



**U.S. Army Corps
of Engineers**
Baltimore District
PN 21-46

Public Notice

**In Reply to Application Number
NAB-2021-61817 (Water & Land Solution LLC
- Potomac River Mitigation Bank)**
Comment Period: December 7, 2021 to January 7, 2022



**Maryland Department of
the Environment**

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, U.S. Army Corps of Engineers (Corps) and the Maryland Department of the Environment (MDE) have received a complete prospectus pursuant to the 2008 Mitigation Rule (33 CFR 332) proposing to establish the Potomac River compensatory mitigation bank ("Bank"), and generate mitigation credits to offset unavoidable impacts to waters of the United States (U.S.) authorized under Section 10 of the Rivers and Harbors Act (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344). In addition, the Bank is proposed to generate mitigation credits to offset unavoidable impacts to waters of the State of Maryland authorized under Title 5 Environment Article Annotated Code of Maryland. The proposed Bank may also provide alternative types of mitigation for water quality impacts, Corps of Engineers civil works projects, as well as mitigation in connection with resolving Clean Water Act enforcement cases.

BANK SPONSOR: Water & Land Solutions, LLC

Point of Contact: Nate Ober
333 Baldwin Road
Pittsburgh, PA 15205

WATERWAY AND LOCATION OF THE PROPOSED BANK: The Bank is located along an approximately 4.37-mile section of the North Branch of the Potomac River in the Potomac River Basin Watershed [Hydrologic Unit Code (HUC) 6: 020700] in Cumberland, Allegany County, Maryland. The Bank Site is proposed to begin at 39.618079°, -78.797701° and terminate at 39.628567°, -78.776104°, North American Datum-83 (NAD-83) and includes the Potomac Industrial Dam (dam). The Bank is in the Mountain (Ridge and Valley) physiographic province of the Potomac River watershed.

OVERALL PROJECT PURPOSE: The Bank Sponsor proposes to use a combination of restoration, creation, and enhancement of aquatic resources (wetlands and streams) and uplands for the purpose of generating compensatory mitigation credits for off-site compensatory mitigation for unavoidable impacts to wetlands and other waters of the U.S. and/or the State of Maryland authorized by Department of the Army (DA) and MDE permits and/or credit requirements for the TMDL Program and/or National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Program within the proposed geographic service area described below.

The attached prospectus provides a summary of the development of the proposed mitigation Bank and initiates the Corps' and MDE's review associated with establishment of this Bank. A draft Mitigation Banking Instrument (MBI) may be prepared by the Bank

Sponsor following the Corps' and MDE's review of the comments received in response to this public notice and determination that the proposed Bank site has potential for providing appropriate compensatory mitigation for activities authorized by DA and MDE permits. An approved MBI, including a mitigation site development plan (MSP), 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 and 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=107:278:2806803315542::RP,278:P278_BANK_ID:6177

PROJECT DESCRIPTION: The proposed establishment of the Potomac River Mitigation Bank Site involves establishment, rehabilitation, and enhancement of aquatic resources and includes the removal of the Potomac Industrial Dam and a portion of the accumulated sediment. It is proposed that ecological lift associated with establishment of this mitigation bank, including landscape connectivity, in-stream habitat, water quality, and riparian habitat, as well as aquatic resource passage, would generate wetland and/or stream credits that are to provide off-site compensatory mitigation for activities authorized under a DA and MDE permits. Specifically, the following is a list of project objectives as described by the Bank Sponsor:

- restore 2.81 miles of impounded water to a free-flowing stream above the existing dam,
- restore aquatic passage through removal of the dam,
- restore and enhance 1.56 miles of stream, downstream of the existing dam,
- restore approximately 5.86-acres of forested wetlands,
- enhance approximately 2.88-acres of emergent wetlands; and,
- enhance water quality by removing legacy sediment, restoring floodplain connectivity, and reducing erosive forces to prevent sedimentation.

