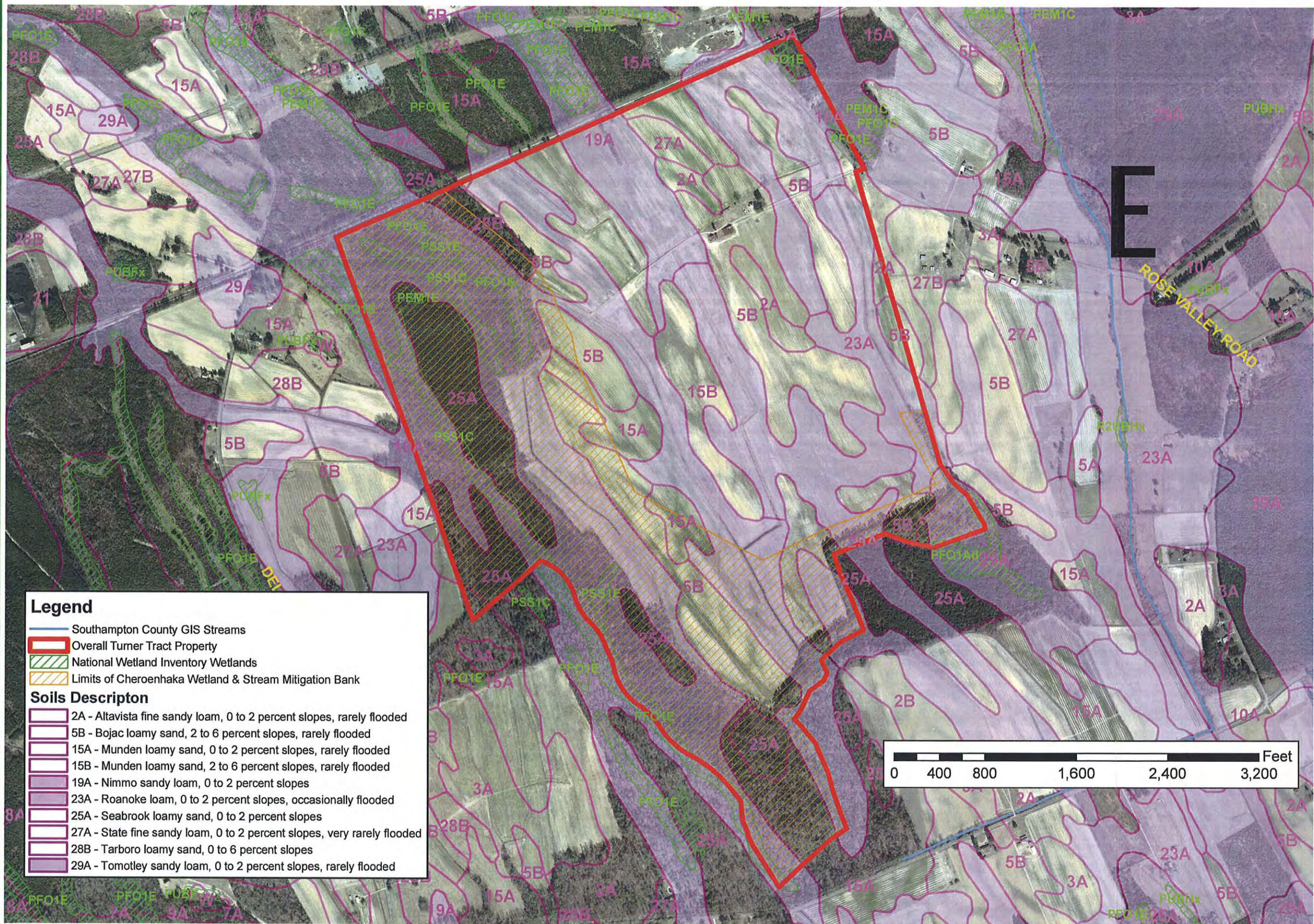

for 
Nicholas L. Konchuba
Chief, Eastern Virginia
Regulatory Section

EXHIBIT 4: ENVIRONMENTAL INVENTORY MAP

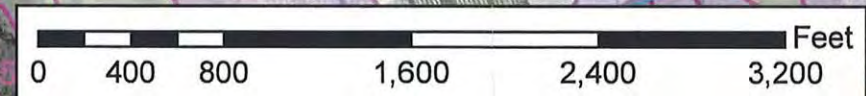


Legend

- Southampton County GIS Streams
- Overall Turner Tract Property
- National Wetland Inventory Wetlands
- Limits of Cherokeehaka Wetland & Stream Mitigation Bank

Soils Descripton

- 2A - Altavista fine sandy loam, 0 to 2 percent slopes, rarely flooded
- 5B - Bojac loamy sand, 2 to 6 percent slopes, rarely flooded
- 15A - Munden loamy sand, 0 to 2 percent slopes, rarely flooded
- 15B - Munden loamy sand, 2 to 6 percent slopes, rarely flooded
- 19A - Nimmo sandy loam, 0 to 2 percent slopes
- 23A - Roanoke loam, 0 to 2 percent slopes, occasionally flooded
- 25A - Seabrook loamy sand, 0 to 2 percent slopes
- 27A - State fine sandy loam, 0 to 2 percent slopes, very rarely flooded
- 28B - Tarboro loamy sand, 0 to 6 percent slopes
- 29A - Tomotley sandy loam, 0 to 2 percent slopes, rarely flooded



TIMMONS GROUP

THIS DRAWING PREPARED AT THE
CORPORATE OFFICE

1001 Boulders Parkway, Suite 300 | Richmond, VA 23225
TEL 804.200.6500 FAX 804.560.1016 www.timmons.com

CHEROENHAKA WETLAND AND STREAM MITIGATION BANK

SOUTHAMPTON COUNTY, VIRGINIA

ENVIRONMENTAL INVENTORY MAP

PROJECT STUDY LIMITS
FROM TIMMONS GROUP
AERIAL IMAGE FROM
USDA/NAIP DATED 2003

DATE
1/20/09

DRAWN BY
D.A.

SCALE
1" = 800'

JOB NO.
27127

EXHIBIT 5: COMPENSATION CREDITING FORMS

Compensation Crediting Form (Form 3)

Unified Stream Methodology for use in Virginia

Project #	Project Name	Locality	Cowardin Class.	HUC	Date	Reach #	Reach Length	
27127	27127CHEROENHAKA MIT. BANK					1	3975	
Name(s) of Evaluator(s)		Stream Name and Information						
		STREAM 1- RESTORATION						
								Project Credits
Restoration: Includes Priority 1, 2, and 3 restoration activities. Does not include buffer width.								Credit per foot
List Reaches that will receive full Restoration:								3975
Total length of Full Restoration								1
Credits = Stream Length X 1.0								
Enhancement With Instream Structures: Addressing Streambank Stability, Grade Control (Vaness, Weirs, Step-Pools), Constructed Riffles								Credit per foot
Discuss Length Affected by Instream Structures (justify length):								0.3
Length Affected by Instream Structures								0
Credits = Stream Length X 0.3								
Enhancement: Addressing Streambank Stability, Entrenchment Ratios, Access to Floodplain								
Mitigation Categories								
	Mechanical Bank Work			Biological Bank Work				
	Credit Per Structure	Pick One Per Length			May Be Cumulative Per Length			
Activities	Habitat Structures	Create Bankfull Bench	Lay Back Banks	Bio-Remediation Techniques	Stream Bank Plantings ONLY			
Credit per foot per	0.1	0.15	0.1	0.1	0.09			
Right Bank	Length						0	
	Credit>							
Left Bank	Length						0	
	Credit >							
CREDITS								
Rt Bank >								0.00
Lt Bank >								0.00
SUM of banks								0
Σ (Length X Credit) for all areas (banks done separately)								
Riparian Areas: Assess the proposed 100 foot buffer on both banks based on the activity proposed. Enter the percentage of area and the credit below. (Widths of buffer above 100' will be determined below)								
Activities	Buffer Re-establishment (removal of invasives)	Buffer Planting - Heavy	Buffer Planting - Light	Preservation ONLY. No work proposed High Quality	Preservation ONLY. No work proposed Low Quality	Buffer area not within preservation width but within the first 100'		
Credit for inner 100'	0.4	0.38	0.29	0.14	0.07	0		
Credit for outer 100'	0.2	0.19	0.15	0.07		0		
Calculation of "Goal" riparian buffer for each side (SAR length times 100') >>>>				397,500 square feet				
Insert area in square feet for a given activity: 16250				Percentage of "Goal">>>> 4.09%				
WITHIN FIRST 100' - Mitigation Categories								
Missing one vegetative community				Subtract 0.03	Ensure the sums of % Riparian Blocks equal 100			
Missing two vegetative communities				Subtract 0.06				
Right Bank	% Area	95%					95%	
	Credit>	0.14						
Left Bank	% Area	99%					99%	
	Credit >	0.38						
CREDITS								
Rt Bank >								0.13
Lt Bank >								0.38
Σ (% Area X Credit) for all areas (banks done separately) AVE of credit for banks X length of project								1012.04
WITHIN SECOND 100' - Mitigation Categories								
Missing one vegetative community				Subtract 0.03	Ensure the sums of % Riparian Blocks equal 100			
Missing two vegetative communities				Subtract 0.06				
Right Bank	% Area	95%					95%	
	Credit>	0.07						
Left Bank	% Area						0%	
	Credit >							
CREDITS								
Rt Bank >								0.07
Lt Bank >								0.00
Σ (% Area X Credit) for all areas (banks done separately) AVE of credit for banks X length of project								159
Adjustment Factors: These factors are applied as a multiplier to length of a reach for which they apply								
Adjustment Factor Categories								
Activity	Rare, Threatened, or Endangered Species or Communities	Livestock Exclusion	Watershed Preservation					
Credit	0.1 - 0.3	0.1 - 0.3	0.1 - 0.3					
Credits are cumulative and can apply to more than one reach. Each reach can have more than one Adjustment Factors								
Stream Length Affected								
Credit>								
Credits >								0
Σ (Length X Credit) for all areas								
Total Compensation Credit Provided by Project								5146

