



**U S Army Corps of
Engineers
Huntington District
Regulatory Division**

Public Notice

In reply refer to Public Notice No.

LRH-2013-574-OHR

Issuance Date:

JAN 20 2014

Stream:

Beaver Creek

Closing Date:

FEB 18 2014

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-RD-E Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304)399-5610

PUBLIC NOTICE: The District Engineer has received a mitigation plan to establish a wetland and/or stream compensatory mitigation bank for Federal and State permits as described in this Public Notice. Issuance of a public notice regarding proposed mitigation banks is required pursuant to the "Compensatory Mitigation for Losses of Aquatic Resources; Final Rule," (Rule) as published in the April 10, 2008, Federal Register, Vol. 73, No. 70, Pages 19594-19705 (33 CFR Parts 332). The purpose of this public notice is to inform you of the proposed mitigation bank and to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

INTERAGENCY REVIEW TEAM: As indicated in the U.S. Army Corps of Engineers (Corps) regulations [33 CFR 332.8(b)], the District Engineer has established an Interagency Review Team (IRT) to review documentation for the establishment and management of mitigation banks and in-lieu fee programs. The primary role of the IRT is to facilitate the establishment of mitigation banks and/or in-lieu fee programs through the development of mitigation banking or in-lieu fee program instruments. The Corps Huntington District (Regulatory Division) is the lead district for the state of West Virginia (WV) and chairs (or leads) the WV IRT. The WV IRT consists of the following federal and state resource agencies: Corps Huntington and Pittsburgh Districts, U.S. Environmental Protection Agency (USEPA), U.S. Fish and Wildlife Service (USFWS), U.S. Department of Agriculture's Natural Resource Conservation Service (NRCS), West Virginia Department of Environmental Protection (WVDEP) and West Virginia Division of Natural Resources (WVDNR).

REGULATORY PROGRAM: Since its early history, the Corps has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

SECTION 10: The Corps is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the U.S. The intent of this law is to protect the navigable

capacity of waters important to interstate commerce.

SECTION 404: The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the U.S., including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The Corps is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate this proposed mitigation bank.

BANK SPONSOR: Green Rivers LLC
PO Box 106
Thomas, West Virginia 26292

LOCATION: The proposed mitigation bank site is located on an approximately 55-acre parcel along Beaver Creek west of Hazelwood, Randolph County, West Virginia. The mitigation bank site includes an unnamed tributary to Beaver Creek, Beaver Creek, adjacent floodplains and upland corridors. Beaver Creek is a tributary to the Tygart Valley River.

DESCRIPTION OF THE PROPOSED WORK: The Sponsor, Green Rivers LLC, has submitted a prospectus to the Huntington District Corps of Engineers to develop and operate a stream and wetland mitigation bank under an Umbrella Mitigation Banking Instrument (UMBI) to be known as the Tygart Valley River Mitigation Bank. The submitted prospectus proposes a mitigation bank composed of multiple phases, which involves the establishment, design, construction, and operation of compensatory stream and wetland mitigation bank. The purpose of the mitigation bank is to provide compensatory mitigation for projects resulting in unavoidable impacts to jurisdictional streams and wetlands within the specified service area (map enclosed). The primary service area for the Tygart Valley River Mitigation Bank is the Tygart Valley River watershed. Many of the streams and wetlands within this watershed have been degraded due to historic agricultural, silvicultural, oil and gas extraction and mining activities. Impacts to these resources identified within this watershed include wetland degradation due to cattle access, stream channelization, isolation, sedimentation and habitat degradation. The proposed bank will involve the enhancement, restoration, and preservation of stream channels, wetlands and their associated buffers as those terms are defined in the Mitigation Rule, mentioned above. Stream enhancement and restoration techniques will incorporate natural stream channel design techniques as described in more detail below. These activities are anticipated to provide multiple benefits to the contributing watershed including improvements to water quality by reducing sediment loads, increased fish and wildlife habitat, and additional flood conveyance and storage.

