

# Public Notice

U.S. Army Corps of Engineers, Norfolk District

June 25, 2008

CENAO-REG  
NAO-2008-01859

## FEDERAL PUBLIC NOTICE

The District Engineer has received a prospectus to establish a compensatory wetland mitigation bank for Federal and State permits as described below:

### BANK SPONSOR

Middle Peninsula Environmental Properties, Inc.  
11832 Rock Landing Drive, Suite 106  
Newport News, VA 23606

WATERWAY AND LOCATION OF THE PROPOSED WORK: The proposed mitigation bank site is located on a 95-acre parcel of land owned by Middle Peninsula Environmental Properties, Inc. The proposed site is currently used for agricultural purposes and is situated at the intersection of Robins Neck Road (State Route 614) and Free School Road (State Route 629) in Gloucester County, Virginia. The site is located adjacent to the Ware River and is part of the Great Wicomico-Piankatank River watershed.

PROPOSED WORK AND PURPOSE: The bank sponsor, Middle Peninsula Environmental Properties, Inc., proposes to establish, design, construct, and maintain a wetland compensatory mitigation bank on approximately 95 acres in Gloucester County, Virginia.

The purpose of the mitigation bank is to provide off-site compensatory mitigation for projects that result in unavoidable impacts to non-tidal wetlands and other waters of the United States within the bank's service area. The goals and objectives of the bank will target important ecological functions and related habitat values. The proposed wetland creation, restoration, and preservation is intended to provide a positive contribution within the drainage basin and to contribute to improved water quality of the Great Wicomico-Piankatank River watershed.

The Bank Sponsor will establish this Bank by restoring approximately 44 acres of non-tidal wetlands, create approximately 3.6 acres of non-tidal wetlands, preserve approximately 35.8 acres of non-tidal wetlands and preserve approximately 9.2 acres of upland.

The sponsor has proposed for purposes of Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act that the geographic service area of this mitigation bank would include the USGS Hydrologic Unit Codes (HUC) known as "02080102", and the adjoining units "2080108" and "1080109". This proposed service area would include all, or portions of the counties, of Gloucester, King and Queen, Essex, Lancaster, Mathews, Middlesex, Northumberland, Richmond, York, Accomack, Northampton and the cities of Newport News, Norfolk, Poquoson and Virginia Beach.

Oversight of this mitigation bank will be by a group of federal and state agency representatives. This interagency oversight group will be known as the Mitigation Bank Review Team (MBRT). The Norfolk District of the U.S. Army Corps of Engineers shall chair the MBRT.

This mitigation bank may be one of a number of practicable options available to applicants to compensate for unavoidable wetland impacts associated with permits issued under the authority of Section 404 and 401 of the Clean Water Act (Public Law 95-217) in southern Virginia.

The actual approval of the use of this mitigation bank for a specific project is the decision of the Corps pursuant to Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act and/or by the Department of Environmental Quality pursuant to Section 401 of the Clean Water Act and Title 62.1 of the Code of Virginia. The Corps and the Department of Environmental Quality provide no guarantee that any particular individual or general permit will be granted authorization to use this mitigation bank to compensate for unavoidable wetland impacts associated with a proposed permit, even though compensatory mitigation may be available. Authorization by the Virginia Marine Resources Commission may also be required for its use for specific projects.

**AUTHORITY:** A Public Notice is recommended pursuant to Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Federal Register Number 228).

**FEDERAL EVALUATION OF PROPOSAL:** The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate this proposed mitigation bank. **This is not an application for work in Waters of the United States.** The Corps of Engineers in evaluating this proposal will consider any comments received. Comments are used to assess impacts on endangered species, historic properties, water quality, conservation, economics, aesthetics, general environmental concerns, wetlands, fish and wildlife values, flood hazards, flood plain values, land use classification, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, and consideration of property ownership.

Preliminary review indicates that: (1) no environmental impact statement will be required; (2) conduct of work will affect no species listed as threatened or endangered under the Endangered Species Act of 1973 (PL 93-205); and (3) no cultural or historic resources considered eligible or potentially eligible for listing on the National Register of Historic Places will be affected. Additional information might change any of these preliminary findings.

