

# Addressing Mitigation Credit Shortages and Price Jumps

Mike Rolband, PE, PWD, PWS Emeritus

President, Resource Protection Group, Inc.  
and retired founder of WSSI



# Mitigation Credit Shortages and Price Jumps

Two pathways for addressing

- Service Area Adjustment with HB1983
- Increased VART Advanced Credits

# Problem – Supply/Demand Imbalance

- In 2018, and again in 2020 the Wetland Mitigation Credit Supply “ran out” in NOVA
- Problem expanded into other markets – Fredericksburg and Richmond and also affected Stream Credits in some markets
- Demand for Credits is historically very variable and rapidly changing
- Time to develop Supply is much slower than Demand change timing
  - Function of approval process and plant growth to demonstrate success trajectory and full credit release
- Prices have been VOLATILE
  - In past decade: Low of 55k to High of 500k

# 2018/19 Solution

- Increase Advance Credit Release to The Nature Conservancy's (TNC) Virginia Aquatic Resource Trust Fund (VARTF) – which is a state-wide In-Lieu-Fee (ILF) mitigation fund.
  - Industry supported and Corps/DEQ approved!
- It worked – **UNTIL...** one bank had a release of wetland credits and increased price from \$100,000/credit to \$500,000
  - Hierarchy in current Mitigation Rule requires Bank Credits to be purchased before going to ILF Advance Credits.
  - Ecologically that is reasonable – credits in the ground vs. on paper are better
  - Policy does not consider monopolistic or duopolistic unregulated pricing

# 2020/2021 Solution

- Two Prongs
  - Support more ILF Releases in markets with bank credit shortages – **ACHIEVED 3/23/2021!**
  - Increase Supply by increasing Service Areas – the geographical area that a mitigation bank can sell credits to compensate for permitted impacts
- Increase Service Area Size
  - Increases the number of banks that can serve high demand areas
  - Adds geography with lower land costs and restoration costs to incentivize new bank development



DEPARTMENT OF THE ARMY  
US ARMY CORPS OF ENGINEERS  
NORFOLK DISTRICT  
FORT NORFOLK  
803 FRONT STREET  
NORFOLK VA 23510-1011

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Special Projects Regulatory Section  
NAO-1995-08595 (multiple basins)  
Virginia Aquatic Resources Trust Fund

The Nature Conservancy  
Ms. Karen Johnson  
530 East Main Street, Suite 800  
Richmond, Virginia 23219

Dear Ms. Johnson:

This letter is regarding your request to modify the existing Virginia Aquatic Resources Trust Fund (VARTF) Program Instrument (Instrument) to increase the number of Advanced Credits in multiple basins. The documents supporting your request were public noticed on December 15, 2020 and coordinated with the Interagency Review Team (IRT) on December 16, 2020.

As a result, the IRT Chairs, the Virginia Department of Environmental Quality and the US Army Corps of Engineers Norfolk District, approve the release of additional Advanced Credits in the following basins:

Middle James River Basin – 10 nontidal wetland Advanced Credits  
New River Basin – 5 nontidal wetland Advanced Credits  
Potomac River Basin – 40,000 stream Advanced Credits  
Roanoke River Basin – 5 nontidal wetland Advanced Credits  
Roanoke River Basin – 5,000 stream Advanced Credits  
Shenandoah River Basin – 5 nontidal wetland Advanced Credits

If you have any questions, please contact me, either via telephone at (434) 384-0182 or via email at [jeanne.c.richardson@usace.army.mil](mailto:jeanne.c.richardson@usace.army.mil).

Sincerely,

Jeanne C. Richardson  
VARTF Program Manager  
Special Projects Regulatory Section

