

**COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject

Mitigation Banking Policy

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Purpose

This Mitigation Banking Policy is intended to set forth the procedures to be followed in establishing, using, and managing mitigation banks. This Policy is divided in two sections, as follows.

Section 1: Addresses the issue of establishing and administering County-owned and managed mitigation banks.

Section 2: Addresses the issue of recognizing and using private mitigation banks.

This Policy will streamline planning for public and private projects because off-site mitigation credits to meet State and Federal Endangered Species Acts (ESA) and California Environmental Quality Act (CEQA) requirements will be readily available. Additionally, this Policy will further the goals of the County Open Space Program by directing mitigation to areas in the County with the highest biological value, resulting in optimal use of the preserved land. Elements of this Policy include the following:

Section 1. County Mitigation Banks.

- A. Management framework for overseeing the County's Mitigation Bank Program;
- B. Criteria for selecting lands to be included in mitigation banks;
- C. Process for establishing credits in mitigation banks;
- D. Process for using credits in the bank;
- E. Ownership requirements;
- F. Land/resource management/assessment of costs;
- G. Funding requirements.

Section 2. Private Mitigation Banks.

- A. County recognition of private mitigation banks;
- B. Process for using credits in the bank.
- C. Administration of privately-owned banks.

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Background

The County of San Diego carries out a variety of projects to meet its goal of serving the public. These include, but are not limited to, road construction and improvement projects; operation and expansion of solid waste facilities, airports, sewage treatment facilities, courthouse administration, building and operation and expansion of detention center; and construction and improvement of parks. In addition, private development projects for residential, commercial, industrial, recreational, and other purposes are regularly processed through the County. These public and private projects often cause the disturbance of habitat for sensitive species, resulting in the need to mitigate project impacts. A mitigation bank is a technique whereby the County or a private party acquires and manages open space lands for preservation ahead of any need for mitigating a County or private project. Establishment of a County mitigation bank, from which credits may be withdrawn as County projects proceed, will save the County money in mitigation acquisition costs, and will streamline the CEQA process and the granting of approvals under the State and Federal ESAs. Establishing procedures to be followed in using private mitigation banks will likewise streamline the CEQA process for private development projects.

Policy

It is the policy of the Board of Supervisors that:

The County will assemble land within mitigation banks to meet the resource needs of County public projects. The County will also encourage assemblage of land within private mitigation banks.

Section 1. County mitigation banks.

A. Management Framework.

The Chief Administrative Officer shall appoint a Mitigation Bank Technical Committee (MBT Committee) for overseeing the County's Mitigation Bank Program. The MBT Committee shall include directors or their representatives of the Department of Parks and Recreation (DPR), Department of General Services (DGS), Planning & Development Services (PDS) and the Department of Public Works (DPW). The purpose of this MBT Committee is to review proposals for mitigation banks to determine conformance to the provisions of this policy and to make recommendations to the Board of Supervisors, and the Chief Administrative Officer, on the establishment and operation of County mitigation banks. The Committee shall select from its members a Chairperson.

B. Criteria.

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The following criteria shall be used in selecting the land to be designated and/or acquired as a County mitigation bank:

1. The property should include sensitive and listed plant and animal species. Property that has the potential for revegetation of sensitive habitat may be considered.
2. The property should be large enough to sustain the biological viability of the resources present or should be adjacent to other permanently protected land so that in combination, the biological viability of the resources will be ensured.
3. The property should contribute to implementation of the County Open Space Planning efforts where adopted or be identified as high value areas on resource evaluation maps.
4. For property which is to be acquired by the County for a County-owned mitigation bank, the property owner must be willing to sell or donate the property to the County.
5. Property designated as open space or for park use currently owned and managed by DPR may be used as long as the property is not already designated for mitigation or has no other additional restrictions preventing mitigation (such as deed restriction, restrictive covenant, easement, etc.). Use of DPR owned and managed land for mitigation must be implemented as described in the Mitigation Lands Policy, Policy I-138.

The following types of property shall not be considered for mitigation banking purposes:

1. Property acquired in the past for mitigation purposes; property designated for a public purpose which is not consistent with habitat/resource protection, e.g.: Circulation Element right-of-way, or Solid Waste Facility.
2. Property in County ownership which was acquired with funds limiting the use of the property to certain purposes. Examples include property acquired with the road fund and park property acquired with State Bond Act funds, which restricts the use of the land.

