

Memorandum of Understanding
Between The Elizabeth River Project, the
Commonwealth of Virginia, and US Army Corps of
Engineers, Norfolk District

Regarding:

Parameters for Establishing a Trust Fund for Mitigation
of Impacts, Elizabeth River Watershed

This memo establishes a WORKING UNDERSTANDING between The Elizabeth River Project, the Commonwealth of Virginia, and the US Army Corps of Engineers, Norfolk District, regarding parameters for the potential establishment of a trust fund for mitigation of impacts to aquatic resources in the Elizabeth River watershed.

- 1) First and foremost, it is understood that mitigation funds will be accepted for permitted projects only after every reasonable option has been pursued to "do no harm," by avoiding or reducing the environmental impacts of those projects in keeping with federal and state laws. It is understood that the establishment of the trust fund in no way will result in relaxing the Commonwealth's and/or the Corps' current level of enforcement of permit requirements.
- 2) The trust fund will be used to offset impacts that cannot be avoided, with the goal of achieving, at a minimum, an offset to permitted project impacts to affecting the environmental health of the Elizabeth River watershed. While mitigation funds shall be sufficient, at a minimum in the aggregate, to offset the impacts for which they are provided, the Elizabeth River Project's goal will be to go beyond the minimum to achieve improvements to the Elizabeth River ecosystem. This is in keeping with The Elizabeth River Project's support for "win-win" solutions that benefit both the economy and the ecosystem. This will be achieved by the following actions.
 - Prior to consideration or acceptance of any mitigation funds, a working understanding will be established between The Elizabeth River Project, the Commonwealth of Virginia, and the Corps regarding guidelines for the appropriate level of funding, varying by size and nature of the impacts, which will be necessary in order to accomplish restoration activities that offset the impacts for which funds are provided. Funds must be used in accordance with state and federal regulations on the use of In lieu fee funds.
 - Changes in the federal code will be pursued to allow the trust fund to be a non-federal sponsor required for civil works projects to be funded by Congress for environmental restoration on the Elizabeth River. In this way, the environmental benefits of the trust fund will be multiplied by leveraging federal dollars.

- The trust fund will be used to implement appropriate aspects of The Elizabeth River Project's Watershed Action Plan, Elizabeth River Restoration and Conservation, which has been adopted by the Commonwealth of Virginia. This plan will serve as the guiding document for selecting projects and establishing priorities for expenditure of the trust fund. It is understood there are certain activities in the Action Plan that will need to be excluded from funding under federal and/or state regulations and mitigation guidelines. The Corps and the Commonwealth of Virginia in consultation with the Elizabeth River Project will identify these in advance.
- An independent entity will be established to receive and administer the fund.
- The Governing trustee of the entity will be The Elizabeth River Project. Projects that implement the Elizabeth River Project's Action Plan, excepting any areas that the Corps and the Commonwealth identify as being ineligible under federal or state regulations or guidelines, are pre-qualified for implementation with these funds. An advisory board to the Elizabeth River Project, with representation from the Corps of Engineers, the state and other diverse interests, will provide advisory guidance.
- It is understood that The Elizabeth River Project reserves the right to veto acceptance of funds for mitigation purposes if it deems the impacts of the project to be of an unacceptable level, with no reasonable expectation of offsetting those impacts, and/or the level of funding is insufficient to offset the impacts.
- It is understood that the trust fund will be only one of a number of options open to permit applicants in the Elizabeth River watershed. Applicants will continue to have the right to construct their own mitigation projects within Corps and State guidelines.



Ray E. Moses, RADM NOAA (Ret.)
President, The Elizabeth River Project Board

7/5/03

Date



Robert G. Burnley
Director, VA Department of Environmental Quality

7/18/03

Date



David L. Hansen
Colonel, US Army Corps of Engineers
Commanding

8 July 2003

Date