



SPECIAL PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

BUILDING STRONG®

Availability of Prospectus: Los Angeles Harbor Department Mitigation Bank

Public Notice/Application No.: SPL-2010-00714-TS

Action: Port of Los Angeles Mitigation Bank

Comment Period: June 1, 2012 through July 9, 2012

Project Manager: Theresa Stevens, Ph.D.; 805-585-2146; theresa.stevens@usace.army.mil

Applicant

Los Angeles Harbor Department
Port of Los Angeles
Environmental Management Division
425 S. Palos Verdes Street, P.O. Box 151
San Pedro, California 90733-0151

Contact

Kat Prickett
Los Angeles Harbor Department
Port of Los Angeles
Environmental Management Division
425 S. Palos Verdes Street, P.O. Box 151
San Pedro, California 90733-0151

Activity

The Los Angeles Harbor Department (LAHD) has proposed to develop a single-user umbrella mitigation bank agreement (agreement) which could be modified to include new mitigation bank sites. They have also requested approval of a Bank Enabling Instrument (BEI) for the existing (legacy) single-user Port of Los Angeles Inner and Outer Harbor Mitigation Bank(s). Both actions are described in a Prospectus and require interagency review team (IRT) review and Corps approval. Use of existing credits from the Inner and Outer Harbor Mitigation Bank and production of new credits at the Inner and Outer Harbor Mitigation Bank or new mitigation bank sites would require additional public and IRT review, and Corps approval. Credits may be applied to future Port projects which require mitigation pursuant to Department of the Army permit(s). No impacts to waters of the U.S. are proposed and no permits are required as a part of the LAHDs request to the Corps.

Location

The term "service area" defined in the Corps Mitigation Rule (Rule) and is "the geographic area within which impacts can be mitigated at a specific mitigation bank or in-lieu fee program..." (33 CFR 332.3). Typically a mitigation bank site is a single location that provides compensatory mitigation for a broader geographic area within which permitted project impacts can occur. In this case, permitted project impacts would occur at a confined location (i.e., the Port of Los Angeles, POLA) and mitigation would occur at mitigation banks sites within a broader geographic area (i.e., the Southern California Bight, including the POLA). For the purposes of the proposed umbrella mitigation bank agreement, the term "service area" is not used to define a specific location. Instead, the location of the "impact area" is within the POLA Inner and Outer Harbor (approximately 33.7321 N latitude / -118.2407 W longitude) and the location of mitigation bank sites may include intertidal and subtidal marine waters within the Southern California Bight region which extends from Point Conception in Santa Barbara County to the U.S. Mexico border, inclusive of the POLA Inner and Outer Harbor.

Interested parties are hereby notified that a request has been received for development of an umbrella mitigation bank agreement and approval of the Inner and Outer Harbor Mitigation Bank for the activities described herein. We invite you to review today's public notice and provide views on the proposed action. By providing substantive 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 our decision. This proposed umbrella mitigation bank agreement and Inner and Outer Harbor Mitigation Bank will be approved, modified, or denied under the provisions of 33 CFR 332.

Comments should be mailed to:

U.S. Army Corps of Engineers
Los Angeles District, Regulatory Division
Ventura Field Office
Attn: CESPL-2010-00714-TS
2151 Alessandro Drive, Suite 110
Ventura, CA 93001

Alternatively, comments can be sent electronically to: theresa.stevens@usace.army.mil

Evaluation Factors

During the mitigation bank development process, the Corps carefully considers the views of other Federal, state and local agencies, interest groups, and the public. The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the merits of the proposed activity. Any comments received will be considered by the Corps in order to determine whether to approve or deny this proposal.

Proposed Activity Requiring Corps Approval

The LAHD's proposed single-user umbrella mitigation bank agreement which could be modified to include new mitigation bank sites and the proposed Inner and Outer Harbor Bank BEI require Corps approval. Use of existing credits from the Inner and Outer Harbor Mitigation Bank and production of new credits at the Inner and Outer Harbor Mitigation Bank or new mitigation bank sites would require additional public and IRT review, and Corps approval. Credits may be applied to future Port projects which require mitigation pursuant to Department of the Army permit(s). No impacts to waters of the U.S. are proposed and no permits are required as a part of the LAHDs request to the Corps.

See Page 3 for additional information.

Additional Information

At present, the LAHD's existing Inner and Outer Harbor Mitigation Bank(s) consist of shallow and deep water habitats located within the limits of the Port of Los Angeles. Presently, the Corps is not signatory to these bank(s), therefore existing credits cannot be used to provide compensatory for Corps-approved impacts within POLA. Under the proposed agreement, the LAHD may produce credits in ecologically suitable mitigation bank sites within the service area, which may include the Inner and Outer Harbor Mitigation Bank or at new mitigation bank sites with various habitat types such as tidally-influenced wetlands, outer coast or off site eelgrass, or artificial reefs.

