

**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**

WHEREAS, the U.S. Army Corps of Engineers Norfolk District Regulatory Office (USACE) administers the USACE Regulatory Permit Program authorized by Section 404 of the Clean Water Act of 1973, Section 10 of the Rivers and Harbors Act of 1899, and Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972; and

WHEREAS, the Virginia Department of Environmental Quality (DEQ) administers the Virginia Water Protection Permit Program under the authority of Section 62.1-44.15:20-23 of the Code of Virginia and Virginia Water Protection Program Regulations 9 VAC 25-210; and

WHEREAS, 33 CFR Part 332, Compensatory Mitigation for Losses of Aquatic Resources; Final Rule (Mitigation Rule), constitutes the USACE regulations governing compensatory mitigation for activities authorized by permits issued by the Department of the Army; and

WHEREAS, pursuant to 33 CFR Section 332.8(b)(5), the USACE may enter into a memorandum of agreement (MOA) with any other federal, state, or local government agency to perform all or some of the Interagency Review Team (IRT) review functions described in 33 CFR Section 332.8, provided that any such MOA include provisions for appropriate federal oversight of the review process and that the Norfolk District Engineer retains sole authority for final approval of instruments and other documentation required by the Mitigation Rule; and

WHEREAS, pursuant to 33 CFR Section 332.8 and consistent with USACE third party compensation procedures, the USACE reviews and coordinates pre-applications, prospectus, project proposals, mitigation bank/program instruments, site development plans, modifications, initial credit releases, and bank/site/program closures; and

WHEREAS, in accordance with the stipulations of this MOA the USACE agrees that DEQ shall conduct the review of financial assurance reports, as-built reports, monitoring reports, and corrective action reports (reports) submitted to the USACE and DEQ by mitigation bank and in-lieu fee sponsors (Sponsor), coordinate those reports with the IRT, conduct site visits, require corrective action, release financial assurances, and release credits; and

WHEREAS, the USACE and the DEQ shall follow standard operating procedures titled “*Norfolk District Standard Operating Procedures for Compensatory Mitigation with the Virginia Department of Environmental Quality*” (SOP) dated March 22, 2023, and attached as Appendix I, unless amended or superseded by execution of a new SOP; and

NOW, THEREFORE, the USACE and the DEQ agree to perform the IRT functions in accordance with the following stipulations.

STIPULATIONS

I. DEQ REVIEW OF PRE-APPLICATIONS, PROSPECTUS, PROJECT PROPOSALS, MITIGATION BANK/PROGRAM INSTRUMENTS, SITE DEVELOPMENT PLANS, MODIFICATIONS, INITIAL CREDIT RELEASES, BANK/SITE/PROGRAM CLOSURES, AND OTHER MATERIALS NOT SPECIFIED IN STIPULATIONS II, III AND IV.

- a. *Evaluation:* DEQ shall continue to function as a member and co-chair of the IRT for the USACE review actions not modified in Stipulations II and III and the attached SOP. DEQ may provide comments in response to a given IRT coordination; however, for these review actions, DEQ shall accept the final decision of the USACE.
- b. *File Documentation:* USACE shall copy DEQ on all relevant correspondence during the processing of the USACE review actions not modified in Stipulations II and III and the attached SOP. Target schedules for these processes are incorporated by reference into this MOA in Appendix II as a performance goal of the program in Virginia and shall be tracked, in real time, by DEQ.

II. DEQ REVIEW OF FINANCIAL ASSURANCE REPORTS, AS-BUILT REPORTS, MONITORING REPORTS, AND CORRECTIVE ACTION PLANS

- a. *Evaluation:* The DEQ and the USACE shall follow the SOP, or the most recently amended version thereof, included as Appendix I to this MOA.
- b. *File Documentation:* The DEQ and USACE shall require that Sponsors submit, via RIBITS, as-built reports and monitoring reports that utilize the 2023 Monitoring Report Template or the most recent version thereof.

III. DEQ EVALUATION AND CREDIT RELEASE

- a. *Evaluation:* When the DEQ has completed Stipulation II and determines that the monitoring report is complete, all IRT comments have been addressed, and it is appropriate to release credits, DEQ shall provide a draft credit release letter for the USACE's review and approval as outlined in the SOP included as Appendix I to this MOA.
- b. *File documentation.* The DEQ shall load to RIBITS all Monitoring Report Review Forms, credit tracking spreadsheets, and all other relevant correspondence.

IV. DEQ EVALUATION AND FINANCIAL ASSURANCE RELEASE

- a. *Evaluation:* When the DEQ has completed Stipulation II and determined that it is appropriate to release financial assurances, DEQ shall provide a draft financial assurance release letter for USACE review and approval as outlined in the SOP included as Appendix I to this MOA.
- b. *File documentation.* The DEQ shall load to RIBITS the final financial assurances

release letter and all other relevant correspondence.

V. AUDIT/ANNUAL REVIEW

On or before October 31 of each year, commencing in 2023, the USACE shall invite the DEQ to a meeting to facilitate review of this MOA, the performance of DEQ and the USACE in executing their responsibilities set forth in this MOA, and to discuss any issues encountered in the implementation of its stipulations.

DEQ shall summarize the monitoring reports reviewed and the credits released over the previous year (August 1- July 31). During each annual review, the USACE shall verify that:

- a. The DEQ is in compliance with the SOP; and
- b. The DEQ has effective mechanisms and sufficient staff to carry out the responsibilities assigned to it under this MOA.

VI. DISPUTE RESOLUTION

Any controversial concerns or policy related issues regarding this MOA should be coordinated with USACE and DEQ management.

VII. AMENDMENTS AND TERMINATION

- a. Amendment.
 - i. If the USACE or DEQ determines that the terms of this MOA cannot be implemented or if the USACE determines that the MOA is not being properly implemented, the DEQ or the USACE may propose in writing that this MOA or the SOP be amended.
 - ii. Within 30 days of such proposal to amend, the USACE and DEQ must meet and confer to discuss any proposed amendment. All signatories to this MOA must agree in writing to any proposed amendment by executing an amended version of this MOA (for MOA amendments) or agreeing in writing to any amendments to the SOP (for SOP amendments).
 - iii. If future amendments to the SOP are agreed upon and those amendments affect this MOA, the USACE shall consult with the DEQ to determine if amendments to this MOA are necessary. Amendments to the SOP which do not affect this MOA shall not require amendment of this MOA.
- b. Termination.
 - i. If the USACE or DEQ determines that the terms of this MOA cannot be implemented or if the USACE determines that the MOA is not being properly implemented, either the USACE or DEQ may—instead of proposing an amendment—terminate this agreement within 30-days of providing written notice.

