



## CONSERVATION AND MITIGATION BANKING GUIDELINES



**State of California  
Natural Resources Agency  
Department of Fish and Wildlife**

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# Conservation and Mitigation Banking Guidelines

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# Chapter 1: Conservation and Mitigation Banking Statute of 2013

## Introduction

Since the mid-1980s, the State of California has actively sought alternatives to the small, fragmented habitat reserves that can result from project-by-project mitigation. One approach has been the creation of conservation and mitigation banks. These banks are generally large, connected areas of preserved, restored, enhanced, or constructed habitats (for example, wetlands) that are set aside for the express purpose of providing mitigation for project impacts to wetlands, threatened and endangered species, and other sensitive resources.

The terms "conservation bank" and "mitigation bank" are defined in Fish and Game Code section (§)1797.5. Broadly speaking, a bank is privately or publicly owned land managed for its natural resource values. In exchange for permanently protecting the land and resources, and managing them according to a written agreement with the California Department of Fish and Wildlife (CDFW), the bank sponsor is issued credits that it may sell to project proponents who need to satisfy legal requirements for mitigating the environmental impacts of projects, or that it may use for its own project mitigation needs. A privately owned conservation or mitigation bank is a free-market enterprise that offers landowners economic incentives to protect natural resources, and that can save time and money for parties with mitigation responsibilities by simplifying the state regulatory compliance process. A publicly owned conservation or mitigation bank offers the sponsoring public agency advance mitigation for larger or multiple projects and/or operations and maintenance that spans longer term project planning horizons.

Conservation banks generally protect threatened or endangered species habitat or other sensitive resources, while mitigation banks conserve existing, restored, enhanced, or created wetland habitats that may also provide habitat for listed species. CDFW has actively supported banking to provide an incentive to conserve lands, consolidate mitigation into larger, more ecologically viable properties, and assist CDFW in meeting its conservation goals. Conservation and mitigation banking is important to the state because banks provide regulatory efficiencies, environmental benefits, and economic advantages.

Banking has been an ongoing activity since the early 1990's, and in 1995 a state policy on conservation banks was established jointly by the Natural Resources Agency and the California Environmental Protection Agency. Bank proposals have increased each year with more than 60 requests submitted in 2011-12. CDFW staff is involved in all facets of bank review and approval, yet until 2013 there was no dedicated funding source to carry out these activities. Due to state agency reductions in 2011 including loss of CDFW positions and funding, CDFW did not have the financial means to continue to provide bank services without cost recovery, and it suspended bank review in early 2012. The CDFW banking program resumed in January 2013, when legislation with standards for bank applications, timelines for CDFW review and response, and associated fees for cost recovery became effective.

## Purpose

CDFW is providing these Guidelines and criteria to implement Chapter 7.9 of Division 2 (beginning with §1797) of the Fish and Game Code (FGC). These Guidelines incorporate all relevant documents and program guidance as of the date of these Guidelines, as contemplated by FGC §1799.1(c). These Guidelines are intended to clarify the bank review and approval process as defined in the FGC in order to

assist bank sponsors, partner agencies, the public, and CDFW staff. CDFW intends that these Guidelines will be a "living document" available on the [CDFW Conservation and Mitigation Banking webpage](#). CDFW, in coordination with interested parties, will update these Guidelines as additional relevant documents or program guidance become available.

## Legislation

Senate Bill (SB) 1148 (Pavley), Ch. 565, Statutes of 2012, effective January 1, 2013<sup>1</sup> established a process for CDFW review and approval of mitigation and conservation bank applications and new fees for program services, administration, and oversight by CDFW. Through legislative findings and declarations, this new statute reinforced the values and importance of conservation and mitigation banks in providing for the conservation of important habitats and habitat linkages, taking advantage of economies of scale that are often not available to individual mitigation projects, and simplifying the state regulatory compliance process while achieving conservation goals. Among other things, the legislation also acknowledged a desire for greater transparency to ensure mitigation requirements are fully met when employing banks, and that the monitoring of banks to ensure long-term conservation of species and habitats is scientifically valid. Finding that banks and the entities to which bank credits are sold should fully fund the administrative and regulatory costs incurred by CDFW in providing banking program services, administration and oversight, SB 1148 also imposed new fees to cover these costs.

In FGC §1797(h), the Legislature finds and declares its intent that banking and all other forms of mitigation for wildlife species should:

- comply with regulatory requirements
- be based on the best available scientific information
- be capable of being implemented successfully
- have adequate funding to achieve mitigation measures
- be monitored for compliance and effectiveness

The Legislature also recognized in §1797(h) that mitigation and conservation banking is an important conservation mechanism in California because banks provide regulatory efficiencies, environmental benefits, and economic advantages. Properly developed and monitored banks have demonstrated their value and efficacy and are important tools in mitigating impacts to resources and in conserving a wide range of habitat lands.

## Definitions

Some terms used in the enacted legislation were not defined. CDFW has provided definitions for these terms and others used in bank review and approval to provide clearer direction and guidance to bank sponsors. In addition to the terms defined in [FGC §1797.5](#), the terms below are used in these Guidelines and defined as follows:

- "*Amendment*" means any addition, change or other modification to a CDFW-approved bank that requires approval from CDFW. There are two types of amendments:  
    "*Simple amendment*" means any amendment that relates to the organization or administration

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<sup>1</sup> Fish and Game Code, Chapter 7.9 (beginning with §1797), Division 2.

of the bank including, but not limited to, changes in bank name, ownership, address, bank sponsor, property owner, endowment holder, a decrease in the number of credits, or reduction in the bank service area.