In addition, the City of Cumberland, Maryland developed a Master Plan to improve the riverfront on the North Branch Potomac River in downtown Cumberland. Their proposed riverfront improvements include ecological and economic benefits such as the removal of the Potomac Industrial Dam to allow for fish passage and recreational boating. The proposed Bank would be located within proposed riverfront improvements on the North Branch Potomac River in downtown Cumberland associated with the River Park at Canal Place. The River Park at Canal Place would include potential access points for boaters, a whitewater course, a riverside trail, parking areas, and other featured improvements.

Upon Bank closure, the site ownership will remain with the current site owners (the City of Cumberland and the National Park Service); however, Memoranda of Agreement are proposed to provide the Sponsor and its successors the ability to maintain the restoration project.

The sponsor is proposing 23,074 stream credits and 7.30 wetland credits based on a ratio

approach. A summary of the proposed mitigation resource type, crediting, performance standards, and proposed credit release schedule are 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 Department of the Army permits. The primary service area proposed for the Bank is the Potomac River watershed, 6-digit Hydrologic Unit Code (HUC): 020700. No secondary service area is proposed.

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

Issuance of a public notice regarding proposed compensatory mitigation bank sites is required pursuant to 33 C.F.R. §332.8(d)(4) and 40 C.F.R. §230.98(d)(4). The proposed establishment of the 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 including any necessary outfall and bridge stabilization associated with the dam removal and any activities associated with the river front improvements (e.g., any water white course structures). 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 and associated permit application, the proposed work to develop the compensatory mitigation bank site may result in temporary and/or permanent impacts to waters of the U.S., waters of the State, and work within navigable waters of the U.S. and require a Department of Army authorization. Authorization for the proposed impacts will also be required by MDE. A future Corps/MDE public notice will be issued if the sponsor elects to proceed with preparation of a mitigation bank instrument and specific plans for impacts to waters of the U.S./State are prepared and submitted to the Corps/MDE for authorization.

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 (lf)	Wetland Impact (acre)	Authority (Section 10/404/408)
Ecological restoration (i.e., using selective grading, excavating, filling, and planting)	23,074	2.88 (emergent nontidal wetlands)	Section 404/Section 10/Section 408

In addition, the proposed work would impact approximately 121,945 square feet of State regulated nontidal wetland buffer and 90 acres of State regulated FEMA 100-year floodplain.

LEAD FEDERAL AGENCY: The U.S. 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 UMBI, including this initial Bank site. The IRT includes representatives from the Corps, the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Maryland Department of Natural Resources, and MDE. The Baltimore District of the U.S. 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 may affect 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 (NMFS) 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 there may be historic properties listed or eligible for inclusion, in the National Register of Historic Places, located at the site of the proposed Bank. The Corps has made the preliminary

determination that the proposed project would have an adverse effect on historic properties. The Corps final eligibility and effect determination will be based on coordination with the State Historic Preservation Office as appropriate and required, and with full consideration given to the proposed undertaking's potential direct and indirect effects on historic properties within the Corps' identified permit area.

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

MODIFICATION OF CIVIL WORKS PROJECTS: 33 USC 408 (SECTION 408): The sponsor will apply for a Section 408 approval to modify the existing Corps civil works project concurrently with any authorization associated with the proposed bank establishment. The Section 408 decision will be issued along with the Section 404 and/or Section 10 decision. Please see the following link for more information regarding Section 408: <https://www.nab.usace.army.mil/section408/>.

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

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

REQUEST FOR PUBLIC HEARING: Any person may request a public hearing. The request must be submitted in writing to the District Engineer and MDE (see Corps and MDE contact information 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 and MDE are soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties to help inform the Corps, MDE, and the IRT as to the overall merits of the proposed Bank, the scope of the proposed mitigation bank, the delineation of the proposed service area, the ecological suitability of the Bank site to achieve restoration of waters of the U.S. and waters of the State. Any comments received will be considered by the Corps of Engineers and MDE to determine whether the proposal has the potential to provide mitigation opportunities for project proponents (permittees) authorized to impact waters of the U.S. under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act and waters of the State under Title 5 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.

