



U.S. Army Corps
of Engineers
Baltimore District

Joint Public Notice

In Reply to Application Number
CENAB-OPR-MN (Patuxent Mitigation Bank)
2019-60966



Maryland Department of
the Environment

PN 19-41

Comment Period: June 20, 2019 to July 20, 2019

THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM THE PUBLIC CONCERNING THE PROPOSED PATUXENT MITIGATION BANK PROSPECTUS FOR DEVELOPMENT OF A PRIVATE COMMERCIAL MITIGATION BANK.

THE BALTIMORE DISTRICT, U.S. ARMY CORPS OF ENGINEERS (CORPS) AND THE MARYLAND DEPARTMENT OF THE ENVIRONMENT (MDE) ARE SOLICITING COMMENTS FROM THE PUBLIC; FEDERAL, STATE, AND LOCAL AGENCIES AND OFFICIALS; INDIAN TRIBES; AND OTHER INTERESTED PARTIES IN ORDER TO CONSIDER AND EVALUATE THE BANKING INSTRUMENT PROSPECTUS, THE PROPOSED PATUXENT MITIGATION BANK, AND THE POTENTIAL OF THE PROPOSED MITIGATION BANK TO PROVIDE APPROPRIATE COMPENSATORY MITIGATION FOR ACTIVITIES AUTHORIZED BY DEPARTMENT OF THE ARMY AND STATE OF MARYLAND PERMITS.

At this time, no decision has been made as to whether or not the proposed Mitigation Banking Instrument for the Patuxent Mitigation Bank Site will be approved. We are requesting comments to determine if approval should be granted for the proposed Patuxent Mitigation Bank for the purpose of providing compensatory mitigation for future unavoidable wetland impacts authorized by the Department of the Army (DA) and MDE under Section 404 of the Clean Water Act (CWA) and Titles 5 and 16 Environment Article Annotated Code of Maryland, respectively. Such authorized use of a Bank must meet all applicable requirements and be authorized by the appropriate authorities.

Issuance of a public notice regarding proposed mitigation banks is required pursuant to the Department of the Army and Environmental Protection Agency "Compensatory Mitigation for Losses of Aquatic Resources; Final Rule," (Rule) as published in the April 10, 2008, Federal Register, Vol. 73, No. 70, Pages 19594-19705 (33 CFR Parts 325 and 332).

A complete application for work in waters of the United States or Waters of the State to construct the Patuxent Mitigation Bank Site has not been received by the Corps and MDE. A preliminary review of the proposed site indicates that there may be waters of the United States or Waters of the State, including wetlands within the project area. These areas may be regulated pursuant to Section 404 of the Clean Water Act (CWA), the Maryland Nontidal Wetlands Protection Act, and the Maryland Waterway Construction Act, and the work described below may require Corps and MDE authorization.

The Corps and MDE have received the Patuxent Mitigation Bank Prospectus which is available at our website: <http://www.nab.usace.army.mil/Missions/Regulatory/PublicNotices.aspx> and as an attachment to the electronic copy of this public notice. Those receiving notification of this public notice who desire a copy of the proposed Prospectus may either access the above website link or, may request a hard copy of the document by contacting Ms. Jamie Larkin, Baltimore District, Corps, at 410.962.4522 (Jamie.H.Larkin@usace.army.mil) or by contacting Ms. Kelly Neff, MDE, Wetlands and Waterways Program at 410.537.4018 (kelly.neff@maryland.gov).

This Prospectus provides a summary of the information regarding the proposed Mitigation Banking Instrument and the Patuxent Mitigation Bank Site in accordance with the Department of Defense/Environmental Protection Agency Final Rule on Compensatory Mitigation for Losses of Aquatic Resources (33 CFR Parts 325 and 332 and 40 CFR Part 230). Oversight of this mitigation bank will be undertaken by the Maryland Interagency Review Team (IRT), which is comprised of Federal and State regulatory and resource agencies. The Corps serves as chair of the IRT, and the MDE as co-chair the IRT.

This prospectus provides a summary of how the proposed Patuxent Mitigation Bank will be established, used, operated, and maintained and is provided in accordance with the Federal Final Rule on Compensatory Mitigation for the Losses of Aquatic Resources (33 CFR 325 and 332 and 40 CFR 230) and Code of Maryland Regulations (COMAR).

APPLICANT: Johnson, Mirmiran and Thompson, Inc.
Attn: Mr. Jim Morris, P.E. and Mr. Chandler Denison
40 Wight Avenue
Hunt Valley, Maryland 21030

SPONSOR: NextEra Energy Marketing, LLC
Attn: Paul Jones, Director
700 Universe Boulevard EPM
JB, Juno Beach, Florida 33408

The Sponsor proposes in accordance with the attached plans, to establish, design, construct, and operate a compensatory Mitigation Bank.

LOCATION AND WATERWAY: The Patuxent Mitigation Bank is located on Cabin Branch in Howard County, Maryland. The site is divided into two parcels with Florence Road perpendicularly bisecting downstream and upstream parcels. The downstream parcel includes an approximately 35-acre easement area and the upstream parcel includes an approximately 18-acre easement area. The most downstream outfall location is 39° 18' 58.74" N, 77° 7' 57.04" W. The southern parcel is located at 2570 Florence Road, in Woodbine, Howard County, Maryland.

BANK DESCRIPTION: The proposed Patuxent Mitigation Bank would provide compensatory mitigation for future unavoidable nontidal wetland and stream impacts authorized by a Section 404 CWA permit, a Maryland Nontidal Wetlands Protection Act permit and/or a Maryland Waterways Construction Act permit. This mitigation bank would be used to comply with special conditions for compensatory mitigation of permitted projects by providing in-kind compensation for authorized aquatic resource impacts. The proposed mitigation bank is comprised of approximately 10,286 linear feet of stream restoration, 1,143 linear feet of stream preservation, 2.02 acres of wetland enhancement, 32.62 acres of wetland restoration, 9.72 acres of wetland preservation, and 7.77 acres of wetland buffer enhancement within the project area protected by a permanent conservation easement. The mitigation bank may only be used for future projects after all appropriate and practicable steps to avoid and minimize adverse impacts to aquatic resources, including wetlands and streams, have been demonstrated.

BANK SERVICE AREA: The proposed primary Service Areas is the Patuxent Watershed (HUC 02060006). The proposed secondary service area is the piedmont ecoregion of the Gunpowder-Patapsco Watershed (HUC 02060003). This secondary service area was chosen because the proposed bank's location within the Piedmont ecoregion is close to the Gunpowder-Patapsco ridgeline.

WORK REQUIRING CORPS AND MDE AUTHORIZATION: At this time, a jurisdictional determination has not been performed by the Corps/MDE to confirm Federal and State jurisdiction at the proposed 58-acre mitigation bank. The proposed work to construct a wetland and stream mitigation bank involves grading, excavating and filling selective areas within the mitigation bank site by impacting approximately .54 acres of forested nontidal wetland, 1.47 acres of emergent nontidal wetland, 0.44 acres of scrub-shrub nontidal wetland, 3.38 acres of State regulated nontidal wetland buffer, 45.12 acres of State regulated 100 year floodplain, and 10,286 linear feet perennial stream channel. Any impact to jurisdictional streams and/or wetlands must be approved by the Corps and MDE prior to commencing any regulated construction activities. The wetland buffer and floodplain impacts are subject to MDE regulations. These impacts are not subject to DA regulation.

The final mitigation banking instrument does not provide ultimate DA and/or State authorization for specific future projects impacting waters of the United States or Waters of the State; exclude such future projects from any applicable statutory or regulatory requirements; or preauthorize the use of credits from the bank for any particular project. The Corps and MDE provide no guarantee that any particular individual or general permit will be granted authorization to use this Mitigation Bank to compensate for unavoidable aquatic resource impacts associated with a proposed permit, even though compensatory mitigation may be available within the defined service area(s).

The decision whether to approve this mitigation bank and issue a permit for the impacts to waters of the United States will be based on an evaluation of the probable impacts including cumulative impacts of the proposed bank on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects, thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, and, in general, the needs and welfare of the people.

If you have any questions concerning this matter, or require a hardcopy of the prospectus, please contact Ms. Jamie Larkin, Baltimore District, U.S. Army Corps of Engineers at 410.962.4522 (Jamie.H.Larkin@usace.army.mil) or Ms. Kelly Neff, Maryland Department of the Environment, Wetlands and Waterways Program at 410.537.4018 (kelly.neff@maryland.gov).

Requests to be included on the interested persons list may be sent to MDE, Attn: Kelly Neff, 1800 Washington Boulevard, Suite 430, Baltimore, MD 21230 or kelly.neff@maryland.gov or 410-537-4018. Any further notices concerning actions on the application will be provided only by mail to those persons on the interested persons list. Please refer to Subsection 5-907 of the Annotated Code of Maryland or the Code of Maryland Regulations 26.23.02 for information regarding the State application process.

ENDANGERED SPECIES ACT: A preliminary review of this application using the U.S. Fish and Wildlife Service IPaC online screening tool indicates that the proposed work will not affect any Federal listed threatened, endangered, or candidate species and/or their critical habitat, pursuant to Section 7 of the Endangered Species Act, as amended. As the evaluation of this proposal continues, additional information may become available which could modify this determination.

NATIONAL HISTORIC PRESERVATION ACT: Review of the latest published version of the National Register of Historic Places indicates that no registered properties listed as eligible for inclusion therein are located at the site of the proposed work. Currently unknown archeological, scientific, prehistoric, or historical data may be lost or destroyed by the work to be accomplished under the requested permit. The Maryland Historical Trust (MHT) on August 6, 2018 made the determination that there are no historic properties affected by this undertaking. As the evaluation of this proposal continues, additional information may become available which could modify this determination.

WRITTEN COMMENTS: Written comments concerning the activity described above must be submitted directly to the District Engineer, U.S. Army Corps of Engineers, Baltimore District [ATTN: Ms. Jamie Larkin, CENAB-OP-RMN], 2 Hopkins Plaza, Baltimore, Maryland, 21201 or by email to Jamie.H.Larkin@usace.army.mil and to the Maryland Department of the Environment [ATTN: Ms. Kelly Neff, Mitigation and Technical Assistance Section], 1800 Washington Boulevard, Suite 430, Baltimore, Maryland 21230-1708 or by email to kelly.neff@maryland.gov, within the comment period as specified above to receive consideration.

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

It is requested that you communicate this information concerning the proposed work to any persons known by you to be interested and not being known to this office, who did not receive a copy of this notice.

FOR THE DISTRICT ENGINEER:

Joseph P. DaVia
Chief, Maryland Section Northern

Information for a Complete Mitigation Bank Prospectus per CFR 332.8(d)(2)

This information list has been prepared to assist bank sponsors, their agents, and other interested parties with the successful development of a complete prospectus, pursuant to the requirements provided in the mitigation rule. The bank prospectus should be sufficiently detailed to assess the technical feasibility of the bank development plan and to support informed comment regarding the bank's operational objectives. The prospectus should be organized in the following format as described in the mitigation rule to facilitate the review of the proposed project by the IRT.

1. BASIC INFORMATION

- a. Property owner interest - *include a letter from the property owner indicating their interest in developing a mitigation bank. The letter should indicate whether the sponsor owns the land or is acquiring an interest in the proposed bank site (fee simple acquisition, easement, etc.)*

A secured option agreement has been obtained from the land owner that clearly outlines the holder's intention of developing a mitigation bank. Further, the option agreement outlines that the sponsor will be securing a conservation easement as part of the mitigation banking instrument.

- b. Mitigation bank name, location, and vicinity map - *include proposed mitigation bank name, location (address and latitude/longitude), and 8 1/2" by 11" vicinity map.*

The Patuxent Mitigation Bank is located on Cabin Branch in Howard County. The project site is in the Patuxent Service Area (SA) identified as Hydrologic Unit Code (HUC 02060006) in the Northern Piedmont Level III ecoregion. The most downstream outfall location is 39° 18' 58.74" N, 77° 7' 57.04" W. See Appendix A for vicinity map.

- c. Bank purpose and bank type - *describe purpose of the bank and its relationship to Corps, Maryland Department of the Environment (MDE), and other involved regulatory programs and authorities (e.g., to provide compensatory wetland mitigation for unavoidable impacts to nontidal wetlands authorized under Section 404 of the Clean Water Act.) and type of mitigation bank (e.g., single client, commercial use, etc.).*

The primary purpose of the bank is to provide commercial compensatory stream and wetland mitigation for unavoidable impacts to streams and nontidal wetlands authorized under Section 404 of the Clean Water Act. A secondary purpose is to provide other compensation and mitigation for impacts under the Maryland Forest Conservation Act and the Total Maximum Daily Load (TMDL) pollutant reductions under the various MS4 permit requirements for multiple entities. While TMDL goals are part of this project, at this time it is not anticipated that TMDL credits will be many of the credits sold from the bank.

