

U.S. Army Corps
of Engineers
Baltimore District
PN-21-41

Public Notice

In Reply to Application Number
NAB-2021-60426 (DRG MD UMBI & Lake
Elkhorn Mitigation Bank)

Comment Period: November 4, 2021 to January 7, 2022



Maryland Department of
the Environment

THE PURPOSE OF THIS PUBLIC NOTICE IS TO INFORM INTERESTED PARTIES OF A SCHEDULED PUBLIC HEARING AND TO SOLICIT COMMENTS CONCERNING THE PROSPECTUS FOR DEVELOPMENT OF A PRIVATE COMMERCIAL UMBRELLA COMPENSATORY MITIGATION BANK. AT THIS TIME, NO DECISION HAS BEEN MADE AS TO WHETHER OR NOT PERMITS WILL BE ISSUED OR IF THE PROPOSED BANK WILL BE APPROVED. THE CORPS/MDE WILL HOLD A VIRTUAL PUBLIC HEARING VIA WEBEX. PLEASE SEE WEBEX PUBLIC HEARING INFORMATION BELOW:

**Wednesday, December 8, 2021
6:30 pm – 9:00 pm: Virtual Public Hearing**

PRE-REGISTRATION REQUIRED: In order to view or participate in the virtual hearing, a participant must register at

<https://attendee.gotowebinar.com/register/1421406169928775948> Webinar ID 436-422-987.

Directions will be electronically forwarded to the email provided. If internet service is not available, the participant may call 1 (866) 901-6455 and then enter access code 573-714-596 to hear the public hearing. Phone only participants will not have the ability to provide testimony during the hearing; however, statements (which may not be longer than three minutes in length) may be provided to Kelly Neff at kelly.neff@maryland.gov by December 1, 2021 to be read during the hearing. Information and questions can be provided orally by participants during the hearing through the virtual platform.

PUBLIC HEARING: The Corps and MDE Joint Virtual Public Hearing will provide members of the public the opportunity to present views, opinions, and information that will be considered by the Corps and MDE in evaluating the proposed establishment of the Lake Elkhorn Compensatory Mitigation Bank under a statewide DRG MD UMBI to generate mitigation credits to offset unavoidable impacts to waters of the U.S. and waters of the State of Maryland. As part of the public comment period, the purpose of the hearing is for the Corps and MDE to receive oral or written comments that will enable them to evaluate the proposed DRG MD UMBI. All interested parties, including representatives of Federal, State, and local governments and private individuals and organizations, are invited to be present or to be represented. Each will be given an opportunity to express their views regarding the proposed project. The Corps/MDE issued a previous public notice on August 2, 2021 for the proposed Lake Elkhorn mitigation bank (See Corps PN-21-33 on the Baltimore District website at the following link: (<https://www.nab.usace.army.mil/Missions/Regulatory/Public-Notices/>)). Please note, all comments received during the previous PN-21-33 public comment period and this public

comment period, including the virtual public hearing, will be part of the administrative record and considered equally by the Corps and MDE during the DRG MD UMBI prospectus evaluation.

Beginning at 6:30 pm on December 8, 2021, the formal virtual public hearing will begin with agency statements, followed by public testimony. Please note that a time limit of three minutes per speaker will be set to ensure that all interested parties have an opportunity to voice their views. The public hearing will be audio only, but all public testimony will be recorded and transcribed.

If anyone planning to attend requires special consideration due to hearing or other impairment, please notify Kelly Neff at kelly.neff@maryland.gov by December 1, 2021 so that we can try to make the necessary accommodations.

BACKGROUND: The Corps and MDE have received a complete prospectus pursuant to the 2008 Mitigation Rule (33 CFR 332) proposing to establish the Lake Elkhorn Compensatory Mitigation Bank ("Bank") under a statewide Davey Resource Group Maryland Umbrella Compensatory Mitigation Instrument (DRG MD UMBI), 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 Titles 5 and 16 Environment Article Annotated Code of Maryland. The proposed Bank may also provide alternative types of mitigation for Total Maximum Daily Load (TMDL) and/or National Pollutant Discharge Elimination Systems Municipal Separate Storm Sewer System (MS4) nutrient and sediment credits, Corps of Engineers civil works projects, as well as mitigation in connection with resolving Clean Water Act enforcement cases.

BANK SPONSOR: Davey Resource Group Inc. dba Davey Mitigation
ATTN: T.J. Mascia
1500 N Mantua St.
Kent, Ohio 44240

WATERWAY AND LOCATION OF THE PROPOSED BANK: The Bank is located on an unnamed Tributary to the Little Patuxent River in Columbia, Howard County, Maryland with the center of the site located approximately at Latitude: 39.223139, and Longitude - 76.814917. The Bank is in the Piedmont physiographic province of the Patuxent River watershed, U.S. Geological Survey Hydrologic Unit Code (USGS HUC) 02060006.