- "*Complex amendment*" means any amendment that relates to the operation, management, or other material element of the bank including, but not limited to, conservation easement transfer, increase in service area, change in service area configuration (excluding a service area reduction), increase in the number(s) or type(s) of credits, change in the types(s) of credits, increase in the size of the bank property, or substantial variation from the recommended standard templates.
- "*Approved bank*" means a bank CDFW has determined to be acceptable and for which the bank agreement has been signed by CDFW.
- "*Bank agreement*" or "*bank agreement package*" means the bank enabling instrument including all of its exhibits and attachments as required by the interagency checklists. Checklists can be found at <https://www.wildlife.ca.gov/Conservation/Planning/Banking/Templates>.
- "*CDFW modification*" means any addition, change or other modification proposed to a CDFW-approved bank by CDFW staff, alone or with one or more other signatory agencies.
- "*Clerical change*" means any alteration to a CDFW-approved bank agreement such as corrections of typos or other minor errors, and any minor information change that CDFW determines has no substantive impact on the bank, its organization or administration.
- "*Established*" bank (or "*establishment*" of a bank) means the bank agreement has been signed, any security provided, and the land has been protected by recording a conservation easement or transferring fee title.
- "*Interagency review team*" or "*IRT*" means the group of federal, tribal, state, or local regulatory or resource agencies with authorities and/or mandates directly affecting, or affected by the establishment, operation, or use of a mitigation or conservation bank. The members of the IRT vary depending on the resources conserved by the bank and the location of the bank in the state. The IRT is sometimes referred to as the Mitigation Bank Review Team (MBRT) or Conservation Bank Review Team (CBRT), depending on the agencies involved.
- "*Unsolicited change*" is defined in FGC §1798.5(f) and §1798.6(f). An unsolicited change includes only those changes requested by the bank sponsor, property owner, or any other party associated with the bank, and does not include changes requested by CDFW or other IRT agencies acting on their own initiative.



## Chapter 2: Interagency Guidance Documents

### Interagency Guidance for Preparing Bank Proposals

In a statewide team effort in 2006, CDFW and other state and federal agencies entered into a [Memorandum of Understanding](#) (MOU) (updated and renewed in 2011) to guide how the parties would work together to develop and use combined or coordinated approaches to mitigation and conservation banking, such as standardized banking program documents and guidance. The agencies represented in this effort include: the California Natural Resources Agency, California Department of Fish and Wildlife, US Army Corps of Engineers, US Fish and Wildlife Service, US Environmental Protection Agency, US Department of Agriculture - Natural Resources Conservation Service, National Oceanic and Atmospheric Administration - National Marine Fisheries Service, and State Water Resources Control Board.

The interagency Project Delivery Team (PDT), established by the MOU, created the first joint bank document templates in 2006 (published in 2008). Since then, the templates and instructions have been updated periodically to reflect changing policies and new bank implementation experience, with input from bank sponsors and staff from the interagency review team (IRT) agencies. When templates are updated, the public is given an opportunity to provide comments in response to a US Army Corps of Engineers public notice, and at a public meeting hosted by the IRT agencies. The current versions of the bank document templates and instructions, including bank proposal review checklists, bank enabling instrument, conservation easement, and long-term management plan are available at CDFW's Conservation and Mitigation Banking webpage (<https://www.wildlife.ca.gov/Conservation/Planning/Banking/Templates>). The IRT agencies recommend that bank sponsors use these templates without modifying them. Significant changes to standard template language may cause the bank review and evaluation process to take considerably longer than if the template is used.

### Bank Proposal Review Checklists

The PDT created bank proposal review checklists to assist bank sponsors in providing information about their bank proposal to the IRT agencies that is sufficient to meet the agencies' requirements. A complete bank package helps the agencies provide meaningful feedback at early stages of the evaluation process, and facilitates timely review. To assist bank sponsors in preparing complete bank proposals, the PDT created [checklists](#) for the draft prospectus, prospectus, and draft bank enabling instrument. The instructions that accompany the checklists provide additional guidance to bank sponsors on the process of creating a bank. For certain steps or components in the checklist the bank sponsor may benefit from obtaining professional assistance for the financial, legal and environmental aspects of the proposed bank.

### Bank Enabling Instrument

A [Bank Enabling Instrument \(BEI\)](#) is an agreement between a mitigation bank sponsor, bank property owner, and the signatory agencies that have jurisdiction over the wetland resources to be conserved and managed by the mitigation bank and for which credits will be established. The BEI identifies the conditions and criteria under which the bank will be established, managed, and operated. The BEI, including its required exhibits, describes the location of the bank site, the bank service area, the numbers and types of credits to be established and how they will be released, and how the bank will be managed and conserved in perpetuity. It describes allowable activities and access, and identifies requirements such as

environmental site assessments and appropriate monitoring programs. The BEI, once completed and finalized, must be signed by CDFW to be approved. For a complete understanding of the BEI, please refer to the current template at [CDFW Instructions and Templates webpage](#).

### **Conservation Bank Enabling Instrument**

The Conservation Bank Enabling Instrument (CBEI) is an agreement between a conservation bank sponsor, bank property owner, and the signatory agencies that have jurisdiction over the threatened or endangered species habitat or other sensitive resources to be conserved and managed by the conservation bank and for which credits will be established. Currently, until a CBEI template is finalized, a CBEI is derived from the standard template BEI, and contains essentially the same provisions and exhibits as the BEI. As the starting point for creating a CBEI, the [BEI template](#) is modified to focus on issues pertinent to the conservation bank. For the purposes of these Guidelines, references to the BEI apply to the CBEI as well.

### **Conservation Easement**

The biological resources protected by a conservation or mitigation bank must be conserved in perpetuity, typically by granting a conservation easement to an eligible Federal or State resource agency or non-profit conservation organization. A conservation easement, established according to California Civil Code section 815, *et seq.*, preserves land and resources in perpetuity while allowing property owners to retain many private property rights. It constitutes an interest in the land that is binding on future owners. The conservation easement prohibits activities on and uses of the bank property that might otherwise interfere with the functioning of the bank. The PDT has created a [conservation easement template for banks](#).

### **Property Assessment and Warranty**

The [Property Assessment and Warranty](#) requires the landowner to provide a narrative explaining each recorded or unrecorded lien, encumbrance, or other exception to the title of the bank property. It describes the impact any matter affecting title may have on a conservation easement or fee title held by a conservation entity, and is accompanied by a preliminary title report. The IRT agencies rely on the Property Assessment and Warranty to identify any constraints on the bank property that could prohibit or interfere with permanent conservation of the bank's resources.

