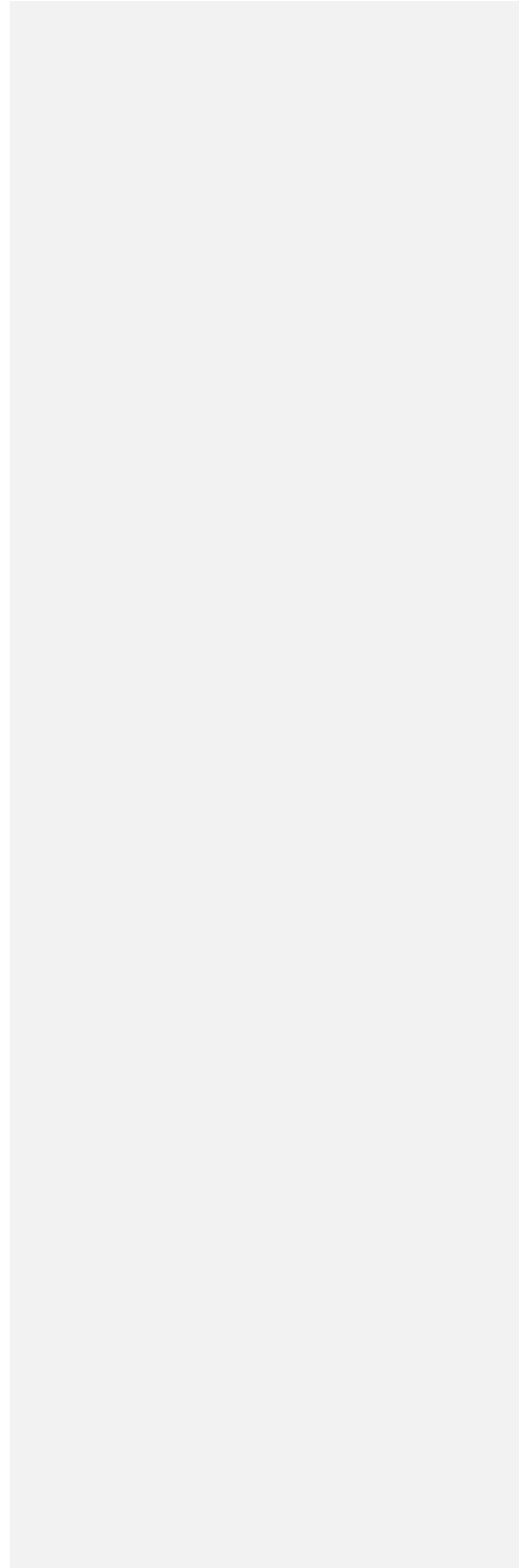


Draft Bank Enabling Instrument Checklist



**Draft Bank Enabling Instrument Checklist
for Conservation and Mitigation Banks in California
[Revised August 2025]**

Commented [A1]: Note to Preparer: If your proposed bank includes a wildlife connectivity action, as part of [CDFW's Connectivity Advance Mitigation \(CAM\)](#), please refer to the [Wildlife Connectivity Action Bank Checklist](#) for the CAM requirements.

Please refer to the "[Interagency Guidance for Preparing Mitigation Bank Proposals in California](#)", revised *May 2021*, for information and instructions related to the submission requirements for a conservation and mitigation bank proposal.

The following are the submission requirements for a Draft Bank Enabling Instrument (BEI) or Draft Conservation Bank Enabling Instrument (CBEI). The BEI/CBEI package should include documents/information provided from the Prospectus Checklist. Provide the following information and a copy of this checklist with the submittal of a Draft BEI/CBEI. Any proposed modifications to the BEI/CBEI template shall be identified using tracked changes and explained in a memorandum.

For submittal of documents, please contact the agencies reviewing the bank proposal for instructions on how to appropriately submit a package.

Banks that propose federal agency participation must upload electronic copies of the documents described in this checklist and the checklist to the proposed Bank's Cyber Repository in [RIBITS](#). Banks that include CDFW must submit their electronic documents and the checklist directly to CDFW.

The complete package consists of individual PDFs of the instrument and all exhibits and/or sub exhibits, an editable format of the BEI, the draft Conservation Easement or Grant Deed (if fee title to the State of California), and other applicable template-derived documents with track changes. The draft BEI/CBEI should include the most recent banking templates, and the other necessary exhibits listed below. When including attachments to the draft BEI/CBEI, please use descriptively labeled file names to facilitate IRT/CBRT review. Note that if attachments are not labeled, the document will be sent back to the Bank Sponsor.

