



US Army Corps  
of Engineers®  
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division  
1455 Market Street, 16<sup>th</sup> Floor  
San Francisco, CA 94103-1398

# PUBLIC NOTICE

PROJECT: Collier Creek Mitigation and Conservation Bank

PUBLIC NOTICE NUMBER: 2012-00093S

PUBLIC NOTICE DATE: 04-25-2013

COMMENTS DUE DATE: 06-6-2013

PERMIT MANAGER: Nina Cavett-Cox

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1. **INTRODUCTION:** Water Hole Land Company (POC: Mark Dawson 925-202-9277), 3170 Crow Canyon Place, Suite 260 San Ramon, California 94583, through its agent, Olberding Environmental (POC: Jeff Olberding 916- 985-1188) has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to establish the Collier Creek Mitigation and Conservation Bank (Bank) located along the Alameda/Contra Costa County line north of interstate 580 in Alameda and Contra Costa Counties, California. The Bank would provide mitigation for both permanent and temporary impacts to waters of the U.S. and provide mitigation and conservation to offset impacts to species listed under the Endangered Species Act. This Department of the Army permit application is being processed pursuant to the provisions of Section 4040 of the Clean water Act of 1972, as amended (33 U.S.C. Section 1344 *et seq.*)

## 2. PROPOSED PROJECT:

**Project Site Location:** The Bank is located along the Alameda/Contra Costa County line north of interstate 580, west of the intersection of Highland Road and Manning Road (figure 1) in Alameda and Contra Costa Counties, California (APNS 006-200-006-2, 903-0002-004, and 905-0005-007). The portion of the Bank in unincorporated Contra Costa County consists of approximately 216.25 acres (APN 006-200-006-2), and the portion of the Bank in unincorporated Alameda County consists of approximately 87.51 acres (located on sections of APNS 903-0002-004 and 905-0005-007).

**Project Site Description:** The Bank property predominantly consists of 303.76 acres of actively grazed grassland habitat occurring on level flats, moderately steep hillslopes, and ridgelines. The property is surrounded by

undeveloped agricultural land on all sides and is adjacent to the Eagle Ridge Preserve to the south. Surrounding land uses include grazing and open land and livestock production. The Bank contains grass covered rolling hills which serve as a watershed for two well defined creeks (west branch of Cayetano Creek and Collier Canyon Creek) flowing along the east and west boundaries of the Bank property. There are multiple scour pools and seep features within both Cayetano and Collier Canyon creek channels which include patches of willow riparian habitat, in-stream wetland habitat, and abutting seasonal wetlands. The creeks and seasonal wetlands provide habitat for numerous special status animal and plant species.

**Project Description:** As shown in the attached Conceptual Habitat Map (figure 2), the applicant proposes to preserve, create, and enhance wetlands, creek features, and riparian habitats along Cayetano and Collier Canyon Creeks. Specific objectives for Bank establishment include the following: improve retention and release of overland flow through natural flow channels and pools (figure 3), preserve and or increase the local populations of special status species, design seasonal wetlands to mimic the functions and values of wetlands found at the agency approved reference site (figure 4), design all wetlands to have natural long term hydrologic sustainability, establish seasonal wetlands and seasonal ponds on previously degraded land, maintain food webs by increasing the availability of suitable foraging and breeding habitat for onsite rodents and burrowing owls, establish and rehabilitate wetlands in the landscape in a form that will support breeding and non-breeding special status species, establish riparian woodland habitat, maintain regional and landscape biodiversity, and assist in meeting defined recovery goals for special status species that are known to occur in the area.

In order to implement the Bank preservation component of the plan measures to identify and protect current site resources would be carried out. Following preservation, the installation of protective fencing, the collection of baseline data, and the creation and rehabilitation of target habitat would occur. Seasonal wetland, swale, and pond establishment is proposed for the valley floor along both creeks channels. These features would be created by excavating and grading in upland areas. To reduce infiltration, compaction of the existing clay layer would occur. Riparian habitat enhancement and establishment would take place along the creek channels. A detailed Bank development plan will be submitted with the Bank Enabling Instrument (BEI).