- ii. If this MOA is terminated by the USACE or DEQ, all responsibilities assigned to DEQ in this MOA shall return to the USACE.

VIII. MISCELLANEOUS

- a. Participation in this MOA does not imply endorsement of all aspects of a bank or ILF program proposal.
- b. Nothing in this MOA is intended to diminish, modify, or otherwise affect the statutory and/or regulatory authorities of the USACE and DEQ.
- c. This MOA does not confer any right or benefit, substantive or procedural, enforceable at law or equity, upon the USACE or DEQ.
- d. This MOA becomes effective when signed by the USACE and DEQ.

IX. FEDERAL OVERSIGHT

In accordance with 33 CFR Section 332.8(b)(5), the Norfolk District Engineer shall provide the appropriate federal oversight of the review process and retains the final approval of all financial assurance releases, credit releases, and corrective action plans.

X. DURATION OF MOA

This MOA shall continue in full force and effect until it has been amended or terminated in accordance with Stipulation VII.

This MOA becomes effective when the appropriate officials, designated to act for the USACE and for DEQ, have signed below.

Brian P. Hallberg

Colonel Brian P. Hallberg
Commander
US Army Corps of Engineers, Norfolk District

Date: 29 March 2023

Michael S. Rolband

Michael S. Rolband
Director
Virginia Department of Environmental Quality

Date: 3/29/23

Appendix I: Norfolk District Standard Operating Procedures for Compensatory Mitigation with the Virginia Department of Environmental Quality (SOP)

Appendix II: Target Schedules for Third Party Compensatory Mitigation Processes Tracked by DEQ

Appendix I

Norfolk District Standard Operating Procedures for Compensatory Mitigation with the
Virginia Department of Environmental Quality (SOP)

Norfolk District Standard Operating Procedures for Compensation Mitigation
with the Virginia Department of Environmental Quality

March 22, 2023

Where this document refers to Interagency Review Team (IRT) coordination, that will include all members of the IRT: U.S. Army Corps of Engineers (USACE), U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (FWS), U.S. Department of Agriculture – Natural Resource Conservation Service (NRCS), National Oceanic and Atmospheric Administration (NOAA), Virginia Department of Environmental Quality (DEQ), Virginia Marine Resource Commission (MRC), Virginia Department of Wildlife Resources (DWR), Virginia Department of Conservation and Recreation - Natural Heritage Division (DCR), Virginia Department of Historic Resources (DHR), Virginia Department of Forestry (DOF), and other agencies depending on the individual mitigation banking instrument (MBI), in lieu fee (ILF) program instrument, or site development plan (SDP).

Many third-party compensatory mitigation processes are tracked by the USACE in OMBIL Regulatory Module (ORM) and in the Regulatory In-Lieu Fee and Banking Information Tracking System (RIBITS). In addition, DEQ will track, in real time, third-party compensatory mitigation processes in DEQ's Permitting Enhancement and Evaluation Platform (PEEP).

All required documentation listed in this SOP, unless otherwise noted, is required to be uploaded to RIBITS by the party sending the information (USACE, DEQ, mitigation bank (Bank) or ILF sponsor (Sponsor), agents, consultants, etc.).

For the purposes of this document, Sponsor, refers to the Sponsor and/or agents/consultants listed in RIBITS who are authorized to represent or act on behalf of the Sponsor. Generally, correspondence regarding the mitigation site actions in these Standard Operating Procedures will be emailed to the original submitter of documents after the USACE or DEQ confirms that the submitter is approved to act in this capacity.

If, during the execution of any Standard Operating Procedure herein, DEQ does not receive a response from the Sponsor by the DEQ-appointed due date, DEQ will inform USACE via email. DEQ and USACE will meet and confer to discuss an appropriate response in accordance with applicable legal and regulatory authority, the MBI, the ILF Program Instrument, and/or the SDP.

I. As-Built Report

The Sponsor submits an as-built report via RIBITS, according to requirements in the MBI/SDP, within 60 days following completion of the grading for each phase of a mitigation site. Once the Sponsor has emailed DEQ and the USACE to notify them what has been submitted and the location of documents in RIBITS, DEQ will follow the procedures below.

Initial Review of As-Built Report

1. DEQ has **30 days** to conduct a full review of the as-built report, and DEQ will:

- a. Review the report for completeness and technical sufficiency;
 - b. Confirm proper funding of all required financial assurances (See Financial Assurances Section below); and
 - c. Fill out the As-Built Report Review Form, and upload to RIBITS.
2. If the report is deemed incomplete, DEQ will email the Sponsor, copying the USACE, requesting the missing information as additional information.
3. DEQ will give the Sponsor **15 days** to respond to the request for additional information.
4. DEQ has **15 days** to review the additional information and determine if it is sufficient to complete their review.
5. Once DEQ determines the as-built report is complete:
 - a. DEQ will inform the Sponsor the report is complete, and the As-built Report Review Form is in RIBITS;
 - b. DEQ will schedule a site visit with the Sponsor; and
 - c. DEQ will initiate IRT coordination for **15 days**. In the IRT coordination email, DEQ will reference the location of the as-built report and As-Built Report Review Form in RIBITS, the requested credit release, and the date of the intended site visit.

As-built Site Visit

6. DEQ will schedule a site visit to confirm onsite constructed conditions relative to the as-built report.
7. DEQ and the Sponsor must attend the site visit. DEQ and the USACE will determine whether USACE attendance is necessary on a site-specific basis.
8. The site visit must be conducted within **30 days** of IRT coordination.

As-built IRT Coordination

9. DEQ will collect all IRT comments and upload them to RIBITS in the same folder as the report.
10. At the conclusion of the IRT coordination, DEQ will email the Sponsor, copying the USACE, with the location of the As-Built Report Review Form and IRT comments in RIBITS.

As-built Evaluation

11. Within **15 days** of the site visit or the end of IRT coordination, DEQ will:
 - a. Update the As-Built Report Review Form with site observations and notes;
 - b. Upload the updated As-built Report Review Form to RIBITS and email the Sponsor; and
 - c. Email the USACE and IRT the:
 - i. Location of the updated As-Built Report Review Form in RIBITS;
 - ii. Draft credit tracking spreadsheet; and
 - iii. Draft credit release letter.
12. The USACE has **15 days** to review the recommended credit release. The USACE will:
 - a. Concur with the recommended credit release; or
 - b. Recommend deferring the credit release and request corrective action.
13. Within **5 days** of the USACE response, DEQ will, in accordance with USACE's response, either
 - a. Approve the credit release, or:
 - b. Defer the credit release and request corrective action.

