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April 6, 2022

Mr. Jaime Pinkham
Principal Deputy Assistant Secretary of the Army (Civil Works)
U.S. Army Corps of Engineers (Corps)
108 Army Pentagon
Washington, D.C. 20310-0108

Dear Mr. Pinkham:

The Ecological Restoration Business Association (ERBA) represents the nation's mitigation and restoration providers, who deliver durable ecological services and expedite Clean Water Act (CWA) permitting for the Corps and permittees. ERBA highly values our decades-long working partnership with the Corps to generate offsets under the Corps' 2008 Compensatory Mitigation Rule (the "Rule"). We appreciated the opportunity to meet with you earlier this year to discuss potential improvements in implementation of the 2008 Rule. Following that discussion, we respectfully share the enclosed specific recommendations for a Regulatory Guidance Letter (RGL) on mitigation delivery to expedite the Corps' ability to responsibly permit infrastructure and accelerate private investment towards our national environmental goals.

Urgency of the Current Moment – for Infrastructure and our Environment

ERBA strongly supports development of a *Principles of Delivery* Corps guidance document as an immediate step to stimulate mitigation reviews.ⁱ We agree that a sharp focus on delivery should drive Corps' decision-making processes to meet our urgent infrastructure and environmental challenges. Delivery of efficient advance mitigation credits is more important than ever as Districts face increased permitting workloads following the Infrastructure Investment and Jobs Act (IIJA) and communities seek to incentivize restoration of aquatic systems in response to escalating natural disasters.ⁱⁱ Despite the need for more mitigation credits, Districts are unfortunately trending towards protracted delays in the review and approval of new mitigation banks and existing banks' credit release requests. Across the country, ERBA members face review timelines running 6 years and longer in Districts where bank approvals previously averaged 2-3 years.ⁱⁱⁱ These same Districts are grappling with substantial permitting needs in sensitive ecological habitats, and would benefit greatly from available mitigation credits. The Corps' national data on Mission Success Criteria 5.1 revealed that Districts meet the criteria's target 550-day bank review timeline only 35% of the time.

ERBA believes there are two main solutions to these mitigation review regulatory delays: 1) increase the number of dedicated, trained Corps District Regulatory staff responsible for mitigation program administration and reviews; and 2) empower strong District level leadership to lead the IRT by fully embracing the text of the 2008 Rule and proven project management tools and templates.

On this first solution, ERBA continues to advocate for a substantial increase in the Corps' annual Regulatory Budget, with increased funding dedicated towards full time mitigation staffers at the District level.^{iv} We were encouraged that the IIJA included an additional \$32M per year over the next five years, which should be immediately applied towards full time mitigation bank staffing hires at the District level. We also advocated for the slight increase to \$212M in the final FY22 appropriations package, and are

dedicated to this funding ask on an annual basis.^v Just this month ERBA submitted a recommendation to OMB and Congress for the Corps' FY23 Regulatory Budget to be funded to a minimum of \$235M.^{vi}

On the second solution, ERBA recommends that the Corps develop a Regulatory Guidance Letter (RGL) focused on delivery of mitigation credits that i) outlines roles and responsibilities on the IRT and ii) promotes adoption of project management tools and leadership skills to meet the Rule's stipulated timelines for mitigation reviews. ERBA advocates for a RGL on these regulatory concepts rather than an amendment to the Rule because rule-making requires substantial agency staff time and resources and the existing Rule text is largely sufficient with respect to the mitigation project approval process. However, there are obvious immediate opportunities to improve Rule implementation at the District-level, which would boost mitigation program efficiencies, timeline compliance, and attract increased investment into additional resource restoration. ERBA believes that in the long-term a RGL on this topic would be more effective than Corps-only guidance (such as the *Principles of Delivery* guidance) because the RGL development process allows for interagency input, which is critical to a RGL's successful implementation, especially for a RGL focused on the roles of IRT Co-Chair and peer agencies.