Compensation Crediting Form (Form 3)

Unified Stream Methodology for use in Virginia

Project #	Project Name	Locality	Cowardin Class.	HUC	Date	Reach #	Reach Length	
27127	27127CHEROENHAKA MIT. BANK					2	4358	
Name(s) of Evaluator(s)		Stream Name and Information						
		STREAM 2- RESTORATION						
								Project Credits
Restoration: Includes Priority 1, 2, and 3 restoration activities. Does not include buffer width.								Credit per foot
List Reaches that will receive full Restoration:								4358
Total length of Full Restoration								1
Credits = Stream Length X 1.0								
Enhancement With Instream Structures: Addressing Streambank Stability, Grade Control (Vaness, Weirs, Step-Pools), Constructed Riffles								Credit per foot
Discuss Length Affected by Instream Structures (justify length):								0.3
Length Affected by Instream Structures								0
Credits = Stream Length X 0.3								
Enhancement: Addressing Streambank Stability, Entrenchment Ratios, Access to Floodplain								
Mitigation Categories								
	Mechanical Bank Work			Biological Bank Work				
	Credit Per Structure	Pick One Per Length			May Be Cumulative Per Length			
Activities	Habitat Structures	Create Bankfull Bench	Lay Back Banks	Bio-Remediation Techniques	Stream Bank Plantings ONLY			
Credit per foot per	0.1	0.15	0.1	0.1	0.09			
Right Bank	Length						0	
	Credit>							
Left Bank	Length						0	
	Credit >							
CREDITS								
Rt Bank >								0.00
Lt Bank >								0.00
SUM of banks								0
Σ (Length X Credit) for all areas (banks done separately)								
Riparian Areas: Assess the proposed 100 foot buffer on both banks based on the activity proposed. Enter the percentage of area and the credit below. (Widths of buffer above 100' will be determined below)								
Activities	Buffer Re-establishment (removal of invasives)	Buffer Planting - Heavy	Buffer Planting - Light	Preservation ONLY. No work proposed High Quality	Preservation ONLY. No work proposed Low Quality	Buffer area not within preservation width but within the first 100'		
Credit for inner 100'	0.4	0.38	0.29	0.14	0.07	0		
Credit for outer 100'	0.2	0.19	0.15	0.07		0		
Calculation of "Goal" riparian buffer for each side (SAR length times 100') >>>>				435,800 square feet				
Insert area in square feet for a given activity: 16250				Percentage of "Goal">>>> 3.73%				
WITHIN FIRST 100' - Mitigation Categories								
Missing one vegetative community				Subtract 0.03	Ensure the sums of % Riparian Blocks equal 100			
Missing two vegetative communities				Subtract 0.06				
Right Bank	% Area	94%	6%				100%	
	Credit>	0.38	0.14					
Left Bank	% Area	99%					99%	
	Credit >	0.38						
CREDITS								
Rt Bank >								0.37
Lt Bank >								0.38
Σ (% Area X Credit) for all areas (banks done separately) AVE of credit for banks X length of project								1616.38
WITHIN SECOND 100' - Mitigation Categories								
Missing one vegetative community				Subtract 0.03	Ensure the sums of % Riparian Blocks equal 100			
Missing two vegetative communities				Subtract 0.06				
Right Bank	% Area	17%					17%	
	Credit>	0.07						
Left Bank	% Area	17%					17%	
	Credit >	0.19						
CREDITS								
Rt Bank >								0.01
Lt Bank >								0.03
Σ (% Area X Credit) for all areas (banks done separately) AVE of credit for banks X length of project								87.16
Adjustment Factors: These factors are applied as a multiplier to length of a reach for which they apply								
Adjustment Factor Categories								
Activity	Rare, Threatened, or Endangered Species or Communities	Livestock Exclusion	Watershed Preservation					
Credit	0.1 - 0.3	0.1 - 0.3	0.1 - 0.3					
Credits are cumulative and can apply to more than one reach. Each reach can have more than one Adjustment Factors								
Stream Length Affected								
Credit>								
Credits >								0
Σ (Length X Credit) for all areas								
Total Compensation Credit Provided by Project								6062

Compensation Crediting Form (Form 3)

Unified Stream Methodology for use in Virginia

Project #	Project Name	Locality	Cowardin Class.	HUC	Date	Reach #	Reach Length			
27127	27127CHEROENHAKA MIT. BANK					3A	3752			
Name(s) of Evaluator(s)		Steam Name and Information								
		STREAM 3- ENHANCEMENT								
								Project Credits		
Restoration: Includes Priority 1, 2, and 3 restoration activities. Does not include buffer width.								Credit per foot		
List Reaches that will receive full Restoration:								0		
						Total length of Full Restoration	1			
						Credits = Stream Length X 1.0				
Enhancement With Instream Structures: Addressing Streambank Stability, Grade Control (Vaness, Weirs, Step-Pools), Constructed Riffles								Credit per foot		
Discuss Length Affected by Instream Structures (justify length):								0.3		
						Length Affected by Instream Structures	0.3	0		
						Credits = Stream Length X 0.3				
Enhancement: Addressing Streambank Stability, Entrenchment Ratios, Access to Floodplain										
Mitigation Categories										
	Mechanical Bank Work			Biological Bank Work						
	Credit Per Structure	Pick One Per Length			May Be Cumulative Per Length					
Activities	Habitat Structures	Create Bankfull Bench	Lay Back Banks	Bio-Remediation Techniques	Stream Bank Plantings ONLY					
Credit per foot per	0.1	0.15	0.1	0.1	0.09					
Right Bank	Length	3752					3752			
	Credit>	0.09								
Left Bank	Length						0			
	Credit >									
								CREDITS		
								Rt Bank >	337.68	Credit
								Lt Bank >	0.00	SUM of banks
										338
										Σ (Length X Credit) for all areas (banks done separately)
Riparian Areas: Assess the proposed 100 foot buffer on both banks based on the activity proposed. Enter the percentage of area and the credit below. (Widths of buffer above 100' will be determined below)										
Activities	Buffer Re-establishment (removal of invasives)	Buffer Planting - Heavy	Buffer Planting - Light	Preservation ONLY. No work proposed High Quality	Preservation ONLY. No work proposed Low Quality	Buffer area not within preservation width but within the first 100'				
Credit for inner 100'	0.4	0.38	0.29	0.14	0.07	0				
Credit for outer 100'	0.2	0.19	0.15	0.07		0				
Calculation of "Goal" riparian buffer for each side (SAR length times 100') >>>>				375,200 square feet						
Insert area in square feet for a given activity: 16250				Percentage of "Goal">>>> 4.33%						
WITHIN FIRST 100' - Mitigation Categories										
Missing one vegetative community				Subtract 0.03	Ensure the sums of % Riparian Blocks equal 100					
Missing two vegetative communities				Subtract 0.06						
Right Bank	% Area	95%					95%			
	Credit>	0.38								
Left Bank	% Area	79%					79%			
	Credit >	0.07								
								CREDITS		
								Rt Bank >	0.36	Credit
								Lt Bank >	0.06	0.21
										780.98
										Σ (% Area X Credit) for all areas (banks done separately)/ AVE of credit for banks X length of project
WITHIN SECOND 100' - Mitigation Categories										
Missing one vegetative community				Subtract 0.03	Ensure the sums of % Riparian Blocks equal 100					
Missing two vegetative communities				Subtract 0.06						
Right Bank	% Area	12%					12%			
	Credit>	0.19								
Left Bank	% Area	36%					36%			
	Credit >	0.07								
								CREDITS		
								Rt Bank >	0.02	Credit
								Lt Bank >	0.03	0.03
										112.56
										Σ (% Area X Credit) for all areas (banks done separately)/ AVE of credit for banks X length of project
Adjustment Factors: These factors are applied as a multiplier to length of a reach for which they apply										
Adjustment Factor Categories										
Activity	Rare, Threatened, or Endangered Species or Communities		Livestock Exclusion		Watershed Preservation					
Credit	0.1 - 0.3		0.1 - 0.3		0.1 - 0.3					
Credits are cumulative and can apply to more than one reach. Each reach can have more than one Adjustment Factors										
Stream Length Affected										
Credit>										
								Credits >	0	
										Σ (Length X Credit) for all areas
Total Compensation Credit Provided by Project										1231