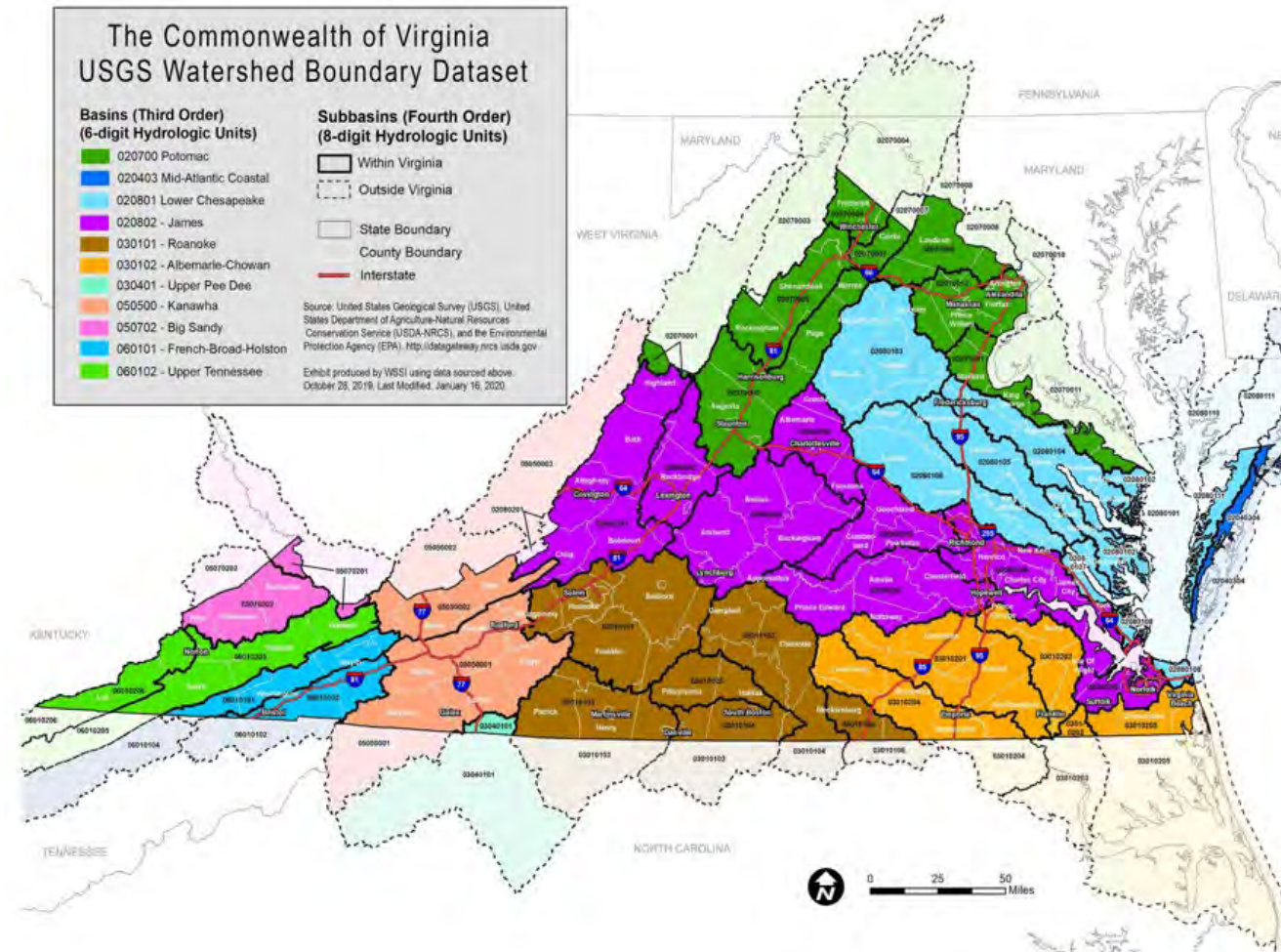
Copies Furnished:  
IRT Members

# Process

- VACRE and HBAV teamed to work on this problem
- State Law in 1996 established a Maximum Service Area size
  - Many banks have a Service Area that is smaller than the Maximum
- Delegate Bulova agreed to Patron a Bill if we demonstrate broad support
- Initial Zoom meetings with DSNR and SNR led to an ad hoc Stakeholders Group
- Stakeholders Group peaked at 36 members: broad spectrum of interests
  - Big Group zoomed monthly 5 times – with untold smaller zooms and emails
  - Compromise Achieved

