

**Optional Draft Prospectus Checklist
for Conservation and Mitigation Banks in California
[Revised April 2024]**

Please refer to the “*Interagency Guidance for Preparing Mitigation Bank Proposals in California*”, revised May 2021, for procedures related to the submission of a conservation and mitigation bank proposal.

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.

- U.S. Army Corps of Engineers (U S A C E) --
<http://www.spd.usace.army.mil/Missions/Regulatory/Public-Notices-and-References/>
- U.S. Environmental Protection Agency (U S E P A) --
<https://www.epa.gov/cwa-404/federal-guidance-establishment-use-and-operation-mitigation-banks>
- U.S. Fish and Wildlife Service (U S F W S) --
<https://www.fws.gov/endangered/landowners/conservation-banking.html>
- National Marine Fisheries Service (N M F S) --
<https://www.fisheries.noaa.gov/topic/habitat-conservation>
- California Department of Fish and Wildlife (C D F W) --
<https://wildlife.ca.gov/Conservation/Planning/Banking>
- State Water Resources Control Board -- <https://www.waterboards.ca.gov/>
- California Coastal Commission -- <https://www.coastal.ca.gov/laws/>

Following Interagency Review Team (IRT) review of the Draft Prospectus, additional information may be requested for evaluating the proposal. Acceptance of a Draft Prospectus does not guarantee final approval of a Bank; only that the review can proceed to the Prospectus. Additional information is preferred and may be provided by the Sponsor at the Draft Prospectus stage, but is not mandatory. However, the inclusion of additional information may facilitate a more expeditious review at subsequent stages of the Bank review process.

This preliminary review is optional but strongly recommended. It is intended to identify potential issues early so the Bank Sponsor may attempt to address those issues prior to the start of the formal review process.

The following information is needed to evaluate the Draft Prospectus. A greater level of detail provided in the **Draft Prospectus and Bank Enabling Instrument** will result in a more comprehensive assessment of the site's suitability. **Items identified as “if known” may be provided at the time of submittal of the Draft Prospectus, but may also be submitted at a later date when available.** When including attachments to the Draft Prospectus, please use descriptively labeled file names to facilitate IRT review.

Commented [SJ1]: CalERBA recommends clarifying language in this preamble that reiterates the requested information is *optional*, at the Sponsor's option, for review during the prospectus stage, and review and resolution of these issues just must be completed prior to finalizing the BEI. For both the draft Prospectus and Prospectus sections, the requested information should be grouped according to: i) information that is required at this stage, and ii) information that should be included if it is available.

In conjunction with these Draft Prospectus and Prospectus checklist revisions, we recommend that the Agencies agree upon a template approval letter to Sponsors, that can be used by the Corps and/or CDFW, to grant approval to proceed to the Instrument stage while still listing the outstanding items of concern (e.g. those items caveated as “draft” in our edits) to be addressed by the Sponsor in the instrument stage if they chose to move forward.

Commented [SJ2]: CalERBA recommends an instructional statement making it clear that the Prospectus is, by definition, preliminary and conceptual. So, the information categories requested for the draft Prospectus should be kept to only those that are essential to evaluate whether the project is ready to proceed to the prospectus. While the sponsor may opt to provide greater detail at this early stage, it is not necessary to provide extensive details. The agencies and sponsor should balance the need for details with the time and expense to produce those details at an early stage.

Electronic copies of the documents described in this checklist must be uploaded to the proposed Bank's Cyber Repository in Regulatory In-lieu fee and Bank Information Tracking System (R I B I T S), <https://ribits.ops.usace.army.mil>. For submittal of draft prospectus documents, please contact the agencies reviewing the bank proposal for instructions how to appropriately submit a draft prospectus package.

In order to establish the Bank in R I B I T S, the Bank Sponsor or their designee must contact the appropriate point of contact with the U S A C E, U S F W S, or N M F S and provide the following information:

- Bank name,
- U S A C E identification number (if known),
- type of Bank (private commercial, combination public/private, single client), latitude and longitude (in decimal degrees), and
- a map of the proposed Bank Property.

CHECKLIST

- ☐ **Proposed Bank Name** – Use a unique short name, and a preferred acronym, based on a geographic feature if possible and include “Mitigation Bank” in the name for Banks proposing to sell waters of the U.S. credits or include “Conservation Bank” in the name for Banks that will not be selling waters of the U.S. credits. Please note, the IRT may request the name of the proposed Bank be changed if the name has been used for another Bank.
- ☐ **Bank Contacts** – include the name, address, phone, fax, and email for: Bank Sponsor and, Property Owner, and, if known, include consultants, proposed Endowment Holder, proposed Conservation Easement Grantee, etc.
- ☐ **Bank Purpose and Bank Type**
 - ☐ Describe how the property would provide suitable habitat (e.g. the factors considered during the site selection process, including watershed scale features such as aquatic habitat diversity, habitat connectivity, relationships to hydrologic sources, land use trends, ecological benefits, occupied with listed species and compatibility with adjacent land uses).
 - ☐ Include a description of the type of Bank (e.g., combination public/private, private commercial, private non-profit, private commercial, or single client).
- ☐ **Location Maps and Aerial Photos**
 - ☐ General vicinity map (reasonable identification of major cities, roads, county boundaries, or other commonly recognizable landmarks);
 - ☐ Address; if no street address is available, include a written description of the location and driving instructions to the proposed Bank Property;

Commented [SJ3]: CalERBA recommends direction to the Agencies that a Draft Prospectus package should not be rejected as incomplete simply because one agency feels not enough roadways or cities were labeled on the map. A reasonable number of labels should meet the completeness requirement and if more are requested, those can be handled in a memo requesting supplemental information attached to the completeness determination letter. For the avoidance of doubt, the Agencies might also consider adding more specific direction to the Sponsor on the level of reasonable identification, such as: “at least 3 major cities, immediate county boundaries, and major roadways (State Highways, Interstates, and at least two local roadways),” as a hypothetical example.

