



SUMMARY REPORT

Agenda Date: 12/12/2023

To: Board of Supervisors

Department or Agency Name(s): Sonoma County Public Infrastructure and Permit Sonoma

Staff Name and Phone Number: Johannes Hoevertsz 707-565-2550, Tennis Wick 707-565-1900

Vote Requirement: 4/5th

Supervisorial District(s): Countywide

Title:

Update on establishment of the Mecham Road Mitigation Bank and Agreement to Develop a Bank Enabling Instrument

Recommended Action:

- A) Receive an update on efforts to create a Mitigation Bank on existing County-owned land.
- B) Authorize staff to continue work towards the establishment of the Mecham Road Mitigation Bank project for site located at 403 Mecham Road in Petaluma.
- C) Authorize the Chair to execute an agreement with Wetlands Research Associates Incorporated (WRA) for a term of three years, from December 12, 2023 through October 24, 2026, to prepare a bank enabling instrument for the Mecham Road Mitigation Bank for a total contract amount not to exceed \$692,204.
- D) Adopt a Resolution authorizing a budget adjustment in the Sonoma County Public Infrastructure Fiscal Year 2023-2024 Refuse Disposal -Former Rural Landfills Budget in the amount of \$592,204 from available former rural landfill fund balance. (4/5 Vote Required)

(4/5th Vote Required)

Executive Summary:

Sonoma County Public Infrastructure (SPI), in collaboration with Permit Sonoma, is seeking to create a mitigation bank on existing County-owned land held by the Integrated Waste Division.

On September 15, 2020, the Board approved a contract with Wetlands Research Associates Incorporated (WRA) to prepare a draft mitigation prospectus for two County-owned properties as a first step in creating a mitigation bank. Today's action will update the Board on the findings of the mitigation prospectus, seek authorization to continue to work toward creating a mitigation bank, and request authority for the Chair to execute an agreement with WRA for a term of three years, from November 28, 2023, through October 24, 2026, to prepare a bank enabling instrument for the Mecham Road Mitigation Bank for a total contract amount not to exceed \$692,204. This request also seeks adoption of a budgetary Resolution to appropriate available fund balance of \$592,204 to fund the consultant's work financed from the Refuse Disposal-Former Rural Landfills. Per the Board's annually adopted [Financial Policies](https://sonomacounty.ca.gov/administrative-support-and-fiscal-services/county-administrators-office/budget-and-operations/financial-policies) [<https://sonomacounty.ca.gov/administrative-support-and-fiscal-services/county-administrators-office/budget-and-operations/financial-policies>](https://sonomacounty.ca.gov/administrative-support-and-fiscal-services/county-administrators-office/budget-and-operations/financial-policies), Refuse Fees may not roll into County General Fund so that the County can designate for solid waste obligations, roads infrastructure preservation, and other Board of Supervisors priorities. If today's use recommendation is approved by the Board, this will document a use for "other Board"

established priorities such as the establishment of a mitigation bank as recommended by staff in this report. The preparation of the application for a bank enabling instrument will require WRA and department staff to propose terms with the resource agencies (resource agencies typically consist at minimum of the Regional Water Quality Control Board, Fish and Wildlife and Army Corps of Engineers) on behalf of the County. During the application development process, staff will provide regular updates to the Board on the status of the pending application at least every six months, and more frequently if necessary for certain critical milestones. It is anticipated that negotiations will take place after submittal until such time a final package has been approved by the Inter Agency Review Team (IRT). When the application is approved by the resource agencies, the final bank enabling instrument will be brought back to the Board for formal acceptance and use for public projects. Before that time, no formal obligations nor financial commitments will be made such as to limit the Board to either accept or decline the project or associated obligations that come with it.

The mitigation bank will be fully compatible with and would eventually be incorporated into the Conservation Strategy that will be developed as part of the HCP/NCCP process which is presently underway at the county. Permit Sonoma staff have been assisting SPI on the mitigation bank project and are also managing the HCP/NCCP project, so the projects will be able to be seamlessly integrated in the future when an HCP/NCCP is developed and permitted. A Board Workshop on the HCP/NCCP is scheduled for spring 2024.

The final bank enabling instrument will include performance standards, monitoring requirements, design specifications, the types and amounts of credits (wetland, species) allocated to the bank, and management requirements developed to optimize the mitigation value. The instrument is expected to be presented to the Board sometime in 2025.

