US Army Corps of Engineers

Regulatory Division
1455 Market Street
San Francisco, CA 94103-1398

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

Project: Pinole Valley Mitigation Bank Prospectus

NUMBER: 2008-00365S DATE: August 24, 2010 RESPONSE REQUIRED BY: September 24, 2010

PROJECT MANAGER: Paula Gill PHONE: 415-503-6776 Email: Paula.C.Gill@usace.army.mil

1. **INTRODUCTION:** The East Bay Municipal Utility District (EBMUD), through its agent Westervelt Ecological Services (Point of Contact: Lucy Triffleman, 600 North Market Boulevard, Suite 3, Sacramento, California 95834 (916) 646-3644 ext. 212) has applied for a Department of the Army permit to construct a wetland mitigation bank. This proposed compensatory mitigation bank would be located on a 2,639.8-acre site located within the Pinole Valley in Contra Costa County, California (Figure 1). This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. Section 1344).

2. **PROPOSED PROJECT:**

Project Site: The proposed Pinole Valley Mitigation Bank (PVMB) encompasses the majority of the Pinole Valley in the central portion of the Pinole Creek Watershed. The western boundary of the property abuts the city limits of the City of Pinole. The site is located in the Briones Valley and Richmond USGS 7.5 minute quadrangles (Figure 2). The site consists of valleys and hills ranging in elevation from 400- to 1,050-feet above Mean Sea Level. The southern edge of the property is defined by Oursan and El Sobrante Ridges and the northern boundary is marked by portions of the Pinole and Franklin ridgelines. The central portion of the property is dominated by Pinole Creek and the associated floodplain. Deep ravines exist between the site's many hillsides, allowing for the development of numerous ephemeral and perennial drainages and riparian corridors throughout the property (Figure 3).

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 bank enabling instrument (BEI) which must be approved by an Inter-Agency Review Team (IRT).

The mission of the PVMB is to implement a watershed restoration approach to ensure the long-term sustainability and connectivity of sensitive wildlife, seasonal wetlands, and native oak woodland habitats within the East Bay region. Sensitive species include the state and federally threatened Alameda whipsnake (*Masticophis lateralis euryxanthus*) (AWS), the federally threatened California red-legged frog (*Rana draytonii*) (CRLF), and the federally threatened steelhead/rainbow trout (*Oncorhynchus mykiss*) (steelhead). In order to accomplish this mission, specific objectives will be utilized to re-establish wetlands, protect wildlife resources, and enhance native oak woodlands within the site.

Specific objectives for 404/401 wetlands would include:

- Design wetlands to mimic the design and function of analogous features throughout the project site.
- Re-establish freshwater seasonal wetlands on floodplains and/or terraced landscapes in

areas impacted by historic agricultural activities.

- Re-establish natural riparian characteristics in drainage segments channelized or diverted during historic agricultural activities.
- Design all wetlands to fill through naturally occurring flood events and/or overland flows from the surrounding watershed, and to hold water within these features for the appropriate hydroperiod to encourage the development of self-sustaining wetland features.
- Encourage the establishment of native and non-invasive naturalized vegetation via natural recruitment and/or active planting activities around re-established features.
- Re-establish 404-wetlands to be situated in the landscape in a form that will support breeding and non-breeding CRLF habitat and other native wildlife species.

Specific objectives for species preservation areas would include:

- Preserve existing on-site breeding, non-breeding aquatic, aestivation, and dispersal habitats for the CRLF.
- Protect and expand, through natural colonization and appropriate land management, the current vegetation community matrix, which provides AWS habitat within the bank boundary in support of local AWS populations.
- Maintain existing perennial shaded watercourses that support resident and anadromous steelhead populations by limiting human and agricultural activities within local riparian corridors.
- Assist in meeting defined recovery goals for AWS, CRLF, and steelhead populations as outlined by federal wildlife agencies.

The PVMB proposes to offer credits for wetlands, special status species, and oak woodland as outlined in the below table.