- ☐ Site coordinates (latitude/longitude in decimal degrees), Assessor Parcel Number(s) (APN), access points, and size (in acres) of the proposed Bank Property. Include the coordinates for the northwest corner of the Bank Property, and if known, the coordinates for the northwest corner of the proposed Bank Site (if different);
- ☐ 7.5-minute U.S. Geologic Survey (USGS) map showing boundaries of the proposed Bank Property and include the name of the quadrangle;
- ☐ ~~A separate map depicting other conserved lands in the vicinity of the proposed Bank Property. The map should include the level of conservation (i.e., private land versus state land, owned in fee title, conservation easement for agriculture, etc.);~~
- ☐ Color aerial photographs that reflect current conditions of the proposed Bank Property and surrounding properties.

☐ **Crediting**

- ☐ Provide a draft, proposed description of the habitat and/or species proposed for crediting and the relationship to regulatory programs and authorities, as applicable. For example, to compensate for unavoidable impacts to aquatic resources and federal-or state- listed species and their habitat authorized under the Clean Water Act, federal Endangered Species Act and California Endangered Species Act. Final habitat and/or species proposed credit type and their respective acreages will be further refined at the Prospectus and Bank Enabling Instrument stage.
- ☐ ~~Include a description of the type of Bank (e.g., combination public/private, private commercial, private non-profit, private commercial, or single client).~~

- ☐ **Service Area** – If known, provide a map showing the proposed Bank Property location and its position within the limits of the proposed Service Area(s) (e.g., a USGS 8-digit hydrologic unit code (HUC), county boundaries, listed species recovery units, etc.).

☐ **Baseline Site Conditions** – Briefly describe current site conditions, including:

- ☐ Acreage of the proposed Bank Property;
- ☐ Description and approximate acreage of existing habitat types on the proposed Bank Property (i.e. vernal pools, uplands);
- ☐ Species known or potentially present (include survey methodology utilized, if conducted);
- ☐ Site history, including past and present land uses (e.g., grazing practices), location in the floodplain, surrounding land uses and zoning;

☐ Current ground-level photos of the Bank Property.

☐ **Regional Context** – If available, briefly discuss compatibility of existing/proposed land uses with adjacent property(ies), including known present and proposed zoning designations, discuss potential conflicts with any conservation plans, CDFW conceptual area plans, Williamson Act Contracts, or other land use plans, policies, or federal/state/local regulations. Several resources are available including <http://www.wildlife.ca.gov/Data/BIOS>. ~~A separate~~ **Include one or multiple maps depicting other conserved lands in the vicinity of the proposed Bank Property. The map(s) should include the level of conservation (i.e., private land versus state land, owned in fee-title, conservation easement for agriculture, etc.).**

☐ **Conceptual Plan** – ~~If applicable and available,~~ **Please** briefly describe how the proposed Bank Property will establish, re-establish, restore, and/or preserve aquatic resources, habitat for special-status species, and other habitat or resources.¹

☐ ~~**Real Estate Title Exceptions** – List and describe any known encumbrances on the proposed Bank Property that may affect the conservation values of the proposed Bank (e.g., severed mineral rights, utility easements, etc.). Provide information regarding ownership of any rights that have been severed from title (e.g., mineral rights, water rights, etc.).~~

☐ **Lands not appropriate for Banking²** - Identify if the proposed Bank Property has been or is being used as:

- ☐ CDFW owned or conserved lands;
- ☐ Land used as mitigation for a previous project(s);
- ☐ Land already designated or dedicated for park or open space use, where that use is generally compatible with sustaining biological values;
- ☐ Land purchased for designated purposes which are not consistent with habitat preservation, where the use of the land is irrevocably limited to the incompatible activity (e.g., lands purchased for roads, landfills, etc.);
- ☐ Land acquired by a public entity (e.g., with State Bond Act funds) or provided to a jurisdiction for park or natural open space purposes. These criteria excludes land purchased by state and local agencies specifically for the purposes of mitigation or mitigation banking assuming the funding source is appropriate;
- ☐ Lands with existing easements that are incompatible with the purposes of the Bank; or

Commented [S14]: The checklist and other agency resources should clarify whether a proposed Bank Property with these land characteristics will be outright rejected by the Agencies, or if those characteristics will just warrant a meet and confer with the Agencies prior to submittal of the Prospectus.

¹ See South Pacific Division, Regional Mitigation Monitoring Guidelines, Section 4.4: <http://www.spd.usace.army.mil/Portals/13/docs/regulatory/mitigation/MitMon.pdf>

² See <https://www.wildlife.ca.gov/Conservation/Planning/Banking/Appropriate-Lands>

- ☐ Details regarding public funding received 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.).

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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.

- U.S. Army Corps of Engineers (U S A C E) -- [South Pacific Division > Missions > Regulatory > Public Notices and References \(army.mil\)](https://www.army.mil/missions)
- U.S. Environmental Protection Agency (U S E P A) -- <https://www.epa.gov/cwa-404/federal-guidance-establishment-use-and-operation-mitigation-banks>
- U.S. Fish and Wildlife Service (U S F W S) -- <https://www.fws.gov/service/conservation-banking>
- National Marine Fisheries Service (N M F S) -- <https://www.fisheries.noaa.gov/topic/habitat-conservation>
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³ Additional information may be requested to deem the prospectus complete.

labeled file names to facilitate IRT review.

If revised documents are submitted, you must provide a clean copy, a redline/track changes copy, and a summary of major changes with justification for such changes, along with the current revision date. In addition, the document must be upload to the proposed Bank's Cyber Repository in R I B I T S, <https://ribits.ops.usace.army.mil>.

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☐ **Bank Contacts** – Include the name, address, phone, fax, and email for: Bank Sponsor, Property Owner, ~~and, if known,~~ include consultants, proposed Endowment Holder, proposed Conservation Easement Grantee, etc.

☐ **Qualifications of the Bank Sponsor** – Describe qualification of Bank Sponsor to successfully complete the type(s) of mitigation project(s) proposed, including information describing any similar previous activities by the Bank Sponsor.

☐ Statement of training or on-the-job experience of team (i.e., Bank Sponsor, consultant, engineer, etc.) to design and implement Bank.

☐ ~~Describe successful and unsuccessful experiences of the Bank Sponsor in similar previous activities.~~

☐ Names and mailing addresses of adjacent Property Owners (for public notice mailing).

