Compensatory Mitigation and In-Lieu Fee Sponsorship:

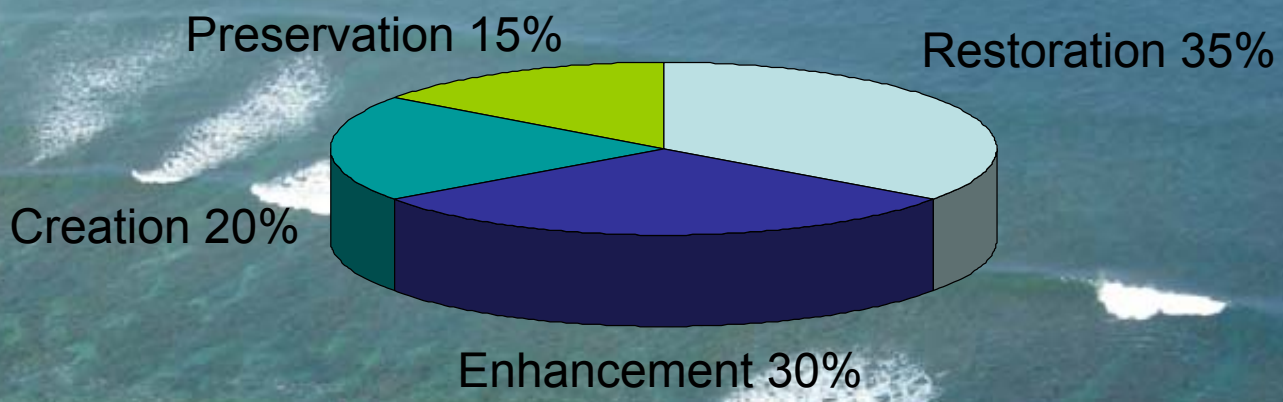
Conservation Opportunity

Presented by: Wendy Wiltse, Ph.D.
EPA Region 9, Honolulu
wiltse.wendy@epa.gov

Compensatory Mitigation

- Basis for “no net loss” of wetlands (coral reefs)
- Clean Water Act 404 requires permit to discharge dredged or fill material into waters of U.S.
- Impacts must be:
  - Avoided
  - Minimized
  - **Compensatory mitigation** required for unavoidable impacts

Compensatory Mitigation Methods



Lost functions/services at impact site
+ uncertainty
+ temporal loss

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Gained functions/services at mitigation site

KILO WHARF, APRA HARBOR

Kilo Wharf impacts to coral reefs:

4.5 acres direct

17 acres indirect

MITIGATION

Coral Reef Restoration via Erosion control – Reforestation of 500 acres in Cetti Bay

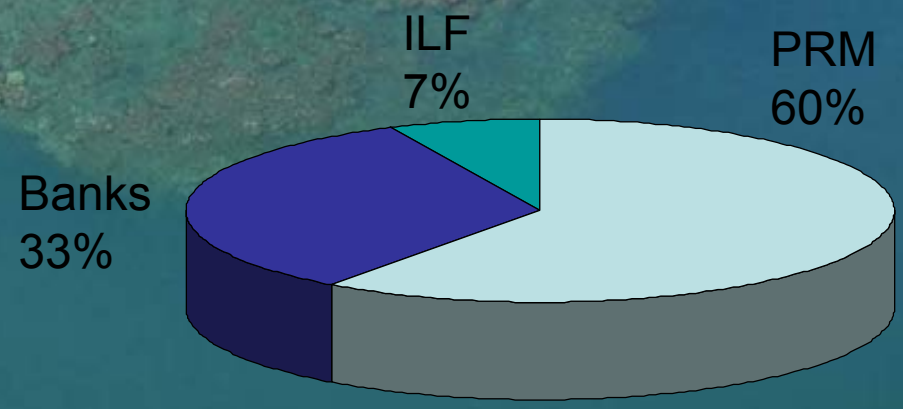
Q: Is Compensatory Mitigation Successful?

A: Too often not

- 2001 National Research Council Report
- 2005 FWS-EPA report on coral mitigation
- 2008 COE-EPA Mitigation Rule

Who provides mitigation?

- Permittee –Responsible mitigation (PRM)
- Third Party Mitigation
  - Mitigation Bank
  - In-lieu Fee (ILF)



Third Party Mitigation

Mitigation Banks:

- Initiated before impacts
- Credits given after project is successful
- Sponsored by entrepreneurs
- >450 banks

In-Lieu Fee Programs:

- Initiated after impacts
- Sponsored by Gov't & Non-profits
- >50 programs

Mitigation Preference

- Credits from mitigation bank
- Credits from in-lieu fee program
- PRM using watershed approach
- PRM on-site
- PRM off-site

