



US Army Corps
of Engineers®
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division
450 Golden Gate Ave., 4th Floor
San Francisco, CA 94102-3406

PUBLIC NOTICE

PROJECT: Proposed Montezuma Island Mitigation Bank, Sacramento and Solano Counties, California

PUBLIC NOTICE NUMBER: SPN-2019-00173

PUBLIC NOTICE DATE: August 24, 2023

COMMENTS DUE DATE: September 24, 2023

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1. **INTRODUCTION:** Pacific Gas and Electric Company (PG&E) (Matt Brown, 3580 East California Ave., Bldg. B, Fresno, California 93725; Phone: 559-263-5416; Email: myb5@pge.com) has applied to the U.S. Army Corps of Engineers and other members of the Interagency Review Team¹ (IRT) to establish the Montezuma Island Mitigation Bank. If authorized, this mitigation bank would receive money from individuals or entities receiving Corps authorization under Section 404 of the Clean Water Act of 1972, when appropriate, to provide compensatory mitigation credit pursuant to the requirements of the 2008 Corps-EPA Compensatory Mitigation Rule² (33 CFR 332.8(d)). 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; stream alteration and state-listed endangered species impacts regulated by the California Department of Fish and Wildlife under Section 1602 of the California Fish and Game Code and California Endangered Species Act; and impacts to endangered species regulated by the U.S. Fish and Wildlife Service and National Marine Fisheries Service under the federal Endangered Species Act.

2. **PROPOSED PROJECT:** The U.S. Army Corps of Engineers, Sacramento and San Francisco Districts, (Corps) are evaluating a proposal to establish the Montezuma Island Mitigation Bank. Development of

the Proposed Bank would occur in two phases, with the first phase occurring on three adjacent parcels in Solano County, totaling approximately 109 acres. Phase 1 of the Proposed Bank is the subject of this Public Notice, and would result in establishment and enhancement of 31.38 acres of waters of the United States, including wetlands, in the Suisun Bay (HUC 18050001) watershed. The Bank property includes an additional 32 acres in Sacramento County (Montezuma/Burnett Island) (Phase 2) adjacent to Phase 1. Phase 2 is not contemplated at this time, but would be considered as a subsequent phase in the future, pending the successful development of Phase 1. A Department of the Army permit may be required for restoration activities. This notice is to inform interested parties of the proposed activity and to solicit comments. A concurrent public notice is also available from the Corps Sacramento District (www.spk.usace.army.mil/Media/RegulatoryPublicNotices.aspx). This prospectus is being evaluated under 33 Code of Federal Regulations (CFR) Part 332.8. A copy of the Montezuma Island Mitigation Bank prospectus is available online at the following location: https://ribits.ops.usace.army.mil/ords/f?p=107:0:7822907914856:APPLICATION_PROCESS=AP_DB_DO_C:::AI_STRING,AI_ID:attachment,126881

Project Site Location: The approximately 141-acre Bank property is located southwest of the Montezuma Hills and north of the confluence of the Sacramento and San Joaquin Rivers, approximately

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 2008 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.

1 mile east of the town of Collinsville, Latitude 38.07750°, Longitude -121.83461°, Sacramento and Solano Counties, California.

Project Site Description: There are currently approximately 13.54 acres of alkali wetlands, 0.61 acre of scrub-shrub wetlands, and 1.50 acres of brackish marsh within the Phase 1 project area. The Bank site supports a mosaic of annual grasslands intermixed with alkali wetlands on native bayland substrate, gradually sloping toward the brackish marshes on the margins of the Sacramento River. The northern portion of the Bank site is predominantly covered in nonnative annual grassland; alkali wetlands occupy topographic lows and brackish marshes occur in lower elevations of the southern border. These habitats currently present at the Bank site are remnant of the once more naturally occurring habitats associated with the central Sacramento–San Joaquin Delta and Montezuma Hills.

Bank Description: The prospective Sponsor proposes to establish an approximately 109-acre mitigation bank. The project would result in the establishment and enhancement of 31.38 acres of waters of the United States, including wetlands, in the Suisun Bay (HUC 18050001) watershed. The mitigation bank proposes to offer 24.62 tidal marsh establishment credits, 3.71 alkali wetland enhancement credits, 2.39 open water establishment credits, and 3.00 sea level rise transition zone establishment credits. Credits generated at the bank would be utilized as compensatory mitigation for select PG&E projects as well as being sold to non-sponsor entities.

Service Area: The proposed Service Area includes the boundaries of the legal Delta, plus several connected rivers on the east, and the San Pablo Bay (including the Petaluma River up to Penngrove and the Napa River up to Calistoga) and Suisun Bay (including Honker Bay, Grizzly Bay, and surrounding Suisun Marsh areas) on the west. The proposed service area includes portions of Sacramento, Solano, Contra Costa, Alameda, San Joaquin, Yolo, Napa, Sonoma, and Marin counties. The attached drawings provide additional details.

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, but is not limited to, 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.

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. Prior to any permit authorization, the Corps would assess potential impacts to federally listed species, historic properties, and essential fish habitat, and complete any needed consultations under the Endangered Species Act, the National Historic Preservation Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other applicable laws.

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 scope and overall merits of the proposed mitigation bank, the proposed 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 the bank. Comments would also be used to assess impacts on endangered species, historic properties, water quality, general environmental effects and other public interest factors, and 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 Greg Brown, San Francisco District Regulatory Division, at the email cited in the public notice letterhead. Comments 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 email. An electronic version of this public notice may be viewed under the *Public Notices* tab on the USACE website: <https://www.spn.usace.army.mil/Missions/Regulatory/Public-Notices/>.