Discussion:

Historical Context of Mitigation Banks

Mitigation banking is a system of credits and debits designed to ensure that authorized adverse impacts to wetlands, streams and other aquatics is compensated by the preservation, restoration, or establishment of similar resources so that there is no net loss. Mitigation banking has been an integral part of U.S. environmental strategy for several decades and its origins trace back to the early 1980's, emerging as a method to address the challenges of environmental conservation.

State and Federal law that requires that impacts to aquatic resources, especially wetlands, must be mitigated by creating or restoring an equal or greater amount of the resource. The concept has also been extended to state or federally listed species, e.g., the California Tiger Salamander, and to other resource types like riparian corridors and forests. Mitigation can be accomplished on a project-by-project basis. For example, state and federal permits would typically require three acres of wetlands to be created or restored (a 3:1 ratio) for a public transportation project that impacts one acre of wetlands. The public agency can then build a three-acre wetland, monitor it for at least 5 years, and upon meeting the performance standards for size and quality specified in its wetland impact permits, be released from further monitoring.

However, it can be quickly seen, especially where projects are generating numerous relatively small impacts, that there are economies of scale in terms of economics and ecological quality to consolidating impacts into larger restoration sites as well as pre-building restoration prior to the actual impacts occurring.

One of the early impetuses for mitigation banking came from transportation agencies pre-building multiple acres of wetlands for future transportation projects, also called permittee-responsible consolidated mitigation.

Then when the actual impact later occurred, it could be debited against the acreage already constructed. Over time, and series of state and federal guidance documents and regulations, this approach became formalized as the federal compensatory mitigation rule, which created a structure for the development, review, and authorization of mitigation banks (33 CFR Part 325, 332; 40 CFR Part 230). This approach provided for the creation of “commercial” mitigation banks which could “sell” credits to permittees needing to implement mitigation requirements, and also formalized the approval process for the original permittee-responsible consolidated mitigation that transportation agencies had pioneered and where the bank would in effect only sell credits to itself for its own projects.

As the County department responsible for the County’s transportation system, as well as other significant public infrastructure like the County landfill and the Airport, SPI is regularly engaged in implementing the mitigation requirements of state and federal permits for projects that impact aquatic resources and various listed species. At the present time, complying with required mitigation is done on an individual project basis and the economies of scale from consolidating and pre-building mitigation are not available.

Consolidating mitigation efforts in mitigation banks has the advantage of being able to integrate with other landscape scale conservation strategies. The County, led by Permit Sonoma staff, has recently embarked on a Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP) process, which functionally is a large-scale consolidated mitigation program for the multiple species and habitat types that are included in the HCP/NCCP analysis. It is expected that this plan will address habitats (e.g., wetlands) and the species that are also the focus of the Mecham Road Mitigation Bank project (California Tiger Salamander, Red-Legged Frog), and projects like this will be fundamental to building the restoration and protection areas needed to implement an HCP/NCCP.

In conclusion, while the mitigation bank is a substantial initiative in its own right, its true value emerges when seen as part of Sonoma County's broader environmental strategy. Together, with complementary initiatives like the HCP/NCCP led by Permit Sonoma, we are crafting a future where development and conservation stride hand in hand, ensuring a sustainable and vibrant Sonoma County for generations to come.

Background on the Proposed Mecham Road Mitigation Bank

In collaboration with the Natural Resources Division of Permit Sonoma, SPI is working to establish a mitigation bank on existing County land held by the Integrated Waste Division of SPI. The bank aims to introduce a cost-effective and efficient method for projects necessitating environmental mitigation within County endeavors or other initiatives benefiting public welfare. Each initiative outside of County endeavors will undergo a legal review by County Counsel and will require the Board's approval.

In 2019, the staff at Permit Sonoma and SPI collaboratively searched for a suitable location to establish a mitigation bank, diligently assessing various sites and garnering positive responses from state and local agencies. Of the two sites under consideration the Mecham site was selected based on favorable regulatory feedback from the Inter Agency Review Team (IRT). This led to the initiation of a Request for Proposal (RFP) to create a preliminary mitigation bank prospectus. On September 15, 2020, WRA was granted the agreement by the Board. By August 2021, the mitigation bank prospectus reached completion, receiving authorization from the IRT in 2022. The IRT is a group of federal and state agencies that have jurisdiction over the resources in a proposed mitigation bank, which review and approve the bank proposal, consisting of several components, such as the prospectus, the bank enabling instrument (BEI), and the bank amendment. The selected property

for the mitigation bank, located at 403 Mecham Road, covers 134.79 acres and was initially procured as a buffer for the Central Disposal Site. Despite the transfer of the Central Disposal Site's operations and management to Republic Services, the 403 Mecham property has remained in the possession of the Integrated Waste Division. Importantly, this project on the property adjacent to the Landfill will not impede future landfill expansion opportunities. The strategic location of the property, lying across Mecham Road from the landfill, creates a natural separation that ensures the landfill's potential for growth remains unaffected. The mitigation bank is a distinct, self-contained project that enhances environmental value without encroaching on or limiting the landfill's operational footprint or its capacity for future development.

