A.2

Appendix 2: Regulatory and Permitting-Considerations and Settlement Agreements

Regulatory and Permitting Considerations

Under the Plan, the City is proposing redevelopment of the marina to separate and expand the commercial and recreational boating activities. These proposed facilities would extend piers beyond the jurisdictional line between the City of Alexandria and the District of Columbia. The jurisdictional line is the pierhead line. Additionally, the proposed facilities would pierce the federal navigational channel. See the graphic at the end of this section, prepared by Moffatt and Nichol Engineers, for more information about the pierhead line and the navigational channel. In addition to changes to the marina area, the Plan is also proposing other shoreline modifications/improvements.

Proposed waterfront improvements would likely trigger both state and federal environmental review, thus the City would need to follow both the State Environmental Protection Act (SEPA) and the National Environmental Protection Act (NEPA) processes.

Additionally, the proposed waterfront improvements would require District of Columbia approval if piers are extended into District waters.

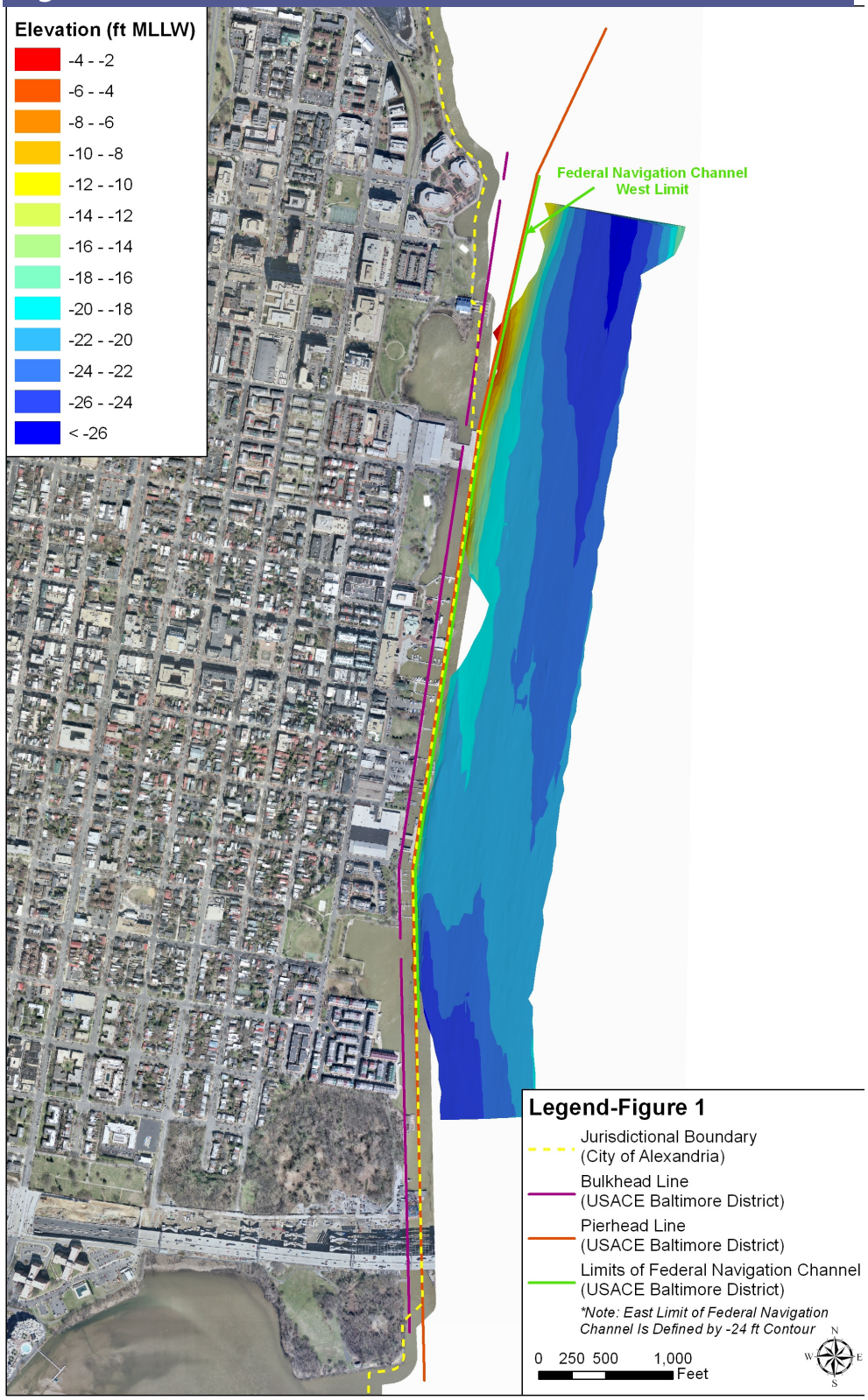
Moreover, although the United States Army Corps of Engineers (USACE) is responsible for the federal navigational channel, potential waterfront improvements would be subject to review not only by USACE but also by a number of federal and state agencies such as the US National Park Service (NPS), the US Coast Guard, and a variety of agencies within the Commonwealth of Virginia. For most activities that would disturb either tidal or non-tidal wetlands or shallow water habitat, a Joint Permit Application would be utilized. Activities that are subject to joint applications include:

- Bulkheads
- Stone Revetments
- Piers
- Boatlifts
- Boathouses
- Boat Ramps
- Moorings
- Marinas
- Aquaculture Facilities
- Marsh Toe Stabilizations
- Dredging
- Breakwaters
- Beach Nourishment
- Groins
- Jetties
- Road Crossings over Tidal Waterways
- Filling Waters of the US or Wetlands
- Stream Restoration Projects

Additionally, the NPS played a key role in the settlement agreements which guide the use of many City-owned and private properties along the waterfront. Elements of the Plan, such as expansion of the marina, change of use within street ends along the waterfront, or change in use of parts of Waterfront Park would require adherence or, in some cases, amendments to the settlement agreements. Such changes or amendments would require the approval of the NPS. See the next section for more information on settlement agreements.

The City has held meetings with the District of Columbia and federal and State lead agencies to inform them about the Plan and the proposal to expand the marina facilities and to improve and/or modify the shoreline treatment in areas of the waterfront. Through these meetings, which have been positive in outcome, and through guidance from the Plan consultant team, the City is readying itself to pursue the required regulatory and permitting processes once the Plan is adopted.

Figure A3: Jurisdictional Boundaries



Settlement Agreements

As background, in 1632, King Charles granted a charter to Lord Baltimore and that charter included the bed of the Potomac River. In 1791, Maryland ceded a portion of its territory including part of the Potomac riverbed to help form the nation's seat of government. Although Virginia also ceded territory on its side of the river, including Alexandria, the 1791 high-water mark became the District's border and marked the edge of the federally owned riverbed when the US retroceded Alexandria back to VA in 1846. In 1973, the federal government commenced legal action against 34 Alexandria riparian owners pursuant to two statutes that authorize the US Attorney to bring quiet title actions against parcels of dry or submerged land in the District of Columbia: 1912 – Public Law No. 62-138 and Public Law 79-208.

The federal government claimed ownership of all filled and submerged lands on the District of Columbia side of the 1791 high-water mark and argued that no riparian owners had any right to fill the land at issue.

In 1979, the City of Alexandria and the U.S. National Park Service (NPS) agreed to a process for joint planning and public participation. The resulting 1981 Alexandria Waterfront Draft Joint Land Use Plan helped to guide settlement agreements with a majority of the 34 owners in the 1980's. Through the settlement agreements the property owners retained ownership, with restrictions on land uses, including the requirement of public access.

Three defendents have continued to defend the lawsuit, with the latest decision in favor of those defendents issued on January 11, 2011 by the United States Court of Appeals for the District of Court Circuit (United States of America v. Old Dominion Boat Club).

The settlement agreements have facilitated substantial public parkland and the public walkway which this Plan intends to enhance. More information regarding the settlement agreements is included on the next page with detail on each agreement found in the NPS document titled Alexandria Waterfront: Land Use Agreements, June 1992.

NPS and the City have held frequent meetings to discuss waterfront and other City-NPS issues. NPS also participated with the City in the multi-year negotiations with ODBC (where some of the ideas in this waterfront Plan originated).