Bank development would result in the preservation of 269.81 acres of annual grasslands an uplands used by special status species, 1.17 acres of ephemeral drainage, and the establishment of 27.05 acres of riparian woodland, seasonal pond, and seasonal wetland.

**Basic Project Purpose:** The basic project purpose comprises the fundamental, essential, or irreducible purpose of the project, and is used by USACE to determine whether the project is water dependent. The basic project purpose is to establish a Mitigation and Conservation Bank.

**Overall Project Purpose:** The overall project purpose serves as the basis for the Section 404(b)(1) alternatives analysis, and is determined by further defining the basic project purpose in a manner that more specifically describes the applicant's goals for the project, while allowing a reasonable range of alternatives to be analyzed. The overall project purpose is to create a mitigation bank for permanent and temporary impacts to waters of the U.S and to provide mitigation and conservation to offset impacts to both federal and State listed species and associated habitat for several counties in the East Bay.

**Project Impacts:** Project impacts from the proposed Bank construction may include temporary and permanent discharge of fill into Cayetano Creek, Collier Creek, and abutting and adjacent wetlands.

**Proposed Mitigation:** The project is a proposed conservation and mitigation bank and will therefore most likely not require compensatory mitigation to offset unavoidable impacts to jurisdictional waters.

### 3. STATE AND LOCAL APPROVALS:

**Water Quality Certification:** State water quality certification or a waiver is a prerequisite for the issuance of a Department of the Army Permit to conduct any activity which may result in a fill or pollutant discharge into waters of the United States, pursuant to Section 401 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1341 *et seq.*). The applicant is hereby notified that, unless USACE is provided documentation indicating a complete application for water quality certification has been submitted to the California Regional Water Quality Control Board (RWQCB) within 30 days of this Public Notice date, the District Engineer may consider the Department of the Army permit application to be withdrawn. No Department of the Army Permit will be issued until the applicant obtains the required certification or a waiver of certification. A waiver can be explicit, or it may be presumed, if the RWQCB fails or refuses to act on a complete application for water quality certification within 60 days of receipt, unless the District Engineer determines a shorter or longer period is a reasonable time for the RWQCB to act.

Water quality issues should be directed to the Executive Officer, California Regional Water Quality Control Board, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, California 94612, by the close of the comment period.

**Coastal Zone Management:** The project does not occur in the coastal zone, and a *preliminary* review by USACE indicates the project would not likely affect coastal zone resources. This presumption of effect, however, remains subject to a final determination by the San Francisco Bay Conservation and Development Commission.

Coastal zone management issues should be directed to the Executive Director, San Francisco Bay Conservation and Development Commission, 50 California Street, Suite 2600, San Francisco, California 94111, by the close of the comment period.

**Other Local Approvals:** The applicant will be applying for the following additional governmental authorizations for the project: California Department of Fish and Wildlife Section 1600 Lake and Streambed Alteration Agreement, Contra Costa County Grading permit, and environmental review as required by the California Environmental Quality Act (CEQA).

### 4. COMPLIANCE WITH VARIOUS FEDERAL

## LAWS:

**National Environmental Policy Act (NEPA):** Upon review of the Department of the Army permit application and other supporting documentation, USACE has made a *preliminary* determination that the project neither qualifies for a Categorical Exclusion nor requires the preparation of an Environmental Impact Statement for the purposes of NEPA. At the conclusion of the public comment period, USACE will assess the environmental impacts of the project in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4347), the Council on Environmental Quality's Regulations at 40 C.F.R. Parts 1500-1508, and USACE Regulations at 33 C.F.R. Part 325. The final NEPA analysis will normally address the direct, indirect, and cumulative impacts that result from regulated activities within the jurisdiction of USACE and other non-regulated activities USACE determines to be within its purview of Federal control and responsibility to justify an expanded scope of analysis for NEPA purposes. The final NEPA analysis will be incorporated in the decision documentation that provides the rationale for issuing or denying a Department of the Army Permit for the project. The final NEPA analysis and supporting documentation will be on file with the San Francisco District, Regulatory Division.

