



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: Olompali Mitigation Bank

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COMMENTS DUE DATE: 08-27-2013

PROJECT MANAGER: Mr. Bryan Matsumoto

TELEPHONE: 415-503-6786

E-MAIL: bryan.t.matsumoto@usace.army.mil

1. **INTRODUCTION:** Rio Marin Restorations, LLC (RMR) (POC: Trevor Ham, (415) 328-3014), 336 Bon Air Center, #329, Greenbrae, California 94904), with their agent, LSA Associates, Inc. (POC: Steve Foreman, (510) 235-6810, 157 Park Place, Point Richmond, California 94801), has submitted to the U.S. Army Corps of Engineers (USACE), San Francisco District, a mitigation bank prospectus to establish the Olompali Mitigation Bank (Bank) located in the City of Novato, Marin County, California. The Bank will focus on the establishment/re-establishment of tidal wetlands and open waters of the U.S., and federally listed wildlife species and associated upland habitats. This bank proposal is being evaluated for compensatory mitigation for the loss of aquatic resources authorized under Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 *et seq.*), and is being processed pursuant to the provisions under the Compensatory Mitigation for Losses of Aquatic Resources; Final Rule (33 C.F.R. Part 332.8).

## 2. PROPOSED PROJECT:

**Project Site Location:** The Bank property is located at 8190 Binford Road in unincorporated Marin County, near the City of Novato, California. The 32-acre site is situated east of US Highway 101 and Binford Road, north of Highway 37, and west of the Petaluma River. (Latitude 38.1380396939204 North and Longitude 122.52707447126 West) (Enclosure 1)

**Project Site Description:** The Bank property is located roughly three miles up the Petaluma River from San Pablo Bay. The area was historically part of the Petaluma River's fringing centennial marsh, which was diked for agriculture at the turn of the 20th century. The project area is located in the middle of the flat marshlands and agricultural parcels that make up the valley of

Petaluma River (Enclosure 2). The site is in close proximity to the Petaluma River and Black John Slough and is surrounded by hundreds of acres of established existing and developing tidal marsh habitat. The restoration site is predominately level, with the interior land roughly 6 feet (two meters) below surrounding marsh plain elevations outboard of the levee system. The existing levee defines the boundary of the project site to the North, East, and South and sits roughly three feet (one meter) above the surrounding established centennial marsh plain. An agricultural drainage ditch runs clockwise along the perimeter of the fields, along the inboard toe of the levee. It was constructed to direct rainfall runoff from the hayfield to a pump at the end of the drainage system. An electric pump with an automatic float switch pumps water from the southwestern end of the ditch to the nearby tidal slough. The ditch was filled with water during the jurisdictional delineation site investigation and in most locations its bed was unvegetated. The ditch varies from approximately 8 feet to 25 feet in width and typically varies from 2 to 6 feet in depth. Predominantly native hydrophytic marsh vegetation, typically including saltgrass, is located on the relatively steep banks along most of this ditch.

The Bank property has a biotic baseline typical of diked and subsided agricultural baylands in Northern San Francisco Bay region. The site is dominated by agricultural fields that are plowed and drill seeded each year with a mixture of cattle feed comprising primarily of cultivated oats (*Avena* sp.) and Italian rye (*Lolium perenne*). Harvest is typically performed once every growing season, the fields are then allowed to re-vegetate for the annual grazing of cattle which begins in the spring and ends in the fall, however, there has been no grazing of animals on the bank property for the past three years.

The other biotic communities are found along the edges of the drainage ditches, in low laying areas of the agricultural fields, and on the existing levees. The ditches have water in them during most the year and have a fixed target water level elevation. The ditches provide drainage for over 200 acres of adjacent agricultural and upland properties. The drainage ditch water is fresh rain water that turns brackish in part from the seepage of saltwater through the existing levee system that runs alongside most of the ditches. Wetland vegetation exists in a roughly three foot buffer zone that stretches from 0.5 feet below the drainage ditch water level to 2.5 feet above the drainage ditch water level (-0.5 ft to -3.5 ft NAVD). Typical brackish tidal wetland plants such as pickleweed and salt grass exist in the buffer zone. The drainage ditch runs along the toe of the inside face of the existing levee and flows in a clockwise direction. The levee surface is dominated by native and weedy upland plant species typical of the area. The drainage ditch system is on a 20 year maintenance schedule through agricultural and flood control agreements.

