

**U.S. Army Corps  
of Engineers**

Baltimore District  
PN-22-10

# Public Notice

**In Reply to Application Number  
NAB-2022-60113 (DM/WSSI UMBI-Walnut  
Tree Mitigation Bank)**

Comment Period: May 17, 2022 to June 16, 2022

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**THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM INTERESTED PARTIES CONCERNING THE PROSPECTUS FOR DEVELOPMENT OF A STATEWIDE UMBRELLA MITIGATION BANKING INSTRUMENT (UMBI) AND A PRIVATE COMMERCIAL UMBRELLA 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 an Umbrella Compensatory Mitigation Instrument (UMBI) including a proposed compensatory mitigation bank site to 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 UMBI and compensatory mitigation bank site are proposed to generate mitigation credits to offset unavoidable impacts to waters of the State of Maryland authorized under Titles 5 and 16 Environment Article Annotated Code of Maryland. Finally, the proposed UMBI may also provide alternative types of mitigation for Corps of Engineers civil works projects, as well as mitigation in connection with resolving Clean Water Act enforcement cases.

**BANK SPONSOR:**

Davey Mitigation  
ATTN: T.J. Mascia  
5300 Wellington Branch Drive, Suite 100  
Gainesville, Virginia 20155

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

The proposed Davey Mitigation Umbrella Mitigation Bank Instrument (DM/WSSI UMBI) would be statewide in Maryland. The proposed DM/WSSI UMBI also includes an addendum for the proposed Walnut Tree Wetland Mitigation Bank Site (Addendum 1). The Walnut Tree Wetland Mitigation Bank Site is located at 26393 Walnut Tree Road, Eden, Wicomico County, Maryland within the Atlantic Coastal Plain physiographic province of the Tangier watershed, Hydrologic Unit Code (HUC) 02080110. Latitude 38° 18' 38.6" N, Longitude 75° 41' 52.5" W.

**OVERALL PROJECT PURPOSE:**

The Bank Sponsor proposes to use establish, design, construct, operate, and maintain an approximate 17.57-acre private commercial wetland compensatory mitigation bank to be known as the Walnut Tree Wetland Mitigation Bank. The proposed Bank site will provide off-site compensatory mitigation for unavoidable impacts to wetlands and other waters regulated by the Corps and/or State of Maryland and authorized by Department of the Army (DA) and MDE permits within the proposed geographic service area described below. The proposed DM/WSSI UMBI will establish the framework for the development, implementation, and protection of the initial Walnut Tree Wetland Mitigation Bank Site (Addendum 1) and future individual umbrella mitigation bank sites to be approved under this DM/WSSI UMBI.

The prospectus provides a summary of the development of the proposed Bank and initiates the Corps' and MDE's review associated with establishment of this Bank, including the development of an approved UMBI. A draft UMBI may be prepared by the Bank Sponsor following the Corps' and 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 final UMBI, including a mitigation Bank Site addendum, 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=107:278:1556944601912::RP,278:P278\\_BANK\\_ID:6263](https://ribits.ops.usace.army.mil/ords/f?p=107:278:1556944601912::RP,278:P278_BANK_ID:6263)

**PROJECT DESCRIPTION:**

The proposed establishment of the Walnut Tree Wetland Mitigation Bank Site involves re-establishment, rehabilitation, and enhancement of aquatic resources. It is proposed that ecological lift associated with establishment of this mitigation bank, includes increasing ground water retention on site, providing storage area for flood flows, nutrient removal, and sediment retention. The proposed wetland will be forested, which will provide enhanced wildlife habitat for a variety of species, including Forest Interior Dwelling Species and potentially increase the population of the state-listed sensitive species, the Delmarva Fox Squirrel. The restored wetlands will have a higher capacity

for increased aquatic function due to their proximity to similar adjacent resources and would generate wetland credits that are to provide off-site compensatory mitigation for activities authorized under a DA and MDE permits. Specifically, the project objectives as described by the Bank Sponsor are:

- Restore approximately 17.25 acres of palustrine forested wetlands
- Rehabilitate approximately 0.20 acres of farmed emergent wetlands and ditches,
- Enhance approximately 2.89 acres of wetland buffer

The Bank is proposed to be protected in perpetuity via recordation of a perpetual conservation easement. Upon Bank closure, the Sponsor may transition stewardship to a long-term steward to maintain the site. The site ownership will remain with the current site owner; however, a qualified non-profit conservation organization is proposed to serve as the holder of the conservation easement.