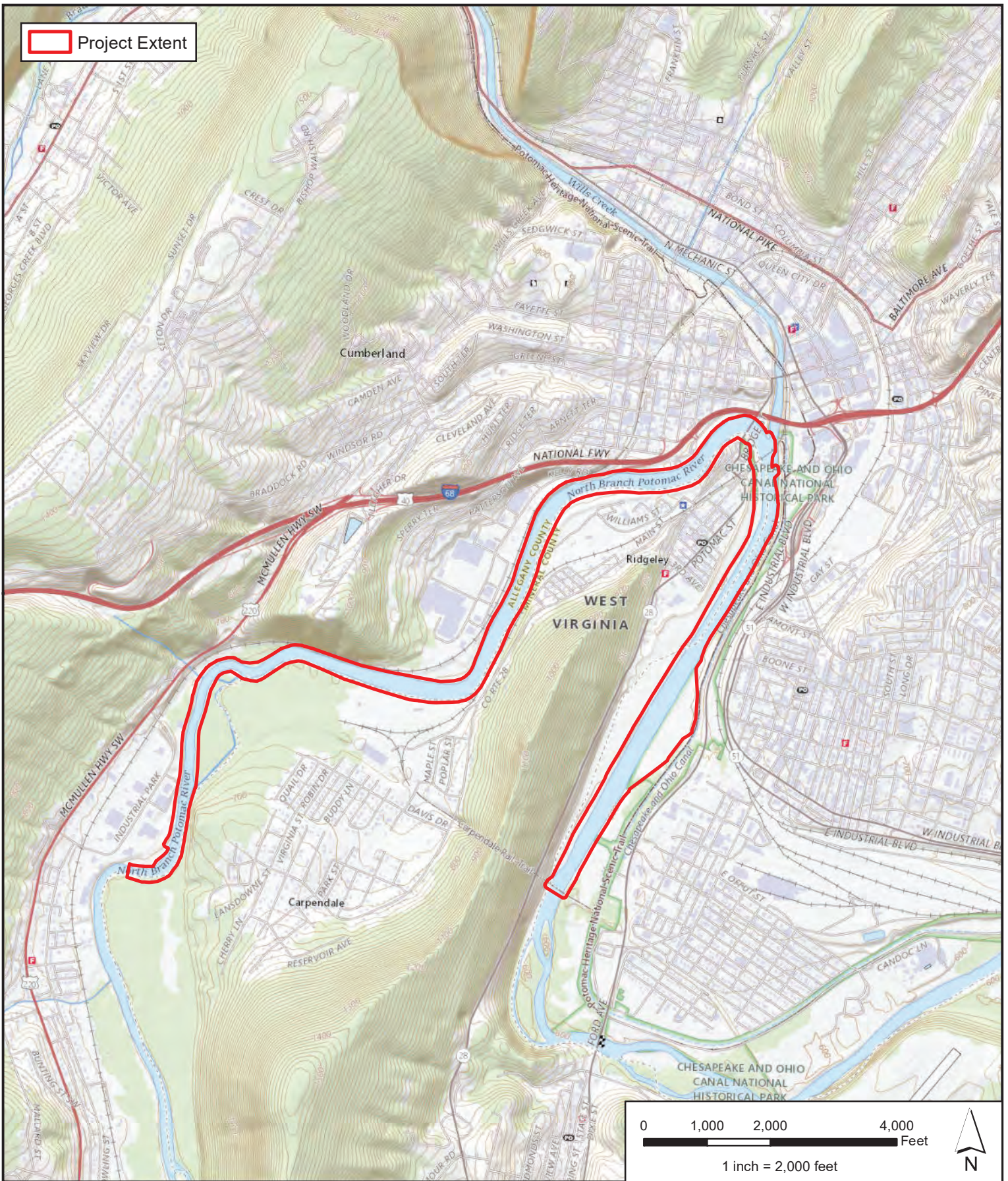
Written comments concerning the proposed Bank must be received by the U.S. Army Corps of Engineers, Baltimore District within the comment period specified above through postal mail at the address below or electronic submission to the project manager's email address below. All comments should reference the Application Number (2021-61817).