- d. Bank sponsorship, landowner, and consultant contact information - *provide contact information (name, address, phone, fax, email, etc.) for bank sponsor, landowner, and consultant if all unique.*

Landowners

Idiots Delight I, Inc.
2551 Florence Rd
Woodbine, MD 21797

Idiots Delight II, Inc.
2551 Florence Rd
Woodbine, MD 21797

Sponsor

Information for a Complete Mitigation Bank Prospectus per CFR 332.8(d)(2)

NextEra Energy Marketing, LLC
700 Universe Boulevard EPM
JB, Juno Beach, FL 33408

Project Manager
Paul Jones, Director
561-304-5463
paul.jones@nexteraenergy.com

Prime Consultant
Johnson, Mirmiran, & Thompson, Inc. (JMT)
40 Wight Avenue
Hunt Valley, MD 21030

Lead Designer & Project Liaison
Mr. Jim Morris, P.E.
443-662-4354
jmorris@jmt.com

Market Coordinator Contact
Mr. Chandler Denison
410-316-2484
cdenison@jmt.com

- e. Adjacent property owners - *provide names and mailing addresses of adjacent property owners and appropriate local officials (for public notice mailing).*

See Appendix B for adjacent property owners contact information.

- f. Agency coordination - *if available, include any reports and/or correspondence regarding historic properties, threatened or endangered species, and essential fish habitat.*

See Appendix B for agency coordination letters (Trilogy Letters)

2. OBJECTIVES OF THE MITIGATION BANK

- a. Resources types proposed - *describe the resource type(s) (e.g., forested/scrub-shrub/emergent wetland, stream, open water, supporting upland/riparian buffer, etc.) that are proposed. Include an 8½" by 11" plan view drawings showing the proposed mitigation project as if you are looking straight down on it from above. Clearly show the entire project site, existing waterbodies, wetlands, 25-foot wetland buffers, 100-year floodplains, and proposed limits of work, including impacts to these resources. Depict and identify the areas of proposed wetland and waterway restoration, enhancement, establishment, and/or preservation.*

The proposed resource types will be forested wetland and stream preservation, enhancement, and restoration/creation with a twenty-five-foot resource buffer around all restored resources. The site is split into two sections from Florence Road perpendicularly bisecting – downstream and upstream. The downstream (Appendix A, Mitigation Unit Map (MUM) South) includes an approximately 28-acre easement area and the upstream (Appendix A, MUM North) includes an approximately 15-acre easement area. Specific plans of proposed improvement types can be seen in both MUM maps.

Information for a Complete Mitigation Bank Prospectus per CFR 332.8(d)(2)

- b. Methods of proposed compensation and Quantities - *identify the methods of proposed compensation (e.g., restoration, establishment, enhancement, and/or preservation) used to establish the mitigation bank.*

All credit calculations follow IRT and MDE guidelines. Stream and wetland credits are calculated based on a ratio of improved length or area. Stream and Wetland preservation improvement ratios are the lowest meaning for every ten feet of stream and ten acres of wetland preserved, one credit is generated. For every three feet of stream and three acres of wetland enhanced, one credit is generated. Most beneficial, with every one-foot of stream and one acre of wetland restored, one credit is generated. See table below for planned improvement sizes and credit totals.

	Size	Ratio	Credits
Stream Preservation (LF)	1,143	10:1	114
Stream Enhancement (LF)	0	3:1	0
Stream Restoration (LF)	10,286	1:1	10,286
Stream Total (LF)			10,400
Wetland Preservation (AC)	9.72	10:1	.97
Wetland Enhancement (AC)	2.02	3:1	.40
Wetland Restoration (AC)	32.62	1:1	32.62
Wetland Total (AC)			34.00

- c. Credit release schedule - *include the proposed credit release schedule. Note that the final, approved credit release schedule will be identified in the mitigation banking instrument.*

Stream and Wetland Mitigation Bank Site Milestones	Credit Percentage Released	
	Preservation	Enhancement/Restoration
Mitigation Banking Instrument Approved by Corp & MDE	100%	20%
Successful Post-Construction As-built Submittal	0%	60%
After Year 1 and Performance Standards Met	0%	0%
After Year 2 and Performance Standards Met	0%	0%
After Year 3 and Performance Standards Met	0%	0%
After Year 4 and Performance Standards Met*	0%	0%
After Year 5 and Performance Standards Met*	0%	0%
After Year 6 and Performance Standards Met*	0%	0%
After Year 7 and Performance Standards Met*	0%	0%
After Year 8 and Performance Standards Met*	0%	0%
After Year 9 and Performance Standards Met*	0%	0%
After Year 10 and Performance Standards Met*	0%	20%
<i>Note: Starting in Year 4, if performance standards are met for two consecutive years, all remaining credits are proposed for release.</i>		

Information for a Complete Mitigation Bank Prospectus per CFR 332.8(d)(2)

3. MITIGATION BANK ESTABLISHMENT & OPERATION

- a. Scope of work for site development - *summarize the scope of work proposed to accomplish site development. Include any proposed phasing of bank development.*

JMT is proposing the following data collection and other activities to accomplish the mitigation work:

Baseline Conditions Surveys:

Forest and Canopy Evaluation: Analysis of the existing forest resources on the site using Howard County Forest Standard Delineation protocols. This includes location of 12-inch diameter and greater trees, specimen trees, and near-bank canopy trees as flagged in the field. Canopy coverage of specific trees in critical locations will be evaluated for stream shading at midday and defined on a map.

Wetland Delineation and Functions and Values Assessments: Wetlands will be delineated per standard practices acceptable to USACE and MDE. Functions and values of existing and proposed wetland conditions will be evaluated through the New England Highway Methodology.

Thermal Stream Conditions: Thermal transducers and absolute pressure transducers are presently installed in significant portions of the tributaries and monitored at one-hour intervals. Atmospheric air temperature and conditions will be monitored via available meteorological data. This monitoring is expected to continue after construction and through the monitoring period.

Topographic survey and Geologic conditions Survey: One-foot contour survey will be completed for the site, as well as top of basal gravel through tile probe investigation. Utility investigation will be included following coordination with MISS UTILITY.

Groundwater Monitoring: Trenching will occur. It is believed there is buried hydric soil layer on top of basal gravel known to be in the ground water table seasonal range based on site soil indicators.

Precipitation and Climate: Data for monthly average rainfall and weather conditions will be tracked through the monitoring period, to identify if other data collected is within “normal” conditions for the site, or representative of wetter, drier, hotter, or colder conditions than normal.

Invasive Species Survey: Invasive species will be identified concurrent with forest and wetland studies and targeted for control.

Fisheries and Benthos: Existing data from DNR and Howard County will be used for baseline conditions and will be augmented with a full fishery assessment in summer 2019 and a full benthos assessment conducted in either spring 2019 or 2020. JMT proposes DNR to continue fisheries monitoring following construction in their normal locations on Cabin Branch which are not in our work area. JMT does not propose any specific goals for

Information for a Complete Mitigation Bank Prospectus per CFR 332.8(d)(2)

benthos other than improving the quantity and availability of physical habitat and demonstrating that the work area has the same or better benthic taxa composition and quantity following restoration, and fisheries are improved in number of individuals and recruitment as demonstrated by age classes; therefore, existing and proposed conditions physical habitat will be assessed. JMT proposed cooperation with DNR to evaluate if this tributary will be suitable for Brook Trout (*Salvelinus fontinalis*) restoration, as thermal data indicate that following restoration and canopy re-establishment, there may be potential to reintroduce the species to this reach. At a minimum, Brown Trout (*Salmo trutta*) restoration is an additional suitable goal for the reach. Channel flow status, in channel overhead cover, and presence of woody debris are key elements that will be assessed, as well as presence of clean gravel substrates, bed and bar particle distributions, and overall visual assessment of the reaches and banks are proposed.

Historic Resources: No known resources are present on the site within the proposed work areas. This has been confirmed by Maryland Historical Trust in a letter and can be found in Appendix B. Per standard protocols, if the discovery of resources on the site is made, MDE/MHT will immediately be contacted.

Design:

JMT will prepare the design of the mitigation measures. These measures will be designed using best practices to accomplish ecological lift and maintain existing resources on the project site. Detailed alternatives and avoidance and minimization measures will be developed to accomplish these goals. Erosion and sediment control standards will be met, as well as design input and comments from the IRT. JMT proposes an on-board process with agencies with review comments at critical milestones. All plans will be signed and sealed by a Professional Engineer specializing in ecosystem restoration practices.

Construction:

To minimize incidental take, fish relocation, and exclusion is proposed during construction. Work offline from the stream may be proposed to minimize pump-around practices and other practices which may dewater stream resources for long periods of time. A qualified contractor will be selected, with extensive expertise in the restoration of stream and wetland resources, as well as the appropriate specialized equipment to accomplish the work. Contractors will be overseen by a JMT construction specialist who is versed in best construction practices and the full intent of the design. JMT's principle designer of the project will have full oversight and stop-work capabilities to ensure regulations and design intent are met.

- b. Pre-application meeting - *request a pre-application meeting with MDE and the Corps to discuss the Joint Permit Application process prior to or concurrent with the Prospectus submittal.*

Meeting took place at the proposed mitigation bank site on February 14th, 2019.

- c. Joint Permit Application - *submit a Joint Permit Application with the draft mitigation instrument. Alternatively, a Joint Permit Application should be submitted with the prospectus when a Department of the Army individual permit and public notice is needed for the proposed bank construction impacts to wetlands and waterways.*

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A Joint Permit Application (JPA) will be provided at the MBI phase, following a Jurisdictional Determination (JD) meeting and receipt of the approved JD. Nationwide 27 authorization is anticipated for these activities. This would be more consistent with regulation to determine the impacts of the project to only approved, jurisdictional resources. JMT will yield to the determination of the USACE and MDE for jurisdictional resources at both the federal and state level; all impacts to these resources as part of this project are currently viewed as temporary with potential for enhancement of their functions and values.

4. PROPOSED SERVICE AREAS

- a. Primary and secondary services area - *provide an 8½" by 11" map showing the bank site location and its position within the limits of the proposed service area(s) (e.g., a U.S. Geological Survey 8-digit HUC code, county boundaries, etc.).*

See Appendix A for service area map.

- b. Service area rational and justification - *provide a watershed-based rationale for determining the limits of the proposed service area.*

The proposed primary Service Areas is the Patuxent Watershed (HUC 02060006). The proposed secondary service area is the piedmont ecoregion of the Gunpowder-Patapsco Watershed (HUC 02060003). This secondary service area was chosen because the proposed bank's location within the Piedmont ecoregion is close to the Gunpowder-Patapsco ridgeline. Additionally, the secondary service area has some of the highest stream and wetland impacts in the state, allowing the proposed bank to be available to compensate for these impacts. This service area is conservative and based upon previous IRT precedence, however the input of the IRT is welcome in the development of a potential tertiary service area and modifications to the primary and secondary service areas.

- c. Mitigation in context of watershed needs and previous impacts - *describe how the proposed aquatic resource functions of the compensatory mitigation bank will address the functional needs of the watershed, ecoregion, physiographic province, or other geographic area of interest. Specify the aquatic resource functions to be restored or enhanced.*

This project site yields multiple opportunities for restoration, creation, enhancement, and preservation. These opportunities include:

Wetland Restoration Opportunities: In multiple locations on the site, a buried hydric soil layer is present along with buried cellulosic material, such as seeds, twigs, root matter, etc. This indicates that the site is impacted by mill dams and legacy sediments. It is known that multiple dams were located immediately downstream of the site, and it is presently suspected at least one dam is present within the study area. Therefore, historic impacts to wetlands are present on the project site, and their restoration is possible as part of this project. This would convert upland areas to wetland areas through connection with hydric soil, connection with groundwater, and the planting of hydrophytic vegetation. A trenching

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investigation will be completed to determine the extents of basal gravel, hydric soil, and dam locations.

Wetland Enhancement Opportunities: Existing wetlands are present on the project site. Enhancement opportunities include grading of existing surface water wetlands to re-connect them to groundwater, remove Phragmites and other invasive species, and restore native vegetation. In forested wetlands, for example, the shrub layer is predominantly invasive species. Additional enhancement opportunities can be found by increasing the wetland buffer, removing trash and unnatural debris, and planting additional native species for pollinator benefits.