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires all Federal agencies to consult with the National Marine Fisheries Service on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). The proposed project is described above in Proposed Work and Purpose. The proposed project is not located in Essential Fish Habitat and is unlikely to directly affect EFH. However, the proposed stream and wetland restoration may increase the amount of habitat available for some anadromous species and/or contribute to improved water quality in the Great Wicomico and Piankatank rivers. Our preliminary determination is that the project will not have a substantial adverse effect on EFH and therefore expanded EFH consultation is not required. Based on comments from the National Marine Fisheries Service in response to this public notice, further EFH consultation may be necessary.

COMMENT PERIOD: Comments on this project should be made in writing, addressed to the Corps of Engineers, C/O 6669 Short Lane, Gloucester, Virginia 23061, and should be received by the close of business on **July 25, 2008**. Copies will be forwarded to the DEQ.

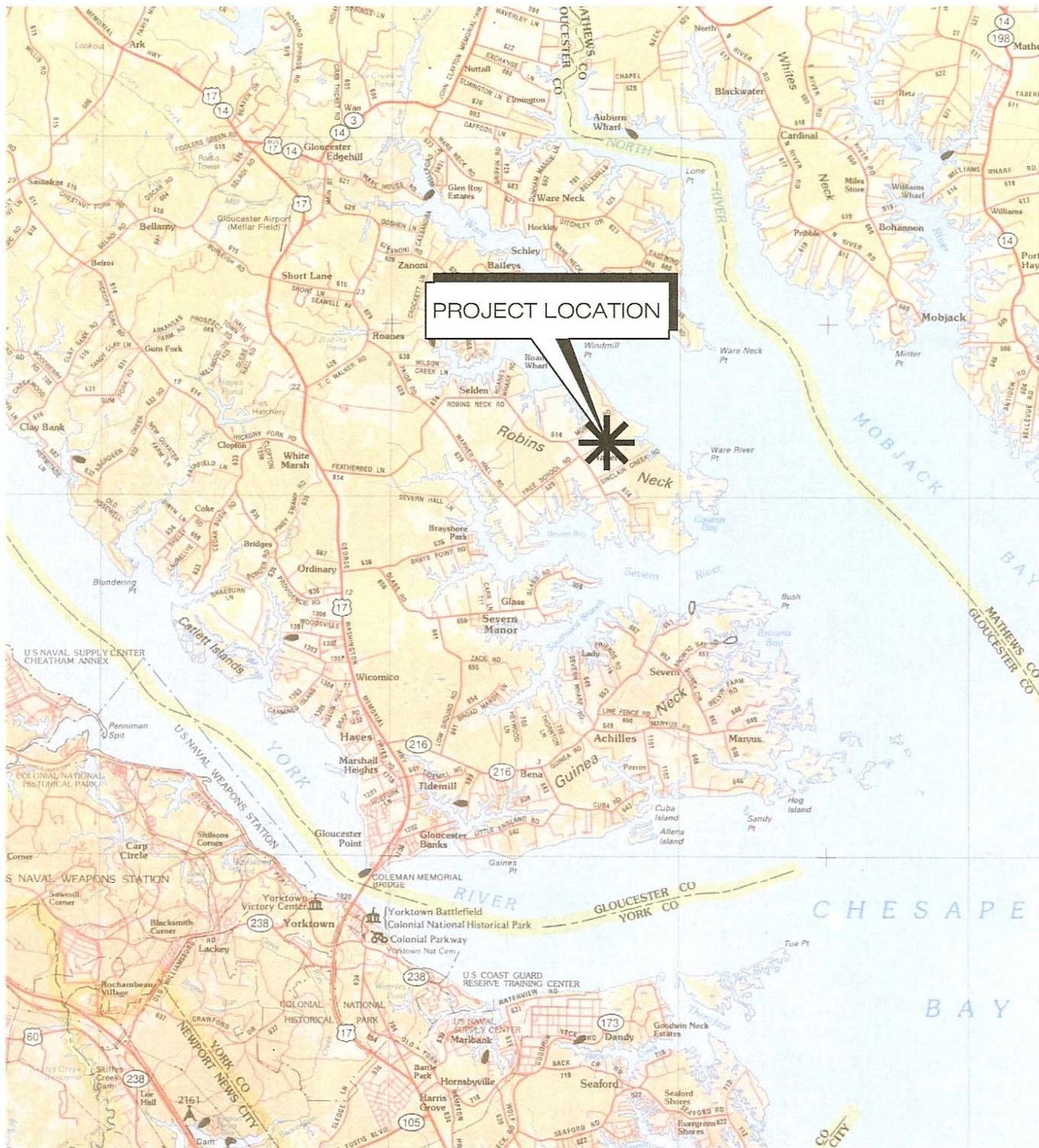
If you have any questions about this project or the permit process, please contact:

Alicia Riley (804) 824-9492  
E mail: Alicia.G.Riley@usace.army.mil

FOR THE DISTRICT ENGINEER:

Keith B. Lockwood  
Chief, Northern Virginia  
Regulatory Section

Attachment: Drawings



2.4 MILES 1.2 0 MILES 2.4 MILES

SCALE: 1 INCH = 2.4 MILES



SOURCE: VIRGINIA ATLAS AND GAZETTEER,  
DeLORME MAPPING CO., 1995.

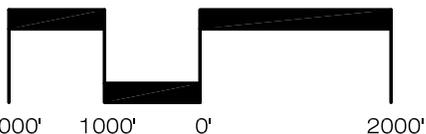
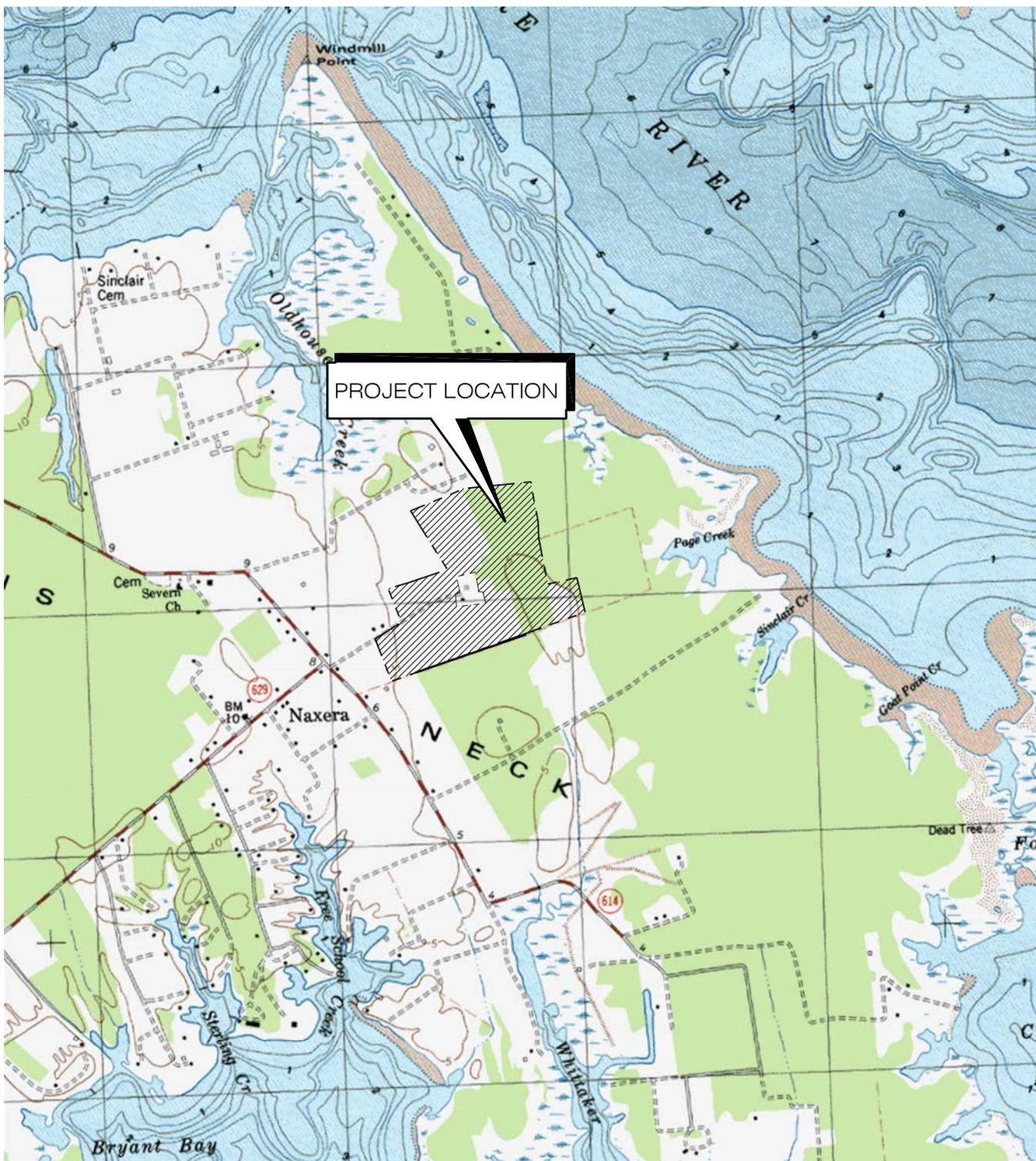


