



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: North Bay Conservation and Mitigation Bank

PUBLIC NOTICE NUMBER: 2012-00288N

PUBLIC NOTICE DATE: 03-11-2013

COMMENTS DUE DATE: 04-11-2013

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1. **INTRODUCTION:** North Marin Land Company L.L.C. (NMLC) (POC: Kent Carter, (415) 971-7985), P.O. Box 5743, Petaluma, CA 94955 and Falling Springs LLC (POC: Aaron Revere, (804) 330-1186), 1110 Boulders Parkway Suite 100, Richmond, VA 23225, through their agent, WRA, Inc. (POC: Matt Richmond, 415-454-8868, 2169-G E. Francisco Blvd., San Rafael, CA 94901, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to establish the North Bay Conservation and Mitigation Bank in unincorporated Marin County, California. The Bank will focus on the restoration, establishment, enhancement, and preservation of wetland, stream and riparian habitats and federally listed wildlife and plant species as well as sensitive upland habitats. This Department of the Army permit application is being processed pursuant to the provisions of Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 *et seq.*)

## 2. PROPOSED PROJECT:

**Project Site Location:** The project site is located at 969 San Antonio Road, Petaluma, CA. approximately two miles west of Highway 101 off of San Antonio Road in Marin County, California. The Bank Property is located between the proposed North Marin Highlands Conservation Bank to the south and San Antonio Creek to the north. The project site is located in the Petaluma USGS quadrangle. The total property size is approximately 1,059 acres of which 874 are proposed as the Bank Property. The remaining 186 acres are excluded from the Bank and would not be subject to the conservation easement or the Bank Enabling Instrument.

**Project Site Description:** The project site has a wide variety of vegetation and habitat types including streams,

seasonal and perennial wetlands, chaparral, grasslands, broadleaf upland forest, cismontane woodland, coastal scrub, valley and foothill grassland, and meadow habitats. A large portion of the site is grazed grasslands on slopes with intermixed oak woodland communities. San Antonio Creek supports riparian habitat with mixed oak woodland. The topography of the project site is generally mountainous with narrow to rounded summits and v-shaped canyons and drainages, elevations range from 50 to 1250 feet. The project site contains a total of 52.88 acres of wetlands and waters of the U.S., and a total of 72, 347 linear feet of waters of the U.S.

**Project Description:** As shown in the attached drawings, the applicant proposes to create a conservation and mitigation bank for restoration, establishment, enhancement, and preservation of wetland, stream and riparian habitats and federally listed wildlife and plant species as well as sensitive upland habitats. The applicant proposes that habitat preservation, enhancement, rehabilitation, reestablishment and establishment credits be developed for the various resources. Preservation credits would be comprised of wetland and waters areas that currently support functional aquatic communities; these areas would be protected and managed in perpetuity to maintain their functional and habitat values. Enhancement credits would be comprised of wetland and riparian areas that are somewhat impaired by deleterious grazing impacts, invasive species, or erosion, these areas would be enhanced through the implementation of managed grazing, invasive species eradication, erosion control and planting/seeding of native species. Rehabilitation credits would be comprised of areas that support aquatic resources which are substantially impaired due to altered hydrology, extensive erosion, these areas would be restored through re-grading, slope and bank stabilization, road removal, natural rock and large woody

debris habitat installations, replanting of native species and eradication of invasive species. Reestablishment credits would be comprised of areas that historically supported intact wetland areas but currently consist of degraded habitats that are uplands. The project proposes to restore these areas to functional and diverse stream and riparian communities through re-grading, slope and bank stabilization, natural rock and large woody debris habitat installations, replanting of native species. Establishment credits would be comprised of upland areas that have not supported wetland habitat in recent history, but have the potential to support these habitats through re-grading, planting or other habitat construction techniques.

The applicant proposes to develop preservation, enhancement, rehabilitation or establishment credit for the following wetland types: vernal pool, seasonal wetland depression, seasonal wetland meadow, seasonal wetland seep, seasonal wetland swale and seasonal wetland fringe.

