



US Army Corps
of Engineers®

Regulatory Division
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SAN FRANCISCO DISTRICT

PUBLIC NOTICE

Statewide Mitigation Banking Templates and Checklists

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1. SUBJECT: The Sacramento, San Francisco, and Los Angeles Districts of the U.S. Army Corps of Engineers (USACE), along with the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG), the California Resources Agency, the National Marine Fisheries Service (NMFS), the United States Environmental Protection Agency (EPA), and the Natural Resources Conservation Service (NRCS) as potential participants in Interagency Review Teams (IRT) have developed a standard Bank Enabling Instrument (BEI) template, Conservation Easement (CE) template, Management Plan template, and checklists for conceptual bank submittals, banking prospectus submittal, and draft BEI submittal for use in the development of mitigation banks that are within, or that propose service areas within the State of California. This notice is to inform interested parties of the availability of the completed templates. This notice may also be viewed at the Corps web site at <http://www.spk.usace.army.mil/regulatory.html>.

2. AUTHORITY: These templates are to be used in the development of mitigation banks which are being developed to provide mitigation for impacts from projects which have received authorizations to proceed under the authorities of Section 10 of the Rivers and Harbors Act of 1899 for structures or work in or affecting navigable waters of the United States and/or Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States. Additionally, these templates are to be used when those mitigation

banks would also propose to provide mitigation for projects which have been required to provide mitigation by USFWS, CDFG, NMFS, and/or NRCS.

3. PROJECT DESCRIPTION: In response to concerns over the increasing time it has taken to develop, review, and approve individual mitigation bank proposals, USACE, USFWS, NMFS, NRCS, EPA, the California Resources Agency, and CDFG have developed the attached BEI, CE, and Management Plan templates and associated checklists. These templates will help potential mitigation bank sponsors submit adequate proposals and guide the bank sponsor and Interagency Review Team (IRT) on how to adequately review, approve and implement the bank. The "Federal Guidance for the Establishment, Use and Operation of Mitigation Banks" (Federal guidance) and other state and federal regulations and policy documents do not address all of the bank establishment and implementation issues that IRTs have encountered. Mitigation banks within the State of California are typically proposed to provide mitigation for projects for which mitigation has been required by different agencies, operating under different authorities. The attached documents integrate these requirements. USACE, USFWS, NMFS, NRCS, EPA, the California Resources Agency, and CDFG have committed through an interagency Memorandum of Understanding to establishing a combined and coordinated approach to mitigation bank review and approval which includes development of template documents for use throughout the State of

California. These templates will serve to add consistency to the approval process for mitigation banks and ensure a viable private mitigation banking market. These templates reflect existing regulations, policies, and guidance and represent the way in which USACE, USFWS, NMFS, NRCS, EPA, the California Resources Agency, and CDFG intend to implement and provide a consistent approach to future mitigation banking proposals. It is expected that, with finalized joint templates, agencies, mitigation bank sponsors, and project proponents will be able to proceed with confidence that regulatory needs are met and the information used in the bank review and approval process is adequate, predictable, consistent, and not subject to extensive unnecessary confusion and negotiation.

The next step will be to hold a facilitated implementation meeting July 18, 2008, at 10 AM, in the Cafeteria Conference Rooms, next to the offices of USFWS, 2800 Cottage Way, Sacramento, to present the template documents to mitigation bank sponsors and other interested parties. Steps that will follow include developing Conservation Banking Agreements to be used for Conservation Banks which will be approved by USFWS and CDFG, and a Bank Enabling Instrument Template for banks where USACE is the only agency releasing credits that will be used across the entirety of USACE's South Pacific Division (SPD).

If you have questions or need additional information please contact Tom Cavanaugh, 916-557-5261, Thomas.J.Cavanaugh@usace.army.mil.