

Attachment A: Ad hoc Wetland and Stream Mitigation Proposal to Chesapeake Bay Program Partnership Management Board

Purpose/Request for Management Board Consideration

To form an ad hoc group to deliberate and report on current wetland mitigation accounting and reporting procedures in the jurisdictions and provide options for potential changes to Partnership policies related to reporting, tracking, and documenting associated nutrient and sediment reduction efficiencies.

Background

The Chesapeake Bay Program Partnership instituted a policy in the 1990's whereby wetlands and streams restored under voluntary measures can be recognized toward meeting the Chesapeake Bay Total Maximum Daily Load (Bay TMDL), but those restored under compensatory mitigation and mitigation banking cannot be accounted for in the modeling tools. This policy has remained unaltered as other regulatory programs began accounting for their outcomes throughout the Chesapeake Bay. Pennsylvania and other jurisdictions have long-standing state regulatory requirements regarding impact avoidance, minimization, and compensatory mitigation. Pennsylvania DEP disagrees with the ineligibility of compensatory stream and wetland mitigation projects for use as BMPs acknowledged by the Chesapeake Bay Program Partnership; the ineligibility for these projects is not reflective of the current comprehensive Chesapeake Bay Program Partnership strategies that include BMPs that are implemented under both voluntary and regulatory measures. Pennsylvania DEP advocates for the inclusion of these projects as recognized BMPs across all jurisdictions.

Scope of Work

The specific issues related to not accounting for stream and wetland mitigation include disincentivizing the use of mitigation banks; inaccurate accounting of pollution reduction projects and land use changes over time; and invalid calibration of water quality monitoring and modeling in areas where these large-scale practices exist.

The group's assigned tasks are to review the existing policy and historic framework regarding this policy; identify intended and unintended consequences of action and no action; and report options as well as recommendations to the Management Board for consideration.

Deliverable: The group will provide a memorandum that articulates policy options available to the Management Board for decision by December 2020, in order to align with 2020 Annual Progress.

Proposed group composition and operations

The ad hoc group will comprise of members that are experienced in state or federal regulatory wetland mitigation programs. Additionally, awareness or understanding of the following is desired but not a requirement:

- How BMPs are tracked and reported at the state or programmatic level, and subsequent reporting to Chesapeake Bay Program for annual BMP progress toward the TMDL and the Watershed Agreement's wetland outcome;
- Knowledge of relevant program requirements, design codes or standards associated with compensatory wetland mitigation;

- Familiarity with how wetland mitigation banks operate and how credits are calculated and certified;
- Knowledge of relevant participating programs and familiarity with how crediting works or affects outcomes across sectors within the Chesapeake Bay Program Partnership

The proposed group will have at least six and no more than ten members, not counting participants from the CBP Office. Each jurisdiction may appoint one member, if desired. EPA Region 3 and the Army Corps of Engineers will each choose a member or select a joint federal member. The Chesapeake Bay Commission may select a member for the group, or recommend another qualified individual for that spot, if desired. Relevant CBPO staff will serve as non-voting participants in group discussions.