

STAFF EVALUATION

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Case No.: Zoning Ordinance Amendment, ZOA24-0007

Planning Commission Date: January 18, 2024

City Council Date: February 14, 2023

General Information

<i>Description of Proposal</i>	The amendment proposes to add a definition of "mitigation bank". The amendment is in conjunction with ZOA24-0006 which would add the term as a permitted use within all zoning districts with approval of a Use Permit.
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<i>Relevant Existing Zoning Definitions</i>	None.
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<i>Current Regulations</i>	Currently, there is no use or similar use within the "Table of Uses Permitted". Because the use is not listed and there are no similar uses, a mitigation bank cannot operate in the City.
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Establishment of a mitigation bank is also regulated at the federal and state levels. Within the Commonwealth, depending on the type of wetlands being created by the mitigation bank, the Virginia Department of Environmental Quality (DEQ) or the Virginia Marine Resources Commission (VMRC) oversee the bank and its work.

Analysis

This proposed amendment adds a new definition for "mitigation bank". Mitigation banks are commercial enterprises which receive money from developers to create new wetlands in order to offset loss of wetlands from development in other areas. This amendment is in conjunction with ZOA No. 24-0006, which establishes mitigation bank as a use within the "Table of Uses Permitted" requiring approval of a Use Permit in all zoning districts.

Mitigation banks are regulated at the state level by either the Virginia Department of Environmental Quality or the Virginia Marine Resources Commission, depending on the type of wetlands being created. The use is regulated at the federal level by the U.S. Army Corps of Engineers, and depending on the project type may also require approval from the Hampton Wetlands Board. The creation of the wetlands requires extensive construction activity which can be conducted all at once, or could be phased over a number of years, depending on the enterprise and funding for the mitigation. The created wetlands are required to be maintained in perpetuity. If the created wetlands are tidal or else non-tidal but connected to tidal wetlands, their establishment would expand the Chesapeake Bay Preservation Overlay (O-CBP) area, which would potentially limit the use of neighboring properties.

While the creation of new wetlands is desirable and in accordance with City policies on resiliency and living with water, there are potential impacts of the use which need to be accounted for. Potential impacts on neighboring properties could include construction activity wear of roads, traffic, noise, and O-CBP buffer expansion. Therefore, staff recommends that any mitigation bank must have approval from City Council via the Use

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Permit process, so that site- and enterprise-specific conditions can be tailored to the proposed mitigation bank.

Staff and Planning Commission recommend approval of ZOA 24-0007.