Stream Restoration Activities: Initial investigation of the site, preliminary thermal data, and its given use class would indicate that the stream has functioning biology. Paradoxically, however, little in-channel habitat is observed and pools which should have adult trout year-round do not have adult or juvenile fish observed. In channel overhead cover, pool diversity, and channel over-widening are assumed to be contributing factors to the apparent deficiencies in fisheries resource. Extensive bare banks and erosion are also present, which limit in-channel temporal availability of habitat and quality of channel substrates. Other potential work includes the grading of banks and connect the stream to restored wetlands; form and maintain pool, riffle, glide, and run facet features; preserve grade control to prevent head cutting through the system; and create side channel habitats.

Stream Enhancement Opportunities: Enhancement opportunities on the project site include the restoration of stream buffers, the addition of large woody debris to the channel, and the formation of micro facets, and the establishment of appropriate canopy trees with root connection to the stream. Connection with good buffers is vital to enhancement of stream corridors.

Forest Mitigation Opportunities: Existing agricultural land poses opportunities to compensate for the loss of trees as part of the construction of the project, as well as restore additional forest. The main portion of the project to be restored includes a CREP project with 10 to 20 year-old sporadic trees, many of which are upland or inappropriate type compared to historic ecology of the area; for example, Bald Cypress has been planted in multiple locations, however hydrology and soils indicate these trees will not successfully reproduce. Other trees are early successional type and do not represent a mature forest resource, nor have the connectivity of their roots systems with the groundwater or stream to significantly contribute to hyporheic exchange or the formation of living woody habitats in the stream.

TMDL / Nutrient Reduction Opportunities: Streams are requested to be dual-certified for TMDL as well as mitigation credit. Credits are for stream mitigation OR TMDL. They will not be stacked or sold twice. A complete nutrient savings analysis from source reductions, as well as nutrient processing, will be tabulated.

These practices will address historic losses of functions and values in the watershed, such as loss of floodplain wetlands, deforestation, and urbanization. Additionally, these practices limit the impacts from ongoing farming operations.

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5. NEED AND TECHNICAL FEASIBILITY

- a. Watershed description and viability of banking - *describe the overall watershed where the proposed mitigation bank is located (major tributaries, existing development trends, watershed needs, etc.)*

The Patuxent Watershed (HUC 02060006) encompasses many of the urban and suburban areas of Howard, Montgomery, Anne Arundel, and Prince George's counties. This watershed has a significant potential need for this type of work, and due to urbanization, has a strong history of impact to streams and wetlands. Mitigation work here therefore meets historic needs for the replacement of these resources. The proposed bank will provide stream and wetland compensatory mitigation credits for those individuals or entities impacting these resources, and through use of mitigation ratios greater than 1:1 for resources, will aid in the restoration of historic impacts.

- b. Site selection process - *describe the factors considered during the site selection process, including watershed scale features such as existing watershed plans, aquatic habitat diversity, habitat connectivity, relationships to hydrologic sources, land use trends, ecological benefits, and compatibility with adjacent land uses.*

A comprehensive site search was used to screen sites within the watershed based on land use, soils, watershed position, proximity to other resources, and other relevant factors used traditionally in the determination of site suitability for restoration practices. Rather than screening only the available land on public property, property for sale, or owned by a key tenant client, all parcels within the Patuxent watershed were screened for suitability through desktop analysis. With the top parcels selected by a panel of engineers and scientists experienced in restoration and mitigation, public outreach was conducted, and this parcel was selected based on positive landowner feedback and agreement to the restoration practices proposed.

This approach is completely different from traditional PRM restoration approaches and involved the usage of proprietary GIS programming and algorithms and the technical expertise of JMT's Information Technology Group as part of a multidisciplinary approach.

JMT's site selection process demonstrates that project sites can be selected with restoration potential as the top priority despite perceived difficulties in selecting sites on private land. This site allows for the capacity to restore high quality resources with very limited impacts to existing regulated resources. It specifically has the following valuable attributes:

- Exhibits physical connectivity to existing high-quality features.
- Contains multiple sources of hydrology, including drainage from other sites, precipitation, and strong potential for groundwater connectivity.
- Is compatible with landowner long-term perpetuation plans and adjacent land uses.
- Restores lands impacted by agriculture.
- Promotes the management of this parcel as well as adjacent land parcels toward long-term conservation.

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- c. Local and regional benefits of the bank - *identify any local or regional benefits derived from the bank.*

It is anticipated that the connectivity of this proposed restoration with other existing resources will only magnify the value of those existing resources. Local water quality improvement is expected through improved land cover, reduced erosion, and ceasing of agricultural wide-spectrum herbicide and pesticide application.

Regionally, this project is part of a watershed-wide approach to restoring the streams and wetlands of the State of Maryland and placing high quality habitats into perpetual easement for their long-term beneficial management in perpetuity. This has benefits in encouraging a thriving restoration industry and working towards a clean and healthy Chesapeake Bay, which is of paramount regional importance.

- d. Threats to the site and existing impairments - *identify any potential threats to the bank site or resource type.*

No additional constraints have been identified.

- e. Proposed construction work to address site impairments - *describe the proposed construction work required to develop the bank and the feasibility of these techniques to develop the bank. Mitigation banks should be designed to be self-sustaining over time with minimal maintenance.*

Mitigation construction will require a full suite of ecosystem restoration construction processes, including grading with low ground pressure equipment, excavation, placement of structures with used of logs and stone, and the planting and management of vegetation. Vegetation management includes the use of herbicides with mechanical or hand spraying techniques, mechanical removal of vegetation and the use of tree shelters and other measures to prevent herbivory. A detailed mitigation work plan will be presented at MBI stage.

6. **OWNERSHIP & LONG-TERM MANAGEMENT** - Identify the proposed ownership arrangements and long-term management strategy for the proposed mitigation bank.

- a. Long-term ownership, financial responsibility and use of site - *describe the proposed long-term ownership and use of the mitigation site once restoration activities are completed and the proposed project is determined to be successful.*
- b. Long-term management responsibility party - *identify the party responsible for long-term management.*
- c. Site protection mechanism - *identify the type of site protection mechanism to be secured by the Sponsor.*
- d. Holder of the site protection mechanism - *identify the "holder" of the site protection mechanism if a "holder" is required (e.g., conservation easement).*

The long-term owner of the mitigation site will be the Idiots Delight, Inc and Idiots Delight Corp. II. However, a conservation easement (see Appendix A) will be secured and placed

Information for a Complete Mitigation Bank Prospectus per CFR 332.8(d)(2)

on the site and the easement will be held by a TBD non-profit entity. This entity will also be responsible for the long-term management of the site.

7. **SPONSOR QUALIFICATIONS** - Summarize the qualifications of the Sponsor to successfully complete the type(s) of mitigation project proposed, including information describing any past such activities by the sponsor that demonstrate experience in the restoration, establishment, preservation, or enhancement of aquatic resources.

A TBD Limited Liability Company (LLC) based in Maryland will be the Bank Sponsor. The owner of the LLC will be NextEra Energy Marketing or its affiliate or subsidiary (collectively, "NEM"). NEM is a direct, wholly-owned subsidiary of NextEra Energy, Inc (NEE), a publicly traded company with substantial financial resources and an equity market capitalization of approximately \$92 billion as of May 2, 2019. NEM will provide the capital to establish and complete the proposed mitigation bank.

JMT will be contracted by the LLC to provide all services required to complete the mitigation bank. Founded in 1971, JMT is a 100% employee-owned firm that provides a full range of multi-disciplined environmental, engineering, planning, architectural, and related services to public agencies and private clients throughout the United States. JMT provides ecological restoration, wetland & stream mitigation, natural resource investigations & permitting, NEPA compliance, historic & archaeological resource investigations, hazardous materials services, resource monitoring, and public outreach services. JMT is currently providing these services for multiple natural resource permittee responsible and turnkey projects, as well as hundreds of transportation and water/wastewater projects, for Departments of Transportation, major wastewater utilities, and Federal agencies such as the National Park Service, Department of Defense (Army, Navy, Air Force, Marine Corps installations), Food & Drug Administration, National Aeronautics and Space Administration, U.S. Department of Homeland Security, Customs and Border Control/Immigration and Customs Enforcement, and others.

8. **SITE SUITABILITY** - describe the ecological suitability of the site to achieve the objectives of the proposed mitigation bank, including the physical, chemical, and biological characteristics of the bank site and how that site will support the planned types of aquatic resources and functions.

- a. Title report - *provide a preliminary title report indicating any easements or other encumbrances. Note, any liens and easements on the property that may affect a bank's viability will need to be resolved before a bank can be approved.*

Title Reports for both properties are provided in Appendix B

The following recorded easements were found:

1. An agricultural preservation easement on the property to the State of Maryland to the use of the Maryland Agricultural Land Preservation Foundation. Recorded at Liber 1076, folio 141 dated October 18, 1981.
2. Final Release and Agreement of a portion of an Agricultural Land Preservation Easement. (Release of 1.0-acre parcel for a Child) Between State of MD by MALPF, as Releasor and Idiot's Delight, Inc., as Releasee. Recorded at Liber 17232, folio 421, dated October 25, 2016.

Information for a Complete Mitigation Bank Prospectus per CFR 332.8(d)(2)

3. Deed of Easement, Idiot's Delight, Inc as Grantor, to Edward Hereth and Susan Hereth, Grantees, for an easement encumbering Idiots Delight Lots 1,2 & 3 for ingress, egress, maintenance and utilities. Recorded at Liber 8041, folio 419, dated January 28, 2004.
4. Deed of Easement, Idiot's Delight, Inc as Grantor, to Paul Mulloy and Mary Hereth- Mulloy, Grantees for an easement encumbering Idiots Delight Lots 1,2 & 3 for ingress, egress, maintenance and utilities. Recorded at Liber 8041, folio 424, dated January 28, 2004.
5. Declaration of Right of Access and Maintenance Obligations for Use-In -Common Access Area, Idiot's Delight, Inc and Mary Hereth- Malloy as Grantors, to Stanley B. Miller, Grantee, Recorded at Liber 12587, folio 479, dated July 21, 2010.
6. Right of Way Agreement, Idiot's Delight, Inc and as Grantor, to Potomac Edison Company, Grantee, for an electric line from Pole# F-22517, running south along driveway, on, over and across the property to house meter. Recorded at Liber 989, folio 417, dated November 23, 1979.
7. Deed and Agreement between William J. Hoffman, Jr., William J. Blackert, Sr. and Robert E. Blackert and Idiot's Delight, Inc. Agreement to agree on the precise location of the common boundary lines of their property, Recorded at Liber 1322, folio 262, dated January 5, 1985.
8. Covenant, and Notice of Recordation Agricultural Water Quality Cost-Share Agreement between Idiot's Delight, Inc and Maryland Department of Agriculture. For the purpose of financing and constructing a Riparian Forest Buffer. This Agreement is null and void on July 14, 2018. Recorded at Liber 7933, folio 247 dated October 3, 2003.

- b. Option, proof of ownership, and encumbrances - *provide a written representation from the Bank Sponsor disclosing the current owner of the Bank lands and any existing or proposed easements or other encumbrances (including, but not limited to mortgages, liens, rights-of-ways, servitudes, easements, mineral rights, etc.) that affects the property.*

Executed Option Agreements for both properties are provided in Appendix B

- c. Title insurance - *include a title insurance policy insuring clear title to the Bank lands.*

Title Insurance for both properties is provided in Appendix B

- d. Other existing credits types on property - *identify all other existing or proposed crediting types that affect the property (e.g., TMDL, forest conservation, Critical Area mitigation, Natural Resource Conservation Service conservation programs, species conservation, etc.)*

There are no crediting types that currently exist on the property. The Bank Sponsor is proposing that the bank lands be eligible for sale as multiple types of credit, including compensatory mitigation, TMDL credit, and forest conservation credit. In accordance with the 2008 Mitigation Rule, credits cannot be sold twice, i.e., no "stacking." To be clear, credits will only be sold once.

- e. Baseline site conditions - *summarize baseline ("without project condition") site conditions including land use, vegetation, hydrology, and soils. Photographs are encouraged.*

Information for a Complete Mitigation Bank Prospectus per CFR 332.8(d)(2)

JMT will characterize the site with detailed studies; however, the site is presently functioning at risk or not functioning based on initial assessments. Various land use and climate pressures are anticipated to cause ecosystem simplification on the project site, diminishing the taxonomic diversity as well as quantity of suitable high-quality habitats. JMT anticipates continuing thermal and other monitoring through the design and construction period to serve as a robust baseline to measure uplift.

