

Cover Sheet

Mitigation Banking Proposal Procedures

[Revised September 2010 by the Multi-Agency Product Delivery Team]

This package provides procedures and information to initiate the development of mitigation banking proposals in the state of California. This package contains three checklists with requirements for submitting a Mitigation Bank Draft Prospectus, a Prospectus, and a Draft Bank Enabling Instrument (BEI). **Please follow the instructions carefully.** The review and approval of mitigation banks is a multi-agency process that may involve any of the following five federal and state agencies: the U.S. Army Corps of Engineers (“USACE”), Region IX of the U.S. Environmental Protection Agency (“USEPA”), the U.S. Fish and Wildlife Service (“USFWS”), National Oceanic Atmospheric Administration’s National Marine Fisheries Service (“NMFS”), and the California Department of Fish and Game (“CDFG”). These agencies comprise and are referred to jointly as the Interagency Review Team (“IRT”).

Prior to submitting a Prospectus, the Bank Sponsor may elect to submit a Draft Prospectus to the IRT agencies for comment and consultation. It is intended to identify potential issues early so that the Bank Sponsor may attempt to address those issues prior to the formal review process. A Prospectus must be submitted by the Bank Sponsor and then reviewed, and evaluated by the IRT and the public prior to the Bank Sponsor’s submittal of a Draft BEI. The following also applies to all amendments to existing banks.

The following steps should be utilized from the Prospectus stage forward: 1) Check the IRT agencies’ websites to obtain the most current banking information and templates before beginning the Prospectus, or Draft BEI preparation; 2) Check with your IRT for meeting dates, times, and chair contacts – this information is provided at the end of this cover sheet; 3) Submit a Prospectus for completeness review by the IRT Chair(s); 4) Once the Prospectus has been deemed complete by the Chair(s) the Prospectus is reviewed by the IRT agencies and the public; and 5) Upon completion of review by the IRT agencies’ and the public of the Prospectus, USACE will coordinate with the other Chairs and will provide a letter to the Bank Sponsor informing them whether or not they may begin development of the draft BEI.

Definitions:

Draft Prospectus (optional) – A brief, concept level proposal submitted when scoping the concept of a mitigation bank, contemplating pursuing a mitigation bank idea or for those new to the mitigation banking process.

Prospectus (required) – Should be submitted when a Bank Sponsor has a definite bank proposal.

Draft BEI – The complete Bank Enabling Instrument and all Exhibits submitted for IRT review and approval.

Please contact _____ at the _____ District of the USACE at (###) ###-#### or _____@usace.army.mil to arrange a time to be placed on the agenda for an IRT meeting. **Issuance of [IRT to insert appropriate requirement: an approved or a preliminary] jurisdictional determination by the USACE is required prior to submittal of a Prospectus.** The IRT meetings for the _____ District are held [*IRT to insert appropriate day of each month, or “as needed”*].

In order to receive a time slot on the IRT agenda for a Draft Prospectus or a Prospectus, the Bank Sponsor must provide the IRT participants listed below [*IRT can edit as needed*: with ____ hard copies and ____ compact discs (CD) of the proposal at least **14 days prior to the scheduled meeting with the IRT. In addition to the quantities listed above, please bring ____ extra hard copies of the proposals and CDs of the completed information for a Draft Prospectus or Prospectus to the IRT meeting at the scheduled time.] Following review and public input, the IRT will respond to the Bank Sponsor as to whether the proposal is tentatively accepted and a Draft BEI may be prepared. The IRT may also request additional information if the Prospectus raises additional questions or issues.**

In order to receive a time slot on the IRT agenda for a Draft BEI, the Bank Sponsor must provide each IRT agency with copies of the Draft BEI, to be provided in a 3-ring binder with all sections tabbed and descriptively labeled, at least **21 days prior to the** scheduled meeting with the IRT.

