



PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

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Prospectus for Mitigation Bank
Otay River Mitigation Bank

Public Notice/Application No.: SPL-2018-00411-MAL

Project: Otay River Mitigation Bank

Comment Period: August 21, 2019 through September 21, 2019

Project Manager: Michael LaDouceur; (760) 602-4840; Michael.A.Ladouceur@usace.army.mil

Bank Sponsor

Curt Smith
Otay Land Company
1903 Wright Place, Suite 220
Carlsbad, California 92008

Consultant

RJ Van Sant
ICF
525 B Street
Suite 1700
San Diego, California 92101

Location

The proposed Otay River Mitigation Bank (Bank) would be located on approximately 135 acres of public and private land in the Otay River Valley in southwestern San Diego County, California at approximately 32.599°, -116.944°.

Activity

The Corps has received a prospectus from the Otay Land Company (Sponsor) to develop a mitigation bank to generate credits to offset impacts to waters of the United States. The project would restore the Otay River within the Bank by removing non-native vegetation, and grading the site to include a low-flow channel, an active floodplain, and an upper terrace.

Interested parties are hereby notified a complete prospectus has been received for consideration of developing a Compensatory Mitigation Bank. We invite you to review today's public notice and provide views on the prospectus. By providing substantive, site-specific comments to the Corps Regulatory Division, you provide information that supports the Corps' decision-making process. All comments received during the comment period become part of the record and will be considered in the decision. Comments should be mailed to:

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
REGULATORY DIVISION
ATTN: Michael LaDouceur
Carlsbad Field Office
5900 La Place Ct., Suite 100
Carlsbad, CA 92008

Alternatively, comments can be sent electronically to: Michael.A.Ladouceur@usace.army.mil

Additional Information

The Mitigation Rule (Rule) established a process and defined requirements for the establishment and management of mitigation banks, in-lieu fee (ILF) programs, and Permittee-responsible mitigation (33 CFR §332). In addition, the Rule established a public review process and timeline for the development of mitigation banks and in-lieu fee programs. This Bank establishment process will include the following: 1) public review and comment on the Prospectus, 2) Interagency Review Team (IRT) coordination on the Prospectus and the Bank Enabling Instrument (BEI), 3) development of a program account, and 4) development of a credit release schedule.

The IRT consists of member resource agencies, and may include the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, California Department of Fish and Wildlife, California Coastal Commission, and the Regional Water Quality Control Board. More information on the Rule and the Mitigation Banking Process can be found at <https://www.spl.usace.army.mil/Missions/Regulatory/Mitigation.aspx>.

Background

The Bank property is located at the uppermost reach of the Lower Otay River Watershed. The Savage Dam is located immediately upstream of the restoration area. The Dam severs the upper watershed from the lower watershed and only passes water once the reservoir has filled. The Bank property has also been extensively mined for aggregate material, and mining tails and fill piles are located throughout the floodplain.

The following is a list of objectives as described by the Bank Sponsor.

- Complete initial removal of invasive species in the areas to be restored within the Bank site with a focus on dense stands of tamarisk.
- Complete treatment of all large invasive woody trees within the Bank site including eucalyptus, Brazilian pepper trees (*Schinus terebinthifolia*), and date and fan palms. Leave on site to degrade and be incorporated as organic material and structure in future grading.
- Reestablish approximately 2.9 acres (3,100 linear feet) of the intermittent Otay River mainstem at the upstream portion of the Bank site that was not returned to natural conditions following the departure of sand-mining operations. The grading would remove flow obstructions including berms, rows of cobble piles, and sediment and spoil piles, and would re-create the contours of the Otay River mainstem and tributary connections, connect existing low-lying pooling areas, and create floodplains. These actions would improve flow conditions during rain events and hydrological conditions for native plants and would include an upland Diegan coastal sage scrub buffer of approximately 100 feet.
- Reestablish approximately 45 acres of floodplain habitat by removing structures such as berms, rows of cobble piles, and sediment and spoil piles that impede flow, and by removing and managing invasive species. This area within the Bank currently supports a large, nearly

monotypic stand of tamarisk. The tamarisk and other nonnative vegetation would be removed, the natural floodplain contours that were corrupted by mining activities would be re-created, and native plants would be installed following invasive plant removal and regrading.

