

Interagency Guidance for Preparing Mitigation Bank Proposals in California

[Revised May 2021 by the Multi-Agency Project Delivery Team]

Introduction

The following procedures are to be used to develop proposals for all mitigation and conservation Banks in the state of California. The process described here is intended to assist applicants in providing information to the Bank reviewing agencies that is sufficient to meet their statutory and regulatory requirements. A complete Bank package will help the agencies provide feedback at the earliest stages of the process and will facilitate timely review and approval. Applicants are encouraged to follow this guidance closely as it will save them time and money in the process.

Some key background information is presented below, followed by specific instructions for preparing and submitting the various Bank proposal components: Draft Prospectus (optional), Prospectus, Draft Bank Enabling Instrument (BEI), and Bank Amendment. This guidance supplements the required information listed in the Checklists for each Bank proposal component. Please follow these instructions carefully.

Interagency Process for Banks

The review and approval of mitigation and conservation Banks is often a multi-agency process that may involve any of the following federal and state agencies: the U.S. Army Corps of Engineers (“USACE”), Region IX of the U.S. Environmental Protection Agency (“USEPA”), U.S. Fish and Wildlife Service (“USFWS”), National Oceanic Atmospheric Administration’s National Marine Fisheries Service (“NMFS”), USDA Natural Resources Conservation Service (“NRCS”), State Water Resources Control Board (“SWRCB”), California Natural Resources Agency (“CNRA”), the California Department of Fish and Wildlife (“CDFW”), and the California Coastal Commission (CCC).

The agencies with jurisdiction over the resources in a proposed Bank together comprise and are referred to as the Interagency Review Team (“IRT”). The members in the IRT vary depending on the resources addressed in the Bank and the location of the bank in the state.

For each stage of the Bank review process described below, the individual/company proposing a bank (Bank Sponsor) should contact a member of the IRT in the appropriate area to arrange a time to be placed on the agenda for an IRT meeting. Time slots on an IRT agenda will be assigned when a Bank Sponsor has provided the IRT members with printed and electronic copies of the proposal in advance of the scheduled meeting with the IRT (see below for specific deadlines). Specific instructions related to making a presentation to an IRT meeting will be provided by the IRT contact.

We recommend that you review the policies and guidance from all the agencies with jurisdiction for the credits you are seeking. Some of the websites where you can find these policies are included below.

- USACE: <http://www.spd.usace.army.mil/Missions/Regulatory/Public-Notices-and-References/>
- USEPA: <https://www.epa.gov/cwa-404/federal-guidance-establishment-use-and-operation-mitigation-banks>
- USFWS: https://www.fws.gov/sacramento/es/Conservation-Banking/Home/es_conse-banking.htm
- NOAA/NMFS: <https://www.fisheries.noaa.gov/west-coast/habitat-conservation/habitat-conservation-west-coast>
- CDFW: <https://www.wildlife.ca.gov/Conservation/Planning/Banking>
- State Water Resources Control Board: https://www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.html

Procedures Specific to Bank Review by California Department of Fish and Wildlife

In January 2013, the bank review process by CDFW became fee based. All banks seeking CDFW review are subject to the current CDFW bank fees and review timelines (Fish and Game Code (FGC) Sections 1797-1799.1). CDFW review timelines may differ from timelines of other IRT members. Please visit <https://www.wildlife.ca.gov/Conservation/Planning/Banking/Templates> for instructions, fee schedules, and templates.

General Categories of Bank Proposals

Draft Prospectus (optional)

A Draft Prospectus is a brief, concept level proposal that is optional but **recommended** when a Bank Sponsor is contemplating a specific mitigation or conservation bank and can be especially helpful for those new to the mitigation/conservation banking process.

Prospectus

A Prospectus is required and is a brief, detailed proposal for a specific bank. The Prospectus allows the IRT to determine if the bank proposal is adequate to support development of a full bank agreement package. The Prospectus allows early collaboration between the IRT and the Bank Sponsor to clarify the intent for the proposal and to identify potential benefits and issues.

Bank Agreement Package

The bank agreement package is the Bank Enabling Instrument (BEI), including all exhibits. See the Checklist for a BEI for a complete list of the information required.

Amendment

An Amendment to an approved bank means any change that requires revision of the bank documents and approval from the IRT. Amendment also refers to the document that summarizes revisions to the bank document and receives approval from by the IRT.

Preparation of Bank Proposals

Draft Prospectus (optional)

The Bank Sponsor may elect to submit an optional Draft Prospectus to each member of the IRT for comment and consultation. This step is intended to identify potential obstacles early so that the Bank Sponsor might rectify them or change course prior to the formal review process. See the Checklist for a Draft Prospectus for a complete list of the information required.

