



**US Army Corps
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SAN FRANCISCO DISTRICT

PUBLIC NOTICE

US Army Corps
of Engineers

Regulatory Branch
333 Market Street
San Francisco, CA 94105-2197

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Mitigation Bank Policy in the Santa Rosa Plain,
Sonoma County, CA

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The San Francisco District of the United States Army Corps of Engineers announces a new policy regarding the use of mitigation banks for projects occurring on the Santa Rosa Plain, Sonoma County, California. For reference, a map of the Santa Rosa plain is attached to this notice.

A permit is required from the Corps of Engineers, under Section 404 of the Clean Water Act for any fill in Waters of the United States, including adjacent wetlands. Often mitigation for wetland impacts is required. On the Santa Rosa Plain, two forms of wetland mitigation may be required: wetland creation and wetland preservation.

Currently, applicants who need to provide wetland creation mitigation in the Santa Rosa Plain have two options. One is to create wetlands on the plain as an independent mitigation project. The second is to purchase credits at an approved wetland creation mitigation bank. The owner of the bank creates wetlands, and sells "credits" to applicants who need mitigation for Section 404 permits or approvals from the Regional Water Quality Control Board.

Purchasing mitigation credits is often considered to be the preferred alternative for many developers. As a result of high demand for credits at these banks, it has become difficult for the Corps to approve new banks quickly enough to meet the demand. Furthermore, most mitigation banks on the Santa Rosa Plain are small, providing less than ten acres of creation wetland mitigation. Large projects may consume most of the credits, thereby, limiting the opportunity for small projects to purchase the necessary credits. The Corps feels the use of banks is most useful as mitigation for projects with small wetland fill impacts, since smaller developers often do not have the resources to complete an independent mitigation project.

On June 5, 2002, the Corps issued Public Notice No. 02-03, soliciting comments on a proposed new policy, which would require projects with three or more acres of wetland fill on the Santa Rosa Plain to create an independent wetland creation mitigation project, rather than use a wetland creation mitigation bank. While some environmental organizations and individuals favored the limitation, several governmental agencies and mitigation bankers opposed it. However, there was general agreement that reserving a portion of the bank credits for projects with small mitigation needs would be appropriate.

After considering all comments, the Corps has finalized its policy, as described in this public notice. Subsequent to the date of this public notice, each new creation wetland mitigation bank on the Santa Rosa plain must reserve 30% of its total credits to fulfill the mitigation requirement for small projects, consisting of filling three acres or less of wetlands. Note that 30% of the total credits sold by the bank must be reserved for small projects, not necessarily the last 30%. For example, the bank owner may sell 30% of the credits to small developers up front, allowing the remaining credits to be sold without restriction. Alternatively, the owner may choose to sell 70% of the bank's credits to a large developer, reserving the final 30% of credits for small developers.

These reserved credits must only be sold to small developers and must be reserved for two years after the last allotment of credits are released by the agencies. If the bank still has unsold credits two years after the last credit release, the bank owner will be released from this requirement, and the remaining credits may be sold to larger developers to fulfill their mitigation needs.

This restriction would only apply to creation banks, not preservation banks. Furthermore, this policy would not apply to mitigation banks, whose proponents have made a presentation on the bank to the Mitigation Bank Review Team, prior to the date of this public notice. This policy will be reviewed again in two years. If it is determined that the demand for the use of banks has become reduced or the speed of mitigation bank approvals has increased, the Corps may alter or revoke this policy.

If you have questions concerning this policy, please contact Philip Shannin at (415) 977-8445 or by email at pshannin@spd.usace.army.mil.