Commented [A2]: Note to Preparer: Each exhibit should be provided a separate pdf. Figures and tables should be included within the same pdf as the exhibit.

If revised documents are submitted, you must provide a clean copy of each document, a redline/track changes copy of each document, and a summary of major changes with justification for such changes for each document, along with the current revision date on each document. In addition, the document must be individually uploaded to the proposed Bank's Cyber Repository in RIBITS and submitted to CDFW (if applicable) in the same manner.

CHECKLIST

- Business Entity Verification and Authorizations** – Entities that wish to conduct business in California must be validly formed, registered to do business, and in good standing with the California Secretary of State's Office. The IRT/CBRT will review all business entities for verification of legal authority to conduct business in California. Please provide the following documents for your business type.
 - Corporation** (non-profit and for-profit):

- Current Certificate of Active Registration with the Secretary of State.
- Current Certificate of Good Standing.
- Articles of Incorporation, and all amendments.
- Bylaws, and all amendments; and
- Corporate Resolution approving the transaction and authorizing the signing of all documents.
- Limited Liability Company (LLC)**
 - Filed Certificate of Active Registration with the Secretary of State.
 - Certificate of Good Standing.
 - Articles of Organization (Form LLC-1), and all amendments.
 - Operating Agreement, and all amendments; and
 - Member/Manager Written Consent approving the transaction and authorizing the signing of all documentation.
- Limited Partnership (LP)**
 - Filed Certificate of Active Registration with the Secretary of State.
 - Certificate of Good Standing.
 - Certificate of Limited partnership (Form LP-1 or LP-5), and all amendments (Form LP-2 or LP-6).
 - Limited Partnership Agreement, and all amendments; and
 - Partnership Resolution approving the transaction and authorizing the signing of all documentation.
- General Partnership (GP)**
 - Statement of Partnership authority pursuant to Section 16303 of the California Corporation Code (Form GP-1), executed by at least two partners, and a copy of any amendments to such statement (Form GP-7).
 - Partnership Resolution approving the transaction and authorizing the signing of all documentation.
- Public Agency Authorization** – Public agencies that are governed by a board should provide a board resolution or other proof of authorization indicating the board has agreed to be a Bank Sponsor, to develop the specific bank, and to be named as a signatory.
- Tribes Authorization** – If the Bank Sponsor is a Tribe, please provide the name of the Tribe and whether the Tribe is on the Bureau of Indian Affairs' list of federally recognized Tribes.
- BEI/CBEI** – The most current PDT-approved template must be used, and any proposed modifications must be documented using tracked changes. All major

changes from the template must be justified in writing.

- Exhibit A - Bank Location Maps** (shapefile or equivalent digital format)
 - A-1: General Vicinity Map: This map should show the Bank location in relation to cities, towns, or major roads, and other distinguishable landmarks with sufficient detail to allow the Bank Property to be easily located.
 - A-2: Map of Property including Bank Property. This map should illustrate Property and Bank Property boundaries, Construction Phases, and any planned Subsequent Phases on a topographic map. The map should be established on California state plane coordinates and consistent with the Boundaries/Improvements/Encumbrances (B I E) Map required in the Property Assessment and Warranty.
 - A-3: Map of Conserved Areas in Bank Property Vicinity (if applicable). This map should depict other conserved lands in the vicinity of the proposed Bank Property. If a conserved area is contiguous to the proposed Bank Property, make a notation on the B I E Map for the proposed Bank Property.
- Exhibit B - Service Area Map(s) and Description(s).**
 - B-1: **Map(s) of the Bank's Service Area(s)** include Service Area map(s) showing the area within which each type of Credit (i.e., Waters of the U.S., Waters of the State, Covered Species or Covered Habitat) may be sold or transferred.
 - B-2: **Narrative Description(s) of the Bank's Service Area(s)** includes a detailed description of the area, and a basis for that Service Area, within which each type of Credit may be sold or transferred. Include sufficient details to be able to determine the boundaries, including counties, landmarks, roads, etc. on all sides of the Service Area.
 - Provide all bank property and service area boundaries as geospatial data. Provide all G I S data and associated metadata preferably using the Environmental Systems Research Institute (ESRI) shapefile format or equivalent digital format. Also provide a kmz file. If the service area is updated, new geospatial data will be required.
- Exhibit C - Development and Interim Management Plan** (use current PDT-approved template)
 - C-1: Development and Interim Management Plan
 - The Development Plan must include the following:**
 1. Baseline conditions of the Bank Property including biological resources, geographic location and features, topography, hydrology, past present and adjacent land uses, an Aquatic Resource Delineation (if applicable), and a list of species and habitats occurring on the Bank Property.