☐ **Business Entity Verification and Authorizations** –Entities that wish to conduct business in California must be validly formed, registered to do business, and in good

Commented [SJ6]: CalERBA recommends that sponsors also identify here if they are a member of CalERBA. Membership in CalERBA indicates a commitment to high standards and principles for ecological restoration, as well as staying informed of the latest best practices. This information is supporting evidence of a bank sponsor's qualifications.

Commented [SJ7]: The first sub-bullet satisfactorily addresses this issue because it will already disclose whether the team members have previously worked on mitigation banks and their skills relevant to bank projects, e.g. long term planning, monitoring, site design, adaptive management, etc. Requiring a record sheet of successful and unsuccessful banking experiences of the sponsor may act as a de facto screening tool that unnecessarily excludes well qualified but first time banking entities from entering the marketplace.

Commented [SJ8]: Redundant; addressed in Bank Contacts above. Also note that the public notice reference may only be applicable to Corps approved banks.

Commented [SJ9]: CalERBA recommends clarifying the documentation needed when your business entity is registered in a different state but has a “d/b/a” for California to avoid potential incomplete notifications.

standing with the California Secretary of State's Office. The IRT will review all business entities for verification of legal authority to conduct business in California and to sign all banking documents. ~~Please see a list of minimum required documents and provide copies of documents listed by your business type:~~

Commented [SJ10]: CalERBA strongly recommends editing this list down for each business type. The Certificate of Good Standing alone should be sufficient to confirm that the state of California recognizes the proposed entity as legally formed to conduct business in California. The Articles and Bylaws of an entity should not be necessary as well, especially at the Prospectus stage. At a minimum, only the most recent Amended and Restated Bylaws or Articles should be required, which effectively replace all originals, versus also requiring copies of the original filings. Consents and resolutions to conduct business are internal to the entities and should be assumed if the entity is investing in preparation of a Prospectus. Again, these are items not essential to the Prospectus stage and could be moved to the Instrument review stage. Several members noted that the requirements of this section result in lengthy package submittals and regulators spending time on review of corporate details that are not material or germane to the proposed project's ecological and operating success.

Corporation (non-profit and for-profit):

- ☐ Certificate of Active Registration with the Secretary of State;
- ☐ 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 documentation.~~

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~~
- ☐ ~~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~~
- ☐ ~~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

☐ Bank Purpose and Need

- ☐ Describe purpose of Bank and its relationship to regulatory programs and authorities, as applicable (e.g., to provide compensatory wetland mitigation for unavoidable impacts to aquatic resources or federal- or state-listed species and/or habitat). In addition, include a description of the type of Bank (e.g., combination public/private, private commercial, private non-profit, private commercial, or single client).
- ☐ ~~Describe the general need for the proposed Bank.~~
- ☐ Description of the factors considered during the site selection process, including watershed scale features such as aquatic habitat diversity, habitat connectivity, relationships to hydrologic sources, land use trends, contribution to conservation of species, ecological benefits, and compatibility with adjacent land uses. Reference applicable agency guidance or regulatory requirements as appropriate.

Commented [SJ11]: CalERBA recommends striking this requirement or revising to reflect a description of the need for the proposed Bank and its credit types from an ecological standpoint. Whether or not there is a market demand “need” for the bank is a business decision and risk to be internally assessed by the sponsoring entity.

☐ Location Maps and Aerial Photos – All maps (unless historic) should include the accurate boundary of the proposed Bank Property, north arrow, and adjacent roadways. Aerial photographs must be orthorectified, date-stamped, and with the imagery source identified on the map. Date of imagery must be chosen such that aquatic resources have maximum visibility (e.g., during wet season).

- ☐ Bank location map, with address (if available), site coordinates (latitude/longitude in decimal degrees), APN(s), and size (in acres) of the proposed Bank property and overall Bank site (if different). If no street address is available, then ~~include clearly indicate on submitted maps a written description of the location, access points, and driving instructions route from the nearest major thoroughfare and/or town/city to the Bank Property.~~
- ☐ General vicinity map (identifying major cities, roads, county boundaries, or other commonly recognizable landmarks).
- ☐ Color aerial photographs that reflect current conditions of the Bank Property and surrounding properties, at least one of which shows existing site topography.
- ☐ A separate map depicting other conserved land in the vicinity of the Bank Property. The map should include the level of conservation (i.e., private land versus state land, owned in fee-title, conservation easement for agriculture, etc.).
- ☐ If species credits are proposed, a map showing the California Natural Diversity Database (CNDDB) records within a 5-mile or species-specific radius of the Bank Property or other appropriate dataset of species distribution or occurrence.
- ☐ Map depicting existing zoning of the Bank Property and surrounding properties.

Commented [SJ12]: Recommend consistency with BEI terminology with use of the terms “Property” and “Bank Property” versus Bank site.

Commented [SJ13]: As commented above: CalERBA recommends direction to the Agencies that a Prospectus package should not be rejected as incomplete simply because one agency feels not enough roadways or cities were labeled on the map. A reasonable number of labels should meet the completeness requirement and if more are requested, those can be handled in a memo requesting supplemental information attached to the completeness determination letter. For the avoidance of doubt, the Agencies might also consider adding more specific direction to the Sponsor on the level of reasonable identification, such as: “at least 3 major cities, immediate county boundaries, and major roadways (State Highways, Interstates, and at least two local roadways),” as a hypothetical example.

Also include county or city land use and zoning and any proposed changes, as well as floodplain boundaries and designations (e.g. FEMA 100-year floodplain).

- ☐ Boundaries of Bank Property overlain on all of the following:
 - ☐ National Wetland Inventory and or State Wetland maps
 - ☐ NRCS soil surveys,
 - ☐ HUC map (depicting 10- and 8-digit HUC boundaries with associated identifiers),
 - ☐ 7.5-minute USGS topographic map (include the name of the quadrangle).

- ☐ **Credit Evaluation and Credit Release Schedule (to be finalized at the Bank Enabling Instrument review stage)**– The draft, proposed number and type of credits (in acres/linear feet) on the Bank Property and the proposed credit release schedule if proposed deviation from the Bank Enabling Instrument Template, should include the following:

- ☐ Description of the resource type(s) (e.g., forested/emergent/scrub-shrub wetland, perennial stream, open water, upland/riparian, species habitat, etc.) that are proposed for crediting.
- ☐ Description of the approximate amount(s) (acres, linear feet) of each type of resource and the proposed methods of compensation, as defined at 33 C.F.R. § 332.2 (i.e., re-establishment, rehabilitation, establishment, enhancement, and/or preservation) intended to achieve the proposed objectives of the Bank.

