

SPECIAL PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

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APPLICATION FOR MILLER VALLEY RANCH MITIGATION BANK

Public Notice/Application No.: SPL-2012-00222-RRS

Project: Miller Valley Ranch Mitigation Bank

Comment Period: May 1, 2012 through May 31, 2012

Project Manager: Robert R. Smith Jr.; 760-602-4831; Robert.R.Smith@usace.army.mil

Owner/Sponsor

Mr. Mark Perry
Westminister Fund VI, LP
270 Westminister, Suite 300
Lake Forest, IL 60045

Contact

Cynthia Eldred
The Law Offices of Cynthia L. Eldred
2481 Congress Street
(619) 233-7366
San Diego, California 92110

Location

The proposed Corps Wetlands Mitigation Bank Site (Bank Site) is located near Miller Valley Road between Live Oak Springs and Cameron Corners in the eastern and southern part of unincorporated San Diego County (no street address), California (Figure 1). The Bank Site is south of Interstate 8 and Old Highway 80, approximately 1.4 miles southwest of Interstate 8/Crestwood Road junction. It is within T 17 S, R 6 E, Sections 17 and 18, of the USGS 7.5' Cameron Corners quadrangle.

Activity

The Sponsor is proposing the establishment of the Miller Valley Ranch Mitigation Bank or Bank Site. The proposed Bank Site constitutes the proposed activity requiring Corps approval for both a bank and potentially a permit request for enhancement activities. Proposed enhancement activities include the cessation of cattle ranching, invasive plant removal, and native species re-vegetation. The Sponsor has requested 11.3 acres of wetland credits in and adjacent to Miller Creek in the Bank Site for these activities. This public notice initiates the review of the Prospectus. The Corps has also formed an Interagency Review Team (IRT) to process the bank through to completion. The bank is proposed to compensate for development-related impacts to aquatic habitat on other properties within the service area.

Interested parties are hereby notified that a Prospectus has been received from Westminster for a Corps wetlands mitigation bank for an off-site area to compensate for development-related impacts on other properties. Interested parties are invited to provide their views on the Prospectus, which will become a part of the record and will be considered in the decision.

Comments should be mailed to:

U.S. Army Corps of Engineers
Los Angeles District
Regulatory Division, Carlsbad Field Office
Attn: Robert Smith, P.E. (File No. SPL-2012-00222-RRS)
6010 Hidden Valley Rd., Suite 105
Carlsbad, California 92011

Alternatively, comments can be sent electronically to: robert.r.smith@usace.army.mil

Evaluation Factors

The decision whether to approve the Miller Valley Ranch Mitigation Bank will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. The proposed Corps wetlands mitigation bank may require a Corps permit which may require a Corps public interest review. The Corps' decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, if the proposal would discharge dredged or fill material, the evaluation of the activity will include application of the Environmental Protection Agency (EPA) Guidelines (40 CFR 230) as required by Section 404 (b) (1) of the Clean Water Act.

The U.S. Army Corps of Engineers (Corps) is soliciting comments from the public; Federal, State, and local agencies and officials; Native American tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. The District Engineer (DE) will review the comments received in response to this notice and make a written initial evaluation as to the potential of the proposed conservation/mitigation bank to provide mitigation to compensate for development-related impacts on other off-site properties. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation, if applicable, of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine

the need for a public hearing and to determine the overall public interest in the proposed activity. In addition, all comments will be distributed to the members of the Interagency Review Team (IRT) and the applicant within 15 days of the close of the comment period. The DE and the IRT members will also have the opportunity to comment to the applicant. After considering comments from the DE, the IRT, and the public, if Westminster chooses to proceed with establishment of the mitigation bank, Westminster will prepare a bank enabling instrument and submit it to the DE for approval.

Background

On April 10, 2008, the Corps and the EPA published the Final Rule on Compensatory Mitigation for Losses of Aquatic Resources ("Mitigation Rule") which went into effect on June 9, 2008. The Mitigation Rule replaced most previous guidance concerning compensatory mitigation.

