



US Army Corps  
of Engineers®  
San Francisco District

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

SAN FRANCISCO DISTRICT

# PUBLIC NOTICE

Project: Fulton Road Mitigation Bank

NUMBER: 2006-30096N                      DATE: May 7, 2009                      RESPONSE REQUIRED BY: June 6, 2009  
 PERMIT MANAGER: David Wickens                      PHONE: 415-503-6787                      Email: david.m.wickens@usace.army.mil

1. **INTRODUCTION:** Mr. Pascal Sisich, Burbank Housing Development Corporation, 790 Sonoma Avenue, Santa Rosa, California 95404 (707) 526-1020, has applied to the United States Army Corps of Engineers (Corps), through his agent LSA Associates, Inc. (Point of Contact: Mr. George Molnar, 157 Park Place, Point Richmond, California 94801-3922, (510) 236-6810), for Department of the Army authorization to construct a wetland mitigation bank called, “The Fulton Road Mitigation Bank.” This proposed compensatory mitigation bank would be located on a 26.25-acre site at 2365 Fulton Road, northwest of the City of Santa Rosa, in unincorporated Sonoma County, California (Figures 1-2). The project purpose is to create a mitigation bank where wetlands have been restored, enhanced, and preserved for the purpose of providing compensatory mitigation for impacts authorized by Department of the Army permits. The mitigation banking instrument is being processed pursuant to the provisions of Part 332 of Section 404 of the Clean Water Act (33 U.S.C. Section 1344).

2. **PROPOSED PROJECT:**

**Project Site:** The 26.25-acre site is located in the north-central portion of the Santa Rosa Plain (Figures 1-2). The site is also located within the Alton Conservation Unit under the Santa Rosa Plain Conservation Strategy, adopted by the U.S. Fish and Wildlife Service on December 7, 2005.

The site was historically used for grazing and farming but is currently fallow. The site is bordered on the north by 5- and 10-acre ranchettes, on the

west by grasslands and vernal pools, on the south by the Cambodian Cultural Center, and on the east by Fulton Road and a residential development. The site and surrounding areas lie outside the urban growth boundary and municipal limits of Santa Rosa and is designated for Agriculture-Rural Residential uses under the Sonoma County General Plan.

There are three primary habitat/vegetation communities on the proposed site: non-native grassland (approximately 20.84 acres), vernal pools/seasonal wetlands and swales (approximately 3.61 acres), and native and non-native trees (approximately 0.1 acre). Approximately 1.80 acres of the site is occupied by a former home site with associated out-buildings, ornamental trees, driveways and compacted fill. This home site was demolished in 2006 and all associated structures removed.

**Project Description:** In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument. Burbank Housing Development Corporation (Sponsor) proposes the following mitigation actions under their proposed mitigation banking instrument:

- Construct 5.35 acres of new vernal pool wetland habitat, including 0.29 acre of suitable breeding habitat for California tiger salamander (CTS)

- (*Ambystoma californiense*), a federally-listed animal species;
- Enhance 2.22 acres of existing vernal pool and seasonal wetland habitat;
- Preserve and manage 1.41 acres of existing vernal pool habitat supporting or potentially supporting Burke's goldfields (*Lasthenia burkei*) and Sonoma sunshine (*Blennosperma bakeri*), federal and state listed plant species;
- Preserve and enhance 16.77 acres of suitable upland habitat for CTS;
- Preserve an existing valley oak and black oak tree;
- Plant 0.5 acre of valley oak savannah habitat;
- Establish and fully fund a long-term management plan for the site via a non-depleting endowment;
- Establish a permanent Conservation Easement for the site, in favor of the California Department of Fish and Game (CDFG); and
- Following attainment of performance criteria, transfer ownership of the parcel, with the non-depleting endowment, to CDFG.

The full mitigation banking instrument prospectus is available to the public for review upon request.

**Purpose and Need:** The fundamental objective of compensatory mitigation is to offset environmental losses resulting from unavoidable impacts to waters of the United States authorized by Department of the Army (DA) permits. The district engineer must determine the compensatory mitigation to be required in a DA permit, based on what is practicable and capable of compensating for the aquatic resource functions that will be lost as a result of the permitted activity. In many cases, the environmentally preferable compensatory mitigation may be provided through mitigation banks because they usually involve consolidating

compensatory mitigation projects where ecologically appropriate, consolidating resources, providing financial planning and scientific expertise (which often is not practical for permittee-responsible compensatory mitigation projects), reducing temporal losses of functions, and reducing uncertainty over project success.

