The background image shows two women crouching in a field, examining the ground. The woman on the left is wearing a blue hoodie and a patterned knit hat. The woman on the right is wearing a pink hoodie and a blue scarf. They appear to be engaged in a field activity, possibly related to conservation or stewardship. The field is dry with some trees and bushes in the background.

Opportunities in Conservation Banking for Tribal Stewardship

Tribal Stewardship Economies Webinar Series

Tribal Stewardship Policy and Toolkit: Webinar Objective



The Tribal Stewardship Policy Toolkit and webinar series is intended to increase the capacity of tribes, state agencies, and non-tribal entities to advance tribal stewardship according to the Policy.

During this webinar, you'll hear from tribal practitioners and experts about using mitigation and conservation banking as a tool to finance long term operations and management for tribal stewardship. Speakers will discuss opportunities and best practices for tribes in wetland mitigation banking and share resources that can support tribes in implementing projects.

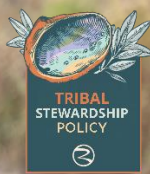


Agenda

- Introduction to Conservation Banking
- Introduction to Conservation Banking for Tribes
- Moderated Q&A
- Closing



Moderator and Panelist Introductions



David Smith-Ferri

Petaluma River Mit. Bank Project Mgr.
Dry Creek Rancheria

Melissa Denena

Sr. Principal Ecologist
Environmental Science Associates

Geneva E.B. Thompson

Dep. Sec. for Tribal Affairs
CA Natural Resources Agency

Skip Moss

Chief Strategic Officer
Natural Resources Group

California Natural Resources Agency (CNRA)

Opportunities in Conservation Banking for Tribal Stewardship

Tribal Stewardship Economy Webinar Series



**DRY CREEK RANCHERIA
BAND OF POMO INDIANS**



30x30
CALIFORNIA

April 28, 2026



Presenters



Melissa Denena

Environmental Science Associates
(ESA)



Skip Moss

Natural Resources Group, Inc. (NRG)



David Smith-Ferri

Dry Creek Rancheria
Band of Pomo Indians



**DRY CREEK RANCHERIA
BAND OF POMO INDIANS**

Agenda

- Mitigation Banking History
- Regulatory Agency Oversight
- Mitigation Banking 101
- Tribal Constraints and Opportunities

Mitigation Banking History



What is “Banking”?

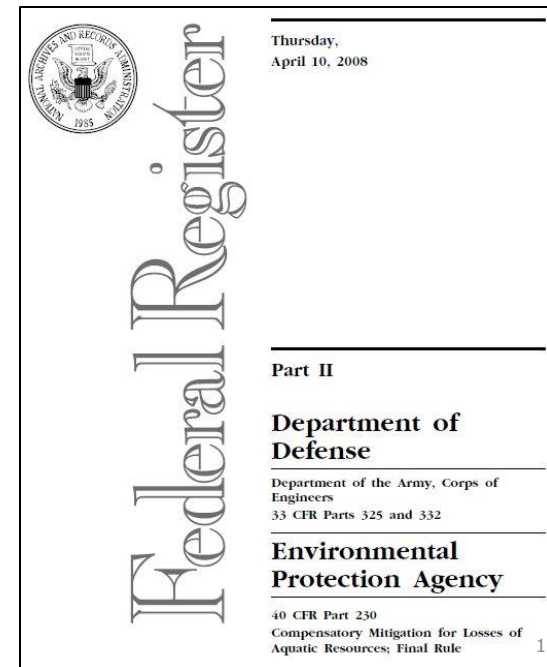
- Land that is Conserved **In Advance** of Impacts
 - “Advanced Mitigation”
- Typically Established w/ Private Sector Investment
 - Some exceptions in Southern California
- Two Types of “Banks”
 - “Mitigation Banks” (catchall term, but typically used for banks w/ wetland restoration)
 - “Conservation Banks” (typically used for species banks or wetland preservation)