### **Long-Term Management Plan**

Management of the bank property is essential to assure a bank continues to provide high quality habitat, and is key to the success of a mitigation or conservation bank. The purpose of the [Long-Term Management Plan](#) is to ensure the bank property is managed, monitored, and maintained in perpetuity for its natural resource values. The long-term management plan establishes objectives, priorities, tasks, and reporting requirements. Management actions are tailored to achieve desired outcomes for the covered species and habitat, and must be designed to adapt to changing environmental factors (adaptive management).

## Chapter 3: CDFW Bank Review Process

Bank applications are received by and reviewed at CDFW Regional Offices. [Regional Bank Coordinators](#) serve as the primary contact for bank sponsors and participate as members of the IRTs. Regional Bank Coordinators have the expertise to review bank proposals and work with bank sponsors and other IRT agencies to finalize the terms of the bank and all the necessary bank documents. Bank agreement and amendment packages that make significant changes to standard template language may also be subject to review by the CDFW Office of General Counsel (OGC). Acceptable bank agreement and bank amendment packages are approved in writing and signed by the Regional Manager. Where either a conservation easement interest in or fee title to the bank property is proposed to be granted to CDFW, relevant documents are reviewed by the Habitat Conservation Planning Branch, may be reviewed by OGC, and, after internal CDFW processing is complete, are then forwarded to the Wildlife Conservation Board for acceptance and recording. Conservation easements that are to be granted to an approved non-profit organization will be processed by the bank sponsor or landowner and the grantee of the conservation easement.

### Bank Applications

Bank applications fall into four main categories or document types: draft prospectus (optional), prospectus, bank agreement package, and amendment package.

Any person or entity seeking CDFW approval to establish a bank will need to submit a series of application documents during the bank review process. This phased approach allows CDFW to consider bank concepts and initial proposals before the bank sponsor invests the time and resources to prepare a full bank agreement package. For example, a bank sponsor may begin the process by submitting a draft prospectus (optional), then prospectus, and finally, if the prospectus is acceptable, a bank agreement package. However, a bank sponsor may also choose to begin the process with a prospectus, skipping the draft prospectus stage. After bank approval, the bank sponsor may request amendments.

Except for banks where CDFW is the only agency with jurisdiction, bank applications are typically jointly reviewed by the IRT agencies according to the interagency templates, checklists, and processes agreed to by the IRT/PDT agencies ([see Chapter 2](#)).

### Draft Prospectus (optional)

A draft prospectus is a brief, concept level proposal that is optional but **recommended** when a bank sponsor is scoping the concept for a bank or contemplating a specific mitigation or conservation bank idea, or for those new to the banking process. This step is intended to identify potential obstacles early so that the bank sponsor may rectify the issues, revise the proposal, or decide not to pursue the bank prior to investing in the full requirements of formal prospectus review. The bank sponsor may elect to submit an optional draft prospectus to CDFW for comment and consultation. CDFW may request a site visit to the proposed bank location. See the [Checklist for Draft Prospectus](#) for a complete list of the information required.

### Prospectus

The bank sponsor must submit a prospectus to CDFW. It is a written summary of the proposed bank. FGC §1797.5(h) requires that it contain "a sufficient level of detail to support informed department review and

comment." The prospectus allows CDFW to determine if the bank proposal is adequate to support development of a full bank agreement package. The prospectus review process allows for early collaboration among CDFW and the bank sponsor to clarify the intent for the proposal and to identify potential benefits and issues. See the [Checklist for Prospectus](#) for a complete list of the information required. CDFW will visit the site of the proposed bank. The prospectus will be reviewed and evaluated by CDFW to determine if it is acceptable (see Chapter 5 for [Considerations for Determining Acceptability](#)), and whether the bank sponsor may submit a draft bank agreement package.

### **Bank Agreement Package**

The bank agreement package is [defined in Chapter 1](#). The PDT agencies have created [templates](#) for many of the required bank agreement components, including the BEI, conservation easement, and long-term management plan. The bank sponsor may submit a draft bank agreement package to CDFW after it determines the prospectus to be acceptable. See the [Checklist for Draft BEI](#) for a complete list of the information required. CDFW will review and evaluate the draft bank agreement package.

### **Amendments**

Amendment is [defined in Chapter 1](#). A bank sponsor seeking to amend a CDFW-approved bank must submit a complete bank amendment package (as defined in FGC §1798.6(a)) to CDFW. See the [Checklist for Draft BEI](#) for a complete list of the information required. CDFW will review and evaluate the bank amendment package.

### **Fees**

FGC §§1798, 1798.5, 1798.6, and 1799 established the initial fees for the various bank application phases described above, as well as an implementation and compliance fee for approved banks. These fees are deposited in a separate dedicated account and expended for the purposes of funding the CDFW banking program as provided in FGC §1797(f) and §1799.1.

FGC §1799.1 directs CDFW to adjust the fees annually pursuant to FGC §713. Fee adjustments are determined using the [Implicit Price Deflator](#) (IPD) for State and Local Government Purchases of Goods and Services, as published by the United States Department of Commerce. The rate of change for the annual fee adjustment is determined by comparing the March 31 quarter end IPD index of the current year to the March 31 quarter end IPD index of the prior year. Each current banking fee is multiplied by the relative amount of change in the IPD index. The product is added to the fee for the current year and then rounded to the nearest \$0.25 increment (as required by FGC §713). The resulting amounts are the adjusted fees for the new calendar year, beginning January 1.