C. Process for Establishing Credits in County Banks.

1. Property currently in County ownership or control will be evaluated by the MBT Committee based on the criteria set forth in Section 1. B., above, for potential inclusion in a mitigation bank. An environmental review of the

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resources present on the site should be performed, and a report generated which includes information on the baseline environmental data (type, quality, extent and location of resources) on the property. The amount of credit to be granted in a bank shall be determined based upon negotiations with the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife (the Wildlife Agencies), using guidelines set forth in the Official Policy on Conservation Banks, adopted April 7, 1995, by the California Resources Agency and the California Environmental Protection Agency. Credits shall be based on the location of the property and resources present on the site. Once the property has been determined by the MBT Committee to be appropriate for inclusion in a bank, and an estimated number of credits determined, the County department establishing the mitigation bank should develop a mitigation banking agreement (Agreement), in a form approved by County Counsel, and should negotiate the terms of such Agreement with the Wildlife Agencies. The Agreement shall set forth the number of credits available for the property proposed for inclusion in the mitigation bank and a management plan for the property. The Agreement shall be approved by the Board of Supervisors.

2. Each County department shall maintain a list of public projects planned for the upcoming five years. An estimate as to the type and amount of habitat likely to be disturbed by the project should also be prepared. A master compilation of this list shall be maintained by the County department establishing the mitigation bank. If the County-owned bank is exhausted, or the bank does not contain credits of the type needed for a future County project, property should be acquired for mitigation banking purposes, using criteria set forth in Section 1. B., above. Prior to seeking property for inclusion in the bank, the master list of future projects should be consulted to determine what type of habitat to purchase.
3. In acquiring property for County-owned mitigation banks, the County will rely on acquiring properties from willing sellers and will not use the power of eminent domain. Once a suitable site for acquisition by the County is found, an environmental review of the resources present on the site should be performed, and a report generated which includes information on the baseline environmental data (type, quality, extent and location of resources) on the property. The amount of credit to be granted in a bank shall be determined based upon negotiations with the Wildlife Agencies, using guidelines set forth in the Official Policy on Conservation Banks, adopted April 7, 1995, by the California Resources Agency and the California Environmental Protection Agency. Credits shall be based on the location of the property and resources present on the site. Informal agreement as to the number of credits available should be reached with the Wildlife Agencies prior to requesting authorization

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from the Board of Supervisors to purchase the site. Purchase of the site should be contingent upon approval of an Agreement, in a form approved by County Counsel, by the Wildlife Agencies and the Board of Supervisors.

D. Process for Using Credits in the Bank.

The County department establishing the mitigation bank shall be responsible for administering and accounting for the credits created by County Mitigation Banking Agreements.

County departments shall analyze their need for mitigation for a project early in the environmental review process. Once the need for mitigation for a particular project is known, the project planner/manager shall contact each County department who establishes mitigation banks to determine whether credits are available in a County-owned mitigation bank to satisfy the project mitigation requirements.

Use of mitigation credits from mitigation banks must be approved by the County discretionary body responsible for certifying/approving the necessary environmental documents for the project, with concurrence from the Resource Agencies.

The County department who established the mitigation bank shall be notified when a project has been approved which utilizes credits from a County mitigation bank. The County department who established the mitigation bank shall be responsible for the record keeping task of debiting credits from County mitigation banks as projects are approved.

County Departments shall not be bound to purchase credits from a County mitigation bank when fulfilling the requirement for mitigation of the impacts of a project. If it is appropriate and in the best interests of the County, the County may purchase credits or land from a private bank.

E. Ownership Requirements.

Mitigation banks must be maintained in perpetuity. Title may be held in fee by the County, the Wildlife Agencies or another entity authorized in the Mitigation Bank Agreement. For banks held in fee by the County, the Wildlife Agencies may require that the County grant an open space easement or other property restriction over mitigation bank property either to a non-profit organization which has as its primary purpose the preservation, protection or enhancement of land in its natural, scenic, forested or open space condition or use, or to the State Department of Fish and Wildlife, or any district or other state or local governmental entity if otherwise authorized to acquire and hold title to real property.

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F. Land/Resource Management/Assessment of Costs.

