



**US Army Corps  
of Engineers**®  
San Francisco District

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

SAN FRANCISCO DISTRICT

# PUBLIC NOTICE

## Availability of Prospectus: Petaluma River Mitigation Bank

PUBLIC NOTICE NUMBER: SPN-2014-00105  
PUBLIC NOTICE DATE: November 12, 2024  
COMMENTS DUE DATE: December 12, 2024

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### 1. INTRODUCTION:

The Dry Creek Rancheria Band of Pomo Indians (Sponsor) (POC: David Smith-Ferri, P.O. Box 607, Geyserville, CA 95441, 707-513-8155, [davids@drycreekrancheria.com](mailto:davids@drycreekrancheria.com)), through their agent Environmental Science Associates (POC: Melissa Denena, 787 The Alameda, Suite 250, San Jose, CA 95126, 408-660-4002, [mdenena@esassoc.com](mailto:mdenena@esassoc.com)), has submitted a Prospectus to the U.S. Army Corps of Engineers (Corps), and other members of the Interagency Review Team<sup>1</sup> (IRT) for the establishment of the Petaluma River Mitigation Bank. If authorized, this mitigation bank would receive money from individuals or entities (“project proponent”) 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 be utilized to offset unavoidable impacts to waters of the State that are regulated by the Regional Water Quality Control Board (RWQCB) under Section 401

of the Clean Water Act or Section 13260 of the Porter-Cologne Act, and impacts to state and federally listed species under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), and California Department of Fish and Wildlife (CDFW).

### 2. PROPOSED MITIGATION BANK:

**Activity:** To establish the Petaluma River 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=107:278:2005328225693:::278:P278\\_BANK\\_ID:6458](https://ribits.ops.usace.army.mil/ords/f?p=107:278:2005328225693:::278:P278_BANK_ID:6458)

**Project Site Location:** The Bank property is located east of U.S. 101, south of the City of Petaluma, Sonoma County, California (APNs 019-320-006, 019-330-008, and 019-330-010; Lat: 38.2136°, Long: -122.5957°). The Sonoma-Marin Area Rail Transit

<sup>1</sup> 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).

<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.

(SMART) rail line runs along the western property boundary. The Bank property is bordered on the east side of the Petaluma River.

**Bank Site Description:** The approximately 123-acre Bank property is located within the Central California Foothills and Coastal Mountains region. Historically, the bank site supported tidal wetlands, which lined the Petaluma River from its mouth at San Pablo Bay to as far north as the current city of Petaluma. As the area was developed by early European settlers, a levee was constructed along the Petaluma River, blocking tidal flows. The site was diked and drained, and the low-lying areas were used for agriculture. In the late 1800s, a rail line was constructed along the western boundary of the site. The rail line interrupted flow from the hillslope to the wetlands. A ditch was constructed upslope of the rail line to collect this flow and route it north and south to hydrologic crossings beneath the line. The entirety of the site continued to be farmed until around 2006. During the winter of 2006, the levee between the Petaluma River and the site was breached and the levee was repaired. A secondary levee was installed, which created a channel between the original and secondary levees. In 2017, another levee breach reintroduced limited tidal exchange to the eastern part of the site. The breach was not repaired and the central and southern portions have remained fallow since the 2017 breach, while the northern portion of the site continues to be dry farmed. There are no cattle onsite.

The site is relatively flat, ranging in elevation from approximately 7 feet above mean sea level North American Vertical Datum of 1988 (NAVD88) in parts of the northern field to 3 feet in much of the lowlands in the central and southern portions of the property. The site contains wetlands and waters with areas of predominantly nonnative annual grassland and disturbed/ruderal vegetation types.

**Bank Description:** As shown in the Prospectus, the Sponsor is proposing to re-establish, rehabilitate, and enhance tidal wetlands to provide improved ecological benefits. To accomplish this, full tidal inundation would be restored to the Bank property by deepening and widening the existing undersized breach and by excavating a network of tidal channels to distribute tidal flows within the tidal wetland area.

**Service Area:** The proposed service area for 404 and 401 aquatic resources credits would include the two Hydrologic Unit Codes (HUC) that the Bank straddles, San Pablo Bay (HUC 1805000208) and Petaluma River-Frontal San Pablo Bay Estuaries (HUC 1805000206).

### 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 ILF 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 RIBITS.

To ensure permanent protection of the Bank 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 or as a means of resolving Section 404 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.

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=107:278:2005328225693:::278:P278 BANK ID:6458>

Additionally, these documents 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:

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San Francisco, California 94102-3404  
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Comment letters should cite the Bank name, sponsor name, and public notice number to facilitate review by the Regulatory Permit Manager. 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 *Public Notices* tab on the USACE website: <https://www.spn.usace.army.mil/Missions/Regulatory>