History of Federal Mitigation Banking

- Federal mitigation banking has a history rooted in the 1960s environmental movement and formalized through legislation like the 1972 Clean Water Act.
- Guidance from the U.S. Fish and Wildlife Service in 1983 paved the way for the first mitigation banks, often for state highway and public works projects
- 1995: Federal Guidance for the Establishment, Use and Operation of Mitigation Banks
 - Published by: USACE, EPA, NRCS, USFWS, NMFS
 - Established “Mitigation Bank Review Team”
 - Defined key terms
- 2008: Compensatory Mitigation for Losses of Aquatic Resources (aka “Mitigation Rule”) – Part 332.8 Mitigation banks and in-lieu fee programs
 - “Interagency Review Team”
 - More detailed information regarding banking process
 - Incorporated recommendations of 2001 the National Research Council (NRC) evaluation of the effectiveness of wetlands compensatory mitigation required under section 404 of the Clean Water Act.



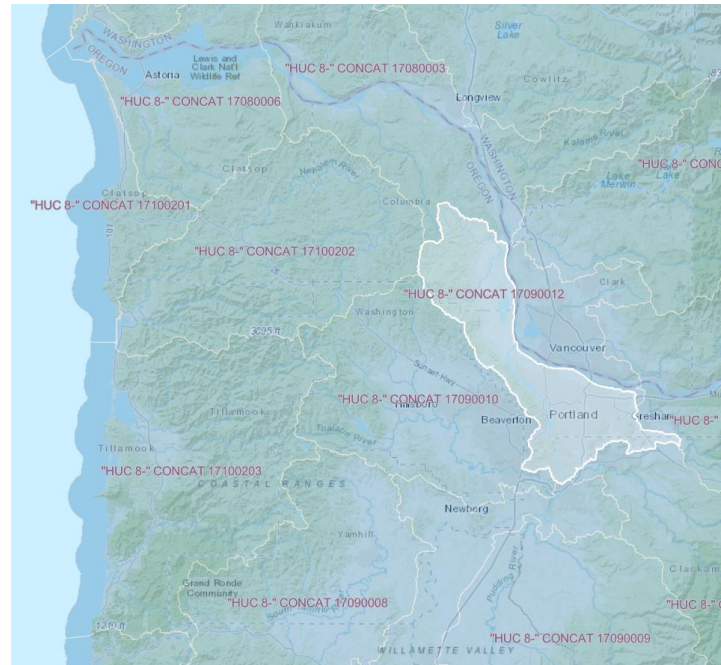


Watershed Approach

"Watershed approach means an analytical process for making compensatory mitigation decisions that support the sustainability or improvement of aquatic resources in a watershed." (33 CFR 332.2)

Ultimate Goal = maintain and improve the quality and quantity of aquatic resources within watersheds

**Species mitigation is driven by ecology and population data and goals.*





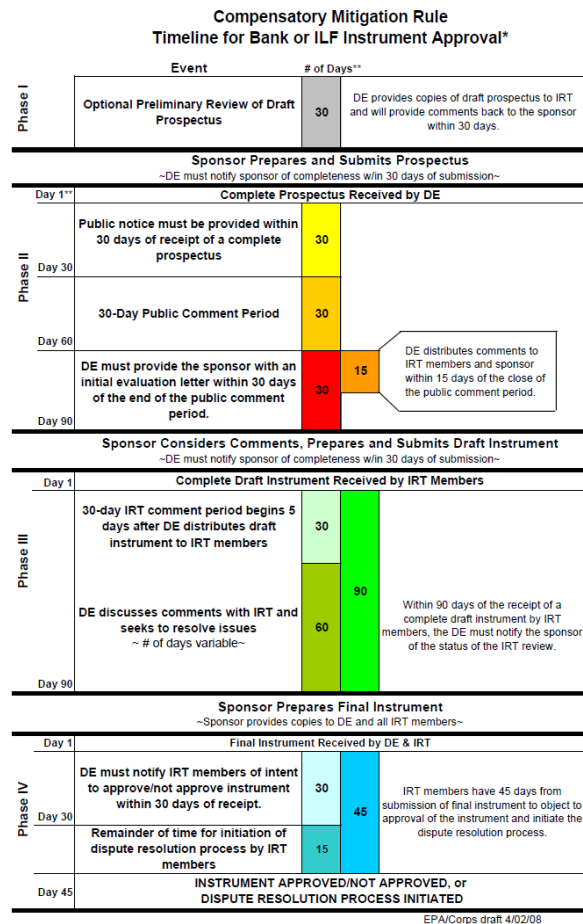
Other Key Terms from 2008 Mitigation Rule