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

#### **PROPOSED SERVICE AREA:**

The service area of a bank is a geographic area, such as a watershed or ecoregion, within which the mitigation bank is authorized to provide compensatory mitigation required by Department of the Army permits. The proposed service area for the DM/WSSI UMBI is the entire state of Maryland. The proposed primary service area for the Walnut Tree Wetland Mitigation Bank Site is the Tangier watershed, Hydrologic Unit Code (HUC) 02080110.

The proposed secondary service areas are the Choptank (HUC 02060005), Nanticoke (HUC 02080109), and the Pocomoke-Western Lower Delmarva (HUC 02080111) watersheds. The use of the secondary service area would be considered by the Corps and MDE only when credits are not available from another approved mitigation bank within the primary service area and an applicant demonstrates that the mitigation credits will replace the lost aquatic functions and services at the impact site. Certain types of impacts, including impacts to coastal and tidal aquatic resources, would be excluded from mitigating at the Walnut Tree Wetland Mitigation Bank Site.

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

This Bank Site may be one of a number of practicable options available to applicants to compensate for unavoidable impacts associated with permits issued under the authority

of Section 404 of the Clean Water Act and the Maryland Nontidal Wetlands Protection Act. 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, 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 compensatory mitigation Bank will be evaluated pursuant to the 2008 Mitigation Rule (33 CFR Part 332).

The Sponsor must obtain the appropriate federal, state, and local permits required to implement the Bank restoration activities. The Bank Sponsor would submit an application for Corps and MDE permits should the Bank mitigation activities involve impacts to State aquatic resources and/or a discharge of dredge or fill material into waters of the U.S. or work within navigable waters of the U.S. and receive appropriate authorizations prior to initiating construction activities. The Corps would complete consultation, if appropriate, under the Endangered Species Act, the National Historic Preservation Act, and other applicable federal laws, prior to any DA permit authorization for construction of the Bank Site.

Based upon a preliminary review of the Prospectus, the proposed work to develop the Compensatory Mitigation Bank Site may result in temporary and/or permanent impacts to waters of the U.S. and waters of the State or work within navigable waters of the U.S. No permit application has been submitted to date for the proposed construction activities associated with development of the Bank. A preliminary review indicates that the proposed work may qualify for Corps authorization under the Nationwide Permit (NWP) #27 (Aquatic Habitat Restoration, Enhancement, and Establishment Activities). NWP #27 has undergone a full public interest review as required by Corps regulations (33 CFR 320.4(a)), and NEPA documentation has been prepared that addresses environmental considerations. Authorization for the proposed impacts will also be required by MDE.

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

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

Activity	Wetland Impact (acre)	Authority (Section 10/404/408)
Ecological restoration (i.e., using selective grading, excavating, filling, and planting)	0.21 (emergent nontidal wetlands)	Section 404

In addition, the proposed work would impact approximately 4.9 acres of State regulated nontidal wetland buffer.

### **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 responsible for review, approval, and oversight of the proposed mitigation bank, 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 will have no effect federally listed threatened or endangered species or their critical habitat, pursuant to Section 7 of the Endangered Species Act, as amended. As the evaluation of this application continues, additional information may become available which could modify this preliminary determination.

### **ESSENTIAL FISH HABITAT:**

The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 04-267), requires all federal agencies to consult with the National Marine Fisheries Service (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 no properties listed or eligible for inclusion, in the National Register of Historic Places, are located at the site of the proposed Bank. The Corps has made the preliminary determination that the proposed project has no potential to cause effects on historic properties. The Corps final eligibility and effect determination will be based on coordination with the State Historic Preservation Office as appropriate and required, and with full consideration given to the proposed undertaking's potential direct and indirect effects on historic properties within the Corps' identified permit area.

### **TRIBAL RESOURCES:**

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

### **MODIFICATION OF CIVIL WORKS PROJECTS: 33 USC 408 (SECTION 408):**

All Section 408 proposals will be coordinated internally at USACE. The Section 408 decision will be issued along with the Section 404 and/or Section 10 decision. Please see the following link for more information regarding Section 408:

<https://www.nab.usace.army.mil/section408/>.

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

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

**REQUEST FOR PUBLIC HEARING:**

Any person may request a public hearing. The request must be submitted in writing to the District Engineer and MDE (see Corps and MDE addresses below) within the designated comment period of the notice and must state the specific reasons for requesting the public hearing.