2. Description of the Mitigation/Conservation Bank Goals and objectives.
3. Activities and methodologies for establishing, restoring, and/or enhancing Waters of the U.S. and/or Waters of the State or other habitat types.
4. Anticipated increases in functions and services of existing resources and their corresponding effect within the watershed (i.e. habitat diversity and connectivity, floodplain management, or other landscape scale functions).
5. A discussion of ecological suitability of the site to achieve the stated goals and objectives (i.e. watershed/hydrology analysis, soils, topography, compatibility with adjacent land uses, watershed management plans, critical habitat designation, NCCP, HCP, and species recovery plans).
6. Performance Standards for each credit type.
7. Monitoring Plan, including monitoring methods, schedule, and reporting.
8. Potential Remedial Actions
9. Construction Phasing, if proposed. Clearly specify how each phase will be constructed and monitored in sufficient detail that a third-party acting on the Construction Security could complete establishment of any given phase.
10. Any other information deemed necessary by the IRT/CBRT
11. Include, at a minimum, the following maps:
 - a. Overall mitigation bank design
 - b. Location, acreages, and types of proposed credits. *Note:* The maps and acreage must be consistent with the Boundaries/Improvements/Encumbrances Map required in the Property Assessment and Warranty.
 - c. Historical aerial photographs and/maps, if available
12. If the bank is proposing only preservation credits, then a Development Plan is not needed.

The Interim Management Plan must include the following:

1. Detailed description of all Interim Management activities, including the short-term management, monitoring, and reporting.
2. A table organized by objective that shows all tasks and their schedule for completion.
3. An Adaptive Management plan.
4. Interim Management activities must be described for managing each Construction Phase independently as well as together.

Commented [A3]: Note to preparer: Please see the Long-Term Management Plan template for an example of how to organize this table.

5. For preservation only banks that do not include a Development Plan, the Interim Management Plan should also include goals/objectives and baseline conditions, unless directed otherwise by the IRT.

C-2: Construction Security Analysis and Schedule

Provide a copy of the third-party estimate or contract that is being relied upon to determine the proposed amount of the Construction Security Construction Phase. Include a specific Construction Security Analysis and Schedule for each Construction Phase.

Commented [A4]: Note to preparer: This security is not needed for banks only proposing preservation credits.

C-3: Performance Security Analysis and Schedule

Specify the amount of the Performance Security based upon 10% of the Construction Security in **Exhibit C-2**. Include a specific Performance Security Analysis and Schedule for each Construction Phase.

Commented [A5]: Note to preparer: This security may not be needed for banks only proposing preservation credits.

C-4: Interim Management Security Analysis and Schedule

This analysis and schedule shall consist of a table and/or spreadsheet that identifies all tasks (management, monitoring, reporting); task descriptions; labor (hours); cost per unit; total cost, frequency, timing or scheduling of the tasks; the total annual funding necessary for each task; and any associated assumptions for each task required for Interim Management. The total annual expenses should include administration and contingency costs. This analysis must be included for each Construction Phase.

Cost estimates should be based on tasks implemented by a third-party in present day dollars or equipment prices in present day dollars

C-5: Compliance Security Analysis and Schedule

Specify the amount of the Compliance Security based upon 10% the of Construction Security in **Exhibit C-2**. Include a specific Performance Security Analysis and Schedule for each Construction Phase.

Exhibit D - Bank Management and Operation Documents

D-1: Endowment Fund Analysis and Schedule

This analysis and schedule shall consist of a table and/or spreadsheet that shows the projected annual capitalization rate, all the tasks (management, monitoring, reporting); task descriptions; labor (hours); cost per unit; cost, frequency, timing or scheduling of the tasks; the total annual funding necessary for each task; and any associated assumptions for each task required by the Long-term Management Plan. The total annual expenses should also include administration and contingency expenses. The Endowment Fund Analysis and Schedule is developed assuming that each Construction Phase is constructed and managed by itself without the economies of scale or other cost reductions that may occur if all Construction Phases are implemented.