- The **Prospectus** provides an overview of the proposed mitigation bank or in-lieu fee program and serves as the basis for public and initial IRT comment.
- **Mitigation banking instrument** means the legal document for the establishment, operation, and use of a mitigation bank.
- **Credit** means a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the accrual or attainment of aquatic functions at a compensatory mitigation site. The measure of aquatic functions is based on the resources restored, established, enhanced, or preserved.
- **Service area** means the geographic area within which impacts can be mitigated at a specific mitigation bank or an in-lieu fee program, as designated in its instrument.



Mitigation Banking Timeline

- Phase 1: Draft Prospectus (optional)
- Phase II: Prospectus review and public comment period
- Phase III: Draft Instrument review
- Phase IV: Final Instrument review and decision



Regulatory Agency Oversight



Key Regulatory Guiding Documents

- U.S. Army Corps of Engineers (USACE) and Environmental Protection Agency (EPA)
 - 2008 Final Mitigation Rule
 - 2015 Regional SPD Compensatory Mitigation and Monitoring Guidelines
- U.S. Fish and Wildlife Service (USFWS)
 - 2023 Endangered Species Act Compensatory Mitigation Policy
- State Water Quality Control Boards (SWQCB)
 - 2019 State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State
- California Department of Fish and Wildlife (CDFW)
 - Conservation and Mitigation Banking Guidelines, Instructions, and Templates



California Interagency Roles & Responsibilities

- 8-Party MOU to improve consistency
- Banking Agency Management Team (BAMT)
 - Project Delivery Team (PDT)
 - Interagency Review Team (IRT)
- Targeting quarterly BAMT meetings
- Renewed energy around mitigation banking





Entitlement Timeline to Permit a CDFW Conservation Bank

761 - 1,740 days

270 days CDFW processing required in CA Code

Average total time (CDFW data)

Average total time (USACE data)

Average total time (bank sponsor data)