In Lieu Fee Sponsorship: 4 steps

- Prospectus
- Compensation Planning Framework
- Instrument
- Mitigation Plan

ILF Prospectus

Overview of ILF program and basis for public comment

- Objectives of ILF
- Service area
- Land ownership and long term management strategy
- Qualifications of sponsor
- Compensation planning framework
- ILF program account

Compensation Planning Framework

Strategy to select and implement aquatic resource restoration/enhancement/preservation projects

- Delineation of service area
- Threats to aquatic resources
- Analysis of current & historic resource conditions
- Prioritization strategy
- Long term protection & management strategy

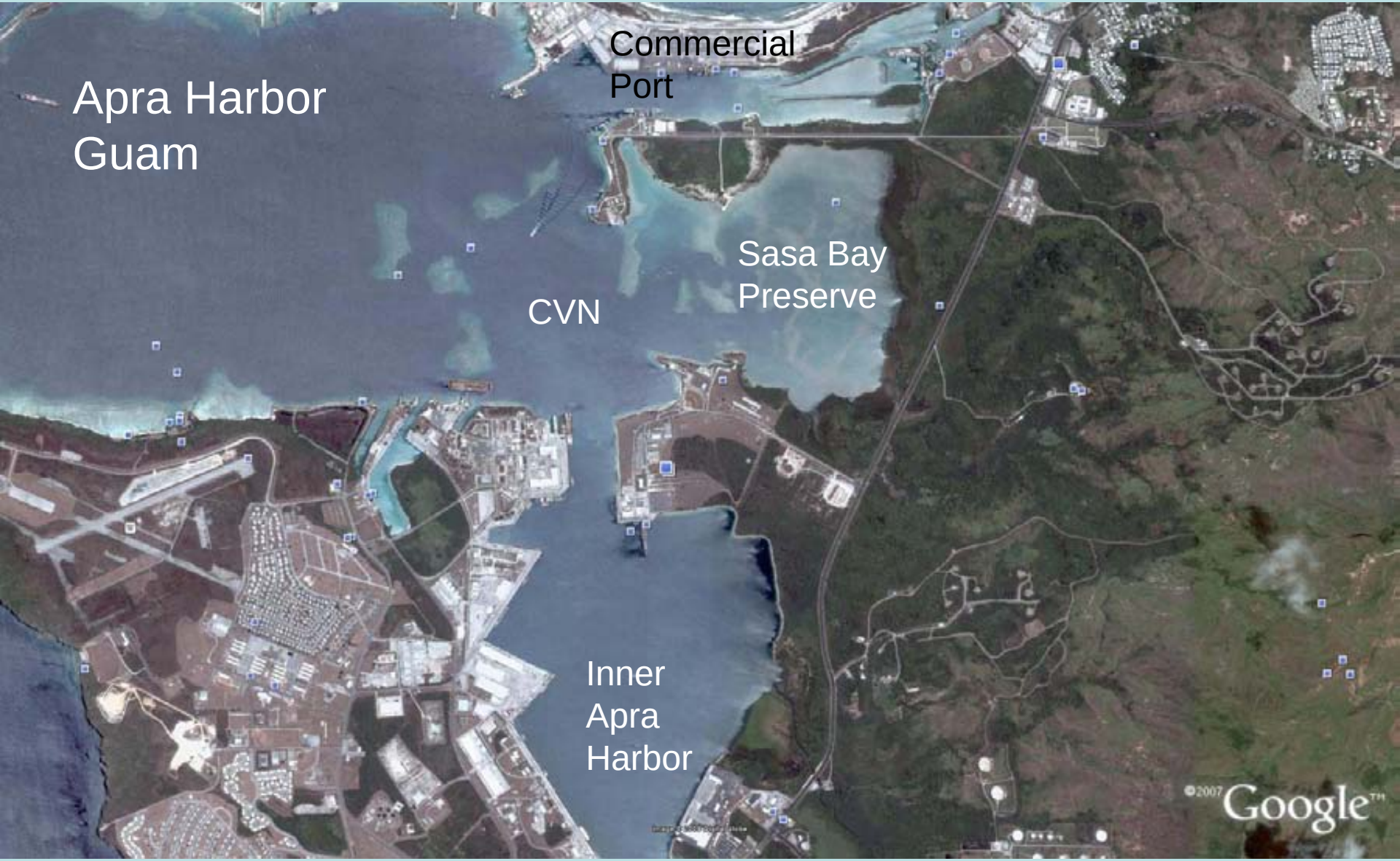
ILF Instrument

Authorization to provide credits to be used as mitigation for ACOE permits

- Compensation Planning Framework
- Method for determining advance credits, future credits, and credit fees
- Financial program & account

Mitigation Plans

1. Project objectives
2. Site selection factors
3. Site protection
4. Baseline info @ impact & mitigation site
5. Credit methodology
6. Work plan
7. Maintenance plan
8. Performance standards
9. Monitoring requirements
10. Long term management plan
11. Adaptive mgmt Plan
12. Financial assurances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