

South Pacific Division

REGIONAL COMPENSATORY MITIGATION & MONITORING GUIDELINES

Regulatory Program Workshop

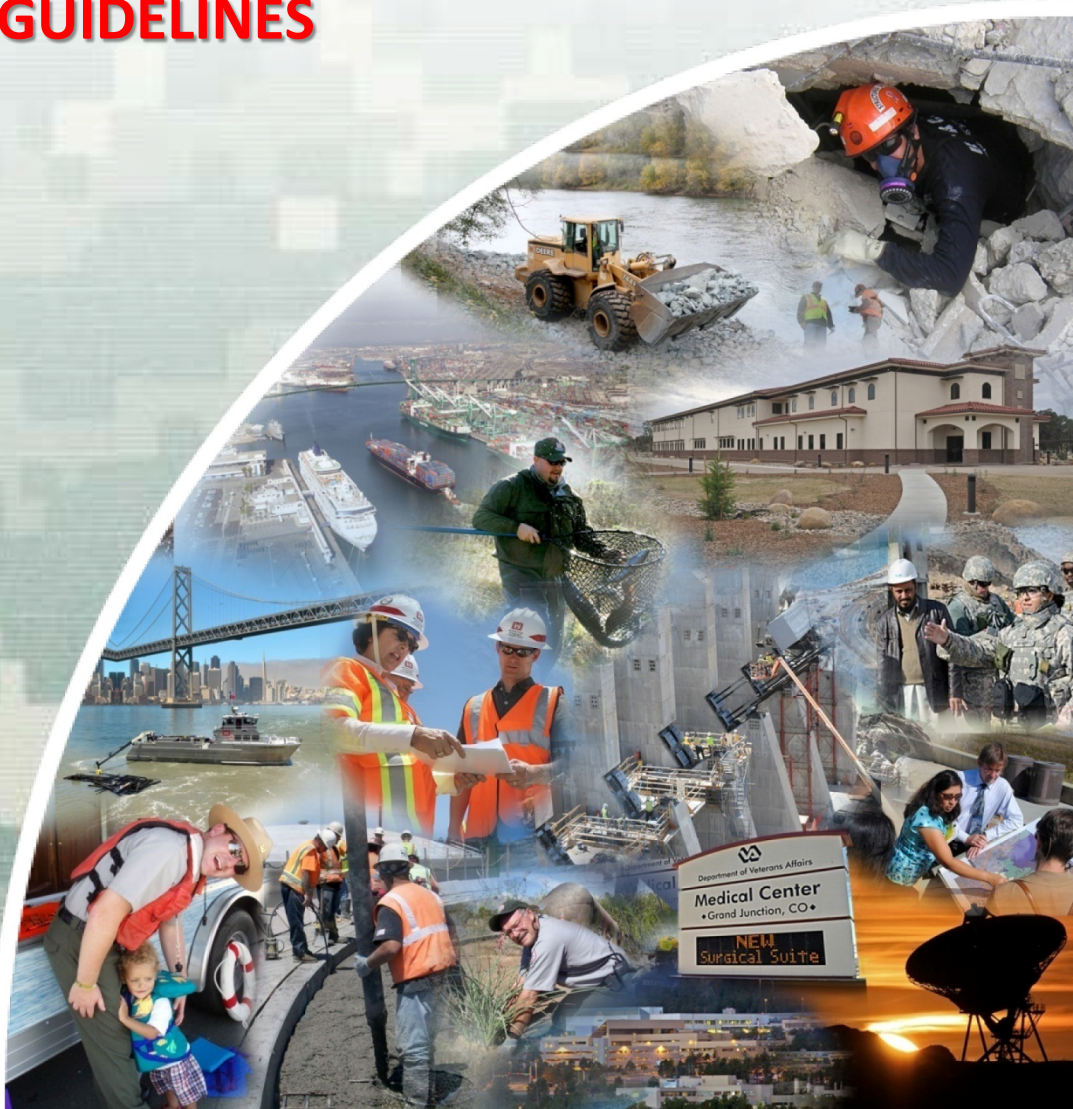
February 16, 2016



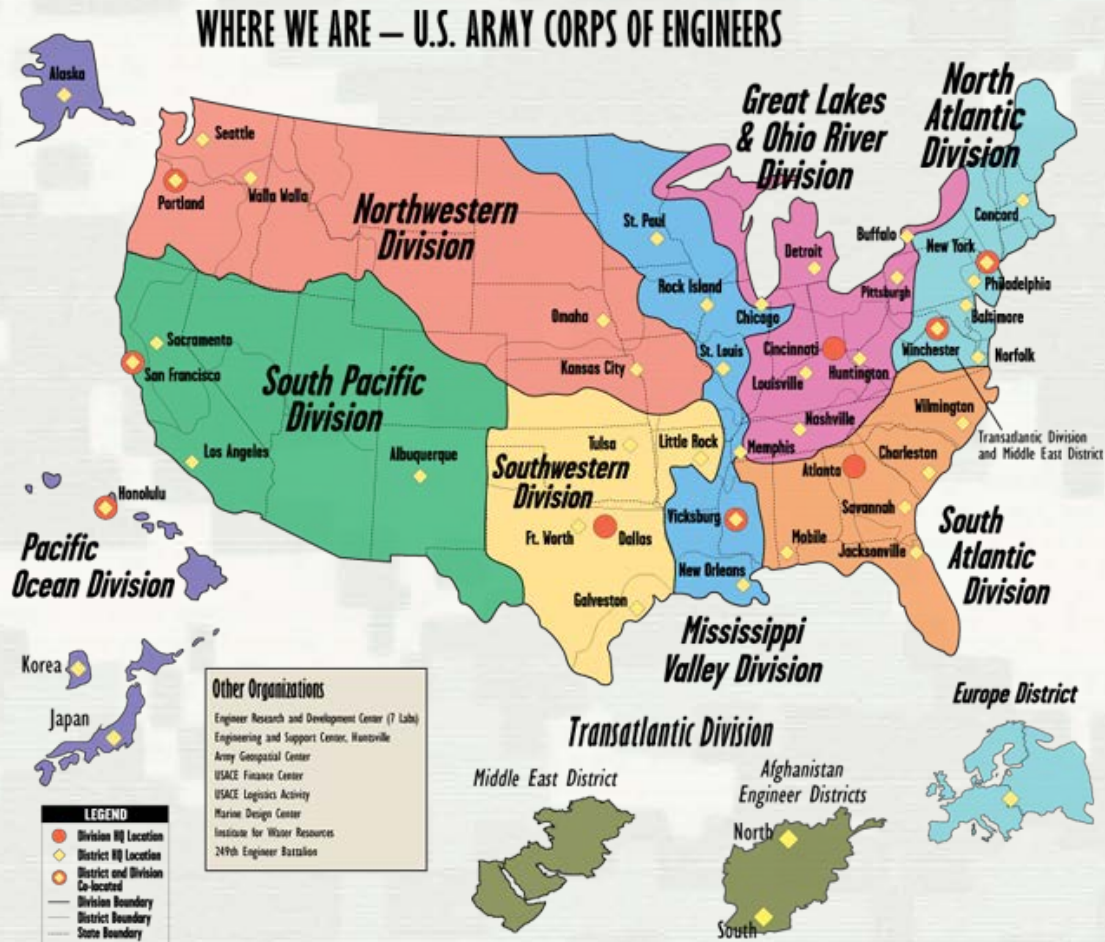
U.S. ARMY



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The boundaries for the SPD Regulatory Program within the four districts encompass the states of Arizona, California, Nevada, Utah, New Mexico, as well as parts of Colorado and Texas.



11. APPLICABILITY AND EFFECTIVE DATE

- Guidelines went into effect on January 12, 2015.
- Supersede all previous district-specific compensatory mitigation and monitoring guidelines issued within SPD.
- Applicable for all permit applications proposing permittee responsible mitigation and mitigation bank/ILF prospectus submittals received after January 12, 2015.



1. Introduction and Purpose

- Guidelines intended to supplement and inform implementation of 2008 Corps-EPA mitigation regulations (33 CFR Part 332), a.k.a., “the Mitigation Rule.”
- Organized similarly to the rule (33 C.F.R. § 332.1 through 332.8).
- Provide guidance for the regulated public in selecting appropriate compensatory mitigation sites and in preparing mitigation plans to compensate for unavoidable impacts to waters of the United States for authorized activities.
- Intended to standardize compensatory mitigation procedures throughout SPD region.
- Intended to assist the regulated public in preparing mitigation plans and in implementing successful compensatory mitigation projects using a watershed-based approach.