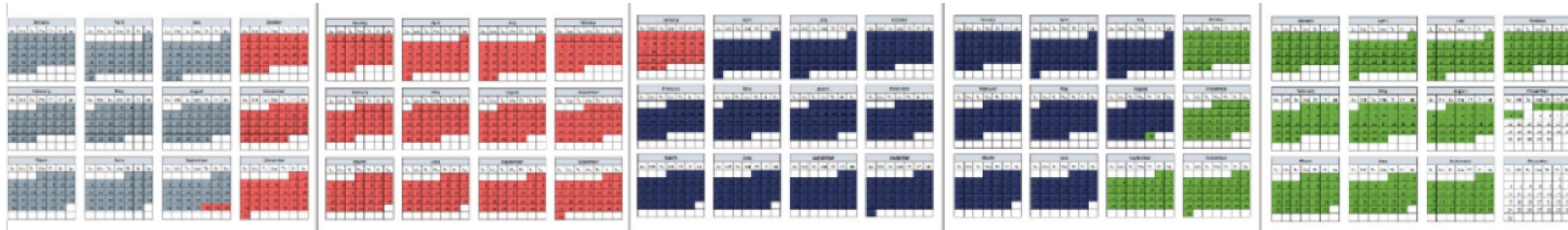
Yr 1

Yr 2

Yr 3

Yr 4

Yr 5

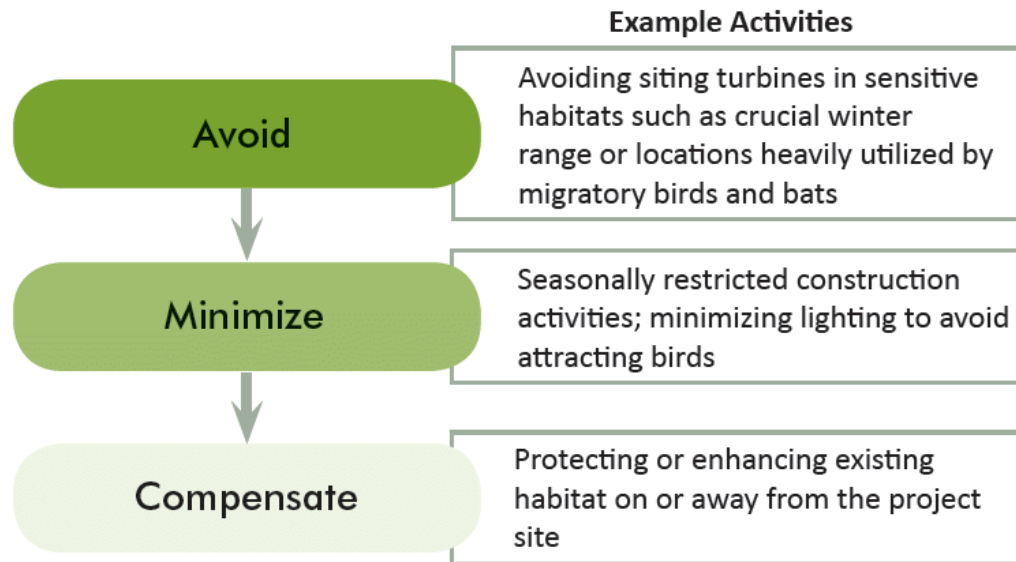


Mitigation Banking 101



Mitigation 101

- Compensation for unavoidable impacts
- Mitigation Delivery mechanisms:
 - Advanced:
 - Mitigation Banks
 - Synchronous/Trailing:
 - Permittee-responsible mitigation (PRM)
 - In-Lieu Fee (ILF) programs
 - HCP's (hybrid)





How Banking “Works”

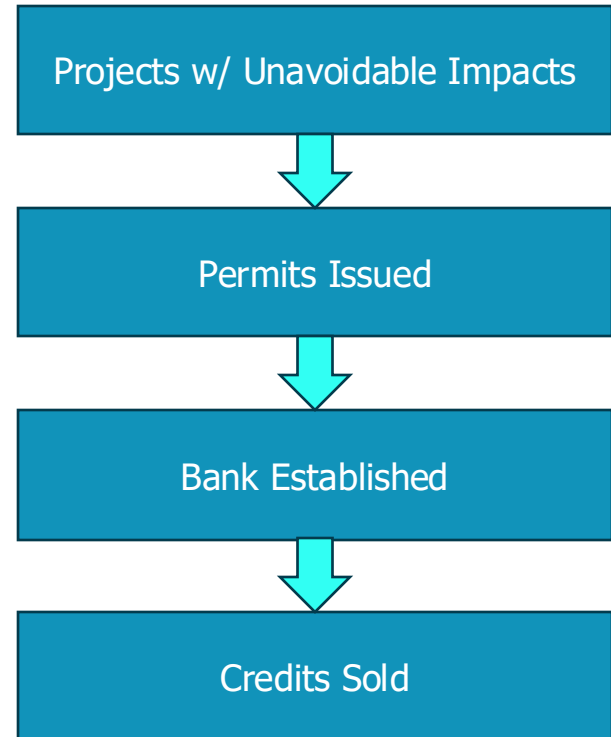
1. Strong Environmental Regulatory Framework Generates Mitigation Needs

- 404 Clean Water Act
- Federal Endangered Species Act
- California Endangered Species Act
- California Environmental Quality Act
- City/County Ordinances & Requirements

2. Private Sector Responds

- Mitigation Demand
- Land Acquisition
- Bank Entitlement
- Credit Availability

3. Project Proponents Buy Credits/Fulfill Permit Requirements





Mitigation 101

- Banks for federally & state protected resources conserve > 100,000 acres
- Can be approved by federal & state agencies:
 - USFWS, USACE, EPA
 - CDFW, RWQCB
- Local agencies