Cost estimates should be based on tasks implemented by a third-party in present day dollars or equipment prices in present day dollars.

This Endowment Fund Analysis and Schedule in this Exhibit D-1 is specific to funding long-term management of the Bank Property by the Property Owner. The endowment funding required by the Grantee to hold and monitor the Conservation Easement must be addressed by the Bank Sponsor in a separate and distinct Endowment Agreement to be included as part of Exhibit E. Such separate Endowment Agreement is not considered part of Exhibit D-1.

- D-2: Agreements, Instructions and Forms for Submission or Disbursement of Endowment Funds:
 - a. Endowment Agreement
 - b. Deposit Document
 - c. Deposit Procedures
 - d. Annual Funding Report Templates

- D-3: Long-Term Management Plan

The Long-term Management Plan identifies the perpetual management, monitoring, and reporting activities to be conducted after the Interim Management Period. The most current PDT-approved template must be used, and any proposed modifications must be documented using tracked changes. All major changes from the template must be justified in writing.

1. Purpose of Bank establishment and purpose of Long-term Management Plan.
2. A description of the setting, location, history and types of land use activities, geology, soils, climate, hydrology, habitats present (once Bank meets Performance Standards) and species descriptions.
3. Overall management, maintenance and monitoring goals, objectives and specific tasks; timing of implementation; and a discussion of any constraints which may affect goals.
4. The Endowment Fund Analysis and Schedule (**Exhibit D-1**).
5. Discussion of Adaptive Management actions for reasonably foreseeable events and possible thresholds for evaluating and implementing Adaptive Management (e.g., response to impacts caused by unauthorized access to the site or wildfire).
6. Monitoring and Reporting requirements and schedule.
7. Description of how access is provided to the Bank Property. When access is through private property, Exhibit E needs to demonstrate legal deeded access (recorded on title) to the Bank Property.

8. Prohibited uses of the Bank Property as provided in the [Choose one: Conservation Easement or Grant Deed]; and,
9. Procedures for amendments and notices.
10. Include a reference to the Historic Properties Treatment Plan (**Exhibit J-3**), if applicable.

Exhibit E - Real Estate Records and Assurances

E-1: Property Assessment and Warranty

- Property Assessment and Warranty prepared in accordance with the approved template.
- Preliminary Title Report (PTR) (current) for the Bank Property including hyperlinks of all recorded documents identified in the PTR which includes any referenced recorded documents in the legal description(s), any referenced recorded documents in the deed, and all referenced documents embedded in the exception documents. Provide a legible copy of each reference document as an individual document in pdf format and labeled according to Instrument number or Book and Page number.
- Encumbrance Documents
- Summary and Explanation of Encumbrances
- Maps listed in Property Assessment and Warranty template
- Draft Subordination Agreement

E-2: Real Estate Instrument

The form of the Conservation Easement using the approved template, including all exhibits to the Conservation Easement [or, if fee title to the State, substitute: The form of the Grant Deed, including all exhibits to the Grant Deed]. Any proposed modifications to the Conservation Easement template must be documented using tracked changes. All major changes from the template must be justified in writing.

E-3: Conservation Easement Funding Agreement (if applicable)

The conservation easement funding agreement required by the Grantee to hold and monitor the Conservation Easement.

E-4: Mineral Remoteness Opinion

- If the owner(s) of the surface estate is/are different than the owner(s) of the mineral estate, identify how the risks to the Bank will be addressed. Include the following:
- Effects on the Bank: Identify the known mineral/oil/gas resources on the Bank Property and address how extraction of these resources could

affect the Bank and its conservation values.

- Return mineral rights to the property owner: Identify whether the Property Owner will retain the mineral rights prior to signature of the Instrument.
- Surface Use Agreement: If a surface use agreement is required, include it as part of this exhibit.
- Mineral Remoteness Opinion: If a mineral remoteness opinion is required, provide the final report approved by the IRT.
- Any other information required by the IRT to mitigate risks to the Bank.

Exhibit F - Bank Crediting and Credit Transfers

F-1: Credit Evaluation and Credit Table

A "Credit Evaluation" is an explanation of the evaluation undertaken to formulate the value of each type of Credit and the total number of each type of Credit. The "Credit Table" should show the number and type of Credits released as mitigation or compensation for agency-approved projects and other impacts in the Service Area(s). The table should distinguish between the following categories of Credits: Waters of the U.S.; Waters of the State, Covered Species and Covered Habitat Preservation; Covered Species and Covered Habitat Establishment.
Note: The total credited acreage must be consistent with Boundaries/Improvements/Encumbrances Map required in the Property Assessment and Warranty.