2. Definitions

3. General Compensatory Mitigation Requirements



3.5. Financial assurances

- Provide contingency funding for a third party to complete compensatory mitigation
- Generally provided as bonds or letters of credit. See [IWR White Paper: Implementing Financial Assurances for Mitigation Project Success](#). Government agencies may propose alternative mechanisms.
- 3.5.1 Amount of financial assurance
- 3.5.3 Financial assurance release process



3.6 Aquatic resource description

Table B-1: Impact Site Description

Pre-Construction Site Conditions							Post-Construction Site Conditions			
Site No. ¹	Habitat Types ²	Vegetation Communities ³	Cowardin ⁴	HGM ⁵	Hydrology	FCAM ⁶ CRAM (if used)	Activity	Permanent Loss ⁷	Temporary Loss ⁷	Lin. Ft
<i>Wetland Waters of the U.S.</i>										
1	Alkali meadow	Saltgrass series	PUB	Slope	saturated	wet meadow	road crossing	0.3	N/A	N/A
2	Freshwater marsh	Bulrush-cattail series	R2UB	Depressional	seasonally flooded	depression	building pads	2.1	N/A	N/A
Total:								2.4	N/A	N/A
<i>Non-Wetland Waters of the U.S.</i>										
3	Mulefat	Mulefat series	R4SB	Riverine	intermittent	riverine	utility line	N/A	0.27	673
4	Riparian scrub	Arroyo willow series	R4SB	Riverine	intermittent	riverine	building pads	0.7	N/A	1202
Total:								0.7	0.27	1875

Table B-2: Mitigation Site Description

Site No.	Pre-Construction Site Conditions	Post-Construction Site Conditions								
		Habitat Types ²	Vegetation ³	Hydrology	Mitigation Method	Acres	Lin. Ft	Cowardin ⁴	HGM ⁵	FCAM ⁶ CRAM (if used)
<i>Wetland Waters of the U.S.</i>										
1	Alkali meadow	Alkali meadow	Saltgrass series	saturated	EN	3.0	N/A	PUB	Slope	wet meadow
2	Freshwater marsh	Freshwater marsh	Bulrush-cattail series	seasonally flooded	EN	1.0	N/A	R2UB	Depressional	depression
3	Annual grassland	Riparian forest	Black willow series	seasonally flooded	ES	1.0	500	PEM	Riverine	riverine
Total:						5.0	500			