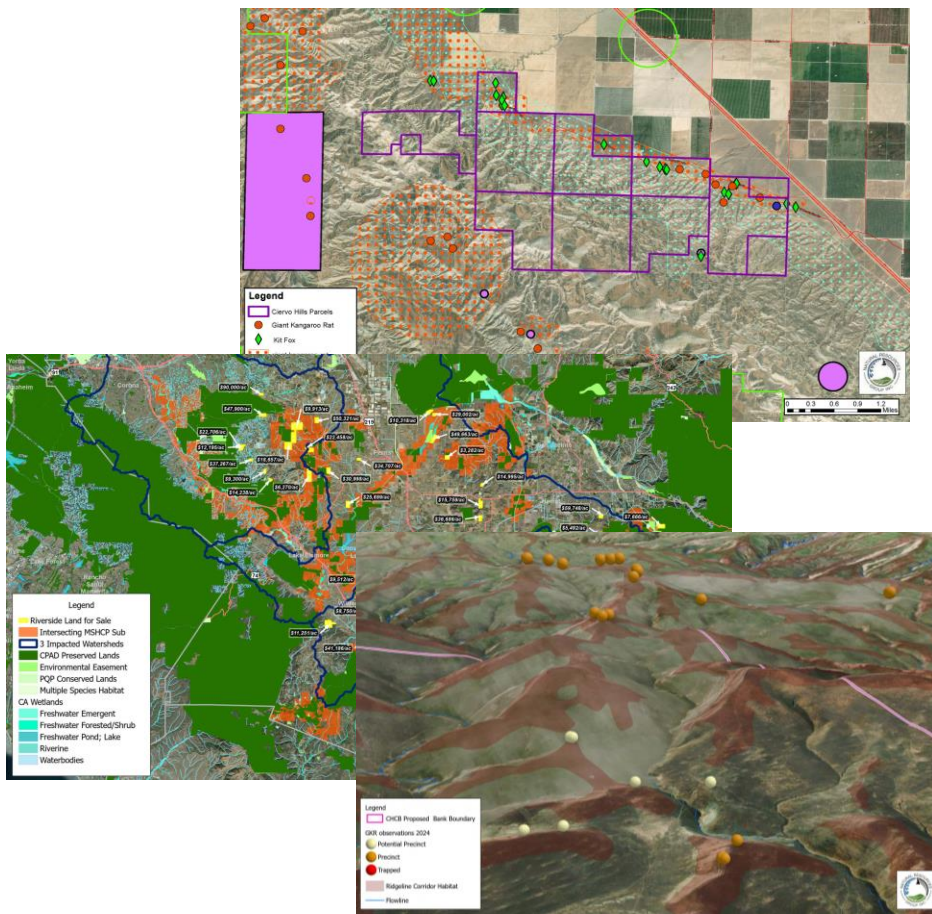
Features Common to Banks

- **Bank Enabling Instrument**
 - Agreement between Bank Sponsor and the Regulatory Agency(ies)
- **Conservation Easement**
 - Granted to an Approved 501(c)(3) Non-Profit Entity
 - Permanent Protection of the Land
- **Management Plans**
 - Development (if restoration), Interim & Long-Term
- **Endowment**
 - Held by 3rd Party, Non-Wasting
 - Provides for the Implementation of the LTMP
- **Service Area**
 - Location where permitted impacts can mitigate



Bank Development Process

- Banker Identifies Mitigation Demand
 - Scale & Timing
- Land Identification & Acquisition
 - Recovery Plans, CNDDDB, Watersheds, CAPP's, Local Knowledge
 - Identify Potentially Suitable Properties
 - Find Willing Landowners
 - Due Diligence
 - Biological Analysis
 - Title/Real Estate Analysis (can the property be permanently protected)
 - Negotiate Purchase Price







Primary Resource in California

- CDFW Publishes Statewide Requirements
- Banking Process
- Standardized Templates
- Conservation/Mitigation Banking Checklist

