



U.S. Army Corps
of Engineers

Baltimore District
PN-21-10

Public Notice

In Reply to Application Number
NAB-2019-00180-P02 (Ecotone MD
Statewide UMBI/Pheasant Run
Mitigation Bank)

Comment Period: March 19, 2021 to April 18, 2021



Maryland Department
of the Environment

THE PURPOSE OF THIS PUBLIC NOTICE (PN) IS TO SOLICIT COMMENTS FROM INTERESTED PARTIES CONCERNING THE PROSPECTUS FOR DEVELOPMENT OF A STATEWIDE UMBRELLA MITIGATION BANKING INSTRUMENT (UMBI) AND PRIVATE COMMERCIAL COMPENSATORY MITIGATION BANK.

The Baltimore District, U.S. Army Corps of Engineers (Corps) and the Maryland Department of the Environment (MDE) have received a complete prospectus for the Ecotone Maryland (MD) Statewide UMBI/Pheasant Run Mitigation Bank pursuant to the 2008 Mitigation Rule (33 CFR § 332) proposing to establish a statewide UMBI and compensatory mitigation bank ("Bank"). The Bank will generate mitigation credits to offset unavoidable impacts to waters of the United States (U.S.) and the state authorized under Section 10 of the Rivers and Harbors Act (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344), and under Titles 5 and 16 Environment Article Annotated Code of Maryland, respectively. The proposed Bank may also provide alternative types of mitigation for Corps of Engineers civil works projects as well as mitigation in connection with resolving Clean Water Act enforcement cases. Comments received in response to this PN will be provided to the Bank Sponsor for consideration in their continued development of the Bank draft instrument.

BANK SPONSOR:

Ecotone, Incorporated
129 Industry Lane
Forest Hill, Maryland 21050
Attn: Marie Brady

WATERWAY AND LOCATION OF THE PROPOSED BANK: The proposed 32.0-acre compensatory mitigation Bank is located on a 70.9-acre property at South 5617 Patterson Road, Baldwin, Baltimore County, Maryland, 21013, on five unnamed tributaries to Long Green Creek, with the center of the site located approximately at Latitude: 39.496067 N, Longitude -76.474526 W. The Bank is located within the 8-digit U.S. Geological Survey Hydrologic Unit Code (USGS HUC), 02-06-00-03 Gunpowder-Patapsco River Basin.

OVERALL PROJECT PURPOSE: The Bank Sponsor proposes to establish, design, construct, operate, and maintain a 32.0-acre private commercial wetland and stream compensatory mitigation bank to be known as the Pheasant Run Mitigation Bank. The proposed Bank would provide off-site compensatory mitigation for unavoidable impacts to wetlands and other waters regulated by the Corps and/or state that are authorized by

a Department of the Army (DA) and/or MDE permit within the proposed geographic service area described below. The proposed Ecotone statewide UMBI (Ecotone UMBI) will establish the framework for the development, implementation, and protection of the initial Pheasant Run Mitigation Bank and future individual umbrella mitigation bank sites to be approved under this Ecotone UMBI.

The attached prospectus provides a summary of the development of the proposed Bank and initiates the Corps' and MDEs review associated with establishment of this Bank, including the development of an approved UMBI. A draft UMBI may be prepared by the Bank Sponsor following the Corps' and MDEs review of the comments received in response to this public notice and a determination that the proposed UMBI and Bank site has potential for providing appropriate compensatory mitigation for activities authorized by DA and MDE permits. An approved UMBI, including a mitigation site plan, is the legal document for the establishment, operation, use, and maintenance of the Bank in a way that complies with the regulations governing compensatory mitigation for activities authorized by DA permits granted by the Corps and Titles 5 and 16 Environment Article Annotated Code of Maryland permits issued by MDE.

Pursuant to 33 CFR 332.8(d)(4), the Corps has posted a full copy of the subject prospectus online so that it is available for review by the public. The prospectus may be downloaded from the Regulatory In-Lieu Fee and Bank Information Tracking System (RIBITS) at web address

https://ribits.ops.usace.army.mil/ords/f?p=107:278:226909524427::NO:RP,278:P278_BANK_ID:5358

PROJECT DESCRIPTION: The proposed establishment of this 32.0-acre mitigation bank site involves the establishment/restoration, and enhancement of aquatic resources. The proposed ecological lift associated with establishment of this mitigation bank, including: groundwater recharge and discharge; flood attenuation; fish habitat; food sources; shading to reduce stream temperature; sediment storage; nutrient removal; organic production export; stream channel stabilization; and wildlife habitat would generate wetland and/or stream credits that are to provide off-site compensatory mitigation for activities authorized under DA and MDE permits. Specifically, the following is a list of project objectives as described by the Bank Sponsor:

- Establishment/Restoration of approximately 23.60 acres of palustrine forested wetlands.
- Restoration of approximately 5,233 linear feet of perennial stream channels on five streams.
- Enhancement of approximately 3.02 acres of existing palustrine emergent wetlands to palustrine forested wetlands.
- Establishment/Restoration of 4.26 acres of Non-Tidal Wetland Buffer.