**WILLIAMSBURG  
ENVIRONMENTAL  
GROUP, INC.**

**FIGURE 1  
PROJECT VICINITY MAP  
MIDDLE PENINSULA  
ENVIRONMENTAL BANK**

GLoucester County, VIRGINIA

June, 2008



SCALE: 1 INCH = 2000 FEET



LATITUDE: 37°20'16.00"N  
 LONGITUDE: 76°26'15.64"W

SOURCE: USGS 7.5 MINUTE SERIES TOPOGRAPHIC MAP,  
 ACHILLES, VA QUADRANGLE, 1983 (REV 1986)



WILLIAMSBURG  
 ENVIRONMENTAL  
 GROUP, INC.

FIGURE 2  
 PROJECT LOCATION MAP  
 MIDDLE PENINSULA  
 ENVIRONMENTAL BANK

GLOUCESTER COUNTY, VIRGINIA

June, 2008

Mitigation Banking Prospectus  
Middle Peninsula Environmental Bank  
Gloucester County, Virginia

Prepared for:

Middle Peninsula Environmental Properties, Inc.  
11832 Rock Landing Drive, Suite 106  
Newport News, VA 23606

Prepared by:

Williamsburg Environmental Group, Inc.  
5209 Center Street  
Williamsburg, Virginia 23188

June 2008

## Prospectus

### MIDDLE PENINSULA ENVIRONMENTAL BANK

#### I. Objectives

- A. Middle Peninsula Environmental Bank (hereinafter, the Bank) proposes to establish a compensatory wetland mitigation bank to provide compensation for unavoidable impacts to nontidal wetlands and other waters of the United States in the Great Wicomico-Piankatank drainage basin. This proposal calls for the construction of a +/-95 acre bank situated in Gloucester County which will yield approximately 52.34 credits. The Bank will consist of the following components:
- Wetland Restoration - +/-44.7 acres
  - Wetland Creation - +/- 3.6 acres
  - Wetland Preservation - +/-35.8 acres
  - Upland Preservation - +/- 9.2 acres
- B. A Mitigation Banking Instrument (MBI) will be developed by Williamsburg Environmental Group, Inc. (WEG) to establish the Bank. The MBI will contain a Bank Development Plan and include the specifications for construction, operation, and maintenance of the bank. The sponsor owns a large construction firm which has successfully completed many grading projects in the past. WEG will provide over-sight during the construction process.
- C. The MBI and the development and operation of the Bank will be in accordance with the "Federal Guidance for the Establishment, Use and Operation of Mitigation Banks," published in Volume 60, Number 228 of the Federal Register, November 28, 1995, referred to hereafter as Federal Banking Guidance. It will also comply with all provisions of the new Mitigation Rule as published (March 21, 2008). The MBI will follow the latest template published March 27, 2008.