14. If DEQ approves the credit release, it must upload the credit release letter and credit tracking spreadsheet to RIBITS and email the Sponsor and the USACE. The USACE will update RIBITS credit ledger.

II. Monitoring Report with Credit Release Request

The Sponsor submits monitoring reports with credit releases via RIBITS, according to requirements in the MBI/SDP. DEQ will require the use of the 2023 Mitigation Monitoring Report template (or the most recent version thereof) for all monitoring reports. Once the Sponsor emails DEQ and the USACE to notify them what has been submitted and the location of documents in RIBITS, DEQ will follow the procedures below.

Initial Review of Monitoring Report

1. DEQ has **30 days** to conduct a full review of the monitoring report, and DEQ will:
 - a. Review the report for completeness and technical sufficiency;
 - b. Confirm proper funding of all required financial assurances for the site (See Financial Assurances Section); and
 - c. Fill out the Monitoring Report Review Form and upload it to RIBITS.
2. If the monitoring report is deemed incomplete, DEQ will email the Sponsor, copying the USACE, requesting the missing information. A monitoring report will be deemed incomplete and will not be reviewed if the 2023 Mitigation Monitoring Report template (or subsequent versions) is not used.
3. DEQ will give the Sponsor **15 days** to respond to the request for additional information.
4. DEQ has **15 days** to review the additional information and determine if it is sufficient to complete their review.
5. Once DEQ determines the monitoring report is complete:
 - a. DEQ will inform the Sponsor that the report is complete and of the location of the Monitoring Report Review Form in RIBITS;
 - b. DEQ will confirm the need for a site visit with the USACE, and either schedule a site visit with the Sponsor or waive a site visit; and
 - c. DEQ will initiate IRT coordination for **15 days**. In the IRT coordination email, DEQ will reference the location of the monitoring report and Monitoring Report Review Form in RIBITS, the requested credit release amount, any financial assurance requests, and the intended site visit date, if scheduled.

Monitoring Report Site Visit

6. Site visit decision:
 - a. The Sponsor may request a site visit in association with monitoring. If the Sponsor requests a site visit, DEQ will schedule a site visit.
 - b. If the Sponsor does not request a site visit, DEQ will provide a site visit recommendation to the USACE based on DEQ's full review of the report and IRT comments.
7. DEQ and the Sponsor must attend the site visit. DEQ and the USACE will determine whether USACE attendance is necessary on a site-specific basis.
8. The site visit must be conducted within **30 days** of IRT coordination.

Monitoring Report IRT Coordination

9. DEQ will collect all IRT comments and upload them to RIBITS in the same folder as the report.
10. At the conclusion of the IRT coordination, DEQ will email the Sponsor, copying the USACE, with the location of the Monitoring Report Review Form and IRT comments in RIBITS.

Credit Release Decision

11. Within **15 days** of the site visit or end of IRT coordination, DEQ will:
 - a. Update the Monitoring Report Review Form with site observations and notes;
 - b. Upload the updated Monitoring Report Review Form to RIBITS and email the Sponsor; and
 - c. DEQ will email the USACE and IRT the following:
 - i. Location of the updated Monitoring Report Review Form in RIBITS;
 - ii. Draft credit tracking spreadsheet; and
 - iii. Draft credit release letter.
12. The USACE has **15 days** to review the recommended credit release. Before the end of that period, the USACE will:
 - a. Recommend deferral of the credit release and request corrective action; or
 - b. Concur with the recommended credit release.
13. Within **5 days** of the USACE response, DEQ will, in accordance with USACE's response, either:
 - a. Defer the credit release and request corrective action; or
 - b. Approve the credit release. Upon approval, the following actions are required:
 - i. DEQ will upload the credit release letter and credit tracking spreadsheet to RIBITS and email the Sponsor and the USACE; and
 - ii. USACE will update the RIBITS credit ledger.

III. Monitoring Report (No Credit Release Request)

Sponsors submit monitoring reports via RIBITS according to requirements in the MBI/SDP. DEQ will require the use of the 2023 Mitigation Monitoring Report template (or the most recent version thereof) for all monitoring reports. Once the Sponsor emails DEQ and the USACE to notify them what has been submitted and the location of documents in RIBITS, DEQ will follow the procedure below.

Initial Review of Monitoring Report

1. DEQ has **60 days** to conduct a full review of the monitoring report, and DEQ will:
 - a. Review the report for completeness and technical sufficiency;
 - b. Confirm proper funding of all required financial assurances for the site (See Financial Assurances Section); and
 - c. Fill out the Monitoring Report Review Form and upload it to RIBITS.
2. If the monitoring report is deemed incomplete, DEQ will email the Sponsor, copying the USACE, requesting the missing information. A monitoring report will be deemed incomplete and will not be reviewed if the 2023 Mitigation Monitoring Report template (or the most recent version thereof) is not used.
3. DEQ will give the Sponsor **15 days** to respond to the request for additional information.

4. DEQ has **15 days** to review the additional information and determine if it is sufficient to complete their review.
5. Once DEQ determines the monitoring report is complete:
 - a. DEQ will inform the Sponsor the report is complete and of the location of the Monitoring Report Review Form in RIBITS;
 - b. DEQ will confirm the need for a site visit with the USACE, and either schedule a site visit with the Sponsor or waive a site visit; and
 - c. DEQ will initiate IRT coordination for **15 days**. In the IRT coordination email, DEQ will reference the location of the monitoring report and the Monitoring Report Review Form in RIBITS, any financial assurance requests, and the intended site visit date, if scheduled.

Monitoring Report Site Visit

6. Site visit decision:
 - a. The Sponsor may request a site visit in association with monitoring. If the Sponsor requests a site visit, DEQ will schedule a site visit.
 - b. If the Sponsor does not request a site visit, DEQ will provide a site visit recommendation to the USACE based on DEQ's full review of the report and IRT comments.
7. DEQ and the Sponsor must attend the site visit. DEQ and the USACE will determine whether USACE attendance is necessary on a site-specific basis.
8. The site visit must be conducted within **30 days** of IRT coordination.