The following table shows the initial statutory fee amounts and the adjusted fees for 2014:

<b>Bank Document Name/Phase</b>	<b>Initial Review Fees through 1/31/14</b>	<b>Review Fees 2/1/14 - 12/31/14</b>
Draft Prospectus (optional)	\$1,500	\$1,507.75
Prospectus	\$10,000 (or \$8,500 if optional Draft Prospectus was evaluated)	\$10,052.25 (or \$8,544.50 if optional Draft Prospectus was evaluated)
Bank Agreement Package	\$25,000	\$25,130.50
Unsolicited change	\$10,000	\$10,052.25
Bank Amendment Package (initial/simple)	\$7,500	\$7,539.25
Bank Amendment Package (complex)	\$25,000 (or \$17,500 if initial Bank Amendment Package fee was paid)	\$25,130.50 (or \$17,539.50 if initial Bank Amendment Package fee was paid)
Implementation	\$60,000	\$60,313.50

Each fall, CDFW will determine the fee change for the next year, notify the public via the [fee webpage](#), and update the [Bank Submittal Form](#). The fee change will become effective on January 1<sup>st</sup> of each year. Bank sponsors submitting bank documents to CDFW that are received with the incorrect fees will receive a letter giving notice of the applicable fee and that the proposal review timeline will not begin until CDFW has received the appropriate fee. [Chapter 5](#) describes some situations where fees will not be required.

### Review Timelines

FGC §§1798, 1798.5, and 1798.6 established timelines for CDFW review and evaluation of the various bank applications. To assist applicants, CDFW has created a graphical representation or [flowchart](#) of the process of submittal and review of a draft prospectus, prospectus, and bank agreement package. The review periods are summarized in the table below. The minimum allowed review period for any bank proposal is 240 days. CDFW must receive the appropriate review fee and bank package for the statutory review timeline to begin. Please refer to FGC §§[1798-1798.6](#) for detailed information about CDFW review timelines.

<b>Bank Document Name/Phase</b>	<b>Action/Decision</b>	<b>Review Timeline</b>
Draft Prospectus (optional)	Initial evaluation	30 days
Prospectus	Complete?	30 days
	Acceptable?	90 days
Bank Agreement Package	Complete?	30 days
	Acceptable?	90 days

Bank Agreement Package (continued)	CDFW Requests Supplemental Information	+90 days
	Unsolicited change	+90 days
	FGC §1798.5(g) Extension	+60 days
Bank Amendment Package	Complete?	30 days
	Acceptable?	90 days
	CDFW Requests Supplemental Information	

**Bank Database**

FGC §1799(c) requires CDFW to establish and maintain a database that allows bank sponsors to share information about their banks, and to make the information available via the CDFW internet website. The information available for each bank will include, but is not limited to, bank name, location, contact information, total number of each type of bank credit, number and types of credits sold or obligated, number of credits applied, balance of each type of credit remaining, status of the species and habitat at the bank, a link to the bank’s long-term management plan, and links to the complete annual monitoring reports. In addition, CDFW will track bank documents submitted, fees paid, and review timelines.

Planning for the database began in mid-2013, with full implementation expected mid-2015. Bank sponsors with a CDFW-approved bank will be able to submit updates about their bank to the [Regional Bank Coordinator](#) who will upload the information to the database. The database will be searchable by the public. Until the new database is functional, CDFW lists established banks on its [bank webpage](#).

## Chapter 4: CDFW Guidance and Templates

In addition to the multi-agency templates described in Chapter 2, CDFW has prepared a variety of guidance documents to assist potential bank sponsors who are interested in establishing a mitigation or conservation bank. These documents include instructions, general guidance, templates, flow charts to assist bank sponsors in understanding the CDFW bank application review process, and instructions describing how to submit the appropriate fees as established in FGC §§1797-1799.1. The following guidance documents are discussed in this chapter:

- Instructions for bank sponsors
- Review process flowchart and description
- Bank submittal forms
- Guidance on lands appropriate for banking
- Letter of credit template
- Bank amendment process flowchart and description

Current versions of these CDFW guidance documents and templates are available at <https://www.wildlife.ca.gov/Conservation/Planning/Banking/Templates>. These aids are for general information only and do not change the requirements of FGC §1797, *et seq.*

### Instructions for Bank Sponsors

FGC §§1797-1799.1 created new steps in the CDFW process for authorizing and amending banks and mandated fees to fund CDFW's services. The [Instructions for Bank Sponsors](#) explains where to obtain templates, describes how to contact a CDFW Regional Bank Coordinator, identifies required forms, and cites the appropriate fee to be submitted with each bank application document.

### Review Process Flowchart and Description

FGC §§1798-1798.5 created specific requirements in the CDFW review process, including timelines and procedures for requesting more information, handling proposed changes, and resubmitting bank applications. To assist bank sponsors, CDFW created a graphical representation or [flowchart](#) of the process of submittal to and review by CDFW of a draft prospectus (optional), prospectus, and bank agreement package. Footnotes in the flowchart provide clarification and references to the applicable FGC sections. In addition, CDFW created a [step-by-step description](#) of the review steps and fees for bank prospectuses and bank agreement packages. This outline is complementary to the flowchart and is intended to walk bank sponsors through the basic process for bank review and associated fees.

### Bank Submittal Form

In order for CDFW to accurately track bank applications and fee payments, bank sponsors must use the [Bank Submittal Form](#) when submitting bank documents to CDFW. Key pieces of information needed for accurate tracking are the bank name and CDFW-assigned tracking number, bank sponsor name and other contact information, as well as the type of bank document and its corresponding fee. The [Instructions for Bank Sponsors](#) explains how a bank sponsor may obtain a CDFW tracking number that is necessary for completing and submitting this form. The Bank Submittal Form provides instructions for

payment of fees, which must be made by check or through wire transfer.

### **Guidance on Lands Appropriate for Banking**

Bank sponsors should carefully select proposed bank sites to assure they provide conservation value for the sensitive species, habitats, and/or wetlands for which credits are sought. CDFW encourages bank sponsors to consider siting prospective banks where they will conserve significant high value resources, contribute to regional conservation strategies, and create a bank of ecologically sustainable size near other conserved lands. The CDFW Regional Bank Coordinators are available as a resource to bank sponsors considering locations for prospective banks. For additional guidance, see [Siting Banks to Contribute to CDFW Conservation Objectives](#).

