

## **Wetland and Waterway Mitigation Bank Approval Process in Maryland**

May 31, 2022

*The Maryland Department of the Environment has developed this guidance document to assist potential bank sponsors in successfully getting through the bank approval process. This guidance may not reflect the policies of the U.S. Army Corps of Engineers or the Interagency Review Team.*

*This is intended to be a living document. Revisions may occur frequently, as mitigation policies (including decisions made as part of the Interagency Review Team) evolve.*

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## Q. Standard Credit Release Schedule for Tidal Wetlands Mitigation Banks

### 1. Introduction and Purpose

This document contains guidance on the development of wetland and waterway mitigation banks in accordance with the Federal Mitigation Rule adopted April 10, 2008, by the U.S. Army Corps of Engineers (“USACE”) and the U.S. Environmental Protection Agency (“EPA”) (33 CFR Part 332 and 40 CFR Part 230). The Maryland Department of the Environment (“MDE”) has developed this guidance to assist mitigation bank sponsors in successfully getting through the mitigation bank approval process in a timely manner. **This document should not be interpreted as a guarantee that a mitigation bank meeting these guidelines will be approved by MDE, the USACE, and the Interagency Review Team (IRT), as MDE, the USACE, and the IRT must consider projects on a case-by-case basis. Additionally, this guidance may not reflect the policies of the USACE or IRT.**

This document is applicable to the development of mitigation banks designed to provide compensatory mitigation in accordance with the Federal Mitigation Rule for unavoidable impacts to Waters of the U.S. and Waters of the State, including streams, wetlands, and their functions, as a result of activities authorized under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, Maryland Nontidal Wetlands Protection Act, Maryland Tidal Wetland Act, and Maryland Waterway Construction Act.

All mitigation banks should follow criteria included in [Appendix A](#)<sup>1</sup> “Components of a Compensatory Mitigation Plan - Guidance for Developing Wetland and Waterway Mitigation in Maryland.”

### 2. Interagency Review Team

The Maryland Interagency Review Team is comprised of representatives from USACE (co-chair), MDE (co-chair), EPA, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Maryland Department of Natural Resources (DNR), Maryland Historical Trust (MHT), and Maryland Critical Area Commission. The Maryland Board of Public Works may also comment on proposed tidal wetland mitigation banks. While these are the standard IRT members, for any particular project some members may choose not to participate or additional federal, State, or local agencies may participate. The IRT meets monthly to discuss mitigation banking and continues to develop standard templates and other documents to improve the efficiency of the

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<sup>1</sup> Appendix A can be found on the MDE Wetlands and Waterways Program website at: <https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Documents/Components-Mit-Plan-Guidance.pdf>

mitigation bank review process and improve the environmental outcomes. IRT contact information is provided in [Appendix B](#)<sup>2</sup>.

The IRT chairs (USACE and MDE), where appropriate, make decisions required within the banking review and operation on behalf of the IRT. Where this document refers to an action by the IRT, it is intended that the IRT acts through the chairs, with consultation from the IRT members.

## **2.1. Interagency Review Team Meetings**

IRT meetings are generally held during the day on the first Tuesday of each month through a video conference (e.g., Google Meets). To be considered for the IRT agenda, the sponsor must submit the “IRT Meeting Request Form” ([Appendix C](#)<sup>3</sup>) and all materials to be presented or discussed at the IRT meeting to [kelly.neff@maryland.gov](mailto:kelly.neff@maryland.gov) by the deadlines specified in the “IRT Meeting Schedule and Deadlines,” located on the MDE website<sup>4</sup>. Time slots for the IRT meeting will be filled as the requests are received and sponsors will be notified of the meeting date, location, and time. If all slots are filled, then the sponsor will be notified and offered a time slot at the following month's IRT meeting. During these meetings, the sponsor is encouraged to provide a presentation (e.g., Powerpoint) discussing the concepts of the mitigation bank. To make better use of the IRT meetings, if the sponsor has questions mainly for the USACE and/or MDE, the sponsor should set up a time to discuss these issues outside of the IRT meeting (e.g., through conference calls).