Mitigation banks are defined as a site, or suite of sites, where resources (e.g. wetlands, streams, riparian area) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits pursuant to Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act. In general, units of

restored, established, enhanced, or preserved streams (or wetlands) are expressed as “credits” which may be subsequently withdrawn to offset “debits” incurred at a project development site. The Corps is responsible for authorizing the use of a particular mitigation bank on a project-specific basis and determining the number and availability of credits required to compensate for proposed impacts. Decisions rendered by the Corps will fully consider all comments submitted as part of the permit evaluation process. In areas where a functional or condition assessment or other suitable metric is not available, a minimum one-to-one acreage (for wetlands) or linear foot (for streams) compensation ratio must be applied in order to achieve a federally mandated “no net loss of aquatic resources.” Wetland credits would correlate with wetland acreage and classification (i.e. emergent, scrub-shrub and forested). Stream credits would correlate with linear feet or acceptable forms of assessments and classification of streams. Acceptable forms of assessments would include those based upon best available science that can be measured or assessed in a practicable manner.

The proposed primary Geographic Service Area (GSA) for the proposed Tygart Valley River Mitigation Bank is the Tygart Valley River Watershed as defined by Hydrologic Unit Code (HUC) 05020001. The proposed secondary GSA for the mitigation bank includes the Little Kanawha River Watershed (05030203), the Monongahela River Watershed (05020003), the West Fork River Watershed (05020002), the Elk River Watershed (05050007) and the Cheat River Watershed (05020004). These secondary service areas would service projects on a case-by-case basis as determined by the Corps and the WV IRT.

The goal of the proposed mitigation bank is to establish, restore, enhance and/or preserve self-sustaining, functional stream corridors and wetlands, and to replace the functions and values lost due to unavoidable adverse impacts to streams and wetlands from current and historic agricultural, silvicultural, oil and gas extraction and mining activities. The Bank is anticipated to include Beaver Creek, unnamed tributaries to Beaver Creek, adjacent wetlands and riparian buffers, including a portion of the riparian buffer along the Tygart Valley River main stem. Some of the targeted functions include improvements to wildlife habitat, water quality, flood conveyance and storage, and erosion control through the implementation of natural channel design and the re-establishment of riparian buffers.

The Bank Sponsor proposes to meet the Bank’s goals through establishment, restoration, enhancement, and preservation of contributing perennial, intermittent and ephemeral stream channels and adjacent wetlands as summarized below and as indicated on the attached Table 1:

Establishment: The Bank Sponsor proposes to establish approximately 3 acres (ac) of wetland in areas exhibiting a high water table adjacent to existing wetlands and/or in the floodplain of existing streams. The Sponsor would utilize existing agricultural drain tile and incorporate on-site hydrology to ensure the sustainability of the proposed established wetland, and these wetlands would be planted based on natural wetland vegetative communities.

Restoration: Restoration is proposed for 8,297 linear feet (lf) of stream channel, 11 ac of wetland and 41 ac of riparian buffer. Wetland restoration activities would be similar to wetland establishment as indicated above. Stream restoration modifications may include

but are not limited to natural channel design, channel cross section and pattern alterations, bank stabilization and bioengineering techniques, grade control and in-stream structures, reconnection of contributing streams to the main channel, establishment of forested riparian buffers, and removal of detrimental land use activities (i.e. agriculture/cattle use) in appropriate riparian corridors. The restoration of dimension, pattern, and profile of these reaches is proposed to improve the overall channel condition, stabilize channel banks, and re-establish hydraulic connectivity to flood prone areas.

Enhancement: Enhancement is proposed for 4,947 lf of stream channel. The enhancements would be associated with invasive species eradication and supplemental riparian buffer plantings as well as cattle exclusion fencing.

Preservation: Preservation is proposed for all enhanced, restored and established streams and wetlands on the site. These areas would be protected in perpetuity by either a conservation easement or restrictive covenant.

The Bank Sponsor proposes to use the West Virginia Stream and Wetland Valuation Metric (SWVM) to determine the amount of proposed credits to be generated at the bank. Based on the Bank Sponsor's preliminary calculations, the proposed stream and wetland mitigation work would generate approximately 2,466 stream credits and 6.5 wetland credits (wetland "credits" are equivalent to acres).

Figure 1 of 4 shows the location of the proposed mitigation bank. Figure 2 of 4 shows the topographic map of the proposed mitigation bank. Figure 3 of 4 shows the plan view of the proposed mitigation bank. Figure 4 of 4 shows the proposed service area map for the proposed mitigation bank.