OVERALL PROJECT PURPOSE: The Bank Sponsor proposes to use a combination of restoration, creation, enhancement, and preservation 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 proposed DRG MD UMBI will establish the framework for the development, implementation, and protection of the initial

Lake Elkhorn Mitigation Bank and future proposed umbrella mitigation bank sites to be approved under this UMBI.

The 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, including 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 UMBI, including a site-specific mitigation development plan, 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=107:278:14821701732382::NO:RP,278:P278_BANK_ID:5978

PROJECT DESCRIPTION (Lake Elkhorn Mitigation Bank Site): The proposed establishment of the approximately 133-acre Lake Elkhorn Mitigation Bank Site involves establishment, rehabilitation, enhancement, and preservation of aquatic resources. It is proposed that ecological lift associated with establishment of this mitigation bank, including flood attenuation, water quality treatment, nutrient cycling, aquifer recharge, wildlife habitat, creation of intact habitat corridors with adjacent conservation lands 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 approximately 33,000 linear feet of intermittent and perennial stream channel
- Enhance approximately 20 acres of palustrine forested wetlands
- Create approximately 5 acres of palustrine forested wetlands
- Upon Bank closure, the site ownership will remain with the current site owner, however, the easement on the site will provide the Sponsor and its successors the ability to maintain the restoration project.

A summary of the proposed mitigation resource type and crediting is provided in the Prospectus. The summary includes the estimated Stream mitigation credits based upon the approximate length of restored stream and functional improvement calculated using the Maryland Stream Mitigation Framework (Beta version).

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 and MDE permits. The primary service area for the Bank is the Patuxent River watershed, Hydrologic Unit Code

(HUC) 02060006. The proposed secondary service area is the piedmont physiographic province of the Gunpowder-Patapsco (HUC 02060003). 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 the applicant demonstrates that the mitigation credits will replace the lost aquatic functions and services at the impact site. Impacts to coastal and tidal aquatic resources would be excluded from mitigating at this nontidal Bank Site.

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 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. The Bank Sponsor has submitted an application for Corps and MDE permits since 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 require 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. A permit application has been submitted 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) or State Programmatic General Permit (SPGP). Both the SPGP and NWP #27 have 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 (i.e. culvert)	Stream Impact (linear feet)	Wetland Impact (acres)	Authority (Section 10/404/408)
Ecological restoration (i.e., using selective grading, excavating, filling, and planting)	33,323	20.9 (forested nontidal wetlands)	Section 404

In addition, the proposed work would impact approximately 9.6 acres of State regulated nontidal wetland buffer and 35.2 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 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.

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, 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 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 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 (2021-60426).