- f. Previous land uses for site and adjacent parcels - *identify previous land uses of the site and adjacent properties.*

Agriculture and agricultural related industries such as grain processing are the previous uses on site. Presently the principal site activities are agriculture and hunting.

- g. Current zoning of bank site and proposed development - *identify current zoning and any existing and proposed development adjacent to the bank. Identify current zoning within the bank site.*

Howard County GIS depicts the Patuxent site zoned as “RC-DEO” – Rural Conservation District – Density Exchange Option.

- h. Historical hydrology - *summarize the historical hydrology of the site.*

Strong presence of historical hydrology is evident based on initial geologic investigation. JMT will characterize this through a trenching investigation. Wells are not proposed at this time due to strong indicators of hydrology corresponding with exposed geologic layering.

- i. Existing data sources and proposed data collection - *If applicable, identify any ecological monitoring that has been performed for the site and for what period (e.g., well data, vegetation diversity, channel morphology, erosion pins, crest gage, macro invertebrates, etc.).*

JMT will conduct a thorough investigation of the site as part of design data collection, including geomorphic data, topography, and natural resources inventory. Benthic data and fisheries data collected by the DNR and other publicly available sources will also be used.

- j. Reference information - *reference information on 8 ½” by 11” sheets showing boundaries of bank site overlaid on aerial photographs, National Wetland Inventory and State Wetland maps, NRCS soil surveys, FEMA 100-year floodplain boundary, 7.5-minute USGS map, and 8-digit HUC map.*

Please see Appendix A for additional reference information. Area is in unshaded FEMA Zone X area of minimum flood hazard determined to be outside the 0.2% (500-year) annual chance floodplain.

- k. Jurisdictional determination - *a jurisdictional determination of waters of the U.S. from the Corps will be needed to support the method of compensation statement. The bank sponsor shall submit a request for a preliminary jurisdictional determination that includes data*

Information for a Complete Mitigation Bank Prospectus per CFR 332.8(d)(2)

sheets and maps showing the approximate limits of waters of the United States on the project site. Include an estimate of the square feet or linear feet of wetlands or streams that are proposed to be impacted by bank construction. This information will be evaluated by the Corps in conjunction with the prospectus, and an accurate approved jurisdictional determination will be required prior to finalizing a mitigation banking instrument.

Will be provided in final prospectus.

1. Stream order and type/wetland Cowardin types - *identify the stream order and type (Rosgen or Cowardin classification).*

The stream is a second order, low sinuosity gravel bed Rosgen stream type C4, with B4 portions where sinuosity is diminished. Some of the more severe portions of the entrenched stream could be F4 classifications. Wetlands emergent, scrub and forest. Full wetland delineation to follow.

9. ASSURANCE OF SUFFICIENT WATER RIGHTS

- a. Relationship with adjacent resources and maintenance of rights and connection - *describe the relationship between the mitigation bank site and other aquatic resources within the sub-watershed and methods that will be implemented to ensure enough water rights to support the long-term sustainability of the proposed mitigation bank. The project sponsor must have enough control over hydrology inputs and outputs on the project site to ensure that hydrology is available. In addition, the proposed project should not result in the interruption of downstream flows or the flooding of upstream properties.*

There are no known current or future withdrawals of surface flow or groundwater which would impact the site. Therefore, control of the hydrology is not perceived as an issue at this time. The existing surface flows and groundwater hydrology will be utilized for the primary hydrologic functions of the mitigation areas. Maintaining and improving connectivity to adjacent forest corridors with contributing tributaries is paramount for the passage of aquatic organisms.

- b. Hydrological disturbance outside the sponsor's control - *describe any existing hydrological disturbances on and adjacent to the site over which the Sponsor has no control.*

No hydrological disturbances outside of the sponsor's control are anticipated.

- c. Structural water management requirements - *describe any temporary or long-term structural management requirements (e.g., levees, weirs, culverts, etc.) needed to assure hydrological/vegetative restoration.*

Hydrology will be provided through stream and floodplain restoration. No long-term controls or maintenance-intensive structures are anticipated.

- d. Water sources and losses - *describe water source(s) and losses (e.g., precipitation, surface runoff, groundwater, stream, tidal).*

Information for a Complete Mitigation Bank Prospectus per CFR 332.8(d)(2)

Groundwater, precipitation, and surface flow connection are the primary sources of hydrology for restored wetlands onsite. Losses of hydrology include groundwater recharge, evapotranspiration, and flow off site.

- e. Hydroperiod - *describe hydroperiod (seasonal depth, duration, and timing of inundations and/or saturation).*

Hydroperiods proposed throughout the wetland are intended to vary, yielding maximum habitat diversity. Hydroperiods must at a minimum meet that necessary to be deemed jurisdictional wetland as a primary goal. Other portions of the site will be designed to vary the hydroperiod to occur at differing durations and periods of the year; such diversity is invaluable in fostering habitats for herpetofauna. Flood flow connection is also anticipated.

- f. Contributing drainage areas - *describe the contributing drainage area (map and size).*

Patuxent Mitigation Bank drains approximately 3.07 square miles - see Appendix A.

10. OTHER INFORMATION

Appendix A

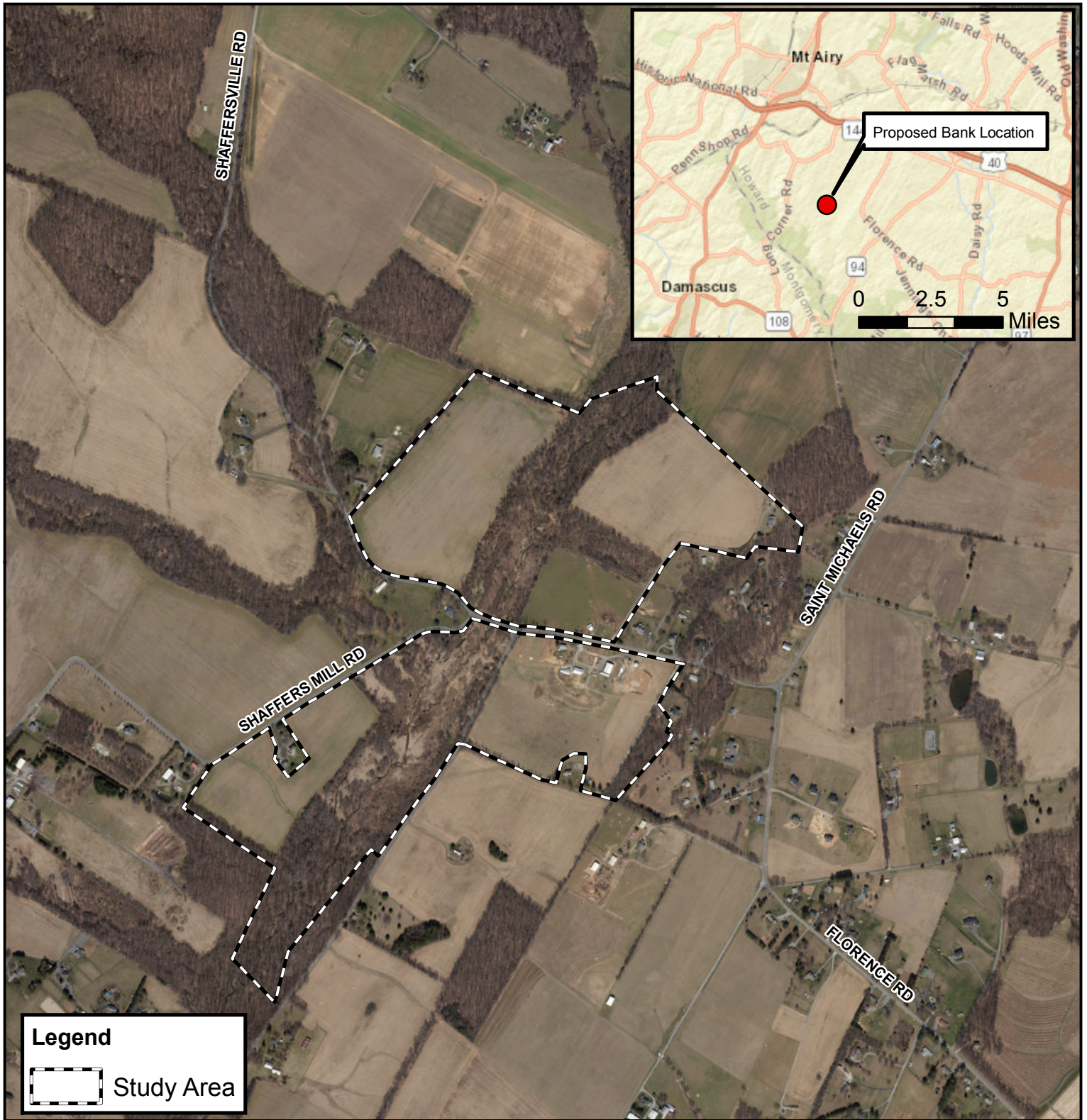
- Proposed Patuxent Mitigation Bank Vicinity Map
- Proposed Patuxent Mitigation Bank Proposed Mitigation (MUM)
- Proposed Patuxent Mitigation Bank Service Area Map
- Proposed Patuxent Mitigation Bank Drainage Area Map
- Proposed Patuxent Mitigation Bank 8-Digit HUC Watershed Map
- Proposed Patuxent Mitigation Bank Soil Map
- Proposed Patuxent Mitigation Bank USGS 7.5' Topographic Map
- Proposed Patuxent Mitigation Bank Existing Features Map
- Proposed Patuxent Mitigation Bank Impacted Features Map
- Proposed Draft Mitigation Banking Conservation Easement

Appendix B

- Executed Option Agreements
- Title Reports and Title Insurance
- Wetland Delineation Report
- List of Adjacent Landowners
- Trilogy Letters
- Other Relevant Correspondence
- JD Request Form

Information for a Complete Mitigation Bank Prospectus per CFR 332.8(d)(2)