ESA

<https://wildlife.ca.gov/Conservation/Planning/Banking>

Conservation and Mitigation Banking

 <p>Program Overview</p> <p>Learn more about the banking program</p>	 <p>Process & Templates</p> <p>Overview of the banking process and associated forms</p>	 <p>Established Banks</p> <p>Dashboard of existing banks</p>	 <p>Contact</p> <p>Regional banking contacts</p>
--	---	--	--

A conservation or mitigation bank is a free-market enterprise that:

- allows landowners economic incentives to protect natural resources
- saves permittees/project proponents time and money by providing them with pre-approved compensation lands
- consolidates small, fragmented mitigation projects into large contiguous sites that may have a higher wildlife habitat value
- provides for long-term protection and management of habitat
- offers the sale of mitigation credits in advance of identifying the compensatory mitigation project

 <p>Banking Guidelines (PDF)</p>	 <p>Publications & Resources</p>	 <p>Fees</p>
--	--	--

Recent Banking News

- **2/5/2025**
[New 2024 BEI now required, and call out for banking photos](#)
- **1/13/2025**
[Fees updated for 2025 and multi-agency checklist available for comment](#)
- **11/5/2024**
[New BEI Template Published](#)

Subscribe

Sign up to receive news about environmental impact mitigation banking in California.

Email *

By checking this box, you consent to our [privacy policy](#).*



“Pros” of Banking

- Private Investment Moves Quickly
 - Targeted Conservation Acquisition
 - Purchase w/o Appraisal or Grant Funding Cycle
- Land Protected & Restored in Advance
- Permanent Protection, Management, Funding
- Opportunity for High Revenue



“Cons” of Banking

- Driven by Permit Demand
 - Response to Mitigation Required in Permits
- Protected “Only” for the Resource
 - Little or No Public Access
- Very Capital Intensive, Need to have “Return”



Tribal Constraints and Opportunities



Tribal Mitigation Banking Overview

- The regulatory framework was built without tribal sovereignty in mind
- Permanent site protection is the #1 entitlement killer on tribal lands
- Less than 1% of mitigation banks across the U.S. currently involve tribes
- There is opportunities for this to change!





Common Constraints for Tribes

- Private land versus sovereign government land
- Tribal trust land
 - Cannot be encumbered
 - State's limited jurisdiction
 - Granting rights to a non-tribal third party
 - Tribal legal systems
- Requirement for permanent site protection
 - Conservation easements
 - Deed restriction
 - Third-party enforcement rights





Mitigation Bank Example – Tribal Trust Land

Lummi Nation Wetland and Habitat Mitigation Bank

- Sponsor: Lummi Nation
- USACE Seattle District, EPA Region 10
- Approved in 2012
- First federally approved tribally owned commercial mitigation bank
- Proved to the IRT that “Equivalent protection can exist without alienating tribal land interests.”
- USACE accepted functional equivalency, not a one-size-fits-all easement

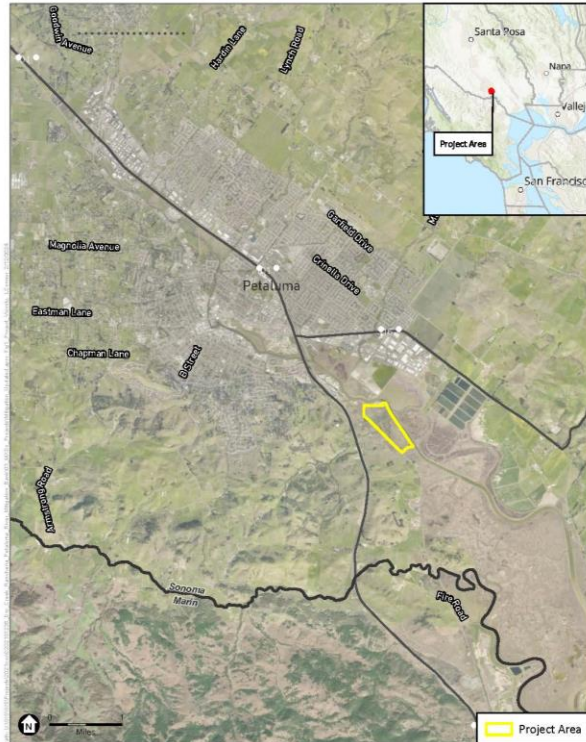


The Lummi Nation WHMB is comprised of approximately 1,965 acres on three separate sites in the Lummi River and Nooksack River floodplains. The mitigation bank is being developed in phases—currently only Phase 1A is operational.