**Endangered Species Act (ESA):** Section 7(a)(2) of the ESA of 1973, as amended (16 U.S.C. § 1531 *et seq.*), requires Federal agencies to consult with either the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) to insure actions authorized, funded, or undertaken by the agency are not likely to jeopardize the continued existence of any Federally-listed species or result in the adverse modification of designated critical habitat. As the Federal lead agency for this project, USACE has conducted a review of the California Natural Diversity Data Base, digital maps prepared by USFWS and NMFS depicting critical habitat, and other information provided by the applicant, to determine the presence or absence of such species and critical habitat in the project area. Based on this review, USACE has made a preliminary determination that the following Federally-listed species and designated critical habitat are present at the project location or in its vicinity, and may be affected by project implementation. The Bank contains federally endangered California tiger salamander (CTS) (*Ambystoma californiense*), federally threatened California red-legged frog (CRLF)(*Rana aurora draytonii*), and federally endangered San Joaquin Kit Fox (SJKF) (*Vulpes macrotis*

*mutica*). In addition the entire property falls under designated critical habitat for CRLF. Breeding, foraging, and dispersal habitat for both CTS and CRLF occur on the property. SJKF have not been sighted on Bank property, however, observations of this species has been recorded four miles to the north. Given the range in which SJKF are known to travel it is possible that they may utilize habitat within Bank boundaries. Bank establishment goals directly correlate to the preservation, establishment, and rehabilitation of habitat for the above species and would therefore have positive impacts on these species and their habitat. Salmonid species are not known to occur in the west Branch of Cayetano Creek or Collier Canyon Creek, therefore the Corps has made a preliminary determination that ESA consultation with NMFS is not required.

To address project related impacts to these species and designated critical habitat, USACE will initiate consultation with USFWS, pursuant to Section 7(a) of the Act. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

**Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA):** Section 305(b)(2) of the MSFCMA of 1966, as amended (16 U.S.C. § 1801 *et seq.*), requires Federal agencies to consult with the National Marine Fisheries Service (NMFS) on all proposed actions authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat (EFH). EFH is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EFH is designated only for those species managed under a Federal Fisheries Management Plan (FMP), such as the *Pacific Groundfish FMP*, the *Coastal Pelagics FMP*, and the *Pacific Coast Salmon FMP*. As the Federal lead agency for this project, USACE has conducted a review of digital maps prepared by NMFS depicting EFH to determine the presence or absence of EFH in the project area. Based on this review, USACE has made a *preliminary* determination that EFH is not present at the project location or in its vicinity, and that consultation will not be required. USACE will render a final determination on the need for consultation at the close of the comment period, taking into account any comments provided by NMFS.

**Marine Protection, Research, and Sanctuaries Act (MPRSA):** Section 302 of the MPRS of 1972, as amended (16 U.S.C. § 1432 *et seq.*), authorizes the Secretary of Commerce, in part, to designate areas of ocean waters, such as the Cordell Bank, Gulf of the

Farallones, and Monterey Bay, as National Marine Sanctuaries for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or aesthetic values. After such designation, activities in sanctuary waters authorized under other authorities are valid only if the Secretary of Commerce certifies that the activities are consistent with Title III of the Act. No Department of the Army Permit will be issued until the applicant obtains the required certification or permit. The project does not occur in sanctuary waters, and a *preliminary* review by USACE indicates the project would not likely affect sanctuary resources. This presumption of effect, however, remains subject to a final determination by the Secretary of Commerce, or his designee.