F-2: Credit Sales and Transfer Agreements and Payment Receipt Templates

- Credit Sales Agreement (Sale Without a Transfer).
- Credit Sale and Transfer Agreement.
- Credit Transfer Agreement.

F-3: Credit Transfer Ledger Template.

Credit Transfer Ledger shall include, at a minimum:

- a. Bank name
- b. Total number of each type of Bank Credit
- c. Credit purchaser name, address and phone number
- d. Project name
- e. Project applicant name, address, and phone number
- f. Agency project file numbers
- g. Date of Credit Transfer
- h. Type(s) of Credit(s) sold and/or Transferred

- i. Number of Credits sold
- j. Number of Credits Transferred
- k. Balance of each type of Credit remaining
- l. Columns showing the running total of each credit type, and
- m. A declaration that the Bank Sponsor has entered the Transfer into RIBITS.

F-4: Instructions for Species Credit Transfers Using RIBITS *[if applicable]*

F-5: Credit Release Schedule and Funding Schedule for Covered Species and Covered Habitats. The Funding schedule must follow the B E I credit release.

F-6: Implementation Fee Schedule (if applicable)

Exhibit G - Phase I Environmental Site Assessment. If there are no substantive changes between the Prospectus and Draft Instrument, the Phase 1 from the Prospectus may be submitted. However, an updated Phase 1 completed within 6 months must be included with the Final Instrument.

Exhibit H - Biological Resources Survey

The Biological Resources Survey(s) of the Bank Property shall be recent (less than 5 years old) and describe the biotic and abiotic baseline of the Bank Property and should include descriptions of the following with maps:

- a. The Bank Property's 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 on the Bank Property and;
- d. Past and present land uses, including grazing practices.

Exhibit I – Aquatic Resource Delineation (if applicable)

Bank Sponsor shall provide a copy of the aquatic resource delineation and any jurisdictional determination issued by U S A C E and/or Regional Water Board or State Water Board for the Bank Property.

Exhibit J – Non-confidential Cultural, Historical, Archeological, and Native American Resources (“Cultural Resources”). Information regarding the character, location, and ownership of historic properties shall not be included within this exhibit or uploaded to RIBITS, pursuant to Section 304 of the National Historic

Preservation Act (NHPA) and 36 CFR. For banks that do not propose species/habitat credits under the authority of CDFW this information must be provided under a separate cover. This exhibit will then be referenced as a placeholder.

For B E I Only

J-1: Identification, Inventory and Evaluation

Cultural resources inventory and evaluation shall include the following:

- a. A description and map of the area of potential effects (APE) or permit area if USACE-only Bank.
- b. A description of each cultural resource and a brief statement identifying the specific location of each cultural resource within the APE/permit area.
- c. A description of how the boundary was determined for each cultural resource identified.
- d. A determination of eligibility for the National Register of Historic Places (National Register), as determined by the lead Federal agency in consultation with the State Historic Preservation Officer (SHPO) and,
- e. Where appropriate, eligibility recommendation for listing on the California Register of Historical Resources. Cultural resources that are recommended eligible for listing in the National Register are called "historic properties" under the Federal regulations and "historical resources" under the California regulations.

J-2: Compliance Documentation *[if applicable]*

If the lead Federal Agency has made a previous determination that the proposed Bank would have no potential to cause effects or would result in no adverse effect to cultural resources, the Bank Sponsor shall include the previous determination under a separate cover. However, if it is determined that the undertaking will have an adverse effect on a historic property, the lead Federal Agency will need to execute a Memorandum of Agreement (Section 106 agreement) with SHPO, and the Advisory Council on Historic Preservation if they have entered the consultation, as documentation of compliance with Section 106 of the National Historic Preservation Act of 1966, as amended. If the undertaking may cause a substantial adverse change in the significance of a historical resource, then pursuant to California Code of Regulations, Title 14, § 15064.5(b), preparation of an environmental impact report is required.

J-3: Historic Properties Treatment Plan *[if applicable]*

A historic property treatment plan (HPTP), approved by the lead Federal Agency and the SHPO, shall be prepared prior to any ground-disturbing

activities conducted on the Bank Property. The HPTP will be included in the Section 106 agreement as an appendix. Ground disturbing activities must be conducted in accordance with the stipulations of the Section 106 agreement (**Exhibit J-2**). The plan shall include both short and long-term management of the historic properties. In addition, each applicable Federal Agency will make compliance with the Section 106 Agreement a condition of any Federal authorization or approval.