- The Bank is proposed to be protected in perpetuity via recordation of a real estate instrument such as a conservation easement or restrictive covenant.
- Upon Bank closure, the bank is proposed to be managed long term by the Bank Sponsor until a third part Long-Term Steward is identified and approved.

PROPOSED SERVICE AREA: The service area of a bank is a geographic area, such as a watershed or ecoregion, within which the mitigation bank is authorized to provide compensatory mitigation required by DA and MDE permits. The proposed primary service area for the Bank would include the Gunpowder-Patapsco River Watershed, 8-digit USGS HUC: 02-06-00-03. The proposed secondary service area would include the Piedmont physiographic region portions of the Lower Susquehanna River Watershed, 8-digit USGS HUC: 02-05-03-06, and the Patuxent Watershed, 8-digit USGS HUC: 02-06-00-06. The use of the secondary service area would be considered by the Corps and MDE only when credits are not available from another approved mitigation bank within the primary service area and the applicant demonstrates that the mitigation credits will replace the lost aquatic functions and services at the impact site. Impacts to coastal and tidal aquatic resources would be excluded from mitigating at this nontidal Bank.

MITIGATION BANK APPROVAL AND PERMITTING PROCESSES: This Bank may be one of a number of practicable options available to applicants to compensate for unavoidable impacts associated with permits issued under the authority of Section 10 of the Rivers and Harbors Act and/or Section 404 of the Clean Water Act and the Maryland's Nontidal Wetlands Protection Act and/or a Maryland Waterways Construction Act. Released mitigation bank credits are generally the preferred option for compensatory mitigation because banks consolidate resources, involve more financial planning and scientific expertise, and must meet certain performance standards, thereby reducing risks associated with mitigation projects. Approval to use an approved Bank site to offset impacts for a specific project is the decision of the Corps and MDE. The Corps and MDE provide no guarantee that any particular individual or general permit will be granted authorization to use an approved Bank site to compensate for unavoidable impacts associated with a proposed permit.

Issuance of a public notice regarding proposed compensatory mitigation bank sites is required pursuant to 33 C.F.R. § 332.8(d)(4) and 40 C.F.R. § 230.98(d)(4). The proposed establishment of the compensatory mitigation Bank will be evaluated pursuant to the 2008 Mitigation Rule (33 CFR § 332).

The Sponsor must obtain the appropriate federal, state, and local permits required to implement the Bank restoration activities. The Bank Sponsor would submit an application for Corps and MDE permits should the Bank mitigation activities involve a discharge of dredge or fill material within waters of the U.S. or work within navigable waters of the U.S. and/or impacts to state aquatic resources, respectively; and receive appropriate authorizations prior to initiating construction activities. The Corps would

complete consultation, if appropriate, under the Endangered Species Act, the National Historic Preservation Act, and other applicable federal laws, prior to any DA permit authorization for construction of the Bank site.

Based upon a preliminary review of the prospectus, the proposed work to develop the compensatory mitigation Bank site may result in temporary and/or permanent impacts to waters of the U.S. and waters of the state. The proposed work to construct the wetland and stream mitigation bank involves grading and planting selective areas within the mitigation bank site and would impact approximately 3.02 acres of emergent nontidal wetlands and 5,233 linear feet perennial stream channel. In addition, the proposed work would impact approximately 1.06 acres of State regulated nontidal wetland buffer and 35.64 acres of state regulated Federal Emergency Management Agency (FEMA) 100-year floodplain. A joint permit application has been submitted for the proposed construction activities associated with development of the Bank. However, the Bank Sponsor will need to revise the application based on changes in the design. A preliminary review indicates that the proposed work may qualify for Corps authorization under the Nationwide Permit (NWP) #27 (Aquatic Habitat Restoration, Enhancement, and Establishment Activities). NWP #27 has undergone a full public interest review as required by Corps regulations (33 CFR § 320.4(a)), and National Environmental Policy Act documentation has been prepared that addresses environmental considerations. Authorization for the proposed impacts will also be required by MDE. MDEs permit number is 20-NT-0041/202060215.

Please refer to the table below for a summary of approximate aquatic resource impacts to construct the compensatory mitigation bank.

EFFECTS ON AQUATIC RESOURCES:

Activity (i.e. culvert)	Perennial Stream Impact (lf)	Emergent Wetland Impact (Acres)	State-regulated nontidal wetland buffer (Acres)	State-regulated FEMA 100-year floodplain (Acres)
Ecological Restoration (Corps)	5,233	3.02	N/A	N/A
Ecological Restoration (MDE)	5,233	3.02	1.06	35.64

LEAD FEDERAL AGENCY: The Corps, as the lead federal agency, is responsible for all coordination pursuant to applicable federal authorities.

The Interagency Review Team (IRT) responsible for review, approval, and oversight of the proposed mitigation bank includes representatives from the Corps, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the National

Marine Fisheries Service, the MDE, the Maryland Department of Natural Resources, the Maryland Historical Trust, and the Maryland Critical Area Commission. The Baltimore District of the Corps chairs the IRT and the MDE co-chairs the IRT.