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



Potomac Mitigation Bank
 North Branch Potomac 02070002
 Allegheny County, Maryland

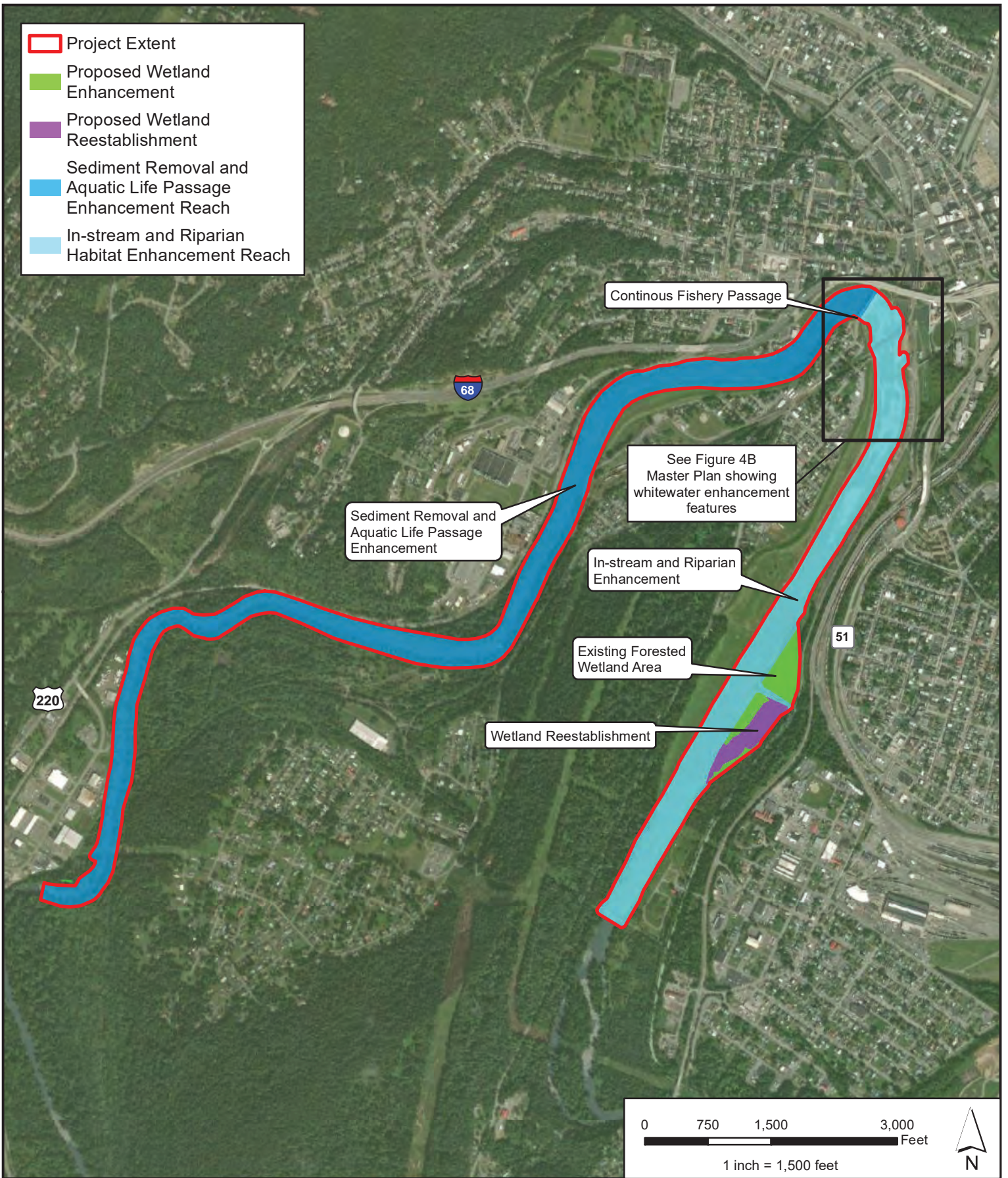
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Site Location Map
 USGS - Cumberland