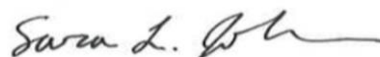
In addition to adopting a RGL, ERBA also recommends that the Corps invest District level staff time in required training on how to lead the mitigation bank and ILF review process. This training would rely on the RGL as a primary resource and also incorporate the recently finalized IRT Review Workbooks. After seeing the success of the IRT trainings hosted at the National Conservation Training Center, ERBA recommends that the required training course be held in a similar format and incorporate mock IRT meetings where participants can "learn by doing" with case study exercises that highlight conflict resolution and application of decision-making tools. Again, we reiterate that this course should be mandatory for any Corps staff acting on the IRT and should ideally be attended in person for the most productive immersive experience.

ERBA would like to meet with Corps leadership in April to discuss this RGL recommendation, the enclosed suggested outline for the RGL, and how ERBA can better serve as an industry resource on the topic. Please contact Sara Johnson at sjohnson@ecologicalrestoration.org at your earliest convenience to schedule a meeting time. Thank you for your leadership, and please do not hesitate to reach out with any questions, comments, or requests for further information.

Sincerely,



Ecological Restoration Business Association
President



Ecological Restoration Business Association
Executive Director

CC: Al Lee, Director, Civil Works
Stacey Jensen, Assistant for Regulatory and Tribal Affairs
Jennifer Moyer, Chief Regulatory
David Olson, Regulatory Program Manager
Andy Beaudet, Regulatory Program Manager

ENCLOSURES

Enclosure I: Recommendations on a RGL re: IRT Roles and Mitigation Review Timelines

For your consideration, ERBA respectfully recommends the following RGL outline:

i. Rule text underpinning RGL recommendations.

The RGL should first remind the Corps and IRT agency representatives of the IRT's purpose and District Engineer (i.e., Chair) and Co-Chair(s)' leadership authority.^{vii} This opening section should also highlight leadership roles in a joint banking scenario and underscore the IRT's clear authority to approve 404 compensatory mitigation banks to satisfy the requirements of other federal, state, tribal, or local government regulatory programs, including those for endangered species, so long as the same credits are not used to provide compensation for more than one permitted action.^{viii} Where joint banks or ILFs are to provide offsets under another federal, state, tribal, or local program, the relevant administering peer agency may serve as a Co-Chair of the IRT.^{ix}

The IRT process is intended to enable, not hinder, the approval of mitigation banks and ILF programs: "the primary role of the IRT is to facilitate the establishment of mitigation banks or in-lieu fee programs through the development of mitigation banking or in-lieu fee program instruments."^x The Chair and Co-Chairs are established to lead IRT reviews with peer agencies serving in a supplemental review role and then, once banks and ILF are approved, only an advisory role: "The IRT will also *advise* the district engineer in assessing monitoring reports, *recommending* remedial or adaptive management measures, approving credit releases, and approving modifications to an instrument."^{xi} While non-Chair peer agencies on the IRT may elect to sign on to a final instrument, they are not required to do so. The required signatures of the Chair and Co-Chairs should not be conditioned on or delayed while waiting on peer agency concurrence as signatory. To emphasize this point, ERBA recommends that the RGL include definitions for required and non-required signatories. IRT processes and project management should facilitate instrument signing by the required signatories as soon as possible once they approve the instrument, and emphasize that non-required signatories may sign after the required signatories and/or simply issue a concurrence or acknowledgment of the final instrument.

In addition to emphasizing the Rule's language on IRT roles and authorities, the RGL should also consider reiterating the mitigation review timelines stipulated in 33 CFR 332.8(d), modification timelines in 33 CFR 332.8(g)(2), and credit release requests in 33 CFR 332.8(o)(9). To help illustrate these timelines and the shifting responsibilities between IRT and mitigation sponsor at different review stages, ERBA recommends that the RGL include a visual outlining the responsible party for action during each stage of document review. This concept is discussed further below as a project management tool.

ii. Reviews according to IRT agency's authority, expertise, and Chair time constraints.