## **2.2. Responsibilities of the Interagency Review Team**

The IRT reviews documentation for the establishment and management of mitigation banks. The IRT will review the prospectus, instrument, and other appropriate documents and provide comments to the co-chairs. The co-chairs and IRT should use a watershed approach<sup>5</sup> to the extent practicable in reviewing banks. Members of the IRT may also sign the instrument if they choose. By signing the instrument, the IRT members indicate their agreement with the terms of the instrument. As an alternative, a member of the IRT may submit written concurrence with the instrument. The IRT will also assist the co-chairs in assessing monitoring reports, recommending remedial or adaptive management measures, approving credit releases, and approving modifications to an instrument. Co-chairs will strive to meet the time limits specified

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<sup>2</sup> Appendix B can be found on the MDE Wetlands and Waterways Program website: <https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Documents/Interagency-Review-Team-Contact-Info.pdf>

<sup>3</sup> Appendix C can be found on the MDE Wetlands and Waterways Program website: <https://mde.maryland.gov/programs/water/WetlandsandWaterways/AboutWetlands/Documents/IRT-Meeting-Request-Form.docx>

<sup>4</sup> <https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Pages/mitigationbanks.aspx>

<sup>5</sup> The watershed approach is described in Appendix A.

in the 2008 Federal Mitigation Rule. Comments from the IRT must be received by the co-chairs within the time limits specified in the Federal Mitigation Rule. Any IRT comments received after these deadlines will be considered at the discretion of the co-chairs to the extent that doing so does not result in the co-chairs missing their deadlines. The co-chairs will consider any timely comments and advice of the IRT.

### **3. Bank Approval Process**

In brief, the bank sponsor shall prepare and submit the following documents to the IRT for approval: draft prospectus (optional); prospectus; draft mitigation banking instrument (MBI); and final MBI. After the draft prospectus has been approved by the IRT, the information in the draft prospectus shall be used to support the development of the prospectus, and the prospectus shall be used to support the development of the draft MBI. Once the draft MBI instrument is approved by the IRT, the compendium of all documents collectively will be considered the final banking instrument, after all responsible parties sign the contractual agreement. After signature, the final MBI will be considered approved. The final MBI must be approved by the USACE and MDE prior to the site being eligible for use to mitigate for federal and State authorized impacts. After the final MBI is approved and any required permits/authorizations are issued, work efforts may initiate on the site, with the understanding that all other obligations will be implemented in accordance with the signed document. The following sections outline the recommended approach to meeting the procedural steps required by the Federal Mitigation Rule, which if followed, will result in faster processing of bank proposals and MBI approval.

The Federal Mitigation Rule requires that for a mitigation bank to be approved, it must follow a formal mitigation bank review process and the IRT are held to certain review timelines ([Appendix D](#)<sup>6</sup>). Flowcharts providing details on the Maryland process are provided for the draft prospectus ([Appendix E](#)<sup>7</sup>), prospectus ([Appendix F](#)<sup>8</sup>), draft MBI ([Appendix G](#)<sup>9</sup>), final MBI

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<sup>6</sup> Appendix D can be found on the MDE Wetlands and Waterways Program website:  
<https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Documents/IRT-Timeline-v5.pdf>

<sup>7</sup> Appendix E can be found on the MDE Wetlands and Waterways Program website:  
[https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Documents/Phase-I-Draft-Prospectus-Process-Timeline\\_04\\_27\\_16.pdf](https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Documents/Phase-I-Draft-Prospectus-Process-Timeline_04_27_16.pdf)

<sup>8</sup> Appendix F can be found on the MDE Wetlands and Waterways Program website:  
[https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Documents/Phase-II-Prospectus-Process-Timeline\\_04\\_27\\_16.pdf](https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Documents/Phase-II-Prospectus-Process-Timeline_04_27_16.pdf)

<sup>9</sup> Appendix G can be found on the MDE Wetlands and Waterways Program website:  
[https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Documents/Phase-III-Draft-MBI-Process-Timeline\\_04\\_27\\_16.pdf](https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Documents/Phase-III-Draft-MBI-Process-Timeline_04_27_16.pdf)

([Appendix H](#)<sup>10</sup>), and umbrella mitigation banking instrument (UMBI) amendment ([Appendix I](#)<sup>11</sup>). The process can be summarized as follows:

1. Present a concept of the mitigation project at the monthly IRT meeting. This provides an opportunity for the bank sponsor to get informal feedback from the IRT before investing much time and money on the project.
2. Set up and conduct a site meeting to the proposed mitigation bank with the IRT. After the sponsor presents the project at the IRT meeting, if the IRT sees merit in the project as mitigation, the IRT will ask the sponsor to coordinate directly with all members of the IRT, usually through a Doodle Poll or similar scheduling tool. The invitees should include the appropriate USACE and MDE project managers, and all IRT members. While submittal of the Joint Federal/State Application for the Alteration of Any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland (JPA) will generally not be required until the Draft Instrument is submitted, MDE and USACE may also consider this site visit as a pre-application meeting to evaluate potential impacts to regulated resources<sup>12</sup>. The sponsor must provide a draft prospectus ([Appendix J](#)<sup>13</sup>) to the IRT at least two weeks prior to the site meeting, to provide background on the mitigation site. The IRT may provide some informal feedback to the sponsor during this site meeting.

Following a site meeting, the sponsor should prepare written meeting summary notes and submit them to all attendees for review.

3. Submit an official draft prospectus (Optional). While the sponsor was required to submit a draft prospectus prior to the site meeting, if they would like official feedback on the draft prospectus, they may request that the IRT provide formal feedback on the draft prospectus. As part of this process, they may decide to revise the draft prospectus based on site meeting comments. The draft prospectus outlines the concepts of the proposed mitigation bank, with emphasis on site selection. It allows the IRT a chance to comment

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<sup>10</sup> Appendix H can be found on the MDE Wetlands and Waterways Program website:  
[https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Documents/Phase-IV-Final-MBI-Process%20-Timeline\\_04\\_27\\_16.pdf](https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Documents/Phase-IV-Final-MBI-Process%20-Timeline_04_27_16.pdf)

<sup>11</sup> Appendix I can be found on the MDE Wetlands and Waterways Program website:  
<https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Documents/UMBI-Amendment-Process.pdf>

<sup>12</sup> As the MDE mitigation bank reviewer may differ from the MDE permit reviewer, the MDE bank reviewer will coordinate internally to ensure that all relevant MDE staff from the Wetlands and Waterways Program are invited to the site meeting.

<sup>13</sup> Appendix J can be found on the MDE Wetlands and Waterways Program website:  
[https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Documents/Draft\\_Prospectus\\_Chkfst.pdf](https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Documents/Draft_Prospectus_Chkfst.pdf)

on the site selection before the sponsor puts the effort into developing the complete prospectus. For example, comments received from the IRT on the draft prospectus would give the sponsor a good idea if there are any “red flags” with the project (e.g., rare species at the project site that should not be disturbed). This step gives the sponsor the chance to get official IRT feedback on the proposal prior to the prospectus stage, which requires public notice. Review of the draft prospectus also has a much quicker review time (30 days) than is allowed for the prospectus (90 days). Within 30 days of receipt of the draft prospectus, the USACE will provide the sponsor with: 1) copies of the IRT comments and 2) letter/email recommending that the prospectus be prepared for the site or that the bank/ILF proposal request be terminated. MDE will also provide comments directly to sponsor within this 30-day period. **The draft prospectus must include all elements in “Draft Prospectus Submittal for Mitigation Banking Proposals”** ([Appendix J](#)). Submit a digital copy to all members of the IRT.

4. Submit a prospectus. The prospectus discusses additional concepts of the proposed mitigation bank, including objectives, how the site will be established and operated, and overall feasibility of the proposed site. The prospectus will be evaluated as a conceptual document that outlines the approach proposed for the bank. While the prospectus is conceptual, it is recommended that the prospectus include enough detail so that opportunities and constraints can be accurately identified. With this perspective, the IRT can then work to approve or reject the proposed concepts of a project. Within 30 days of receipt of complete prospectus, the USACE and MDE will issue a 30-day public notice. Within 90 days of receipt of complete prospectus, the USACE will provide the sponsor with an initial evaluation letter. MDE will provide comments directly to the sponsor within this 90-day period. **The prospectus must include all elements required in “Information for a Complete Mitigation Bank Prospectus per CFR 332.8(d)(2)”** ([Appendix K](#)<sup>14</sup>). It must also include a MDE mitigation bank application ([Appendix L](#)<sup>15</sup>). Submit a digital copy to the USACE and MDE. The submittal should include: an itemized response to IRT comments (if applicable), a word version of the prospectus, a “track changes” version of the prospectus (if applicable), and the MDE mitigation bank application.
5. Submit a draft mitigation banking instrument. If the USACE and MDE determine the prospectus has merit, the sponsor may develop and submit a draft MBI. The draft MBI