Date: 9/23/2021

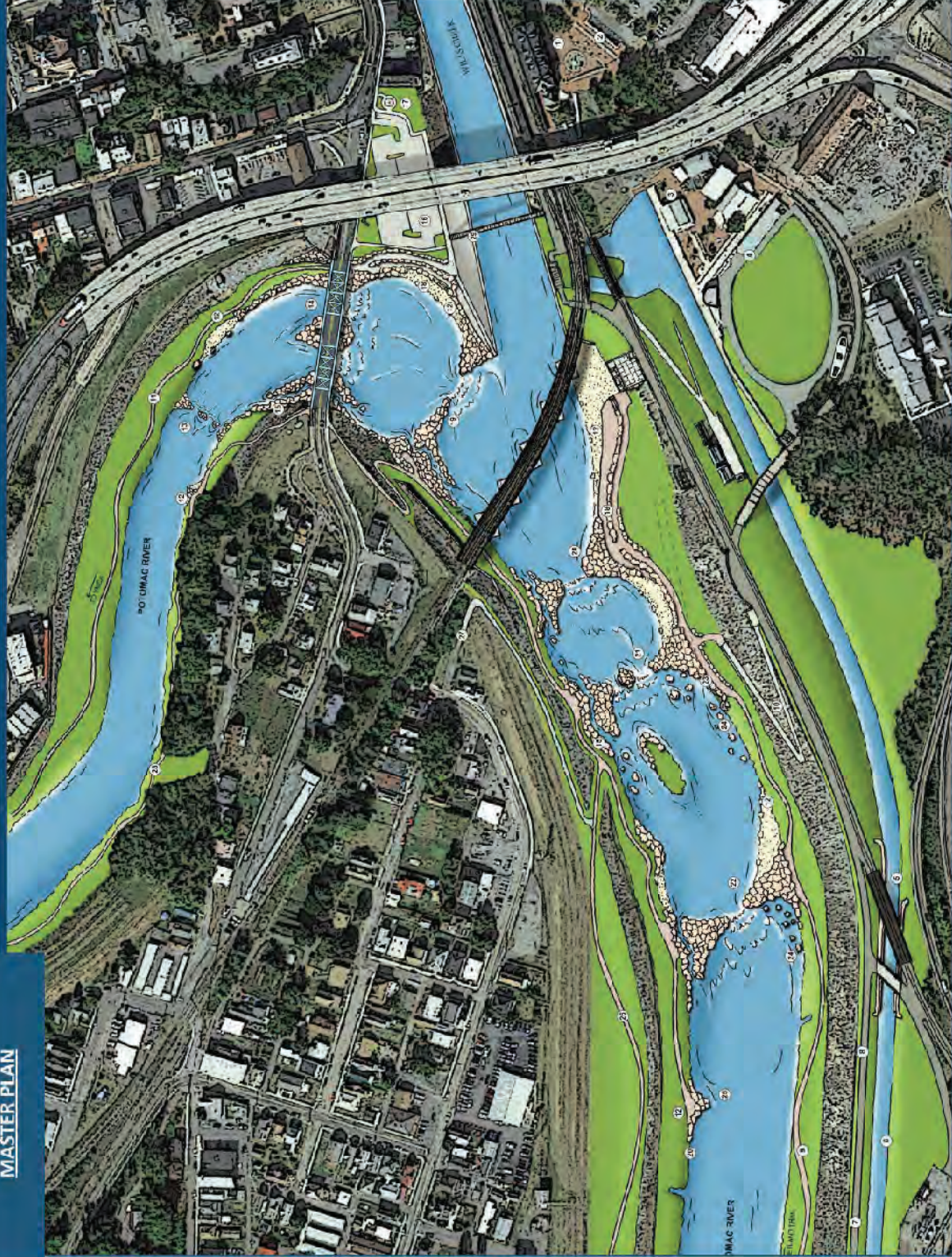
Figure

1



	<p>Potomac Mitigation Bank North Branch Potomac 02070002 Allegheny County, Maryland</p>	<p>Concept Mitigation Map</p>	<p>Figure 4a</p>
	<p>Map Projection: NAD_1983_StatePlane_MD_FIPS_1900_Feet</p>	<p>Date: 9/30/2021</p>	