Consistent with the requirements of the Mitigation Rule at 33 CFR §332.8(d), Westminster has submitted a Prospectus to the Corps for the purpose of establishing and managing the Miller Valley Ranch Mitigation Bank consistent with the Mitigation Rule. The Corps seeks comments from interested parties on the Prospectus and proposed restoration activities.. This public notice provides a summary of the proposed mitigation bank Prospectus submitted by Westminster. The full Prospectus may be obtained from the Corps by contacting Robert Smith or by viewing the Prospectus at the following website:

<http://www.millervalleyranchmitigationbank.com/index.html>

Currently the IRT members consist of the Corps Regulatory Division, the USFWS, EPA, and the California Regional Water Quality Control Board – San Diego Region. The California Dept. of Fish and Game (CDFG) had been participating on the IRT up to December 2011 but due to limited State funding and suspension of the CDFGs Conservation and Mitigation Banking Program, CDFG has withdrawn from the IRT but may return pending CDFG policy or funding changes.

The Sponsor is also proposing a conservation bank adjacent to the Corps wetlands bank which is undergoing review by the U.S. Fish and Wildlife Service (USFWS) but is not a part of the proposed Corps proposed wetlands mitigation bank.

Objectives

The primary objective of the proposed mitigation bank would be to serve as an off-site mitigation area to compensate for development-related impacts to waters of the U.S. on other properties within the service area. The mitigation bank would provide mitigation for both permanent and temporary impacts to wetlands and other waters of the U.S. As required by the Mitigation Rule, the enhanced, restored, and preserved features of the site would be protected and managed in perpetuity.

Service Area

The proposed service area for the Miller Valley Ranch Mitigation Bank is located within the upper Tijuana River watershed above where the Tijuana River crosses the border just west of Portrero.

Establishment and Operation of the Bank

Based on preliminary information developed for the Prospectus, the Miller Valley Ranch Mitigation Bank would encompass approximately 11.3 acres of preserved and enhanced wetlands. A Wetlands Enhancement Plan (Habitat Mitigation and Monitoring Plan; HMMP) would be prepared and implemented to the satisfaction of the Corps, the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency, the CDFG (may not comment due to workload/funding policies), and the San Diego Regional Water Quality Control Board. No importation of fill is proposed for the mitigation bank only cessation of cattle grazing, removal of invasive plants, and re-vegetation of native wetlands plants.

Westminster has proposed a conservation easement for long term site protection. Conservation easements or a fee title transfer of the bank property to a specified grantee is required by the Mitigation Rule and subject to the approval of the IRT. Potential grantees are the CDFG (pending restored State funding); the U.S. Fish and Wildlife Service; and/or other regulatory bodies or non-governmental organizations, as appropriate.

Long-term management of the Miller Valley Ranch Mitigation Bank would be provided by a habitat manager acceptable to the IRT and long-term management activities would be completed in accordance with the approved habitat management plan as required by the Mitigation Rule. Any wetlands enhancement activities would be subject to the requirements of an approved Wetlands Enhancement Plan (HMMP). Westminster proposes to establish a non-wasting endowment as a funding mechanism for the mitigation bank that will be created as mitigation credits are sold.

Qualifications of the Sponsor

Westminster has proposed that one of the following listed entities be approved as habitat manager for the Miller Valley Ranch Mitigation Bank. The summary below sets forth their respective qualifications based on publicly available information (in alphabetical order):

Center for Natural Lands Management: The Center was founded in 1990 to protect sensitive biological resources through professional, science-based stewardship of mitigation and conservation lands in perpetuity; to promote the conservation values of such lands through education; and, to cooperate with public and private entities in their efforts to protect native species and habitats for the

public benefit. The Center is presently managing over 34,000 acres of conservation lands throughout California. This includes 72 separate projects, ranging from one to thousands of acres. The Center has a staff comprised of biologists, preserve managers, and support personnel.

Endangered Habitats League: The League was founded in 1991 and is dedicated to the protection of the diverse ecosystems of Southern California and to sensitive and sustainable land use for the benefit of all the region's inhabitants. Michael Beck, currently a Planning Commissioner for the County of San Diego, is the League's San Diego contact. The League helped lead the effort to preserve the 2,600-acre Crestridge Ecological Reserve, was instrumental in establishing the San Diego River Park, is currently working to expand its scope, and seeks expansion of the San Diego National Wildlife Refuge and Rancho Jamul Ecological Reserve.