- Reestablish approximately 1.3 acres (4,600 linear feet) of secondary ephemeral channels along the northern and southern high floodplain. This would improve flow conditions during rain events and create hydrologic flow complexity, as well as habitat complexity.
- Reestablish approximately 1 acre (2,100 linear feet) of tributaries on the north and south side of the river to connect with the reestablished floodplain and secondary channels. The tributaries are currently cut off by access roads and rarely flow beyond the roads.
- Reestablish and improve an existing river crossing to improve hydrologic conditions and reduce existing artificial ponding upstream of the crossing caused by deepening of the road and berming along the edges of the road caused by Border Patrol and maintenance vehicle use. The existing at-grade dirt crossing would be replaced with a rock/articulated concrete mat at-grade crossing.
- Establish seasonal ponds in the north high floodplain totaling approximately 1.9 acres. These ponds would create a unique niche habitat and increase the overall complexity of the site and the ecological services available.
- Protect existing and proposed native riparian habitat by focusing trail and access road users (i.e., Border Patrol, SDG&E, OWD, hikers, equestrian users, etc.) to key access roads and closing others permanently. Fencing, trail signage, and educational kiosks would be installed at key locations.
- Rehabilitate approximately 60 acres of upland transitional habitat in the northern and southern portions of the site through recontouring, revegetation, and removal of nonnative species. This habitat serves as a buffer to the restored riverine system and provides foraging and breeding habitat for many species and refugia for riparian species during high flood events.
- Establish OVRP Concept Plan and Greenbelt Master Plan trail corridors to minimize the potential impacts on the restoration area from existing and potential future uses. These trail corridors would be identified and approximate road/trail alignments established within the existing disturbed roads or other adjacent habitat to avoid impacts on all road ponds that support San Diego fairy shrimp. Split-rail fencing, trail signage, and educational kiosks would be installed to keep users on the trails and outside of the restoration area.

Proposed Long Term Management Strategy

The Bank is proposed to be protected in perpetuity via recordation of a real estate instrument such as a conservation easement or restrictive covenant. Upon Bank closure, the bank is proposed to be managed by the City of Chula Vista and the County of San Diego as part of the Otay Ranch Preserve Owner / Manager (POM), which is an existing agreement between the City and County regarding the management of open space lands within the Otay Ranch Preserve.

Proposed Service Area

The service area of a bank is a geographic area, such as a watershed or ecoregion, within which the mitigation bank is authorized to provide compensatory mitigation required by Department of the Army Permits. The proposed primary service area for the Bank is the Otay River (Hydrologic Unit Code [HUC] 1807030410), Sweetwater River (HUCs 1807030409 and 1807030408), San Diego Bay (HUC 1807030412), Upper Cottonwood Creek (HUC 1807030501), Pine Valley Creek (HUC 1807030502), Lower Cottonwood Creek (HUC 1807030503), Tecate Creek (HUC 1807030504), Arroyo Seco (HUC 1807030505), and Tijuana River-Frontal Pacific Ocean (HUC 1807030406) watersheds. A secondary service area is proposed for the bank and would include the Upper San Diego River (HUC 1807030405), San Vicente Creek (HUC 1807030406), and the Lower San Diego River (HUC 1807030407) watersheds. Any projects with impacts on coastal and tidal wetlands would be excluded from mitigating at the Bank.

Mitigation Bank Approval and Permitting Processes

Mitigation requirements for a particular project are discussed between the project proponent and the Corps. The project proponent must first submit a compensatory mitigation proposal to the Corps describing the proposed use of a Mitigation Bank. Per the Mitigation Rule, preference is first given to use of Mitigation Banks over In-Lieu Fee (ILF) Programs and Permittee-responsible mitigation types, as Bank credits are usually in place prior to the permitting of a proposed project.

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) 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. The Corps will review the proposal to generate wetlands reestablishment, rehabilitation, enhancement, and preservation credits as well as upland buffer credits. All credit sales would be tracked and reported by the Bank sponsor to the Corps at minimum on an annual basis, and also uploaded to the Corps' Regulatory In-lieu Fee and Banking Information Tracking System (RIBITS) at <https://ribits.usace.army.mil>.

In addition to the final IRT approvals of the Prospectus and completion of the final 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 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 federal laws, prior to any DA permit authorization.