Management of resources present in the mitigation banks is necessary in order to maintain the bank's habitat value. Before property is acquired for a County mitigation bank, a management plan for the property shall be prepared under the direction of DPR and approved by the MBT Committee. The goal of the management plan shall be to maintain the property, and the resources present on the property, as a viable habitat, in perpetuity. The management plan shall include, but not be limited to the following:

Baseline environmental data (type, quality, extent and location of resources on the property).

A description of the number of credits available.

A description of the access control measures to be taken.

A description of the vegetation management techniques appropriate to the resources.

A listing of any reporting requirements established by the Resource Agencies.

An estimate of the start-up and annual costs for administration and management activities, including an estimate of the amount necessary to capitalize a trust account to support the bank in perpetuity.

Any other management activity specifically required in order to maintain the resources in their present condition.

The management plan for County mitigation banks should be approved by the Resource Agencies, and included in the terms of the mitigation banking agreement identified in Section 1. C., above. The management plan shall be administered under the direction of the County department who established the mitigation bank, unless another agency has been designated by the Board of Supervisors to administer the management plan for County mitigation banks. Based on the resources present, size and location of the bank in relation to other open space lands managed by the County, management activities may be carried out directly by County staff or under contract with a private resource manager. The cost of the preparation of the management plans should either be included in the planning costs of a County project requiring the establishment of a bank or as part of the annual budget of the County department

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establishing the mitigation bank. This determination will be made by the Board of Supervisors during the annual budget process.

G. Funding Requirements/Cost of Credits.

For County projects, costs associated with the mitigation bank will be borne by the departments which initiate the projects ultimately using credits in a bank. Based on the information obtained from the management plan referenced above, a trust account will be established by Auditor and Controller to fund the management and administration of the bank. Interest from the account will be used to fund administration and management costs. If an enterprise fund was used to initially establish a mitigation bank, as credits are allocated to County projects, a prorated amount for the initial capitalization shall be paid to the account that originally established the trust fund. A separate Resource Replacement Fund shall be established for replacing the resource value of banks as they are credited to projects through either buying additional lands or credits in private banks. The purchase of each credit should include a contribution to this replacement fund in addition to contributing to the operation and maintenance fund. The MBT Committee shall determine the credit cost per unit.

Section 2. Private Mitigation Banks.

A. County Recognition of Private Mitigation Banks.

The County will rely upon the Wildlife Agencies and private individuals for the establishment of private mitigation banks. The Official Policy on Conservation Banks sets forth standards and criteria for establishment of private mitigation banks. This Policy requires an agreement between the bank developer and the appropriate regulatory agency(s).

The Official Policy provides for assuring biological viability, resource protection, resource management, and establishment of credits. Prior to the approval of a bank in the unincorporated area by the State of California, the County will request that it be notified and allowed to review the proposed bank and comment on the conformance of proposed banks with this policy (Section 1.B. 1-3). The MBT Committee shall review and comment on each proposal for a private mitigation bank within 30 days of the receipt of the request. The County shall rely on the Wildlife Agencies to require and approve management plans for private mitigation banks.

The County will also request the State to provide the County with a list of approved banks in the San Diego region which the County will make available by posting to agencies and private individuals needing mitigation credits.

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B. Guidelines for the Use of Mitigation Credits from Private Mitigation Banks for Private Projects.

When a project proposes to use mitigation credits from a private mitigation bank, PDS shall verify the bank has a valid mitigation bank agreement approved by the Wildlife Agencies. The privately-owned bank owner/manager and project proponent shall also be required to provide to PDS an accounting of the available mitigation bank credits.

PDS shall review the proposal for use of mitigation credits and shall submit a recommendation on the use of such credits to the approving authority. Use of mitigation credits shall be reviewed and approved on a case by case basis.

C. Administration of Privately-Owned Banks.

Responsibility for administration of privately-owned mitigation banks shall be established and monitored by the Wildlife Agencies as a requirement of mitigation banking agreements.

Costs associated with the use of privately-owned mitigation banks will be addressed in a manner consistent with the terms of the mitigation bank agreement approved by the Wildlife Agencies.

Board Action

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12-09-08 (33)

10-31-12 (4)

11-20-19 (10)

Sunset Date

12/31/26

CAO Reference

1. Department of Planning & Development Services
2. Department of Parks and Recreation
3. Department of Public Works
4. General Services