**National Historic Preservation Act (NHPA):** Section 106 of the NHPA of 1966, as amended (16 U.S.C. § 470 *et seq.*), requires Federal agencies to consult with the appropriate State Historic Preservation Officer to take into account the effects of their undertakings on historic properties listed in or eligible for listing in the *National Register of Historic Places*. Section 106 of the Act further requires Federal agencies to consult with the appropriate Tribal Historic Preservation Officer or any Indian tribe to take into account the effects of their undertakings on historic properties, including traditional cultural properties, trust resources, and sacred sites, to which Indian tribes attach historic, religious, and cultural significance. As the Federal lead agency for this undertaking, USACE has conducted a review of latest published version of the *National Register of Historic Places*, survey information on file with various city and county municipalities, and other information provided by the applicant, to determine the presence or absence of historic and archaeological resources within the permit area. Based on this review, USACE has made a *preliminary* determination that historic or archaeological resources are not likely to be present in the permit area, and that the project either has no potential to cause effects to these resources or has no effect to these resources. USACE will render a final determination on the need for consultation at the close of the comment period, taking into account any comments provided by the State Historic Preservation Officer, the Tribal Historic Preservation Officer, the Advisory Council on Historic Preservation, and Native American Nations or other tribal governments. To address project related impacts to historic or archaeological resources, USACE will initiate consultation with the State Historic Preservation Officer or the Tribal Historic Preservation Officer, pursuant to Section 106 of the Act. Any required consultation must

be concluded prior to the issuance of a Department of the Army Permit for the project. If unrecorded archaeological resources are discovered during project implementation, those operations affecting such resources will be temporarily suspended until USACE concludes Section 106 consultation with the State Historic Preservation Officer or the Tribal Historic Preservation Officer to take into account any project related impacts to those resources.

**5. COMPLIANCE WITH THE SECTION 404(b)(1) GUIDELINES:** Projects resulting in discharges of dredged or fill material into waters of the United States must comply with the Guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b) of the Clean Water Act (33 U.S.C. § 1344(b)). An evaluation pursuant to the Guidelines indicates the project is dependent on location in or proximity to waters of the United States to achieve the basic project purpose. This conclusion raises the (rebuttable) presumption of the availability of a practicable alternative to the project that would result in less adverse impact to the aquatic ecosystem, while not causing other major adverse environmental consequences.

**6. PUBLIC INTEREST EVALUTION:** The decision on whether to issue a Department of the Army Permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the project and its intended use on the public interest. Evaluation of the probable impacts requires a careful weighing of the public interest factors relevant in each particular case. The benefits that may accrue from the project must be balanced against any reasonably foreseeable detriments of project implementation. The decision on permit issuance will, therefore, reflect the national concern for both protection and utilization of important resources. Public interest factors which may be relevant to the decision process include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore 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.

**7. CONSIDERATION OF COMMENTS:** USACE is soliciting comments from the public; Federal, State and local agencies and officials; Native American Nations or other tribal governments; and other interested parties in

order to consider and evaluate the impacts of the project. All comments received by USACE will be considered in the decision on whether to issue, modify, condition, or deny a Department of the Army Permit for the project. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, and other environmental or public interest factors addressed in a final environmental assessment or environmental impact statement. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the project.

**8. SUBMITTING COMMENTS:** During the specified comment period, interested parties may submit written comments to Nina Cavett-Cox, San Francisco District, Regulatory Division, 1455 Market Street, 16<sup>th</sup> Floor, San Francisco, California 94103-13978; comment letters should cite the project name, applicant name, and public notice number to facilitate review by the Regulatory Permit Manager. Comments may include a request for a public hearing on the project prior to a determination on the Department of the Army permit application; such requests shall state, with particularity, the reasons for holding a public hearing. All substantive comments will be forwarded to the applicant for resolution or rebuttal. Additional project information or details on any subsequent project modifications of a minor nature may be obtained from the applicant and/or agent, or by contacting the Regulatory Permit Manager by telephone or e-mail cited in the public notice letterhead. An electronic version of this public notice may be viewed under the *Current Public Notices* tab on the USACE website: <http://www.spn.usace.army.mil/Missions/Regulatory/>.