Appendix A



0 1,000 2,000 Feet

1 inch = 1,000 feet



Proposed Patuxent Mitigation Bank Vicinity Map

Howard County, Maryland

Date: April 2019

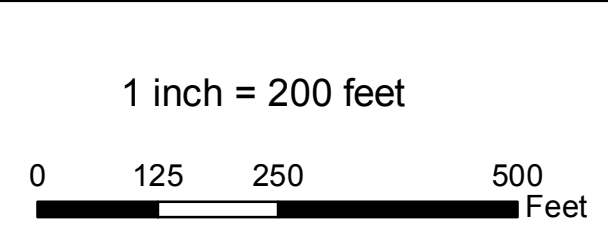
Source: ESRI, iMAP

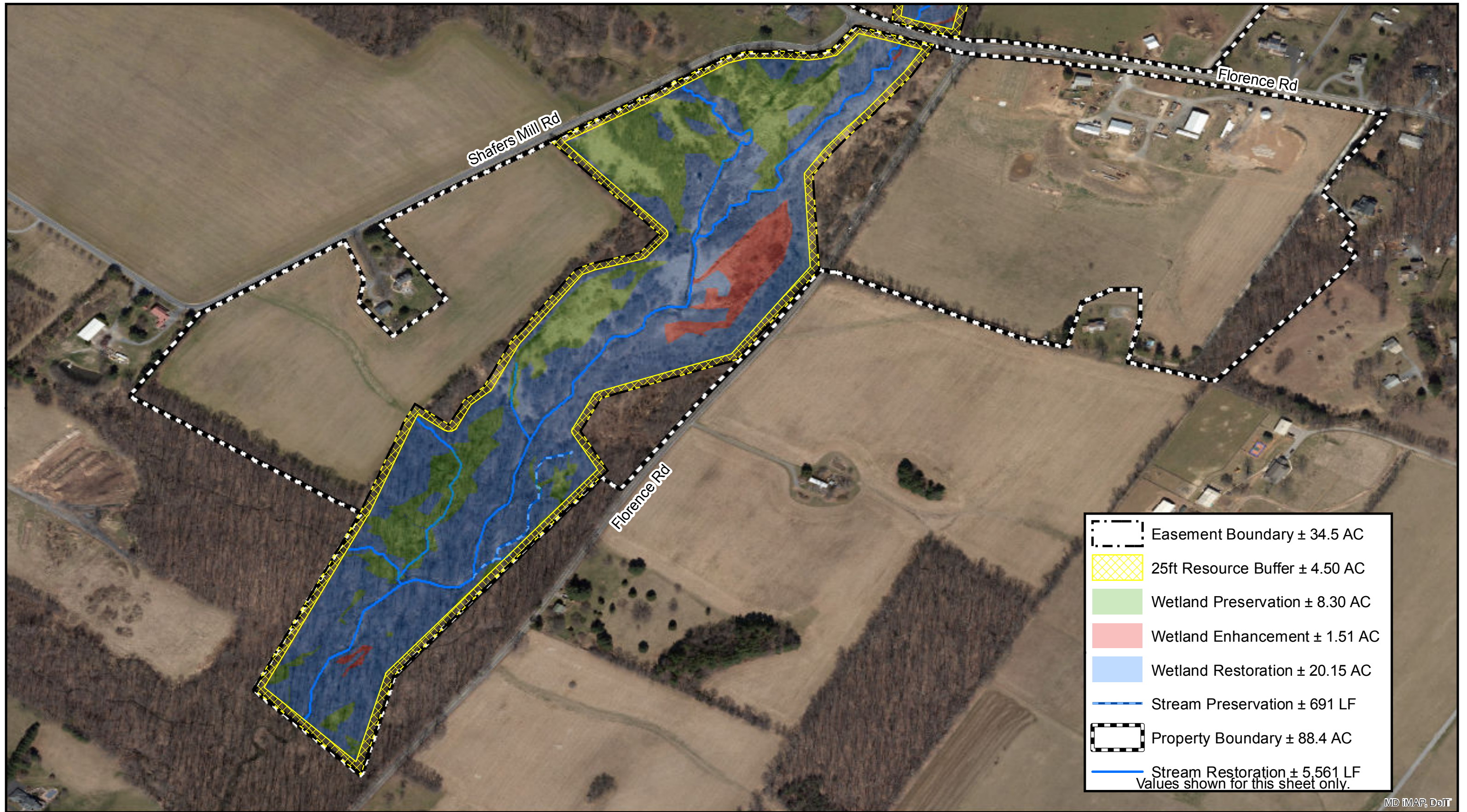


**Patuxent Mitigation Bank
Proposed Mitigation Map - North
Howard County, Maryland**

Source: MD IMAP

Date: May 2019





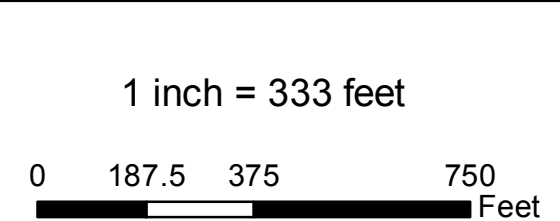
MD IMAP, DoIT

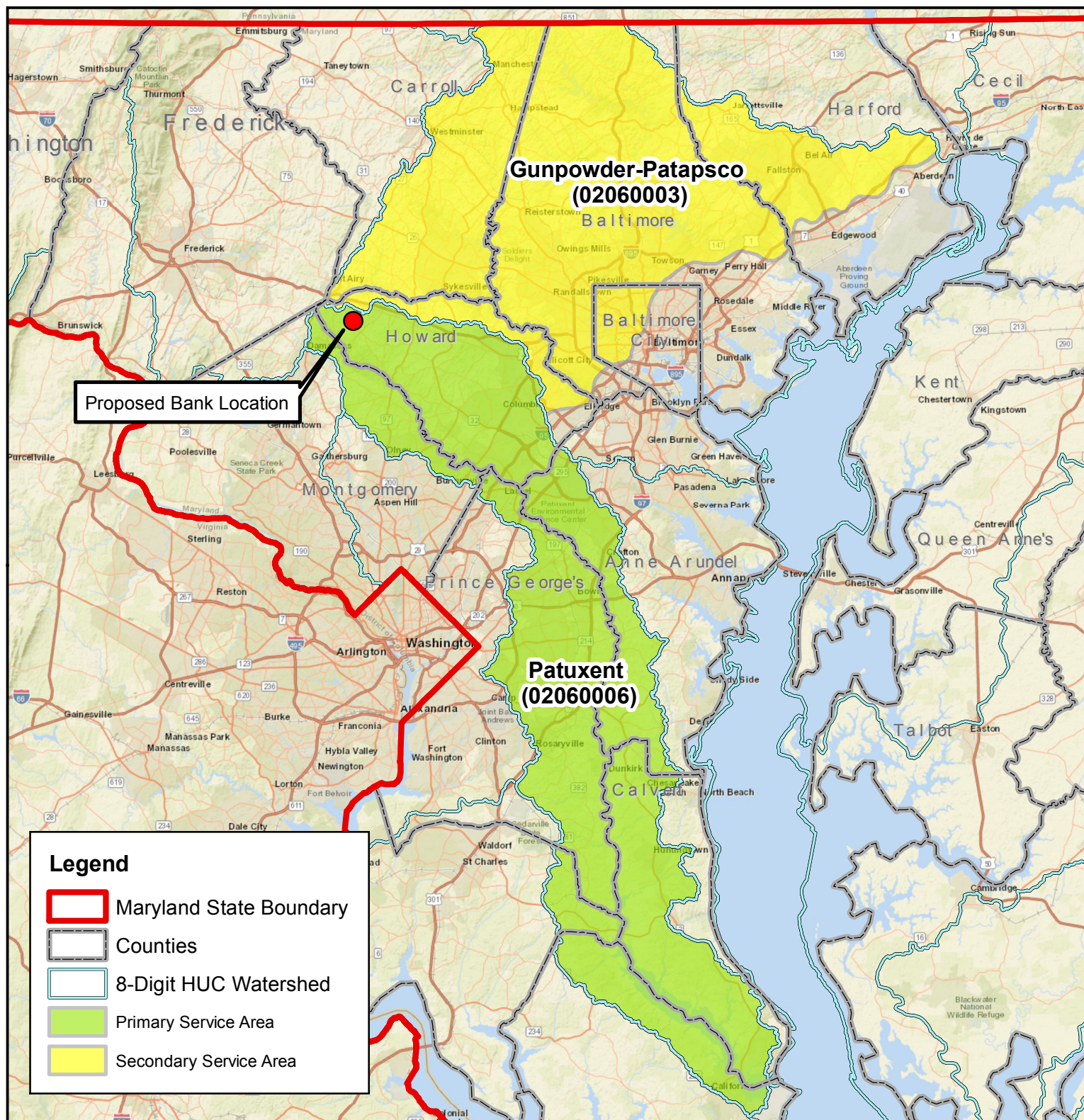


**Patuxent Mitigation Bank
Proposed Mitigation Map - South
Howard County, Maryland**

Source: MD IMAP

Date: May 2019





0 12 24 Miles
1 in = 12 miles



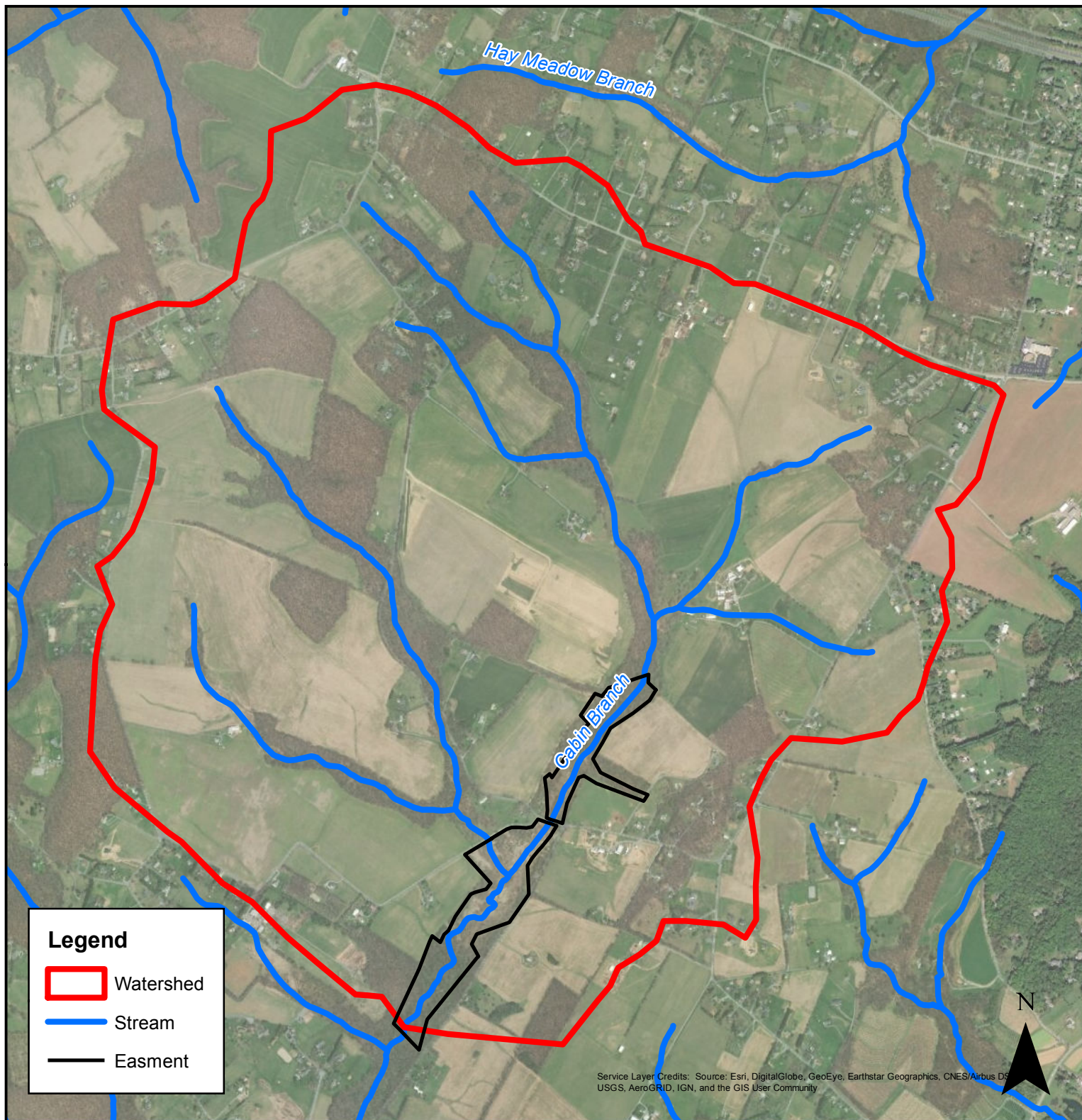
Proposed Patuxent Mitigation Bank Service Area Map

Howard County, MD

39° 18' 58.74" N, 77° 7' 57.04" W

Date: January 2019

Source: ESRI, NHD, EPA



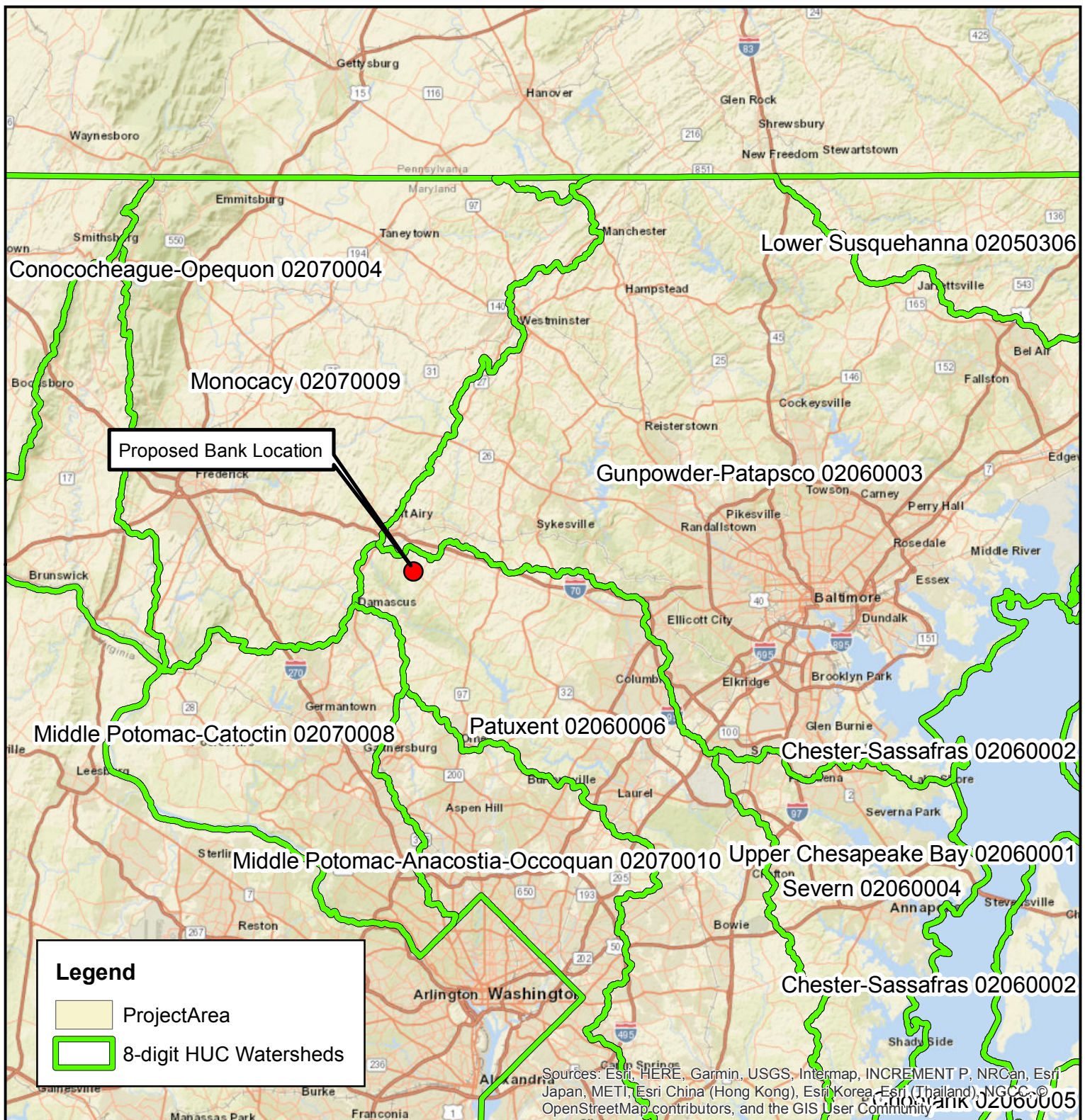
Proposed Patuxent Mitigation Bank Drainage Area Map