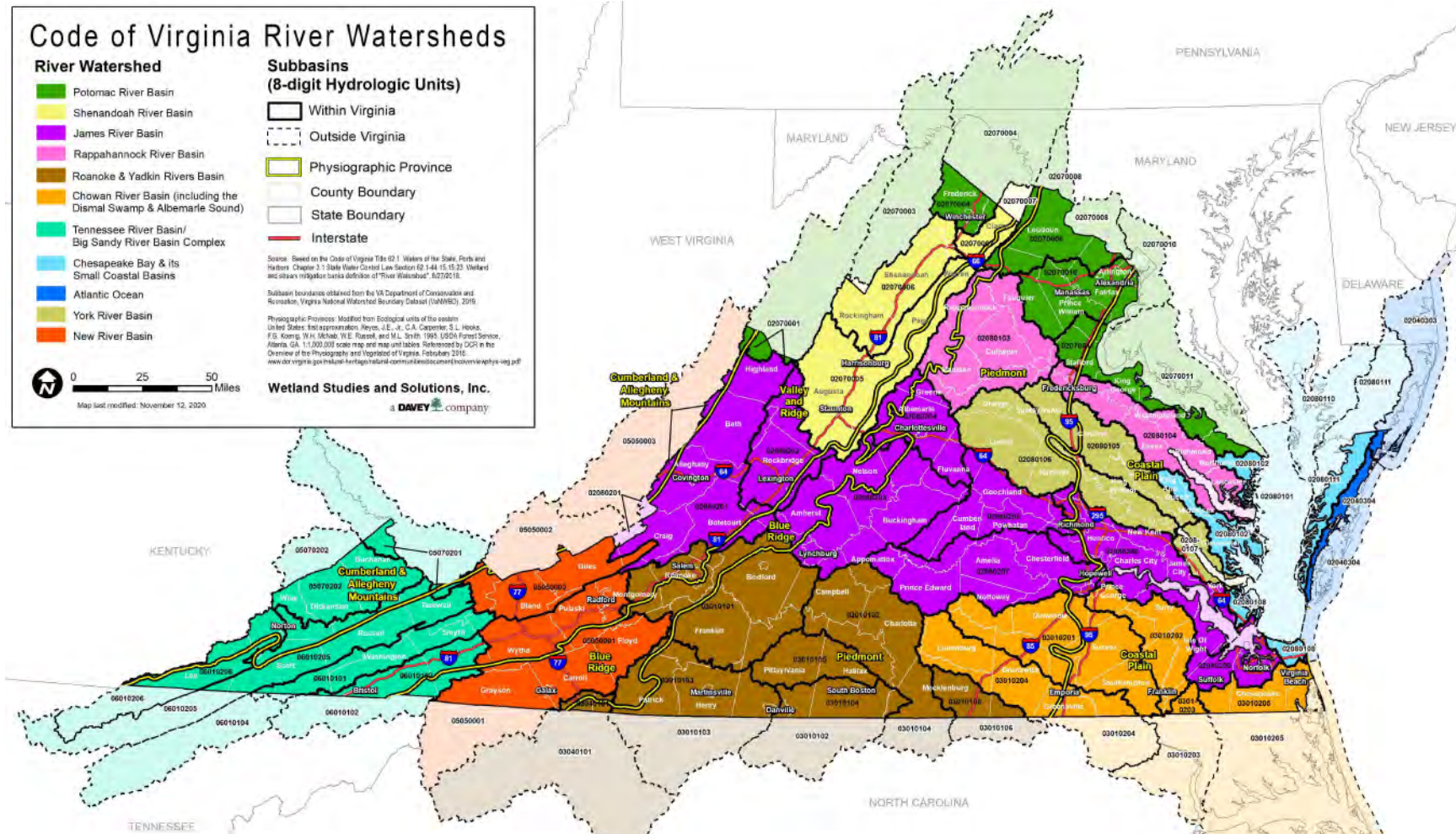
# Original Proposal

- Increase Service Area to Basins (Third Order – aka 6-digit HUC) vs. Subbasins (Fourth Order) and adjacent Subbasins (8-digit HUC) in the same Rivershed



# Compromise

- Primary Service Area (PSA) – the Fourth Order Subbasin (historically the 8-digit HUC) of the bank and adjacent Subbasins in the same Rivershed
- Secondary Service Area (SSA)– Areas outside the PSA, but within same physiographic province where the bank is located and any adjacent physiographic province within the same Rivershed