- ☐ **Proposed Draft Service Area (to be finalized at the Bank Enabling Instrument review stage):**

- ☐ Provide a map showing the Bank Property location and its position within the limits of the proposed Service Area(s) (e.g., a USGS 8-digit HUC, county boundaries, listed species recovery units, etc.).
- ☐ The Service Area map should have sufficient detail to be able to determine the boundaries, including counties, landmarks, roads, etc. on all sides of the proposed Service Area.
- ☐ Location of the Bank Property with the 8-, 10-, and 12-digit HUCs depicted (as appropriate) along with aquatic resource type, eco-region and any existing Service Area(s) for the same resource types that overlap the proposed Service Area.
- ☐ Provide a rationale of the general need for the credits in the proposed Service Area(s), and the basis for such a determination:
- ☐ Credit types based on Waters of the US, Waters of the State, and Fish and Game Code §1600, *et seq*, provide a watershed-based rationale for determining

Commented [SJ14]: The schedule should not be addressed until the instrument review stage.

Commented [SJ15]: The Service Area may not be final at the Prospectus stage. This should not prevent a proposal from moving forward to the Instrument stage when final decisions can be made on Service Area.

Commented [SJ16]: So long as the map shows the general boundary of the service area and overlap with the subject species' range or recovery plan area, then the map should not require details on specific roads, county boundaries, etc. CalERBA members have experienced requests for unnecessary mapping details at this stage.

Commented [SJ17]: As stated above, while a description of the ecological need for the project may be warranted, a need from a market demand perspective is a business decision outside of agencies' review scope.

the limits of the proposed Service Area consistent with current agencies guidance. For Covered Species and Covered Habitat credit types, provide an ecological rationale specific to the proposed species or habitat credits being sought for determining the limits of the proposed Service Area, including recovery units described in the U S F W S and/or N M F S Recovery Plan specific to the proposed credit type, if available.

- ☐ **Baseline Site Conditions** – Summarize baseline site conditions and the ecological suitability (chemical, physical, and biological) of the site to support the proposed types of mitigation to be implemented on the Bank Property. Factors for consideration include, but are not limited to, land use and zoning, vegetation, hydrology, soils, development trends (i.e., anticipated land use changes), habitat status or functions (e.g., re-establishment of habitat corridors or habitat for species of concern), and water quality and floodplain management goals. Site conditions description to include:

- ☐ General site conditions.
- ☐ Geographic location and features such as a description of the overall watershed where the proposed Bank Property is located (major tributaries, existing development trends, watershed needs, etc.) and identify the stream order and type (Rosgen and/or Cowardin classification) .
- ☐ Description and acreage of existing aquatic resources present on the proposed Bank Property.

- ☐ If the bank is proposing credits dependent on hydrological factors (e.g. 404 WOTUS credits), then Describe the hydrology of the Bank Property, including:

- ☐ Existing hydroperiod (*if applicable*), discuss current vegetation, topography, soils or hydrology baseline information to indicate current hydroperiod and measured stream flows. Vegetation type should be described using a recent, widely accepted classification system for a given region (e.g., Sawyer & Keeler-Wolf for California);
- ☐ For properties with proposed over bank flows, describe the proposed hydroperiod (seasonal depth, duration, and timing of inundation and/or saturation);
- ☐ Any existing hydrological disturbances on and adjacent to the site over which the Bank Sponsor has no control;
- ☐ Water source(s) and losses (e.g., precipitation, surface runoff, groundwater, stream, tidal);
- ☐ The contributing drainage area (map and size).
- ☐ Identify existing water rights and provide any relevant documentation. Hydrologic regime should be described differently for wetlands (for example, saturated (groundwater driven) wetlands, seasonally flooded, permanently

Commented [SJ18]: This description is already requested under the Conceptual Development Plan section below. Recommend retaining in only one section to avoid redundancy.

flooded, etc.) as opposed to rivers and streams (perennial, intermittent, or ephemeral).

- ☐ **Draft Biological Resources Survey(s)** – This survey should describe the biotic and abiotic baseline of the proposed Bank Property and should include descriptions of the following, with associated maps:
 - ☐ Current functions and services of aquatic resources.
 - ☐ Habitats and species known or potentially present including federally listed, state-listed and other special-status species or other sensitive resources, and survey methodology utilized (please include results of any surveys if conducted).
 - ☐ Methodology and results ~~used to determine of species~~ presence for abundance surveys proposed ~~for~~ preservation credits.
 - ☐ Inventory of all biological resources, including description of vegetation communities and a ~~complete~~ plant species list, ~~an observed wildlife list, potential presence of federally and/or state listed, threatened, or endangered species, and other species of special concern and/or their habitats, as determined by protocol surveys or other an appropriate survey methodology, state-listed threatened and endangered species and other species of special concern, as determined by protocol surveys or other appropriate survey methodology, other wildlife species that may be present, and presence of non-native species.~~
 - ☐ ~~If new record of species found onsite, include CNDDDB form submitted to CDFW to document the occurrence.~~
- ☐ Site history, including past and present land uses (e.g., grazing practices, mining), location in the floodplain, surrounding land uses and zoning.
- ☐ Preliminary surveys of the Bank Property that document biotic and abiotic baseline conditions. Identify type of monitoring data (e.g., well data, vegetation diversity, channel morphology, erosion pins, crest gage, macro invertebrates, etc.) and for what period ecological monitoring has been done for the site.
- ☐ Color ground-level photos of the Bank Property with photo key providing location and direction of each photo.
- ☐ **Regional Context** – Briefly discuss compatibility of surrounding lands. Consider Service Area, when applicable.
 - ☐ Description of adjacent property land uses, including known present and proposed zoning designations, vegetation types, species information, topography, hydrology, soil types, as available, ~~and anticipated future development in the area (e.g., general plans, transportation plans, etc.).~~
 - ☐ If applicable, a written description of how the Bank Property is connected to presumed extant records for the species that credits are proposed at the Bank. If the Bank is a restoration project, the description should include how connectivity to presumed extant occurrence(s) will contribute to the site being

Commented [SJ19]: Protocol surveys can take multiple years, at notable expense, for sponsors to perform and are not necessary to demonstrate species presence. We recommend striking reference to "protocol surveys" and instead simply stating "as demonstrated through an appropriate survey methodology," with direction to the Agencies that one season of surveys in the last two years, or other similar metric, should be acceptable.

