Development of a Multi-habitat Umbrella Mitigation Banking Agreement at the Port of Los Angeles

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Overview

• Background
• UMBA Development
• Harbor BEI
• Lessons Learned
Need for Mitigation Credits

- Development and Expansion
- Port Fills - 1990s to present
  - Pier 400: 509 acres
  - Berth 100: 43 acres
  - Pier 300 Expansion: 40 acres
  - Berth 134-135: 10 acres
  - Berth 243-245: 8 acres
POLA Mitigation Banks

- Inner Harbor Mitigation Bank (1984)
- Outer Harbor Mitigation Bank (1997)
- Batiquitos Lagoon Restoration (1987) (all credits applied)
- Bolsa Chica Wetlands Restoration (1996)
2008 Mitigation Banking Rule

• 2008 Regulations
  – USEPA and USACE under Section 404 of the Clean Water Act (eCFR 2010a, 2010b) in 33 Code of Federal Regulations (CFR) 332.8(d)(2) and 40 CFR 230.98(d)(2)
  – Standardize the requirements for mitigation banks
  – Establish one set of regulations for compensatory mitigation

• Need to establish new Harbor Bank Enabling Instrument (BEI) in place of existing Inner and Outer Harbor Banks
• Opportunity to create structure for future mitigation needs
Umbrella Mitigation Banking Agreement

• Goals
  – Support a goal of no net loss of habitat and ecological functions
  – Provide a programmatic mitigation approach that will increase process efficiency
  – Standardize mitigation credit framework for a variety of habitats

• Legal Agreement
• Technical Guidance
Interagency Review Team

• Current role
  – Input into UMBA development
  – Potential signatories to UMBA

• Following UMBA approval
  – Review, evaluate, and approve mitigation bank sites through BEIs

• Federal and state agencies
  – USACE, Los Angeles District
  – USEPA, Region IX
  – USFWS, Carlsbad Field Office
  – NMFS, Southwest Regional Office
  – CDFW, Region 5
  – California Coastal Commission
Umbrella Mitigation Banking Agreement

• Service Area
  – Southern California Bight

• Impact Area
  – POLA

• Habitats
  – Harbor Habitat
  – Wetlands
  – Eelgrass
  – Other (potential)

• Technical Guidance
  – Mitigation ratios
  – Performance standards
  – Monitoring requirements
  – Credit release schedule
Harbor Habitat Mitigation

- In-kind mitigation for impacts
- Existing agreements used as a basis for Harbor BEI
- Habitat value differs throughout Port
  - Standard Harbor Habitat
  - Enhanced Harbor Habitat
  - Constrained Harbor Habitat
- Determined by periodic harbor-wide biological surveys
Wetlands Mitigation

- Out-of-kind restoration and enhancement of wetlands
  - Similar to past POLA wetland restoration projects
  - Projects within the Southern California Bight
  - Mitigation credit valuation based on a functional assessment
Eelgrass Mitigation

• In-kind
  – Eelgrass habitat credits would compensate for impacts to eelgrass within the harbor
  – Eelgrass habitat loss and creation would be credited pursuant to current policy
    – Southern California Eelgrass Mitigation Policy (SCEMP) or the statewide California Eelgrass Mitigation Policy (if adopted)

• Out-of-kind
  – Eelgrass habitat credits would compensate for impacts from harbor fill
  – Use functional assessment to determine appropriate mitigation ratios
Bank Enabling Instruments

- BEIs developed under each habitat type
- Project-specific BEIs
  - Process streamlined and defined by UMBA
  - Developed per habitat-specific technical guidance in UMBA
  - BEI template
  - Project details used to define specific monitoring plan, success criteria, and credit release schedules
- Harbor BEI
Lessons Learned

• Going through both UMBA and BEI process in parallel has been complicated at times, but ultimately valuable in improving both documents.

• While the 2008 Mitigation Rule is fairly general in many cases, both UMBA and BEI development require negotiation of specific details that can be labor intensive.
  – Legal constraints of the mitigation bank sponsor
  – Competing mitigation goals specific to the resource management mandates of each agency
  – Uncommon circumstances
Lessons Learned

- Great value in engaging in detailed negotiations without pressure of a development project timeline.
- Highly beneficial to document established understanding of port mitigation banking procedures.
QUESTIONS?

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• Governance
  – Port Tidelands Trust *Los Angeles City Charter, Article VI, Section 601; California Tidelands Trust Act of 1911*
  – California Coastal Act *PRC Division 20 Section 30700 et seq.*
  – Lowenthal Amendment *Assembly Bill 2769 (2002)*

• Mandates
  – Promote commerce, navigation, fisheries, and harbor operations
  – Protect fisheries, wildlife habitat, and open space
The Port of Los Angeles

- 7,500 acres of land and water
- 43 miles of waterfront
- 24 passenger and cargo terminals
  - Automobile
  - Breakbulk
  - Container
  - Dry and liquid bulk
  - Warehouse facilities
- 7.9 million TEUs 2011
Habitat Equivalency Analysis

- Mitigation regulations recommend functional assessment to quantify impacts and mitigation benefits

- Habitat Equivalency Analysis (HEA)
  - Determine functional equivalency for calculation of credits for out-of-kind mitigation
  - Flexible
  - Emphasize ecological functions
  - Developed by NOAA, used by other agencies

- Eelgrass and wetland BEIs will employ HEA or similar