MASTER PLAN



LEGEND

- 1 CANAL PLACE & W.MD. SCENIC RAILROAD
- 2 GREAT ALLEGHENY PASSAGE
- 3 NPS
- 4 FESTIVAL GROUNDS/SHOPS
- 5 PROPOSED FLOOD GATE/LOCK
- 6 SEPARATE STUDY
- 7 BE WAIBED CANAL
- 8 LOWERED LEVEE
- 9 SEPARATE PROJECT
- 10 C&O CANAL TOWPATH/TP
- 11 MD RIVER TRAIL LOOP - 1.3 MILES
- 12 ADA RIVER ACCESS
- 13 YMCA CONNECTOR TRAIL WITH UNDERPASS AT HIGH BRIDGE
- 14 BOATER LAUNCH
- 15 FEATURE FLAND WATER INTAKE
- 16 FEATURE DROP #2
- 17 DAM LOWERED 10-12"
- 18 FISH PASSAGE
- 19 CONTINUOUS PASSAGE
- 20 PARKING
- 21 UNDER E&B
- 22 WASHINGTON'S HEADQUARTERS & NATIONAL RD MARKER ZERO
- 23 NATURAL ROCK SEATING
- 24 FEATURE DROP #3
- 25 FEATURE DROP #4
- 26 FEATURE DROP #5
- 27 FEATURE DROP #6
- 28 CSO OUTLET
- 29 FISH HABITAT
- 30 REFLECTOR
- 31 TRESTLE LOOP TRAIL - 0.5 MILES
- 32 MARLAND & WEST VIRGINIA
- 33 EMERGENCY VEHICLE ENTRANCE
- 34 FUTURE CARPENDALE WV LOOP
- 35 EXISTING PEDESTRIAN BRIDGE
- 36 OVER WILLS CREEK

NOTE: The master plan is a conceptual form and subject to change during final design and funding.

Potomac Mitigation Bank
 North Branch Potomac 02070002
 Allegheny County, Maryland

