



**U.S. Army Corps  
of Engineers**  
Baltimore District  
PN-24-06

# Public Notice

**In Reply to Application Number  
NAB-2022-60111-M47 (KCI/Beaver Dam Creek Mitigation Bank)**

Comment Period: February 21, 2024, to March 22, 2024

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**THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM INTERESTED PARTIES CONCERNING THE PROSPECTUS FOR DEVELOPMENT OF A PRIVATE COMMERCIAL COMPENSATORY MITIGATION BANK.**

The Baltimore District, United States Army Corps of Engineers (Corps) has received a request pursuant to the 2008 Mitigation Rule (33 CFR 332) proposing to establish the Beaver Dam Creek Compensatory Stream and Wetland Mitigation Bank (“Bank”) to generate mitigation credits to offset unavoidable impacts to waters of the United States authorized under Section 404 of the Clean Water Act (33 USC 1344). In addition, the proposed Bank may be used to generate compensatory mitigation credits to offset unavoidable impacts to wetland and/or waters regulated by the State of Maryland under Titles 5 and 16 Environment Article Annotated Code of Maryland. Finally, 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.

**BANK SPONSOR:**

KCI Technologies, Inc.  
ATTN: Mr. Sean Punte  
936 Ridgebrook Road  
Sparks, Maryland 21152

**WATERWAY AND LOCATION OF THE PROPOSED BANK:**

The proposed Bank is located on Beaver Dam Creek and its unnamed tributaries, off Molasses Road, Union Bridge, Frederick County, Maryland, within the Piedmont physiographic province of the Monocacy River watershed, United States Geological Survey Hydrologic Unit Code (USGS HUC) 02070009. Latitude 39.527351° N, Longitude -77.211209° W.

**OVERALL PROJECT PURPOSE:**

The Bank Sponsor proposes to establish, design, construct, operate, and maintain an approximately 10.13 acre private commercial wetland and stream compensatory mitigation bank to be known as the Beaver Dam Creek Stream and Wetland Mitigation Bank. The

proposed Bank will provide off-site compensatory mitigation for unavoidable impacts to wetlands and other waters of the United States authorized by a Department of the Army (DA) within the proposed geographic service area described below. Some areas of the bank may be dedicated to Total Maximum Daily Load credit for National Pollutant Discharge Elimination System MS4 permit compliance, which would be limited to tributaries of the mainstem within the project area with the understanding that those areas used for Total Maximum Daily Load credit would not receive compensatory mitigation credit.

The prospectus provides a summary of the development of the proposed Bank and initiates the Corps review. A draft Mitigation Bank Instrument (MBI) may be prepared by the Bank Sponsor following the Corps' review of the comments received in response to this public notice and determination that the proposed Beaver Dam Creek Mitigation Bank Site has potential for providing appropriate compensatory mitigation for activities authorized by DA permits. An approved MBI 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.

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=107:278:7120691425709::RP,278:P278\\_BANK\\_ID:6336](https://ribits.ops.usace.army.mil/ords/f?p=107:278:7120691425709::RP,278:P278_BANK_ID:6336)

## **PROJECT DESCRIPTION:**

The proposed establishment of this approximately 10.13-acre mitigation bank site involves the re-establishment, enhancement, and preservation of aquatic resources. It is proposed that ecological lift associated with the re-establishment and enhancement of forested wetlands will include habitat improvements for a variety of wildlife species including amphibians, reptiles, birds, mammals and decreased sediment and nutrient loads to the Double Pipe Creek sub-watershed and the Monocacy River watershed. Proposed functional uplift also includes restoring channelized and livestock impacted streams and restoring a diverse vegetated riparian buffer to provide bank stability, filtration, shading, and habitat improvements. The restored wetlands and stream channels will provide increased aquatic function and would generate wetland and stream credits that are to provide off-site compensatory mitigation for activities authorized under a DA and Maryland Department of the Environment (MDE) permits. The proposed Beaver Dam Creek Stream and Wetland Mitigation Bank includes:

- re-establishment of approximately 2.15 acres forested nontidal wetland.
- re-establishment of approximately 2.39 acres scrub/shrub nontidal wetland.
- re-establishment of approximately 1.86 acres emergent nontidal wetland.
- enhancement of approximately 1.04 acres forested nontidal wetland.
- enhancement of approximately 0.39-acre scrub/shrub nontidal wetland.
- enhancement of approximately 0.43-acre emergent nontidal wetland.
- restoration of approximately 10,807 linear feet of stream channel; and
- preservation of approximately 330 linear feet of stream channel.