The approved prospectus consists of a documentation of existing conditions (species, geology, hydrology, soils etc.) with a conceptual restoration plan and crediting approach to the bank, including critical resources and design considerations given site conditions.

The next step in the process is to prepare a bank enabling instrument outlining the terms and conditions for proposed mitigation bank. The bank enabling instrument will include performance standards, monitoring requirements, design specifications, the types and amounts of credits (wetland, species) allocated to the bank, and management requirements developed to optimize the mitigation value.

Financial Assurances

Sonoma County, serving as the Bank Sponsor, is duty-bound to provide pivotal financial assurances that guarantee the successful completion of bank-related undertakings and ensure adherence to the set plans and guidelines. These safeguards serve as a financial backbone and can be held by the California Department of Fish and Wildlife (CDFW), United States Army Corps of Engineers (USACE), or a qualified third-party sanctioned by the IRT or Signatory Agencies. These can only be drawn upon in the event of a default by Sonoma County however, at the conclusion of each phase, these securities are returned to Sonoma County.

1. Construction Security: Before the inaugural Credit Release, Sonoma County is mandated to set up a Construction Security. This amount is determined by an unbiased third-party estimate or contract that aims at initiating or enhancing specific habitats. This assurance remains in place until its cancellation, following the seamless execution of construction and planting operations, in line with the Development and Interim Management Plan. Estimated Cost: A conservative estimate for this item is capped at \$750,000.

2. Performance Security: Upon the sale of the first Credit, Sonoma County must allocate a Performance Security, equivalent to 20% of the Construction Security. This security vouches for Sonoma County's commitments up to the Bank's termination. It stays active until the closure of the Bank post the sale of all credits. Estimated Cost: Pegged to the Construction Security, its maximum potential value would be \$150,000.

3. Interim Management Security: With the commencement of the first Credit sale, Sonoma County needs to introduce an Interim Management Security. This is calculated based on the projected three-year interim management expenses. This security stays operative until its dissolution at the Interim Management period's end. Owing to the County's reservoir of biologists and other specialized staff whose costs have been pre-accounted for, the anticipated expenses are relatively minimal. Estimated Cost: It's estimated at a modest \$100,000.

Further enhancing the financial assurances, Sonoma County is entrusted with the establishment of an

Endowment Fund. This fund is curated to foster the long-haul care of the Bank Property. It's paramount that the Endowment Fund resonates with the Bank's prolonged management blueprint and also adheres to an investment strategy poised to yield inflation-resistant returns and accommodate long-standing managerial costs once it's entirely funded. Conservatively, the Endowment Fund is estimated at \$1 million. However, due to Sonoma County's capability to manage tasks internally using in-house staff, this value could potentially be less. Once the Endowment Amount is capped at 100%, Sonoma County won't have to make any additional contributions.

The issuance of credits is projected to bring in lucrative benefits through avoided costs. Estimations place the value of these credits in a range between \$20 million and \$126 million. Sonoma County plans to internally charge the actual costs tied to credit development to the corresponding projects in need. Notably, these internal costs are forecasted to be lower than the prevailing market rate for the California Tiger Salamander (CTS). Recent private market assessments have benchmarked the CTS rate at \$1 million for the initial acre, with subsequent acres costing half a million each. Staff are exploring several funding sources to cover the County's financial obligations, including the use of road funds and any other appropriate funding sources. It should be noted that no general funds are proposed to be utilized for this project, and by design, the project is intended to be self-funded based on project savings across the County.

Anticipation of Specialized Legal Expertise

As work progresses on mitigation banking, its regulatory framework, and the associated complexities, we anticipate encountering specialized legal and regulatory issues that may require an external perspective. While our internal counsel continues to provide invaluable legal guidance on various County matters, the specificities of mitigation banking might necessitate expertise that is uniquely suited to this domain. SPI will return to the Board should it be decided that specialized legal expertise is required.

