



# SIERRA CLUB

## MARYLAND CHAPTER

Sierra Club Maryland Chapter  
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January 7, 2022

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

Ms. Kelly Neff  
Maryland Department of the Environment  
Mitigation and Technical Assistance Section  
1800 Washington Boulevard, Suite 430  
Baltimore, Maryland 21230-1708

**RE: Permit Number AI 170959/21-NT-3040/202160426, DRG/WSSI Umbrella Mitigation Banking Instrument AND Lake Elkhorn Mitigation Bank, Application Number 2021-60426**

Dear Mr. Dinne and Ms. Neff,

Thank you for the request for comments on the above-listed Umbrella Mitigation Banking Instrument (UMBI) permit and Lake Elkhorn Mitigation Bank application. We request a minimum six-week extension to the public comment periods for these permits, because so much of the comment period has overlapped the holidays, Covid-19 surges, and the current Covid-19 state of emergency declared for the next month in Maryland. Thousands of Marylanders each day are falling ill with Covid-19, many schools have had to go virtual again, and many government services have had to close down or run at reduced capacity. We have just come out of a snowstorm that brought everything to a standstill, some are still without power. A January 7 deadline, particularly January 7, 2022 with all that is happening, does not allow time for public review and comment on this system-changing permit request and its first proposed project. An extension is needed to allow time for more comments to be made by stakeholders and impacted communities and incorporated; in the event that an extension for these permits is not provided, we recommend that the permits be denied for the UMBI and Lake Elkhorn Mitigation Bank Project.

During the minimum six-week extension, Maryland Department of the Environment (MDE) and the U.S. Army Corps of Engineers (USACE) must solicit comments, as required by law, from all interested parties (such as environmental

groups, religious organizations, and citizen associations) across the state. To date, comments were only solicited from a limited subset of properties (approximately 330) out of the estimated 1,000+ properties that are near or adjacent to the proposed Lake Elkhorn Mitigation Bank project. This narrow solicitation completely ignores interested parties from other parts of Columbia and non-Columbia residents who regularly recreate along the proposed stream construction project location. In addition, the narrow solicitation ignores the other parts of the state that may be impacted if the state-wide UMBI is approved.

As noted, should a six-week extension not be granted, we request a denial of the UMBI permit and the permit for the Lake Elkhorn Mitigation Bank Project which is proposed to fall under the UMBI. Reasons for denial of the UMBI permit include:

1. **There would be counterproductive and more damaging impacts as a result of the UMBI's "compensation in advance" approach.** The [Prospectus](#) (p. 2) states that "The Bank Sponsor's goals in establishing the UMBI include: Streamline Clean Water Act Sections 404/402/401 and Rivers and Harbors Act Section 10 permit evaluation processes by providing compensation in advance for unavoidable wetland, stream, water quality, etc., impacts resulting from improvement projects by various permittees." The request for streamlining of permit evaluation processes should be rejected out of hand. Streamlining permit evaluation processes for a for-profit endeavor such as the proposed UMBI is not in the public's interest and should not be the concern of MDE or the USACE. Whenever processes are streamlined for the benefit of for-profit companies, it is the public and the environment that suffer due to lax or absence of proper oversight. *Furthermore, if compensation in advance for unavoidable wetland or other "impacts from improvement projects by various permittees" is allowed to happen, then regulators may be more inclined to allow such destructive projects to proceed without requiring on-site avoidance, minimization, and mitigation of damage. Plus, if mitigation projects are allowed to proceed before a specific mitigation need has been requested, the environmental damage caused by the "in advance" mitigation project may have been for naught (if no mitigation credits are being sought) and could have been avoided.*

2. **The type of process streamlining that is being proposed would cause greater harm to the environment than the existing process and would not be in the public interest.** The [Prospectus](#) (p. 2) states that "The Bank Sponsor's goals in establishing the UMBI include: ... Achieve efficiencies for DRG/WSSI, permit applicants, and the entire IRT review process by eliminating repetitive practices and redundant review processes thereby reducing costs and addressing permitting priorities in a more expedient time frame." Streamlining permit evaluation processes to reduce costs for a for-profit endeavor such as the proposed UMBI is not, and cannot be, the concern of MDE or the USACE. *Short-circuiting review processes for the benefit and convenience of this company or any other company will*

result in irreparable harm to the public's interest in proper review processes that protect the environment from lax or expedited regulatory oversight. Based on the above stated goal of the Bank Sponsor, permits for both the UMBI and Lake Elkhorn Stream Mitigation site should be denied.

3. **The ratio of 1:1 damaged to restored credits is not acceptable or in keeping with established practice.** The [Prospectus](#) (p. 7) states under "Credit Determination" that "The Bank Sponsor proposes 1:1 ratio for both wetland restoration (re-establishment) and wetland creation (establishment), with anticipated higher ratios for enhancement (rehabilitation) and preservation both to be determined on a case-by-case basis." These ratios proposed by the Bank Sponsor are self-serving for purposes of reducing developers' costs and attracting mitigation credit seekers. *A 1:1 ratio does nothing to reverse the historical massive net loss of wetland acreage. Plus, any ratios set on a case-by-case basis are subject to individual whim and could be too lenient toward developers. In keeping with established practice, ratios of at least 1:7 are needed to meaningfully incentivize avoidance of wetland destruction (1:7 ratio of destroyed to restoration/creation/enhancement/preservation).*

4. **There are other problems inherent in the proposed UMBI approach.** There are other problematic provisions in the proposed UMBI, including vagueness of definitions and the approach of not addressing upland stormwater control before undertaking in-stream and in-stream valley and floodplain interventions. We support projects which control stormwater before it enters streams. Rain gardens are one example. Another example is a bio-retention pond where a road's cement curb is cut and stormwater is diverted into planted depressions and where it soaks into the soil. Other examples are permeable pavement, converting lawns to conservation landscaping, green roofs, and planting trees.

The UMBI proposal as submitted does not reflect established norms or the state-of-the-art, appears to be in conflict with the Clean Water Act's requirement for specified permit review (33 U.S.C. 1344 Section 404 (b)), is not in the public interest, and denies the public the right to have full information and opportunity to meaningfully comment on future mitigation projects.

We strongly urge you to extend the comment period on these permits for at least six weeks and then require major revisions consistent with comments received, and otherwise we urge you to deny the permits. Thank you for your consideration of these requests.

Respectfully,  
Rosa Hance, Chapter Chair  
Paula Posas, Deputy Director  
Sierra Club Maryland Chapter