**SUBMISSION OF COMMENTS:**

The Corps and 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 DRG MD UMBI and Walnut Tree Mitigation Bank Site, the scope of the proposed mitigation bank, the delineation of the proposed service area, the ecological suitability of the Bank Site to achieve restoration of waters of the U.S. and waters of the State, and to identify project aspects that should be addressed during the development of a draft UMBI. Any comments received will be considered by the Corps and MDE to determine whether the proposal has the potential to provide mitigation opportunities for project proponents (permittees) authorized to impact waters of the U.S. under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act and waters of the state under Titles 5 and 16 Environment Article Annotated Code of Maryland, or as a means of resolving Section 404 and/or Section 10 enforcement actions. Comments provided will become part of the public record for this action and are subject to release to the public through the Freedom of Information Act.

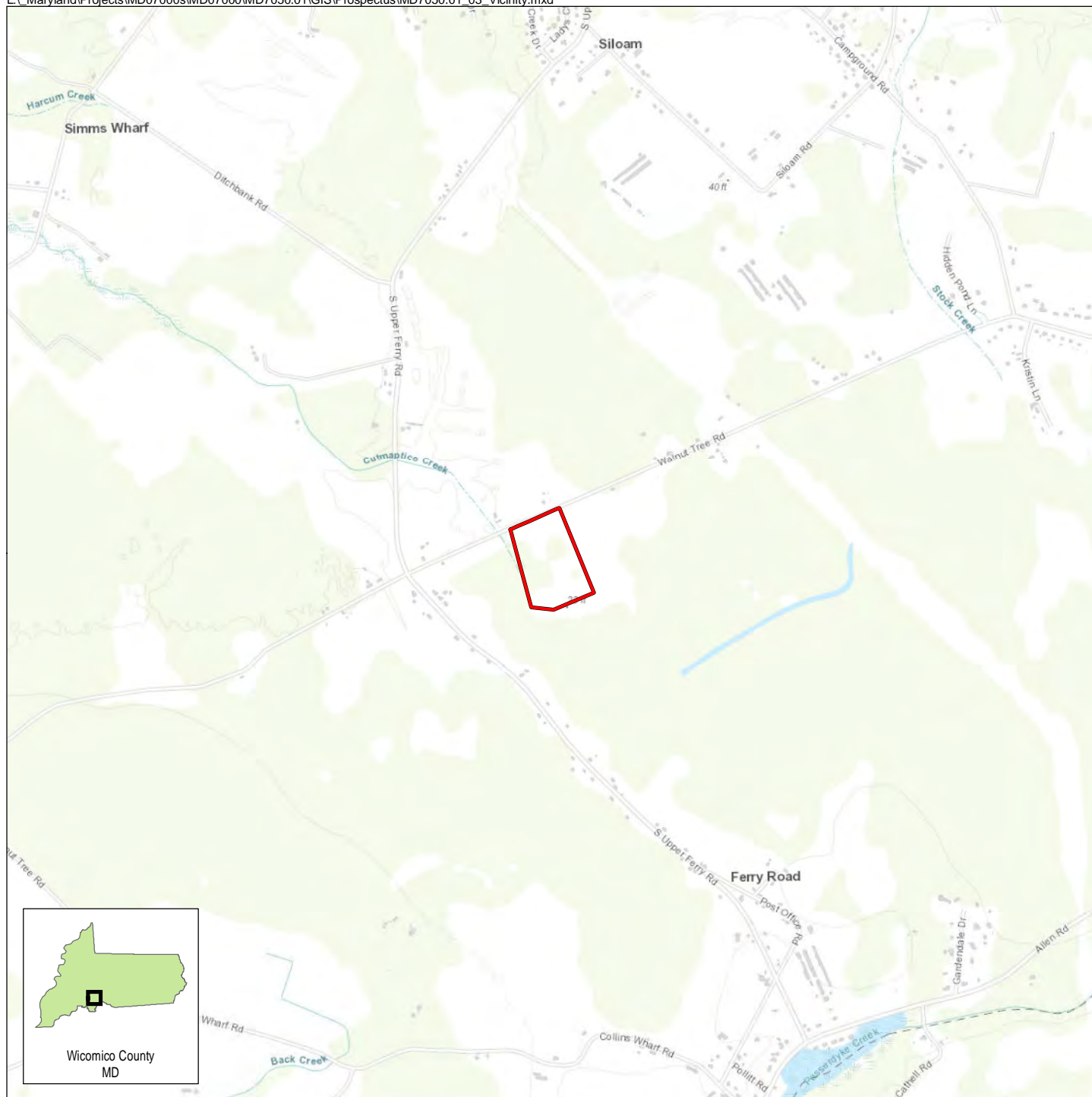
Written comments concerning the proposed Bank must be received by the U.S. Army Corps of Engineers, Baltimore District within the comment period specified above through postal mail at the address below or electronic submission to the project manager's email address below. All comments should reference the Application Number (2022-60113).