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

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

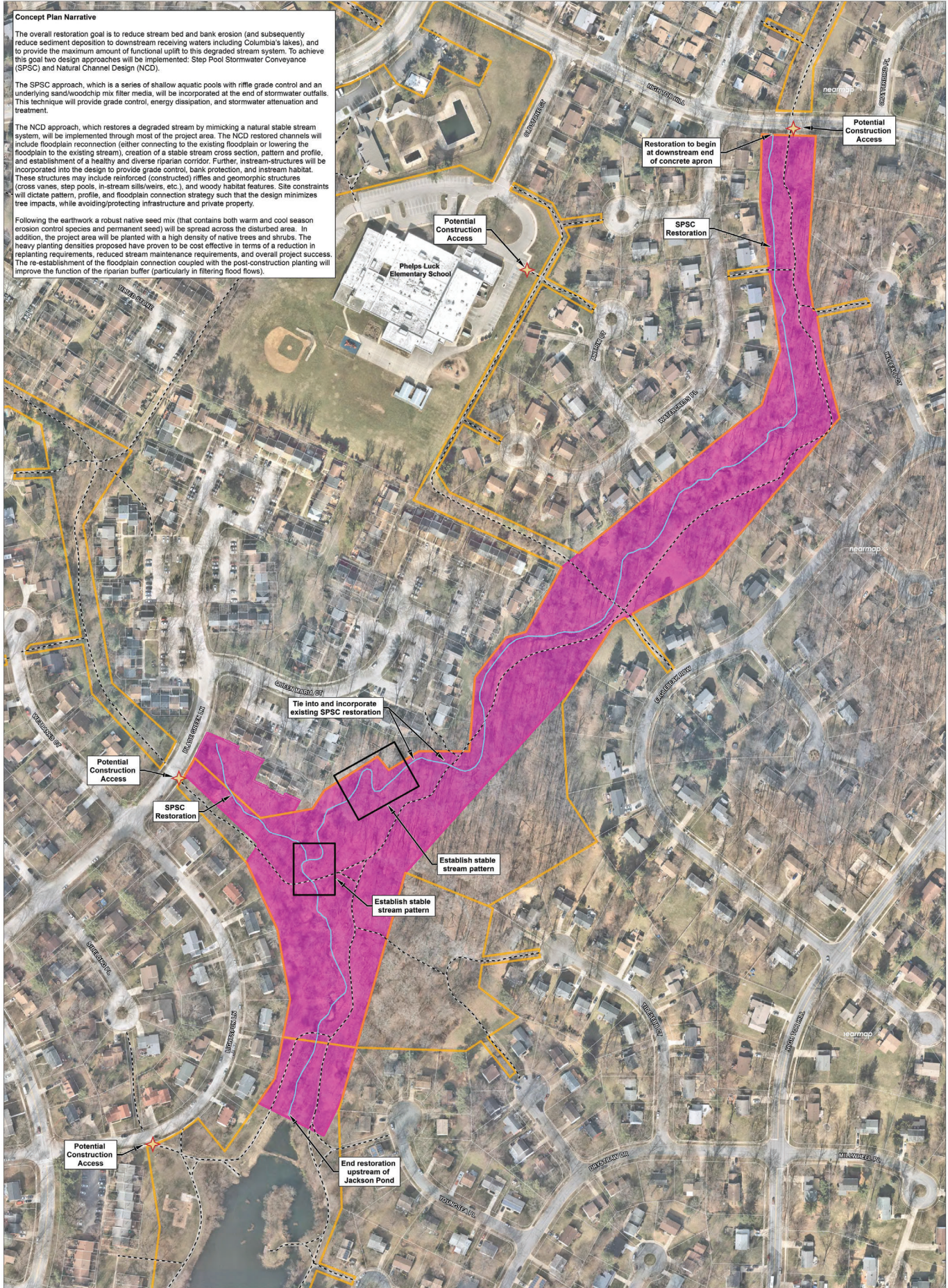
Concept Plan Narrative

The overall restoration goal is to reduce stream bed and bank erosion (and subsequently reduce sediment deposition to downstream receiving waters including Columbia's lakes), and to provide the maximum amount of functional uplift to this degraded stream system. To achieve this goal two design approaches will be implemented: Step Pool Stormwater Conveyance (SPSC) and Natural Channel Design (NCD).

The SPSC approach, which is a series of shallow aquatic pools with riffle grade control and an underlying sand/woodchip mix filter media, will be incorporated at the end of stormwater outfalls. This technique will provide grade control, energy dissipation, and stormwater attenuation and treatment.

The NCD approach, which restores a degraded stream by mimicking a natural stable stream system, will be implemented through most of the project area. The NCD restored channels will include floodplain reconnection (either connecting to the existing floodplain or lowering the floodplain to the existing stream), creation of a stable stream cross section, pattern and profile, and establishment of a healthy and diverse riparian corridor. Further, instream-structures will be incorporated into the design to provide grade control, bank protection, and instream habitat. These structures may include reinforced (constructed) riffles and geomorphic structures (cross vanes, step pools, in-stream sills/weirs, etc.), and woody habitat features. Site constraints will dictate pattern, profile, and floodplain connection strategy such that the design minimizes tree impacts, while avoiding/protecting infrastructure and private property.

Following the earthwork a robust native seed mix (that contains both warm and cool season erosion control species and permanent seed) will be spread across the disturbed area. In addition, the project area will be planted with a high density of native trees and shrubs. The heavy planting densities proposed have proven to be cost effective in terms of a reduction in replanting requirements, reduced stream maintenance requirements, and overall project success. The re-establishment of the floodplain connection coupled with the post-construction planting will improve the function of the riparian buffer (particularly in filtering flood flows).



Lake Elkhorn Stream Mitigation Bank Stream Restoration Concept Plan Reach 1 Sheet 1 of 1

Legend

- Proposed Stream Restoration
- Restoration Easement Area
- Columbia Association Property

Utilities

- Master Storm Line
- Master Sewer Line
- Approximate Utility Easement

- Contours (2 ft)
- Parcels
- Roads
- Trails



Index Map



**Lake Elkhorn Stream Mitigation Bank
Project Overview Map**



- Columbia Association Inc. Properties
- Proposed Stream Restoration:
± 33,323 linear feet
- Proposed Restoration Easement:
± 133 acres
- Trails (10-foot width)
- Howard County-Mapped Hydrology

Data Source: Howard County Digital Data
Imagery Source: National Agriculture Imagery Program (NAIP) 2018



Wetland Studies and Solutions, Inc.
a DAVEY company

Reach 1 - SEE INSET

INSET - REACH 1 STREAM RESTORATION

Restoration to begin
at downstream end
of concrete apron

Total Length:
± 3,780 l.f.

End restoration
upstream of
Jackson Pond