Drainage Area = 3.07 square miles

0 0.125 0.25 0.5 0.75 1 Miles

Date: April 2019

Source: ESRI



0 50,000 100,000 Feet

1 inch = 50,000 feet

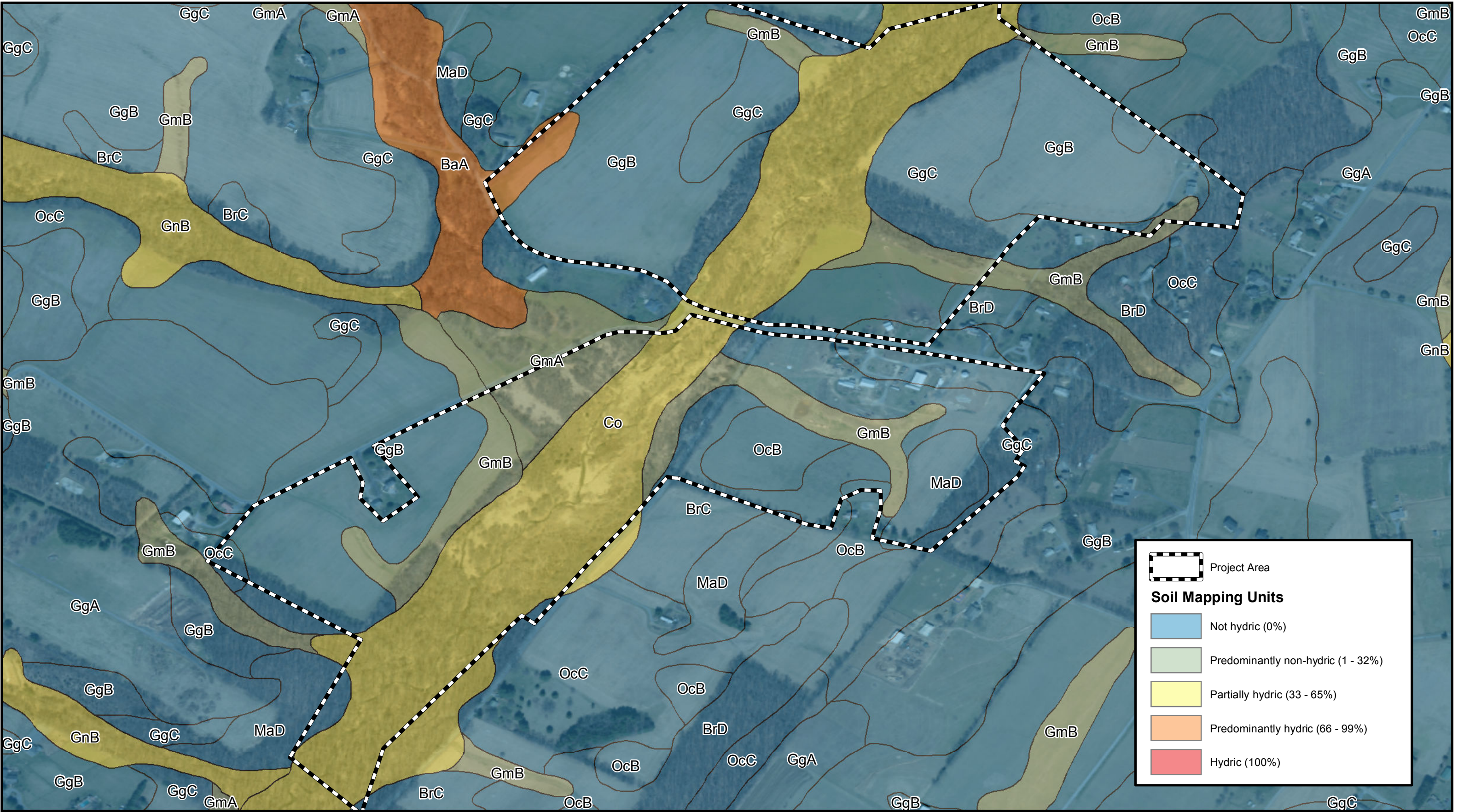


Proposed Patuxent Mitigation Bank 8-Digit HUC Watershed Map

Howard County, Maryland

Date: April 2019

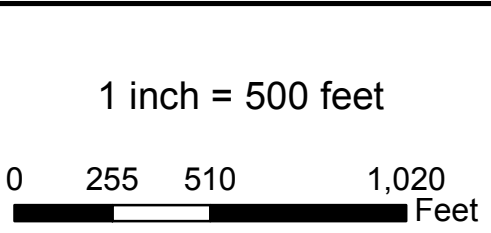
Source: ESRI, USGS

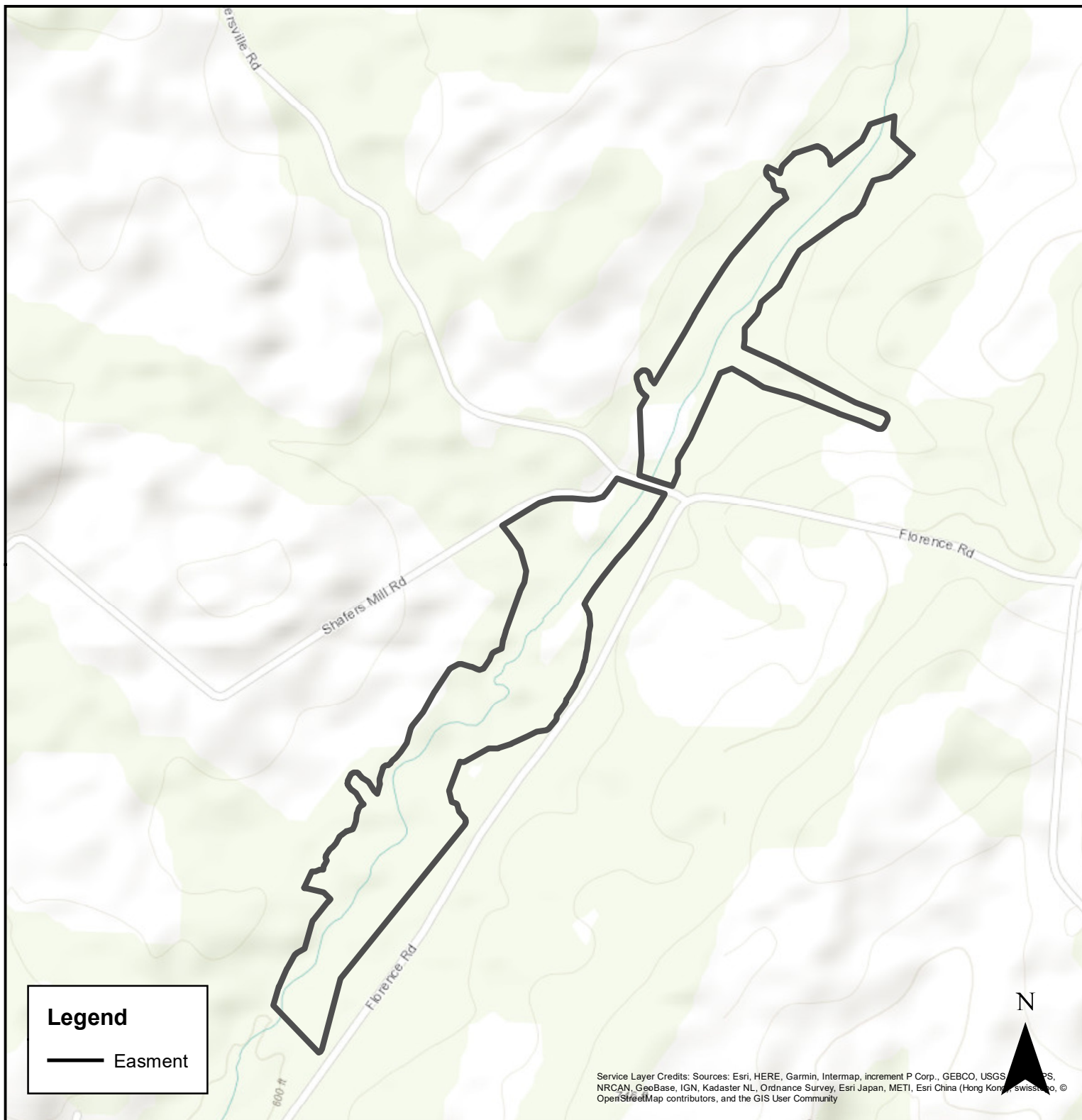


**Patuxent Mitigation Bank
Hydric Soils Map
Howard County, Maryland**

Source: MD IMAP

Date: April 2019





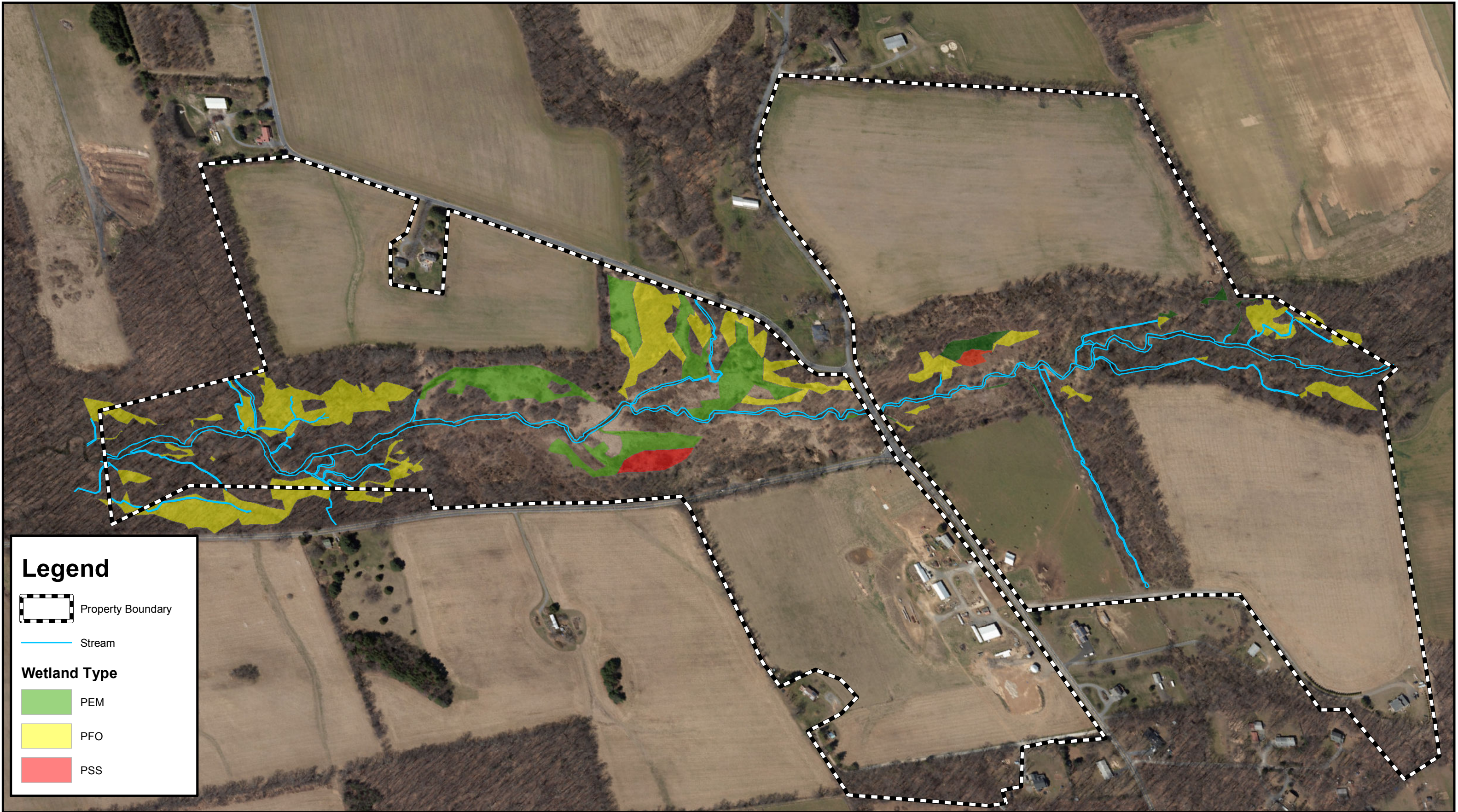
Proposed Patuxent Mitigation Bank 7.5 Minute USGS Topo Map