In accordance with the Rule, performance standards and success criteria established by application of conditional assessments and/or suitable metrics would be outlined and implemented as requirements. ***Preliminary design plans of the proposed establishment, restoration and enhancement work are attached to this notice. The full prospectus is available for review upon request.***

WATER QUALITY CERTIFICATION: In accordance with Nationwide Permit No. 27 [under the February 21, 2012 Federal Register, Reissuance of Nationwide Permits (77 FR 10184)], a general Section 401 Water Quality Certification with special conditions applies. Prior written approval is required from the WVDEP Division of Water and Waste Management in concurrence with the WVDNR.

HISTORIC AND CULTURAL RESOURCES: This project must be reviewed to determine any potential effects to properties that may be eligible for or listed in the National Register of Historic Places (NRHP), in accordance with Section 106 of the National Historic Preservation Act. The National Register of Historic Places has been consulted and it has been determined there are no historic properties currently listed on the National Register within the area to be affected by the project. Based on the limited amount of ground disturbance proposed along with the previous disturbances in the areas of the proposed work, the Corps has determined the proposed project would have no effect on properties listed on or eligible for listing on the

National Register.

The Corps is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the potential effects on historic properties. If you wish to provide comments or objections regarding the effect of the proposed project on historic properties, please provide this information to our office prior to the close of the comment period.

THREATENED & ENDANGERED SPECIES: This public notice will serve as coordination with the USFWS concerning threatened or endangered species, pursuant to Section 7 of the Endangered Species Act of 1972 (as amended). Five (5) federally listed endangered species, the Indiana bat (*Myotis sodalis*), the Virginia big-eared bat (*Corynorhinus (=Plecotus) townsendii virginianus*), the Cheat Mountain salamander (*Plethodon nettingi*), running buffalo clover (*Trifolium stoloniferum*) and eastern cougar (*Felis concolor cougar*) and one proposed listed endangered species, the northern long-eared bat (*Myotis septentrionalis*), may occur within the proposed project area.

The project would involve stream and wetland establishment, restoration and enhancement work performed within mainly agricultural areas as well as the restoration and protection of stream-side and wetland riparian buffers. No known Indiana bat, Virginia big-eared bat or northern long-eared bat hibernacula exists and no adverse impacts, like timber removal, would be conducted upon the proposed bank site. The proposed activities would be expected to result in stream, wetland and riparian corridor improvements. Based on the nature of the project, this office has determined the proposed project may affect (in a positive aspect), but would not likely adversely affect the Indiana bat, Virginia big-eared bat and northern long-eared bat. No critical habitat for the eastern cougar has been identified within the state of West Virginia. Any stream or wetland establishment, restoration or enhancement activities would not be expected to disrupt or alter the habitat or mobility of the eastern cougar. Therefore, this office has determined the proposed project would have no effect on the eastern cougar. The proposed project may affect the running buffalo clover, as it is known in Randolph County and is found in occurs in mesic habitats of partial to filtered sunlight, where there is a prolonged pattern of moderate periodic disturbance, such as mowing, trampling, or grazing. This public notice serves as a request to the USFWS for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the areas which would be affected by the activities, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the approval of this mitigation bank may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activities. This application will be reviewed in accordance with 33 CFR 320-332, the Regulatory Program of the Corps, and other pertinent laws, regulations, and executive orders. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to approve this mitigation bank will be based on an evaluation of the probable impact including cumulative impacts of the proposed activities on the public interest. That decision will reflect the national concern for both

protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Any person may submit cumulative impact information, which is substantive and specifically associated with the proposed actions. In addition, the evaluation of the impact of the activities on the public interest will include application of the guidelines promulgated by the Administrator, USEPA, under the authority of Section 404(b) of the Clean Water Act. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination.

SOLICITATION OF COMMENTS: The Corps is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate this proposed mitigation bank. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the Corps to determine whether to approve, modify, condition or deny this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activities.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to:

U.S. Army Corps of Engineers
ATTN: CELRH-RD-E Public Notice No. LRH-2013-574-OHR
502 Eighth Street
Huntington, West Virginia 25701-2070.

Please note names and addresses of those who submit comments in response to this public notice become part of our administrative record and, as such, are available to the public under provisions of the Freedom of Information Act. Thank you for your interest in our Nation's water resources. If you have any questions concerning this public notice, please call Mr. James Spence at (304) 399-5610.