As stated in our Preamble comment, for each of these documentation requests the agencies should reassess i) what is the purpose of receiving that information, and ii) be flexible in the exact format or approach for the documentation received; so long as the documentation reasonably addresses the purpose of the request, it should be accepted.

Commented [SJ20]: Local development plans are subject to change and city/county planning processes beyond the prediction of mitigation sponsors.

occupied once restoration is complete.

- ☐ Explain how the proposed Bank would contribute to connectivity and ecosystem function, including connectivity to surrounding wildlife corridors and preserved areas. Also discuss potential conflicts and/or compatibility with any existing/proposed conservation plans, CDFW conceptual area plans, U S F W S / N M F S recovery plans, or other land use plans, policies, or regulations.
- ☐ Describe how the proposed Service Area(s) overlap with CDFW or other agency boundaries, regional conservation plan boundaries and the legal Delta and potential conflicts/benefits with NCCP's, watershed plans, or other regional plans.
- ☐ Describe the long-term conservation potential for the Bank Property to achieve the proposed objectives of the Bank, i.e., is the Bank large enough to be ecologically self-sustaining and/or part of a larger conservation strategy.

- ☐ **Draft Conceptual Development Plan** – This plan describes the objectives and development activities of the Bank. Brief description of the scope of work proposed for the development plan. Include any proposed construction phasing. Provide a conceptual development plan that shows the proposed locations of each resource type(s) and the estimated acreage and/or linear footage for each method of mitigation.

Commented [SJ21]: Recommend clarifying that the plan is only in draft form at this stage and will be refined during the Instrument review stage.

- ☐ Describe the objectives of the proposed Bank
- ☐ Include preliminary maps detailing the anticipated location and acreages of aquatic resource, covered species or covered credits. If restoration is proposed these maps should include historic aerial photographs and/or historic topographic maps, as available.
- ☐ Technical feasibility of the proposed Bank. Describe the feasibility of the proposed mitigation techniques required to develop the Bank. Banks should be designed to be self-sustaining over time with minimal maintenance.⁴
- ☐ Assurance of sufficient water rights ,or a plan to secure sufficient water rights, to support the long-term sustainability of the Bank.
- ☐ The Bank Sponsor must have sufficient control over hydrology inputs and outputs on the Bank site to ensure that hydrology is available. In addition, the Bank should not result in the interruption of downstream flows or the flooding of upstream properties.

- ☐ ~~The plan should detail anticipated increases in 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~~

⁴ See South Pacific Division, Regional Mitigation Monitoring Guidelines, Section 4.4:
<http://www.spd.usace.army.mil/Portals/13/docs/regulatory/mitigation/MitMon.pdf>

~~scale functions). Describe the manner in which the resource functions of the Bank will address the functional needs of the watershed, eco-region, physiographic province, or other geographic area of interest.~~

- ☐ Describe ecological suitability of the Bank Property to achieve the objectives of the Bank (i.e., watershed/hydrology analysis, soils, topography, compatibility with adjacent land uses, watershed management plans), including physical, chemical, and biological characteristics of the Bank Property and how it will support the planned types of aquatic resources and functions, as applicable.
- ☐ Include proposed performance standards and monitoring methods for assessing how the objectives of the Bank will be met.
- ☐ Describe elements of the design that will create long-term management challenges, such as water control structures, culverts, dams, berms, or other challenges that would require intensive management.
- ☐ Address the long-term viability and sustainability of the Bank with regard to climatic changes, including drought and flood risk.
- ☐ ~~Methods-Draft plan~~ for establishing, restoring, rehabilitating, and/or preserving wetlands and other aquatic resources and habitat for special-status species and other habitat or resources.
- ☐ ~~Including methodology and criteria for determining credit availability and how species credits above the baseline would be awarded.~~
- ☐ Anticipated schedule for implementation and completion.
- ☐ ~~The proposed general accounting and reporting procedures to be used.~~
- ☐ A comparison of the baseline condition with proposed condition after Bank Establishment.
- ☐ ~~If known, Do~~ describe any proposed construction phases, including descriptions of each construction phase, boundaries, target habitat/species, and the number of credits associated with each phase.

- ☐ ~~Bank Operation — Description of how the Bank will be operated, including but not limited to the proposed ownership arrangements and long-term protection and funding, real~~
- ☐ ~~Describe the future long-term ownership and use of the Bank Property once the Bank is established and Bank development activities are completed, if applicable, and the proposed Bank has met the performance standards.~~
- ☐ ~~Identify the financial mechanisms for Bank establishment and the party responsible for conducting routine site inspections and management activities.~~
- ☐ ~~Type(s) of financial assurance (e.g. construction security) to be secured by the Bank Sponsor.~~

Commented [SJ22]: The IRT often discusses these considerations when finalizing the development plan during the Instrument review stage. Recommend holding off on this analysis until then.

Commented [SJ23]: This description is already requested under the Baseline Conditions section above. Recommend retaining in only one section to avoid redundancy.

Commented [SJ24]: This request seems duplicative. It is already addressed through the Credit Evaluation and Credit Release Schedule and Baseline Site Conditions sections.

Commented [SJ25]: This is a premature request for the prospectus stage. Agencies do not need to review the nuances of a business arrangement to evaluate the ecological merits of a proposed restoration project. Details on the ownership structure of a bank may change between the Prospectus and Instrument stages while the Sponsor finalizes the details around a particular project's business model.

Commented [SJ26]: Again, this is a premature request for the prospectus stage. At this review stage, the sponsor should be required to simply represent that they will provide financial assurances compliant with the banking regulations and BEI template. This allows the bank sponsor to retain flexibility to propose using the financial assurance mechanism that is best for the sponsor's business model later in the review process, i.e. during the instrument stage.