Monitoring Report IRT Coordination

9. DEQ will collect all IRT comments and upload them to RIBITS in the same folder as the report.
10. At the conclusion of the IRT coordination, DEQ will email the Sponsor, copying the USACE, with the location of the Monitoring Report Review Form and IRT comments in RIBITS.

Monitoring Report Decision

11. Within **15 days** of the site visit or end of IRT coordination, DEQ will:
 - a. Update the Monitoring Report Review Form with site observations and notes;
 - b. Upload the updated Monitoring Report Review Form to RIBITS and email the Sponsor; and
 - c. Email the USACE and IRT:
 - i. Location of the updated Monitoring Report Review Form in RIBITS; and
 - ii. DEQ recommendations.
12. The USACE has **15 days** to review the DEQ recommendations. Before the end of that time, the USACE will:
 - a. Request additional information and/or recommend corrective action; or
 - b. Concur with DEQ recommendations.
13. Within **5 days** of the USACE response, DEQ will, in accordance with USACE's response, either:
 - a. Request additional information; or
 - b. Send DEQ recommendations to the Sponsor, copying the USACE.

IV. Corrective Action Plan (CAP)

Corrective Action Plans (CAP) that are implemented as part of the Bank Operations Maintenance Plan may be coordinated with the as-built report or monitoring report.

The decision to require a separate CAP based on the as-built report, monitoring report, or site visit will be determined by DEQ or the USACE.

Any CAP that involves the proposal of a modification to the MBI will require a formal submission of the proposed Modification by the Sponsor to be reviewed by the USACE and coordinated with the IRT.

If at any time during as-built or monitoring report review or site visits, DEQ or the USACE identifies the need for a CAP, DEQ will follow this procedure.

CAP Initial Review

1. DEQ will email the Sponsor, copying the USACE, to:
 - a. Request a CAP;
 - b. Describe what the CAP should include (i.e., areas onsite, plans for corrective actions onsite, technical questions to be answered by the Sponsor, etc.); and
 - c. Provide the Sponsor **15 days** to submit the CAP via RIBITS.
2. Once the Sponsor uploads the CAP to RIBITS and emails DEQ and the USACE, DEQ has **60 days** to conduct a full review of the CAP (completeness and technical sufficiency).
3. If the CAP is deemed incomplete, DEQ will email the Sponsor, copying the USACE, requesting the missing information as additional information.
4. DEQ will give the Sponsor **15 days** to respond to the request for additional information.
5. DEQ has **15 days** to review the additional information and determine whether it is sufficient to complete their review.
6. Within **5 days** of DEQ's determination that the CAP is complete:
 - a. DEQ will inform the Sponsor the CAP is complete;
 - b. DEQ will confirm the need for a site visit with the USACE, and either
 - i. Schedule a site visit with the Sponsor, or
 - ii. Waive a site visit; and
 - c. DEQ will initiate IRT coordination for **30 days**. In the IRT coordination email, DEQ will reference the location of the CAP and the intended site visit date, if scheduled.

CAP Site Visit

7. Site visit decision:
 - a. The Sponsor may request a site visit in association with CAP review. If the Sponsor requests a site visit, DEQ will schedule a site visit.
 - b. If the Sponsor does not request a site visit, DEQ will provide a site visit recommendation to the USACE based on DEQ's full review of the CAP and IRT comments.
8. DEQ and the Sponsor must attend the site visit, if scheduled. DEQ and the USACE will determine whether USACE attendance is necessary on a site-specific basis.
9. There is no timeframe for a site visit associated with a CAP.

CAP IRT Coordination

10. DEQ will collect all IRT comments and upload them to RIBITS in the same folder as the report.
11. At the conclusion of the IRT coordination, DEQ will email the Sponsor, copying the USACE, with the location of the IRT comments in RIBITS.

CAP Decision

12. Within **15 days** of the site visit or the end of IRT coordination:
 - a. DEQ and the USACE will discuss the CAP, IRT comments, the site visit, and any other relevant information, and will do one of the following:
 - i. DEQ will request additional information; or
 - ii. Upon written approval of USACE, DEQ will approve the CAP.
 - b. Upon approval of the CAP, DEQ will email the Sponsor approving the CAP, copying the USACE.

V. Financial Report / Financial Assurances Release Request

Introduction

DEQ will perform the functions listed in this introduction for financial assurances mechanisms for all mitigation sites and will do so regardless of whether the financial report is submitted as a standalone report, part of an as-built report or monitoring report or is requested by DEQ as additional information for an incomplete report.

DEQ will confirm proper funding of and coordinate reduction or release requests for the following types of short-term financial assurance mechanisms, according to all requirements of the MBI/SDP and any approved modifications:

- Maintenance and Monitoring Funds – Escrows, bonds, letters of credit, eco-insurance policies, or casualty insurance policies;
- Bank Operation Funds - Escrows, bonds, letters of credit, eco-insurance policies, or casualty insurance policies;
- Initial Credit Release Financial Assurances - Bonds, letters of credit;
- Accelerated Credit Release Financial Assurances – Bonds, letters of credit;
- Catastrophic Event Funds – Escrows; and
- Other financial assurance mechanisms, as directed by the USACE.

DEQ will confirm proper funding of the following types of long-term financial assurance mechanisms, according to all requirements of the MBI/SDP and any approved modifications:

- Catastrophic Event Funds – Escrows;
- Long-Term Management Plan Funds – Escrows, Endowments; and
- Other financial assurance mechanisms, as directed by the USACE.

DEQ will not authorize the release of funds from any Long-Term Management Plan Funds through these Standard Operating Procedures.