Compensation Crediting Form (Form 3)

Unified Stream Methodology for use in Virginia

Project #	Project Name	Locality	Cowardin Class.	HUC	Date	Reach #	Reach Length	
27127	27127CHEROENHAKA MIT. BANK					3B	3752	
Name(s) of Evaluator(s)		Stream Name and Information						
		STREAM 3- ENHANCEMENT						
								Project Credits
Restoration: Includes Priority 1, 2, and 3 restoration activities. Does not include buffer width.								Credit per foot
List Reaches that will receive full Restoration:								0
						Total length of Full Restoration	1	
						Credits = Stream Length X 1.0		
Enhancement With Instream Structures: Addressing Streambank Stability, Grade Control (Vaness, Weirs, Step-Pools), Constructed Riffles								Credit per foot
Discuss Length Affected by Instream Structures (justify length):								0.3
						Length Affected by Instream Structures	3752	1125.6
						Credits = Stream Length X 0.3		
Enhancement: Addressing Streambank Stability, Entrenchment Ratios, Access to Floodplain								
Mitigation Categories								
Mechanical Bank Work			Biological Bank Work					
Credit Per Structure			Pick One Per Length			May Be Cumulative Per Length		
Activities	Habitat Structures	Create Bankfull Bench	Lay Back Banks	Bio-Remediation Techniques	Stream Bank Plantings ONLY			
Credit per foot per	0.1	0.15	0.1	0.1	0.09			
Right Bank	Length	3752					3752	
	Credit>	0.15						
Left Bank	Length						0	
	Credit >							
							CREDITS	
							Rt Bank >	562.80
							Lt Bank >	0.00
							SUM of banks	
							563	
Σ (Length X Credit) for all areas (banks done separately)								
Riparian Areas: Assess the proposed 100 foot buffer on both banks based on the activity proposed. Enter the percentage of area and the credit below. (Widths of buffer above 100' will be determined below)								
Activities	Buffer Re-establishment (removal of invasives)	Buffer Planting - Heavy	Buffer Planting - Light	Preservation ONLY. No work proposed High Quality	Preservation ONLY. No work proposed Low Quality	Buffer area not within preservation width but within the first 100'		
Credit for inner 100'	0.4	0.38	0.29	0.14	0.07	0		
Credit for outer 100'	0.2	0.19	0.15	0.07		0		
Calculation of "Goal" riparian buffer for each side (SAR length times 100') >>>>				375,200 square feet				
Insert area in square feet for a given activity: 16250				Percentage of "Goal">>>> 4.33%				
WITHIN FIRST 100' - Mitigation Categories								
Missing one vegetative community				Subtract 0.03	Ensure the sums of % Riparian Blocks equal 100			
Missing two vegetative communities				Subtract 0.06				
Right Bank	% Area					0%		
	Credit>							
Left Bank	% Area					0%		
	Credit >					0.00		
							CREDITS	
							Rt Bank >	0.00
							Lt Bank >	0.00
							0	
Σ (% Area X Credit) for all areas (banks done separately) AVE of credit for banks X length of project								
WITHIN SECOND 100' - Mitigation Categories								
Missing one vegetative community				Subtract 0.03	Ensure the sums of % Riparian Blocks equal 100			
Missing two vegetative communities				Subtract 0.06				
Right Bank	% Area					0%		
	Credit>							
Left Bank	% Area					0%		
	Credit >					0.00		
							CREDITS	
							Rt Bank >	0.00
							Lt Bank >	0.00
							0	
Σ (% Area X Credit) for all areas (banks done separately) AVE of credit for banks X length of project								
Adjustment Factors: These factors are applied as a multiplier to length of a reach for which they apply								
Adjustment Factor Categories								
Activity	Rare, Threatened, or Endangered Species or Communities	Livestock Exclusion	Watershed Preservation					
Credit	0.1 - 0.3	0.1 - 0.3	0.1 - 0.3					
Credits are cumulative and can apply to more than one reach. Each reach can have more than one Adjustment Factors								
Stream Length Affected								
Credit>								
							Credits >	
							0	
							Σ (Length X Credit) for all areas	
							Total Compensation Credit Provided by Project	
							1688	

Compensation Crediting Form (Form 3)

Unified Stream Methodology for use in Virginia

Project #	Project Name	Locality	Cowardin Class.	HUC	Date	Reach #	Reach Length	
27127	27127CHEROENHAKA MIT. BANK						2418	
Name(s) of Evaluator(s)		Steam Name and Information						
		STREAM PRESERVATION						
								Project Credits
Restoration: Includes Priority 1, 2, and 3 restoration activities. Does not include buffer width.								Credit per foot
List Reaches that will receive full Restoration:								0
Total length of Full Restoration						0	1	
Credits = Stream Length X 1.0								
Enhancement With Instream Structures: Addressing Streambank Stability, Grade Control (Vaness, Weirs, Step-Pools), Constructed Riffles								Credit per foot
Discuss Length Affected by Instream Structures (justify length):								0.3
Length Affected by Instream Structures						0.3	0	
Credits = Stream Length X 0.3								
Enhancement: Addressing Streambank Stability, Entrenchment Ratios, Access to Floodplain								
Mitigation Categories								
	Mechanical Bank Work			Biological Bank Work				
	Credit Per Structure	Pick One Per Length		May Be Cumulative Per Length				
Activities	Habitat Structures	Create Bankfull Bench	Lay Back Banks	Bio-Remediation Techniques	Stream Bank Plantings ONLY			
Credit per foot per	0.1	0.15	0.1	0.1	0.09			
Right Bank	Length						0	
	Credit>							
Left Bank	Length						0	
	Credit >							
CREDITS								
	Rt Bank >	0.00	Credit					
	Lt Bank >	0.00	SUM of banks					0
Σ (Length X Credit) for all areas (banks done separately)								
Riparian Areas: Assess the proposed 100 foot buffer on both banks based on the activity proposed. Enter the percentage of area and the credit below. (Widths of buffer above 100' will be determined below)								
Activities	Buffer Re-establishment (removal of invasives)	Buffer Planting - Heavy	Buffer Planting - Light	Preservation ONLY. No work proposed High Quality	Preservation ONLY. No work proposed Low Quality	Buffer area not within preservation width but within the first 100'		
Credit for inner 100'	0.4	0.38	0.29	0.14	0.07	0		
Credit for outer 100'	0.2	0.19	0.15	0.07		0		
Calculation of "Goal" riparian buffer for each side (SAR length times 100') >>>>				241,800 square feet				
Insert area in square feet for a given activity: 3500				Percentage of "Goal">>>> 1.45%				
WITHIN FIRST 100' - Mitigation Categories								
Missing one vegetative community				Subtract 0.03	Ensure the sums of % Riparian Blocks equal 100			
Missing two vegetative communities				Subtract 0.06				
Right Bank	% Area	92%					92%	
	Credit>	0.07						
Left Bank	% Area	62%					62%	
	Credit >	0.07						
CREDITS								
	Rt Bank >	0.06	Credit					
	Lt Bank >	0.04	0.05					130.33
Σ (% Area X Credit) for all areas (banks done separately) AVE of credit for banks X length of project								
WITHIN SECOND 100' - Mitigation Categories								
Missing one vegetative community				Subtract 0.03	Ensure the sums of % Riparian Blocks equal 100			
Missing two vegetative communities				Subtract 0.06				
Right Bank	% Area	98%					98%	
	Credit>	0.07						
Left Bank	% Area	84%					84%	
	Credit >	0.07						
CREDITS								
	Rt Bank >	0.07	Credit					
	Lt Bank >	0.06	0.07					169.26
Σ (% Area X Credit) for all areas (banks done separately) AVE of credit for banks X length of project								
Adjustment Factors: These factors are applied as a multiplier to length of a reach for which they apply								
Adjustment Factor Categories								
Activity	Rare, Threatened, or Endangered Species or Communities	Livestock Exclusion	Watershed Preservation					
Credit	0.1 - 0.3	0.1 - 0.3	0.1 - 0.3					
Credits are cumulative and can apply to more than one reach. Each reach can have more than one Adjustment Factors								
Stream Length Affected								
Credit>								
Credits >								0
Σ (Length X Credit) for all areas								
Total Compensation Credit Provided by Project								300