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 Sponsor may transition management to a long-term steward. Site ownership will remain with the current site owner.

A summary of the proposed mitigation resource type and crediting is provided in the Prospectus.

#### **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 permits. The proposed primary service area for the Bank is the Monocacy River Watershed, USGS HUC (02070009).

The proposed secondary service area would include the Piedmont physiographic region of the Middle Potomac-Catoctin HUC (02070008) in the State of Maryland. The use of the secondary service area would be considered by the Corps only when credits are not available from another approved mitigation bank within the primary service area and an applicant demonstrates that the mitigation credits will replace the lost aquatic functions and services at the impact site. Certain types of impacts, including impacts to coastal and tidal aquatic resources, would be excluded from mitigating at the Beaver Dam Creek Stream and Wetland Mitigation Bank Site.

#### **MITIGATION BANK APPROVAL AND PERMITTING PROCESSES:**

An approved compensatory mitigation 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 404 of the Clean Water 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 pursuant to Section 404 of the Clean Water Act. The Corps provides 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. Authorization by the MDE may also be required to use this Bank to offset specific impacts regulated by the State of Maryland.

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 Part 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 permit should the Bank mitigation activities involve a discharge of dredge or fill material into waters of the United States or work within navigable waters of the United States 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 this compensatory mitigation Bank site may result in temporary and/or permanent impacts to waters of the United States. No DA permit application has been submitted to date for the proposed construction activities associated with development of the Bank. 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.

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

#### **APPROXIMATE EFFECTS ON AQUATIC RESOURCES:**

Activity	Aquatic Resource Impact	Authority (Section 10/404/408)
Ecological restoration (i.e., using selective grading, excavating, filling, and planting)	11,597 linear feet of stream and 1.4 acre of nontidal wetlands	Section 404

**LEAD FEDERAL AGENCY:**

The United States Army Corps of Engineers, as the lead federal agency, is responsible for all coordination pursuant to applicable federal authorities.

The Maryland Interagency Review Team (IRT) is responsible for review, approval, and oversight of the proposed Umbrella Mitigation Bank Instrument and mitigation bank site. The IRT includes representatives from the Corps, the United States Environmental Protection Agency, United States Fish and Wildlife Service, National Marine Fisheries Service, Maryland Department of Natural Resources, and MDE. The Baltimore District of the United States Army Corps of Engineers chairs the IRT and MDE co-chairs the IRT.

**ENDANGERED SPECIES:**

A preliminary review of this prospectus indicates that the proposal will have no effect federally listed threatened or 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 is located in the Piedmont physiographic region of Maryland and does not lie 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 is not within 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 has no potential to cause effects 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 USACE. 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 (see Corps address below) within the designated comment period of the notice and must state the specific reasons for requesting the public hearing.

**SUBMISSION OF COMMENTS:**

The Corps of Engineers is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties to help inform the Corps and the IRT as to the overall merits of the proposed Beaver Dam Creek Stream and Wetland Mitigation Bank Site, 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 United States, and to identify project aspects that should be addressed during the development of a draft MBI. Any comments received will be considered by the Corps of Engineers to determine whether the proposal has the potential to provide mitigation opportunities for project proponents (permittees) authorized to impact waters of the United States under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act, 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 United States Army Corps of Engineers, Baltimore District within the comment period specified above through postal mail at the address below or electronic submission to the project manager's email address below. All comments should reference the Application Number NAB-2022-60111-M47

Ms. Meg Fullam  
[meghan.e.fullam@usace.army.mil](mailto:meghan.e.fullam@usace.army.mil)  
United States Army Corps of Engineers, Baltimore District  
Regulatory Branch  
2 Hopkins Plaza  
Baltimore, MD 21201-2930

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 contacting Ms. Meg Fullam, Baltimore District, Corps, at [meghan.e.fullam@usace.army.mil](mailto:meghan.e.fullam@usace.army.mil). This public notice is issued by the Chief, Regulatory Branch.