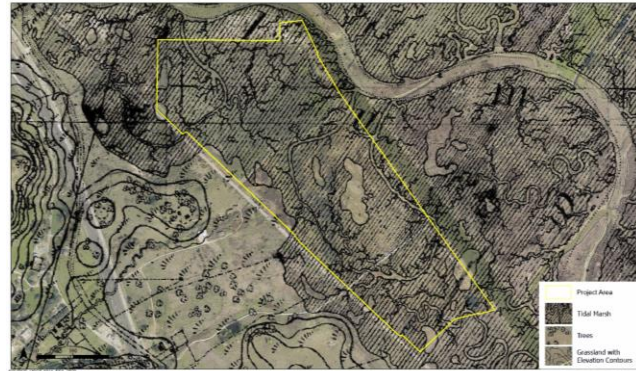
Mitigation Bank Example – Non-Tribal Trust Land

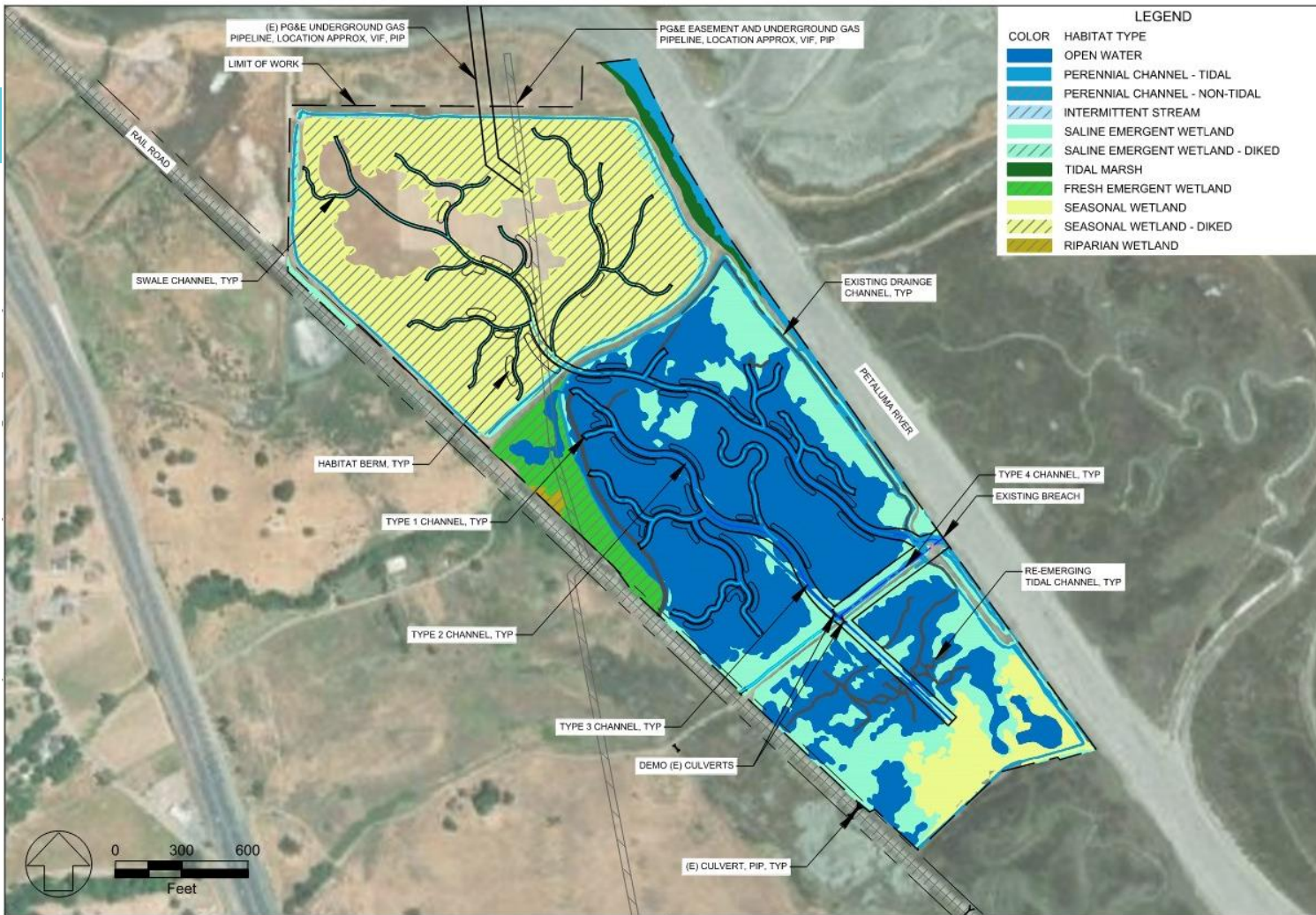
Petaluma River Mitigation Bank



SOURCE: ESRI, 2021, ESA, 2022

Dry Creek Ranch/Petaluma River Mitigation Bank





Existing Conditions with Design Overlaid



Bank Credits

- Credit Types

- Tidal marsh
- Four fish species
- Two avian
- One mammal



- Goal of agency approval 2027

- Anticipated releases over the next ten years



- Tribe sets the pricing





Other Opportunities for Tribal Involvement in Mitigation Banking



- Potential for holding conservation easement
- Project partner through joint venture, land investment, project involvement (ex., plantings)
- Land back to tribes following bank closure (management funds, land ownership, etc.)



Firsthand Account - Lessons Learned

- Assembling a good technical support team is crucial
- Developing a mitigation bank is a process
- Managing Tribal Leaders' expectations is important
- Upfront capital investment
- Work with potential credit buyers ahead of time



Thank you!

Melissa Denena

Environmental Science Associates
mdenena@esassoc.com

Skip Moss

Natural Resources Group, Inc.