Generally Applicable Procedures for Review, Coordination, and Release

1. Financial Assurances Review and Release
 - a. DEQ has **15 days** to conduct a full review.
 - i. DEQ will follow all steps to confirm proper funding for all required financial assurances.
 - ii. If the Sponsor submits a financial assurances release request, DEQ will confirm the release amount, according to the requirements of the MBI/SDP, any approved modifications, and the SOP provisions identified below for the particular type of financial assurances at issue.
 - b. If the report is deemed incomplete, DEQ will email the Sponsor, copying the USACE, requesting the missing information as additional information.
 - c. DEQ will give the Sponsor **15 days** to respond to the request for additional information.
 - d. DEQ has **15 days** to review the additional information and determine whether it is sufficient to complete their review.
 - e. Once DEQ determines the financial report / release request is complete:
 - i. DEQ will inform the Sponsor the report is complete;
 - ii. DEQ will initiate IRT coordination for **15 days**;
 - iii. DEQ will collect all IRT comments and upload them to RIBITS in the same folder as the report;
 - iv. At the conclusion of the IRT coordination, DEQ will email the Sponsor, copying the USACE, with the location of the IRT comments in RIBITS; and
 - v. In the IRT coordination email, DEQ will reference the location of the financial report / release request in RIBITS, confirm whether proper funding has been obtained for all financial assurances, and provide the amount of the financial assurances release request.
2. Financial Assurances Final Decision
 - a. Within **15 days** of the end of IRT coordination, DEQ will email the USACE and IRT:
 - i. Location of the financial report / release request in RIBITS;
 - ii. Draft financial assurances recommendation.
 - b. The USACE has **15 days** to review the financial assurances recommendation and respond in writing. The USACE will
 - i. Request additional information; or
 - ii. Agree or disagree with the DEQ recommendation.
 - c. Within **5 days** of the USACE response, DEQ will advise the Sponsor in writing of the final decision, in accordance with USACE's response.

Specific Procedures for Review and Release based on Type of Financial Assurances

The foregoing procedures in this SOP, "Financial Assurances Review and Release" and "Financial Assurances Final Decision," will be followed for every final decision, regardless of the type of financial assurances. In addition, DEQ will confirm proper funding and evaluate release requests for particular types of financial assurance by completing the following actions (as applicable). The following steps shall be followed before DEQ shares its draft financial assurances recommendation with USACE. Written approval by USACE shall be required prior to any releases.

Bonds and Letters of Credit

1. Proper Funding.
 - a. DEQ will verify that the bond or letter of credit remains in place, is held by the DEQ Office of Financial Assurances (OFA), and has been maintained, renewed, or extended so that it remains effective as required by the MBI or SDP.
 - b. If the bond or letter of credit on file has expired, DEQ will email the Sponsor, copying the USACE, to request the renewed or extended bond or letter of credit. DEQ will provide the Sponsor **5 days** to send an original paper copy of the renewed or extended bond or letter of credit or certificate of continuation to DEQ OFA.
2. Release Request.
 - a. If a reduction is requested, DEQ will confirm that:
 - i. Proper funding has been achieved;
 - ii. The request is appropriate according to the approved reduction schedule in the MBI/SDP, any approved modifications thereto, and the financial assurance mechanism; and
 - iii. The IRT has approved the most recent monitoring report and financial report.
 - b. If a full release is requested, DEQ will confirm that:
 - i. Proper funding has been achieved;
 - ii. The request is appropriate according to the approved MBI/SDP and any approved modifications;
 - iii. IRT has approved the most recent monitoring report and financial report;
 - iv. For an initial release financial assurance, that performance standards have been met for a sufficient portion of the type and amount of credits initially released; and
 - v. For an accelerated credit release financial assurance, that all performance standards have been met and any other requirements of the accelerated credit release have been satisfied.

Eco-Insurance and Casualty Insurance Policies

1. Proper Funding
 - a. DEQ will verify that the policy remains in place, and has been maintained, renewed, or extended, so that it remains effective; and
 - b. If the policy has expired, DEQ will email the Sponsor, copying the USACE, to request the renewed or extended policy. DEQ will provide the Sponsor **5 days** to provide an electronic copy of the renewed or extended policy or continuation certificate to DEQ OFA.
2. Release Request
 - a. If a reduction is requested, DEQ will confirm that:
 - i. Proper funding has been achieved;
 - ii. The request is appropriate according to the approved reduction schedule in the MBI/SDP, any approved modifications, and the financial assurance mechanism; and
 - iii. The IRT has approved the most recent monitoring report and financial report.
 - b. If a full release is requested, DEQ will confirm that:

- i. Proper funding has been achieved;
- ii. The request is appropriate according to the approved MBI/SDP and any approved modifications; and
- iii. The IRT has approved the most recent monitoring report and financial report.

Escrow Accounts

1. Proper Funding:
 - a. DEQ will verify that each credit sale on the RIBITS credit ledger for the financial reporting period is represented in the short-term financial assurances ledger;
 - b. DEQ will confirm that for each credit sale, the appropriate percentage of the price of the credit sale was contributed to the account in the short-term financial assurances ledger;
 - c. DEQ will confirm that any previous releases of money from the account are represented on the short-term financial assurances ledger;
 - d. DEQ will confirm that any interest earned in the account remains in the account and is represented on the short-term financial assurances ledger;
 - e. DEQ will confirm there were no unauthorized withdrawals of money from the account; and
 - f. DEQ will confirm that the total amount of funding for each account on the short-term financial assurances ledger matches a financial bank statement from the approved escrow account at the approved financial institution, for the end of the current financial reporting period.
2. Release Request
 - a. If a release is requested, DEQ will confirm that:
 - i. Proper funding has been achieved;
 - ii. The request is appropriate, according to monitoring year(s) completed;
 - iii. The request is appropriate according to approved percentage of release in the MBI/SDP and any approved modifications;
 - iv. The IRT has approved the most recent monitoring report and financial report; and
 - v. No funds shall be released from any Long-Term Management Plan Funds through the request.

Endowments (Long-Term Management)

1. Proper Funding
 - a. DEQ will verify that the endowment amount is greater than or equal to the required amount according to the credit release schedule, MBI/SDP, and any approved modifications.
2. Release Request
 - a. DEQ will not authorize the release of funds from any Long-Term Management Plan Funds through these Standard Operating Procedures.

