



# PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS  
LOS ANGELES DISTRICT

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## APPLICATION FOR CORPS MITIGATION BANK & PROSPECTUS REVIEW Port of San Diego - South San Diego Bay Pond 20 Wetland Mitigation Bank

**Public Notice/Application No.:** SPL-2017-00296-RRS

**Project:** Port of San Diego - South San Diego Bay Pond 20 Wetland Mitigation Bank (Bank)

**Comment Period:** July 5, 2018 through August 6, 2018

**Project Manager:** Robert Smith; (760) 602-4831; [Robert.R.Smith@usace.army.mil](mailto:Robert.R.Smith@usace.army.mil)

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### **Bank Sponsor**

Eileen Maher  
Port of San Diego Planning and Greenport  
3165 Pacific Highway  
(619) 686-6532  
San Diego, California 92101

### **Bank Owner**

Eileen Maher  
Port of San Diego Planning and Greenport  
3165 Pacific Highway  
(619) 686-6532  
San Diego, California 92101

### **Location**

The Pond 20 Bank project area (Site) comprises approximately 76.48 acres in south San Diego bay in a former salt pond now owned by the Port of San Diego. The Site is generally bound by the Otay River on the northern boundary and an unnamed tidal tributary on the western boundary. The Site is also adjacent to the San Diego Bay National Wildlife Refuge to the north, the Bayside Palms Mobile Home Village, commercial properties, and Palm Avenue to the south, the South Bay Salt Works and Imperial Sands Mobile Park to the east, and residential properties, a car wash, and 13th Street to the west. The Site is located in the city of San Diego and near the City of Imperial Beach, San Diego County, CA (at: 32.587049, -117.10251). Also see attached figures and maps.

### **Activity**

The Corps has received a prospectus from the Port of San Diego (Bank Sponsor) to construct a wetlands mitigation bank in Pond 20 in San Diego bay. The Port of San Diego (Port) seeks to create a wetland mitigation bank on a former salt pond (Pond 20) in South San Diego Bay (Site) that would be named the South San Diego Bay Wetland Mitigation Bank (Bank). Located in the City of San Diego and adjacent to the City of Imperial Beach, California, the Bank would focus on the re-establishment and rehabilitation of aquatic resources within a former salt pond. The Port proposes to construct a tidal wetland restoration project consisting of approximately 76.48 acres of re-established and rehabilitated tidal wetland habitat on the Site. Wetland and non-wetland waters of the U.S. would be restored by reconnecting tidal flows to the Pond 20 area.

This action is being processed under Section 214 of the Water Resource Development Act (WRDA) whereby actions are expedited for public agencies per an existing WRDA agreement.

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Interested parties are hereby notified a complete prospectus has been received for a Department of the Army Bank for the activity described herein and shown on the attached drawing(s). 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: Robert R. Smith Jr.  
Carlsbad Field Office  
5900 La Place Ct., Suite 100  
Carlsbad, CA 92008

Alternatively, comments can be sent electronically to: [Robert.R.Smith@usace.army.mil](mailto:Robert.R.Smith@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 C.F.R. § 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)<sup>1</sup> coordination on the Prospectus and the Bank Enabling Instrument (BEI), 3) development of a program account, and 4) development of a credit release schedule. Also note that the project sponsor has prepared a functional assessment of impacts to wetlands and other potential jurisdictional areas.

### **Background**

The Sponsor has submitted a prospectus (dated April 2018) to the Corps for the establishment of the Bank. If authorized, this mitigation bank would receive monies from individuals or entities ("project proponent") receiving Corps authorization under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act, when appropriate, to provide compensatory mitigation credit as part of Section 404 or 10 permit or enforcement actions. The bank is proposing to operate a service area that extends to the coastal areas from the U.S Mexico border to the northern boundary of Orange County. Additionally, the proposed mitigation bank may be utilized to offset unavoidable impacts to waters of the State that are regulated by the Regional Water Quality Control Board under Section 401 of the Clean Water Act or Section 13260 of the Porter-Cologne Act, impacts to Essential Fish Habitat regulated by the National Marine Fisheries Service under the Magnusson Stevenson Fisheries Management Act, impacts to wetlands or other sensitive habitats within the Coastal Zone regulated by the California Coastal Commission under the Coastal Zone Management Act, impacts to waters of the State regulated by the California Department of Fish and Wildlife, and impacts to ESA listed species and/or their critical habitat regulated by the U.S. Fish and Wildlife Service (USFWS) under the Endangered Species Act. The Port has submitted avian and plant surveys based on

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<sup>1</sup> The Interagency Review Team (IRT) consists of member Agencies, and includes 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(s).

surveys done in 2017 and wetlands delineations done in 2000, 2003, 2008 (Merkel), and 2017 (Great Ecology).