San Diego Habitat Conservancy: The Conservancy was established in 2000 for the purpose of preserving and managing the sensitive habitat and species that are unique to the Southern California environment. The Conservancy manages a number of open space easements throughout the San Diego region, including the: Welk Biological Open Space; Woods Valley Ranch Open Space Preserve; Eureka Ranch Open Space Preserve; Encinas Creek Biological Open Space; Emerald Pointe Preserve; and, Lowe's Biological Open Space.

The mission of the Corps' Regulatory Program is to protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions. The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands. The Regulatory Program in the Los Angeles District is executed to protect aquatic resources by developing and implementing short- and long-term initiatives to improve regulatory products, processes, program transparency, and customer feedback considering current staffing levels and historical funding trends.

Corps permits are necessary for any work, including construction and dredging, in the Nation's navigable water and their tributary waters. The Corps balances the reasonably foreseeable benefits and detriments of proposed projects, and makes permit decisions that recognize the essential values of the Nation's aquatic ecosystems to the general public, as well as the property rights of private citizens who want to use their land. The Corps strives to make its permit decisions in a timely manner that minimizes impacts to the regulated public. The proposed wetlands bank shall provide for the sale of wetlands credits in a portion of one watershed which help balance the watershed and development needs of the areas.

Preliminary Review of Selected Factors

Environmental Impact Statement (EIS) Determination- A preliminary determination has been made that an environmental impact statement is not required for the proposed work.

Water Quality- If a Corps permit is needed then the applicant is required to obtain water quality certification, under Section 401 of the Clean Water Act, from the California Regional Water

Quality Control Board. Section 401 requires that any applicant for an individual Section 404 permit provide proof of water quality certification to the Corps of Engineers prior to permit issuance. For any proposed activity on Tribal land that is subject to Section 404 jurisdiction, the applicant will be required to obtain water quality certification from the U.S. Environmental Protection Agency.

Coastal Zone Management- This project is located outside the coastal zone and preliminary review indicates that it would not affect coastal zone resources. A final determination of whether this project affects coastal zone resources will be made by the Corps, in consultation with the California Coastal Commission, after review of the comments received on this Public Notice.

Cultural Resources- The latest version of the National Register of Historic Places has been consulted and this site is not listed. This review constitutes the extent of cultural resources investigations by the District Engineer, and he is otherwise unaware of the presence of such resources.

Endangered Species- Preliminary determinations indicate that the proposed activity would not affect federally-listed endangered or threatened species, or their critical habitat. Therefore, formal consultation under Section 7 of the Endangered Species Act does not appear to be required at this time for the Bank Site. A conservation bank adjacent to the Corps mitigation bank may be proposed by the Sponsor which would be outside of the Bank Site area.

Public Hearing- Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

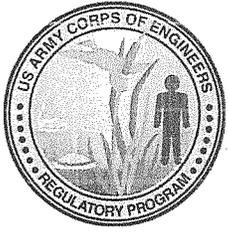
Proposed Activity for Which a Permit is Required- The Sponsor is not proposing to perform any grading only the removal of cattle, invasive plant removal, and wetlands plant re-vegetation which may not require a Corps permit unless there is a discharge of fill.

Additional Project Information

Baseline information- The Miller Valley Ranch Mitigation Bank site is located in the middle of a large block of mostly-disturbed native habitat that extends from Mexican border to the south of the Cleveland National Forest. Preservation of the site will contribute to the habitat connectivity in this regional linkage in perpetuity helping to connect lands that are managed by the Bureau of Land Management (BLM), the Campo Indian Reservation to the east.

Field surveys of the area were done in 2010 and the area supports existing wetlands consisting of montane meadows, riparian scrub, great basin scrub, flat-top buckwheat, coast live oak woodland, open water, non-native grasslands, disturbed and urban/developed habitat, chaparral, and freshwater marsh. The area supports over 116 species of animals including the federally-listed Arroyo toad (*Bufo Californicus*) is near the proposed Bank Site but not within the Bank Site. The Sponsor has completed a Wetlands Delineation and Wetlands Functional Assessment using an HGM approach.

For additional information please call Robert Smith of my staff at 760-602-4831 or via e-mail at Robert.R.Smith@usace.army.mil. This public notice is issued by the Chief, Regulatory Division.



Regulatory Program Goals:

- To provide strong protection of the nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.

