
SECTION 9 – PROGRAMMATIC PERMITTING/ CONSERVATION BANKING

9.1 BACKGROUND

The Master Plan describes the revegetation and stabilization of San Francisquito Creek in adequate detail for facilitating obtaining permits for individual landowners in accordance with the scenarios described in Section 8. It provides a range of design criteria and considerations for direct incorporation into permit application and CEQA documents. For many, perhaps the majority of projects, stabilization will take place in a severely degraded situation, where, for example, a bank has collapsed to bare ground. The project then becomes self-mitigating, by eliminating a source of excess sediment and encouraging some kinds of riparian vegetation. In these instances, the permit process can be relatively straightforward, although time consuming and expensive.

The Master Plan can also function to coordinate public and private actions, so that public or private entities carrying out stabilization would be linked with projects where the goal was to remove non-native vegetation and restore native habitat. When projects which are purely enhancement are linked to projects which are mainly directed towards stabilization, the benefits of a watershed-wide approach are clear. One of these benefits is the possibility and applicability of a larger permit strategy, one which would streamline the process and relieve the permit burden from individuals.

9.2 PROGRAMMATIC PERMITTING FOR THE SAN FRANCISQUITO CREEK MASTER PLAN

As the recommendations of this Master Plan are implemented, an applicant for a wetlands permit (which includes work on San Francisquito Creek) is required to “avoid” destruction of wetlands to the extent possible. In addition, an applicant must “minimize” any wetland impacts. Finally, if wetland losses are unavoidable, an applicant must “mitigate” for the wetland losses. Of these three requirements, the first two are integrated into the recommended stabilization designs.

Suitable mitigation, which ensures no net loss of wetland function, must be part of the overall program. Mitigation which is planned in a way as to guarantee a net *benefit* to the creek can produce an implementation *program* for the project area as a whole. It would be accepted by the Corps, the Department of Fish and Game, and the Regional Water Quality Control Board as a stream enhancement project, with a much shorter permitting timeline. Specifically, this may result in the program being authorized as a Nationwide Permit 27 (Wetland and Riparian Restoration and Creation Activities), or by the more flexible Regional General Permit (RGP) as opposed to Nationwide Permit 13 (Bank

Stabilization).¹ The benefits to the watershed are self-evident. The benefits to individual landowners would be relief from both CEQA compliance and permit application.

The Master Plan provides guidance and direction for future action, but since no individual project is proposed, net benefits cannot be calculated. There is, however, a process by which a quantity of mitigation can be identified in advance, then incrementally assigned to projects as they occur. The process is called “mitigation banking.”

9.3 MITIGATION BANKING

Since the mid-1980s both federal and state wetland regulators have actively sought to prevent the inadequate, fragmented habitat conservation that often results from project-specific mitigation by allowing project proponents to secure mitigation “credit” in advance of a specific project. Mitigation land is set aside and committed in perpetuity. For example, the 20,000 linear feet of San Francisquito creekside in public ownership could be the mitigation “bank.” An agreement is reached (e.g., through a Memorandum of Understanding) that the enhancement and permanent protection of the conservation land will account for a specified amount of impact. Since stabilization permits assess impacts in terms of linear feet, the bank credits would likely be similarly calibrated. For example, the implementation of a project which installed gabions along 100 feet of bank would be considered no-net loss if it was assigned an equivalent amount of enhancement credits from the mitigation bank. If it acquired significantly more credits (e.g. 150 feet), it would be considered a stream enhancement. The costs of enhancement would be allocated through a fee structure, but any fees would be less costly to individuals than paying for project specific permitting and CEQA compliance.

Mitigation banking offers clear advantages. Compared to traditional mitigation, mitigation banks are easier for resource agencies to monitor, and mitigation banks bring greater expertise and long-term financial and commitment to mitigation efforts. In addition, the opportunity to offset project impacts through a locally sponsored mitigation bank provides strong incentives to implement the bank stabilization and revegetation treatment recommendations of the Master Plan. Lastly, it provides a vehicle for resolving all of the endangered species issues at one time, making the compliance process simpler even for those projects which would be self-mitigating.

¹ The structure and content of the nationwide permit system is currently under review, and these generic permit types are being revised by the Corps during 2000.

To qualify for approval under an RGP, the mitigation bank sponsor will need to identify specific areas to “capitalize” the bank. In addition, the total linear feet of implemented projects would need to be projected for a five to ten year period. Each year, the program administrator would record the linear feet of all stabilized streambanks which are considered riparian impacts (some projects would be deemed self-mitigating), and report on the associated linear feet for which improvement funds have been collected and projects carried out. It is possible that the amount of available bank credits would be insufficient to meet the demands. At this point, landowners would need to negotiate their own mitigation with the Corps and the CDFG, or the program could shift to a type of ecosystem improvement unrelated to land: control of invasive species, such as mitten crabs, for example.

If a Memorandum of Understanding based on the Master Plan would thus coordinate public and private actions, so that public or private entities carrying out stabilization are linked with projects where the goal was to improve stream function, the result would be a program with its own internal stewardship accountability. It would thus facilitate permitting while engaging the support of the active conservation community.