EXHIBIT D: CREDITING AND DEBITING PROCEDURE FOR THE BANK

EXHIBIT D
CHEROENHAKA WETLAND AND STREAM BANK
CREDITING AND DEBITING PROCEDURE FOR THE BANK

I. IMPACT DEBIT VALUES

The Cowardin system of wetland classification for compensatory wetlands creation or restoration, or the Unified Stream Methodology for compensatory stream restoration or enhancement shall be utilized to determine the maximum number of Credits that may be Debited from the Bank. This maximum number of Credits may be modified by the age, and status of construction of the Mitigation areas. The U.S. Army Corps of Engineers (“Corps”) and the Virginia Department of Environmental Quality (“DEQ”) shall determine the appropriate and specific number of Mitigation Credits necessary to be Debited against the Bank to achieve no net loss of Functions and values during the permit process based upon their use of methods determined to be appropriate by said agencies, of the impact areas and the status of this Bank.

II. MITIGATION CREDIT CREATION

A. Pre- Construction

Mitigation Credits shall be created by development of a wetland and/or stream Mitigation area with upland buffers in substantial conformance with the Mitigation Site Plan described in Exhibit C of the Banking Instrument. The number of Credits created by this Mitigation Bank shall initially be based upon the Mitigation Site Plan. Credits may then be adjusted by the IRT based upon the results of the monitoring program described in Section V of the Banking Instrument, if and only if, as-built conditions differ substantially from the areas projected in the Mitigation Site Plan projections as determined by the IRT acting through the IRT Chair. Adjustments may include changes in the number of available Credits, credit composition, or minimum credit ratios associated with use of the Bank. However, this adjustment shall not be permitted to increase the number of Credits available from upland reforestation as originally proposed in the final construction documents. If such areas cannot be modified so as to create the planned wetlands or stream habitats, no Credits will be available from such areas. Each acre of land area within the Property described in Exhibit B shall be designated by the Mitigation Site Plan as to which types of land forms, as classified by the Cowardin System or the prevailing stream assessment/crediting methodology, shall be restored or created by grading, water impoundment, vegetation planting, or any other activity by which Credit may be generated. The number of Credits created by this plan shall be determined by community

or cover type for wetlands, and instream and/or riparian buffer activities for streams.

The exact number of Credits created will be determined by the Mitigation Site Plan and adjusted based upon final as-built conditions.

B. Post-Construction

During or after the fifth growing season, the Corps, acting in consultation with the IRT, may assess the functions and values of this ecological system if part or all of the site fails to meet Bank Success Criteria (or when requested to do so by the Sponsor). The IRT may issue a written determination to the Sponsor that due to the demonstration of successful performance, the number of Credits attributable to this Mitigation Bank are increased or decreased to reflect the functions and values provided.

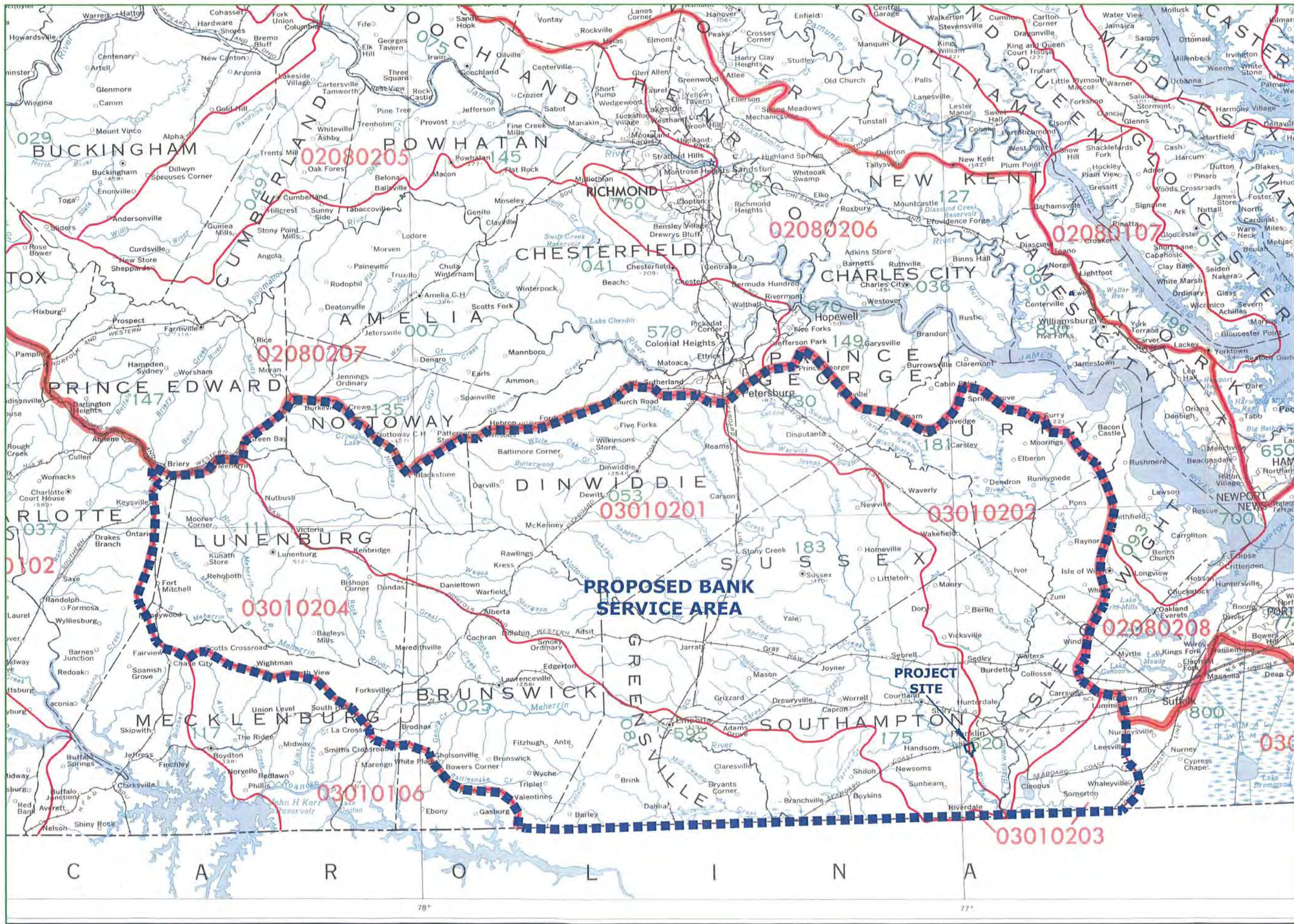
C. Open Water

Any created Open Water areas shall be accounted for separately from the wetland and stream credits available at the Mitigation Bank Site. When an impact in the service area of the Bank to Open Water occurs, DEQ and/or the Corps may allow a permittee to purchase a portion of any open water on the Mitigation Bank site as off-site Mitigation for said impact permitted under permits issued under the Clean Water Act and/or Virginia Water Protection Permit.

III. Accounting Procedures

- A. The Sponsor shall comply with the accounting procedures described in Section V of the Banking Instrument and the quantitative assessment of Credits and Debits for permitted impacts as described herein.
- B. In no event shall the cumulative total area of impacts to Waters of the U.S. permitted to use Credits from the Mitigation Bank exceed the total area of Waters of the U.S. created by this Mitigation Bank.
- C. If the Mitigation Bank is constructed in Phases, the accounting of Credits shall duly reflect this phasing of work.

EXHIBIT E: SERVICE AREA MAP



1001 Boulders Parkway, Suite 300 | Richmond, VA 23225
TEL: 804.200.6500 FAX: 804.560.1015 www.timmons.com

THIS DRAWING PREPARED AT THE
CORPORATE OFFICE

YOUR VISION ACHIEVED THROUGH OURS

DATE: 12/10/06
DRAWN BY: D. ABRINGTON
DESIGNED BY:
CHECKED BY:
SCALE: 1" = 40,000'

Site Development | Residential | Infrastructure | Technology

REVISION DESCRIPTION

TIMMONS GROUP

CHEROENHAKA WETLAND AND STREAM MITIGATION BANK
SOUTHAMPTON COUNTY, VIRGINIA

EXHIBIT E: SERVICE AREA MAP

100 NO.
24164

SHEET NO.

