



US Army Corps  
of Engineers®  
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division  
450 Golden Gate Avenue, 4<sup>th</sup> Floor  
San Francisco, CA 94102-3406

# PUBLIC NOTICE

Availability of Prospectus: Mendocino Coast Mitigation Bank

PUBLIC NOTICE NUMBER: SPN-2020-00231N PUBLIC NOTICE

DATE: July 28, 2023

INITIAL COMMENTS DUE DATE: August 28, 2023

**COMMENTS DUE DATE EXTENDED TO November 13, 2023**

PERMIT MANAGER: Michael Orellana

TELEPHONE: 415-503-6769

E-MAIL: michael.s.orellana@usace.army.mil

1. **INTRODUCTION:** Resource Environmental Solutions (RES), LLC (“sponsor”) (POC: Linda Robb, 714-478-0755, [lrobb@res.us](mailto:lrobb@res.us)), has submitted an updated Prospectus to the U.S. Army Corps of Engineers (USACE), San Francisco District, and other members of the Interagency Review Team<sup>1</sup> (IRT) for the establishment of the Mendocino Coast Mitigation Bank. If authorized, this mitigation bank would receive money from the California Department of Transportation (“project proponent”), and potentially also from other individuals or entities, receiving Corps authorization under Section 404 of the Clean Water Act of 1972, when appropriate, to provide compensatory mitigation credit as part of Section 404 permits or enforcement actions within the proposed service area. Additionally, the proposed mitigation bank may also be utilized to offset unavoidable impacts that are regulated by the California Regional Water Quality Control Boards under Section 401 of the Clean Water Act or Section 13260 of the Porter-Cologne Act, the California Coastal Commission under the California Coastal Act, and the California Fish and Game Code (CFG) Section 1602.

## 2. PROPOSED MITIGATION BANK:

**Activity:** To establish the Mendocino Coast Mitigation Bank (Bank) pursuant to the requirements of the Corps-EPA Compensatory Mitigation Rule<sup>2</sup> (33

CFR 332.8(d)) (Mitigation Rule). Supporting documents are available online at the Corps Regulatory In-Lieu Fee and Bank Information Tracking System (RIBITS) website: [https://ribits.ops.usace.army.mil/ords/f?p=107:10::::P10\\_BANK\\_ID:5822](https://ribits.ops.usace.army.mil/ords/f?p=107:10::::P10_BANK_ID:5822). Select the Cyber Repository tab and click on the dropdown button to the left of the “Banking Instrument Documents.”

**Bank Locations:** The sponsor is proposing the Bank to be comprised of two parcels at two different locations with different landowners but having a single sponsor. At this time, the sponsor has identified two discrete parcels within the coastal zone of the Big-Navarro-Garcia 8-Digit Hydrologic Unit Code (HUC) watershed in Mendocino County for inclusion in the Bank. The parcels are being referred to as the Garcia River and Crispin parcels.

The Garcia River parcel is an approximately 283-acre parcel with a 117.18-acre potential easement area. The Parcel is located north of the Garcia River, east of the unincorporated community of Stornetta at 43001 Mountain View Road, Manchester, CA 95459 (38.9484°N, 123.6742°W; APN 133-150-03). This parcel is proposed for wetland, other waters, riparian, and environmentally sensitive habitat area (ESHA) credits. This parcel is owned by Michael P. Boer,

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

<sup>2</sup> 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.

successor trustee of the Boer Living Trust and would be owned in fee by the current private property owner with a conservation easement recorded over the Bank acreage.

The Crispin parcel is a 26.6-acre, fee-title parcel owned by Resource Environmental Solutions, LLC (RES, LLC) the Bank sponsor, with a 24.5-acre easement area. It is located north of Brush Creek and east of Highway 1 at 43821 Crispin Road, Manchester, CA (38.9732°N, 123.6831°W; APN 133-080-16). The parcel is proposed for wetland, other waters, riparian, and ESHA credits. One small section on the eastern side of this parcel is located outside of the coastal zone.