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<sup>14</sup> Appendix K can be found on the MDE Wetlands and Waterways Program website: <https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Documents/MBI-Prospectus-Information-List.pdf>

<sup>15</sup> Appendix L can be found on the MDE Wetlands and Waterways Program website: <https://mde.maryland.gov/programs/water/WetlandsandWaterways/AboutWetlands/Documents/MDE-mitigation-bank-application-with-instructions-form.pdf>

shall describe in detail the physical and legal characteristics of the mitigation bank and how it will be established and operated. Within 90 days of receipt of a complete draft MBI, the USACE will notify the sponsor of the status of the IRT review, including general acceptability and unresolved concerns. MDE will provide comments directly to sponsor within this 90-day period. If there are major IRT comments and many revisions required to the draft MBI, the USACE and MDE may recommend submittal of a revised draft MBI, which may also have up to a 90-day review period.

Generally, a JPA should be submitted at this time to the MDE Regulatory Services Division for any temporary or permanent impacts proposed to wetlands, 25-foot nontidal wetland buffer, floodplain, or waterways as part of the mitigation bank project. This JPA will be processed concurrently with the mitigation bank review.

**The draft MBI must include all elements required in “Requirements for Mitigation Bank and In-Lieu Fee Program Instruments”** ([Appendix M](#)<sup>16</sup>). The submittal should include: an itemized response to IRT comments (if applicable), a word version of the draft MBI, and a “track changes” version of the draft MBI (if this is a revised draft MBI). Submit two hard copies and a digital copy to the USACE and MDE. The USACE and/or MDE may request that the sponsor distribute hard copies (including plans) directly to the IRT members. *Examples of language used in previously approved mitigation banks can be found on the USACE’s Regulatory In-Lieu Fee and Bank Information Tracking System (RIBITS) website*<sup>17</sup>.

6. Submit a final mitigation banking instrument for IRT signature. After the USACE and MDE determine that all major issues in the draft MBI have been resolved, they will recommend that the sponsor submit the final MBI for signature. At this point, the USACE and MDE have the options to approve or not approve the instrument. Within Day 45, the USACE will notify the sponsor of intent to approve/not approve the instrument. After signature of the MBI by all parties, the mitigation bank will be considered approved. The final MBI must be approved by the USACE and MDE prior to the bank being eligible for use as mitigation for USACE and MDE authorized impacts. After the final MBI is approved and all other site protection documents are in-place, mitigation site construction may commence, with the understanding that all other obligations (e.g., financial assurances, monitoring, tracking, etc.) will be implemented in accordance with the MBI.

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<sup>16</sup> Appendix M can be found on the MDE Wetlands and Waterways Program website: <https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Documents/Requirements-for-Complete-MBI-and-ILF-Instrument.pdf>

<sup>17</sup> [ribits.usace.army.mil/](https://ribits.usace.army.mil/)

The sponsor will need to receive authorization (if applicable) from the USACE and MDE for impacts proposed by the mitigation bank project, prior to mitigation construction and release of any mitigation bank credits. All other required permits must also be approved prior to mitigation construction.

**The final MBI must include all elements in “Requirements for Mitigation Bank and In-Lieu Fee Program Instruments”** ([Appendix M](#)). Submit two hard copies and a digital copy to the USACE and MDE. The USACE may request that the sponsor distribute hard copies (including plans) directly to the IRT members. The submittal should include: an itemized response to IRT comments (if applicable), a word version of the final MBI, and a “track changes” version of the MBI.