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EXHIBIT F: DECLARATION OF RESTRICTIONS

EXHIBIT F
CHEROENHAKA WETLAND AND STREAM MITIGATION BANK
DECLARATION OF RESTRICTIONS

DECLARATION OF RESTRICTIONS

OF

SOUTHAMPTON COUNTY, VIRGINIA

THIS DECLARATION OF RESTRICTIVE COVENANTS, is made this ____ day of _____, 2010, by INDUSTRIAL DEVELOPMENT AUTHORITY OF SOUTHAMPTON COUNTY (hereinafter the "Owner").

WHEREAS, Southampton County is the Owner of the Property more fully described on Exhibit A attached hereto; it being the same Property conveyed to _____, by deed from _____, dated _____, and duly recorded in the Clerk's Office of the _____ of _____ in Deed Book _____, at page _____ (hereinafter the "Property").

WHEREAS, Southampton County desires to comply with the respective conditions of the Banking Instrument for the Cheroenhaka Wetland and Stream Mitigation Bank (hereinafter the "Bank") between: Bunrootis, LLC, the Interagency Review Team (the "IRT") which consists of the U.S. Army Corps of Engineers, Norfolk District (the "Corps"), the Virginia Department of Environmental Quality ("DEQ"), the U.S. Environmental Protection Agency ("EPA"), the U.S. Fish and Wildlife Service ("FWS"), the Virginia Department of Game and Inland Fisheries ("VDGIF"), and the Virginia Department of Conservation and Recreation ("DCR"), dated _____, 20____, by imposing this Restrictive Covenant on the Property that may consist of preserved wetlands and streams, restored wetlands and streams, enhanced wetlands and streams, created wetlands, uplands, and areas to be converted into wetlands.

WHEREAS, Southampton County desires to impose on said Property restrictive covenants expressing _____ intent to preserve 240.9 acres of said Property as shown on Exhibit B and as described as Cheroenhaka Wetland and Stream Mitigation Bank in perpetuity as detailed below. The Owner desires to comply with the respective conditions of the Banking Instrument by imposing this Restrictive Covenant on the Mitigation Bank located on the Property. These covenants are imposed by Owner freely and voluntarily.

NOW THEREFORE THIS DECLARATION WITNESSETH: Southampton County does hereby declare, covenant and agree, for itself and its successors and assigns, that said Property described as _____ shown on Exhibit B shall be hereafter held, leased, transferred, and sold subject to the following conditions and restrictions which shall run with the land and be binding on all parties and persons claiming under them.

Covenants and Restrictions. The Property described as _____ shown on Exhibit B attached hereto shall be preserved in perpetuity in its natural state, by prohibiting the following activities:

1. Destruction or alteration of the wetlands, streams and stream buffers on the Property as shown on Exhibit B except:
 - (a) Alteration necessary to construct the wetland, stream and stream buffer mitigation areas and associated improvements, such as nature trails, and interpretive stations, proposed to be built by Bunrootis, LLC, or its successors, and/or assigns, for the Bank;
 - (b) Alteration necessary to ensure the success of the Bank and in conjunction with the construction, reconstruction or maintenance of the constructed Mitigation areas;
 - (c) Removal of vegetation (where not precluded by federal or state law) when conducted for:
 - (i) Removal of noxious or invasive plants;
 - (ii) Removal of diseased trees;
 - (iii) Conducting controlled burns and other activities associated with maintaining a healthy forested ecosystem; or
 - (ii) Limited aesthetic modifications not involving clearing or removal of trees or limbs greater than three (3) inches in caliber unless dead, dying or diseased;
 - (d) Alteration authorized by the Banking Instrument and by the Corps and/or the DEQ under Permit Number _____ and other activities permitted by the DEQ and the Corps pursuant to the Virginia Water Protection Permit program and Section 404 of the Clean Water Act, respectively; and/or
 - (e) Alteration as reasonably necessary to comply with state or federal law or appropriate court order.
2. Construction, maintenance or placement of any structures or fills including but not limited to buildings, and mobile homes, other than those, which currently exist, however, pathways, boardwalks, fences, wildlife management structures, and observation decks may be placed within the stream buffer area provided that any such structure permits the natural movement of water and preserves the natural contour of the ground and is subject to prior approval by the COE and DEQ;
3. Ditching, draining, diking, damming, filling, excavating, grading, plowing, flooding/ponding, mining, drilling, placing of trash and yard debris or removing/adding topsoil, sand, or other materials, and any building of roads or alteration in the topography of the land in any manner (except for maintenance of existing foot trails and stream

crossing and as may be necessary on a case-by-case basis with prior written approval by the IRT) other than any authorized under the Banking Instrument;

4. Harvesting, cutting, logging, and pruning of trees and plants, or using fertilizers and spraying with biocides unless allowed under Section I.C above and as may be allowed on a case-by-case basis with prior approval by the IRT);
5. Cultivating, harvesting, and logging; and
6. Utilizing a non-reporting Nationwide Permit or State Program General Permit under Section 404 of the Clean Water Act or state general permits under VWPP regulations to impact any State Waters on the Property. Notification shall be required for the use of any Nationwide Permit, State Program General Permit, Regional Permit, or state general permit under VWPP regulations.

Amendment. The covenants contained herein shall not hereafter be altered in any respect without the express written approval and consent of the Owner or its successor in interest and the IRT. The Owner or its successor may apply to the IRT for vacation or modification of this declaration; however, after recording, these restrictive covenants may only be amended or vacated by a recorded document signed by the signatory members of the IRT and the Owner or its successor in interest.

Compliance Inspections and Enforcement. The IRT, and its authorized agents shall have the right to enter and go on the Property to inspect the Property and take actions necessary to verify compliance with these restrictive covenants. The restrictive covenants herein shall be enforceable by any proceeding at law or in equity or administrative proceeding by the IRT, including the Corps or DEQ. Failure by any agency (or owner) to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.

Separability Provision. The provisions hereof shall be deemed individual and severable and the invalidity or partial invalidity or unenforceability of any one provision or any portion thereof shall not affect the validity or enforceability of any other provision thereof.

WITNESS the following signature the day and year first above written.

BY: _____

TITLE: _____

Commonwealth of Virginia, City of _____, to wit:

I, _____, a notary public for the state and city aforesaid, do certify that [Name] [Title] whose name was signed on _____, 20__ in his capacity on that date to the foregoing document has acknowledged said document and signature before me in the city aforesaid.

Given under my hand and notarial seal this _____ day of _____, 20__.

Notary Public

My commission expires _____.

Signature block for Bank and Trustee, if applicable.

Exhibit A

Legal description of Property.

Exhibit B

Plat Map and /or Legal description of preserved area. If Plat is oversized and will be recorded separately, Exhibit B should contain a description that includes the reference to the Plat Book and Page number where the plat is recorded.

EXHIBIT G: ESCROW AGREEMENT

EXHIBIT G
CHEROENHAKA WETLAND AND STREAM MITIGATION BANK
BANK ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Escrow Agreement") is made and entered into as of the _____ day of _____, 20__ by and among Bunrootis, LLC, a Delaware limited liability company ("Sponsor"), and Regions Bank (Escrow Agent) specifically described herein, governing the design, construction, monitoring, maintenance, and use of credits on a parcel of land and said Escrow Agreement contains the agreements among the parties.