Time slots for IRT banking proposal meetings will be filled as the proposals are received and Bank Sponsors will be notified of the time slot and the meeting location. If all slots are full when the proposal is received, the Bank Sponsor will be notified and offered a time slot at the following month's IRT meeting.

Optional Checklist

Draft Prospectus for Mitigation Banks

[Revised September 2010 by the Multi-Agency Product Delivery Team]

Please refer to the Cover Sheet, revised *September 2010*, for procedures related to the submission of a mitigation bank proposal. Please provide the following information and a copy of this checklist with the submittal of a Draft Prospectus:

- Proposed Bank Name - Use a short name based on a geographic feature if possible and include "Mitigation Bank" in the name;
- Bank contacts – include the name, address, phone, fax, and email for: Bank Sponsor, Property Owner, Consultants, etc.;
- General location map and address of the proposed Bank Property;
- Accurate current map of the proposed Bank Property on a 7.5-minute USGS map showing boundaries of the mitigation bank;
- Color aerial photographs that reflect current conditions of the proposed Bank Property and surrounding properties. Briefly discuss compatibility of proposed mitigation bank with adjacent property land uses including known present and proposed zoning designations;
- Map of the proposed mitigation bank service area(s), description of the general need for the mitigation bank and basis for such determination; and
- Site conditions description. This should include a BRIEF description of: site conditions; habitats and species known or potentially present; photos of the Bank Property; description and acreage of existing wetlands and other waters of the U.S. present on the proposed Bank Property; hydrology; methods for establishing, restoring, rehabilitating, and/or preserving wetlands and other waters of the U.S., and habitat for federal, and state listed species; and site history, including past and present land uses, surrounding land uses and zoning along with the anticipated future development in the area;
- Explain how the proposed bank would contribute to connectivity and ecosystem function. Also discuss potential conflicts and compatibility with any conservation plans, CDFG conceptual area plans, or other land use plans, policies, or

regulations;

- Has the proposed Bank Property been:
 - Used as mitigation for a previous project(s);
 - Already designated or dedicated for passive park or open space use, where that use is generally compatible with sustaining biological values;
 - Designated for purposes which are inconsistent with habitat preservation (i.e., lands purchased for roads, landfills, etc.); and
 - Acquired by a public entity (e.g., with State Bond Act funds) or provided to a jurisdiction for park or natural open space purposes. This criterion excludes land purchased by state and local agencies specifically for the purposes of mitigation or mitigation banking assuming the funding source is appropriate;

- Provide details including ownership information on interest of surface and sub-surface mineral rights;

- Details regarding public funding received (if applicable) for restoration, acquisition or other purposes on all or a portion of the proposed Bank Property (e.g., funding source, amount received, purpose, # of acres affected by each purpose, etc.).

Following IRT review of this material, additional information may be requested for evaluating the proposal.

Checklist

Prospectus for Mitigation Banks

[Revised September 2010 by the Multi-Agency Product Delivery Team]

Please refer to the Cover Sheet, revised *September 2010*, for information and instructions related to the submission requirements for a mitigation bank proposal.¹ Please provide the following information and a copy of this checklist with the submittal of a Prospectus:

- Proposed Bank Name - Use a short name based on a geographic feature if possible and include "Mitigation Bank" in the name;²
- Bank contacts – Include the name, address, phone, fax, and email for: Bank Sponsor, Property Owner, Consultants, etc;
- General location map and address of the proposed Bank Property;
- Accurate current map of the proposed Bank Property on a 7.5-minute USGS map showing proposed boundaries of the mitigation bank;
- Color aerial photographs that reflect current conditions proposed Bank Property and surrounding properties. Briefly discuss compatibility of proposed mitigation bank with adjacent property land uses including known present and proposed zoning designations;
- Description of how the mitigation bank will be established and operated, including the proposed ownership arrangements and long-term management strategy, and any phases planned [include description of phases, boundaries, target habitat/species, and the number of credits associated with each phase];
- Qualifications of the Bank Sponsor to successfully complete the type(s) of mitigation project(s) proposed, including information describing any similar activities by the Bank Sponsor;
- [USACE District to include the appropriate language:*** Approved or

¹ Additional information may be requested to deem the prospectus complete.