RESOURCE	CREDITS
Sole Wetland Credits	
404/401 Seasonal Wetlands	67.8
1600	85
404/401 Scrub-Shrub (Riparian)	18
Sole Species Credits	
AWS	21.4
CRLF	159.8
Steelhead	51.3 (23,516 linear feet)
Oak	73.1
Combined Credits	
AWS/CRLF	2163.4
CREDIT TOTAL	2639.8

Upon bank approval, a conservation easement would be recorded on the entire 2,639.8-acre PVMB area. This conservation easement would be held and managed by the Wildlife Heritage Foundation (WHF) or other approved non-profit 501 (c) (3) in accordance with the BEI. With final approval, a non-wasting endowment would be established to fund long-term management activities on the mitigation bank. The endowment would be held and managed by the WHF or other approved entity.

Impacts to Corps of Engineers Jurisdiction: There are currently no proposed impacts to Corps jurisdictional wetlands or other waters of the United States.

Purpose and Need: The project purpose is to create a mitigation bank where wetlands and other waters have been re-established and preserved for the purpose of providing compensatory mitigation for impacts authorized by Department of the Army (DA) 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).

The fundamental objective of compensatory mitigation is to offset environmental losses resulting from unavoidable impacts to waters of the United States. 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 would be lost as a result of the permitted activity. In many cases, the environmental preferable compensatory mitigation may be provided through mitigation banks because they usually involve consolidating compensatory mitigation projects where ecologically appropriate, consolidating resource, 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 bank service area (the geographic area within which impacts can be mitigated at a specific mitigation bank, as designated in the BEI) is included as figure 4.

3. **COMPLIANCE WITH VARIOUS FEDERAL LAWS:**

National Environmental Policy Act of 1969 (NEPA): The Corps will assess the environmental impacts of the proposed action in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Section 4371 et. seq.), the Council on Environmental Quality's Regulations (40 C.F.R. Parts 1500-1508), and the Corps' Regulations (33 C.F.R. Part 230 and Part 325, Appendix B). Unless otherwise stated, the Environmental Assessment will describe only the impacts (direct, indirect, and cumulative) resulting from activities within the Corps' jurisdiction. The documents used in the preparation of the Environmental Assessment will be on file with the U.S. Army Corps of Engineers, San Francisco District, Regulatory Division, 1455 Market Street, San Francisco, California 94103-1398.

Endangered Species Act of 1973 (ESA): Section 7 of the Endangered Species Act requires formal consultation with the U.S. Fish and Wildlife Service (USFWS) and 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. The proposed bank contains AWS, CRLF, and steelhead/rainbow trout.

The USFWS and NMFS are proposed signatories on the bank and would be responsible for evaluating species related compensatory mitigation credits. Service areas of the appropriate species are included as figures 5- 7.

Magnuson-Stevens Fisheries Conservation and Management Act: Essential Fish Habitat - The Magnuson-Stevens Fishery Conservation and Management Act requires all Federal agencies to consult with the NMFS on all actions, or proposed actions permitted by the agency that may adversely affect Essential Fish Habitat (EFH). There are no EFH concerns with this proposed project.

National Historic Preservation Act of 1966 (NHPA): Several buildings exist on-site that may be considered historical sites under NHPA guidlines. However, any known historic properties on the site would not be impacted by proposed work activities. To ensure no unknown properties are disturbed during wetland re-establishment, a cultural resources survey of areas where ground disturbing activities are scheduled to occur will be completed prior to full Bank implementation 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 IRT. The IRT is an interagency group of federal, tribal, state, and/or local regulatory and resource agency representative that reviews documentation for, and advises the District Engineer on, the establishment and management of a mitigation bank. The District Engineer and the 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 impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, condition or deny this proposal. To make this decision, comments are used to assess impacts on federally listed 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 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 the 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 Paula Gillof our office at telephone 415-503-6776 or E-mail: Paula.C.Gill@usace.army.mil. Details on any changes of a minor nature that are made in the final permit action will be provided upon request.