(WV)

Table 1

Mitigation Work	Linear Feet	Acres
Stream Restoration	8,297	---
Stream Enhancement	4,947	---
Wetland Establishment	---	3
Wetland Restoration	---	11
Riparian Buffer Restoration	---	41

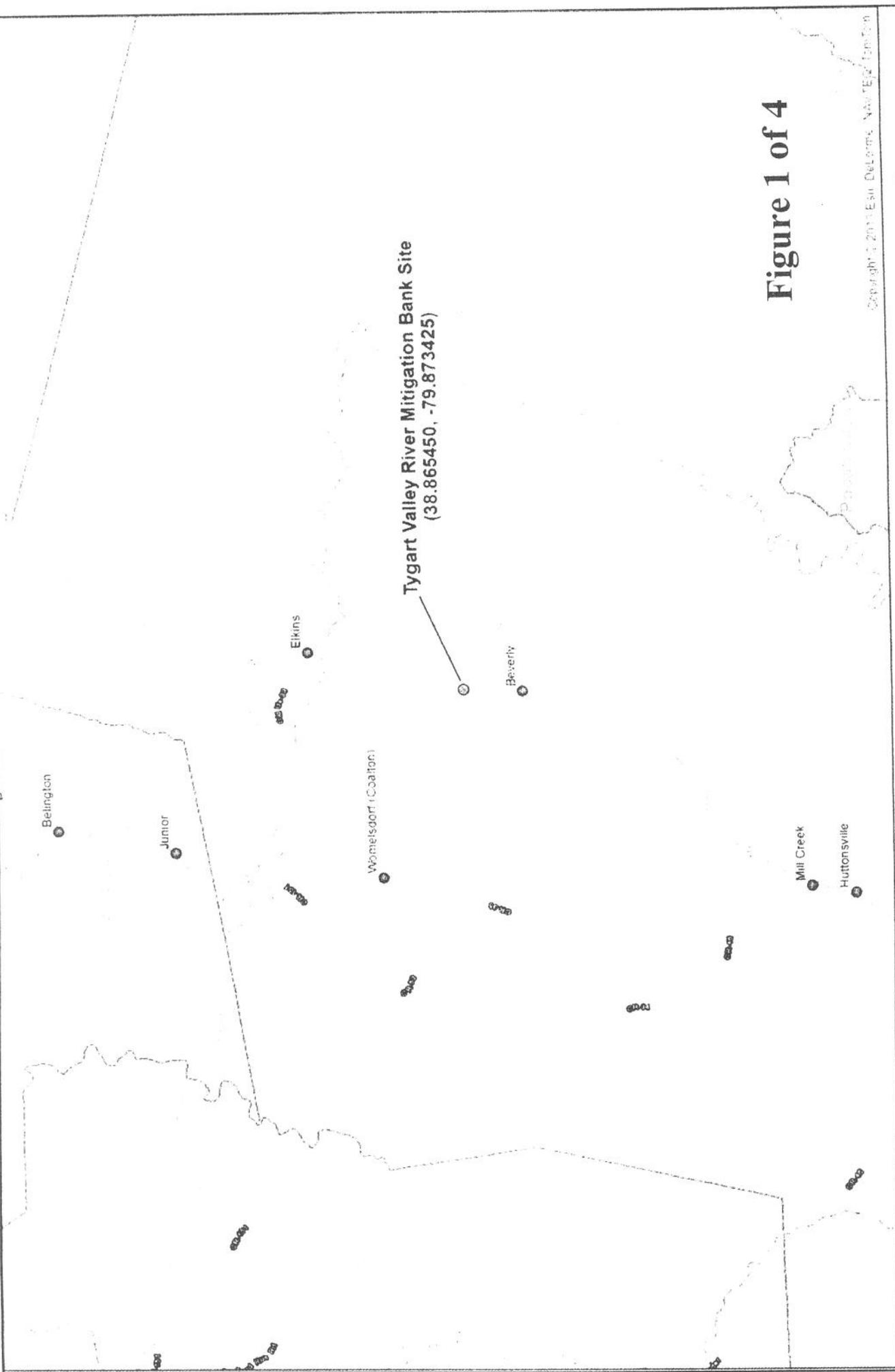


Figure 1 of 4

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Tygart Valley River Mitigation Bank General Vicinity Map

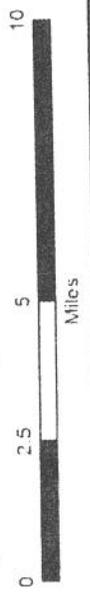


Figure 1. (3A) General vicinity and project location map.