Appendix II

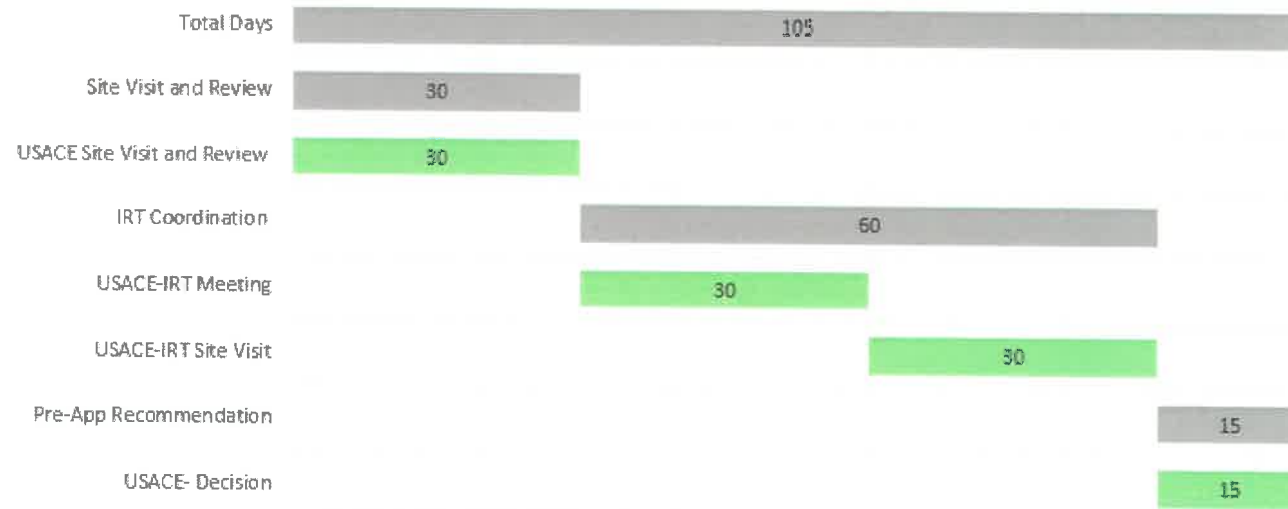
Target Schedules for Third Party Compensatory Mitigation Processes
Tracked by DEQ

Big Steps

Sub Steps

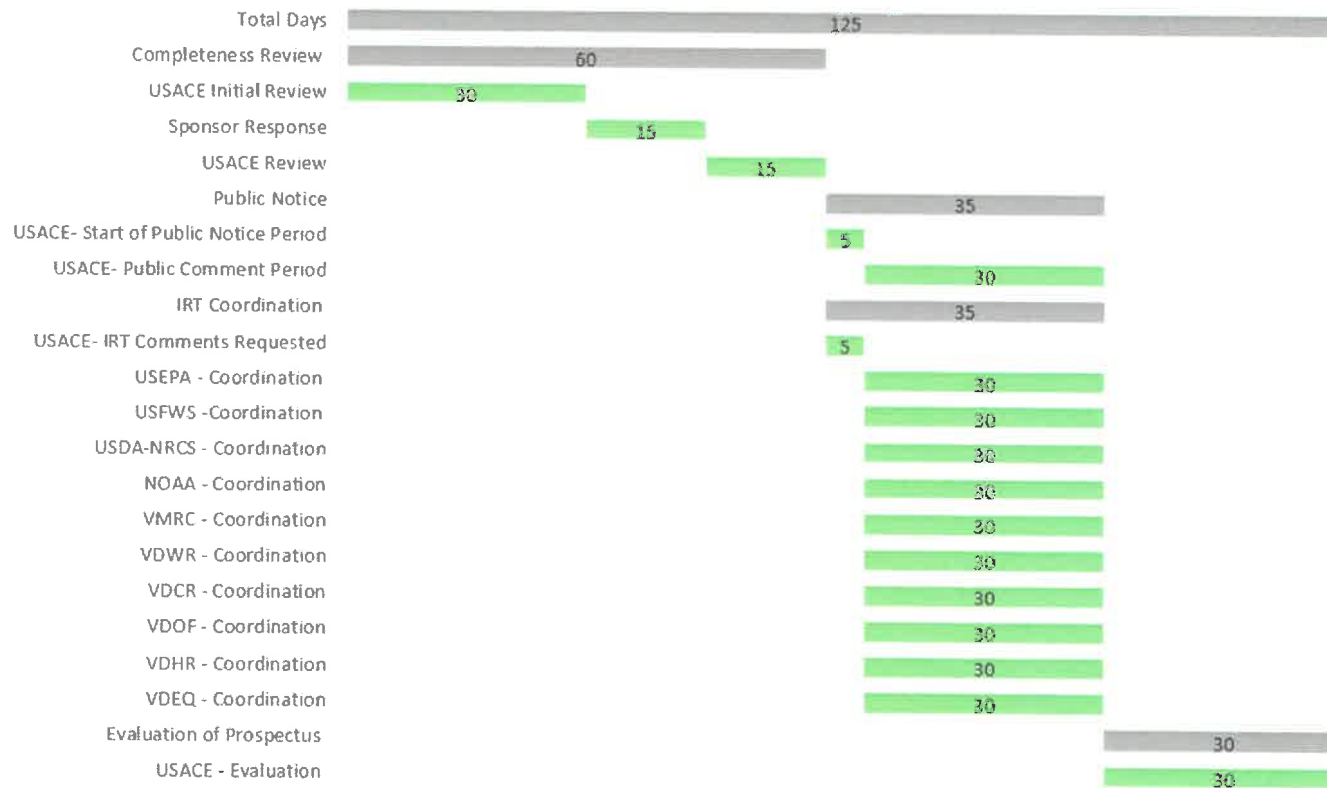
Pre-Application Lead: USACE Target Days: 105

