



US Army Corps
of Engineers®
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division
1455 Market Street, 16th Floor
San Francisco, CA 94103-1398

PUBLIC NOTICE

Availability of Prospectus: Rose Slough Wetlands Mitigation Bank

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COMMENTS DUE DATE: April 27, 2017

PROJECT MANAGER: Bryan Matsumoto

TELEPHONE: 415-503-6786

E-MAIL: Bryan.T.Matsumoto@usace.army.mil

1. INTRODUCTION: Wetland Solutions LLC (Sponsor) (POC: Trevor Ham, 336 Bon Air Center #329, Greenbrae, CA 94904, 415-328-3014, trevor415@gmail.com) has submitted a Prospectus to the U.S. Army Corps of Engineers (Corps) and other members of the Interagency Review Team¹ (IRT) for the establishment of the Rose Slough Wetlands Mitigation Bank. If authorized, this mitigation bank would receive monies from individuals or entities (“project proponent”) receiving Corps authorization under Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 *et seq.*) and/or Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*), when appropriate, to provide compensatory mitigation credit as part of Section 404 or 10 permit or enforcement actions within the proposed service area. Additionally, the proposed mitigation bank may be utilized to offset unavoidable impacts to waters of the State that are regulated by the Regional Water Quality Control Board under Section 401 of the Clean Water Act or Section 13260 of the Porter-Cologne Act.

2. PROPOSED MITIGATION BANK:

Activity: To establish the Rose Slough Wetlands Mitigation Bank (Bank) pursuant to the requirements of the Corps-EPA Compensatory Mitigation Rule² (33 CFR 332.8(d)) (Mitigation Rule). Supporting documents are available online (See page 3).

¹ The IRT consists of member Agencies, and may include U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, California Department of Fish and Game, and the Regional Water Quality Control Board(s).

² The mitigation rule was promulgated by the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency at 33 C.F.R. Part 332 and 40 C.F.R. Part 230, respectively.

Bank Location: The Bank is located in unincorporated Sonoma County and along the eastern bank of the Petaluma River, approximately 1-1/2 miles west of the intersection of Lakeville Highway with State Highway 37. The study site comprises a portion of APN 068-130-001, and has an area of approximately 160 acres. The site is located within Section 14, Township 3 North, Range 6 West, on the Petaluma River, California, 7.5 minute USGS quadrangle, centered at approximately 38.133°N latitude and 122.508°W longitude. The site is accessed from Lakeville Highway via Twin House Ranch Road approximately 2-1/4 miles north of its intersection with Highway 37 (See attached map).

Bank Site Description: The majority of the Bank site is a farmed hayfield reclaimed from the brackish marshlands along the eastern side of the Petaluma River. A levee separates the Bank site and adjacent agricultural fields from the Petaluma River. An agricultural drainage ditch along the Bank’s southeastern boundary drains southwestward to a pump near the Petaluma River. A smaller agricultural drainage ditch along the Bank’s northwestern boundary likely drains northward to adjacent off site agricultural ditches. The hayfield is relatively level and has an elevation of approximately mean sea level. The hayfield drains to the agricultural drainage ditches. Ditch water is pumped through the levee to the Petaluma River. The Bank site contains no structures but pump houses at the Bank’s southern corner. The Bank site is bounded by hayfields similar to that on the study site. Vegetation in the hay field is predominantly cultivated oats (*Avena sativa*), but has areas of Italian rye (*Lolium perenne*), common knotweed (*Polygonum aviculare*), and rabbit’s-foot grass (*Polypogon monspeliensis*) in several depressions within the field. Additional species observed in the hayfield include yellow starthistle (*Centaurea solstitialis*), field bindweed

(*Convolvulus arvensis*), prickly lettuce (*Lactuca serriola*), and wild radish (*Raphanus sativa*). The elevated levee is predominantly vegetated with black mustard (*Brassica nigra*), wild radish, ripgut grass (*Bromus diandrus*), saltgrass (*Distichlis spicata*), and coyote brush (*Baccharis pilularis*). The marsh bordering the river and the agricultural ditches are vegetated with pickleweed (*Salicornia pacifica*), cord grass (*Spartina* spp.), spearscale (*Atriplex prostrata*), saltgrass (*Distichlis spicata*), fleshy jaumea (*Jaumea carnosa*), and marsh gumplant (*Grindelia stricta* var. *angustifolia*).

Soils on the entire site are mapped as Reyes silty clay, 0 to 2 percent slopes (map unit RmA). The Reyes soil series is described as located within reclaimed salt marshes, as being somewhat poorly drained, as having slow permeability, and as having an extremely acid pH in its upper horizons. The Reyes soil series is listed as predominantly hydric if it is poorly or very poorly drained and has a water table within 1 foot of the surface during the growing season.

The entire site drains to the Petaluma River, a tidal navigable water of the United States, which drains into San Pablo Bay approximately 1-1/2 miles south of the study site.

Based on a Corps Approved Jurisdictional Determination, the Bank site contains 5.34 acres of other waters of the U.S. and 7.18 acres of wetlands.

Bank Description: As shown in the Prospectus, the Sponsor is proposing to re-establish approximately 108 acres of tidal marsh habitat to include, sub tidal, mud flat, low marsh, marsh plain, and high marsh habitats. To accomplish this, tidal influence would be introduced to the site with some initial grading, and allowed to gradually and more naturally shape/form the internal drainage channels and other marsh areas. Berms and small islands would be constructed to provide flood protection, minimize wind fetch, and provide upland refugia.