Some locations may not be appropriate for banking. Lands may be unsuitable to become mitigation or conservation banks if they have been used to mitigate impacts of previous projects, were acquired or conserved using public funding sources, or are subject to incompatible uses that could preclude an ecologically functional and sustainable bank. Lands that do not support significant biological resources or are not biologically viable, or would not meet obligations of permits or authorizations that require mitigation, may also not be appropriate for a bank. The CDFW website offers additional direction on [what lands are appropriate for banking](#).

### **Guidance on Cultural, Historical, Archeological, and Native American Resources (“cultural resources”)**

To facilitate compliance with CDFW’s Tribal Communication and Consultation Policy<sup>2</sup>, CDFW will seek in good faith to consult with tribes whenever CDFW actions may significantly impact Tribal Interests. To help facilitate this process in a timely manner, CDFW may request bank sponsors to perform a cultural resources records search on all proposed conservation and mitigation bank sites.

Based on the records search results, CDFW will evaluate whether bank approval and the ensuing bank establishment and management activities may have an impact on Tribal Interests. If CDFW determines that such activities may have an impact on Tribal Interests, CDFW will follow the procedures in CDFW’s Tribal Communication and Consultation Policy before approving the bank.

### **Letter of Credit Template**

The bank sponsor is responsible for providing financial security for the successful completion of habitat construction, management, monitoring, and remedial actions in accordance with the BEI. Financial security is typically required for activities not completed or fully funded by the time the bank is established.

The bank sponsor may choose to provide financial security in the form of either a cashier's check payable to the appropriate IRT agency or an irrevocable standby letter of credit (LOC). A LOC is a common instrument issued by a financial institution to guarantee payment or performance of an obligation. If a LOC is provided as security, it must name one of the IRT agencies as the beneficiary. A LOC must be issued for no less than one year, and provide an expiration date that will be automatically extended annually until the beneficiary releases the LOC based on completion of measures described in the BEI and LOC.

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<sup>2</sup> Department of Fish and Wildlife Bulletin: Tribal Communication and Consultation Policy  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=122905&inline>



Details on the requirements for performance security and letters of credit are available in the BEI.

CDFW has created a [template letter of credit](#) for use by bank sponsors where CDFW is the named beneficiary. LOCs must be approved by CDFW before they are issued to secure obligations related to a conservation or mitigation bank.

### **Bank Amendment Process Flowchart and Description**

The process for amending banks mirrors the process described above for authorizing a bank agreement package. To assist bank sponsors, CDFW created a graphical representation or [flowchart](#) of the bank amendment submittal and review process. Footnotes in the flowchart provide clarification and references to the applicable FGC sections. In addition, CDFW created a [step-by-step description](#) of the fees and review steps for proposed bank amendments. The outline is complementary to the flowchart and is intended to walk bank sponsors through the basic process for amendment review and associated fees.

### **Notifications to Bank Sponsors**

FGC §§1798-1798.6 require CDFW to provide notice to bank sponsors of determinations related to whether applications are complete or not complete and acceptable or not acceptable. CDFW has established a process to provide such notifications. In the case of notifications of not complete or not acceptable, CDFW's written notification will state the reasons for the determination as it relates to requirements of the banking statute and/or interagency templates, checklists, and processes agreed to by the IRT agencies ([see Chapter 2](#))

## Chapter 5: Additional Guidance

CDFW banking staff throughout the State met regularly during 2013 to share experiences and discuss program questions related to implementation of FGC §§1797-1799.1. With input from the community of banking stakeholders, the following new or clarified program practices were created to improve the application and review process for all interested parties.

### Clarification of Fees

Implementation of FGC §§1797-1799.1 has revealed some situations where guidance regarding application of the statutory fee requirements would be beneficial. Guidance regarding fees for unsolicited changes to draft bank agreements/amendments and other changes to CDFW-approved banks is provided below.

### Unsolicited Changes During CDFW's 90-Day Review Period

FGC §§1798.5(f) and 1798.6(f) require CDFW to charge a fee if a bank sponsor proposes changes to a draft bank agreement or amendment package that have not been solicited by CDFW during its 90-day review period, if CDFW identifies the change as one that will require additional CDFW staff review time. This fee is referred to in these Guidelines as an unsolicited change fee. One reason for instituting an unsolicited change fee was to encourage bank sponsors to submit well thought-out, thorough, complete, and viable bank or amendment proposals. CDFW can best advance the goals of the banking program by investing its resources in proposed banks that provide high quality resources for which credits are sought, are aligned with CDFW's regional conservation goals, provide appropriate mitigation for project impacts, and meet the requirements of FGC §§1797-1799 and the interagency guidance provided by the IRT agencies. When CDFW receives the fee for an unsolicited change and all required documents, a new 90-day review period begins.

The law requires CDFW to assess a one-time fee for an unsolicited change to cover the reasonable cost of CDFW's services in reviewing a change that it determines will require additional CDFW staff time. CDFW review of an unsolicited change can be anticipated to include a reasonable amount of back and forth discussion and adjustments on the subject of the proposed change, interagency coordination, document revisions, and associated review. All of these activities would be covered under the one-time change fee. However, if later in the CDFW review process the bank sponsor proposes another change on a different topic than the change addressed previously, CDFW will again determine if additional CDFW staff time is needed and, if so, assess an unsolicited change fee to cover the reasonable cost of CDFW's services in reviewing the new change. Upon receipt of this fee and all required documents a new 90-day review period will begin.

Sometimes changes will be proposed by another IRT agency on its own initiative during CDFW's 90-day review period. These changes are not subject to FGC §§1798.5(f) or 1798.6(f). CDFW will not assess an unsolicited change fee if the bank sponsor demonstrates to the reasonable satisfaction of CDFW that another signatory agency has initiated the change on its own behalf, and not at the request of the bank sponsor, property owner, or any other party associated with the bank. A new 90-day review period will begin once the proposed changes have been received by CDFW.