The applicant has proposed a service area based on the watershed approach outlined in the Mitigation Rule (33 C.F.R. Parts 325 and 332). These watersheds are delineated based on the ten-digit Hydrologic Unit Code (HUC-10). The proposed Bank property is located in the transition zone between the Central California Coast Range and the Central California Coastal Valleys, which is predominantly characterized by low rolling foothills ranging from 400 to 100 feet and flat valley bottoms from sea level to 400 feet in elevation. Based on this analysis the applicant has proposed a service area that comprises the entirety of the San Pablo Bay sub-basin and includes following watersheds: Petaluma River-Frontal San Pablo Bay Estuaries, Sonoma Creek-Frontal San Pablo Bay Estuaries, Carneros Creek-Frontal San Pablo Bay Estuaries, Napa River, Conn Creek, Tulucay Creek-Frontal San Pablo Bay Estuaries, San Pablo Creek-Frontal San Pablo Bay Estuaries, and Corte Madera Creek-Frontal San Francisco Bay Estuaries.

In addition to the proposed Section 404 credits, the applicant has proposed developing wetland stream and riparian credits for Section 401 of the Clean Water Act, and Section 1602 of the California Fish and Game Code. The applicant also proposes using the project site to develop mitigation credits for the two species listed under the Endangered Species Act, the federally-listed threatened California red-legged frog (CRLF: *Rana draytonii*), and the federally-listed Marin Western Flax (*Hesperolinon congestum*).

**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 create a wetland mitigation 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 wetland and special-status species mitigation bank serving the northern counties of the San Francisco Bay Area.

**Project Impacts:** Projected project impacts from the proposed mitigation bank construction may include temporary and permanent discharge of fill into San Antonio Creek, a jurisdictional Water of the U.S. for grading, bank stabilization, and creek restoration.

**Proposed Mitigation:** The proposed project is a wetland conservation and mitigation bank and will likely not require compensatory impacts to offset unavoidable impacts to jurisdictional waters. The applicant proposes to develop preservation, enhancement, rehabilitation or establishment credit for the following wetland types: vernal pool, seasonal wetland depression, seasonal wetland meadow, seasonal wetland seep, seasonal wetland swale and seasonal wetland fringe.

### 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 by the close of the comment period.

**Other Local Approvals:** The applicant will be applying for the following additional governmental authorizations for the project: Section 1602 Stream Bed Alteration Agreement from California Department of Fish and Game; Grading Permit from the County of Marin; CEQA document approval.

#### 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 ensure 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/or critical habitat are present at the project location or in its vicinity, and may be affected by project implementation. The project site has two artificial stock ponds that contain potential breeding habitat for Federally-listed threatened California red-legged frog (CRLF: *Rana draytonii*). Surveys have confirmed the presence of CRLF in these ponds. The project site contains extensive non-breeding aquatic habitat and upland dispersal habitation. The project site is adjacent to the proposed North Bay Highlands Conservation Bank which supports a robust breeding population of CRLF. The applicant proposes to preserve and enhance CRLF habitat through eradicating predators in potential CRLF breeding ponds and riparian and stream enhancement. Surveys have confirmed the presence of Marin western flax (*Hesperolinon congestum*), a federal and state threatened species occurring in serpentine soils from Marin County south to San Mateo County. The applicant proposes to preserve and enhance Marin western flax habitat through a managed grazing regime and invasive species eradication. The project site includes San Antonio Creek, NMFS designated critical habitat for Central

California Coast Steelhead (*Oncorhynchus mykiss*). Surveys have confirmed the presence of juvenile steelhead in San Antonio Creek within the project site boundaries. The applicant proposes to preserve, enhance and re-establish riparian and stream habitat. To address project related impacts to these species and designated critical habitat, USACE will initiate formal consultation with USFWS and NMFS, 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 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. The applicant has completed a draft Cultural Resources Report for the project area. As the Federal lead agency for this undertaking, USACE has made a *preliminary* determination that historic or archaeological resources are present in the permit area, and that such resources may be affected by the project. 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 EVALUATION:** 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 Sahrye Cohen San Francisco District, Regulatory Division, 1455 Market Street, 16<sup>th</sup> Floor, San Francisco, California 94103-1398; 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/regulatory/>.