For CBEI Only

J-1: Identification, Inventory, and Evaluation

Cultural resources inventory and evaluation shall include the following:

- a. A description and map of the area of potential effects (APE).
- b. A description of each cultural resource and a brief statement identifying the specific location of each cultural resource within the A P E.
- c. A description of how the boundary was determined for each cultural resource identified.
- d. A determination of eligibility for the National Register of Historic Places (National Register), as determined by the lead Federal agency in consultation with the State Historic Preservation Officer (SHPO) or the Tribal Historic Preservation Officer (THPO) and,
- e. Where appropriate, eligibility recommendation for listing on the California Register of Historical Resources. Cultural resources that are recommended eligible for listing in the National Register are called "historic properties" under the Federal regulations and "historical resources" under the California regulations.

J-2: Compliance Documentation [if applicable]

If a federal agency finds that there is an undertaking, and that undertaking will have no effect or no adverse effect upon cultural resources, the CBEI shall include the federal agency's determination of effect and the required concurrence by the SHPO/THPO and the Advisory Council on Historic Preservation, as applicable. However, if it is determined that there is an undertaking, and that the undertaking will have an adverse effect on a historic property, the CBEI is to include either an executed Programmatic Agreement or Memorandum of Agreement (Section 106 agreement) as

documentation of compliance with Section 106 of the National Historic Preservation Act of 1966, as amended.

If the undertaking may cause an adverse change in the significance of a historical resource, then Bank Sponsor must provide environmental documents, findings and notices prepared or filed by the lead agency to comply with CEQA.

J-3: Historic Properties Treatment Plan (HPTP) [if applicable]

A historic properties treatment plan, approved by a federal agency and the SHPO/THPO, shall be prepared prior to any ground-disturbing activities conducted on the Bank Property. The HPTP will be included in the Section 106 agreement as an appendix. Ground disturbing activities must be conducted in accordance with the stipulations of the Section 106 agreement (**Exhibit J-2**). The plan shall include both short and long-term management of the historic properties. In addition, the federal agency will make compliance with the Section 106 Agreement a condition of any Federal authorization or approval.

Exhibit K – Other Documentation, Permits, Permit Amendments or Revisions

To the extent not already obtained, the Bank Sponsor or Property Owner will be responsible for obtaining all appropriate environmental documentation, permits, permit amendments, or other authorizations needed to establish and maintain the Bank, including but not limited to the list below. Enclose the required documentation for all Construction Phases. Include only those that apply and add others as necessary:

- a. Department of the Army Permits/approvals (e.g. Clean Water Act permit and/or 408 Permission).
- b. Environmental documents, findings and notices prepared or filed by Lead Agency to comply with CEQA and N E P A.
- c. Water Quality Certification or Waiver under § 401 of the Clean Water Act.
- d. General or Individual Waste Discharge Requirements Under the Porter–Cologne Water Quality Control Act, Water Code § 13000 *et seq.*
- e. Streambed Alteration Agreement (Fish and Game Code § 1600 *et seq.*).
- f. Federal Endangered Species Act compliance (16 U.S.C. § 1535 *et seq.*) (ESA) (§ 7 or § 10).
 - i. If USACE is signatory to the bank: Provide sufficient information to initiate consultation pursuant to Section 7(a)(2) of the Federal Endangered Species Act concurrent with the draft B E I. If activities qualify under the U.S. Fish and Wildlife Service California Statewide Programmatic Restoration Effort, Programmatic Biological Opinion or the 2018, NOAA Restoration Center’s

Programmatic Biological Opinion, provide the required forms.

- g. California Endangered Species Act compliance (Fish and Game Code § 2050 *et seq.*).
- h. Magnuson-Stevens Fishery Conservation and Management Act compliance (16 U.S.C. § 1801, *et seq.*).
- i. Central Valley Flood Protection Board Permit for streams listed in the in California Code of Regulations, Title 23, Section 112, Table 8.1, in a United States Army Corps of Engineers (U S A C E) Project Channel (part of Adopted Plan of Flood Control), and/or is in a Designated Floodway.
- j. Coastal Development Permit under the California Coastal Act and,
- k. County/City Grading Permit(s) or other local approvals.
- l. Forms for all programmatic permits being used.