STATEMENT OF PURPOSE

Sponsor has entered into the Cheroenhaka Wetland and Stream Mitigation Banking Instrument with the Interagency Review Team (IRT), which consists of the U.S. Army Corps of Engineers, Norfolk District (the "Corps"); the Environmental Protection Agency ("EPA"); the U.S. Fish and Wildlife Service ("USFWS"); the Virginia Department of Environmental Quality ("DEQ"), the Virginia Department of Game and Inland Fisheries ("VDGIF"), the Virginia Marine Resources Commission ("VMRC") and the Virginia Institute of Marine Sciences ("VIMS"), represented by its Chair, the Corps, dated as of the _____ day of _____, 2010 ("Banking Instrument"), consisting of approximately 239 acres of land located in Southampton County, Virginia, as more particularly described in the Banking Instrument (the "Property"). The Sponsor desires to have the Escrow Agent hold certain funds in escrow and distribute said funds resulting from the sale of Mitigation Credits as required under the Banking Instrument and pursuant to the terms of this Escrow Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Appointment. The Sponsor hereby appoints the Regions Bank as Escrow Agent hereunder, and by its execution thereof, Regions Bank agrees to accept such appointment.
2. Mitigation Sale Proceeds. Sponsor shall cause all funds from any Mitigation sales relating to the Property to be delivered and deposited in escrow with the Escrow Agent as and to the extent required by Section IV.D. of the Banking Instrument. The Escrow Agent agrees to immediately deposit said funds in an escrow account at a federally insured depository institution, and to hold and only disburse said funds, and any interest earned thereon (together the "Mitigation Sales Proceeds") as hereinafter provided.
3. Notification of Receipt of Mitigation Sale Proceeds. Upon receipt of any Mitigation Sale Proceeds, Escrow Agent shall provide written confirmation to the

Sponsor of receipt of such funds. The Sponsor shall forward copies of this confirmation to the following organizations:

4. Notification of Disbursement of Funds from Escrow Account. The Sponsor, the IRT, acting through the Chair, and/or the Long-Term Steward (if one has been designated) shall only request that Escrow Agent disburse said funds in accordance with the criteria established in Sections IV.D., IV. E., and VI. E. of the Banking Instrument as necessary. The Escrow Agent agrees that it shall only honor requests for disbursements that are made in writing. A copy of each request for disbursement shall be simultaneously sent by the Sponsor, IRT, or Long-Term Steward to:

Upon receiving written approval from the IRT Chair for the requested disbursement, the Escrow Agent shall release said funds requested by the Sponsor, the IRT, or the Long-Term Steward (If one has been designated) within 5 days of receiving said approval.

5. Instructions. Escrow Agent is instructed and directed by the parties to comply with Section IV.D. of the Banking Instrument and by its execution hereof agrees to comply with Section IV.D. of the Banking Instrument.
6. Duties of Escrow Agent/Exculpation. The Sponsor agrees that in performing any of its duties under this Agreement, that Escrow Agent shall not be liable to the Sponsor or any other person for any loss, costs or damage that may incur as a result of its service as Escrow Agent hereunder, except for any loss costs or damage arising out of its willful default or negligence. Accordingly, Escrow Agent shall not incur any liability with respect to (a) any action taken or admitted to be taken in good faith upon advice of its counsel given with respect to any questions relating to its duties and responsibilities, or (b) to any action taken or admitted to be taken in reliance upon any document, including any written notice of instruction provided for in this Escrow Agreement, not only as to its due execution and validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein, which Escrow Agent in good faith believes to be genuine, believes to have been signed or presented by a proper person or persons and, in good faith believes to conform with the provisions of this Escrow Agreement.

7. Indemnification. The Sponsor hereby agrees to indemnify and hold harmless the Escrow Agent and any and all of its partners acting hereunder, against any and all losses, claims, damages, liabilities and expenses, including, without limitation, reasonable attorneys' fees and disbursements, which may be imposed upon or incurred by Escrow Agent in connection with its service as Escrow Agent, unless such losses, claims, damages, liabilities and expenses are the result of Escrow Agent's willful default or negligence.
8. Disputes. In an event of dispute between the Sponsor and the IRT or-the IRT Chair, sufficient in the discretion of Escrow Agent to justify its doing so, Escrow Agent shall be entitled to tender unto the registry or custody of any court of competent jurisdiction all money or Property held by it under the terms of this Escrow Agreement, together with such legal pleadings as it deems appropriate and immediately thereupon it should be discharged from all duties and responsibilities hereunder.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed and sealed as of the day and year first above written.

BY: BUNROOTIS, LLC

Signature: _____

Name: _____

Date: _____

AND BY: REGIONS BANK

Signature: _____

Name: _____

Date: _____

EXHIBIT H: LONG-TERM MANAGEMENT PLAN

Exhibit H

Long-term Management Plan

I. Introduction

- A. Purpose of Establishment. The Cheroenhaka Wetland and Stream Bank (“Bank”) was established by the Mitigation Bank Instrument (“MBI”) to compensate for unavoidable impacts to, and to conserve and to protect waters of the U.S. The Bank property includes 253 acres of waters of the U.S., including wetlands, and associated upland buffers. The IRT Agencies include the Norfolk District of the U.S. Army Corps of Engineers, Region 3 of the U.S. Environmental Protection Agency, the Virginia Field Office of the U.S. Fish and Wildlife Service, the Virginia Department of Environmental Quality, the Virginia Department of Game and Inland Fisheries, the Virginia Department of Conservation and Recreation, and the Virginia Department of Forestry. Terms used in this management plan have the same meaning as defined in the MBI.
- B. Purpose of this Long-term Management Plan. The purpose of this long-term management plan is to ensure the Bank or Bank Site is managed, monitored, and maintained in perpetuity. This management plan establishes objectives, priorities and tasks to monitor, manage, maintain and report on the waters of the U.S., covered species and covered habitat on the Bank. This management plan is a binding and enforceable instrument, implemented in accordance with the MBI and the real estate protection instrument (conservation easement or declaration of restrictions) covering the Bank property.
- C. Long Term Steward and Responsibilities. The Long-Term Steward is the _____. The Long-Term Steward, and subsequent Long-Term Stewards upon transfer, shall implement this long-term management plan, managing and monitoring the bank property in perpetuity to preserve its habitat and conservation values in accordance with the Bank’s MBI, conservation easement and/or declaration of restrictions, and the long-term management plan. Long-term management tasks shall be funded through the Long-Term Management Fund. The Long-Term Steward must maintain a copy of the MBI and all addendums associated with the Bank (Site) including all deed restrictions and easements. The Long-Term Steward shall be responsible for providing an annual report to the IRT detailing the time period covered, an itemized account of the management tasks and total amount expended. Any subsequent grading, or alteration of the site’s hydrology and/or topography by the Long-Term Steward or its representatives must be approved by the IRT and the necessary permits, such as a Section 404 permit and/or Virginia Water Protection Permit, must be obtained if required.

II. Property Description

- A. Setting and Location. The Bank is located southeast of the confluence of the Nottoway River and Nottoway Swamp in Southampton County, in the Commonwealth of Virginia. The Property is shown on the general vicinity map (Figure 1) and the bank property map (Figure 2). The general vicinity map shows the Bank location in relation to cities, towns, or major roads, and other distinguishable landmarks. The Bank property map shows the Bank property boundaries on a topographic map.
- B. History and Land Use. Historically, the majority of the Bank Site has been cultivated for at least 100 years. In the late 1930s, the onsite streams were straightened, ditches were dug and the site was outfitted with a series of drainage tiles to drain areas of hydric soils and gain farmable land. The Site has been used for growing soybean, peanut, and cotton crops and a no-till management plan has been in place; however, after harvest, the Site has been sprayed with a weed control spray. Frequent fertilization of the fields have resulted in algal blooms in the streams.

The remainder of the Site, typically along the southwestern site boundary, consists of a mixture of upland and wetland wooded areas.

- C. Hydrology and Topography. The Bank Site is located southeast of the confluence of the Nottoway River and Nottoway Swamp. The proximity to this confluence is a probable explanation for the broad range in soil characteristics observed across the site. The soils onsite were formed from loamy and/or sandy alluvium and marine deposits. The parent material and method of deposition were observed as stratified horizons of alternating textures in the soil profiles assessed onsite.
- D. Soils. The soils within the Bank Site are mapped as Bojac loamy sand (5B), Munden loamy sand (15A), Nimmo sandy loam (19A), Roanoke loam (23A), Seabrook loamy sand (25A), Tarboro loamy sand (28B), and Tomotley sandy loam (29A). The observed onsite were characterized by loam; sand; or clay loam and silty clay loam. The soils observed during the onsite field investigation were mostly consistent with the Soil Survey mapping.

The Soil Survey maps the following soils onsite:

- Bojac loamy sand (5B), 2 to 6 percent slopes, very rarely flooded, well drained, Hydrologic Soil Group B. The Bojac loamy sand mapping unit is listed as containing a one percent (1%) hydric component of the Tomotley series in depressions on stream terraces and drainageways on stream terraces.
- Munden loamy sand (15A), 0 to 2 percent slopes, rarely flooded, moderately well drained, Hydrologic Soil Group B. The Munden loamy sand mapping unit is listed as containing a two percent (2%) hydric component of the Nimmo series on stream terraces; and a one percent (1%) hydric component of

the Tomotley series in depressions on stream terraces and drainageways on stream terraces.