² A name change may be requested if the proposed bank name is already being used.

preliminary³] jurisdictional determination (JD) of on-site wetlands and other waters of the U.S;

- Preliminary Biological Resources Survey(s) - This section should describe the biotic and abiotic baseline of the proposed Bank Property and should include descriptions of the following, with maps: a) Bank geographic location and features, including topography, hydrology, soils, and vegetation; b) current functions and services of aquatic resources; c) inventory of all biological resources, including description of vegetation communities and a complete plant species list, presence of federally threatened or endangered species, and/or their habitats, as determined by protocol surveys or other appropriate survey methodology, state-listed threatened and endangered species and other species of special concern, other wildlife species that may be present, and presence of non-native species; and d) past and present land uses, including grazing practices;
- Map of the proposed mitigation bank service area(s), description of the general need for the mitigation bank and basis for such determination;
- A map depicting other conserved lands in the vicinity of the proposed Bank Property;
- Bank Objectives/Conceptual Plan - This document describes the objectives of the mitigation bank and activities and methods for establishing, restoring, rehabilitating and/or preserving wetlands and other waters of the U.S. and habitat for federal and state listed species. Include maps detailing the anticipated location, acreages, and credits of wetlands and other waters of the U.S., habitat for federal and state listed species. The plan should detail anticipated increases in

³ [USACE District to include, depending on the USACE District's requirement for an approved vs. a preliminary JD: A preliminary JD can only be used to determine that wetlands or other water bodies that exist on a particular site "may be" jurisdictional waters of the United States. For the purposes of this document, a preliminary JD is one done in accordance with the requirements of USACE Regulatory Guidance Letter 08-02.]

functions and services of existing aquatic resources and their corresponding effect within the watershed (i.e., habitat diversity and connectivity, floodplain management, or other landscape scale functions). Describe ecological suitability of the site to achieve the objectives of the mitigation bank (i.e., watershed/hydrology analysis, soils, topography, compatibility with adjacent land uses, watershed management plans). If a restoration site, should include historic aerial photographs and/or historic topographic maps, if available. Include proposed Performance Standards and monitoring methods for assessing how the objectives of the mitigation bank will be met;

Explain how the proposed bank would contribute to connectivity and ecosystem function. Also discuss potential conflicts and compatibility with any conservation plans, CDFG conceptual area plans, or other land use plans, policies, or regulations;

Real Estate Records and Assurances:

Current (within one year of submittal) Preliminary Title Report indicating any easements or other encumbrances and a figure depicting all relevant property lines, easements, dedications, etc. on the proposed Bank Property. Note: any liens and easements on the proposed Bank Property that may affect a mitigation bank's viability will need to be resolved before a mitigation bank can be approved. Provide a property assessment that summarizes and explains each recorded or unrecorded lien or encumbrance on, or interest in, the proposed Bank Property, including, without limitation, each exception listed in the Preliminary Title Report and describing the manner in which each encumbrance may affect the mitigation bank's operation or habitat services;

Assurance of sufficient water rights to support the long-term sustainability of the mitigation bank;

Provide details including ownership information on interest of surface and sub-surface mineral rights;

Identification and description of access to the proposed Bank Property;

An affirmative statement that a conservation easement covering the

proposed Bank Property in perpetuity or fee title transfer of the proposed Bank Property to a specified and approved grantee will occur as part of the mitigation bank establishment. Include number of acres of the proposed Bank Property, excluding any easement areas that allow uses incompatible with conservation. Note: Pursuant to California Civil Code Section 815 and Government Code Section 65965, only certain entities may be approved to hold an interest in mitigation lands. CDFG Regional offices can provide information related to these statutory requirements.