ENDANGERED SPECIES: A preliminary review of this prospectus indicates that the proposal will have no effect on federally listed threatened or on endangered species or their critical habitat, pursuant to Section 7 of the Endangered Species Act, as amended. As the evaluation of this application continues, additional information may become available which could modify this preliminary determination.

ESSENTIAL FISH HABITAT: The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 04-267), 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), including species of concern, life cycle habitat, or Habitat Areas of Particular Concern. The project site lies in or adjacent to EFH as described under MSFCMA for managed species under the MSFCMA. The Baltimore District has made a preliminary determination that the project will have no effect on EFH. The Baltimore District has made a preliminary determination that mitigative measures are not required to minimize adverse effects on EFH at this time. This determination may be modified if additional information indicates otherwise.

HISTORIC RESOURCES: Pursuant to Section 106 of the National Historic Preservation Act of 1966 and applicable guidance, the Corps has reviewed the latest published version of the National Register of Historic Places and initially determined that no properties listed or eligible for inclusion, in the National Register of Historic Places, are located at the site of the proposed Bank. The Corps has made the preliminary determination that the proposed project would have no effect on historic properties. The Corps final eligibility and effect determination will be based on coordination with the State Historic Preservation Office as appropriate and required, and with full consideration given to the proposed undertaking's potential direct and indirect effects on historic properties within the Corps' identified permit area.

TRIBAL RESOURCES: Section 106 of the National Historic Preservation Act also requires federal agencies to consult with federally recognized American Indian tribes that attach religious and cultural significance to historic properties that may be affected by the agency's undertaking. Corps Tribal Consultation Policy mandates an open, timely, meaningful, collaborative, and effective deliberative communication process that emphasizes trust, respect, and shared responsibility. The policy further emphasizes that, to the extent practicable and permitted by law, consultation works toward mutual consensus and begins at the earliest planning stages before decisions are made and actions taken. The Corps final eligibility and effect determination will be based on coordination with interested tribes, in accordance with the Corps current tribal standard operating procedures as appropriate and required, and with full consideration given to the proposed undertaking's potential direct and indirect effects on tribal resources.

MODIFICATION OF CIVIL WORKS PROJECTS: 33 USC 408 (SECTION 408): All Section 408 proposals will be coordinated internally at the Corps. The Section 408 decision will be issued along with the Section 404 and/or Section 10 decision. Please see the following link for more information regarding Section 408: <https://www.nab.usace.army.mil/section408/>.

The applicant must obtain any state or local government permits which may be required.

NOTE: This public notice is being issued based on information furnished by the Bank Sponsor. This information has not been verified or evaluated to ensure compliance with laws and regulation governing the regulatory program.

REQUEST FOR PUBLIC HEARING: Any person may request a public hearing. The request must be submitted in writing to the District Engineer and MDE within the designated comment period of the notice and must state the specific reasons for requesting the public hearing.

SUBMISSION OF COMMENTS: The Corps and MDE are soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties to help inform the Corps, MDE, and the IRT as to the overall merits of the proposed Bank, the scope of the proposed mitigation bank, the delineation of the proposed service area, the ecological suitability of the Bank site to achieve restoration of waters of the U.S. and waters of the state, and to identify project aspects that should be addressed during the development of a draft UMBI. Any comments received will be considered by the Corps and MDE to determine whether the proposal has the potential to provide mitigation opportunities for project proponents (permittees) authorized to impact waters of the U.S. under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act, and/or waters of the state under Titles 5 and 16 Environment Article Annotated Code of Maryland, or as a means of resolving Section 404 and/or Section 10 enforcement actions. Comments provided will become part of the public record for this action and are subject to release to the public through the Freedom of Information Act.

Written comments concerning the proposed Bank must be received by the Corps, Baltimore District and the MDE within the comment period specified above through postal mail at the addresses below or electronic submission to the project manager's email address below. All comments should reference the Application Number NAB-2019-00180-P02 (Ecotone MD Statewide UMBI/Pheasant Run Mitigation Bank) and MDE permit number 20-NT-0041/202060215.

Mr. Michael Danko
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U.S. Army Corps of Engineers, Baltimore District
Regulatory Branch
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MDE, Mitigation and Technical Assistance Section
1800 Washington Boulevard, Suite 430
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Please share this information concerning the proposed work with any persons known by you to be interested, who did not receive a copy of this notice.

General information regarding the Corps' permitting and mitigation processes can be found on our website at <https://www.nab.usace.army.mil/Missions/Regulatory.aspx>. This public notice has been prepared in accordance with Corps implementing regulations at 33 CFR 325.3. If you have any questions concerning this specific project, or would like to request a paper copy of this public notice, please contact Mr. Michael Danko, U.S. Army Corps of Engineers, Baltimore District, at 717-249-8730 (mike.danko@usace.army.mil) or by contacting Ms. Kelly Neff, MDE, Wetlands and Waterways Program at 410.537.4018 (kelly.neff@maryland.gov).

This public notice is issued by the Chief, Regulatory Branch.