The Site currently consists of largely barren upland open space resulting from its historic use as a salt evaporator pond with the La Punta Salt works and then to the site purchased by the Western Salt Company in the 1850s. The Western Salt Company built the berms from the 1890s to 1928 and incorporated the Site within the evaporator pond network during this time frame. The Site includes existing hyper saline depressions/open water ponds with groundwater depths from 2-4 ft. deep from the excavation of the Site in the 1890s and again after the Savage Dam washed out the salt operations in 1916. The Site's original history as a salt pond began in the late 1890s when the salt operations began and the berms were built around Pond 20. Further salt operations occurred in the 1940s and concluded in the 1960s (Merkel).

Another proposed restoration project adjacent to the Pond 20 site, known as the Otay River Estuary Restoration Project (ORERP), is located adjacent to the Site. ORERP is proposed by Poseidon Water, LLC as part of mitigation required by other agencies. Poseidon Water, LLC is developing plans in coordination with the USFWS to restore approximately 67 acres of disturbed wetlands and upland habitat to functional estuarine and salt marsh habitats within the Otay River Floodplain. The ORERP will involve the excavation of approximately 750,000 to 1,000,000 cubic yards of material from this area to create an intertidal estuarine and salt marsh habitat system adjacent to Pond 20. Most of the ORERP dredged material will then be used to restore Pond 15 in the south San Diego Bay system. An earthen berm that is just north of Pond 20 and the ORERP would be moved south temporarily as a part of the ORERP construction.

The objectives of the proposed Bank are as follows:

1. Re-establish and rehabilitate 76.48 acres of tidal salt marsh habitats through restorative grading and breaching of the berms that restricts historic tidal connections.
2. Rehabilitate 9.71 acres of existing hyper saline ponds, depressions, and wetlands/drainage features by grading and revegetating these areas to tidal wetlands and waters.
3. Perform a 5-year monitoring and reporting program for the Bank
4. Perform long-term management and maintenance for the Bank using Port funds with no proposed endowment;
5. Improve tidal influxes across the Site by selective breaching of existing constructed sediment berms, widening and deepening existing channels, and excavating new channels;
6. Excavate to appropriate elevations to achieve inundation frequencies required by the four tidal wetland habitat types proposed, utilizing excavated fill to enhance existing upland habitat; Salvage native vegetation currently onsite for re-establishment;
7. Install suitable native plant material to re-establish and improve proposed habitats;
8. Protect, preserve, and facilitate re-establishment of wetland and upland habitats and species on the Site; and increase habitat connectivity between the Site and adjacent conserved lands.

### **Proposed Long Term Management Strategy**

The Bank Sponsor is the party responsible for long-term management of the Bank property and the owner. Long-term management of the Bank property would be financed by the Bank Sponsor using existing annual Port funds and would include on-going maintenance and management to ensure the long-term persistence of the Bank's biotic resources. The Bank Sponsor has also proposed they

would hold the Bank property in fee title as the owner, and no Conservation Easement has been proposed but other conservation mechanisms are being reviewed such as integration in the MSCP or the INRMP. Proposed long-term management activities include: site inspection/conservation area enforcement, vegetation management, invasive species follow-up treatment, trash and debris removal, signage/fencing, erosion control, trail maintenance, and vector control.

### **Proposed Service Area**

The proposed service area includes both primary and secondary service areas as shown in Figure 15 which are the watersheds that feed into the coastal zones in Orange County and San Diego County. The proposed primary service area includes all areas within the watersheds from the southern border of Los Angeles County to the Mexico border in San Diego County, and watershed areas inland of the Coastal Zone boundary within Los Angeles, Orange, and San Diego Counties. The proposed secondary service area also includes watershed areas inland of the coastal zone, within Orange, and San Diego Counties occurring within the same 10-digit HUCs as the primary service area. The Port had previously proposed (in April 2017) the coastal zone areas of LA, Orange County, and San Diego as the proposed service area but recently changed (in July 2018) the proposed service area to include the entire watersheds that flow into the coastal areas in Orange, and San Diego County.