The need for mitigation banks has been recognized both nationally and regionally to offset unavoidable impacts to waters of the United States authorized through the issuance of DA permits. The proposed service area for the proposed Fulton Road Mitigation Bank is the Santa Rosa Plain (Figure 3).

**Impacts to Corps of Engineers jurisdiction:** To conduct wetland enhancement work at the proposed bank site, the sponsor proposes activities within Corps regulated wetlands to enhance and expand eighteen native vernal pools and one wetland swale. The proposed work would be accomplished by light mechanized means using equipment such as a small bulldozer. Approximately 2 acres of jurisdictional wetlands would be temporarily impacted (Figure 4). The proposed work can be verified by the Corps with Nationwide Permit 27, *Aquatic Habitat Restoration, Establishment, and Enhancement Activities*, pursuant to section 404 of the Clean Water Act (33 U.S.C. 1344), upon completion of consultation procedures pursuant to Section 7 of the Endangered Species Act, as amended.

### 3. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

**Endangered Species Act of 1973 (ESA):** Section 7 of the Endangered Species Act requires formal consultation with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) if a Corps permitted project may adversely affect any Federally listed threatened or endangered species or its designated critical habitat.

On March 25, 2008, the Corps initiated consultation with the U.S. Fish and Wildlife Service to append the sponsor's proposed wetland restoration

work to the *Programmatic Biological Opinion (Programmatic) for the U.S. Army Corps of Engineers (Corps) Permitted Projects that May Affect California Tiger Salamander and Three Endangered Plant Species on the Santa Rosa Plain, California (Corps File Number 223420N)*, dated November 9, 2007. The Corps' initial determination is that the project meets the Suitability Criteria listed in the Programmatic. Our final determination relative to project impacts is subject to review by and coordination with the FWS.

**Clean Water Act of 1972 (CWA):**

**a. Water Quality:** Under Section 401 of the Clean Water Act (33 U.S.C. Section 1341), an applicant for a Corps permit must first obtain a State water quality certification before a Corps permit may be issued. The applicant has provided the Corps with evidence that he has submitted a valid request for State water quality certification to the San Francisco Bay Regional Water Quality Control Board. No Corps permit will be granted until the applicant obtains the required water quality certification. The Corps may assume a waiver of water quality certification if the State fails or refuses to act on a valid request for certification within 60 days after the receipt of a valid request, unless the District Engineer determines a shorter or longer period is reasonable for the State to act.

Those parties concerned with any water quality issue that may be associated with this project should write 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 of this Public Notice.

**National Historic Preservation Act of 1966 (NHPA):** Based on a review of survey data on file with various City, State and Federal agencies, no historic or archeological resources are known to occur in the project vicinity. If unrecorded resources are discovered during construction of the project, operations will be suspended until the Corps completes consultation with the State Historic

Preservation Office (SHPO) in accordance with Section 106 of the National Historic Preservation Act.

**4. PUBLIC INTEREST EVALUATION:** A component of the mitigation bank review process involves public review and comment in accordance with the public notice procedures at 33 CFR Part 325, Section 325.3 of Section 404 of the Clean Water Act (33 U.S.C. Section 1344). All factors that may be relevant to the proposal will be considered. Comments received shall be distributed to the bank sponsor and members of the Interagency Review Team (IRT). The IRT is an interagency group of federal, tribal, state, and/or local regulatory and resource agency representatives that reviews documentation for, and advises the district engineer on, the establishment and management of a mitigation bank. The District Engineer and IRT members may also provide comments at this time, and copies of any such comments will also be distributed to all IRT members.

**5. CONSIDERATION OF COMMENTS:** The Corps of Engineers 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 of the proposed mitigation bank to provide compensatory mitigation for activities authorized by DA permits. Any comments received will be considered by the Corps to determine this potential. 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 to determine the need for a public hearing and to determine the overall public interest in the proposed activity.

**6. SUBMISSION OF COMMENTS:** Interested parties may submit, in writing, any comments concerning this activity. Comments should include the applicant's name and the number and date of this Public Notice, and should be forwarded so as to reach this office within the comment period specified on Page 1. Comments should be sent to the U.S. Army Corps of Engineers, San Francisco District, Regulatory Division, 1455 Market Street, San

Francisco, California 94103-1398. It is the Corps' policy to forward any such comments that include objections to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this Public Notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Additional details may be obtained by contacting the applicant whose name and address are indicated in the first paragraph of this Public Notice or by contacting David Wickens of our office at telephone 415-503-6787 or E-mail: david.m.wickens@usace.army.mil. Details on any changes of a minor nature that are made in the final permit action will be provided upon request.