U.S. ARMY CORPS OF ENGINEERS – LOS ANGELES DISTRICT

Los Angeles District, Corps of Engineers
Regulatory Division, Carlsbad Field Office
6010 Hidden Valley Rd., Suite 105
Carlsbad, CA 92011
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**Figure 1. Regional Location – Miller Valley Ranch Conservation/Mitigation Bank
Portion of U.S.G.S. “Cameron Corners, California” 7.5’ Quadrangle Map**

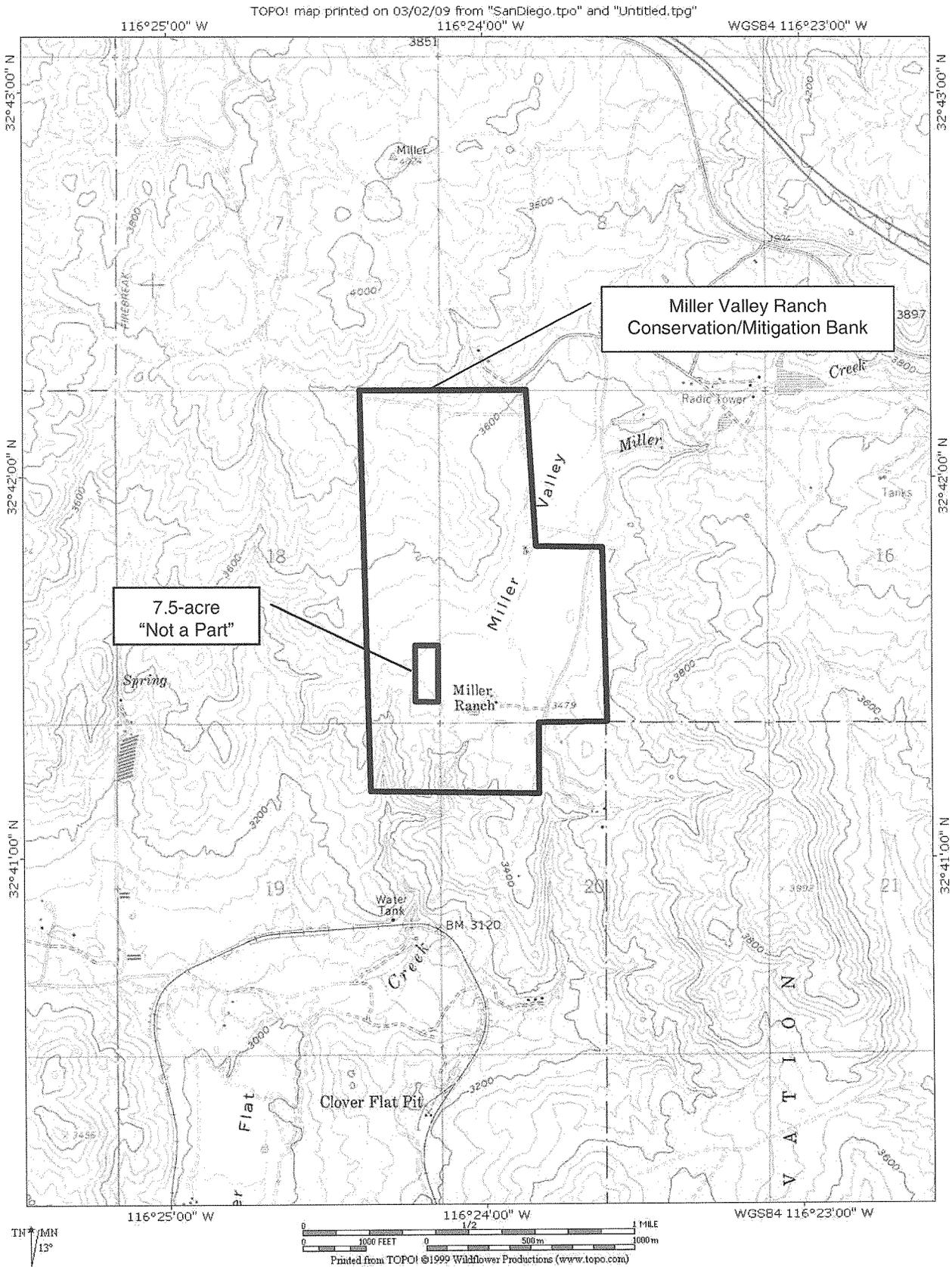


Figure 3. Jurisdictional Wetlands and "Waters" – Miler Valley Ranch Conservation/Mitigation Bank