USACE – 45 days
IRT – 60 days



Prospectus Lead: USACE Target Days: 125

USACE – 80 days
Sponsor – 15 days
IRT – 30 days



Mitigation Banking Instrument

Lead: USACE

Target Days: 225

USACE – 150 days
 Sponsor – 30 days
 IRT – 45 days



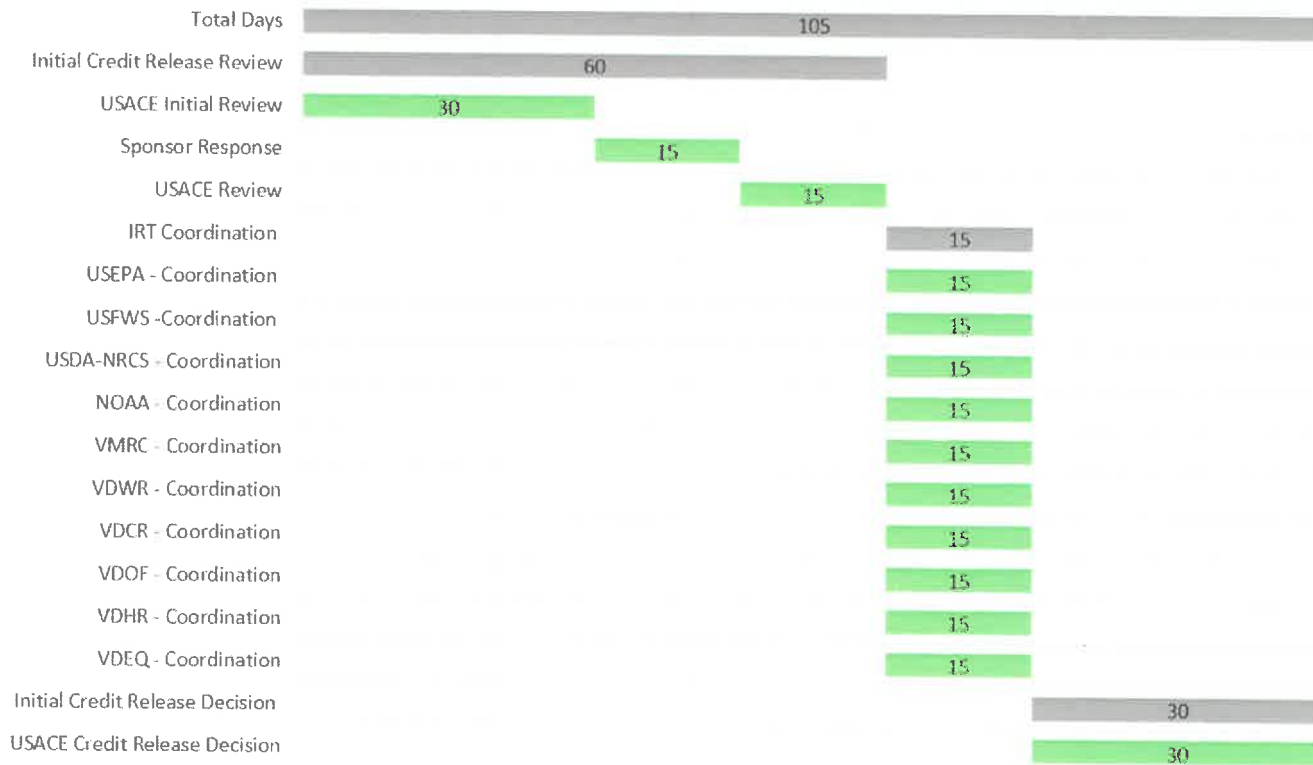
3/6/2023

Initial Credit Release

Lead: USACE

Target Days: 105

USACE – 75 days
 Sponsor – 15 days
 IRT – 15 days



3/6/2023

As-Built Credit Release

Lead: DEQ

Target Days: 125

DEQ – 95 days
 Sponsor – 15 days
 IRT – 15 days



3/6/2023

Monitoring Year Credit Release

Lead: DEQ

Target Days: 125

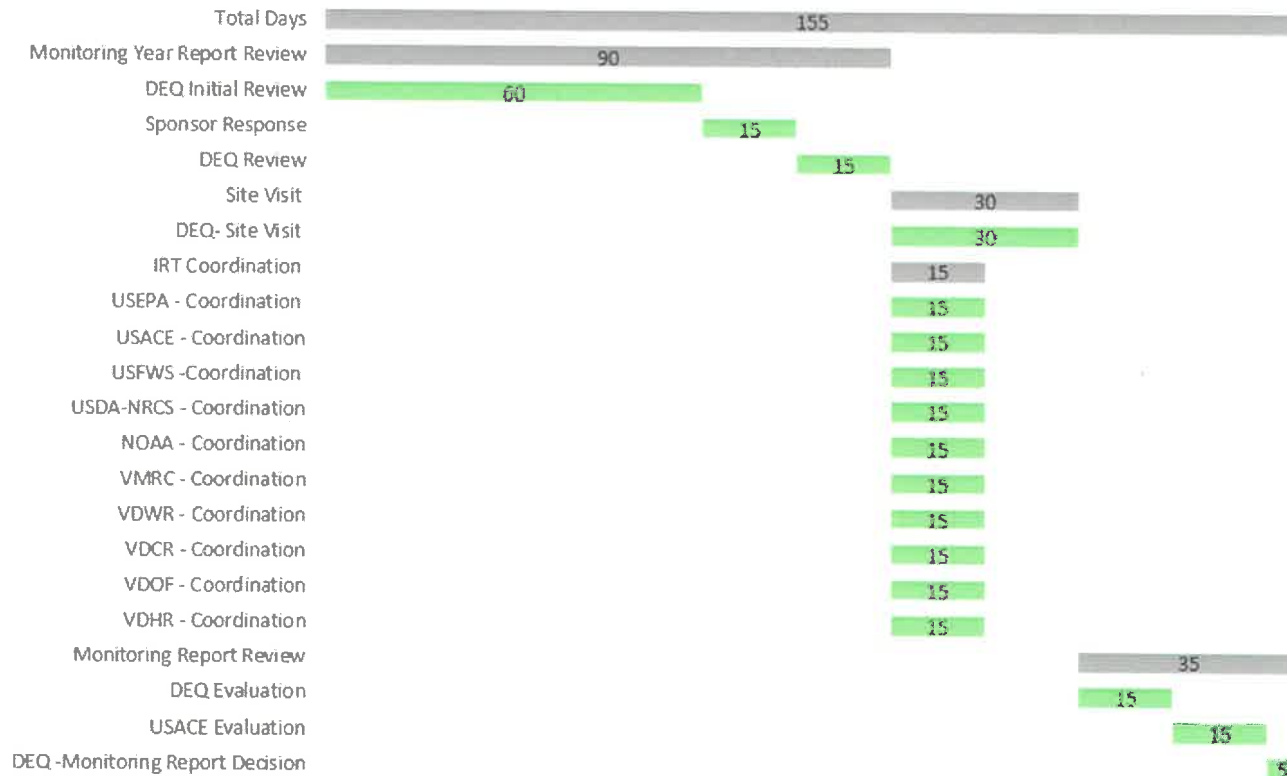
DEQ – 95 days
 Sponsor – 15 days
 IRT – 15 days