The Chair and Co-Chair can immediately improve efficiencies in IRT reviews by limiting peer IRT agencies' review based on the review stage, document versions, and the agency's jurisdiction and expertise. As Chair, the Corps should take ownership of their sole obligation to provide a completeness determination back to the sponsor within 30 days of receipt of a draft prospectus or draft instrument.^{xii} ERBA recommends that the RGL direct use of a completeness checklist to standardize this analysis across Districts and streamline the Corps' ability to reach a predictable consistent determination.^{xiii} Once a complete prospectus determination is made by the Chair, the Chair and Co-Chair should work with the sponsor to adopt a standard project schedule (see Enclosure II for two examples) or otherwise formulate an agreeable project schedule as early as possible with both IRT and sponsor target deadlines. As a best practice, ERBA encourages all sponsors to enclose with their prospectus submission a proposed project

schedule that outlines IRT and sponsor deadlines for key review milestones. The project schedule does not need to be placed on public notice with the prospectus, but the sponsor, Chair, and Co-Chair should consult as soon as possible on an agreeable schedule. If a sponsor does not include a project schedule, then the Chair and Co-Chair should propose one or otherwise negotiate with the sponsor at or before the first meeting on the draft instrument. While there are many different sophisticated scheduling tools, even a simple Excel table can generate a project schedule that serves the intended purpose (in fact, the two enclosed schedules were generated in Excel). Establishing a project schedule at the outset of a review process is a proven tool to facilitate clear communication and expectations between parties and promote decisiveness to meet deadlines.

Once deemed complete, the Corps only has 30 days from the conclusion of the public notice period to provide an initial evaluation letter to the sponsor on the prospectus, and only 90 days to inform the sponsor of the status of the IRT's instrument review.^{xiv} Considering these required timeframes, the Chair and Co-Chair realistically can only facilitate one to two rounds of full IRT member review and comment on each document. ERBA recommends that the Chair and Co-Chair adopt and enforce a policy to tailor IRT review and meet the stipulated deadlines, such as:

The full IRT may provide comment on the first complete version of the prospectus or instrument circulated by the Chair. IRT members are encouraged to tailor their review of these first versions to specific sections of the document that are relevant to that IRT agency's jurisdiction and expertise.^{xv} The Chair may assign portions of prospectus and instrument document review to specific IRT members to facilitate a focused review. The Chair should give greater weight to comments by IRT members that are relevant to the commenting member's expertise. Once the sponsor returns the second version of the document back to the Chair, the Chair alone will take the lead on determining whether the sponsor addressed the collective IRT's comments.^{xvi} The Chair will not allow for subsequent reviews by the full IRT on subsequent document versions, unless the subsequent version includes a significant change that was prompted by an IRT member's comment on the prior version. When conducting reviews of subsequent versions, the Chair, Co-Chair, IRT members and sponsor will commit to excerpt out and only review the document provisions that were initially commented on.^{xvii} This practice will ensure that novel issues or requests are not disruptively raised out of turn by IRT members.

iii. Discipline in Decision-making by Deadlines.

As highlighted above, the Rule outlines a process for complete prospectus and complete instrument review in which the IRT provides comment, the sponsor addresses those comments, and then the Chair and Co-Chair make final determinations and proceed to signature, all within a target 90-day timeline. In practice, IRT Chairs and Co-Chairs commonly extend deadlines to accommodate peer IRT members' delays or to achieve unanimous consensus. Multiple decision-making tools and disciplined policies should be used by the Chair and Co-Chair throughout the IRT review process to ensure compliance with the Rule's mandated timelines and constraints on deference.^{xviii}

Based on the Rule's requirements, if an IRT member submits late comments once the deadline has passed, the Chair and Co-Chair's default position should be to not consider the comments. Late IRT comments threaten the Corps' compliance with the Rule. The Rule contemplates very limited scenarios when the stipulated deadlines may be extended, stating: "Comments received after these deadlines will only be considered at the discretion of the district engineer to the extent that doing so does not jeopardize the deadlines for district engineer action" and goes on to explicitly list the few justifications

for an extension.^{xix} An IRT member's delay in commenting due to competing workload demands does not fit within one of the permissible enumerated reasons listed in the Rule.