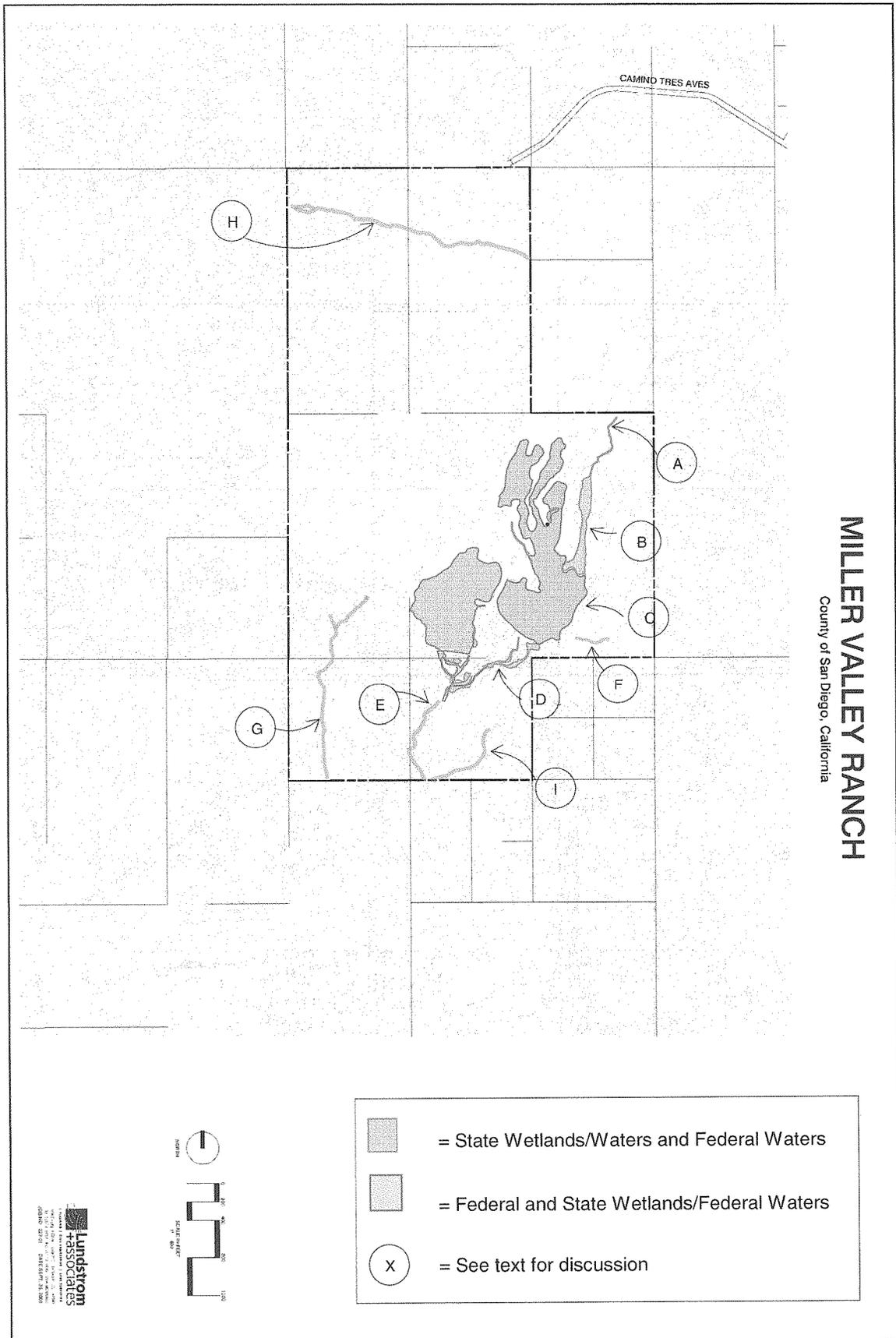


Figure 5. Detail - Wet Meadow, Large Pond, Miller Creek and Tributaries –
Miller Valley Ranch Conservation/Mitigation Bank



No Scale

-  = State Wetlands/Waters and Federal Waters
-  = Federal and State Wetlands/Federal Waters
-  = Pit Location (see text and Attachment A)

Proposed Service Areas for Wetland Credit Sales