7. Dispute Resolution. If an IRT member objects to the approval of the MBI, they may initiate the dispute resolution process ([Appendix N](#)<sup>18</sup>)

#### **4. Modification of an Approved Instrument**

A modification of an approved instrument, including approval of additional mitigation sites for an UMBI, must follow the procedures in 332.8(d), including submittal of a prospectus, draft instrument, and final instrument, unless the USACE determines that the modification qualifies for the "streamlined review process" based on 332.8(g). Examples of modifications that may qualify for the streamlined review process include changes to the adaptive management, credit releases, credit release schedule, and other changes that the USACE determines are not significant. This streamlined review process generally includes a 75-day review period, but can be longer if it goes to dispute resolution. The streamlined review process is as follows:

1. Sponsor submits request to USACE and MDE for modification of their bank. This should include a written request specifying the nature of the modification and justification.
2. The USACE notifies IRT and sponsor that the modification request warrants a streamlined review process and provides them with copies of the proposed modification.
3. IRT and sponsor have 30 days to notify USACE and MDE of concerns.
4. If USACE receives any concerns, they must attempt to resolve them. USACE must notify IRT of intent to approve/disapprove the modification within 60 days of providing the IRT with proposed modification.
5. If no IRT member objects through the dispute resolution process, the USACE must notify sponsor of final decision with 15 days of the notification to IRT. If the modification is

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<sup>18</sup> Appendix N can be found on the MDE Wetlands and Waterways Program website: <https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Documents/Mit-Bank-Dispute-Timeline.pdf>

approved, the USACE will arrange for it to be signed by the appropriate parties.

## **5. Regulatory In-Lieu Fee and Bank Information Tracking System (RIBITS)**

The USACE RIBITS website provides an up-to-date source of information on mitigation banks for bank sponsors and applicants. Information on mitigation banks in Maryland, including all major documents pertaining to the bank (e.g., prospectus and instrument), description of the bank, status of bank approval, service areas, available credits, and monitoring reports can be found on the USACE RIBITS website (<https://ribits.usace.army.mil/>).

Once a draft prospectus has been received by the USACE, the USACE will add the proposed bank to RIBITS. The sponsor should upload key documents to RIBITS for IRT access including the prospectus, draft instrument (and subsequent versions if applicable), and final instrument. The USACE or MDE will load all credit releases onto RIBITS. The bank sponsor should update the credit ledger on RIBITS as each credit withdrawal occurs and will upload the credit transaction letter, to provide real-time accounting. The sponsor will upload the site protection mechanism, financial assurances, monitoring reports and financial reports to RIBITS when they are due, sending an email to the IRT notifying them of the addition. After bank closure, the long-term steward will upload the monitoring reports and financial reports to RIBITS, also sending an email to the IRT notifying them of this action. RIBITS will also include other information and documents as appropriate, including the service areas, contact information, annual inspections, and photos. While some of this information will only be accessible to the IRT, some will also be publicly accessible. Instructions for bank sponsors entering data into RIBITS can be found in the Corps' RIBITS website, under the "Help" section.

## **6. Requirements for Mitigation Bank and In Lieu Fee Program Instruments**

### **6.1. Service Area**

A service area is a designated geographic area, usually based on 8-digit federal hydrologic unit codes ("HUCs"), within which the mitigation bank is authorized to provide compensatory mitigation. A permittee may secure mitigation credits for permitted impacts that occur within the service area, where appropriate credit is available. Service areas, and the ecological justification, should be proposed for each mitigation bank within the draft prospectus/prospectus

documents. [Appendix O](#)<sup>19</sup> includes a map of the 8-digit HUCs and major physiographic provinces.

- a) Primary service area: The primary service area is the designated geographic area wherein a bank can reasonably be expected to provide appropriate compensation for impacts to wetlands, streams, stream corridors, and/or aquatic resources. In Maryland, the primary service area is generally the 8-digit HUC but may occasionally be multiple HUCs if ecologically justified.
  
- b) Secondary service area: The secondary service area generally includes adjacent 8-digit HUC(s) to the primary service area HUC(s) within same 6-digit HUC river basin and physiographic region<sup>20</sup>. 8-digit HUCs within additional adjacent river basins may be considered only when they have a small portion within Maryland (e.g., Susquehanna) and are ecologically justified. Use of the bank for compensatory mitigation for unavoidable impacts located in the secondary service area may be considered during the permit evaluation only when there are no available credits in the primary service area of any other bank and the applicant can demonstrate with documentation that the secondary service area will replace the lost aquatic functions at the impact site with in-kind mitigation. Any secondary service area compensatory mitigation purchase must be approved by the USACE and/or MDE, through project-specific permit decisions, prior to purchase.