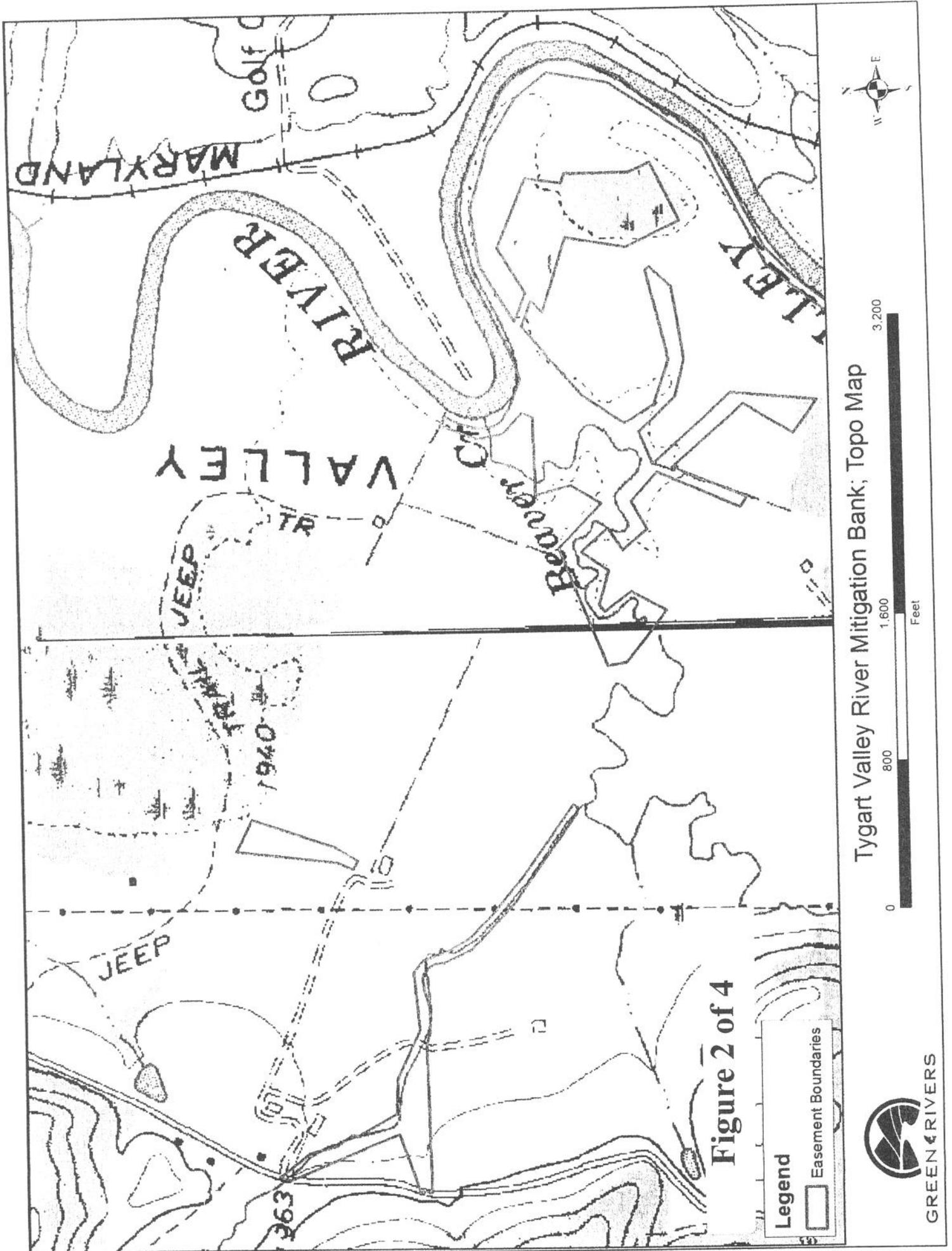


Figure 6. USGS Topographic map showing the project area.



