



Public Notice

U.S. ARMY CORPS OF ENGINEERS

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Subject: Public notice of service area final guidance for mitigation banks and in-lieu fee programs operating in the U.S. Army Corps of Engineers, Sacramento District.

Action ID: SPK-2010-00374

Date: 1 October 2010

PURPOSE: The U.S. Army Corps of Engineers, Sacramento District, (Corps) has developed the following guidance for establishing service areas for mitigation banks and in-lieu fee programs proposing credits to compensate for losses under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Different service areas may be appropriate for other compensatory mitigation needs, such as listed species mitigation. This Public Notice (PN) does not replace or modify any of the existing laws and policies enforced by the Inter-agency Review Team (IRT) member agencies. The IRT reserves the right to make exceptions to or modify these considerations when doing so is required by law or would benefit the public interest or the aquatic environment. This notice is to inform interested parties of the new guidance. This notice may also be viewed at the Corps web site at <http://www.spk.usace.army.mil/regulatory.html>.

AUTHORITY: 33 CFR 332

LOCATION: California, within the Sacramento District's Regulatory boundaries.

BACKGROUND: A Sacramento Corps District California IRT is constituted to review each proposal for a mitigation bank or in-lieu fee program. Members of each IRT typically include the U.S. Army Corps of Engineers (Corps), the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS) and the California Department of Fish and Game (CDFG). The Sacramento District, Corps of Engineers, Regulatory Division issued a Public Notice on January 14, 2010, which proposed guidance regarding mitigation bank and in-lieu fee program service areas. The Corps has reviewed the public comments, made revisions to the proposed guidance, and here publishes the final guidance.

The service area is the watershed, ecoregion, physiographic province, and/or other geographic area within which the mitigation bank or in-lieu fee program is authorized to provide compensatory mitigation required under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act. The service area must be appropriately sized to ensure that the aquatic resources provided will effectively compensate for adverse environmental impacts across the entire service area (33 CFR 332.8(d)(6)(ii)(A)).

The 2008 federal mitigation rule (33 CFR Parts 325 and 332) requires the Corps and EPA to take a watershed approach to compensatory mitigation. A watershed approach is intended to maintain and improve the quality and quantity of aquatic resources within watersheds through strategic selection of compensatory mitigation sites. Therefore, the primary factor the Corps will use when determining service areas for proposed banks and in-lieu fee programs will be the needs of the surrounding watershed. This guidance refers to three scales of watershed delineated and certified by the California Interagency Watershed Mapping Committee and referred to by the number of digits in their hydrologic unit codes (HUC): the 10-digit 'watershed', the 8-digit 'sub-basin', and the 6-digit 'basin'. This guidance suggests use of the U.S. Department of Agriculture's Major Land Resource Areas to define ecoregion boundaries, but does not preempt use of another ecoregion definition with justification. In accordance with 33 CFR 332.8(d)(6)(ii)(A), the economic viability of the bank or in-lieu fee program may also be a consideration when determining service area.

U.S. ARMY CORPS OF ENGINEERS – Sacramento District

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<http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/index.html>

GUIDANCE: When preparing a mitigation bank or in-lieu fee program prospectus, the sponsor must include a map and a detailed narrative description of the geographic boundary and the criteria used to determine the proposed service area or service areas. At a minimum, the service area will be the 10-digit watershed containing the Site(s) (hereinafter "Site" or "Sites" is used to refer generically to mitigation bank sites and in-lieu fee sites). Documentation and justification must be provided for expansion of the service area from the 10-digit watershed containing the Site. The level of documentation and justification the sponsor must provide increases in a step-wise progression with each additional 10-digit watershed, or portion thereof. Additions where all of the following are true require minimal justification: a) areas abutting the 10-digit watershed in which the Site is located, b) within the same 8-digit sub-basin as the Site and c) within the same ecoregion as the Site. Depending upon the characteristics of the Sites and the needs of the watersheds in the area, it may be appropriate to add portions of adjacent 8-digit sub-basins within the same ecoregion rather than expanding the service area into adjacent ecoregions within the same 8-digit sub-basin. Considerable justification is required for any additions that are outside either the 8-digit sub-basin or ecoregion containing the Site. Documentation and justification again is required in a step-wise progression with each addition of a 10-digit watershed or portion thereof. The burden for demonstrating and justifying service area expansion lies entirely with the Sponsor. This guidance does not support expansion of a service area into 6-digit basins other than the one in which the Site is located. The Corps will use this information and the following considerations to determine the appropriate service area for proposed banks and in-lieu fee programs.

CONSIDERATIONS FOR DETERMINING SERVICE AREA:

1. The current and proposed functions to be provided by the bank/in-lieu fee program, including the distance from which ecological functions can reasonably be expected to compensate for impacts;
2. Whether the proposal discusses and contributes to existing watershed-based restoration efforts;
3. The extent of the potential and realized ecological and hydrological benefits of the bank/in-lieu fee program;
4. The degree to which the bank/in-lieu fee program expects to restore processes within the watershed;
5. The position of the bank/in-lieu fee program in the 10-digit watershed, 8-digit sub-basin, 6-digit basin and ecoregion;
6. The size and characteristics of the 10-digit watershed 8-digit sub-basin, 6-digit basin and ecoregion in which the bank/in-lieu fee program is located;
7. The quality, diversity, and regional significance of the habitats provided;
8. Local or regional goals such as those for the restoration or protection of particular habitat types or functions, water quality, floodplain management, etc., This includes consideration of the service area's consistency with state and local laws and ordinances, consistency with land use, and watershed plans (which are defined as "a plan developed by federal, tribal state, and/or local government agencies or appropriate non-governmental organizations, in consultation with stakeholders, for the specific goal of aquatic resource restoration, establishment, enhancement, and preservation"; 33 CFR 332.2) and other local or regional plans such as Habitat Conservation Plans, Natural Community Conservation Plans and Special Area Management Plans;
9. Types of impacts that may be compensated through the use of credits from the bank/in-lieu fee program;
10. The economic viability of the bank or in-lieu fee program, particularly the need or demand for compensatory mitigation in the service area;
11. The extent to which the compensation types occur in the ecoregion or the watershed including the extent to which occurrence favors or is unique to the ecoregion or watershed; and
12. The degree to which the bank/in-lieu fee program supports priorities found in, but not limited to, watershed plans, watershed characterizations, wetland mapping or inventories, storm water management plans, shoreline master programs, species recovery plans and comprehensive land use plans.