Service Area: The proposed service area includes the shorelines of the Petaluma River and San Pablo Bay in the counties of Marin, Sonoma, Napa, Solano, and Contra Costa.

3. ADDITIONAL INFORMATION/BACKGROUND:

Mitigation Rule: The Mitigation Rule established a process and defined requirements for the establishment

and management of mitigation banks, in-lieu fee agreements and permittee-responsible mitigation (33 CFR 332). In addition, the Mitigation Rule established a public review process and timeline for the development of mitigation banks and in-lieu fee agreements. This mitigation bank development process will include the following: 1) public review and comment on the Prospectus, 2) IRT coordination on the Prospectus and the Bank Enabling Instrument (BEI), 3) development of a mitigation credit production approach and credit release schedule, 4) long-term site protection and management measures, and 5) financial assurances estimation approach.

Mitigation Approval and Permitting Processes: Mitigation requirements for a particular project are negotiated between the project proponent and the Corps. The project proponent must therefore first submit a compensatory mitigation proposal to the Corps that describes the proposed use of an In-Lieu Fee (ILF) Program or Mitigation Bank. Per the Mitigation Rule, preference is first given to use of Mitigation Banks over In-Lieu Fee Programs and Permittee-based mitigation types, as Bank credits are usually in place prior to the permitting of a proposed project.

A Mitigation Bank contains wetlands, streams and/or other aquatic resources that have been restored, established, enhanced, or preserved. The Bank area is then utilized to compensate for future impacts to aquatic resources resulting from permitted activities. The value of a Bank is determined by quantifying the aquatic resource functions restored, established, enhanced, and/or preserved in terms of “credits.” If appropriate credits are available at a Mitigation Bank located within the service area, and the Corps determines that the Bank is the most appropriate approach to mitigation implementation, then the project proponent would contact the Bank sponsor to discuss mitigation options. The Bank sponsor would review copies of all permits issued to the project proponent and then submit a proposal to the project proponent, including the estimated cost of the proposed mitigation credits. Prior to acceptance of payment (“credit sale”), the Bank sponsor would also contact the Corps in order to verify the Corps’ compensatory mitigation requirements.

As part of the process of establishing a Bank, the IRT would determine the types and number of potential Bank credits that may be generated. Upon meeting either administrative milestones (e.g., BEI completion, funding of long-term management endowment) or performance-

based milestones (e.g., 1-year, 3-year, 5-year conditional assessments), potential credits then become released credits and are available for sale. In addition to the final IRT approvals of the Bank Prospectus and BEI, the sponsor would also need to obtain the appropriate federal, state, and local permits required to implement the Bank restoration activities. The Bank sponsor would submit an application for Corps permit(s) should the proposed bank mitigation activities involve a discharge of dredge or fill material within waters of the U.S. or work or structures within navigable waters of the U.S. The Corps would complete consultation, if appropriate, under the Endangered Species Act, the National Historic Preservation Act and other applicable laws, prior to any permit authorization.

Bank funds would be held in an account for the Bank, and all credit sales would be tracked and reported by the Bank sponsor to the IRT at a minimum on an annual basis, and also uploaded to the Corps' Regulatory In-lieu Fee and Banking Information Tracking System (RIBITS).

To ensure permanent protection of the Bank mitigation site, in coordination with the IRT, the Bank sponsor would secure an in-perpetuity conservation easement and/or fee title transfer. An endowment would be provided by the Bank sponsor to a third party, non-profit, conservation entity that would fund long-term management of the Bank property.

To ensure a high level of confidence that the Bank would be successfully completed in accordance with applicable mitigation performance standards, the Bank sponsor in coordination with the IRT, would secure sufficient and appropriate financial assurances.

4. CONSIDERATION OF COMMENTS: The Corps is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to help inform the Corps and the IRT as to the overall merits of the proposed Bank, the scope of the proposed mitigation bank, the delineation of the service area, the ecological suitability of the individual sites to achieve wetlands restoration, and to identify project aspects that should be addressed during the development of a draft BEI. Any comments received will be considered by the Corps to determine whether the proposal has the potential to provide mitigation opportunities for project proponents (permittees) authorized to impact waters of the U.S. under Section 404 of the Clean Water Act and/or Section 10 of the Rivers

and Harbors Act or as a means of resolving Section 404 and/or Section 10 enforcement actions.

5. SUBMITTING COMMENTS: Interested parties are hereby notified that a Prospectus has been received in order to authorize a mitigation bank for the purpose of mitigating impacts to waters of the United States authorized, or enforcement actions resolved, under section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act.

Additional details and project plans are provided in the Prospectus, available online through RIBITS at the following link:
https://ribits.usace.army.mil/ribits_apex/f?p=107:25:12897250127330::NO:RP:P25_REPORT_ID,P25_BANK_ID:10552,4571

Additionally, these documents (project plans and Prospectus) are also available at the Corps' San Francisco District Office at the address below and may be reviewed by appointment.

During the specified comment period, interested parties may submit written comments to Bryan Matsumoto, San Francisco District, Regulatory Division, 1455 Market Street, 16th Floor, San Francisco, California 94103-1398, or by email cited in the public notice letterhead; comment letters should cite the Bank name, applicant name, and public notice number to facilitate review by the Regulatory Permit Manager. 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 Project Manager by telephone or email. An electronic version of this public notice may be viewed under the *Public Notices* tab on the USACE website: <http://www.spn.usace.army.mil/Missions/Regulatory>.