



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Chesapeake Bay Field Office
177 Admiral Cochrane Drive
Annapolis, Maryland 21401
<http://www.fws.gov/chesapeakebay>

August 26, 2021

Mr. Jack Dinne
U.S. Army Corps of Engineers, Baltimore District
Regulatory Branch
2 Hopkins Plaza
Baltimore, MD 21201-2930

RE: NAB-2021-60426 (DRG MD UMBI & Lake Elkhorn Mitigation Bank), Howard County, MD

Dear Mr. Dinne:

The U.S. Fish and Wildlife Service (Service) has reviewed Public Notice NAB-2021-60426 dated August 2, 2021 and the DRG/WSSI Maryland Statewide Umbrella Mitigation Bank Final Prospectus (Prospectus) dated June 17, 2021. The Davey Resource Group, Inc. dba Davey Mitigation (Sponsor) proposes to establish the Lake Elkhorn Mitigation Bank (Bank) along an unnamed tributary to the Little Patuxent River in Howard County, Maryland. The proposed Bank will restore approximately 33,000 linear feet of stream, enhance approximately 20 acres of palustrine forested wetlands, and create approximately 5 acres of palustrine forested wetlands within the Columbia Association property 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 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344). The Service has reviewed the Public Notice and Prospectus and offers the following comments pursuant to Section 7 of the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C., 1531 *et seq.*), and the Fish and Wildlife Coordination Act (48 Stat. 401; 16 U.S.C. 661 *et seq.*) for your consideration.

Section 7 of the Endangered Species Act

The Sponsor submitted an online project review request through the Service's Information for Planning and Consultation (IPaC) system on May 20, 2021. The federally listed threatened northern long-eared bat (*Myotis septentrionalis*) may be present within the project action area. If less than 15 acres of tree clearing is required, then the project will have 'no effect' to northern long-eared bat. However, if tree clearing will exceed 15 acres, the *Northern Long-Eared Bat 4(d) Rule Determination Key* should be completed to determine if the project may cause prohibited incidental take under the 4(d) rule or is 'not likely to adversely affect' the species (https://www.fws.gov/midwest/endangered/mammals/nleb/determination_key_instructions_nleb.html). If project plans change or new information on federally threatened or endangered species becomes available, this determination may be reconsidered.



Fish and Wildlife Coordination Act

Mitigation banks are established to offset unavoidable stream and wetland impacts and are intended to support Clean Water Act goals to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. However, the Bank's location is dominated by urban land uses and therefore, its biological restoration potential will be limited. According to the Prospectus, the Bank's drainage area has an average impervious percentage of 26 percent, but the United States Geological Survey StreamStats webtool calculates the drainage area as 42.8 percent impervious. While not suitable for mitigation credits, current and planned stormwater management improvements (e.g., Watershed Implementation Plan and site redevelopment projects) should be inventoried to determine if these activities might complement proposed Bank restoration work and support uplift of the aquatic community.

Existing infrastructure (e.g., underground utilities, paved pedestrian trails, and bridges), forested riparian area, and narrow widths of the Columbia Association property along the corridor will constrain stream restoration design and further limit biological restoration potential of the proposed Bank. Forest clearing along the corridor and especially within Forest Interior Dwelling Species (FIDS) habitat mapped by the Maryland Department of Natural Resources should be reduced to the maximum extent practicable. Any temporary and permanent loss of forest riparian functions should be considered when determining functional uplift and calculating mitigation credits for the proposed Bank.

Preliminary Concept Maps indicate Step Pool Stormwater Conveyance (SPSC) are proposed along the upper reaches of several tributaries. The Service generally supports stormwater best management practices in upland areas to treat runoff but SPSC proposed in streams can displace aquatic habitat function. Any SPSC proposed in intermittent or perennial streams should be evaluated as an impact and should not be eligible for mitigation credit.

The stream corridor appears to be especially constrained between High Tor Hill and Tamar Drive, and is fragmented from the rest of the Bank by Jackson Pond, an inline impoundment. Considering its limited biological restoration potential, this reach may be better suited for other programs with sediment and nutrient load reduction goals.

The Service supports the Sponsor's goal to provide aquatic organism passage through Lake Elkhorn Dam and disconnected roadway culverts. However, it is unclear if the Sponsor has field assessed roadway culverts or developed concept plans to improve passage. The Service recommends the following references related to road-stream crossing assessment and design:

- North Atlantic Aquatic Connectivity Collaborative (NAACC) has developed a field protocol (<https://streamcontinuity.org/naacc>) to assess fish and wildlife passage conditions at road-stream crossings. The Service recommends the NAACC protocol be used to standardize road-stream crossing barrier assessments throughout the Northeast region including in Maryland.
- *Recommendations for Aquatic Organism Passage at Maryland Road-Stream Crossings* (https://www.chesapeakebay.net/channel_files/43044/recommendations_for_aquatic_org)

[anism_passage_at_maryland_road-stream_crossings_draft_05262021.pdf](#)) is a guidance document of recommendations to promote stream continuity and aquatic organism passage at road-stream crossings. This document was developed by the Chesapeake Bay Program Fish Passage Workgroup in collaboration with partners and other stakeholders.

Nature-like fishways are generally more effective to pass aquatic communities than structural approaches designed for a specific species or group of species. Absent a target species, the Service recommends a nature-like fishway to provide passage for the broader aquatic community at Lake Elkhorn dam. The Sponsor should be aware Lake Elkhorn dam is classified by the Maryland Department of the Environment Dam Safety Program as a high hazard dam and special considerations will be needed to ensure the dam's structural integrity is not compromised by any proposed aquatic connectivity work.

The Service appreciates the opportunity to provide comments for the project. Should you have any questions or concerns regarding this letter please contact Raymond Li of my staff at ray_li@fws.gov.

Sincerely,

Genevieve LaRouche
Field Supervisor

cc: Kelly Neff, Maryland Department of the Environment