Overview

- Draft Prospectus
- Prospectus
- Draft Instrument
- Final Instrument
## Compensatory Mitigation Rule
**Timeline for Bank or ILF Instrument Approval**

### Phase I
**Event**
- Optional Preliminary Review of Draft Prospectus

**# of Days**
- DE provides copies of draft prospectus to IRT and will provide comments back to the sponsor within 30 days.

### Phase II
**Sponsor Prepares and Submits Prospectus**
- DE must notify sponsor of completeness w/in 30 days of submission

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**Day 90**
- DE distributes comments to IRT members and sponsor within 15 days of the close of the public comment period.

### Phase III
**Sponsor Considers Comments, Prepares and Submits Draft Instrument**
- DE must notify sponsor of completeness w/in 30 days of submission

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**Day 90**
- Within 90 days of the receipt of a complete draft instrument by IRT members, the DE must notify the sponsor of the status of the IRT review.

### Phase IV
**Sponsor Prepares Final Instrument**
- DE must notify IRT members of intent to approve/not approve instrument within 30 days of receipt

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**Day 45**
- INSTRUMENT APPROVED/NOT APPROVED, or DISPUTE RESOLUTION PROCESS INITIATED

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Total Required Federal Review (Phases II-IV): 1225 Days

*Timeline also applies to amendments*

**The timeline in this column uses the maximum number of days allowed for each phase.*
Phase 1: Draft Prospectus

- Preliminary review of draft prospectus
- Optional
  - “...strongly recommended...intended to identify potential issues early so that the sponsor may attempt to address those issues prior to the start of the formal review process.”
- IRT has opportunity to review
- DE will provide comments to sponsor within 30 days
Example: Draft Prospectus Checklist

- All Fed/State IRT agencies in CA
- 11 elements required
- 404/ESA
- Submit to IRT at least 14 days prior to IRT meeting

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Optional Checklist

Draft Prospectus for Mitigation Banks
(Revised September 2010 by the Multi-Agency Product Delivery Team)

Please refer to the Cover Sheet, revised September 2010, for procedures related to the submission of a mitigation bank proposal. Please provide the following information and a copy of this checklist with the submission of a Draft Prospectus:

- **Proposed Bank Name**: Use a short name based on a geographic feature if possible and include “Mitigation Bank” in the name;

- **Bank contacts**: Include the name, address, phone, fax, and email for: Bank Sponsor, Property Owner, Consultants, etc.;

- **General location**: Map and address of the proposed Bank Property;

- **Accurate current map**: of the proposed Bank Property on a 7.5-minute USGS map showing boundaries of the mitigation bank;

- **Color aerial photographs**: that reflect current conditions of the proposed Bank Property and surrounding properties. Briefly discuss compatibility of proposed mitigation bank with adjacent property land uses including known present and proposed zoning designations;

- **Map of the proposed mitigation bank service area(s)**, description of the general need for the mitigation bank and basis for such determination; and

- **Site conditions description**: This should include a BRIEF description of: site conditions, habitats and species known or potentially present, photos of the Bank Property; description and acreage of existing wetlands and other waters of the U.S. present on the proposed Bank Property; hydrology; methods for establishing, restoring, rehabilitating, and/or preserving wetlands and other waters of the U.S., and habitat for federal, and state listed species; and site history, including past and present land uses, surrounding land uses and zoning along with the anticipated future development in the area;

- **Explain how the proposed bank would contribute to connectivity and ecosystem function**: Also discuss potential conflicts and compatibility with any conservation
### Compensatory Mitigation Rule

**Timeline for Bank or ILF Instrument Approval**

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#### Sponsor Prepares and Submits Prospectus

- **Day 1**
  - Complete Prospectus Received by DE
  - Public notice must be provided within 30 days of receipt of a complete prospectus

- **Day 30**
  - 30-Day Public Comment Period

- **Day 60**
  - DE must provide the sponsor with an initial evaluation letter within 30 days of the end of the public comment period.

