

ILF Program Documentation:

From Conceptual Plan to Final Instrument



Regulatory Branch
U.S. Army Corps of Engineers

Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency

June 2011



Overview

- Draft Prospectus
- Prospectus
- Draft Instrument
- Final Instrument

<i>TABLE OF CONTENTS</i>	
	iv
INSTRUMENT	vii
GUM LOG MITIGATION BANK	ix
Jefferson, Georgia	x
	1
	2
	2
	3
	3
	4
	4
	5
	6
	6
	6
	6
	7
	8
	9
	9
	11
	11
	11
	11
	12
	12
	14
	14
	15
	17
	17
	17
	#



Compensatory Mitigation Rule Timeline for Bank or ILF Instrument Approval*

		Event	# of Days**			
Phase I		Optional Preliminary Review of Draft Prospectus	30		DE provides copies of draft prospectus to IRT and will provide comments back to the sponsor within 30 days.	
	Sponsor Prepares and Submits Prospectus ~DE must notify sponsor of completeness w/in 30 days of submission~					
		Day 1**	Complete Prospectus Received by DE			
Phase II	Day 30	Public notice must be provided within 30 days of receipt of a complete prospectus	30			
	Day 60	30-Day Public Comment Period	30			
	Day 90	DE must provide the sponsor with an initial evaluation letter within 30 days of the end of the public comment period.	30	15	DE distributes comments to IRT members and sponsor within 15 days of the close of the public comment period.	
Sponsor Considers Comments, Prepares and Submits Draft Instrument ~DE must notify sponsor of completeness w/in 30 days of submission~						
		Day 1	Complete Draft Instrument Received by IRT Members			
Phase III	Day 30	30-day IRT comment period begins 5 days after DE distributes draft instrument to IRT members	30			
	Day 90	DE discusses comments with IRT and seeks to resolve issues ~ # of days variable~	60	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.	
Sponsor Prepares Final Instrument ~Sponsor provides copies to DE and all IRT members~						
		Day 1	Final Instrument Received by DE & IRT			
Phase IV	Day 30	DE must notify IRT members of intent to approve/not approve instrument within 30 days of receipt.	30	45	IRT members have 45 days from submission of final instrument to object to approval of the instrument and initiate the dispute resolution process.	
		Remainder of time for initiation of dispute resolution process by IRT members	15			
Day 45	INSTRUMENT APPROVED/NOT APPROVED, or DISPUTE RESOLUTION PROCESS INITIATED					

EPA/Corps draft 4/02/08

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 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

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 submittal 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*

	Event	# of Days**	
Phase I	Optional Preliminary Review of Draft Prospectus	30	DE provides copies of draft prospectus to IRT and will provide comments back to the sponsor within 30 days.
Sponsor Prepares and Submits Prospectus ~DE must notify sponsor of completeness w/in 30 days of submission~			
Phase II	Day 1** Complete Prospectus Received by DE		
Day 30	Public notice must be provided within 30 days of receipt of a complete prospectus	30	
Day 60	30-Day Public Comment Period	30	
Day 90	DE must provide the sponsor with an initial evaluation letter within 30 days of the end of the public comment period.	30	DE distributes comments to IRT members and sponsor within 15 days of the close of the public comment period.
Sponsor Considers Comments, Prepares and Submits Draft Instrument ~DE must notify sponsor of completeness w/in 30 days of submission~			
Phase III	Day 1 Complete Draft Instrument Received by IRT Members		
Day 30	30-day IRT comment period begins 5 days after DE distributes draft instrument to IRT members	30	
Day 60	DE discusses comments with IRT and seeks to resolve issues ~ # of days variable~	60	
Day 90		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.
Sponsor Prepares Final Instrument ~Sponsor provides copies to DE and all IRT members~			
Phase IV	Day 1 Final Instrument Received by DE & IRT		
Day 30	DE must notify IRT members of intent to approve/not approve instrument within 30 days of receipt.	30	
Day 45	Remainder of time for initiation of dispute resolution process by IRT members	15	IRT members have 45 days from submission of final instrument to object to approval of the instrument and initiate the dispute resolution process.
Day 45	INSTRUMENT APPROVED/NOT APPROVED, or DISPUTE RESOLUTION PROCESS INITIATED		

EPA/Corps draft 4/02/08

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.¹ 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 a geographic feature if possible and include "Mitigation Bank" in the name;²
- 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 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;
- [USACE District to include the appropriate language: Approved or preliminary³] 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*