#### II. Site Description

- A. The proposed site is currently used for agricultural purposes, and is situated at the intersection of Robins Neck Road (State Route 614) and Free School Road (State Route 629) in Gloucester County, Virginia (Figure 1). The site is located adjacent to the Ware River (Figure 2), and is part of the Great Wicomico-Piankatank watershed. Development has increased in recent years within the

service area and growth is projected to continue, which has created the need for wetland mitigation credits within the watershed.

- B. The site contains approximately 36 acres of existing wetlands, approximately 55 acres of cropland and approximately 4 acres of nonagricultural upland.
- C. Topography is characterized by flat terrain. Surface water runoff from the surrounding watershed and groundwater will provide wetland hydrology.
- D. Wetlands on the site were delineated by WEG during the winter of 2008 using the Routine Determination Method as outlined in the 1987 *Corps of Engineers Wetland Delineation Manual* (see attached Delineation Map). Site confirmation by the U.S. Army Corps of Engineers is pending.
- E. According to the *Soil Survey of Gloucester County, Virginia* (current), the site is primarily situated on Meggett sandy loam. Smaller areas of Dogue fine sandy loam and Okeetee sandy loam are also found onsite. The Meggett soil series is classified by the U.S. Department of Agriculture (USDA) as hydric.
- F. On-site soil investigations during the winter of 2008 found hydric soils to be present over the majority of the proposed restoration area (Figure 4). The borings were used as point-in-time groundwater level indicators. The water table was intersected within six inches of the soil surface over the hydric areas and with two feet in non-hydric areas. Groundwater wells have been installed and are currently being monitored weekly so that a better understanding of the site hydrology can be obtained.
- G. A PC Determination has been completed by the Natural Resources Conservation Service (NRCS), and indicated that the majority of the agricultural field (approximately 38.6 acres) is prior-converted wetland (Figure 5).

### III. **Goals**

- A. The goal of the Bank is to establish a self-sustaining, functional wetland system to replace the functional values of wetlands and other aquatic resources anticipated to be adversely affected within the authorized service area. In so doing, the Bank expects to satisfy a portion of the existing and prospective demand for compensation mitigation within the service area.

### IV. **Measures To Be Taken To Establish Bank**

- A. The most practical method for wetland mitigation is a plan that requires a minimum amount of water level manipulation; involves the least amount of grading or filling to establish soil-water relationships; impacts uplands of marginal or little habitat value; and increases the ecological benefit attributable to

the functional values of wetlands associated with the Great Wicomico-Piankatank basin.

- B. Development of the Bank will involve the conversion of PC agricultural land back to a palustrine emergent, scrub-shrub, and forested wetland system. This will be accomplished by filling and/or plugging existing drainage ditches and modifying grades and soil structure to create a groundwater-driven wetland system. Preliminary planning suggests wetlands can be restored in this manner. The Bank is proposing a plan that in other similar applications has proven successful in creating the hydrologic regime necessary to facilitate the creation of wetland characteristics.
- C. The Bank may be developed in phases, but the general development plan will undergo the following sequence:
  - The first year will involve filling or plugging the drainage ditches which currently traverse the site and grading within portions of the agricultural areas, and the installation of hydrological control structures. Selective grading will create variations in micro-topography thereby increasing habitat diversity.
  - The entire site will then be stabilized with a wetland seed mix.
  - During the following year, after the site demonstrates wetland hydrology, hydrophytic woody plantings will be installed with consideration of volunteer species already present.
  - Subsequent phases, if any, will be developed in a similar manner following coordination with the Interagency Review Team (IRT).

V. **Geographic Service Area**

- A. The proposed geographic service area for this Bank shall be consistent with Section 62.1-44.15:5(B) of the Code of Virginia and in accordance with the Federal Banking Guidance. The designated area wherein the Bank can reasonably be expected to provide appropriate compensation for impacts to wetlands and streams will be within the same hydrologic cataloging unit ("Hydrologic Unit Map of the United States," U.S.G.S. 1980), or in an adjacent cataloging unit within the same river watershed as the impacted site. For the purpose of this document, the proposed service area includes the primary hydrologic unit 2080102 and the adjoining hydrologic units 2080108 and 2080109 (Figure 3). This area includes all or portions of Essex County, Gloucester County, King and Queen County, Lancaster County, Mathews County, Middlesex County, Northumberland County, Richmond County, York

County, Accomack County, Northampton County, Hampton City, Newport News City, Norfolk City, Poquoson City, and City of Virginia Beach.

