

## U.S. Army Corps of Engineers Mitigation Banking and In Lieu Fee Processes and Regulation

### Port of San Diego (Port) needs a mitigation bank or in lieu fee program

**Why:** Currently many Port, tenant, shipyards, boatyards, and agency projects in San Diego Bay are being delayed or curtailed due to lack of mitigation for environmental impacts to waters of the U.S. under the Clean Water Act, Rivers and Harbors Act, and the Magnuson-Stevens Act.

**What:** Port needs to set up a bank or in lieu fee program to solve the problem.

**How:** Work with the Corps to set up a bank or in lieu fee program.

## Benefits of a Wetlands Bank to the Port of San Diego and Tenants

- 1. Urgent need for project San Diego bay mitigation shall be solved for Port and other tenants
- 2. Variety of habitat types in a Mitigation Bank could satisfy habitat needs for all types of projects.
- 3. Could generate revenues for Port of San Diego in a time of fiscal restraint.
- 4. More efficient permit process which reduces permit processing costs and time.
- 5. Watershed based approach.

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## §332.8 – Mitigation banks and in-lieu fee programs

- Interagency review team
  - Reviews documentation for establishment and management of mitigation bank and in-lieu fee program
  - Corps is chair
  - Other agencies may participate
  - Corps determines membership
  - Seek to resolve issues via consensus, but IRT members must adhere to time frames in the rule
  - Corps remains sole authority for final approval of instruments and other documentation

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## §332.8 – Mitigation banks and in-lieu fee programs

- Prospectus
  - Objectives of the proposed mitigation bank or in-lieu fee program
  - Proposed service area(s)
  - General need and technical feasibility
  - Proposed ownership and long-term management strategy
  - Sponsor qualifications to successfully implement mitigation projects
  - For mitigation banks:
    - Ecological suitability of the proposed bank site
    - Assurance of sufficient water rights
  - For in-lieu fee programs:
    - Compensation planning framework
    - Description of the proposed in-lieu fee program account (for holding funds)

## §332.8 – Mitigation banks and in-lieu fee programs

- Service areas
  - Can be based on watershed, ecoregion, physiographic province, or other suitable geographic area
  - Ensure that mitigation bank or in-lieu fee project will provide effective compensatory mitigation
  - 8-digit HUC or a number of contiguous 8-digit HUCs may form the basis of an appropriate service area
  - May also consider the economic viability of the mitigation bank or in-lieu fee program
  - Basis for determining the service area must be documented in the instrument
  - Can have multiple service areas for in-lieu fee programs or umbrella mitigation banks

## §332.8 – Mitigation banks and in-lieu fee programs

- Draft instruments
  - Service area(s)
  - Accounting procedures
  - Provision where sponsor agrees to assume responsibility for providing compensatory mitigation when permittee secures credits
  - Default and closure provisions
  - Reporting protocols
  - Other information determined to necessary by district engineer

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## §332.8 – Mitigation banks and in-lieu fee programs

- Mitigation banking instruments
  - Add sites as instrument modifications (good fit for Port bank with 3-4 sites!)
- Credit withdrawal from mitigation banks
  - Initial credit release based on approved instrument and mitigation plan, securing the bank site, establishing appropriate financial assurances, and other requirements
  - Implement approved mitigation plan within first growing season after first credit transaction

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## §332.8 – Mitigation banks and in-lieu fee programs

- IRT concern with use of credits
  - IRT can raise concerns to district engineer
  - Resolution is at the discretion of the district engineer
- Site protection
- Long-term management
  - Responsible party must be documented in instrument or approved mitigation plans
  - If long-term management is required, funding arrangements must also be described

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## Potential Sites and Acreage ranges for Umbrella Mitigation Bank for Port of San Diego

1. Caribe Island – 6 acres of wetlands creation.
2. D Street Fill – 5 acres of enhancement.
3. Pond 20 – 10-95 acres of tidal wetlands.
4. South Bay Power Plant – ?

## PORT OF SAN DIEGO MITIGATION BANK

For more info or a copy of this power point slide show call Robert Smith from the Regulatory Division at tele: (760) 602-4831  
Email: [Robert.r.smith@usace.army.mil](mailto:Robert.r.smith@usace.army.mil)