- Has the proposed Bank Property been:
 - Used as mitigation for a previous project(s);
 - Already designated or dedicated for passive park or open space use, where that use is generally compatible with sustaining biological values;
 - Designated for purposes which are inconsistent with habitat preservation (i.e., lands purchased for roads, landfills, etc.); and
 - Acquired by a public entity (e.g., with State Bond Act funds) or provided to a jurisdiction for park or natural open space purposes. This criterion excludes land purchased by state and local agencies specifically for the purposes of mitigation or mitigation banking assuming the funding source is appropriate;

- Any other restrictions on the proposed Bank Property;

- Details regarding public funding received (if applicable) for restoration, acquisition or other purposes on all or a portion of the proposed Bank Property (e.g., funding source, amount received, purpose, number of acres affected by each purpose, etc.); and

- A list of federal, state, and local permits required for construction and operation of the mitigation bank.

Checklist

Draft Bank Enabling Instrument Requirements for Mitigation Banks

[Revised September 2010 by the Multi-Agency Product Delivery Team]

Please refer to the Cover Sheet, revised *September 2010*, for information and instructions related to the submission requirements for a mitigation bank proposal. The following are the submission requirements for a Draft Bank Enabling Instrument (BEI). Please provide the following information and a copy of this checklist with the submittal of a Draft BEI. Any proposed modifications to the BEI template shall be identified using tracked changes or other electronic comparison and explained in a memorandum. The Draft BEI should be submitted in a 3-ring binder containing all the information and documents listed below. The binder should contain labeled tabs (i.e., Exhibit A, Bank Location Maps). The submittal should also include an electronic, editable format of the BEI, the Conservation Easement, and other applicable template-derived documents. The Draft BEI should include the most recent banking templates and the other necessary exhibits listed below and described in Appendix 1 of the BEI Template.

- BEI
- “Exhibit A” - Bank Location Maps
 - A-1 General Vicinity Map
 - A-2 Map of [*if applicable, include:* Property and] Bank Property
 - A-3 Map of any Existing Conserved Land in Bank Property Vicinity [*if applicable*]
- “Exhibit B” - Service Area Map(s) and Description(s)
 - B-1 Map(s) of the Bank’s Service Area(s)
 - B-2 Narrative Description(s) of the Bank’s Service Area(s)
- “Exhibit C” - Development Plan
 - C-1 Development Plan
 - C-2 Construction Security Analysis and Schedule
 - C-3 Performance Security Analysis and Schedule
- “Exhibit D” - Bank Management and Operation Documents
 - D-1 Interim Management Security Analysis and Schedule

- D-2 Endowment Fund Analysis, Assumptions and Funding Schedule
- D-3 Instructions and Forms for Submission or Disbursement of Funds
- D-4 Interim Management Plan
- D-5 Long-Term Management Plan
- D-6 Bank Closure Plan
- “Exhibit E” - Real Estate Records and Assurances
 - E-1 Preliminary Title Report, Legal Description, and Parcel Map(s)
 - E-2 Property Assessment and Warranty
 - E-3 Plat Map(s)
 - E-4 Approved-as-to-form Conservation Easement Deed or Grant Deed
 - E-5 Title Insurance (valid for final BEI approval)
- “Exhibit F” - Bank Crediting and Credit Transfers
 - F-1 Credit Evaluation and Credit Table
 - F-2 Credit Purchase Agreements and Payment Receipts Templates
 - F-3 Credit Transfer Ledger Template
- “Exhibit G” - Phase I Environmental Site Assessment
- “Exhibit H” - Biological Resources Survey
- “Exhibit I” – USACE Waters of the U.S. Verification Letter
- “Exhibit J” – Cultural, Historical, Archeological, and Native American Resources (“Cultural Resources”)
 - J-1 Identification, Inventory and Evaluation
 - J-2 Compliance Documentation [*include as applicable*]
 - J-3 Historic Properties Treatment Plan [*include as applicable*]
- “Exhibit K” - Other Documentation, Permits, Amendments or Revisions