To ensure a high level of confidence that the Sponsor's Mitigation Plan¹ would be successfully completed in accordance with applicable mitigation performance standards, the Bank Sponsor, in coordination with the Corps, would secure sufficient financial assurances following Corps approval. Examples of acceptable financial assurances include performance bonds, letters of credit, and escrow accounts.

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 and/or Section 10 of the Rivers and Harbors Act or as a means of resolving Section 404 and/or Section 10 enforcement actions.

Additional details and project plans will be provided in the Prospectus, available online at <https://ribits.usace.army.mil>. Please use the following steps to navigate to the appropriate documents:

- Under the Navigation Heading, click on “Banks & ILF Sites”
- Using the yellow drop-down arrow under the Banks and ILF Sites heading, filter state to “CA”
- Scroll down the alphabetized listing and click on the Otay River Mitigation Bank.
- Click on “Cyber Repository” located underneath the frog image.
- Click on “Documents for Review”

For additional information please call Michael LaDouceur of my staff at (760) 602-4840 or via e-mail at Michael.A.Ladouceur@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.

**DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS**

WWW.SPL.USACE.ARMY.MIL/MISSIONS/REGULATORY

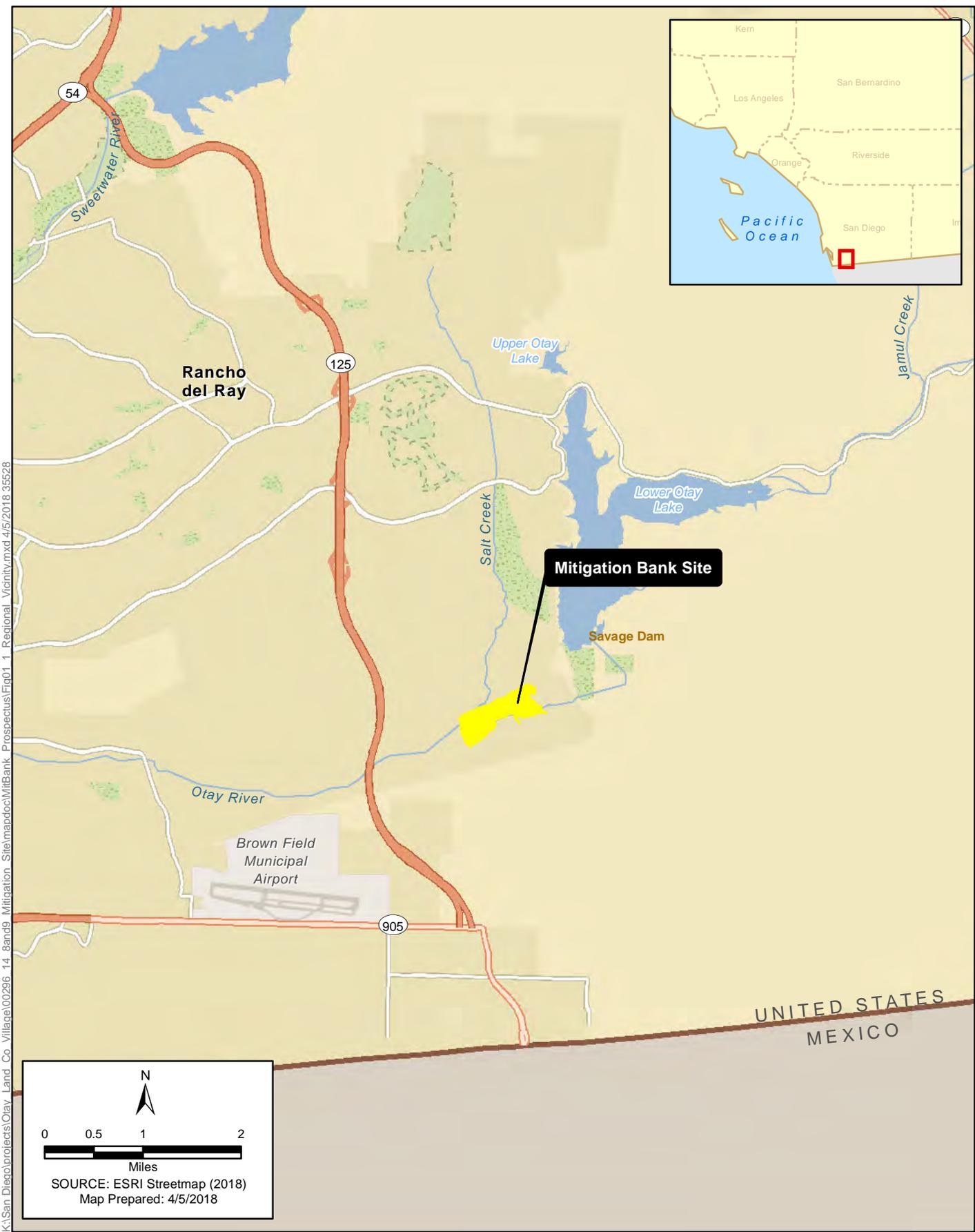
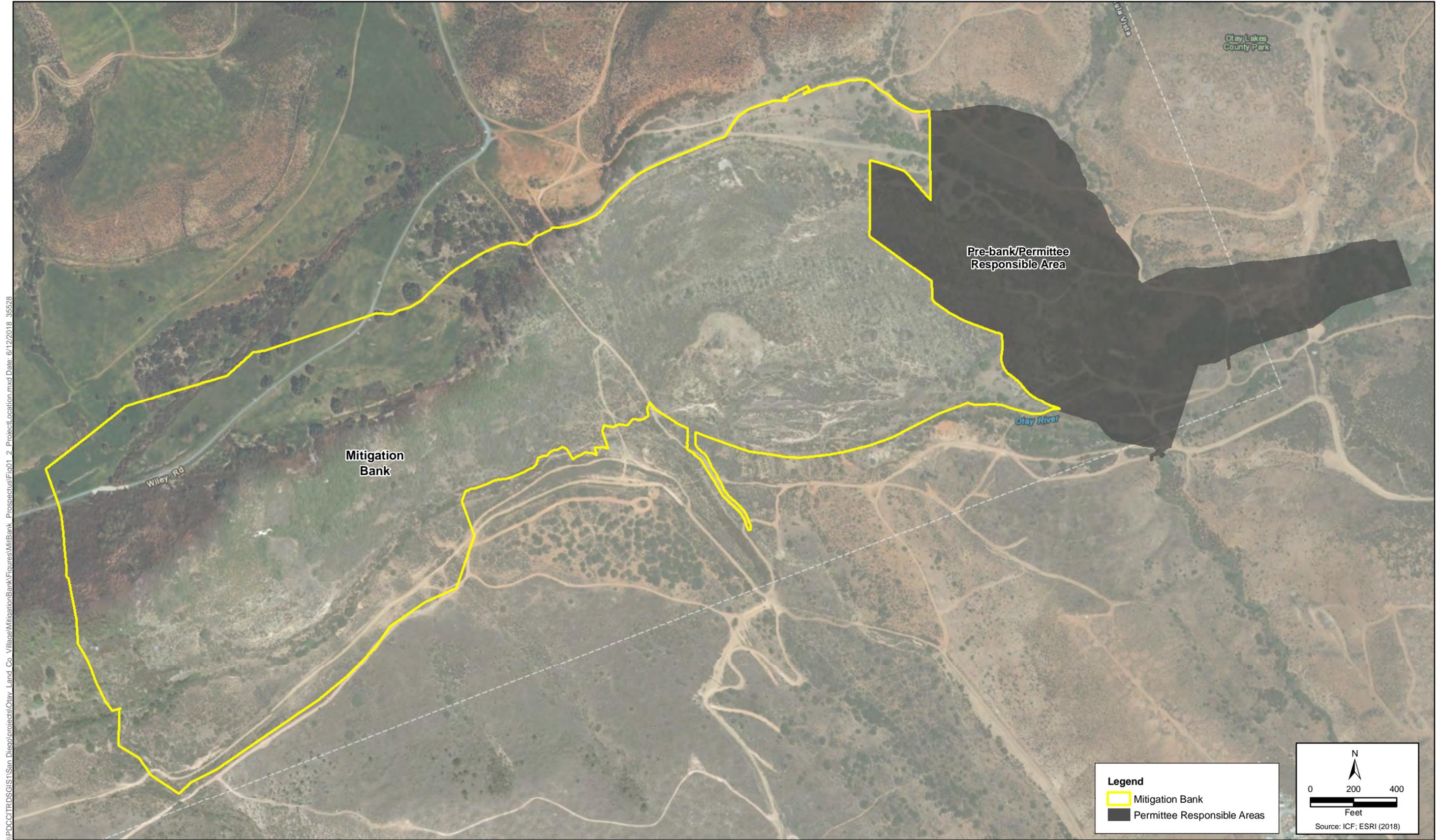