Hence, as we progress further in the establishment and operation of the Mecham Road Mitigation Bank, there may arise a need to engage specialized legal counsel who bring extensive experience in the realm of mitigation banking. This proactive approach ensures that we're not only compliant with all regulatory mandates but also benefit from the vast knowledge base and expertise that specialized legal professionals in this field offer.

Request for Proposal Advertisement and Selection Process

The County published an RFP on January 4, 2023, to solicit proposals for the preparation of a bank enabling instrument for the Mecham Road Mitigation Bank, with a proposal submission deadline of February 15, 2023. One proposal was received from the following firm:

1. WRA Inc.

WRA's proposal was reviewed and scored by partnered staff of three departments (SPI, Permit Sonoma, and Environmental Health) based on the following criteria:

- Demonstrated ability to perform the services described;
- Costs relative to the scope of services;

- A demonstrated history of providing similar services to comparable entities;
- Willingness to accept the County's contract terms, and Quality of Sample Report

WRA's proposal was deemed responsive to the County's needs.

Bank Enabling Instrument (BEI) Deliverables

WRA will craft a comprehensive draft BEI, which will cover pivotal elements such as:

- **Conceptual and Restoration Design Plans:** Key blueprints that lay out the envisioned design and planned restoration efforts for the bank.
- **Financial Assurances Analyses:** Crucial documents, including the Endowment Fund Analysis and various security analyses, aimed at confirming the bank's fiscal robustness and sustainability.
- **Credit Mechanics:** Structured strategies for the generation, evaluation, and transaction of ecological credits, the central operational facet of the bank.
- **Interim and Long-Term Management Plans:** These documents outline the comprehensive strategy governing construction, performance standards, management, monitoring and maintenance activities for the Bank Property.

Permitting Deliverables

Ensuring legal compliance, WRA will facilitate the procurement of vital permits, which include:

- **Environmental Clearances:** Integral permit applications such as the 404 Permit for U.S. Army Corps of Engineers, Lake and Streambed Alteration Agreement for California Department of Fish and Wildlife and 401 Water Quality Certification Package for the Regional Water Quality Control Board to ensure the project's alignment with environmental standards and to assess potential ecological impacts.
- **Ecological Evaluations:** Key assessments, notably the Section 7 Biological Assessment for the U.S. Fish and Wildlife Service and California Environmental Quality Act Initial Study, that guarantee the bank's operations adhere to ecological guidelines and regulations.

For a comprehensive and detailed outline of the project's deliverables and objectives, please refer to the attached BEI proposal. During the preparation of BEI application package, WRA and Staff will be proposing options to develop the bank on behalf of the County. At least every six months during this application development process, Staff will bring an update to the Board through a consent item on the status of the pending application. The Board will have the opportunity to provide direction to staff during these public updates. However, the Board will not have a formal opportunity to review the full application packet before it is submitted to the IRT. After the BEI application package is finalized, it will be submitted to the IRT accompanied by an application fee of approximately \$30,000. When approved, the final BEI will be brought back to the Board for formal acceptance and use for the County's public projects. The Board's review of the final BEI will be limited to accepting the terms as proposed or rejecting it and resubmitting (or walking away). If the Board desires to make any amendments, the County will be required to submit a new application to

amend the BEI along with another application fee. No formal obligations nor financial commitments will become binding unless and until the Board formally accepts the BEI package. It is pertinent to mention that permit fees are projected to constitute 1-3% of the entire project development expense, and less than 1% of the total bank value once sanctioned. This underscores the vast benefits that can be obtained from a well-executed bank establishment.

Benefits to County

If established, a County of Sonoma mitigation bank would provide significant environmental conservation and economic development benefits to the County. The bank would secure on-demand mitigation credits for public projects that have environmental impacts, balancing the needs of development and environmental conservation. Based on identified funding sources, it is the intent of this bank to service infrastructure projects in the County consistent with the Board’s Budget and Financial Policies, including roads infrastructure preservation projects and other solid waste obligations such as maintenance of active transfer station operations and the County’s closed landfills, the potential expansion of the central landfill, and the potential development of a new in-county compost facility.

We anticipate the necessity of 30 acres or more of mitigation credit over the next decade for projects required to maintain the County’s solid waste system alone. Other projects undertaken by the larger SPI Department and projects outside SPI may also be accommodated depending on the availability of credits and related funding. California Tiger Salamander, California Red Legged Frog, and other credits likely to be generated by this project, are in high demand, and are expected to be needed for future County projects. Currently it is estimated that this site will only produce half the acreage necessary for the County’s long term needs of CTS compensatory mitigation habitat for road maintenance and improvements within the Santa Rosa Plain.