#### Sponsor Considers Comments, Prepares and Submits Draft Instrument

- **Day 1**
  - Complete Draft Instrument Received by IRT Members
  - 30-day IRT comment period begins 5 days after DE distributes draft instrument to IRT members

- **Day 90**
  - DE discusses comments with IRT and seeks to resolve issues ≈ # of days variable
  - Within 90 days of the receipt of a complete draft instrument by IRT members, the DE must notify the sponsor of the status of the IRT review

#### Sponsor Prepares Final Instrument

- **Day 1**
  - Final Instrument Received by DE & IRT
  - DE must notify IRT members of intent to approve/not approve instrument within 30 days of receipt.

- **Day 45**
  - INSTRUMENT APPROVED; NOT APPROVED, or DISPUTE RESOLUTION PROCESS INITIATED
  - IRT members have 45 days from submission of final instrument to object to approval of the instrument and initiate the dispute resolution process.

#### Total Required Federal Review (Phases II-IV): ≈225 Days

*Timeline also applies to amendments*

**The timeline in this column uses the maximum number of days allowed for each phase.
Phase 2: Prospectus

• Contents (§332.8(d)(2)) Bank and ILF:
  1. Objectives
  2. How the Bank or ILF program will be established and operated
  3. Proposed service area
  4. Need and technical feasibility
  5. Ownership arrangements
  6. Qualifications
Prospectus Contents (cont’d)

• ILFs must also include:
  7. Compensation planning framework
  8. Description of ILF program account
Public Review and Comment

• Public Notice Required
  – Prospectus
  – Most modifications of approved instruments

• Copies of comments provided to IRT & sponsor
Prospectus Checklist Example

• All Fed/State IRT agencies in CA
• 8 elements required by rule
• 12 additional elements
• 404/ESA
• Submit to IRT at least 14 days prior to IRT meeting

Checklist
Prospectus for Mitigation Banks
[Revised September 2010 by the Multi-Agency Product Delivery Team]

Please refer to the Cover Sheet, revised September 2010, for information and instructions related to the submission requirements for a mitigation bank proposal. Please provide the following information and a copy of this checklist with the submittal of a Prospectus:

☐ Proposed Bank Name - Use a short name based on geographic feature if possible and include “Mitigation Bank” in the name;

☐ Bank contacts – Include the name, address, phone, fax, and email for: Bank Sponsor, Property Owner, Consultants, etc;

☐ General location map and address of the proposed Bank Property;

☐ Accurate current map of the proposed Bank Property on a 7.5-minute USGS map showing proposed boundaries of the mitigation bank;

☐ Color aerial photographs that reflect current conditions of the proposed Bank Property and surrounding properties. Briefly discuss compatibility of proposed mitigation bank with adjacent property land uses including known present and proposed zoning designations;

☐ Description of how the mitigation bank will be established and operated, including the proposed ownership arrangements and long-term management strategy, and any phases planned [include description of phases, boundaries, target habitat/species, and the number of credits associated with each phase];

☐ Qualifications of the Bank Sponsor to successfully complete the type(s) of mitigation project(s) proposed, including information describing any similar activities by the Bank Sponsor;

☐ [USE A District to include the appropriate language: Approved or preliminary2] Jurisdictional determination (JD) of on-site wetlands and other

1 Additional information may be requested to deem the prospectus complete.
2 A name change may be requested if the proposed bank name is already being used.
## Compensatory Mitigation Rule

### Timeline for Bank or ILF Instrument Approval*

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### Sponsor Prepares and Submits Prospectus

- DE must notify sponsor of completeness with 30 days of submission.

#### Phase II

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### Sponsor Considers Comments, Prepares and Submits Draft Instrument

- DE must notify sponsor of completeness with 30 days of submission.

#### Phase III

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### Sponsor Prepares Final Instrument

- Sponsor provides copies to DE and all IRT members.