3/6/2023

Monitoring Year (No Credit Release Request) Lead: DEQ Target Days: 155

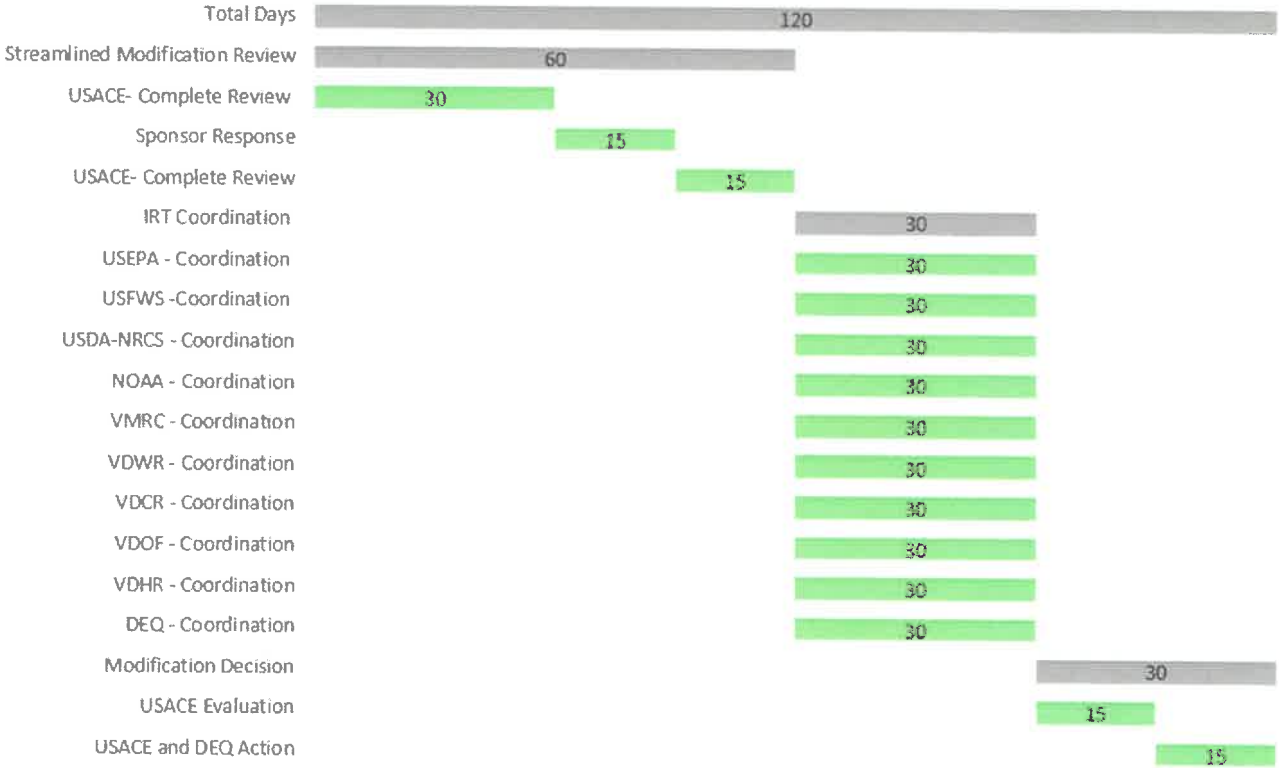
DEQ – 125 days
Sponsor – 15 days
IRT – 15 days



3/6/2023

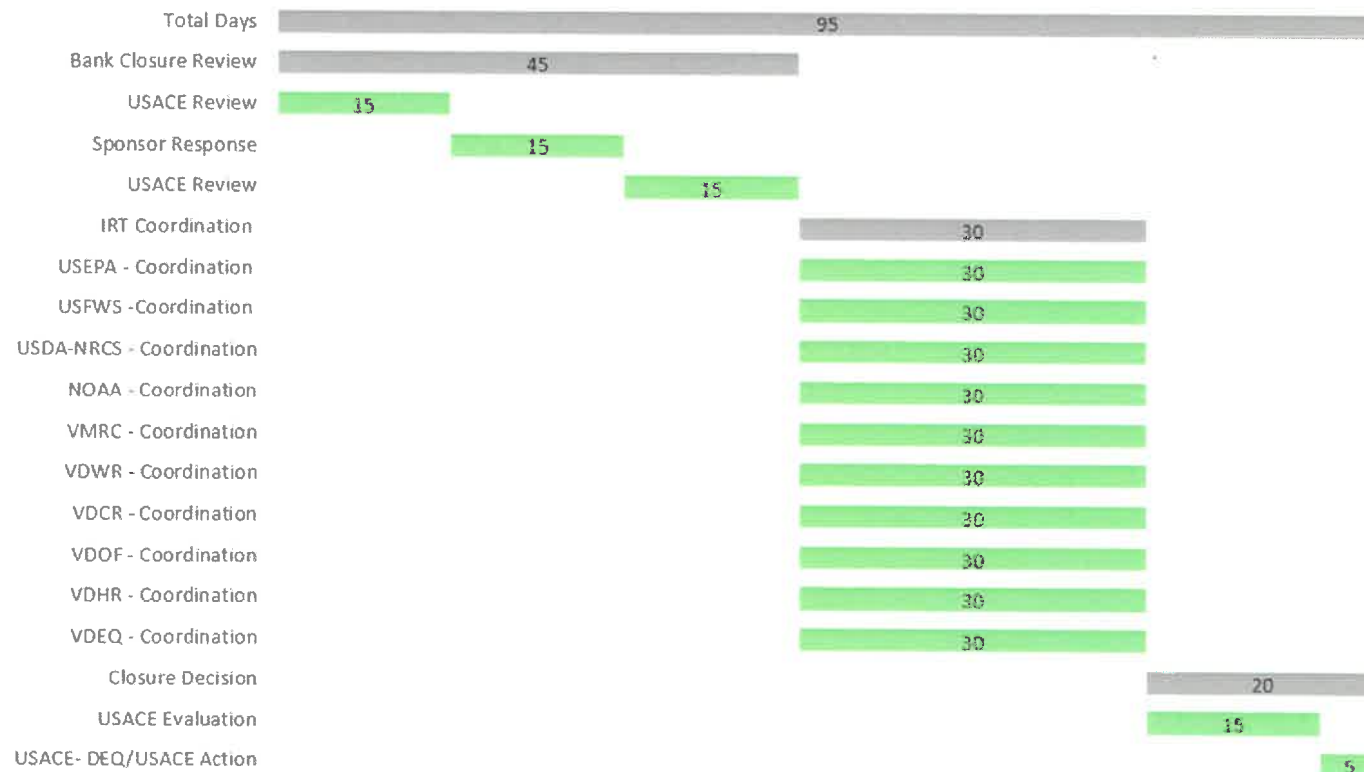
Streamlined Modification Lead: USACE Target Days: 120

USACE – 75 days
Sponsor – 15 days
IRT – 30 days



Bank Closure Lead: USACE Target Days: 95

USACE – 50 days
Sponsor – 15 days
IRT – 30 days



3/6/2023

Corrective Action Lead: DEQ Target Days: 155

DEQ – 125 days
Sponsor – 30 days
IRT – 30 days