Map Projection: NAD_1983_StatePlane_MD_FIPS_1900_Feet

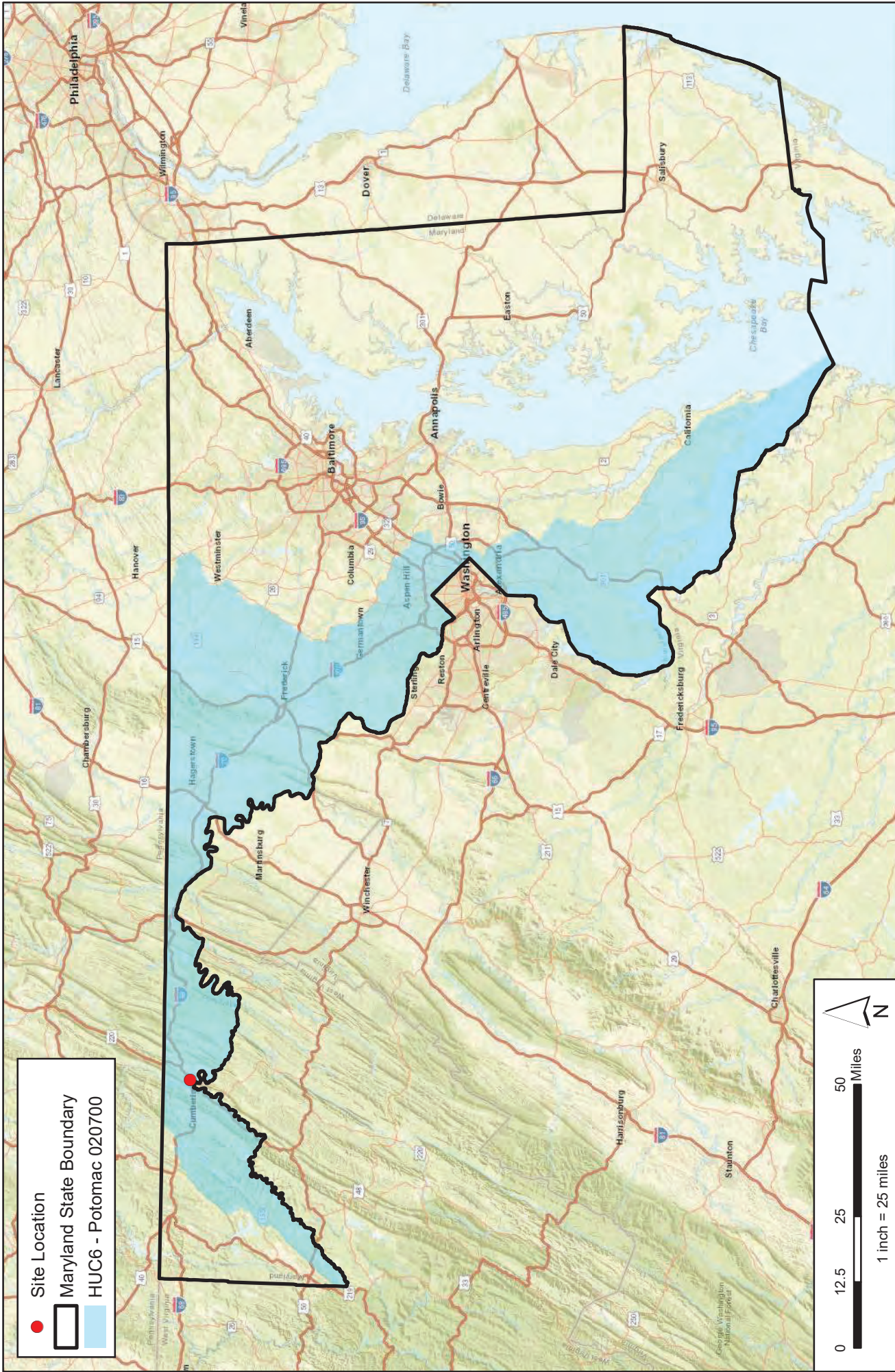
Concept
 Recreation Map

Date: 9/27/2021

Figure











4b

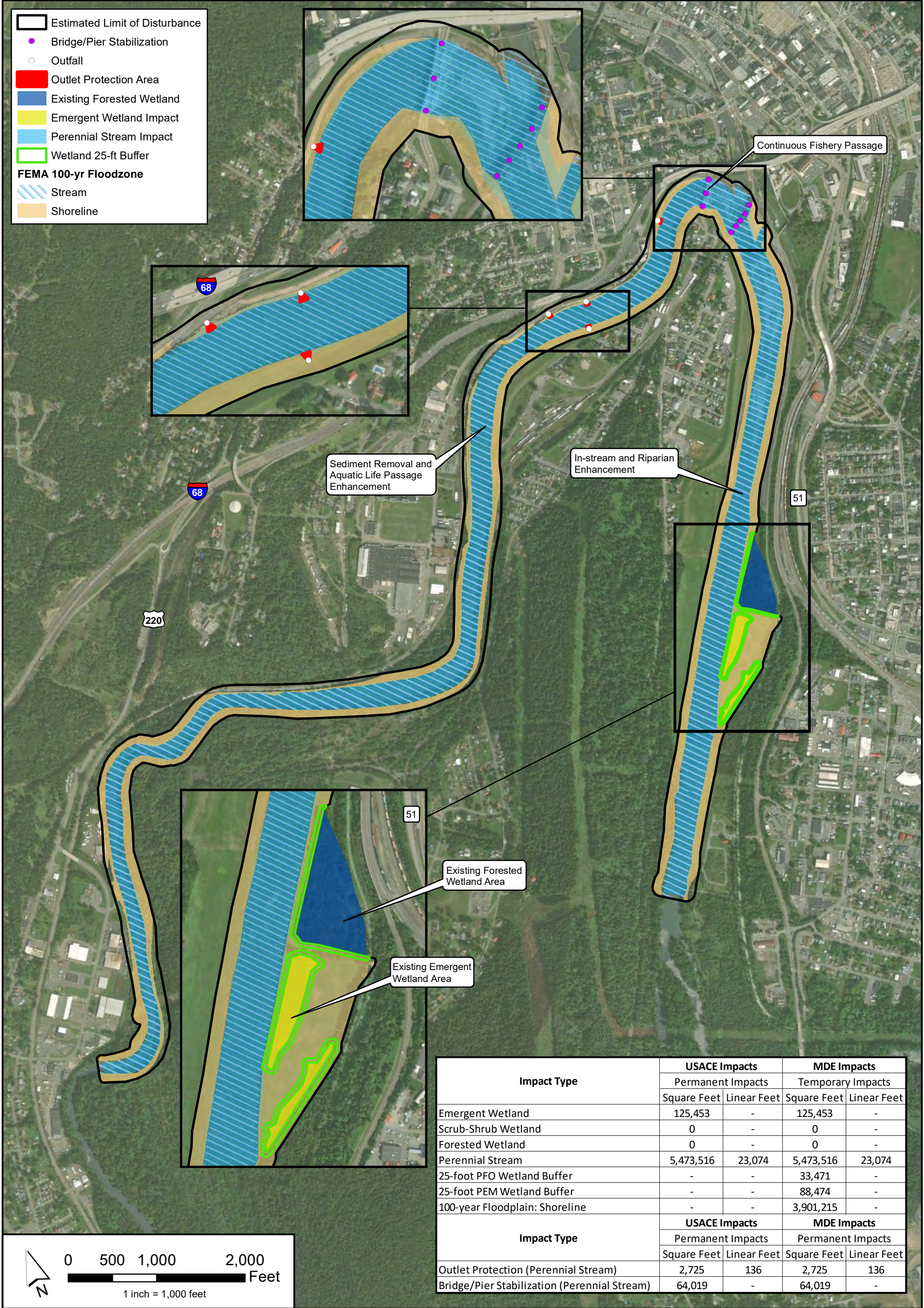




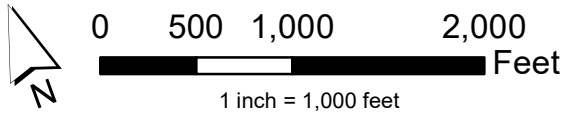
<p>Potomac Mitigation Bank North Branch Potomac 02070002 Allegheny County, Maryland</p> <p>Map Projection: NAD_1983_StatePlane_MD_FIPS_1900_Feet</p>	<p>Geographic Service Area</p>	<p>Figure 5</p>
	<p>Date: 9/30/2021</p>	




-  Estimated Limit of Disturbance
-  Bridge/Pier Stabilization
-  Outfall
-  Outlet Protection Area
-  Existing Forested Wetland
-  Emergent Wetland Impact
-  Perennial Stream Impact
-  Wetland 25-ft Buffer
- FEMA 100-yr Floodzone**
-  Stream
-  Shoreline



Impact Type	USACE Impacts		MDE Impacts	
	Permanent Impacts		Temporary Impacts	
	Square Feet	Linear Feet	Square Feet	Linear Feet
Emergent Wetland	125,453	-	125,453	-
Scrub-Shrub Wetland	0	-	0	-
Forested Wetland	0	-	0	-
Perennial Stream	5,473,516	23,074	5,473,516	23,074
25-foot PFO Wetland Buffer	-	-	33,471	-
25-foot PEM Wetland Buffer	-	-	88,474	-
100-year Floodplain: Shoreline	-	-	3,901,215	-
Impact Type	USACE Impacts		MDE Impacts	
	Permanent Impacts		Permanent Impacts	
	Square Feet	Linear Feet	Square Feet	Linear Feet
Outlet Protection (Perennial Stream)	2,725	136	2,725	136
Bridge/Pier Stabilization (Perennial Stream)	64,019	-	64,019	-



	Potomac Mitigation Bank North Branch Potomac 02070002 Allegheny County, Maryland	Conceptual Impact Map
	Map Projection: NAD_1983_StatePlane_Maryland_FIPS_1900_Feet	Date: 11/4/2021

Service Layer Credits: Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community