#### Phase IV

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Total Required Federal Review (Phases II-IV): ≤225 Days
Initial evaluation of the Prospectus provided to Sponsor

• Based on comments from public and IRT
• Written determination of potential suitability of proposed Mitigation Bank or In-Lieu Fee program to provide compensatory mitigation for DA permits
• If suitable, District Engineer informs sponsor to begin preparing draft Instrument
• If not suitable, District Engineer informs sponsor of reasons for making that determination
  – Sponsor may revise prospectus to address those deficiencies and resubmit
Phase 3 – Draft Instrument

- Contents (§332.8(d)(6)) Banks and ILF:
  1. Service area
  2. Accounting procedures
  3. Provision stating legal liability
  4. Default and closure provisions
  5. Reporting protocols
Draft Instrument Content (cont’d)

• ILFs must also include:
  – Compensation planning framework
  – Advance credits
  – Fee schedule
  – Method for determining fees and credits
  – Description of in-lieu fee program account
Template Bank Instrument Example: California

- All Fed/State IRT agencies in CA
- 2 page BEI checklist (revised 2010)
- 43 page BEI template (May 2008)
- 13 sections/11 appendices
- 404/ESA
- Submit to IRT 21 days prior to IRT meeting
Template ILF Instrument Example: ELI Model

- December 2009
- Overview of approval process
- Analysis of each element from rule
  - 9 (or 10) required
  - 2 potential additional
- Provides examples
## Compensatory Mitigation Rule

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**Sponsor Prepares Final Instrument**

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**Total Required Federal Review (Phases II-IV): 225 Days**

*Timeline also applies to amendments*

**The timeline in this column uses the maximum number of days allowed for each phase.**

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EPA/Corps draft 4/02/08
Phase 4: Final Instrument

- Contents
  - Core elements
    - 18 for final bank instruments (includes 12 elements for mitigation plans)
    - 10 for final ILF instruments
  - Supporting documentation addressing IRT comments
  - DE decides whether instrument should be approved
### Compensatory Mitigation Rule
#### Timeline for Bank or ILF Instrument Approval*

#### Phase I
- **Event**: Optional Preliminary Review of Draft Prospectus
  - **# of Days**: 30
  - DE provides copies of draft prospectus to IRT and will provide comments back to the sponsor within 30 days.

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#### Phase II
- **Day 1**
  - Complete Prospectus Received by DE
    - Public notice must be provided within 30 days of receipt of a complete prospectus
      - **# of Days**: 30
  - 30-Day Public Comment Period
    - **# of Days**: 30

- **Day 30**
  - DE must provide the sponsor with an initial evaluation letter within 30 days of the end of the public comment period.
    - **# of Days**: 30

- **Day 60**
  - DE distributes comments to IRT members and sponsor within 15 days of the close of the public comment period.
    - **# of Days**: 15

#### Phase III
- **Day 90**
  - DE discusses comments with IRT and seeks to resolve issues ~ # of days variable~
    - **# of Days**: 60

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#### Phase IV
- **Day 1**
  - Complete Draft Instrument Received by IRT Members
    - 30-day IRT comment period begins 5 days after DE distributes draft instrument to IRT members
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- **Day 30**
  - DE discusses comments with IRT and seeks to resolve issues ~ # of days variable~
    - **# of Days**: 90

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#### Phase V
- **Day 60**
  - DE must notify IRT members of intent to approve/not approve instrument within 30 days of receipt.
    - **# of Days**: 30

- **Day 45**
  - IRT members have 45 days from submission of final instrument to object to approval of the instrument and initiate the dispute resolution process.
    - **# of Days**: 45

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#### Phase VI
- **Day 90**
  - Final Instrument Received by DE & IRT
    - 15 days of time for initiation of dispute resolution process by IRT members
      - **# of Days**: 15

- **Day 45**
  - INSTRUMENT APPROVED/NOT APPROVED, or DISPUTE RESOLUTION PROCESS INITIATED

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Questions?