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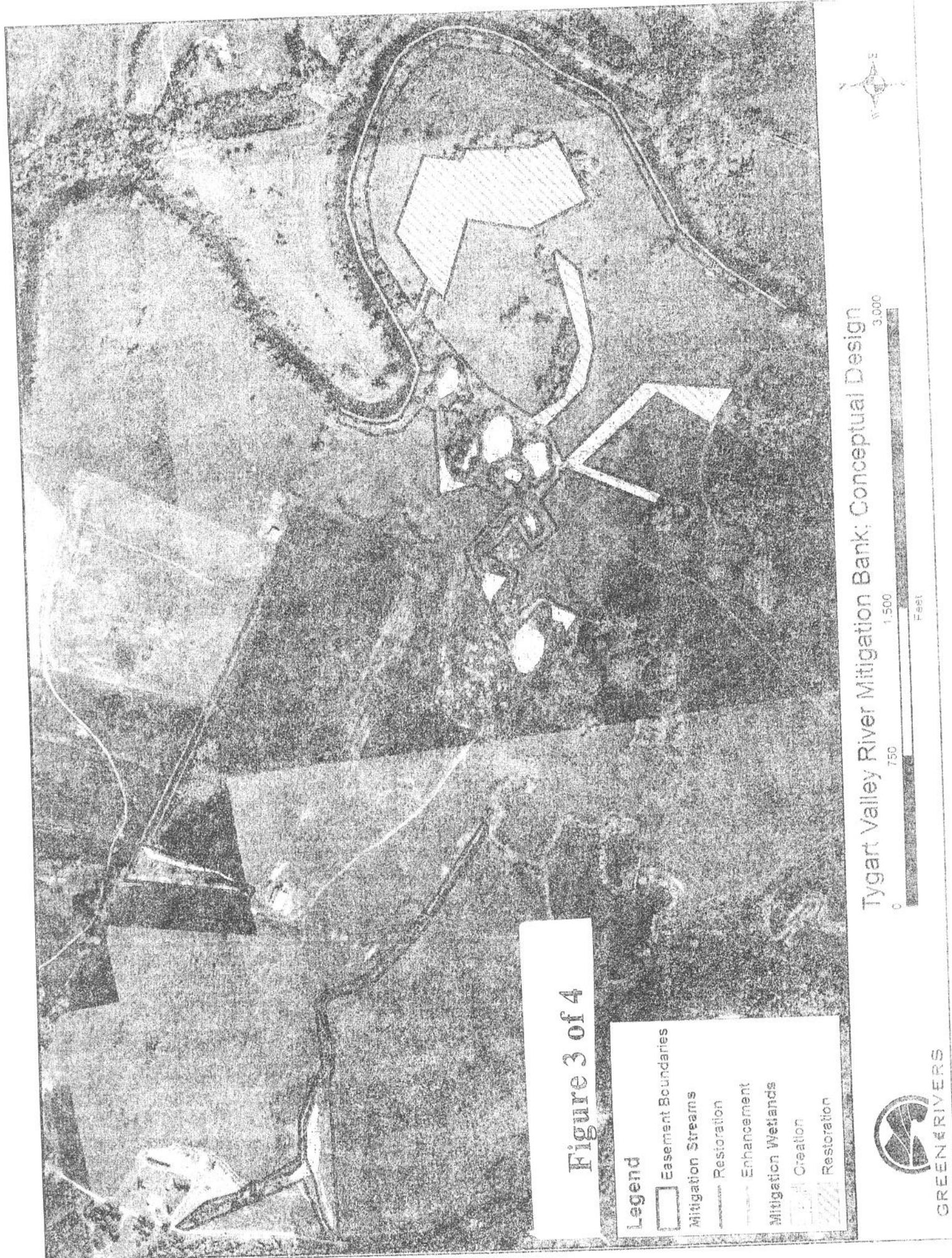
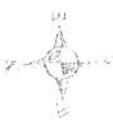
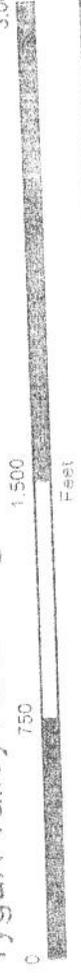