- Nimmo sandy loam (19A), 0 to 2 percent slopes, poorly drained, Hydrologic Soil Group D. The Nimmo sandy loam mapping unit is listed as eighty percent (80%) hydric on stream terraces. It is also listed as containing a two percent (2%) hydric component of the Roanoke series on flood plains and stream terraces; and a one percent (1%) hydric component of the Tomotley series in depressions on stream terraces and drainageways on stream terraces.
- Roanoke loam (23A), 0 to 2 percent slopes, occasionally flooded, poorly drained, Hydrologic Soil Group D. The Roanoke loam mapping unit is listed as ninety five percent (95%) hydric on flood plains and stream terraces. It is also listed as containing a one percent (1%) hydric component of Chastain, frequently flooded on floodplains; a one percent (1%) hydric component of the Dorovan series in swamps and on flood plains; a one percent (1%) hydric component of the Myatt series in depressions and drainageways on marine terraces; and a one percent (1%) hydric component of the Tomotley series in depressions on stream terraces and drainageways on stream terraces.
- Seabrook loamy sand (25A), 0 to 2 percent slopes, moderately well drained, Hydrologic Soil Group C.
- Tarboro loamy sand (28B), 0 to 6 percent slopes, somewhat excessively drained, Hydrologic Soil Group A. The Tarboro loamy sand mapping unit is listed as containing a two percent (2%) hydric component of the Nimmo series on stream terraces.
- Tomotley sandy loam (29A), 0 to 2 percent slopes, rarely flooded, poorly drained, Hydrologic Soil Group B/D. The Tomotley sandy loam mapping unit is listed as ninety percent (90%) hydric in depressions and drainageways on stream terraces. It is also listed as containing a one percent (1%) hydric component of Chastain, frequently flooded on floodplains; a one percent (1%) hydric component of the Dorovan series in swamps and on flood plains; a one percent (1%) hydric component of the Nimmo series on stream terraces; and a one percent (1%) hydric component of the Roanoke series on flood plains and stream terraces.

The natural drainage class referred to in the Soil Survey Manual is the frequency and duration of wet periods similar to the conditions under which the soil formed. The Soil Survey doesn't consider alterations of the water regime by human activities, either through drainage or irrigation, unless they have significantly changed the morphology of the soil. The seven recognized classes of natural soil drainage are: excessively drained, somewhat excessively drained, well drained, moderately well drained, somewhat poorly drained, poorly drained, and very poorly drained.

Hydrologic soil groups are based on estimates of runoff potential. Soils are assigned to four groups (A, B, C, and D) and three dual classes (A/D, B/D, and C/D) according to the rate of water infiltration when the soils are not protected by vegetation, are thoroughly wet, and receive precipitation from long-duration

storms. These groups are defined below:

Group A soils have a high infiltration rate when thoroughly wet and therefore have a low runoff potential. These consist mainly of deep, well drained to excessively drained sands or gravelly sands, and have a high rate of water transmission.

Group B soils have a moderate infiltration rate when thoroughly wet. These consist of moderately deep or deep, moderately well drained or well drained soils that have moderately fine texture to moderately coarse texture. These soils have a moderate rate of water transmission.

Group C soils have a slow infiltration rate when thoroughly wet and have a slow rate of water transmission. These consist mainly of soils with a layer that impedes the downward movement of water or soils of moderately fine to fine texture.

Group D soils have a very slow infiltration rate when thoroughly wet and therefore have a high runoff potential, and a very slow rate of water transmission. These consist chiefly of clays that have a high shrink-swell potential, soils that have a high water table, soils that have a claypan or clay layer at or near the surface, and soils that are shallow over nearly impervious material.

Dual hydrologic groups (A/D, B/D, or C/D) are soils with a very slow rate of water transmission that have been manipulated by human activity and drained. The first letter refers to drained areas while the second refers to undrained areas. Only soils that are in group D in their natural condition are assigned to dual classes.

- E. Existing Easements. There are no existing easements within the area of the proposed mitigation bank.

III. Habitat and Species Descriptions

- A. Baseline Description of Biological Resources on Bank Site.
[Include a general description of geographic location and features, topography, soils, vegetation (assessment of native vs. invasive and non-native species), a quality assessment of all wetland and streams on the bank site. An overview of native plant species present, if applicable, their habitat and management requirement should be presented here.]
- B. Endangered and Threatened Species. *[Describe all federal and state endangered and threatened species that occur or may occur on the bank site. If applicable, provide map showing their location.]*

- C. Rare Species and Species of Special Concern. *[Description of rare species and species of special concern that occur or may occur on the bank site. If applicable, provide map showing their location.]*

IV. Management and Monitoring

The overall goal of long-term management is to foster the long term viability of the Bank site's waters of the U.S., and any listed species/habitat. Routine monitoring and minor maintenance tasks are intended to assure the viability of the Bank site in perpetuity.

- A. Biological Resources. The approach to the long-term management of the Bank site's biological resources is to conduct annual site examinations and monitoring of selected characteristics to determine stability and ongoing trends of the preserved, restored, enhancement, and created waters of the U.S., including wetlands and streams. Annual monitoring will assess the Bank's condition, degree of erosion, establishment of invasive or non-native species, water quality, fire hazard, and/or other aspects that may warrant management actions. While it is not anticipated that major management actions will be needed, an objective of this long-term management plan is to conduct monitoring to identify any issues that arise, and using adaptive management to determine what actions might be appropriate. Those chosen to accomplish monitoring responsibilities will have the knowledge, training, and experience to accomplish monitoring responsibilities.

Adaptive management means an approach to natural resource management which incorporates changes to management practices, including corrective actions as determined to be appropriate by the IRT in discussion with the Long-Term Steward. Adaptive management includes those activities necessary to address the affects of climate change, fire, flood, or other natural events. Before considering any adaptive management changes to the long-term management plan, the IRT will consider whether such actions will help ensure the continued viability of Bank's biological resources.

The Long-Term Steward for the Bank site shall implement the following:

1. Waters of the U.S., including wetlands

Objective: Monitor, conserve and maintain the Bank site's waters of the U.S., including wetlands and streams. Limit any impacts to waters of the U.S. from vehicular travel or other adverse impacts.

Task: At least one annual walk-through survey will be conducted to qualitatively monitor the general condition of these habitats. General topographic conditions, hydrology, general vegetation cover and composition, invasive species, erosion, will be noted, evaluated and mapped during a site

examination. Notes to be made will include observations of species encountered, water quality, general extent of wetlands and streams, and any occurrences of erosion, structure failure, or invasive or non native species establishment.

Task: Establish reference sites for photographs and prepare a site map showing the reference sites for the Bank file. Alternatively, utilize photographic reference sites, if any, developed during interim bank management period. Reference photographs will be taken of the overall Bank site at least every five years from the beginning of the long-term management.

Special attention should be paid to any area adjacent to or draining from non-bank lands. Streams and wetlands should be observed near bank boundaries to observe if increased sediment deposition has occurred. The report should provide a discussion of any recent changes in the watershed (i.e., subdivision being developed upstream of stream bank).

2. Invasive Species

Invasive species threaten the diversity or abundance of native species through competition for resources, predation, parasitism, interbreeding with native populations, transmitting diseases, or causing physical or chemical changes to the invaded habitat.

Objective: Monitor and maintain control over invasive species that diminish site quality for which the bank was established. The Long-Term Steward shall consult the *Virginia Department of Conservation and Recreation's Invasive Alien Plant list at* http://www.dcr.virginia.gov/natural_heritage/documents/invlist.pdf for guidance on what species may threaten the site and on management of those species.

Task: Mapping of invasive species cover or presence shall occur during the first five years of bank management, to establish a baseline. Mapping shall be accomplished through use of available technologies, such as GIS and aerial photography.

Task: Each year's annual walk-through survey (or a supplemental survey) will include a qualitative assessment (e.g. visual estimate of cover) of invasive species. Additional actions to control invasive species will be evaluated and prioritized in coordination with the IRT.

3. Vegetation Management

Objective: Analyze effects of any authorized silvicultural manipulations on the wetland, streams, and buffers on the bank site. If determined appropriate,

develop and implement specific silvicultural manipulations (e.g. selective thinning) in coordination with the IRT.

Objective: Adaptively manage vegetation based on site conditions and data acquired through monitoring to maintain biological values.

Task: Review and explore potential vegetation management regimes as proposals and/or opportunities and funding arise. If determined to potentially maintain site quality, develop specific silvicultural practices, amend this long-term management plan with the IRT's approval to reflect those practices, and implement silvicultural actions as funding allows.

Task: Implement vegetation management techniques, if determined beneficial and as funding allows, to allow development of vegetation as identified in the MBI. Implementation of vegetation management techniques must be approved by the IRT.