Overall Fiscal Impact

As of this date, the Integrated Waste Division of SPI has incurred approximately \$470,000 in costs associated to the development of this project, which has been financed from the Former Rural Landfill Fund with the approval of project costs as of November 2023. The Division may incur future costs for building out the mitigation bank, but the internal utilization of mitigation credits for Integrated Waste projects will outweigh this initial investment to be funded from the Former Rural Landfill Fund. An internal mitigation bank would also provide economic benefits by facilitating County projects and reducing labor costs and project time. The Integrated Waste Division of SPI already owns the property, so no property purchase is required.

Mitigation Bank Credit Potential

The initial prospectus for the mitigation bank proposed the following credit potential:

4.11 acres of wetland credits

124.65 acres of California tiger salamander credits

124.65 acres of California red-legged frog credits

Credit Values - Based on the initial prospectus completed by WRA, the potential value of these credits are:

\$500,000 per acre for wetland

\$250,000 per acre for California tiger salamander

\$50,000 per acre for California red-legged frog

Estimated County needs for California Tiger Salamander Compensatory Mitigation Habitat for County Road Maintenance and Improvements on the Santa Rosa Plain are: 309 Acres.

Comparison to Existing Banks

An internal survey conducted by Permit Sonoma with an existing bank within Sonoma County sold from privately owned mitigation banks estimated California tiger salamander credits valued at up to \$1 million per acre for the first acre sold and \$500,000 for each acre thereafter. However, these estimates do not account for "stacked" credit prices, where one acre of credit can be used to mitigate for multiple resources, such as California tiger salamander and wetland, which often have higher values.

Next Steps

Staff recommends the Board approve the proposed agreement with Wetlands Research Associates Incorporated to prepare a bank enabling instrument for the Mecham Road Mitigation Bank. The proposed agreement has a term of three years and a total budget not to exceed \$692,204 for completing and submitting a final BEI package to the IRT. Staff also recommends the Board adopt a resolution approving a budget adjustment to Sonoma County Public Infrastructure Fiscal Year 2023-2024 Integrated Waste Adopted Budget in the amount of \$592,204. Staff will return to the Board in six months for an update via a consent item, and at least every six months thereafter to apprise the Board of the business decisions at issue. Following conceptual approval of the final BEI package by the IRT, staff will present the proposed bank to the Board, outlining associated conditions and seeking direction for next steps, which could include acceptance, rejection, or submittal of a new application. Upon approval of the bank, Staff is prepared to proceed with the execution of the necessary steps, as detailed in the approved BEI, to construct and establish the bank, ensuring it serves the County's needs effectively.

Strategic Plan:

This item directly supports the County's Five-year Strategic Plan and is aligned with the following pillar, goal, and objective.

Pillar: Climate Action and Resiliency

Goal: Goal 5: Maximize opportunities for mitigation of climate change and adaptation through land conservation work and land use policies

Objective: Objective 1: Align the Board of Supervisor's strategic priorities, policy, and operational goals with funding and resources.

Racial Equity:

Was this item identified as an opportunity to apply the Racial Equity Toolkit?

No

Prior Board Actions:

9/15/20 - Board approved an agreement with WRA to prepare a draft mitigation bank prospectus for creating habitat for California Tiger Salamander.

FISCAL SUMMARY

Expenditures	FY23-24 Adopted	FY24-25 Projected	FY25-26 Projected
Budgeted Expenses		\$100,000	\$0
Additional Appropriation Requested	\$592,204		
Total Expenditures	\$592,204	\$100,000	\$0
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance	\$592,204	\$100,000	\$0
Contingencies			
Total Sources	\$592,204	\$100,000	\$0

Narrative Explanation of Fiscal Impacts:

Total estimated value of consultant work to be completed is \$692,204 for completing and submitting a BEI package to the IRT, including plans, specifications and estimates that will allow SPI to put the construction work out to bid.

Appropriations for this project were not included in the Fiscal Year 2023-24 Integrated Waste Adopted Budget and are requested in the amount of \$592,204 from the Former Rural Landfill Fund (41122) available fund balance. The balance of \$100,000 to complete the work will be included in the Fiscal Year 2024-25 Recommended Budget.

Narrative Explanation of Staffing Impacts (If Required):

None.

Attachments:

Agreement and Exhibits A-D for Bank Enabling Instrument for the Mecham Road Mitigation Resolution
Powerpoint presentation

Related Items "On File" with the Clerk of the Board:

None.