## **§ 62.1-44.15:23. Wetland and stream mitigation banks.**

A. *For purposes of this section:*

*"Physiographic province" means one of the five physiographic provinces of Virginia designated as the Appalachian Plateaus, Blue Ridge, Coastal Plain, Piedmont, and Ridge and Valley physiographic provinces as identified on Figure 2 in the Overview of the Physiography and Vegetation of Virginia prepared by the Department of Conservation and Recreation, Division of Natural Heritage and dated February 2016. The Department of Environmental Quality may adjust the boundaries of a physiographic province to reflect site-specific boundaries based on relative elevation, relief, geomorphology, and lithology provided by the bank sponsor.*

*"Primary service area" means the fourth order subbasin in which the bank is located, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset or the hydrologic unit system or dataset utilized and depicted or described in the bank's approved mitigation banking instrument, and any adjacent fourth order subbasin within the same river watershed.*

*"River watershed" means the Potomac River Basin; Shenandoah River Basin; James River Basin; Rappahannock River Basin; Roanoke and Yadkin Rivers Basin; Chowan River Basin, including the Dismal Swamp and Albemarle Sound; Tennessee River Basin/Big Sandy River Basin Complex; Chesapeake Bay and its Small Coastal Basins; Atlantic Ocean; York River Basin; and New River Basin.*

*"Secondary service area" means the area outside the primary service area but within the same physiographic province in which the bank is located and any adjacent physiographic province within the same river watershed.*

*"Tree canopy" includes all of the area of canopy coverage by self-supporting and healthy woody plant material exceeding five feet in height.*

# Criteria to use SSA

- No available credits from a PSA, OR
- No credits less than 200% of the VARTF Price
- You must purchase 3x the standard wetlands mitigation requirements or 2x the standard stream mitigation requirements
  - Ratios were developed to obtain a net gain in ecological benefit despite proximity decrease using TP as a metric (from nutrient trading land conversion rates)
  - Current economics indicate this would also force prices downward in high-cost areas
- Submit and implement a landscape plan that meets the most stringent Tree Canopy requirements in current state code

C. For impacts to a site for which no credits are available to purchase (i) in the primary service area of any mitigation provider or (ii) at a price below 200 percent of the current price of credits applicable to that site from a Board-approved fund dedicated to achieving no net loss of wetland acreage and functions, a permit applicant may be permitted to purchase or use credits from the secondary service area of a mitigation provider to satisfy all or any part of such applicant's mitigation requirements. For purposes of this subsection, the permit applicant shall provide a determination of credit availability and credit price no later than the time such applicant submits to the Department (a) its proof of credit acquisition or (b) a later change to such proof.

If a permit applicant purchases or uses credits from a secondary service area, the permit applicant shall:

1. Acquire three times the credits it would have had to acquire from a bank in the primary service area for wetland impacts and two times the number of credits it would have had to acquire in the primary service area for stream impacts;

2. When submitting proof of acquisition of credits for a subdivision or development, provide to the Department a plan that the permit applicant will implement that is certified by a licensed professional engineer, surveyor, or landscape architect for the planting, preservation, or replacement of trees on the development site such that the minimum tree canopy percentage 20 years after development is projected to be as follows:

- a. Ten percent tree canopy for a site zoned for business, commercial, or industrial use;
- b. Ten percent tree canopy for a residential site zoned for 20 or more units per acre;
- c. Fifteen percent tree canopy for a residential site zoned for more than eight but fewer than 20 units per acre;
- d. Twenty percent tree canopy for a residential site zoned for more than four but not more than eight units per acre;
- e. Twenty-five percent tree canopy for a residential site zoned for more than two but not more than four units per acre; and
- f. Thirty percent tree canopy for a residential site zoned for two or fewer units per acre.

For a mixed-use development, the tree canopy percentage required pursuant to this subdivision shall be that which is applicable to the predominant use.

The tree canopy requirements established under this subsection shall not supersede any additional requirements imposed by a locality pursuant to § 15.2-961 or 15.2-961.1.

# Conclusion

- Complicated – but only way to gain comprise and support from diverse stakeholders' group and passage through the General Assembly
- Stringent
- Should dampen extreme pricing volatility
- Should cause an increase in credit supply over time