☐ ~~Any other restrictions on the proposed Bank Property.~~

☐ **Real Estate Records**

☐ Preliminary Title Report completed within one year of submittal showing all easements and encumbrances (hyperlinked) on the proposed Bank Property.⁵

☐ ~~A map (not to survey grade) that depicts all relevant property lines, easements, dedications, rights-of-ways, improvements, etc. on the proposed Bank Property.~~

☐ ~~Explanation of all relevant recorded and unrecorded encumbrance (Although the Property Assessment and Warranty (PAW) is not required at this stage, use Attachment 3 of the PAW template.)~~

☐ ~~If mineral rights are severed, a mineral remoteness opinion, prepared by a licensed geologist is required that includes the following information:~~

⁵ Any liens and easements on the proposed Bank Property that may affect a Bank's viability will need to be resolved before a Bank can be approved.

Commented [SJ27]: CalERBA recommends that the Agencies re-evaluate this section to require only documentation that is essential to flag, at a high level, potential fatal flaws in the site's underlying real estate. Other potential issues may be addressed at the Instrument stage.

Land surveyor review should be available to Sponsors at their request, particularly for Sponsors lacking expertise in analyzing properties specifically for mitigation, but this review should not be required at the Prospectus stage.

Commented [SJ28]: The Preliminary Title Report should be used to simply identify potential issues that will then be addressed during the Instrument review stage. We agree though that the Prospectus is an appropriate stage to identify those issues; for example, it is helpful to know if the agencies interpret a certain title exception as impacting a bank's credit potential to anticipate working through that issue during the Instrument review stage.

Commented [SJ29]: Current language often leads to Agencies de facto expecting a PAW or the Sponsor essentially having to perform a PAW at the Prospectus stage. Again, Agencies should reassess wording around each of these requests and what documentation is essential to identify fatal flaws.

Commented [SJ30]: We recommend revising the requirement for a remoteness opinion to optional at the sponsor's election. A mineral remoteness opinion is a very expensive and complex report to prepare, which is an unnecessary burden and deterrent for the Sponsor at the Prospectus stage. The Agencies and Sponsor should work to identify and address any mineral right concerns during the Instrument stage.

☐ ~~Introduction—Report purpose, location maps, legal description.~~

☐ ~~Preliminary Title Report—Explanation of all relevant recorded and unrecorded encumbrance~~

☐ ~~Description of surface and mineral estate ownerships, including all changes in ownership over the fifteen preceding years and rights to access the surface by the owners of the mineral estate.~~

☐ ~~Specific mineral resources included and excluded in the mineral estate.~~

☐ ~~Review of locatable, useable and salable mineral resources on the Bank Property.~~

☐ ~~Maps and aerial photographs of property with delineated mineral estates.~~

☐ ~~Assessment of mineral resource potential, including a map showing locations.~~

☐ ~~Discussion of environmental constraints which may constrain mining.~~

☐ ~~Opinion as to the likelihood of surface mining, or other forms of mining, including a determination whether the "probability of surface mining is so remote as to be negligible".~~

☐ ~~References cited.~~

☐ ~~Preparer's qualifications. Preparer's expertise shall include the ability to~~

~~competently assemble, review and interpret title reports and provide legal descriptions of the ownership. All discussion of minerals, geology and mining potential shall be prepared by a California-Licensed Professional Geologist with demonstrated experience with mining and mineral experience. The report shall bear a California-Licensed Professional Geologist stamp and signature.~~

- ☐ **Perpetual Protection** – An affirmative statement that the Bank Property will be conserved in perpetuity via a Conservation Easement or conveyance of fee title to the State of California by Grant Deed to occur as part of the Bank establishment. ~~Include number of acres of the Bank Property excluding any easement areas that allow uses incompatible with conservation. Provide a written description and the total acreage that contains easements that cover each of the proposed species habitat(s) or other credit types.⁵~~
- ☐ **Lands Not Appropriate** – An affirmative statement that the proposed Bank meets the definition of “What Lands Are Appropriate for Banking?” (See <https://www.wildlife.ca.gov/Conservation/Planning/Banking/Appropriate-Lands>). Has the proposed Bank Property been or is being used as:
 - ☐ CDFW owned or conserved lands.
 - ☐ Land used as mitigation for a previous project(s).
 - ☐ Land already designated or dedicated for park or open space use, where that use is generally compatible with sustaining biological values.
 - ☐ Land purchased for designated purposes which are not consistent with habitat preservation, where the use of the land is irrevocably limited to the incompatible activity (e.g., lands purchased for roads, landfills, etc.).
 - ☐ Land acquired by a public entity (e.g., with State Bond Act funds) or provided to a jurisdiction for park or natural open space purposes. These criteria excludes land purchased by state and local agencies specifically for the purposes of mitigation or mitigation banking assuming the funding source is appropriate.
 - ☐ Lands with existing easements that are incompatible with the purposes of the Bank.
 - ☐ Details regarding public funding received 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.).
- ☐ **Phase I Environmental Site Assessment:** ~~Provide a current (not dated more than~~

Commented [SJ31]: Details on the proposed species and credit types were already provided above in the credit evaluation section. Recommend allowing the sponsor to reference back to that section rather than requiring duplicate information here.

Commented [SJ32]: Recommend revising to remove ambiguity, such as: “Bank Sponsor must affirm that the proposed Bank property has never been nor is currently being used as: “

⁵Pursuant to California Civil Code Section 815 and Government Code Section 65967, only certain entities may be approved to hold an interest in mitigation lands.

~~6 months prior to the submittal date) Phase I Environmental Site Assessment.~~

☐ ~~**Permits** – A list of federal, state, and local permits/authorizations/approvals required for construction and operation of the Bank.~~

Commented [SJ33]: Recommend striking the requirement for a Phase I until the Instrument stage and instead simply asking the Sponsor to attest here that a site visit did not identify any evidence of dumping or other hazardous waste at the Bank Property. At a minimum, the Phase I date requirement should be revised to 1-year.

**Draft Bank Enabling Instrument Checklist
for Conservation and Mitigation Banks in California
[Revised April 2024]**

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 (B E I). The B E I 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 B E I. Any proposed modifications to the B E I 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 how to appropriately submit a package.