Figure 3 of 4

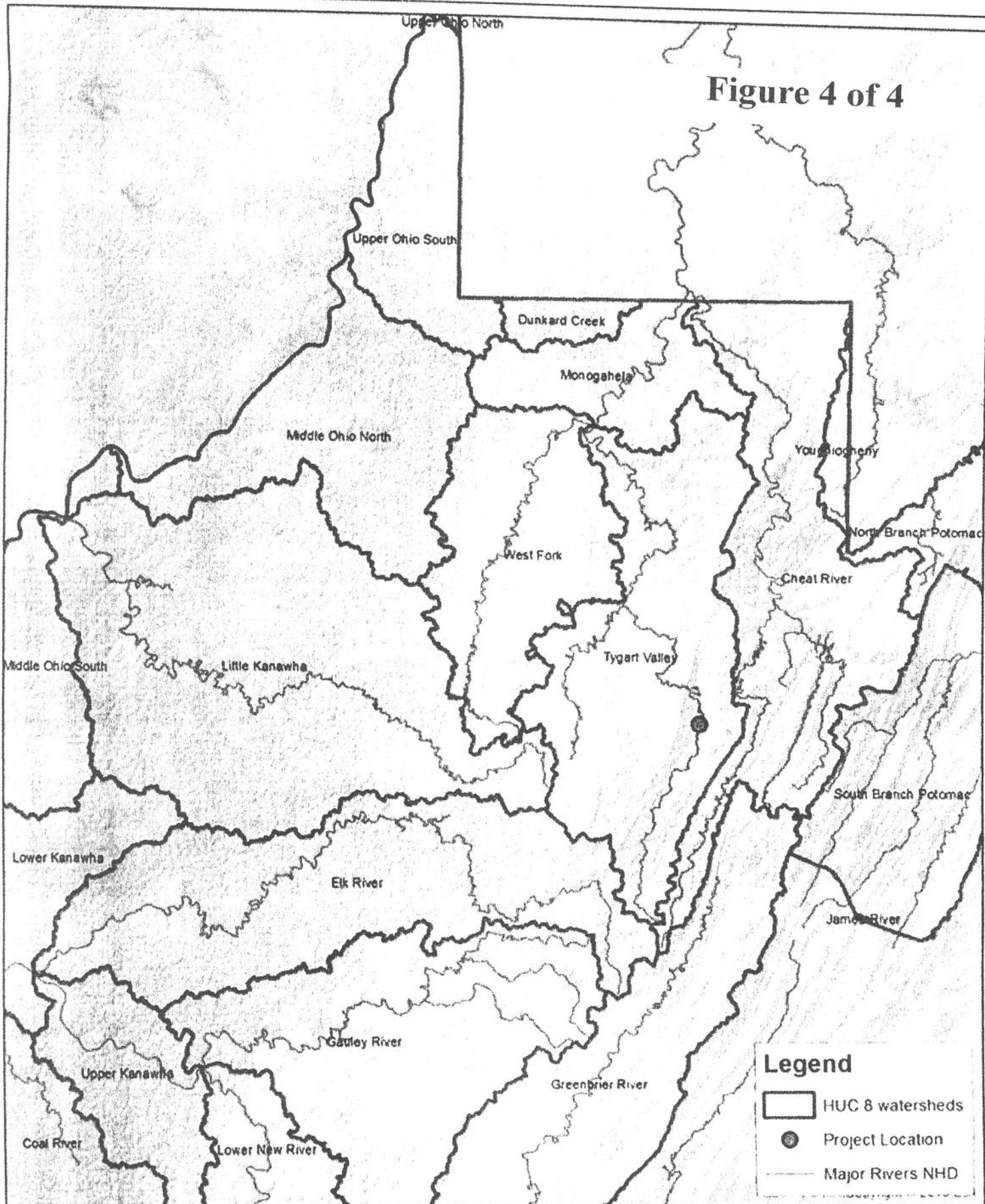
- Legend**
-  Easement Boundaries
 -  Mitigation Streams
 -  Restoration
 -  Enhancement
 -  Mitigation Wetlands
 -  Creation
 -  Restoration

Tygart Valley River Mitigation Bank; Conceptual Design



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Figure 7. Conceptual site design map.



Tygart Valley Mitigation Bank Site #1 HUC 8 Location Map



Figure 2. (4A) General project location map showing position within HUC's.