The permittee may propose to use mitigation credits for permitted impacts that occur outside of the service area, if the proposed impacts are minor and the impacts do not occur within the service area of any approved banks having available credits. The permittee must demonstrate and the permit reviewer must determine that this is the most environmentally preferable option and that the impacted acreage and functions will be replaced. If the permit reviewer allows use of the mitigation site outside of the service area, compensatory ratios and the number of mitigation credits required may be higher.

If the USACE and/or MDE, based on consultation with the resource agencies, determine that the impacts will result in loss of unique functions that will not be replaced at the mitigation bank (e.g., anadromous fish species, Delmarva Bays, Tier II, Wetlands of Special State Concern, SAV, oysters, shallow water habitat, etc.), the pertinent regulatory agencies may determine that

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<sup>19</sup> Appendix O can be found on the MDE Wetlands and Waterways Program website:  
<https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Documents/Map-8HUCs-Physio-Regions.jpg>

<sup>20</sup> The Blue Ridge Physiographic Province may be included within the service area of banks within the Piedmont or Ridge and Valley Physiographic Provinces, if ecologically justified by the bank sponsor.

use of the mitigation bank to satisfy the compensatory mitigation requirements of the authorization is not appropriate.

Banks proposed in more urban areas may have a service area limited to more urban land. Mitigation projects constructed in urban areas may never be able to provide the full suite of mitigation functions (e.g., good biology for stream restoration) due to the limitation of the urban setting.

In order to accurately depict the bank information on RIBITS, the sponsor should submit to the co-chairs a separate GIS polygon for the proposed primary service area and secondary service area. *This file should be a shapefile or feature class, in the coordinate system Maryland State Plane NAD 1983 (meters).*

## **6.2. Accounting Procedures**

A detailed discussion of required accounting procedures for the tracking of mitigation credit sales, releases, and availability should be included in the MBI. The sponsor shall submit a statement to the USACE and MDE each time credits are debited or additional credits are approved by submitting an accounting ledger<sup>21</sup>. In addition, the sponsor shall submit a semi-annual ledger to the USACE and MDE, which will be distributed to all members of the IRT, showing all transactions in the bank for the previous year and cumulative tabulation of all transactions to date. The semi-annual credit ledger must include the following information: name of permittee, project name, USACE permit number, MDE permit number, type of permit, county of impacts, USGS 8-digit HUC catalog unit of impacts, type of impacted system (Cowardin classification), amount of impacts, amount and type of wetland debit from mitigation bank, released credits remaining in the bank, USGS HUC Catalog Unit, and date of transaction. The co-chairs will review the semi-annual report and in consultation with the IRT, adjust the credit composition to assure no net loss of wetland acreage. Semi-annual ledgers and transaction reports shall be submitted to the IRT if credits remain in the bank and/or the bank remains operational. In no event shall the cumulative total area of wetland impacts permitted to use credits from the bank exceed the total credits created by the bank. The sponsor shall update credit ledgers on RIBITS by the 30th of each January and July. When an agreement to buy credits between the sponsor and a permittee is terminated, the sponsor shall provide written notification to the co-chairs within 15 days of said action. If the mitigation bank is constructed in phases, the accounting of credits shall duly reflect this phasing of work.

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<sup>21</sup> Sample ledger is located on Corps' RIBITS website, under the "Bank and ILF Establishment" section.

### **6.3. Responsibility for Compensatory Mitigation**

The MBI must include a provision stating that legal responsibility for providing mitigation lies with the sponsor once a permittee secures credits from the sponsor.

### **6.4. Default Provisions and Closure Provisions**

The sponsor should include detailed information in the MBI about default and closure provisions. If the sponsor is in default of any provision of the MBI, the sale or transfer of credits may be suspended until the appropriate deficiencies have been remedied. If the sponsor remains in default, all future credit transactions may be terminated. If the bank is terminated, the sponsor is required to fulfill all obligations under the MBI relating to credits that were sold or transferred prior to termination.

