Wetlands Compensatory Mitigation: U.S. Army Corps of Engineers and Virginia Department of Environmental Quality Enter into Memorandum of Agreement

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The United States Army Corps of Engineers ("Corps") and Virginia Department of Environmental Quality ("VDEQ") entered into a March 29th document styled:

Memorandum of Agreement Between the U.S. Army Corps of Engineers, Norfolk District and the Virginia Department of Environmental Quality Regarding Implementation of the Third-Party Compensatory Mitigation Program ("MOA")

The intent of the *MOA* is stated to divide responsibilities between the Corps and VDEQ for purposes of increasing efficiency in review and faster analysis of mitigation credits.

Section 404 of the Clean Water Act requires that a permit be obtained from the Corps for certain activities in jurisdictional waters. A frequent condition of such permit is mitigation of environmental impacts to rivers, streams, or wetlands. The Corps may require that a party proposing the project purchase credits from a mitigation bank or an in-lieu fee program in the same area to compensate for such impacts.

Stated differently, compensatory mitigation means mitigating an aquatic resource impact by replacing and providing substitute aquatic resources for impacts that remain after avoidance and minimization measures have been applied, and is achieved through appropriate and practicable restoration, establishment, enhancement, and/or preservation of aquatic resource functions and services. In other words, compensatory mitigation is the third step in a sequence of actions that must be followed to offset impacts to aquatic resources. Step three involves the appropriate and practicable compensatory mitigation required for unavoidable adverse impacts which remain. The amount and quality of compensatory mitigation may not substitute for avoiding and minimizing the impacts.

The Corps/VDEQ *MOA* provides that the Corps will remain the lead agency responsible for:

. . . mitigation site approval, initial mitigation credit release, and final construction plans.

VDEQ is stated to be the lead agency (with federal oversight) for compliance review of approved mitigation sites after construction. Such review is stated to include review of:

- As-built reports
- Monitoring reports

- Financial reports
- Mitigation releases action
- Corrective action associated with such reports

The *MOA* also addresses the development of a new 2023 Monitoring Report template for regular compliance monitoring of third-party mitigation sites. This is stated to be designed to further increase efficiency in agency review of monitoring reports and provide quicker credit release decisions.

A copy of the MOA can be downloaded here.