**Bank Site Description:** The proposed Bank, which would total 309.60-acres throughout the two parcels, is situated within the coastal zone of the Big-Navarro-Garcia 8-Digit HUC in Mendocino County. Non-native annual and ruderal grasslands are currently the common habitat type. Both parcels also currently contain some forested and riparian areas as well as existing wetlands and non-wetland waters, including portions of the Garcia River, Brush Creek, and their tributaries. When identifying parcels for incorporation into the Bank, the Bank sponsor prioritized properties with soil types containing a high clay content, slopes of less than 5 percent, presence of existing and/or historical wetland and perennial stream habitat, minimal existing presence of ESHA habitat, and limited forested habitat. Both parcels are zoned as rangeland, and the predominant land uses in the vicinity are rural residential, agricultural, and open space.

According to an aquatic resources delineation submitted with the Prospectus, the proposed Bank across both parcels may currently contain a total of 23.82-acres of wetlands and 11.29-acres (12,193 linear feet) of other waters. The Corps has not yet issued a Jurisdictional Determination to verify the baseline conditions of the proposed Bank.

**Bank Description:** There are currently no mitigation banks in Mendocino County nor the Northern California coastal zone. The California Department of Transportation (Caltrans), as part of their Advanced Mitigation Program to mitigate for future bridge construction projects along State Route 1 in Mendocino County, has contracted RES, LLC as

the Bank sponsor to establish 26.2-acres of wetland credits and 12.2-acres of other waters credits within the Big Navarro-Garcia sub-basin. Additional credits beyond those needed to fulfill the Caltrans contract could also be sold to Caltrans or to other project proponents in the Bank's service area. Each of the Bank's two parcels could generate wetland, other waters, non-wetland riparian, riparian, and environmentally sensitive habitat area (ESHA) credits.

As shown in the Prospectus, the bank sponsor is proposing to generate mitigation credits for impacts to jurisdictional wetlands and other waters of the U.S. through a combination of re-establishment (creation), rehabilitation, enhancement of wetlands and other waters, and preservation. Credits would be quantified by acres and classified by resource type and anticipated functional uplift. The bank sponsor proposes offering separate types of aquatic resource credits that would include seasonal wetland, riparian wetland, waters, non-wetland riparian, and environmentally sensitive habitat area (ESHA) credits. Stacked credits, in which one unit of credit could serve as mitigation for multiple agencies, would only be used for the same permittee and project.

**Service Area:** The proposed service area for which the Bank would sell credits is based upon a watershed approach and would include portions of the Big-Navarro-Garcia HUC-8 sub-basin and the Coastal Redwood Belt Major Land Resource Area (MLRA). The service area would include the following HUC-10 watersheds: Navarro River, Garcia River, Albion River-Frontal Pacific Ocean, and Alder Creek- Frontal Pacific Ocean. The two discontinuous Bank parcels comprising the Bank would have the same service area.

### 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. Prior to acceptance of payment ("credit sale"), the Bank sponsor would also contact the Corps 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 apply 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 RIBITS.

To ensure permanent protection of each of the Bank parcels, in coordination with the IRT, the Bank sponsor would secure an in-perpetuity conservation easement. 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. At this time, the conservation easement holder has not yet been finalized, but the Bank sponsor is in discussion with the Mendocino Land Trust for this role.

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 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 or as a means of resolving Section 404 enforcement actions.

**5. SUBMITTING COMMENTS:** Interested parties are hereby notified that a Prospectus has been received 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.

As stated above, additional details and project plans are provided in the Prospectus, available online through RIBITS at the following link: [https://ribits.ops.usace.army.mil/ords/f?p=107:10:6370933693830:::P10\\_BANK\\_ID:5822](https://ribits.ops.usace.army.mil/ords/f?p=107:10:6370933693830:::P10_BANK_ID:5822). Select the Cyber Repository tab and click on the dropdown button to the left of the “Banking Instrument Documents.”

During the specified comment period, interested parties may submit written comments to Michael Orellana, San Francisco District, Regulatory Division, 450 Golden Gate Avenue, 4th Floor, San Francisco, California 94102-3406, or by 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 telephone or 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/>.