Table A2: Settlement Properties

Properties	Settlement Date
1. Marina Towers	1981
2. Pepco Generating Station	1981
3. Canal Park	1983
4. Andrews Park	1985
5. Rivergate	1982
6. Oronoco Bay Park	1981, 1985
7. Robinson Terminal North	1981, 1983
8. Founders Park	1981
9. 211 Harbor Center	1981
10. Old Dominion Boat Club	None*
11. Waterfront Park	1981
12. Potomac Arms	None*
13. Strand Property - Mann	None*
14. Strand Property - Sweeney	None*
15. Strand Property - Crenshaw	None*
16. Robinson Terminal South	1983, 1987
17. Harborside	1982
18. Old Town Yacht Basin	None*
19. Pomander Walk	1981
20. Ford's Landing	1986

**United State of America vs Old Dominion Boat Club, US Court of Appeals for the District of Columbia Circuit, decided January 11, 2011.*

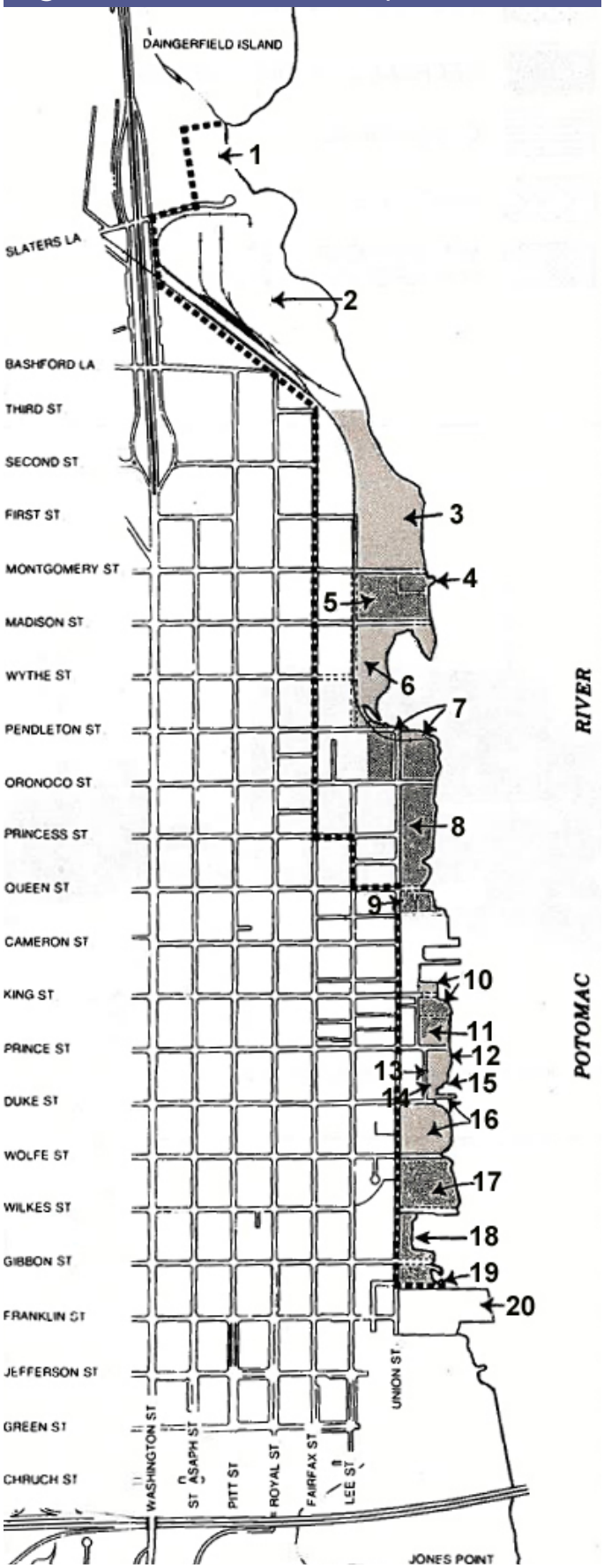



Figure A4: Settlement Properties