No unsolicited change fee is required if CDFW identifies the change as one that will not require additional review time by CDFW staff.

## Changes to CDFW-Approved Banks

Two types of changes to CDFW-approved banks not defined in the statute are [defined in Chapter 1](#) of these Guidelines. These types of changes are not amendments, and, therefore, are not subject to amendment fees.

- *Clerical change* - This type of modification is very minor and does not require any significant CDFW staff review. A clerical change is not an amendment and is therefore not subject to amendment fees pursuant to FGC §1798.6.
- *CDFW modification* - CDFW, alone or with one or more other signatory agencies, may request changes to a CDFW-approved bank for a variety of reasons. These changes, which generally are intended to benefit a bank's covered species and habitats or to address administrative issues, may be simple or complex. For example, some older banks may need adjustments to management strategies or service areas to better meet the conservation objectives for the species/habitats. CDFW modifications may be steps necessary to keep the bank viable, sustainable, and able to continue selling or using credits. All CDFW modification requests would be discussed with the bank sponsor, property owner, or other appropriate party associated with the bank, and the other IRT agencies, and implemented only if the bank sponsor, property owner, or other appropriate party associated with the bank, and other IRT agencies voluntarily agree to the CDFW modification. A CDFW modification is not an amendment and is therefore not subject to amendment fees pursuant to FGC §1798.6.

However, if the bank sponsor wishes to add any change beyond what CDFW is requesting, then the change is not a CDFW modification and the amendment fee requirements of FGC §1798.6 will apply.

When CDFW concurs with a change suggested by another IRT agency on its own initiative, it will be considered a CDFW modification, as described above. If CDFW and another IRT agency are not in agreement about a proposed amendment, it is likely CDFW will need to invest significant staff time to resolve the issues. In this scenario, the amendment fee requirements will apply to the bank sponsor.

## Considerations for Determining Acceptability

FGC §§1798(d), 1798.5(c) and 1798.6(b) require CDFW to determine if complete prospectuses, bank agreement packages, and bank amendment packages are acceptable. CDFW considers many factors including CDFW policy, and the bank's natural resources, financial assurances, and land protection measures during its review of the bank and bank amendment proposals. CDFW will rely on the most recent checklists, templates, CDFW data and guidance, experience, and scientific literature to evaluate the acceptability of bank proposals.

CDFW staff considers the following information, at a minimum, when determining if a bank proposal is acceptable:

- Does the proposed bank site provide high quality habitat for the species or biological resources for which bank credits are sought;
- Is the proposed bank site appropriate for banking (see CDFW policy on [what lands are appropriate for banking](#));
- For a conservation bank, does the bank proposal document species use of the proposed bank site for the type of species habitat credit sought (foraging, aestivating, breeding, etc.);
- Does the bank proposal identify a service area based upon sound ecological principles, geographic

appropriateness for the species for which bank credits are sought, and CDFW's regional conservation goals;

- Is the bank proposal consistent with CDFW's local and regional conservation objectives;
- Does the proposal contain all the information required in the [prospectus checklist or the BEI checklist](#), and FGC §1798(b)(2)(A)-(N) or §1798.5(a)(2)(A)-(H); and
- Does the proposal identify and reconcile potential incompatible uses or encumbrances on the proposed bank site?

CDFW staff considers the following additional information, at a minimum, when determining if a bank agreement package or bank amendment package is acceptable:

- Does the proposal provide sufficient certainty that the habitat protection, enhancement, restoration, or creation will be successful and that it will provide mitigation as intended;
- Does the long-term management plan contain sufficient certainty that the perpetual management of the bank site will adaptively provide for the target species/resource needs over time; and
- Does the proposal include sufficient financial assurances to carry out any enhancement, restoration, or creation, and interim and long-term management?

### **Annual Fee Adjustments**

FGC §1799.1(a) requires CDFW to annually adjust the banking program fees pursuant to FGC §713. CDFW provides information on its [internet website](#) to inform the public of the current fee schedule. The process and timing for [annual fee adjustments](#) is described in Chapter 3 of these Guidelines.

Processing of some banks may carry over from one year to the next. The applicable statutes make no exception to fee changes for these banks. For any document that requires submission of a fee to CDFW, the appropriate fee will be charged according to the fee schedule that is in place at the time a document is received by CDFW.

Regarding payment of the implementation fee as required by FGC §1799(e), the total implementation fee will be set at the time the bank agreement is approved based on the fee schedule in place at the time. The total implementation fee for the bank will stay the same, and installments paid associated with credit releases will not reflect any increase in the fee.

### **Banks Previously Approved by Other Agencies**

Some conservation and mitigation banks have been approved by other agencies without CDFW as a signatory. These include banks that cover species only listed under the Federal Endangered Species Act (FESA), banks that only address impacts to waters of the United States under US Army Corps of Engineers' jurisdiction, and banks established to provide credits to satisfy mitigation requirements for impacts identified in the CEQA review process such as sensitive habitats and habitat for non-listed species of special concern (for more information, see [Guidance for CEQA Banks](#) below). Due to the changing status of a species or increasing demand for CDFW-approved credits, bank sponsors may request to have their bank subsequently approved by CDFW.

Any person seeking to establish a bank with CDFW must submit a prospectus and bank agreement, and provide the appropriate review fees (FGC §1798-1799). The statute does not allow for any exceptions to these steps or fees. In the case where a bank was previously approved by another agency but not by CDFW, CDFW

will consider a formal application for CDFW approval. Such a request will be considered a new bank proposal and will require a full review by CDFW. The proposal will be subject to the requirements of FGC §1797-1799.1, as implemented by these Guidelines, including payment of all appropriate fees to cover the costs of CDFW's review services. The bank sponsor may choose to begin the CDFW review process with either a draft prospectus, which is optional, or a prospectus. In addition, the BEI from an existing, non-CDFW approved bank, will need to be updated to be consistent with the most current BEI template.