Easement Area = 43.0 acres


Date: January 2019


Source: ESRI

0 262.5 525 1,050 1,575 2,100 Feet
1 inch = 667 feet





Legend

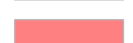
 Property Boundary

 Stream

Wetland Type

 PEM

 PFO

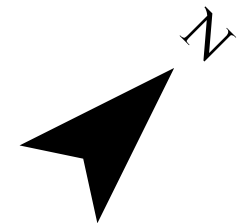
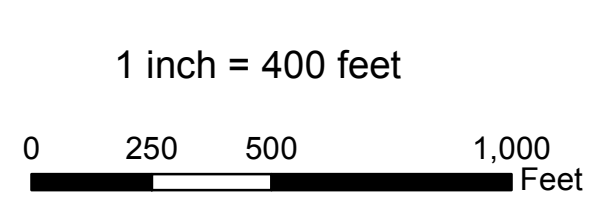
 PSS



**Patuxent Mitigation Bank
Existing Features Map
Howard County, Maryland**

Source: MD IMAP

Date: May 2019

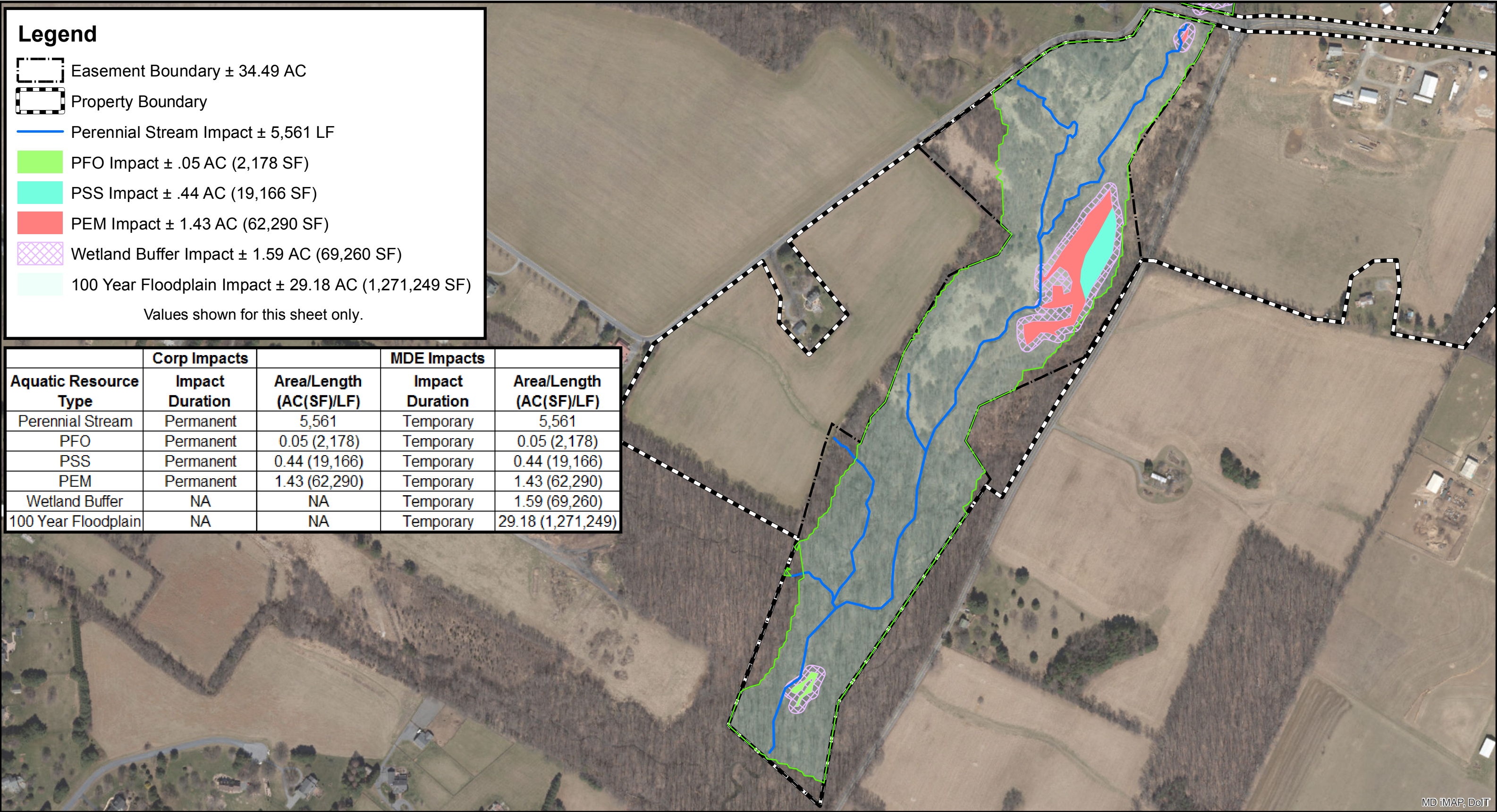


Legend

- Easement Boundary ± 34.49 AC
- Property Boundary
- Perennial Stream Impact ± 5,561 LF
- PFO Impact ± .05 AC (2,178 SF)
- PSS Impact ± .44 AC (19,166 SF)
- PEM Impact ± 1.43 AC (62,290 SF)
- Wetland Buffer Impact ± 1.59 AC (69,260 SF)
- 100 Year Floodplain Impact ± 29.18 AC (1,271,249 SF)

Values shown for this sheet only.

	Corp Impacts		MDE Impacts	
Aquatic Resource Type	Impact Duration	Area/Length (AC(SF)/LF)	Impact Duration	Area/Length (AC(SF)/LF)
Perennial Stream	Permanent	5,561	Temporary	5,561
PFO	Permanent	0.05 (2,178)	Temporary	0.05 (2,178)
PSS	Permanent	0.44 (19,166)	Temporary	0.44 (19,166)
PEM	Permanent	1.43 (62,290)	Temporary	1.43 (62,290)
Wetland Buffer	NA	NA	Temporary	1.59 (69,260)
100 Year Floodplain	NA	NA	Temporary	29.18 (1,271,249)



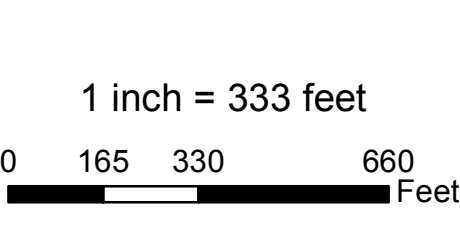
MD iMAP, DoIT



Figure 9A: Proposed Patuxent Mitigation Bank
Impacted Features South
Howard County, Maryland

Source: MD iMAP

Date: June 2019



Legend

- Easement Boundary ± 18.13 AC
- Property Boundary
- Perennial Stream Impact ± 4,725 LF
- PEM Impact ± .04 AC (1,742 SF)
- PFO Impact ± .49 AC (21,344 SF)
- Wetland Buffer Impact ± 1.79 AC (77,972 SF)
- 100 Year Floodplain Impact ± 15.94 AC (694,346 SF)

Values shown for this sheet only.

	Corp Impacts		MDE Impacts	
Aquatic Resource Type	Impact Duration	Area/Length (AC(SF)/LF)	Impact Duration	Area/Length (AC(SF)/LF)
Perennial Stream	Permanent	4,725	Temporary	4,725
PEM	Permanent	0.04 (1,742)	Temporary	0.04 (1,742)
PFO	Permanent	0.49 (21,344)	Temporary	0.49 (21,344)
Wetland Buffer	NA	NA	Temporary	1.79 (77,972)
100 Year Floodplain	NA	NA	Temporary	15.94 (694,346)

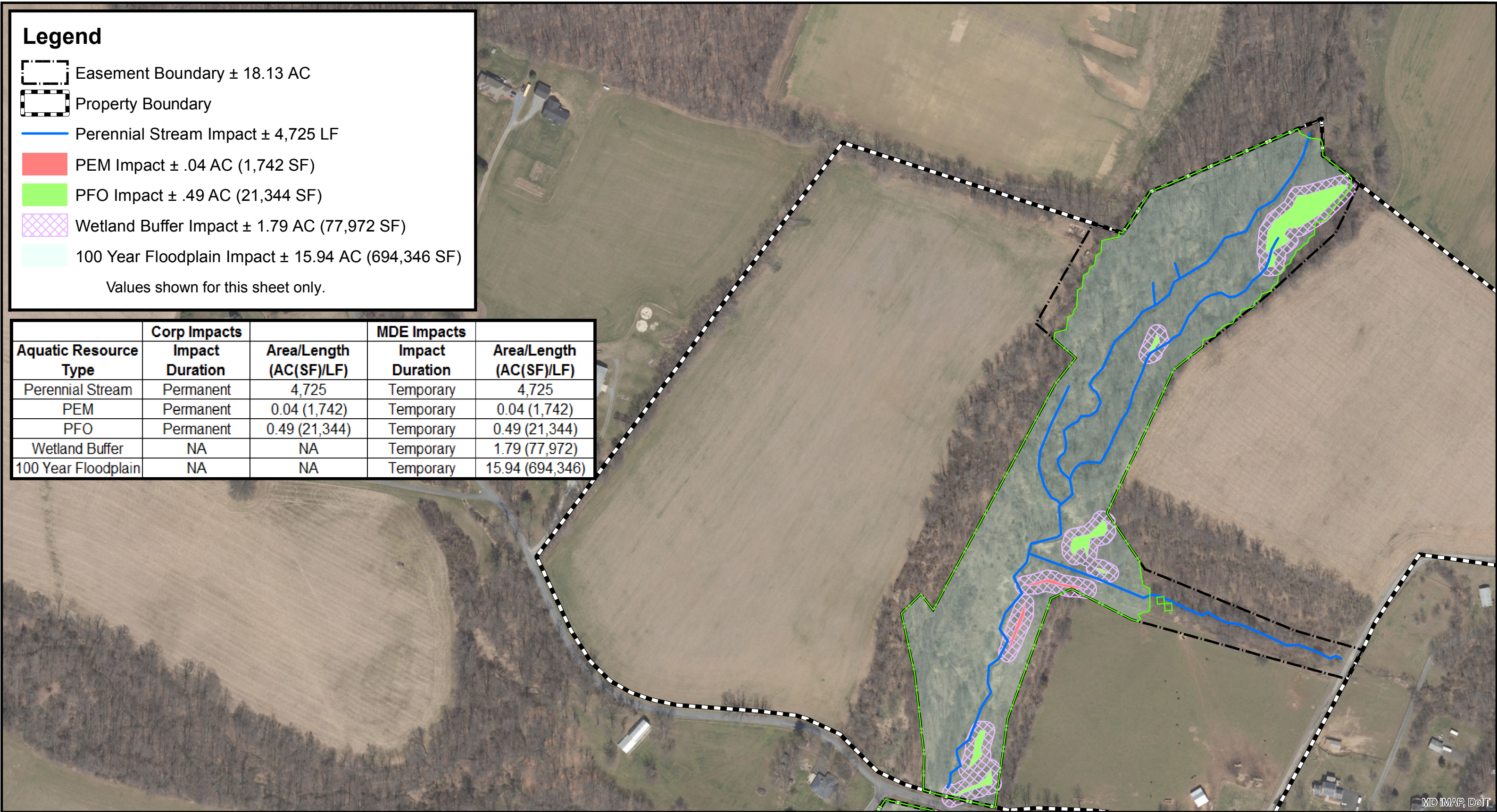
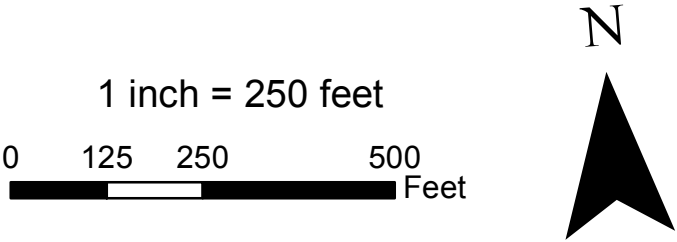