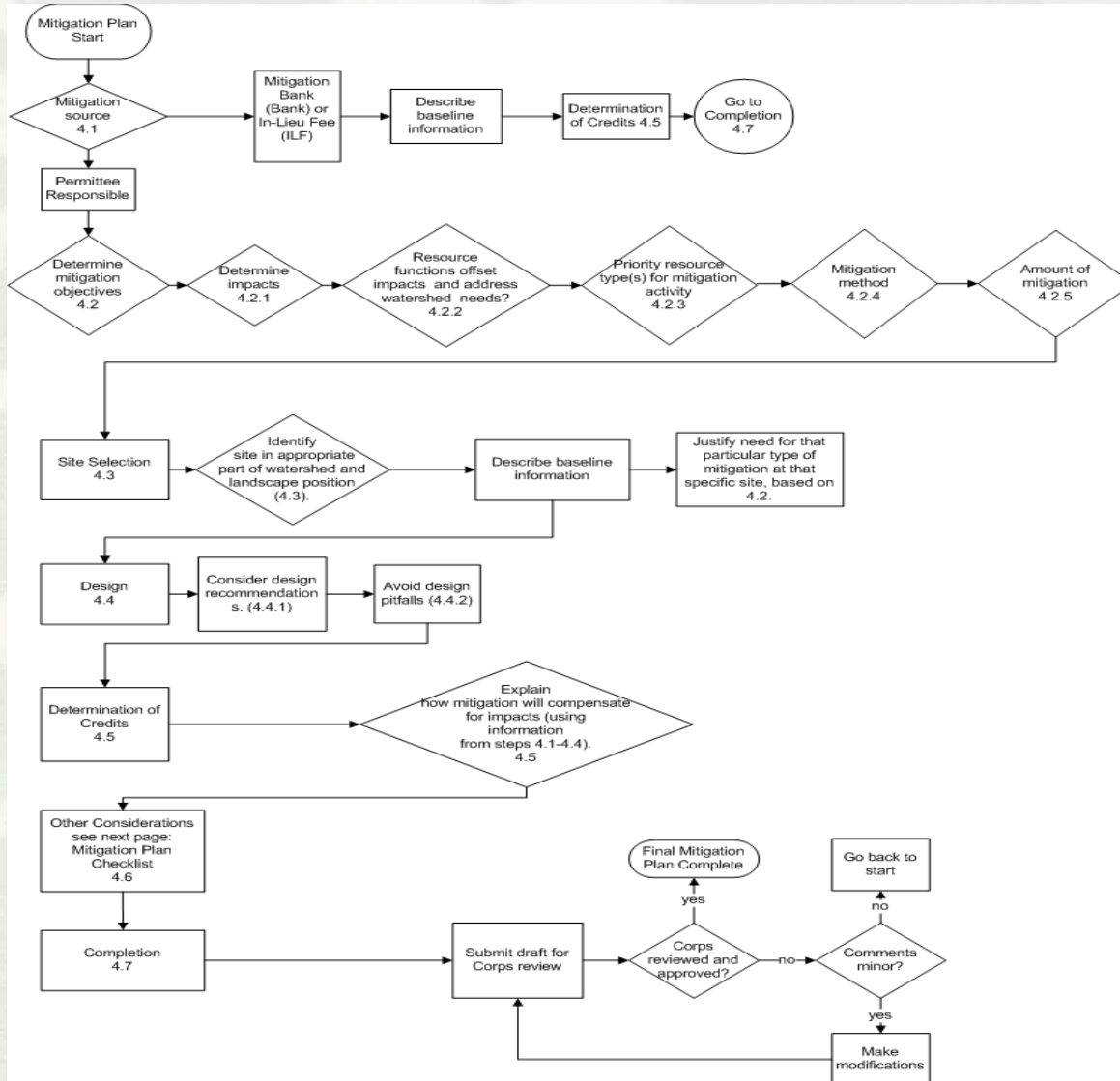


3.8 Functional or Condition Assessment Methods (FCAM)

- In Colorado, FACWET is required for
 - Projects requiring a Standard Individual Permit where impacts to wetlands or riparian habitats would be 0.5 acre or greater;
 - Selection and establishment of prospective mitigation banks and in-lieu fee sites; and
 - Projects possessing unique conditions that warrant use of the FACWet method on a case-by-case basis



4. PLANNING AND DOCUMENTATION



4.4.1 Design recommendations and for compensatory mitigation



4.4.2 Design Pitfalls

- Poor site selection
- Insufficient soil characterization.
- Presence of structures that require long-term maintenance
- Presence of competing/conflicting uses
- Insufficient buffers
- Insufficient connectivity with other aquatic resources
- Unreliable hydrology
- Insufficient analysis of hydrology and soil interaction (see examples in Guidelines).
- Over/under-excavation to soils or lack of top soil
- Planting vegetation species in unsuitable locations without appropriate hydrologic regimes or soil types (texture and chemistry).



4.6 Water and Mineral Rights



4.8 Mitigation plan outline

Mitigation Plan Checklist

Section	Required content	Completed
4.6.1	Title Page	
4.6.2	Contributor Page	
4.6.3	Distribution Page	
4.6.4	Table of Contents	
4.6.5	Brief description of overall project	
4.6.6	Objectives 33 CFR §332.4(c)(2)	
4.6.7	Determination of Credit 33 CFR §332.3(f) and 332.4(c)(6)	
4.6.8	Description of site selection criteria §332.3(d) and 332.74(c)(5)	
4.6.9	Baseline information §332.4(c)(5)	
4.6.10	Mitigation work plan §332.4(c)(7)	
4.6.11	Description of site protection instrument §332.4(c)(4) and 332.7(a))	
4.6.12	Maintenance plan §332.4(c)(8)	
4.6.13	Ecological performance standards §332.4(c)(9) and 332.5	
4.6.14	Monitoring requirements §332.4(c)(4)(10) and 332.6	
4.6.15	Long-term management plan §332.4(c)(11) and 332.7(d)	
4.6.16	Long-term funding (endowments)	
4.6.17	Adaptive management plan §332.4(c)(12) and 332.7(c)	
4.6.18	Financial assurance(s) §332.4(c)(13)	
4.6.19	Other information required by district engineer	

- Provides required content and suggested format for mitigation plans
- Amount and type of information necessary depends on type and complexity of the compensatory mitigation



5. ECOLOGICAL PERFORMANCE STANDARDS

- For more information, see Corps QMS Document 12505: [SPD Uniform Performance Standards for Compensatory Mitigation Requirements](#).