smoss@natural-resources-group.com

David Smith-Ferri

Dry Creek Rancheria Band of Pomo
Indians davids@drycreekrancheria.com

Questions?



**DRY CREEK RANCHERIA
BAND OF POMO INDIANS**



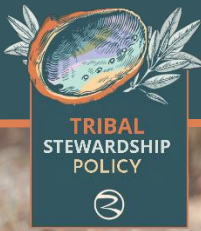
Mitigation Banking Resources

- USACE [HQ mitigation website](#) including 2008 Compensatory Mitigation Rule
- USACE SPD [Regional Compensatory Mitigation and Monitoring Guidelines](#)
- USACE SPD [Regulatory website](#) (banking MOU, templates, public notices)
- USFWS [Conservation Banking website](#)
- CDFW [Conservation and Mitigation Banking](#)
- CDFW [2014 Conservation and Mitigation Banking Guidelines](#)
- NMFS [Mitigation Banks, Conservation Banks, and In-Lieu Fee Programs in the West Coast Region](#)
- EPA [Mitigation Banks under CWA Section 404](#)
- [RIBITS](#)



Discussion & Closing

Thank you!



Want to learn more?



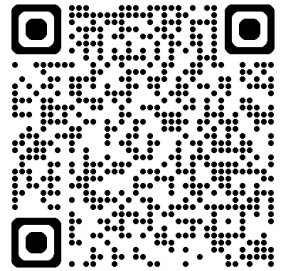
Explore the policy and toolkit:

<https://resources.ca.gov/Initiatives/Tribalaffairs/TribalStewardshipPolicyAndToolkit>



Join our email list:

Scan or go to <https://public.govdelivery.com/accounts/CNRA/signup/48486>



Questions or comments? Email us:
tribalaffairs@resources.ca.gov