Only in extremely limited circumstances should the Chair allow consideration of an IRT member's late comments. An extension may be permitted when the late comments are on a material provision of the document and that provision is within the commenting agency's specific expertise and jurisdiction. Under this approach, if a state parks agency is submitting late comments on financial assurances, which are not within the expertise of that IRT member agency, then the Chair should disregard those comments. Again, as a primary rule, unless the mitigation sponsor has agreed to the extension, the Chair should never consider late comments if their late consideration will result in the Corps then missing their own stipulated deadline for action.

Upon circulation of the prospectus, the Chair should outline to IRT members the rare circumstances and associated process and timeline for an IRT member to request an extension to submit late comments past a deadline. For example, the Chair might require an IRT member seeking an extension to submit the request in writing to the Chair at least 10 days in advance of the deadline and limit their late review to specific portions of the subject document. When granting an extension, the Chair should publicly document the justification for the extension in ORM. Public documentation will provide transparency and accountability in tracking mitigation delays for Mission Success Criteria 5.1 and help the Corps identify common reasons for delay and corresponding opportunities for improvement.

The Chair and Co-Chair should keep in mind that there are multiple versions of consensus when evaluating conflicting comments and analyses between IRT members. While unanimous consensus is of course desirable, it is not required for IRT progress. The Chair and Co-Chair should instead strive for majority, not unanimous, consensus. Ultimately the Chair and Co-Chair must reserve and execute on their authority to issue a final decision based on their judgement alone if the IRT cannot reach a consensus. The Chair should facilitate IRT members' participation in a disciplined manner by committed application of project management tracking and calendaring tools, including reminders on upcoming decisions and deadlines that are enforced consistently across IRT members.

In joint banking instances, the Corps Chair may be prepared to sign the final instrument at the Rule's deadline while the Co-Chair continues to have outstanding concerns and issues with the instrument. While the Chair and Co-Chair should strive from the outset of the review process to both sign off on the instrument at the same time, if the Chair does not share the Co-Chair's view on outstanding concerns, then the Chair should proceed with signing off on the instrument to allow the sponsor to receive 404 mitigation credits. As a best practice in this event, the sponsor may include language in their instrument that the Co-Chair may sign at a later date to later authorize additional credits under their authority.

iv. Direct development of District level SOPs and templates.

Beyond review of pending mitigation instrument and plan applications, an equally important responsibility of IRTs is their development of District level Standard Operating Procedures (SOPs), templates, and other guidance and training materials.^{xx} Standard Operating Procedures (SOPs) and instrument templates are proven guidance tools for more efficient IRT reviews. SOPs and templates bring consistency to sponsor submissions, and focus IRT members' review for a more disciplined, streamlined process. Development of SOPs and templates by IRTs is also a useful exercise that allows IRTs to anticipate specific issues of concern and vet potentially conflicting IRT member viewpoints in

advance of a specific mitigation project’s review.^{xxi} The development process necessitates routine communication among IRT agencies and can bring to bear expertise not readily available to the Corps.

While certain geographic and ecological elements of mitigation projects necessarily vary per project, administrative elements like financial assurances, real estate protection, and long-term planning are ripe for standardization in SOPs and templates. The use of templates focuses IRT members’ review on site and ecological specific elements of mitigation documents, and can generally streamline reviews of real estate, financial, and boilerplate contract terms.

If an IRT does not currently have templates and/or SOPs in place, then within 60 days of issuance of the RGL, the relevant District should work with IRT members to commence development of template(s) and issuance of a draft template onto public notice. To jumpstart IRT template development, ERBA recommends that Corps HQ include an appendix to the RGL with example boilerplate language from current templates approved by Corps Counsel on these key administrative terms like financial assurances, real estate, and long-term management.