At a minimum, an electronic copy of this checklist and associated documents must be uploaded to the Cyber Repository in R I B I T S, <https://ribits.ops.usace.army.mil>. The complete package consists of individual PDFs of the instrument and exhibits, an editable format of the B E I, 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 B E I should include the most recent banking templates and the other necessary exhibits listed below.

If revised documents are submitted, you must provide a clean copy, a redline/track changes copy, and a summary of major changes with justification for such changes, along with the current revision date. In addition, the document must be uploaded to the proposed Bank’s Cyber Repository in R I B I T S.

CHECKLIST

☐ **B E I** – 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. For BEI sections that are “Not Applicable”, those sections should be marked with strikethrough for ease of review and implementation.

☐ **“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 the nearest cities, towns, or major roads, and other distinguishable landmarks with sufficient reasonable detail to allow for the Bank Property to be easily located.

☐ A-2 Map of Property including Bank Property. This map should illustrate

Commented [SJ34]: CalERBA recommends adding direction to the IRT agencies that the BEI template, and related document templates, reflect language and provisions already vetted and approved by the Agencies. Thus, template language should never be edited or word-smithed by IRT agencies during a bank specific review process. IRT agency edits to approved templates lead to delays, increased costs, and unnecessary deliberations between the Sponsor and IRT.

Commented [SJ35]: CalERBA recommends adding a reminder to reviewing agencies that if the BEI package contains documentation text addressing each of the items in the checklist, then the package should be deemed “complete.” If the information provided in the package is not detailed enough to the reviewer’s preference, then they can note the request for additional details in a memo accompanying the completeness acknowledgment. But, so long as all the checklist topics are addressed, the package should be considered complete; incomplete determinations should not be issued based on concerns with information sufficiency. To support this recommendation, we also recommend that the agencies develop a template completeness determination letter. CalERBA can provide sample letters and case studies to inform this effort.

Commented [SJ36]: Agencies, Please provide direction on whether to include the “APPENDIX – Minimum Requirements for Each Exhibit” in the submittals.

Commented [SJ37]: The checklist should provide direction to the agencies that major changes are only those material to the bank proposal, e.g. credit releases, securities, endowment obligations, etc. Except for a limited category of material elements, most proposed changes to a BEI should be considered immaterial. Any changes requested by an agency(ies), such as the requirement to update all pending bank proposals to adhere to the latest BEI template, should not be classified as major changes subject to a fee. Such classification and fee requirements is unfair when the reason for the change originates with an agency requirement and essentially leaves the sponsor applicant no choice but to comply and pay the fee or abandon the project proposal.

Commented [SJ38]: The vicinity details do not need to be exhaustive; so long as the general vicinity of the bank is identifiable from a few labels, the map should be accepted as sufficient by the Agencies.

Property and Bank Property boundaries, Construction Phases, and any planned Subsequent Phases on a topographic map, being established on CA state plane coordinates.

- ☐ 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.

- ☐ **“Exhibit B” - Service Area Map(s) and Description(s).** Once the Service Area has been finalized, it shall be provided to the agencies in a shapefile or equivalent digital format

- ☐ 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)** Include 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. If Service Area corresponds to a watershed, recovery unit, or similar established ecological boundary no further description is required beyond what is already publicly available.

Commented [SJ39]: Similar to the comment above, the details need only to be reasonable to make identifications. CalERBA members have received requests to try and describe boundaries of a recovery unit in relation to roads, county lines, etc., which often do not necessarily match up. Rather than tracking with administrative/jurisdictional boundaries, the Service Area should be specific to the Credit type.

- ☐ **“Exhibit C” - Development and Interim Management Plan** (use current PDT-approved template, if one is available). In the event that the IMP actions do not significantly deviate from actions in the LTMP, the IMP may direct all interested parties to refer to the LTMP for IMP activities.

Commented [SJ40]: Recommend that when IMP and LTMP are mostly similar, like preservation banks, then allow for a reference to the LTMP, so all management requirements are in one location, reducing duplication.

- ☐ C-1 Development and Interim Management Plan

This plan must include the baseline conditions of the Bank Property including: biological resources, geographic location and features, topography, hydrology, vegetation, past present and adjacent land uses, an Aquatic Resource Delineation (if applicable), and a list of species and habitats occurring on the Bank Property. Include a description of the objectives of the Mitigation Bank and activities and methodologies for establishing, restoring, and/or enhancing Waters of the U.S. and/or Waters of the State or other habitat types. Detail anticipated increases in 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). Include map(s) of the overall mitigation bank design, a description of habitat establishment goals, objectives and Performance Standards, 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). Include maps detailing the anticipated location, acreages, and types of proposed Credits. Include historic aerial photographs and/or historic topographic maps (if available). If restoration is proposed; monitoring methodologies required to evaluate and meet the Performance Standards; an approved schedule for reporting monitoring results; a discussion of possible Remedial Actions; surrounding land uses and zoning along with the anticipated future development in the area; and any other information deemed necessary by the [Choose one: IRT or Signatory Agencies]. The Development Plan must clearly specify how each Construction 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.

The Development Plan must include a detailed description of Interim Management activities, including the short-term management, monitoring, Adaptive Management, reporting and other activities to be implemented by the Bank Sponsor during the Interim Management Period. Interim Management activities must be described for managing each Construction Phase independently as well as together. If no development actions are proposed for a preservation only bank, then this Exhibit might only include interim management activities and Exhibit C-2 may not apply.

☐ 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 [SJ41]: For all of the securities referenced in the Instrument, we recommend allowing the Sponsor to submit the form of the intended financial assurance with a statement to the effect of: "This is the financial assurance mechanism intended at the time of instrument package submittal, but we reserve the right to use other permissible financial assurance options if warranted by the circumstances."

☐ C-3 Performance Security Analysis and Schedule

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

Commented [SJ42]: We note that the Compliance Security (from the recent November 2024 BEI template) is missing from this list, and we understand the Agencies plan to add it in their final revisions.