B. Security, Safety, and Public Access

The Bank will be fenced or appropriately marked and shall have no general public access, nor any regular public use. Research and/or other educational programs or efforts, hunting, fishing, and passive recreational activities may be allowed on the Bank site as deemed appropriate by the IRT, but are not specifically funded or a part of this long-term management plan.

Potential mosquito abatement issues will be addressed through the development of a plan by the Long-Term Steward and any local mosquito control district or local health department in coordination with and approved by the IRT.

Potential wildfire fuels will be reduced as needed where approved by the IRT.

1. Trash and trespass

Objective: Monitor sources of trash and trespass.

Objective: Collect and remove trash, repair vandalized structures, and rectify trespass impacts.

Task: During each site visit, record occurrences of trash and/or trespass. Record type, location, and management mitigation recommendations to avoid, minimize, or rectify a trash and/or trespass impact.

Task: At least once yearly collect and remove as much trash as possible and repair and rectify vandalism and trespass impacts.

2. Fences, Gates, Signage, Crossings, and Property Boundaries

Objective: Monitor condition of fences, gates, signage, crossings, and property boundaries.

Objective: Maintain fences, gates, signage, crossings and property boundaries to prevent casual trespass, allow necessary access, and facilitate management.

Task: During each site visit, record condition of fences, gates, signs, crossings, and property boundaries. Record location, type, and recommendations to implement repair or replacement to fence, gate, signage, crossings or property boundary markers, if applicable.

Task: Maintain fences, gates, signs, crossings and property boundary markers as necessary by replacing posts, wire, gates, and signs. Replace fences and/or gates, as necessary, and as funding allows. Note any trespass by livestock.

3. Berms, Structures, and Roads

Objective: Monitor condition of berms, structures, and roads.

Objective: Maintain berms, structures, and roads to facilitate management and maintain conditions of wetlands and streams

Task: During each site visit, record condition of berms, structures, and roads. Record location, type, and recommendations to implement repair or replacement to berms, structures, and roads, if applicable.

Task: Maintain berms, structures, and roads as necessary. Replace berms, structures, and roads as necessary, and as funding allows.

C. Reporting and Administration

1. Annual Report

Objective: Provide annual report on all management tasks conducted and general site conditions to IRT and any other appropriate parties. Each report shall include a cover page with the following information: the bank name, (umbrella bank name if applicable), site name (if applicable), bank phase (if applicable), Long-Term Steward (name, address, phone number, and email address), monitoring year, and any requested action (e.g. funding release, maintenance recommendations requiring IRT approval).

Task: Prepare annual report and any other additional documentation. Include a summary. Complete and circulate to the IRT and other parties by December 31 of each year. Reports should be distributed electronically.

Task: Make recommendations with regard to (1) any enhancement measures deemed to be warranted, (2) any problems that need near-,short-, and long-term attention (e.g., weed removal, fence repair, erosion control), and (3) any changes in the monitoring or management program that appear to be warranted based on monitoring results to date. Provide documentation of the cost of any recommended maintenance and repairs.

D. Transfer, Replacement, Amendments, and Notices

1. Transfer

Any subsequent transfer of responsibilities under this long-term management plan to a different Long-Term Steward shall be requested by the Long-Term Steward in writing to the IRT, shall require written approval by the IRT, and shall be incorporated into this long-term management plan by amendment. Any subsequent Property Owner assumes Long-Term Steward responsibilities described in this long-term management plan and as required in the Conservation Easement, unless otherwise amended in writing by the IRT.

The long-term steward shall be required to ensure that any subsequent property owners (if not identified as the long-term steward) are notified of the deed restriction, conservation easement, purpose and location of the bank lands, and requirement for long-term stewardship.

2. Replacement

If the Long-Term Steward fails to implement the tasks described in this long-term management plan and is notified of such failure in writing by any of the IRT, the Long-Term Steward shall have 90 days to cure such failure. If failure is not cured within 90 days, the Long-Term Steward may request a meeting with the IRT to resolve the failure. Such meeting shall occur within 30 days or a longer period if approved by the IRT. Based on the outcome of the meeting, or if no meeting is requested, the IRT may designate a replacement Long-Term Steward in writing by amendment of this long-term management plan. If the Long-Term Steward fails to designate a replacement Long-Term Steward, then such public or private land or resource management organization acceptable to and as directed by the IRT may enter onto the Bank property in order to fulfill the purposes of this long-term management plan.

3. Amendments

The Long-Term Steward, property owner, and the IRT may meet and confer from time to time, upon the request of any one of them, to revise the long-term management plan to better meet management objectives and preserve the conservation values of the Bank property. Any proposed changes to the long-term management plan shall be discussed with the IRT and the Long-Term

Steward. Any proposed changes will be designed with input from all parties. Amendments to the long-term management plan shall be approved by the IRT in writing shall be required management components and shall be implemented by the Long-Term Steward.

If the VDGIF or USFWS determine, in writing, that continued implementation of the long-term management plan would jeopardize the continued existence of a state or federally listed species, any written amendment to this long-term management plan, determined by either the VDGIF or USFWS as necessary, shall be a required management component and shall be implemented by the Long-Term Steward.

4. Notices

Any notices regarding this long-term management plan shall be directed as follows:

Long-Term Steward:

Property Owner:

Bunrootis, LLC
400 South Record, Suite 1250
Dallas, TX 75202
ATTN: David Gibbons

IRT Chair:

U.S. Army Corps of Engineers Norfolk District
Regulatory Branch
803 Front Street
Norfolk, VA 23510
ATTN: George Janek

IRT Co-Chair:

Department of Environmental Quality
Central Office
629 East Main Street
Richmond, VA 23219
ATTN: Bettina Rayfield

IRT Members:

U.S. Environmental Protection Agency Region 3
1650 Arch Street
Philadelphia, PA 19103-2029
ATTN: Carol Petrow and Mark Douglas

U.S. Fish and Wildlife Services
Virginia Field Office
6669 Short Lane
Gloucester, VA 23061
ATTN: Kimberly Smith

Virginia Department of Game and Inland Fisheries
4010 West Broad St.
Richmond, VA 23230
ATTN: Amy Ewing

Virginia Department of Conservation and Recreation
101 North 14th Street, 11th Floor Monroe Building
Richmond, VA 23219
ATTN: David Aho

Virginia Department of Forestry
135 Bank Street
PO Box 198
Waverly, VA 23890
ATTN: Edward Zimmer

E. Funding and Task Prioritization

1. Funding

[The list of tasks in Table 1 is not meant to be exhaustive. Some sites may have more elements to consider and some may have fewer depending on the attributes of the bank.]

Table 1 summarizes the anticipated costs of long-term management for the Bank. These costs include estimates of time and funding needed to conduct the basic monitoring site visits and reporting, trash removal, fence repair, etc. and a prorated calculation of funding needed to fully repair and/or replace fences and other structures every ____ years. The total annual funding anticipated is approximately \$_____, therefore, with the current annual estimated capitalization rate of ____ the total endowment amount (The Long-Term Management Fund) required will be \$_____.

_____ shall hold the endowment principal and interest monies (The Long-Term Management Fund) as required in the MBI, which consists of monies

that are paid into it in trust, and is appropriated to fulfill the purposes for which payments into it are made. These interest monies will fund the long-term management, enhancement, and monitoring activities on Bank lands in a manner consistent with this long-term management plan.

2. Task Prioritization

Due to unforeseen circumstances, prioritization of tasks, including tasks resulting from new requirements, may be necessary if insufficient funding is available to accomplish all tasks. The Long-Term Steward and the IRT shall discuss task priorities and funding availability to determine which tasks will be implemented. In general, tasks are prioritized in this order: 1) required by a local, state, or federal agency; 2) tasks necessary to maintain or remediate the Bank Site (including unauthorized impacts); and 3) tasks that monitor resources, particularly if past monitoring has not shown downward trends. Equipment and materials necessary to implement priority tasks will also be considered priorities. Final determination of task priorities in any given year of insufficient funding will be determined in consultation with the IRT and as authorized by the IRT in writing.

3. Enforcement

The IRT and its authorized agents shall have the right to inspect the Property and take actions necessary to verify compliance with this Long-Term Management Plan. The Long-Term Management Plan herein shall be enforceable by any proceeding at law or in equity or administrative proceeding by the IRT, including the Corps or DEQ. Failure by any agency (or owner) to enforce the Long-Term Management Plan contained herein shall in no event be deemed a waiver of the right to do so thereafter.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date herein below last written.

Long-Term Steward

Date

INTERAGENCY REVIEW TEAM

U.S Army Corps of Engineers, Norfolk District
By: _____
Its: _____

Date

Virginia Department of Environmental Quality
By: _____
Its: _____

Date