Importantly, to not have template development and use interfere with mitigation approvals underway, templates should specify an effective date upon their final issuance. Until a template is fully vetted and officially issued by a Corps’ District, the Chair should not require any changes in pending instruments under review. A template should only apply to pending mitigation proposals if the template is issued with an effective date prior to the first submission of a complete draft instrument.

Note on Technology Recommendations to Support Implementation of Timely IRT Reviews:

Lastly, ERBA recommends that Corps HQ invest additional funds and staff resources to create a public facing dashboard tracking IRT review timelines and progress per District. One approach may be to have ORM tracked review data pushed through a web service to a dashboard available on RIBITS. Districts could also more consistently and completely utilize RIBITS existing features to better facilitate communications on IRT members’ review obligations. All Chairs should adopt use of RIBITS’ existing calendar and push notification features to prompt automatic IRT reminders on upcoming deadlines and communicate approvals and notifications to other regulators, sponsors, and the public. For example, the Wilmington District already routinely uses RIBITS to post notices, policies, and practice announcements.

Besides these immediate technology opportunities, the Corps should also consider contracting out for development of an online project management system custom to IRT review processes. This system would allow for clear tracking on Chair, IRT member, and sponsor obligations, real time commenting and updates to draft documents (similar to a shared Google document), restrictions on review and commenting depending on an IRT member’s expertise and authority, and automated reminders and prompts with the system oriented to default to the next stage once a deadline passes, unless a specific exception is manually input to allow for late commenting. ERBA has members familiar with these technology capabilities and restrictions and would appreciate the chance to further explore this idea.



ENCLOSURE II

Example Project Schedule – Joint Bank (note the early legal review)

2013		2014												2015																																							
Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec																												
Draft Prospectus																																																					
		Prepare Full Prospectus																																																			
						IRT Review Full Prospectus																																															
										Aug 1 Draft BEI Submitted																																											
						CDFW 30 day Review Period Begins Aug 12 Ends September 11				30 Day Review																																											
						CDFW 90 day Comment and Acceptance begins September 11 and Ends December 10				90 day Review and Comment on Draft BEI (CDFW-120 days)																																											
										USACE Legal Review																																											
										CDFW, USFWS Legal review if deviating from template documents Subject-Specific Meetings IRT-WES																																											
														December 12 IRT meeting All comments Due																																							
														Prepare BEI Revisions Distribute by December 29																																							
																		IRT Review of revised Draft BEI Documents		All comments due by Feb 23																																	
																		Subject-Specific Meetings																																			
																						Revise per Comments by March 23																															
																						Screen Check BEI																															
																						Corps Legal Review																															
																						May IRT																															
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																						Easement, Securities																															
																						Credit Release																															
																						Construction																															
																								As-Builts																													
																										Site Visit																											
																												Credit Release																									

Key	
	Draft Prospectus
	Full Prospectus
	Draft BEI
	Revised Draft BEI
	Screen Check BEI
	Final BEI
	Post-Signature Activities