Attachment 12505.2 Worksheet for SPD Uniform Performance Standards for Compensatory Mitigation Requirements

1	Date: DA no.: Project manager:	Mitigation site name: Cowardin/HGM type: Habitat type: Site coordinates: Center/1st endpoint: Lat: Lon: 2nd endpoint (if linear) Lat: Lon:	Reference site name: Site coordinates: Center/1st endpoint: Lat: Lon: 2nd endpoint (if linear) Lat: Lon:
2	Mitigation objective(s) to improve: <input type="checkbox"/> habitat conservation/biodiversity; <input type="checkbox"/> water storage/flow attenuation; <input type="checkbox"/> water quality; <input type="checkbox"/> target population of special status biota; <input type="checkbox"/> specific aquatic resource function(s); <input type="checkbox"/> other:		
3	Mitigation type (select one): <input type="checkbox"/> re-establishment; <input type="checkbox"/> establishment; <input type="checkbox"/> rehabilitation; <input type="checkbox"/> enhancement If enhancement, indicate function(s) to be increased: function 1: _____ function 2 (if applicable): _____ function 3 (if applicable): _____		
4	Primary type(s) of site treatment: <input type="checkbox"/> introduction of plant materials; <input type="checkbox"/> invasive species control; <input type="checkbox"/> hydrological manipulation; <input type="checkbox"/> topographic/substrate manipulation		
5	Aquatic resource type (select one): <input type="checkbox"/> riverine; <input type="checkbox"/> depressional wetland; <input type="checkbox"/> tidal wetland; <input type="checkbox"/> slope wetland; <input type="checkbox"/> other:		
6	Performance standard categories (select all that apply): <input type="checkbox"/> physical; <input type="checkbox"/> hydrologic; <input type="checkbox"/> fauna; <input type="checkbox"/> flora; <input type="checkbox"/> water quality (ecological)		
7	Using selections from 2-6 above, insert applicable performance standards and targets from .12505.1-SPD Table of Uniform Performance Standards for Compensatory Mitigation Requirements into worksheet rows below. Add or remove rows for any category, as needed.		

Number/Categories:

Performance Standards:

Targets ("R" indicates reference):

	Year 1:	Year 2:	Year 3:	Year 4:	Year 5:
Physical-1					
Physical-2					
Physical-3					
Hydrologic -1					



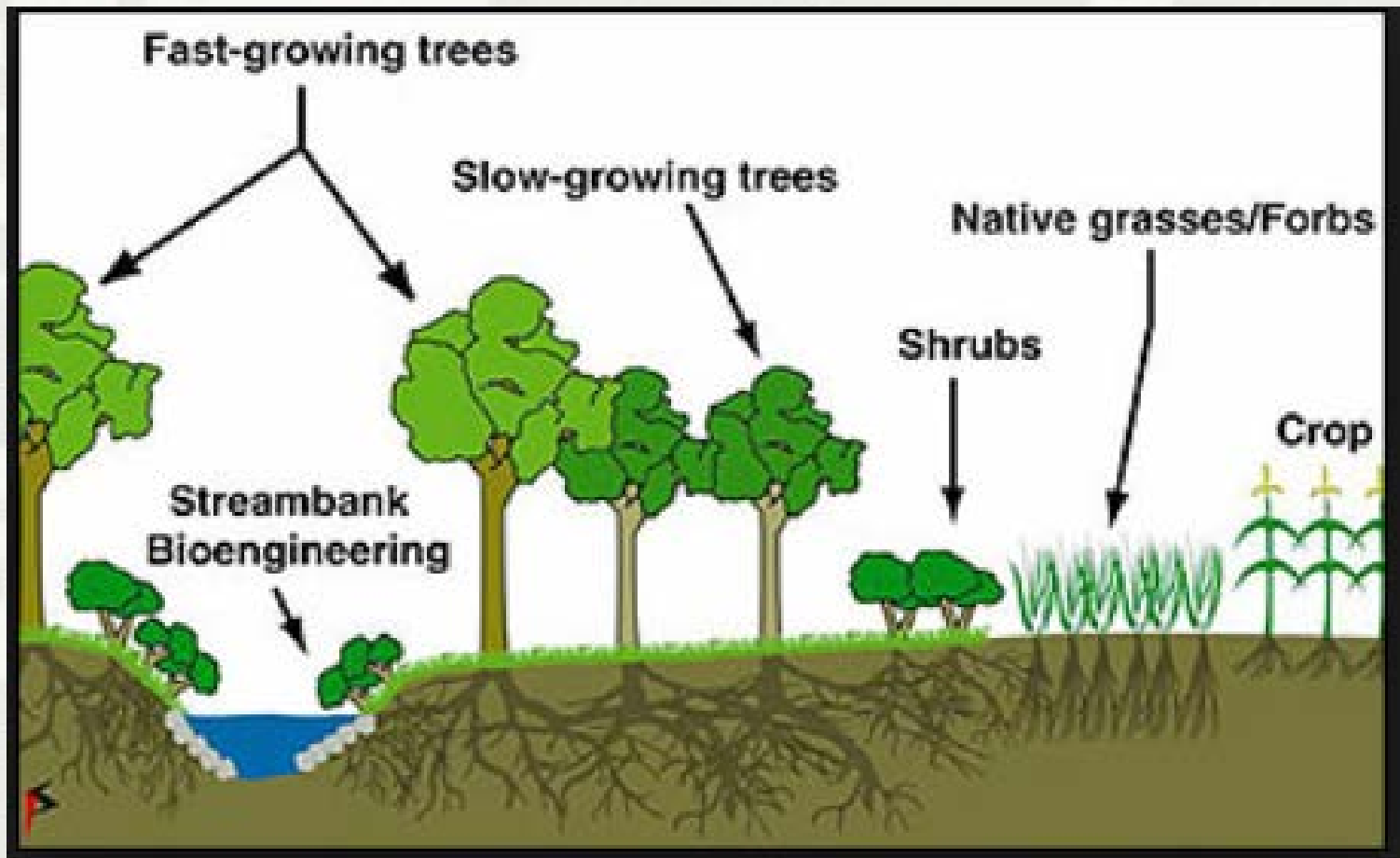
5.3 Setting performance standards using reference sites