Prospectus

A Prospectus must be submitted by the Bank Sponsor to each member of the IRT. See the Checklist for a Prospectus for a complete list of the information required. It will be reviewed and evaluated by the IRT and the public prior to authorization to submit a Draft BEI. The following steps should be taken during the Prospectus stage:

- 1) Check the websites of the IRT agencies to obtain the most current banking information and templates before beginning Prospectus preparation.
- 2) Check with one of the IRT members for IRT meeting dates, times, and chair contacts.
- 3) Submit a Prospectus (see Checklist) to the IRT for completeness review.
- 4) Once the Prospectus has been deemed complete by the IRT, the Prospectus will be reviewed by the IRT agencies and the public.
- 5) Upon completion of Prospectus review by the IRT and the public, the IRT will notify the Bank Sponsor whether they may begin development of the draft BEI.

Draft Bank Agreement Package

A Draft BEI, which includes all exhibits, must be submitted by the Bank Sponsor to each member of the IRT. See the Checklist for a Draft BEI for a complete list of the information required. It will be reviewed and evaluated by the IRT prior to approval of the BEI. The following steps should be taken during the Draft BEI stage:

- 1) Check the websites of the IRT agencies to obtain the most current banking information and templates before beginning Draft BEI preparation.
- 2) Check with the IRT for meeting dates and times.

- 3) Submit a Draft BEI (see Checklist) for completeness review by the IRT.
- 4) The Draft BEI will be reviewed by the IRT once it has been deemed complete.
- 5) The IRT may request clarifying or supplemental information.
- 6) Upon completion of review of the Draft BEI, the IRT will notify the Bank Sponsor of their determination. Once the Draft BEI has been accepted by the IRT, the Bank Sponsor will provide a final bank agreement package to the IRT.
- 7) The BEI will be circulated to the appropriate approval authority in each IRT agency for signature.
- 8) The bank is not final, and credits are not authorized for sale until all requirements for bank establishment have been completed per Section V, of the BEI.

Amendment of Approved Banks

Requirements similar to those listed above for Draft BEIs also apply to amendment of banks that have already been approved and established.

A draft amended BEI must be submitted by the Bank Sponsor to the IRT. The draft amended BEI or amendment document, as determined to be appropriate by the IRT, will identify all sections in the approved BEI to be amended including exhibits, if applicable. It will be reviewed and evaluated by the IRT prior to approval of the Amended BEI. The following steps should be taken during the Amendment stage:

- 1) Check the websites of the IRT agencies to obtain the most current banking information and templates before beginning draft Amendment preparation.
- 2) Check with one of the IRT representatives for meeting dates, times, and chair contacts.
- 3) Submit a draft amended BEI for completeness review by the IRT.
- 4) The draft amended BEI will be reviewed by the IRT once it has been deemed complete.
- 5) The IRT may request clarifying or supplemental information.
- 6) Upon completion of review of the draft amended BEI, the IRT will notify the Bank Sponsor of their determination. Once the draft amended BEI has been accepted by the IRT, the Bank Sponsor will provide a final bank amendment package to the IRT.
- 7) The amended BEI will be circulated to the appropriate approval authority in each IRT agency for final signature.

Presentation of a Proposal to IRT

Draft Prospectus or Prospectus

Please contact the appropriate IRT chairman listed in the table below to arrange a time to be placed on the agenda for an IRT meeting. **Issuance of an approved or a preliminary jurisdictional determination by the USACE [IRT to insert appropriate requirement] is required prior to submittal of a Prospectus.** The IRT meetings for the _____ USACE District are held [*IRT to insert appropriate day of each month, or “as needed”*].

In order to receive a time slot on an 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 electronic copies of the proposal at least **14 days prior to the scheduled meeting with the IRT. In addition to the quantities listed above**, please contact the IRT to determine if submission of hard copies of the proposals are required. 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 supplemental information if the Prospectus raises additional questions or issues.

Draft BEI or Bank Amendment

In order to receive a time slot on the IRT agenda for a Draft BEI or Bank Amendment, the Bank Sponsor must provide each IRT agency with copies of the Draft BEI or Amendment in electronic form. The Bank Sponsor must also contact the IRT to determine if hardcopies will also be required. Submit the hardcopies , 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 their 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.[*IRT to insert date of current list of participants*: Updated by ___ IRT on insert Date:_____]. [*IRT can edit table/columns below as needed.*]

IRT participants:

Name	Agency	Email Address	Mailing Address	Phone