Example Project Schedule – 404 Only Bank

Mitigation Banking Program Tasks and Timeline

Stage	Responsible Party	Days to complete	Due on Date	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Draft Prospectus																		
Submit Draft 2 weeks prior to IRT meeting	Bank Sponsor	0	Jan 1	■														
IRT meeting, check for red flags	IRT	0	Jan 15	■														
Review and Comments	Agencies	30	Feb 1	■	■	■												
Meeting w/Sponsor to discuss comments from all agencies	Agencies	0	Feb 7		■													
Revision of Draft and preparation of Prospectus	Bank Sponsor	30	March 1		■	■	■											
Prospectus																		
Submit Draft 2 weeks prior to IRT meeting	Bank Sponsor	0	March 1			■												
IRT meeting	IRT	0	March 15			■	■											
Determination of Completeness	Agencies	30	March 30			■	■	■										
Publish Public Notice within 30 days of Determination	Agencies	30	April 30			■	■	■	■									
Public Review Period	Agencies	30	May 30			■	■	■	■	■								
Comments Distributed to IRT and Bank Sponsor	Agencies	15	June 15					■	■									
Initial Evaluation letter to Bank Sponsor	Agencies	15	June 30						■	■								
Meeting w/Sponsor to discuss comments from all agencies	Bank Sponsor	0	July 1						■									
Draft Bank Instrument																		
Prepare Draft Instrument and Exhibits	Bank Sponsor	30	July 30						■	■	■							
Submit Draft 2 weeks prior to IRT meeting	IRT	0	Aug 1								■							
IRT meeting	Agencies	0	Aug 14								■							
Completeness Review (and distribution to IRT)	Corps only	30	Sept 1								■	■	■					
Start IRT Review Period	CDFW, USFWS,	5	Sept 5									■						
IRT Review and Comments to Corps	Agencies	30	Oct 5									■	■	■				
Meeting w/ Bank Sponsor to discuss comments from all agencies	Agencies	0	Oct 15										■					
Internal IRT Discussions, Conclusions and Notice to Bank Sponsor	Agencies	60	Dec 5										■	■	■			
Revised Draft Bank Instrument																		
Bank Sponsor Submits Only Revised Documents to IRT (including complete comment matrix)	Bank Sponsor	10	Dec 21											■	■			
Agencies review of revised documents	Agencies	15	Jan 4												■	■		
Meeting to discuss comments from all agencies	Bank Sponsor	3	Jan 7													■		
Bank Sponsor final revisions to address agency comments	Bank Sponsor	14	21														■	
Final Bank Instrument																		
Bank Sponsor submits Screencheck BC1 to IRT (include complete comment matrix)	Bank Sponsor	0	Jan 10															■
Corps Notification of Intent to Approve Final Instrument	Agencies	30	Feb 30														■	■
Bank approval or initiate IRT dispute resolution process	Agencies	15	March 15															■

ⁱ Idea mentioned to ERBA during a 2.25.22 meeting with ERBA and Corps Regulatory leadership. We believe this Corps-only guidance could be a stepping stone towards more specific inter-agency direction given in a RGL.

ⁱⁱ Availability of mitigation credits is documented as expediting permitting reviews to 50% faster than permittee-responsible mitigation, and credits are the preferred option for permittees seeking the benefit of liability transfer. Large-scale mitigation projects implemented in advance of impacts are environmentally preferable to small, concurrent or after-impact mitigation projects that often lack accountability and oversight, and present greater ecological performance and liability risks. The Corps' upfront staffing investment in more efficient delivery of mitigation credits will substantially save staff time on the whole because mitigation bank and ILF reviews are consolidated in a one-time review process of a large landscape-scale site that can service multiple permittees and available credits allow staff to issue infrastructure permits faster. See ERBA's *Principles of Ecological Restoration* for a longer discussion on the environmental benefits of advance mitigation.

ⁱⁱⁱ Some national data to consider: from 2014 to 2018, regulator review processing for mitigation banks increased from 395 days to 559 days (not including the days sponsors are revising the document; based on FY14-FY18 ORM data in response to FOIA request).

^{iv} See ERBA's FY22 White Paper on the Corps' Regulatory Budget available [here](#).

^v See ERBA's August 2021 Statement of Support for the IIJA passage [available here](#).

^{vi} See ERBA's March 2022 Budget Request for FY23 to OMB [available here](#).

^{vii} 33 CFR 332.8(b). Note that the text of the Rule only references "Chair" once, and more frequently uses the reference "district engineer." However, "Chair" implies a leadership role and responsibility, and should be emphasized as a key term in the RGL.

^{viii} 33 CFR 332.3(j)(1) and (3). To provide guidance and resources on the merits of this approach, the RGL may want to cite to examples of 404 credits used as offsets under state laws in CA, FL, GA, NC, MA, MD, ME, MN, NC, NH, OR, TN, VA, WA or under local ordinances in CA, IL, MA, ME, NH, VA, and WA.