Figure 9B: Proposed Patuxent Mitigation Bank
 Impacted Features North
 Howard County, Maryland

Source: MD IMAP

Date: June 2019



*This Conservation Easement Template is a standardized document for Mitigation Banks in Maryland. Modifications to this template shall be identified using tracked changes and an explanation for those changes provided in a cover memorandum.
(Template Version Date: 24 Jan 2018)*

STATE OF MARYLAND
COUNTY OF _____

CONSERVATION EASEMENT
(Insert Bank Name)

Use this version if the mitigation bank sponsor is the same entity as the Holder of the easement:

THIS CONSERVATION EASEMENT (“Conservation Easement”) is made this _____ day of _____, 20____, by [insert full legal name of granting landowner] _____ (“Grantor(s)”) in favor of [full legal name of holder of conservation easement] (“Holder”).

Use this version if the mitigation bank sponsor is NOT the holder of the easement:
THIS CONSERVATION EASEMENT made this _____ day of _____, 20____, by [full legal name of granting landowner] (the “Grantor”), in favor of [full legal name of holder of the conservation easement] (the “Holder”) and [full legal name of the mitigation bank sponsor] (the “Bank Sponsor”).

RECITALS

WHEREAS, Grantor(s) is/are the fee simple owner(s) of certain real property (“Property” which shall include wetlands, any interest in submerged lands, uplands, associated riparian/littoral rights) located in _____ County, Maryland, more particularly [describe tract to be preserved, including: 1) acreage, 2) a reference to recorded plat(s), or attach an approved permit drawing or site plan, and 3) any excluded property] and shown in Exhibit A (i.e., metes and bounds of the Property), and Exhibit B (i.e., a scaled plat of the area subject to the Conservation Easement), and made a part hereof (“Conservation Area”); and

WHEREAS, this Conservation Easement is granted pursuant to the Mitigation Banking Instrument (“MBI”), by and between __[insert Bank Sponsor full legal name] (“Bank Sponsor”), the Grantor and Holder, and intend that the Conservation Area will be used as a mitigation bank to be known as the [insert Bank Name], Department of the Army Action ID [insert action ID number for the MBI] approved by the Interagency Review Team (the “IRT”), which consists of the Baltimore District, U.S. Army Corps of Engineers (the “Corps” or “Baltimore District,” to include any successor agency); the U. S. Environmental Protection Agency (“EPA”); the U.S. Fish and Wildlife Service (“USFWS”); the U. S. National Oceanic and Atmospheric Administration (“NOAA”); the Maryland Department of the Environment (“MDE,” to include any successor agency); the Critical Area Commission (“CAC”); the Maryland Historic Trust (“MHT”); and the Maryland Department of Natural Resources (“DNR”); and

WHEREAS, in recognition of the continuing benefit to the Property, and for the protection of waters of the United States and/or the State of Maryland and scenic, resource, environmental, and general property values, the Grantor and Holder have agreed to place certain restrictive covenants on the Property, in order that the Conservation Area shall be retained and maintained in perpetuity predominately in accordance with the vegetative and hydrological conditions described in the performance standards of the MBI for _____ Bank; and

WHEREAS, pursuant to the MBI, the *Bank Sponsor* proposes to create, maintain, and preserve a high quality, self-sustaining natural aquatic system and buffer located on the Conservation Area; and

WHEREAS, under Federal and State law, the Corps has issued Permit No. _____, and MDE has issued Permit No. _____ (collectively, the "Permits"), for impacts to waters of the United States and/or the State of Maryland expected to result from the creation of the self-sustaining natural aquatic system located on the Conservation Area; and

WHEREAS, the MBI requires that this Conservation Easement be executed and recorded in order that the Conservation Area shall remain substantially in its natural condition forever; and

WHEREAS, the Bank Sponsor(s) desire(s) to comply with the conditions of the MBI by imposing this Conservation Easement on a Conservation Area within the Property; and

WHEREAS, the Conservation Area may contain land, functions, values, and services that serve as compensation and mitigation for impacts to waters of the United States and/or waters of the State that were permitted by the Corps and/or MDE; and

WHEREAS, the Corps and MDE are third-party beneficiaries under this Conservation Easement.

NOW THEREFORE, for good and valuable consideration and in consideration of the mutually held interests in enhancement and preservation of the environment, as well as the terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Maryland, Grantor does agree to the following terms and conditions, which shall run with the land and be binding in perpetuity and forever on all heirs, successors, assigns (they are included in the terms, "Grantor," below), lessees, or other occupiers and users.

1. Covenants and Restrictions. Neither the Grantor(s), nor any subsequent owner or owners of the Conservation Area or any portion thereof, shall undertake or cause to be undertaken within or upon the Conservation Area within the Property, as described in (*Recitals and/or the site plan attached*), any of the following:

a. Removal, excavation, or dredging of soil, sand, gravel, minerals, organic matter, or materials of any kind;

b. Changing existing drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;

c. Disturbance of the water level or water table by drainage, impoundment, or other means;

d. Dumping, discharging of material, or filling with material, including the driving of piles and placing of obstructions;

e. Grading or removal of material that would alter existing topography;

f. Destruction or removal of plant life that would alter the character of a nontidal wetland, or introduction of exotic species;

g. Agricultural or forestry activities, such as aquaculture, plowing, tillage, cropping, seeding, cultivating, and grazing and raising of livestock, sod production, harvesting for production of food and fiber products. Forestry activities mean planting, cultivating, thinning, harvesting, or any other activity undertaken to use forest resources or to improve their quality or productivity;

h. Use of off-road vehicles and motor vehicles;

i. Destruction or alteration of the Conservation Area EXCEPT:

(i) Alteration necessary to construct the mitigation areas and associated improvements proposed to be built by _____, or its successors, and/or assigns, as approved in the mitigation plan approved by the Permits;

(ii) Alteration necessary to ensure the success of the mitigation areas including monitoring, reconstruction, maintenance, or repair of the constructed mitigation areas, as approved by the Corps and MDE;

(iii) Removal of vegetation when approved by the Corps and MDE and conducted for removal of noxious or invasive plants;

j. Utilizing a non-reporting Nationwide Permit or State Programmatic General Permit under Section 404 of the Clean Water Act or state general permits under MDE regulations to impact any Water of the U.S. on the Property. Notification shall be required to the Corps and MDE for the use of any Nationwide Permit, State Programmatic General Permit, or Regional Permit.

[if reference is made to the Permit, or to a mitigation plan approved by the Permit, all exceptions (including regarding buffer areas) must be specifically spelled out in the Permit or plan; also, additional, specific, exceptions may be listed in this paragraph, e.g., fire or wildlife management plans, boardwalks, etc].

2. Duration and Amendment. The covenants and restrictions listed herein are created pursuant to the Annotated Code of Maryland, Real Property Article § 2-118 and shall run with and bind the Property, and be binding on the Grantor(s), its/their personal representatives, heirs, successors and assigns, unless and until terminated or modified by the Corps, MDE, or other Federal, State, or County agencies which have the legal authority to enforce these covenants and restrictions by regulations, permit, or agreement. The failure of the Corps, MDE, or other such agencies to enforce the provisions of this Conservation Easement shall not be deemed a waiver of any rights created hereunder. After recording, this Conservation Easement may only be amended by a recorded document signed by the Corps, MDE and Grantor(s). The recorded document, as amended, shall be consistent with the Baltimore District and MDE model conservation easements at the time of amendment. Amendment shall be allowed at the discretion of the Corps and MDE, in consultation with resource agencies as appropriate, and then only in exceptional circumstances. Mitigation for amendment impacts will be required pursuant to Baltimore District and MDE mitigation policy at the time of amendment. There shall be no obligation to allow an amendment. The Corps and MDE shall be provided with a 60-day advance written notice of any legal action concerning this Conservation Easement or of any action to extinguish, void, or modify this Conservation Easement in whole or in part. This Conservation Easement is intended to survive foreclosure, bankruptcy, condemnation, or judgments affecting the Property.

3. Notice to Government. Any permit application, or request for certification or modification, which may affect the Conservation Area, made to any governmental entity with authority over wetlands or other waters of the

United States and/or waters of the State, shall expressly reference and include a copy (with the recording stamp) of this Conservation Easement.

4. **Reserved Rights.** It is expressly understood and agreed that this easement does not grant or convey to members of the general public any rights of ownership, entry or use of the Conservation Area. This easement is created solely for the protection of the Property, and for the consideration and values set forth above, and Grantor(s) reserve(s) the ownership of the fee simple estate and all rights appertaining thereto, including without limitation the rights to exclude others and to use the property for all purposes not inconsistent with these restrictive covenants.

5. **Monitoring and Maintenance.** The Holder, Bank Sponsor, Long-Term Steward (as defined in the MBI), and their authorized agents shall have the right to enter and go upon the lands of Grantor(s) to monitor and manage the Conservation Area to ensure compliance with the Mitigation Site Plan ("Mitigation Site Plan") and Long-Term Management Plan ("Approved Long-Term Management Plan") approved in the MBI. This may include, but is not limited to, completing annual monitoring, controlling invasive species, planting native vegetation, repairing signs/fences, and repairing erosion. The Holder, Corps, MDE, IRT, and its/their authorized agents shall have the right to enter and go upon the lands of Grantor(s) to inspect the Conservation Area, to verify compliance with the Mitigation Site Plan and Approved Long-Term Management Plan.

6. **Compliance Inspections.** The Holder, Bank Sponsor, Long-Term Steward, Corps, MDE, IRT, and its/their authorized agents shall have the right to enter and go upon the lands of Grantor(s), to inspect the Conservation Area and take actions necessary to verify compliance with these restrictive covenants.

7. **Enforcement.** The Grantor(s) grant(s) to the Holder, Bank Sponsor, Corps, the U.S. Department of Justice, and/or MDE, a discretionary right to enforce this Conservation Easement in a judicial action against any person(s) or other entity(ies) violating or attempting to violate this Conservation Easement; provided, however, that no violation of this Conservation Easement shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing agency shall be entitled to a complete restoration for any violation, as well as any other judicial remedy such as civil penalties. Nothing herein shall limit the right of the Corps and MDE to modify, suspend, or revoke the Permits.

8. **Property Transfers.** Grantor(s) shall include the following notice on all deeds, mortgages, plats, or any other legal instruments used to convey any interest in the Property and or Conservation Area (failure to comply with this paragraph does not impair the validity or enforceability of this Conservation Easement):

NOTICE: This property Subject to Conservation Easement Recorded at [insert book and page references, county(ies), and date of recording].

Should the Property be transferred, sold, or conveyed, be subject to foreclosure, bankruptcy, or transferred by any other means whatsoever, the Grantor or Bank Sponsor shall immediately notify the Corps in writing..

9. **Marking of Property.** The perimeter of the Conservation Area shall at all times be plainly marked by permanent signs saying, "Protected Natural Area," or by an equivalent, permanent marking system.

[Generally, a surveyed, recorded plat is required; however, at the discretion of the Corps and MDE, an approved permit drawing or site plan attached to this Conservation Easement may suffice]

10. **Consent of Lender and Trustee.** Grantor(s) is/are the maker(s) of a note dated _____ secured by a deed of trust dated _____ from the Grantor(s) to _____ as trustees and either of whom may act, recorded in the Clerk's office in Deed Book _____ at page _____, for the benefit of _____ Bank (The "Deed of Trust."). _____, as trustees, join herein for the sole purpose of