6. MONITORING



6.3.1 Longer monitoring periods for aquatic resources with slow development rates



6.4.3 SPD Monitoring Report Form

Section A: General Project Information		
1. Project name: Click here to enter text.	2. DA file number(s): Click here to enter text.	3. Project type: Choose an item.
4. Permittee, bank or in-lieu fee sponsor name and work phone number: Click here to enter text.	5. Permittee, bank or in-lieu fee sponsor mailing address: Click here to enter text.	6. Permittee, bank or in-lieu fee sponsor e-mail address: Click here to enter text.
7. Agent name and work phone number: Click here to enter text.	8. Agent mailing address: Click here to enter text.	9. Agent e-mail address: Click here to enter text.
Section B: Notice of Commencement/Completion of Compensatory Mitigation Project		
1. Commencement: Y <input type="checkbox"/> N <input type="checkbox"/> Click here to enter a date.	2. Completion: Y <input type="checkbox"/> N <input type="checkbox"/> Click here to enter a date.	3. Financial assurance remains in place : Y <input type="checkbox"/> N <input type="checkbox"/>
4. Requesting release of a financial assurance? Y <input type="checkbox"/> N <input type="checkbox"/>	5. Name of contractor (if any): Click here to enter text.	6. Phone number of contractor (if any): Click here to enter text.
<p>Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with this permit, you may be subject to permit suspension, modification, or revocation.</p>		



7. MANAGEMENT



Long Term Protection

- 7.1.1 Conservation easements
 - 7.1.2 Deed restrictions (restrictive or negative covenants)
 - 7.1.3 Transfer of title
 - 7.2 Government property
 - 7.3 Other available mechanisms
- Whatever mechanism is approved it
Must prohibit incompatible uses



Deed Restrictions

- ✓ If deed restrictions are proposed, the proposal must discuss:
 - How any marketable record title issues will be addressed,
 - Suitability of the owner of the mitigation site for ensuring mitigation responsibilities are met,
 - History of the property owner in meeting mitigation responsibilities for other mitigation sites,
 - What mechanisms will ensure that long-term management requirements for the mitigation site are accomplished, and
 - What mechanism will ensure that required funding for the mitigation site will continue to be provided.

- ✓ Where deed restrictions are determined to be appropriate, the permittee or the landowner of the mitigation will be required to report periodically on the status of the deed restriction to ensure restriction remains in the chain of title in perpetuity. Such reports would indicate:
 - Date recorded,
 - Date when the statutory period will expire,
 - Date deed restrictions will be re-recorded, and
 - Other pertinent information.



8. Mitigation Bank and In-Lieu Fee Programs



APPENDICES

- Appendix A: Compensatory Mitigation Methods
- Appendix B: Aquatic Resource Description Tables
- Appendix C: Process of Developing a Mitigation Plan
- Appendix D: Mitigation Monitoring Form
- Appendix E: IRT Review Timeline
- Appendix F: List of Acronyms