		Event	# of Days**		
Phase I		Optional Preliminary Review of Draft Prospectus	30		DE provides copies of draft prospectus to IRT and will provide comments back to the sponsor within 30 days.
	Sponsor Prepares and Submits Prospectus ~DE must notify sponsor of completeness w/in 30 days of submission~				
		Day 1**	Complete Prospectus Received by DE		
Phase II	Day 30	Public notice must be provided within 30 days of receipt of a complete prospectus	30		
	Day 60	30-Day Public Comment Period	30		
	Day 90	DE must provide the sponsor with an initial evaluation letter within 30 days of the end of the public comment period.	30	15	DE distributes comments to IRT members and sponsor within 15 days of the close of the public comment period.
Sponsor Considers Comments, Prepares and Submits Draft Instrument ~DE must notify sponsor of completeness w/in 30 days of submission~					
		Day 1	Complete Draft Instrument Received by IRT Members		
Phase III		30-day IRT comment period begins 5 days after DE distributes draft instrument to IRT members	30		
	Day 90	DE discusses comments with IRT and seeks to resolve issues ~ # of days variable~	60	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.
Sponsor Prepares Final Instrument ~Sponsor provides copies to DE and all IRT members~					
		Day 1	Final Instrument Received by DE & IRT		
Phase IV	Day 30	DE must notify IRT members of intent to approve/not approve instrument within 30 days of receipt.	30	45	IRT members have 45 days from submission of final instrument to object to approval of the instrument and initiate the dispute resolution process.
		Remainder of time for initiation of dispute resolution process by IRT members	15		
Day 45	INSTRUMENT APPROVED/NOT APPROVED, or DISPUTE RESOLUTION PROCESS INITIATED				



EPA/Corps draft 4/02/08

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.

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 fram
 - Advance credits
 - Fee schedule
 - Method for determining fees and credits
 - Description of in-lieu fee program account



Template Bank Instrument Example: California

D-2 Endowment Fund Analysis, Assumptions and Funding Schedule

Checklist
Draft Bank Enabling Instrument Requirements 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. The following are the submission requirements for a Draft Bank Enabling Instrument (BEI). Please provide the following information and a copy of this checklist with the submittal of a Draft BEI. Any proposed modifications to the BEI template shall be identified using tracked changes or other electronic comparison and explained in a memorandum. The Draft BEI should be submitted in a 3-ring binder containing all the information and documents listed below. The binder should contain labeled tabs (i.e., Exhibit A, Bank Location Maps). The submittal should also include an electronic, editable format of the BEI, the Conservation Easement, and other applicable template-derived documents. The Draft BEI should include the most recent banking templates and the other necessary exhibits listed below and described in Appendix 1 of the BEI Template.

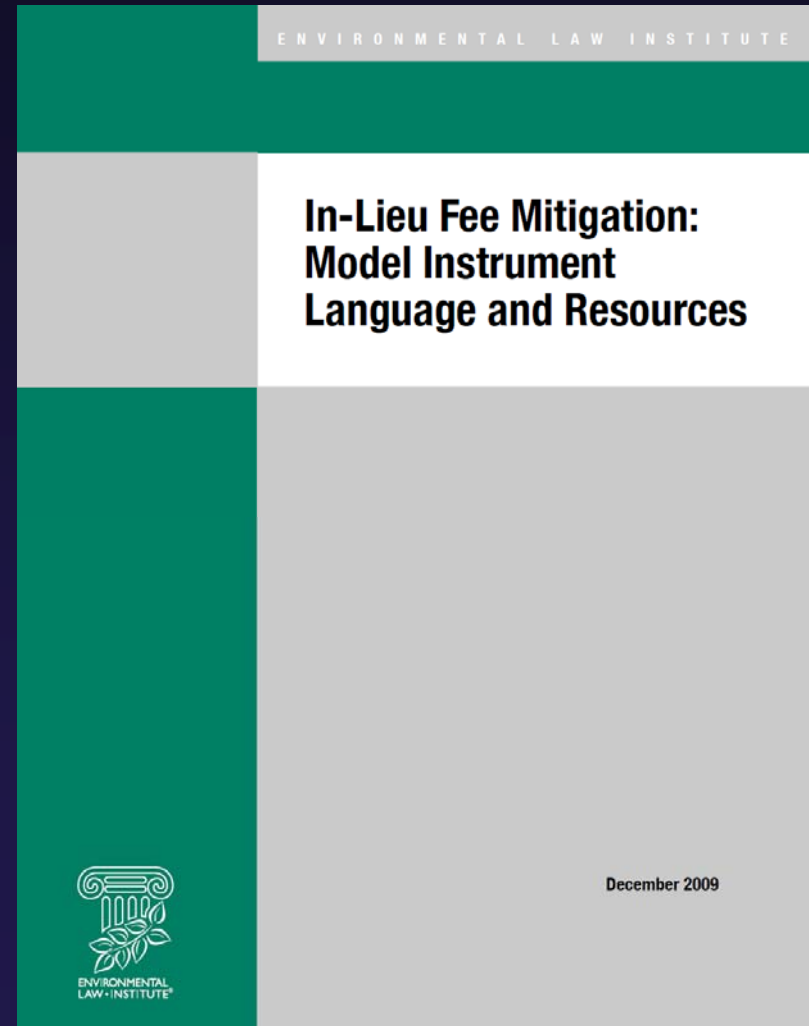
- BEI
- "Exhibit A" - Bank Location Maps
 - A-1 General Vicinity Map
 - A-2 Map of [if applicable, include: Property and] Bank Property
 - A-3 Map of any Existing Conserved Land in Bank Property Vicinity [if applicable]
- "Exhibit B" - Service Area Map(s) and Description(s)
 - B-1 Map(s) of the Bank's Service Area(s)
 - B-2 Narrative Description(s) of the Bank's Service Area(s)
- "Exhibit C" - Development Plan
 - C-1 Development Plan
 - C-2 Construction Security Analysis and Schedule
 - C-3 Performance Security Analysis and Schedule
- "Exhibit D" - Bank Management and Operation Documents
 - D-1 Interim Management Security Analysis and Schedule