**Project Description:** As shown in the attached drawings, the applicant proposes to construct the Bank using a two cell/phase approach (Enclosures 3 and 4). The establishment/re-establishment involves two adjacent cells with one new 1,400 foot (425 meter) levee to separate the habitat from remaining agricultural lands. The first area, “Cell #1”, is the smaller of the two at roughly 12 acres and the second area, “Cell #2”, is the larger of the two at roughly 15 acres. By splitting the establishment/re-establishment into two cells it allows some flexibility in the introduction of tidal influence. Both areas will share a single large entry channel into Black John Slough in order to maximize tidal exchange at the entrance channel in an effort to sustain some long term sub tidal habitat.

Construction of Cell #1 will be the first milestone of construction. This will involve building a new temporary levee across the site, raising the marsh plain elevation, and introducing tidal waters. The layout of Cell #1 and the footprint of Cell #1’s interim levee/wind fetch berm is designed to minimize wind fetch for both cells and improve the rate of natural sediment accretion and vegetation establishment.

Once Cell #2 and the associated new final levee are constructed, then a cut in the Cell #1 levee will connect the internal tidal channels of Cell #2 to the entrance channel and Black John Slough. Before the introduction of tidal exchange, raising of the marsh plain shall occur in

order to speed up the natural process of sediment deposition and vegetation establishment. The Bank proposes minimum construction grades and maximum construction grades based on the germination elevations of vegetation and to allow the top substrate layer of marsh plain to be naturally and gradually accreted ambient sediment. This will allow the habitat to begin a reasonably paced natural evolution toward equilibrium. This will also allow the final marsh plain surface to gradually form over time and accumulate dead organic material and invertebrate communities throughout top surface layer, typical of surrounding existing tidal marshes.

**Proposed Habitat/Credit Types:** Target habitats include sub-tidal, inter-tidal, mudflat, low marsh, marsh plain, transitional upper marsh, and upland refugia. Marsh areas will accrete and vegetate naturally, gradually transforming mud flats throughout the restoration area into low and mid marsh habitat until final equilibrium is reached. In the long term, brackish vegetated tidal marsh plain and transitional upland refugia will be the prominent habitats throughout the 30 acre habitat area due to the expected high rate of long term sediment accretion in the area.

The applicant proposes to develop establishment/re-establishment credit for tidal marsh and open water, along with Federally-listed species credit to include endangered salt marsh harvest mouse (*Reithrodontomys raviventris*), and endangered California clapper rail (*Rallus longirostris obsoletus*).

**Proposed Service Area:** The applicant has proposed a service area based on tidal water levels, vegetation communities, and indicator species that draw ecological parallels throughout the sub-region (Enclosure 5). As proposed it generally covers tidal areas within the San Pablo Bay Hydrologic Unit Code (HUC) 18050002 and the North San Francisco Bay HUC 1805004.

**Project Impacts:** Projected project impacts from the proposed mitigation bank construction may include temporary and permanent discharge of fill into 3.374 acres of jurisdictional waters of the U.S. No permit application has been submitted at this time, but a Department of the Army permit will be required for project construction.

**Proposed Mitigation:** The proposed project is a wetland mitigation bank and will likely not require compensatory impacts 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.*).

**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.

### 4. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

**National Environmental Policy Act (NEPA):** As stated above, no Department of the Army application has been submitted. Once submitted, 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.

**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. To address project related impacts to listed species and designated critical habitat, USACE will initiate 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.

**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. OTHER GOVERNMENT AUTHORIZATIONS:

**Interagency Review Team:** The Interagency Review Team (IRT) is responsible for the review and approval of

proposed mitigation banks and in-lieu fee programs. The IRT is made up of representatives from various Federal and State agencies, and can change from project to project. Currently the IRT for the Bank proposal includes, USACE, the Environmental Protection Agency (EPA), USFWS, NMFS, the Regional Water Quality Control Board (RWQCB), and the California Department of Fish and Wildlife (CADFW).

**6. 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. Comments may be 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 may also be used in the preparation of an Environmental Assessment pursuant to the National Environmental Policy Act.

**8. SUBMITTING COMMENTS:** During the specified comment period, interested parties may submit written comments to Bryan Matsumoto by electronic mail at [bryan.t.matsumoto@usace.army.mil](mailto:bryan.t.matsumoto@usace.army.mil) or by standard mail to 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. All substantive comments will be forwarded to all IRT members and 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 on the USACE website: <http://www.spn.usace.army.mil/Missions/Regulatory/PublicNotices.aspx/>.