Based on varying statutory requirements or new information, CDFW may require new or different conservation actions for banks subsequently proposed for CDFW approval than were previously agreed to by other parties. CDFW will coordinate with other signatory agencies during the review of existing, non-CDFW approved banks. CDFW will rely on recent guidance, experience, and scientific input to ensure that conservation strategies necessary to provide appropriate mitigation will be implemented at the proposed bank.

### **Voluntary Time Extensions**

The participating state and federal agencies work closely through the IRT to review and respond to bank proposals. The agencies coordinate with one another on all facets of the process in an effort to align their comments and avoid conflicting responses to bank sponsors. This practice makes for a more streamlined process for all parties, during which issues can be resolved and bank application review can proceed smoothly.

CDFW is mandated by FGC §§1797-1799.1 to review and respond to document submissions in a specified number of days (see the [summary of review timelines](#), above). However, the other IRT agencies are not subject to the same review timelines. In practice, when CDFW staff is ready to respond within the timelines mandated by the FGC but the other IRT members need more time to complete their review, or the bank sponsor and CDFW have some remaining issues to resolve, the bank sponsor and CDFW may agree to a voluntary time extension. This mutually agreeable extension of the review time may allow the parties to resolve issues, align the agencies' responses, and potentially avoid a "not acceptable" determination by CDFW that would require a bank sponsor to pay additional fees if further consideration is desired. CDFW or the bank sponsor may suggest a voluntary time extension at various stages of the bank review process. Any changes or additions to the bank agreement package proposed by the bank sponsor would be subject to the process described above under [Unsolicited Changes During CDFW's 90-Day Review Period](#).

### **Guidance for CEQA Banks**

FGC §§1797.5 (d)(3) and (f)(2) recognize banks established to mitigate significant effects on the environment pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines. These banks conserve resources such as sensitive habitats, foraging habitat for listed species, wetlands not subject to the lake and streambed alteration requirements of FGC§1600 et seq., and habitat for species of special concern (CEQA resources). CDFW has historically invested time to ensure that banks with CEQA resources provide appropriate mitigation and conservation, even where CDFW is not a signatory to the bank agreement.

CDFW encourages all new banks, including those that only provide credits representative of CEQA resources, to seek CDFW approval.

Obtaining CDFW approval of a CEQA resources bank will assure that CDFW can support use of the bank's credits to meet appropriate mitigation obligations imposed by lead agencies under CEQA. Many CEQA lead agencies rely on CDFW as a trustee agency to suggest appropriate mitigation for projects in their jurisdiction.

Bank sponsors contemplating creation of a CEQA resources bank should consult with the appropriate lead agency to help determine the need for credits and the likelihood that project proponents could use the bank to satisfy CEQA mitigation obligations. In addition, the local lead agency could be invited to become signatory to the bank agreement to assure its support for the bank.

### **Siting Banks to Contribute to CDFW Conservation Objectives**

CDFW encourages bank sponsors to [consider multiple factors when selecting a site for a new bank](#), including ecological value of wildlife habitat and landscape considerations, adjacent land uses, and management factors such as threats, conflicting uses, encumbrances, and major restoration needs.

Bank sponsors should consider what resources are likely to be impacted in the area in the future and existing [credits](#) that may already be available to mitigate impacts to those resources. A critical element required to create a new bank is a location that will provide high conservation value and sustainable mitigation for impacts to wetlands, threatened or endangered species, or other sensitive resources.

Bank sites that make a valuable contribution to the habitat protection objectives of CDFW by contributing to a regional conservation strategy and are connected to other conserved lands are encouraged by CDFW.

CDFW has prepared many strategic conservation initiatives (independently and in cooperation with others) to identify the habitat areas and linkages in California that are essential for conservation of sensitive resources. The information and sources are available to the public, and should be used by bank sponsors when considering sites for new banks. The [Considerations for Determining Acceptability](#) section earlier in this chapter provides additional guidance for siting banks.

Important sources of CDFW information that can inform the selection of a bank location are listed below:

- The CDFW [Regional Bank Coordinators](#) are available as a resource to bank sponsors considering locations for prospective banks. The Regional Bank Coordinator will be familiar with the location of high quality resources that have been targeted for conservation by Regional staff. They will be a wealth of knowledge about species and habitats, and may have additional information that will be helpful to bank sponsors.
- [Bank Site Selection Considerations](#): This one page list offers guidance on important ecological values, factors, attributes, and management needs to consider when evaluating a property as a prospective bank site.
- Reserve areas and habitat connections are identified by regional NCCPs and HCPs. These areas are identified as the highest priority conservation areas within the NCCP plan area. Plan implementers will assemble the reserve network over time through project mitigation and conservation acquisitions. Any bank that is established in NCCP or HCP should be located in the identified reserve areas or habitat connections to support the plan conservation strategy. The link above leads to the CDFW NCCP webpage where further links to local agency conservation plan websites are available. Additionally, the CDFW banking webpage offers information about [siting banks in NCCP/HCPs](#) .
- [California State Wildlife Action Plan](#) (<https://www.wildlife.ca.gov/SWAP>): The State Wildlife Action Plan examines the status of wildlife and prescribes actions to conserve wildlife and vital habitat before they become rarer and more costly to protect. This plan identifies specific conservation projects and actions to secure sensitive habitats and habitat linkages.
- [California Essential Habitat Connectivity Project](#) (<https://www.wildlife.ca.gov/Conservation/Planning/Connectivity>): This project identifies large

remaining blocks of intact habitat and modeled linkages between them that need to be maintained, particularly as corridors for wildlife. This collaborative project offers a GIS habitat connectivity map, an assessment of the biological value of the identified connectivity areas, and guidance for implementing local and regional connectivity plans.