- 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 Timeline for Bank or ILF Instrument Approval*

		Event	# of Days**		
Phase I		Optional Preliminary Review of Draft Prospectus	30		DE provides copies of draft prospectus to IRT and will provide comments back to the sponsor within 30 days.
	Sponsor Prepares and Submits Prospectus ~DE must notify sponsor of completeness w/in 30 days of submission~				
		Day 1**	Complete Prospectus Received by DE		
Phase II	Day 30	Public notice must be provided within 30 days of receipt of a complete prospectus	30		
	Day 60	30-Day Public Comment Period	30		
	Day 90	DE must provide the sponsor with an initial evaluation letter within 30 days of the end of the public comment period.	30	15	DE distributes comments to IRT members and sponsor within 15 days of the close of the public comment period.
Sponsor Considers Comments, Prepares and Submits Draft Instrument ~DE must notify sponsor of completeness w/in 30 days of submission~					
		Day 1	Complete Draft Instrument Received by IRT Members		
Phase III	Day 90	30-day IRT comment period begins 5 days after DE distributes draft instrument to IRT members	30		
	Day 90	DE discusses comments with IRT and seeks to resolve issues ~ # of days variable~	60	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.
Sponsor Prepares Final Instrument ~Sponsor provides copies to DE and all IRT members~					
		Day 1	Final Instrument Received by DE & IRT		
Phase IV	Day 30	DE must notify IRT members of intent to approve/not approve instrument within 30 days of receipt.	30	45	IRT members have 45 days from submission of final instrument to object to approval of the instrument and initiate the dispute resolution process.
	Day 45	Remainder of time for initiation of dispute resolution process by IRT members	15		
INSTRUMENT APPROVED/NOT APPROVED, or DISPUTE RESOLUTION PROCESS INITIATED					



EPA/Corps draft 4/02/08

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 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*

	Event	# of Days**		
Phase I	Optional Preliminary Review of Draft Prospectus	30		DE provides copies of draft prospectus to IRT and will provide comments back to the sponsor within 30 days.
Sponsor Prepares and Submits Prospectus ~DE must notify sponsor of completeness w/in 30 days of submission~				
	Day 1**	Complete Prospectus Received by DE		
Phase II	Day 30 Public notice must be provided within 30 days of receipt of a complete prospectus	30		
	Day 60 30-Day Public Comment Period	30		
Phase II	Day 90 DE must provide the sponsor with an initial evaluation letter within 30 days of the end of the public comment period.	30	15	DE distributes comments to IRT members and sponsor within 15 days of the close of the public comment period.
Sponsor Considers Comments, Prepares and Submits Draft Instrument ~DE must notify sponsor of completeness w/in 30 days of submission~				
	Day 1	Complete Draft Instrument Received by IRT Members		
Phase III	30-day IRT comment period begins 5 days after DE distributes draft instrument to IRT members	30		
	Day 90 DE discusses comments with IRT and seeks to resolve issues ~ # of days variable~	60	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.
Sponsor Prepares Final Instrument ~Sponsor provides copies to DE and all IRT members~				
	Day 1	Final Instrument Received by DE & IRT		
Phase IV	Day 30 DE must notify IRT members of intent to approve/not approve instrument within 30 days of receipt.	30	45	IRT members have 45 days from submission of final instrument to object to approval of the instrument and initiate the dispute resolution process.
	Day 45 Remainder of time for initiation of dispute resolution process by IRT members	15		
	Day 45	INSTRUMENT APPROVED/NOT APPROVED, or DISPUTE RESOLUTION PROCESS INITIATED		



EPA/Corps draft 4/02/08

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.

Questions?