^{ix} 33 CFR 332.8(b)(1).

^x 33 CFR 332.8(3).

^{xi} 33 CFR 332.8(b)(3) (emphasis added); The Rule's intent to vest the Chair, and when applicable Co-Chair, with ultimate, final leadership authority as the required agency signatory/ies is clearly evidenced through multiple references: "[the district engineer] retains final authority over its [IRT] composition" and "The district engineer alone retains final authority for approval of the instrument in cases where the mitigation bank or in-lieu fee program is used to satisfy compensatory mitigation requirements of DA permits." 33 CFR 332.8(b)(2) and (4).

^{xii} 33 CFR 332.8(2) and (6)(i).

^{xiii} Multiple completeness checklists already exist that the Corps could use to inform development of a national completeness checklist template attached to the RGL. For example: Mobile District has a preliminary evaluation checklist; California Districts and Baltimore District have checklists for draft prospectus; New Orleans, Norfolk, Mobile and California Districts have all developed checklists for draft bank instruments; Los Angeles District also has a checklist for an ILF draft prospectus and instrument.

^{xiv} 33 CFR 332.8(d)(5)(i) and (d)(7).

^{xv} Most IRT members are serving on the IRT in addition to many other responsibilities and must prioritize their involvement in the IRT. Already some IRT members limit their review to elements and provisions such as site selection, review of the mitigation plan, remedial action, or adaptive management, rather than reviewing the draft instrument in its entirety. This practice should be embraced across IRTs nationally to ensure the best use of agency time and expertise and streamline the review process for the Chair and Co-Chair.

^{xvi} In the instance of joint banks, the Co-Chair will also have authority to determine the sufficiency of revisions. However, if the Chair/Corps determines the revised document sufficient for approval and Co-Chair disagrees, then the Chair may proceed with approval of the instrument to commence generation of 404 credits. Discussed further in section iii.

^{xvii} This approach has worked successfully in California through commitment and leadership by the Corps and sponsor to carefully track comments and maintain discipline in commenting on future drafts. To hear more, check

out materials from “Session 3: Joint Agency Mitigation & Conservation Banks (Advanced) – Panel” at NMEBC on May 6, 2015.

^{xviii} Notably, on deference to peer IRT members, the Rule instructs: “In order to ensure timely processing of instruments and other documentation, comments from IRT members must be received by the district engineer within the time limits specified in this section. Comments received after these deadlines will only be considered at the discretion of the district engineer to the extent that doing so does not jeopardize the deadlines for district engineer action” and “The district engineer will give full consideration to any *timely* comments and advice of the IRT.” 33 CFR 332.8(b)(3) and (4) (emphasis added).

^{xix} 33 CFR 332.8(b)(3); “The deadlines... of this section may be extended by the district engineer at his sole discretion in cases where: (i) Compliance with other applicable laws, such as consultation under section 7 of the Endangered Species Act or section 106 of the National Historic Preservation Act, is required; (ii) It is necessary to conduct government-to-government consultation with Indian tribes; (iii) Timely submittal of information necessary for the review of the proposed mitigation bank or in-lieu fee program or the proposed modification of an approved instrument is not accomplished by the sponsor; or (iv) Information that is essential to the district engineer’s decision cannot be reasonably obtained within the specified time frame.” 33 CFR 332.8(f)(1).

^{xx} Templates on draft prospectus and instrument typically first come to mind. Besides these documents and appendices, IRTs are also encouraged to develop Letters of Permission that integrate timelines for processing and permitting to facilitate the addition of mitigation sites under Umbrella Mitigation Bank Instruments and ILF instruments. Letters of Permission typically provide all authorities for five to ten years to cover minor modifications at mitigation project sites. (cite/link to IN and KY examples).

^{xxi} A useful model is California’s approach with an eight agency Memorandum of Understanding that facilitates an interagency Project Delivery Team’s development of mitigation resources and templates, which then allow IRT members to focus on review of specific project applications.