- California Areas of Conservation Emphasis (ACE) II (<https://www.wildlife.ca.gov/Data/Analysis/Ace>): This mapping model compiles and analyzes spatial information on California's species diversity, rarity, and sensitive habitats. ACE II provides a summary of biological richness and biodiversity "hot spot" analysis, and is a tool for conservation decision making.
- CDFW Lands Viewer (<https://www.wildlife.ca.gov/Lands/Viewer>): The Lands Viewer provides geospatial data about CDFW lands and facilities, including more than 1 million acres of Ecological Reserves and Wildlife Areas. Additional information for some of these lands may be found at the [CDFW lands program webpage](#).
- Biogeographic Information and Observation System (BIOS) ([map.dfg.ca.gov/bios/](http://map.dfg.ca.gov/bios/)): BIOS is a system designed to enable the management, visualization, and analysis of biogeographic data collected by CDFW and its partner organizations. Specifically of benefit to bank sponsors are two data sets:
  - California Protected Areas Database (CPAD): CPAD is a GIS inventory of all fee-protected open space in California. It includes lands permanently protected by almost 1,000 agencies or nongovernmental organizations for open space purposes ranging from small neighborhood parks to large wilderness areas. Conservation easement data are also available. Additional information is available at [www.calands.org](http://www.calands.org).
  - Wildlife Conservation Board (WCB) Approved Projects: This dataset is a comprehensive list of WCB projects from Board inception in 1949 to present. It includes conservation easements, fee title properties, land exchanges, and restoration and enhancement projects.
- Atlas of the Biodiversity of California ([www.dfg.ca.gov/biogeodata/atlas/](http://www.dfg.ca.gov/biogeodata/atlas/)): The Atlas is a guide to California's biodiversity, the variety of plants and animals found throughout the state. This published book is a collection of maps, photographs, artistic illustrations, and short essays about the state's biological resources, pressures affecting them, and activities to sustain them. Although the Atlas is a worthwhile information source, the data available through ACE II described above are more current.

Information from other sources:

- California Gap Analysis Report ([www.biogeog.ucsb.edu/projects/gap/gap\\_rep.html](http://www.biogeog.ucsb.edu/projects/gap/gap_rep.html)): The term "gap analysis" refers to a GIS evaluation of the conservation status of plant communities, vertebrate species, and the number of different species on existing biological reserves. The report identifies landscapes that contain large numbers of potentially unprotected vegetation types and vertebrate species. Such areas can then be studied in more detail as candidates for additional management and conservation efforts to fill gaps in the reserve network.
- EcoAtlas Wetland and Aquatic Resources ([www.ecoatlas.org](http://www.ecoatlas.org)): EcoAtlas provides maps and tools to create a complete picture of aquatic resources in California, including stream and wetland maps, restoration information, and monitoring results with land use, transportation, and other information important to the state's wetlands.
- Federally-listed Endangered Species Recovery Plans (US Fish and Wildlife Service - USFWS)

([www.fws.gov/endangered/species/recovery-plans.html](http://www.fws.gov/endangered/species/recovery-plans.html)): The USFWS creates recovery plans for federally-listed threatened and endangered species that include significant information about the steps needed to achieve recovery. A recovery plan identifies critical habitat essential for the recovery of the species which is [mapped in detail](#) in the recovery plan and is typically available to the public. The USFWS website allows searches for recovery plans by state and species name.

- Science and Collaboration for Connected Wildlands Regional Connectivity Analyses  
([www.scwildlands.org/](http://www.scwildlands.org/)): As an extension of the California Essential Habitat Connectivity Project described above, South Coast Wildlands is working to create local and regional connectivity analyses that are at a finer scale. This tool may be helpful for bank sponsors looking to create banks in the San Francisco bay area, California desert, south coast, or Carrizo Plain.

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For questions regarding these Guidelines or banking in general, please contact the CDFW Habitat Conservation Planning Branch, Conservation and Mitigation Banking Program, at (916) 653-4875 or [mitbank@wildlife.ca.gov](mailto:mitbank@wildlife.ca.gov).



## Common Banking Acronyms

§	Section
1600	Fish and Game Code Section 1600 for Lake and Streambed Alteration (see LSA)
BAMT	Banking Agencies Management Team: management level of banking agencies representing USACE, USFWS, NMFS, CDFW, USEPA, SWRCB, and NRCS (see PDT)
BEI	Bank Enabling Instrument: an agreement that documents agency and bank sponsor concurrence on the objectives and administration of banks that mitigate impacts to waters of the U.S., including wetlands, and the physical and legal characteristics of the bank. For these Guidelines, the term BEI includes reference to a CBEI
CBEI	Conservation Bank Enabling Instrument: an agreement that documents agency and bank sponsor concurrence on the objectives and administration of banks containing natural resource values that are conserved and managed in perpetuity and used to offset impacts to specified listed or sensitive species or habitats
CBRT	Conservation Bank Review Team (aka IRT)
CE	Conservation Easement: an interest in real property conveyed to a conservation entity and managed in perpetuity for specific goals for which the land was protected; it extinguishes the development rights
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
CDFW	California Department of Fish and Wildlife
FESA	Federal Endangered Species Act
FGC	Fish and Game Code
GIS	Geographic Information System
HCP	Habitat Conservation Plan (pursuant to FESA)
IPD	Implicit Price Deflator: standard for determining annual banking fee increases
IRT	Interagency Review Team (aka MBRT or CBRT)
LSA	Lake and Streambed Alteration (pursuant to FGC §1600)
LOC	Letter of Credit
LTMP	Long-Term Management Plan: plan to ensure the bank is managed and maintained in perpetuity consistent with the goals of the bank
MBRT	Mitigation Bank Review Team (aka IRT)
MOU	Memorandum of Understanding
NCCP	Natural Community Conservation Plan (pursuant to FGC §2800)
NMFS	(NOAA) National Marine Fisheries Service
NRCS	(USDA) Natural Resources Conservation Service
PAR	Property Analysis Record: a computerized database methodology used to estimate annual costs for conservation property management
PDT	Project Delivery Team: staff from the agencies signatory to the MOU who work on the BEI template, other templates, and other guidance products
PLFAF	Proposed Lands For Acquisition Form: a summary and initial intent form
RBC	Regional Bank Coordinator
USACE	US Army Corps of Engineers
USFWS	US Fish and Wildlife Service
WCB	Wildlife Conservation Board