Bank closure will occur after the end of the monitoring period, upon satisfaction of the performance standards and when all released credits have been debited. Upon closure, no further credits shall be transferred. Prior to closure, the IRT will perform a final site inspection to evaluate whether all performance standards have been achieved. Once the site is closed, the long-term maintenance period will commence. Criteria that must be met for closure are:

- a) All applicable performance standards have been achieved;
- b) All released credits for that bank have been debited;
- c) The sponsor has reviewed and revised, if necessary, the long-term management plan, and the revised long-term management plan has been approved by the chairs, in consultation with the IRT;
- d) The sponsor has prepared and submitted an electronic GIS shapefile or similar exhibit to the IRT depicting the location and extent of the bank;
- e) The sponsor has either: (i) assumed responsibilities for accomplishing the long-term management plan, in which case the sponsor will be the long-term steward, or (ii) has assigned those responsibilities to another long-term steward;
- f) The catastrophic event and long-term management funds have been fully funded<sup>22</sup>;
- g) The catastrophic event and long-term management funds have been transferred to the long-term steward; and,
- h) The bank has complied with all terms of the MBI.

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<sup>22</sup> The MBI will specify when these financial assurances are required. They may need to be fully funded earlier in the process.

## 6.5. Reporting Protocols

The sponsor should provide a detailed discussion in the MBI of specific reporting protocols for monitoring reports or other status updates to the IRT. Non-compliance and default procedures may be taken if the sponsor fails to submit complete and timely monitoring reports.

## 6.6. Any Other Information Deemed Necessary by the District Engineer

The sponsor should provide the following:

- a) Cultural and historic resources correspondence (e.g., MHT);
- b) Endangered species act correspondence (e.g., DNR Wildlife and Heritage, USFWS);
- c) Correspondence about other applicable resources proposed to be impacted (e.g., Federal Aviation Administration);
- d) Copies of other agency permits;
- e) Title report and insurance;
- f) Property assessment and warranty;
- g) Plat map;
- h) USACE preliminary or approved jurisdictional determination map and correspondence (MDE will also need to verify the delineation); and
- i) Other information required by the IRT.

## 6.7. Credit Release Schedule

The MBI must include a credit release schedule tied to achievement of specific milestones. The credit release schedule should reserve a significant share of total credits for release only after full achievement of ecological performance standards. Upon submittal of all appropriate documentation by the sponsor, and subsequent written approval by the USACE and MDE, in consultation with the other members of the IRT, credits shall be released for transfer to a third party according to the procedures described in the MBI. The actual number of credits released shall be determined by the USACE and MDE, in consultation with the other IRT agencies, based on determination that required milestones have been achieved, as described in [Appendix P](#)<sup>23</sup> for nontidal wetlands and [Appendix Q](#)<sup>24</sup> for tidal wetlands. The USACE and MDE, in consultation

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<sup>23</sup> Appendix O can be found on the MDE Wetlands and Waterways Program website: <https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Documents/Schedule-of-Credit-Availability-Nontidal-Wetland-Banks.pdf>

<sup>24</sup> Appendix O can be found on the MDE Wetlands and Waterways Program website: <https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Documents/Schedule-of-Credit-Availability-Tidal-Wetland-Banks.pdf>

with the IRT, may accelerate credit release schedule commensurate with performance. No credit transfer shall occur until the applicable credit release has occurred.

## **7. Bulk Credit Sales, Reserving Credits, and Re-sale of Credits**

The sale of bulk credits from an approved mitigation bank may be acceptable. For example, a transportation agency may consider buying several acres of credits from an approved mitigation bank to potentially provide compensatory mitigation for future projects. MDE will recognize this bulk credit sale once we receive a Credit Transaction Statement. This bulk credit sale should also be documented within the RIBITS credit ledger. There is no guarantee that these credits can be used for a certain project – mitigation requirements and the acceptability of a particular mitigation project will still be determined by the permit reviewer on a case-by-case basis during the permit review process. This will require the entity buying the bulk credits to create and maintain a sub-ledger, showing all withdrawn credit from total credits purchased. This sub-ledger should be updated and provided to MDE and the Corps each time an impact is approved to use credits.

The bank sponsor may allow credits to be reserved. This is an agreement between the bank sponsor and the buyer only. When credits are reserved, they are not debited. The bank cannot close until all credits are debited. Credits that are reserved will not be noted on the ledger or RIBITS as being reserved. It won't be until they are officially debited that they will show up as such on the ledger and RIBITS.

Re-sale of bank credits is not allowed.

## **8. Additional Resources**

The MDE Wetlands and Waterways Program Mitigation website (<https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Pages/mitigation.aspx>) and the USACE Baltimore District Mitigation website (<https://www.nab.usace.army.mil/Missions/Regulatory/Mitigation.aspx>) also contain information on mitigation banking in Maryland.