- B. Following the guidance as stated in the Department of Environmental Quality's Memorandum of January 8, 2001, the bank shall be a viable mitigation option to offset impacts to wetlands regulated by the VWPP program which appear to be either located wholly or partially on a HUC boundary as delineated by the Hydrologic Unit Map of the United States (U.S.G.S. 1980). If the impact cannot be clearly determined to be within a particular HUC, then the impact may be mitigated in either of the contiguous hydrologic cataloging units.

## VI. **Criteria For Use**

- A. Decisions concerning project applicability, relationship to mitigation requirements, use of a mitigation bank vs. on-site mitigation, in-kind vs. out-of-kind mitigation, and compensation ratio determinations will be made as part of permit decisions.
- B. Decisions concerning credit withdrawal from the Bank will be made in accordance with the Federal Banking Guidance. In addition, the following general guidelines apply to the Bank. Availability of credit will be based on the level of achievement of those Goals and Objectives contained in the MBI approved by the IRT.
  - 1. The Bank will receive an acre of credit for each acre of the site that meets the performance criteria.
  - 2. Debits of available credit from the Bank will be based on the permit requirements of projects duly authorized. The permit requirement will normally reflect consideration of the value of the wetlands impacted along with the value of the compensation wetlands in the Bank. Standard ratios consistent with those used by the permitting agencies for created wetlands will be applied at the time of application.
  - 3. Limited use of the Bank for projects outside the service area will be considered by the IRT on a case-by-case basis.
- C. The Bank will establish and maintain an accounting system (i.e., ledger) which documents credits and debits to the Bank account. Each time an approved debit/credit transaction occurs, the Bank will submit a statement to the permitting agencies. The Bank will also generate an semi-annual ledger report to be submitted to all members of the IRT. The ledger will be available for inspection upon request by any participating agency.

## VII. **Long-Term Monitoring and Maintenance**

- A. Decisions concerning the operational life of the Bank, long-term monitoring/management, remedial actions, and financial assurances will be made in accordance with Federal Banking Guidance and approved by the IRT.
- B. Wetlands and buffer areas which are part of this Bank and ultimately used as compensation, will be provided long-term protection in the form of a perpetual legal instrument that is agreeable to the IRT.
- C. As specified in the 2008 guidance a long-term maintenance escrow account will be created and funded through a portion of all credit sales by the Bank. At the end of the specified monitoring period a Long-term Stewart will be named for the Bank and will have the right to use these funds if required to maintain the Bank in perpetuity.



**LEGEND**

- SERVICE AREA
- HUCs
- COUNTY BOUNDARIES
- ~ STREAMS
- OPEN WATER



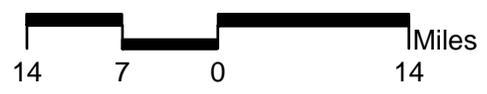
**FIGURE 3**  
**SERVICE AREA MAP**

MIDDLE PENINSULA ENVIRONMENTAL BANK

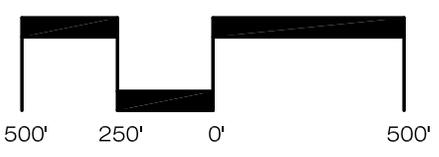
GLOUCESTER COUNTY, VA      MAY 2008

SOURCE: VDOT COUNTY MAP SERIES, 2001  
HUC, U.S.EPA

SCALE: 1 INCH EQUALS 14 MILES



I:\3800s\3874 - Basic Wetland Feasibility\Mitigation\Preliminary Plans\PC MAP.dwg



SCALE: 1 INCH = 500 FEET



SOURCE: WEG FIELD SURVEY



WILLIAMSBURG  
 ENVIRONMENTAL  
 GROUP, INC.

FIGURE 4  
 SOIL BORING SUMMARY  
 MIDDLE PENINSULA  
 ENVIRONMENTAL BANK

GLOUCESTER COUNTY, VIRGINIA

APRIL 2008



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PC

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