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

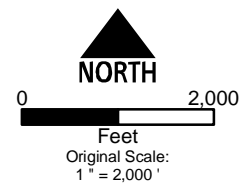
Please share this information concerning the proposed work with any persons known by you to be interested, who did not receive a copy of this notice.

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

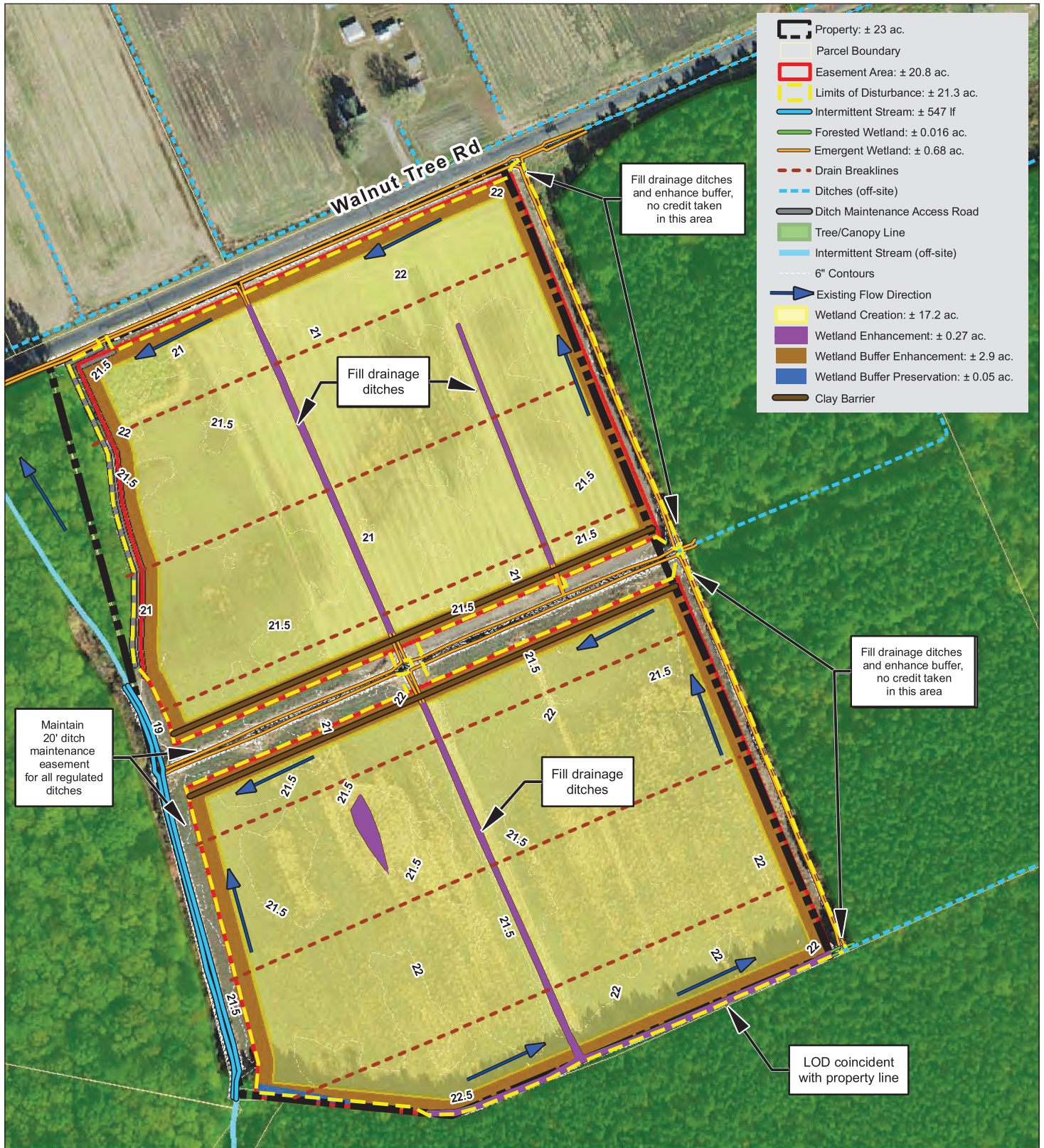


Site

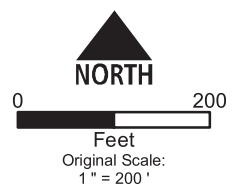
**Vicinity Map**  
**Walnut Tree Wetland Mitigation Site**  
**WSSI #MD7050.01**