☐ 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

☐ **“Exhibit D” - Bank Management and Operation Documents**

☐ D-1 Endowment Fund Analysis, Cost Justifications and Funding Schedule

This analysis and schedule shall consist of a table and/or spreadsheet that shows the projected annual capitalization rate, all of 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, as applicable:

- 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 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. Rights of access to the Bank Property and prohibited uses of the Bank Property as provided in the [**Choose one**: Conservation Easement **or** Grant Deed]; and
8. Procedures for amendments and notices.
9. 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 (current) for the Bank Property
- ☐ Encumbrance Documents
- ☐ Summary and Explanation of Encumbrances
- ☐ Maps listed in Property Assessment and Warranty template

Commented [SJ43]: Considering the recent focus on Williamson Act contract concerns, we recommend incorporating guidance on a Williamson Act analysis into the real estate materials (e.g. if the Bank Property is subject to a Williamson Act contract, describe whether the contract contains provisions allowing development of the Bank Property without a conflict, such as via an open space provision).

Commented [SJ44]: CalERBA members have also experienced deliberation with the Agencies when the Bank Property covers multiple parcels, with the Agencies sometimes requesting justification as to why the proposed Bank should be approved under a single versus multiple BEIs. We recommend providing direction to the Agencies on why it is permissible to have a single BEI cover a Bank Property that crosses multiple parcels.

☐ 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.

Commented [SJ45]: CalERBA notes that the Conservation Easement restrictions should only extend to the Bank Property and not also impact the surrounding Property/Parcel referenced in the easement. As the Agencies next update the Conservation Easement templates for mitigation projects, we recommend that they work with knowledgeable stakeholders in CalERBA and the land trust community to resolve the currently confusing references to the Parcel and the Bank Property, among other issues.

☐ E-3 Mineral Remoteness Report, as applicable, prepared by a licensed geologist that includes the information below. This report is not necessary when the mineral estate owner cannot impact the surface or a surface waiver is provided in the BEI package.

~~—If mineral rights are severed, a mineral remoteness opinion, prepared by a licensed geologist is required that includes the following information:~~

- ☐ Introduction - Report purpose, location maps, legal description.
- ☐ Preliminary Title Report – Explanation of all relevant recorded and unrecorded encumbrance
- ☐ Description of surface and mineral estate ownerships, including all changes in ownership over the fifteen preceding years and rights to access the surface by the owners of the mineral estate, if applicable.
- ☐ Specific mineral resources included and excluded in the mineral estate.
- ☐ Review of locatable, useable and salable mineral resources on the Bank Property.
- ☐ Maps and aerial photographs of property with delineated mineral estates.
- ☐ Assessment of mineral resource potential, including a map showing locations.
- ☐ Discussion of environmental constraints which may constrain mining.
- ☐ Opinion as to the likelihood of surface mining, or other forms of mining, including a determination whether the “probability of surface mining is so remote as to be negligible”.
- ☐ References cited.
- ☐ Preparer's qualifications. Preparer's expertise shall include the ability to competently assemble, review and interpret title reports and provide legal descriptions of the ownership. All discussion of minerals, geology and mining potential shall be prepared by a California Licensed Professional Geologist with demonstrated experience with mining and mineral experience. The report shall bear a California-Licensed Professional Geologist stamp and signature.

Commented [SJ46]: This request is sometimes duplicative to the title report requirement; changes in ownership over the past 15 years may have already been addressed in the preliminary title report. If so, sponsors should be able to simply reference back to the title report here.

Commented [SJ47]: The Preparer's qualification as a CA-licensed geologist should be sufficient evidence.

☐ **“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.; <https://www.spd.usace.army.mil/Missions/Regulatory/Public-Notices-and-References>; Covered Species and Covered Habitat Preservation; Covered Species and Covered Habitat Establishment.

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

- ☐ F-2a: Credit Sales Agreement
- ☐ F-2b: Caltrans Standard (STD) 213/Credit Sales Agreement
- ☐ F-2c: Combined Credit Sales and Transfer Agreement
- ☐ F-2d: Caltrans Combined Credit Sales and Transfer Agreement
- ☐ F-2e: Credit Transfer Agreement
- ☐ F-2f: Caltrans STD 213/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 and/or Transferred;
- j. Number of Credits applied; and Transferred;
- k. Balance of each type of Credit remaining, and;
- l. A declaration that the Bank Sponsor has entered the Transfer

Commented [SJ48]: CalERBA recommends direction to the Agencies that the Agreements in F-2 are simply enclosures of the existing templates and do not need to be completed by the sponsor with bank specific details until the sponsor actually enters one of those agreements with a third party.

into R I B I T S.

- ☐ F-4 Instructions for Species Credit Transfers Using R I B I T S *[if applicable]*
- ☐ F-5 Credit Release Schedule and Funding Schedule for Covered Species and Covered Habitats
- ☐ F-6 Implementation Fee Schedule (if applicable)

- ☐ **“Exhibit G”** - Phase I Environmental Site Assessment (not dated more than 6 months prior to the date the bank agreement package is submitted to the agencies).

- ☐ **“Exhibit H”** - Biological Resources Survey

Biological Resources Survey(ies) 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 for the Bank Property.

- ☐ **“Exhibit J”** - Cultural, Historical, Archeological, and Native American Resources (“Cultural Resources”) – 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.

Cultural Resources requirements met for all Construction Phases. Information regarding the character, location, and ownership of historic properties shall not be included within this exhibit or uploaded to R I B I T S, pursuant to Section 304 of the National Historic Preservation Act (NHPA) and 36 CFR 800.11c.

- ☐ J-1 Identification, Inventory and Evaluation

Cultural resources inventory and evaluation shall include the following: a)

Commented [SJ49]: CalERBA recommends giving Sponsors the option to delete this Exhibit H to reduce paperwork if they have already adequately addressed the Biological Resources Survey in the Development and Interim Management Plan and/or the Long Term Management Plan.

a description and map of the area of potential effects ("A P E") or permit area if U S A C E-only Bank, b) a description of each cultural resource and a brief statement identifying the specific location of each cultural resource within the A P E / permit area, c) a description of how the boundary was determined for each cultural resource identified, and 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 (S H P O), 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 S H P O, 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 S H P O, 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.

☐ **"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 C E Q A 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);
- 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. Flood Protection Board Permit for streams listed in Table 8.1 in title 23 of the California Code of Regulations;
- j. Coastal Development Permit under the California Coastal Act; and,
- k. County/City Grading Permit(s) or other local approvals