



U.S. Army Corps
of Engineers
Baltimore District
PN-22-16

Public Notice

In Reply to Application Number
NAB-2008-01083-M15 (Maple Dam Mitigation Bank Phase IV)

Comment Period: June 21, 2022 to July 21, 2022

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) and the Maryland Department of the Environment (MDE) have received a request pursuant to the 2008 Mitigation Rule (33 CFR 332) proposing to establish Phase IV of the Maple Dam Compensatory Wetland Mitigation Bank Site 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, Phase IV of the Maple Dam Compensatory Mitigation Bank Site is proposed to generate mitigation credits to offset unavoidable impacts to waters of the State of Maryland authorized under Titles 5 and 16 Environment Article Annotated Code of Maryland. Finally, the proposed Phase IV may also provide alternative types of mitigation for the United State Army Corps of Engineers civil works projects, as well as mitigation in connection with resolving Clean Water Act enforcement cases.

BANK SPONSOR:

Maple Dam Conservation, LLC
Attention: Don Miko
P.O. Box 33
Fork, Maryland 21051

WATERWAY AND LOCATION OF THE PROPOSED BANK:

The proposed Phase IV of the Maple Dam Wetland Mitigation Bank Site is located at 4731 Maple Dam Road, Cambridge, Dorchester County, MD, 21613, within the Atlantic Coastal Plain physiographic province of the Tangier watershed, Hydrologic Unit Code (HUC) 02080110. Latitude 38° 29' 55.50" N, Longitude 76° 04' 55.14" W.

OVERALL PROJECT PURPOSE:

The bank sponsor proposes to establish, design, construct, operate, and maintain a 40.39 acre private commercial wetland compensatory mitigation bank to be known as Phase IV of the Maple Dam Compensatory 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) and the State of Maryland permit(s) within the proposed geographic service area described below.

The prospectus provides a summary of the development of the proposed Phase IV of the Maple Dam Wetland Mitigation Bank and initiates the Corps' and the MDEs review associated with expansion of the Maple Dam Wetland Mitigation Bank. A draft supplemental MBI may be prepared by the bank sponsor following the Corps' and the MDEs review of the comments received in response to this public notice and determination that the proposed expansion of the Maple Dam Mitigation Bank Site has potential for providing appropriate compensatory mitigation for activities authorized by the DA and the MDE 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 the DA and the MDE 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=107:278:933253676058:::RP,278:P278_BANK_ID:6337

PROJECT DESCRIPTION:

The proposed establishment of this 40.39-acre Phase IV of the mitigation bank site involves the re-establishment of aquatic resources. It is proposed that ecological lift associated with the reestablishment of forested wetlands will include decreased sediment, nutrient, and pesticide loads to the Little Blackwater River. Proposed functional uplift also includes habitat improvements for a variety of wildlife species including amphibians, reptiles, birds, mammals, and fish. The restored wetlands will have a higher capacity for increased aquatic function due to their proximity to similar adjacent resources and would generate wetland credits that are to provide off-site compensatory mitigation for activities authorized under a DA and the MDE permits. The proposed Phase IV includes:

1. Re-establish of approximately 2.97 acres emergent nontidal wetland and 37.42 acres forested nontidal wetland.
2. The bank is proposed to be protected in perpetuity via recordation of a real estate instrument such as a conservation easement or restrictive covenant.

3. 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 geographic service area of the existing Maple Dam Wetland Mitigation Bank (Phases I-III) as well as the proposed Phase IV is the Tangier HUC (02080110), the Nanticoke HUC (02080109) and the portion of the Choptank HUC (02060005) from Route 404 to the southern-most boundary of that HUC within the State of Maryland.

The secondary service territory will include the Pocomoke-Western Lower Delmarva HUC (02080111) in the State of Maryland. The use of the secondary service area would be considered by the Corps and the MDE 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 Maple Dam Wetland Mitigation Bank Site.

MITIGATION BANK APPROVAL AND PERMITTING PROCESSES:

An approved Compensatory Mitigation Bank Site 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 and the Maryland 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 the MDE pursuant to Section 404 of the Clean Water Act and the Maryland Nontidal Wetlands Protection Act, and/or the Maryland Waterways Construction Act, respectively. The Corps and the 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 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 the Corps and the MDE permits should the bank mitigation activities involve impacts to state aquatic resources and/or 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 Phase IV of the compensatory mitigation bank site may result in temporary and/or permanent impacts to waters of the United States. and waters of the state or work within navigable waters of the United States. No 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 NEPA documentation has been prepared that addresses environmental considerations. Authorization for the proposed impacts will also be required by the MDE.

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

APPROXIMATE EFFECTS ON AQUATIC RESOURCES:

Activity	Stream Impact	Authority (Section 10/404/408)
Ecological restoration (i.e., using selective grading, excavating, filling, and planting)	116 linear feet of intermittent stream	Section 404

LEAD FEDERAL AGENCY:

The Corps, 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 Banking Instrument (UMBI) and mitigation bank site. The IRT includes representatives from the Corps, the United States Environmental Protection Agency, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the Maryland Department of Natural Resources, and the MDE. 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 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 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. The 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 United States Army Corps of Engineers. 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 the MDE (see the Corps and the MDE addresses 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 and the 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, the MDE, and the IRT as to the overall merits of the proposed Phase IV of the Maple Dam 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 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 the MDE 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 and 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 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 (2022-60508).

Mr. Jack Dinne
(john.j.dinne@usace.army.mil)
U.S. Army Corps of Engineers, Baltimore District
Regulatory Branch
2 Hopkins Plaza
Baltimore, MD 21201-2930

Ms. Kelly Neff MDE
(kelly.neff@maryland.gov)
MDE, Mitigation and Technical Assistance Section
1800 Washington Boulevard
Suite 430
Baltimore, Maryland 21230-1708

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 the 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 Mr. Jack Dinne, of the Baltimore District, Corps, at john.j.dinne@usace.army.mil or by contacting Ms. Kelly Neff, MDE, Wetlands and Waterways Program at 410.537.4018 or kelly.neff@maryland.gov. This public notice is issued by the Chief, Regulatory Branch.