The Rule established a process and defined requirements for the establishment and management of mitigation banks, in-lieu fee agreements 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 agreements (Exhibit 1). This mitigation bank development process will include the following: 1) IRT coordination on the Prospectus, the agreement and the Inner and Outer Harbor BEI, 2) public review and comment on the Prospectus, 3) development of a mitigation credit production approach and credit release schedule, 4) long-term site protection and management measures, 5) financial assurances estimation approach.

In October 2011, the LAHD submitted a draft Prospectus to the Corps. Preliminary comments were provided to the LAHD. In December 2011, the Corps initiated Phase 1 of the mitigation bank development process by providing a copy of the draft Prospectus to the U.S. EPA, National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), California Coastal Commission (CCC), and California Department of Fish and Game (CDFG). At that time, these agencies were also invited to participate on the IRT and provide comment on the draft Prospectus. The first IRT meeting was held on February 1, 2012 to determine the level of interest of agency participation, discuss the overall mitigation bank development process, discuss the timeline goals, and to gather initial comments on the draft Prospectus. Subsequent IRT meetings were held on March 21, April 24, and May 24, 2012 to discuss agency comments on the draft Prospectus including comments on the proposed service area, a credit valuation approach using National Marine Fisheries Service Habitat Equivalency Analysis (HEA) or a similar functional assessment method that could be used in conjunction with HEA, the potential ecological benefits and detriments of artificial reefs as mitigation, and the suitability of including within-Port tidal wetlands habitat. The draft Prospectus was revised in response to these IRT meetings and is available for public review concurrent with this public notice (web links provided below), which initiates Phase 2 of the mitigation bank development process. Monthly IRT meetings are planned through the end of 2012.

http://www.portoflosangeles.org/mitigation/mitigation_bank.asp

<http://www.spl.usace.army.mil/Media/PublicNotices/tabid/1320/Article/1624/spl-2010-00714-ts.aspx>

Please note that due to limitations on electronic file storage space, the Corps is only posting the draft Prospectus with this public notice. The entire draft Prospectus, including appendices, can be obtained from the LAHD web site.

The LAHD construction planning process necessitates advanced planning for construction (and mitigation) in order to meet market demands and to most effectively respond to anticipated environmental effects. Therefore, a comprehensive approach to mitigation, and mitigation credit valuation and debiting is warranted. Future projects within the Port of Los Angeles may require Department of the Army authorization. New mitigation bank site development activities within the

service area may also require Department of the Army authorization, and will require modification to the umbrella mitigation bank agreement, through a site-specific BEI, to accept newly produced mitigation bank credits.

Due to the scale and location of most POLA construction projects, it is not possible to completely avoid impacts to waters of the U.S. The LAHD has determined the most appropriate way to mitigate impacts in harbor waters is to provide compensatory mitigation through the generation of mitigation bank credits at specific mitigation bank sites. A credit valuation approach is required by the Rule in advance of BEI approval so that the Corps, resources agencies, and the public can evaluate and understand the mitigation crediting and debiting process when new mitigation bank sites are proposed. Mitigation bank sites which would produce credits are generally considered by the Corps to be self-mitigating and thus would not require additional mitigation or debiting of available credits to offset potential impacts. However, implementation of Best Management Practices (BMPs) would be required during construction of new mitigation bank sites to avoid and minimize potential impacts to aquatic resources to the maximum extent practicable. In some cases the number of credits produced at a mitigation bank site may exceed the mitigation requirements of a Port construction project, in which case credits would be “banked” for future use by the LAHD.

A key requirement of all mitigation banks is determining the number of potential credits. In this case, the proposed umbrella mitigation bank agreement would not produce credits. However, the Prospectus proposes Corps approval of a BEI for the Inner and Outer Harbor Mitigation Bank including existing balances of 12 Inner Harbor and 101 Outer Harbor Mitigation Bank credits, respectively. The number of credits produced by new mitigation bank sites or the Inner and Outer Harbor Mitigation Bank will be determined as future proposals are evaluated by the Corps, the public, and the IRT in accordance with the Rule.

In summary, the proposed action would:

- Establish an umbrella mitigation bank agreement and a process for modifying this agreement as new mitigation bank sites and requisite BEIs are established (see 33 CFR 332.8).
- Establish a Bank Enabling Instrument (BEI) for the Inner and Outer Harbor Mitigation Bank(s) which would allow use of existing credits and production of credits under future proposals.
- Establish a mitigation credit valuation process for each proposed habitat type based on an approved functional assessment methodology or direct impact/mitigation ratio approach.
- Establish an approach to determining adequate financial assurances for long-term maintenance and management of each mitigation bank site.
- Establish requirements for long-term mitigation bank site protection.
- Establish requirements for long-term mitigation bank site maintenance, monitoring, and adaptive management.

For additional information please contact Theresa Stevens, Ph.D. of my staff at 805-585-2146 or via e-mail at theresa.stevens@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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WWW.SPL.USACE.ARMY.MIL