Figure 1-1
Regional Vicinity
Otay River Mitigation Bank





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Figure 1-2
Project Location
Otay River Mitigation Bank

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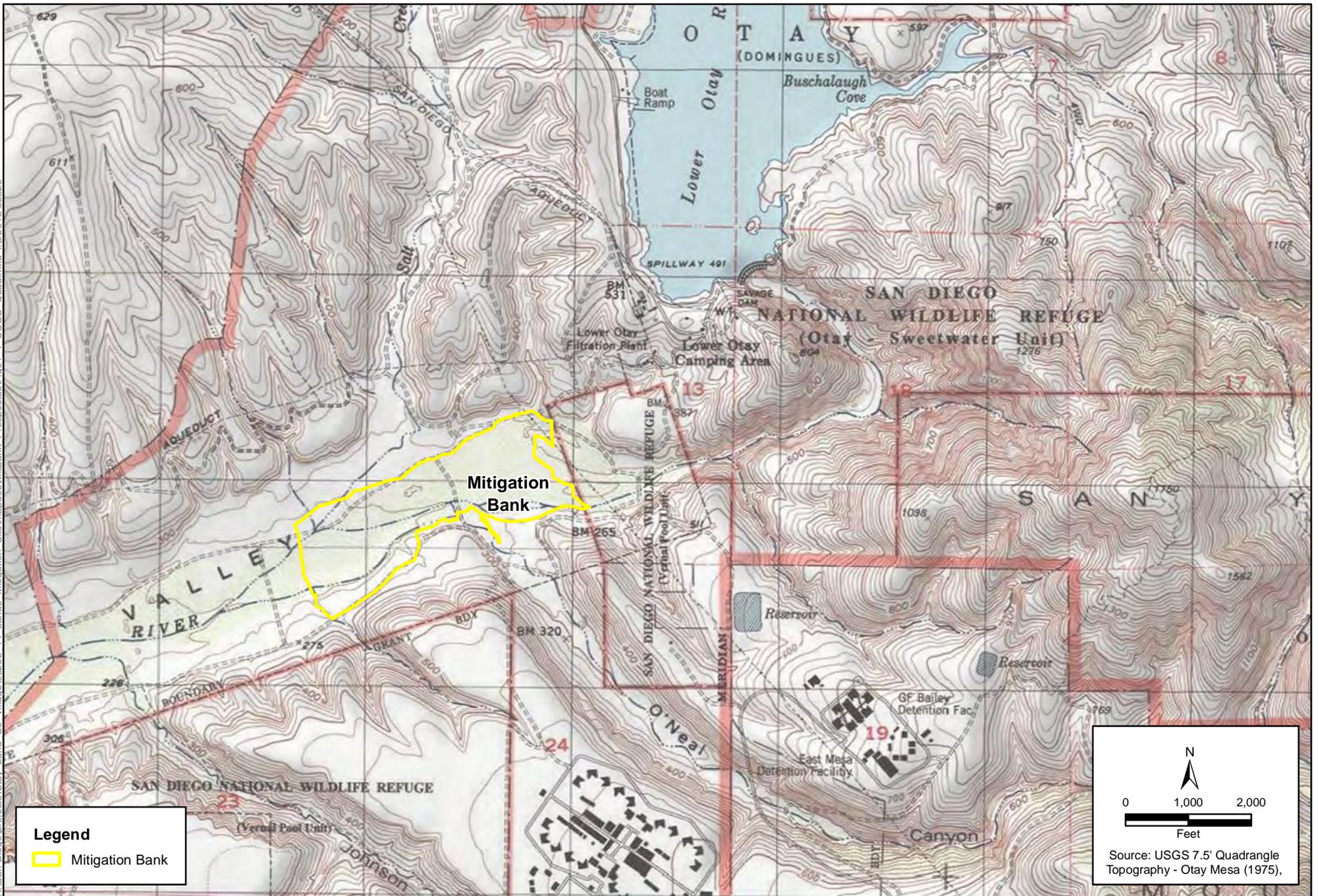


Figure 1-3
USGS Otay Mesa Quad Map
Otay River Mitigation Bank