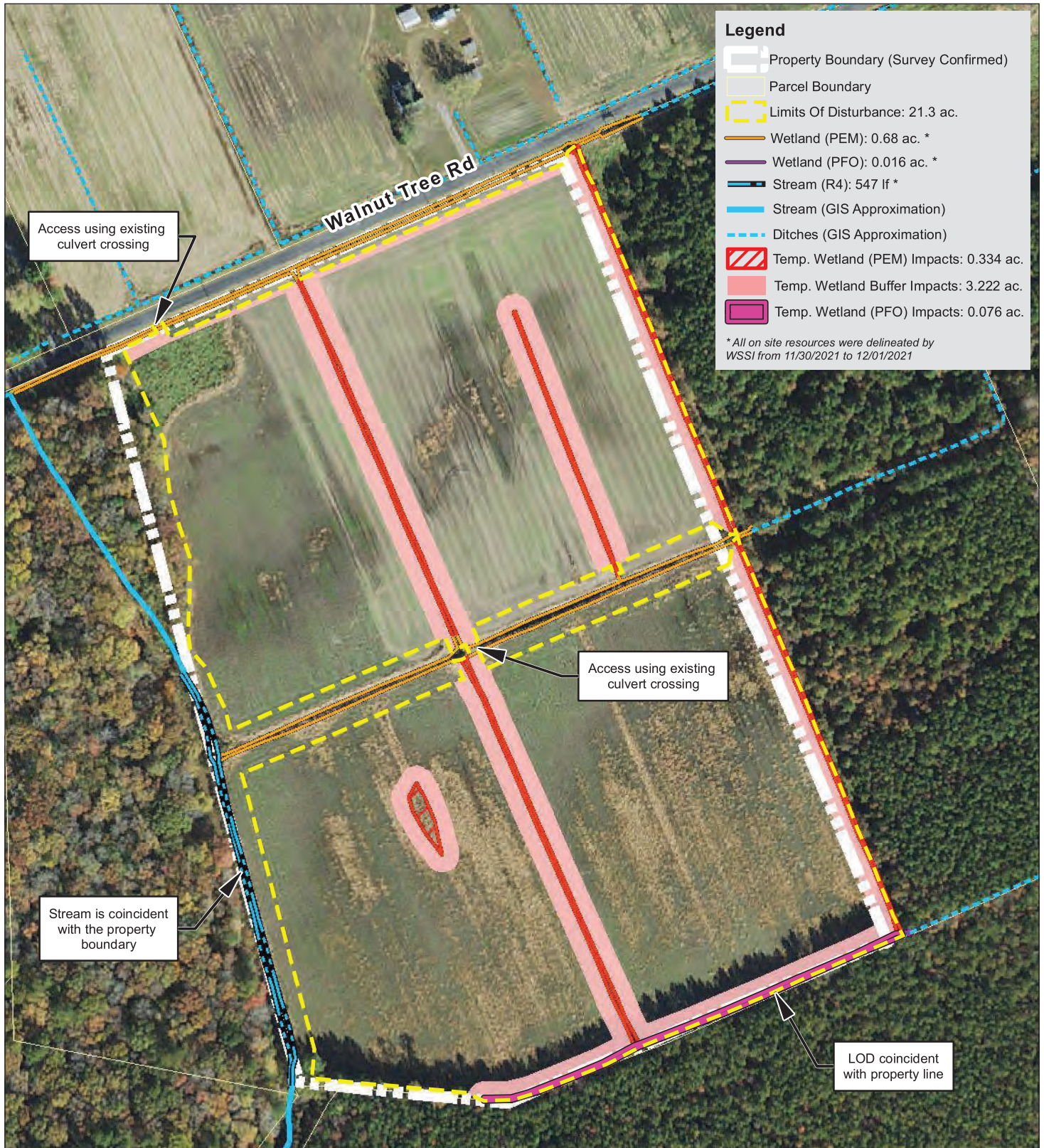
ADC Map/Column/Row: 6749J1  
 Source: World Topographic Map - ESRI



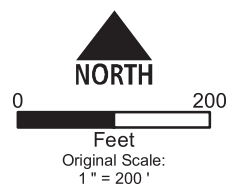
**Concept Plan**  
**Walnut Tree Wetland Mitigation Site**  
**WSSI #MD07050.01**



Aerial: NAIP, 2018



# **Impact Map** **Walnut Tree Wetland Mitigation Site** **WSSI #MD7050.01**



Aerial: NAIP. 2018  
 Map last updated: April 22, 2022