### **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)<sup>2</sup> 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.

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<sup>2</sup> The proposed mitigation activities may also require separate approvals from the Regional Water Quality Control Board and California Department of Fish and Wildlife.

To ensure a high level of confidence that the Sponsor's Mitigation Plan<sup>3</sup> 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 and EPA are currently evaluating the project in accordance with the Inland Testing Manual (ITM) for grain size and chemistry compliance for both the dredging and disposal site and below is information the Corps and EPA are reviewing now in the initial testing Sampling and Analysis Plan (SAP). Based on the *Draft Wetland Restoration of Salt Pond 20* preliminary (30%) design plans (Environmental Science Associates, 2017, Appendix A), the total grading footprint is 76.48 acres, including areas of cut (65.9 acres) and fill (10.58 acres). The estimated quantities of soil to be excavated include a combination of mass excavation for the marsh plain grading (405,000 cubic yards), levee breach excavation (6,000 cubic yards), and excavation to form the tidal channels (43,000 cubic yards), for a total of 454,000 cubic yards. The maximum depth of excavation will occur at the levee breach location where a tidal channel will be re-established and dredged to a maximum depth of -2.87 Mean Lower Low Water (MLLW). Approximately 24,000 cubic yards of soil from the marsh plain grading and tidal channel excavation will be re-used on-Site as fill material for the transitional slope along the interior of the existing Pond 20 perimeter berm. The remaining 430,000 cubic yards will be transported off-Site for reuse at upland sites on the Chula Vista Bay front, which includes the former South Bay power plant site (see attached drawings).

Impacts to potential waters of the U.S. sum to 9.71 acres (per the sponsor's delineation these are not waters of the U.S. or navigable waters of the U.S.) of hyper saline open water ponds, depressions, wetlands, and a small drainage feature but note that the Corps has not completed the jurisdictional determination. The dredged material from the Bank is to be proposed for disposal at several upland sites just north of the project site at Chula Vista and the former South Bay power plant. The restoration effort will generate sub tidal and intertidal wetland credits to compensate for impacts to these habitats under Section 404 of the Clean Water Act (CWA) and under Section 10 of the Rivers and Harbors Act in association with the Port of San Diego - South San Diego Bay Pond 20 Wetland Mitigation Bank.

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 soon at the following link: <https://ribits.usace.army.mil>. Currently once the Corps has fully loaded the prospectus into RIBITs and after clicking on the link, please follow the below steps to download the [Prospectus](#):

- 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"

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<sup>3</sup> The content of a complete Mitigation Plan is described in the Mitigation Rule, at 33 CFR 332.4(c)(2-14).

- Scroll down the alphabetized listing and click on the Port of San Diego Pond 20 Prospectus.
- Click on “Cyber Repository” located underneath the frog image.
- Click on “Documents for Review”
- The prospectus and any associated support/technical documents are available in this folder.

Please note that the Prospectus is a large file and may take several minutes to download. Also note that the prospectus is on the link as follows: [https://greatecology-my.sharepoint.com/:f/p/mtyner/EohTr8\\_b3OpBqM5Wn3Yz6VYBbKuO6RkwfVbw\\_gm0XAJHIA?e=QI6fiT](https://greatecology-my.sharepoint.com/:f/p/mtyner/EohTr8_b3OpBqM5Wn3Yz6VYBbKuO6RkwfVbw_gm0XAJHIA?e=QI6fiT)

Persons or agencies seeking access to RIBITs as mentioned above may have to wait until the Corps has successfully loaded them in to RIBITs. Additionally, these documents are also available at the Corps’ Los Angeles office at the address below and the Corps or the Port may make them available via a weblink as the documents are large documents to email. For additional information please contact Robert Smith at (760) 602-4831 or via e-mail at [robert.r.smith@usace.army.mil](mailto: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.

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**DEPARTMENT OF THE ARMY  
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FIGURE 15: PROPOSED SERVICE AREA



**PROPOSED SERVICE AREA**  
**SOUTH SAN DIEGO BAY WETLAND MITIGATION BANK**

SAN DIEGO UNIFIED PORT DISTRICT  
 FEBRUARY 2018 - FOR BUSINESS PLANNING PURPOSES ONLY

1:1,250,000  
 GCS WGS 1984  
 0 10 20 MILES

GREATecology  
 ENVIRONMENTAL DESIGN