A. Conway.

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	:	
Village of Marshallville	:	**Director's Final Findings**
38 North Main Street	:	**and Orders**
Marshallville, OH 44645	:	
Respondent	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Village of Marshallville ("Respondent"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in the composition of Respondent or the ownership or operation of the Facility described below shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6111. and the rules adopted thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is a rural village of approximately 1,000 residents, located in Baughman and Chippewa Townships, Wayne County, Ohio.

2. Respondent's wastewater treatment facility ("Facility") is a single train system, comprised of a lagoon, the first two thirds consisting of an aeration zone, and the last third housing a clarifier formed by a fabric barrier. Following the lagoon is a rock filter to remove solids and ammonia, a chlorination tank with post aeration, and finally dechlorination. The system is designed as a 120,000 gpd system, with the rock filter designed for 160,000 gpd.

3. The receiving stream, an unnamed tributary of Red Run, has a 0.72 square mile drainage area above the discharge and is designated as a warm water habitat. The unnamed tributary flows to Red Run, Chippewa Creek, the Tuscarawas River, the Muskingum River, and finally to the Ohio River.

4. The unnamed tributary of Red Run, Red Run, Chippewa Creek, the Tuscarawas River, the Muskingum River, and the Ohio River constitute "waters of the state" as defined by ORC § 6111.01.

5. The Facility' discharge comprises a large portion of the unnamed tributary's flow during all but the highest stream flows.

6. Ohio NPDES Permit No. 3PB00032*ED ("NPDES permit") was issued to Respondent on April 15, 1997, with an effective date of June 1, 1997 and an expiration date of May 28, 2002. A renewal application was submitted to Ohio EPA on September 17, 2002.

7. OAC Rule 3745-33-04(C)(1) provides that a NPDES permit holder who wishes to continue to discharge after the expiration date of the Ohio NPDES permit must file for reissuance of the permit at least one hundred eighty days prior to its expiration.

8. OAC Rule 3745-33-04(C)(2) provides that a NPDES permit shall not be renewed unless the Director determines that the permittee is making satisfactory progress toward the achievement of all applicable limitations and has complied with the terms and conditions of the existing permit.

9. Respondent did not make a timely application for a renewal of the NPDES permit and is discharging pollutants to waters of the state in violation of ORC §§ 6111.04 and 6111.07.

10. During the drafting of the NPDES permit, the receiving stream was recognized as having a warm water aquatic life use designation, rather than the previously recognized nuisance prevention use. Further, the drainage area was determined

to be 0.72 square miles, rather than the previously calculated 10.2 square miles. These two factors combined to require a significant reduction of the allowed pollutant levels of the Facility's discharge.

11. The NPDES permit contained a schedule of compliance with interim and final effluent imitations, and required improvements to the Facility to be competed by March 1, 2000.

12. In a letters dated August 3, 2000 and May 1, 2003, Ohio EPA informed Respondent of permit violations. During the period from January 1, 1998 to September 30, 2003, there were permit violations in 51 months, with 344 total violations. The most prominent violations were for total suspended solids, ammonia, and fecal coliform. Violations of pH, CBOD5, chlorine residual and dissolved oxygen also occurred.

13. Respondent prepared a general plan to address the NPDES permit violations and required Facility improvements, but said plan only proposed changes with no immediate action to resolve the issue of achieving current tertiary limits.

14. Respondent has not complied with the schedule of compliance for Facility improvements.

15. In late 2004, to address the Facility's compliance issues, Respondent proposed to eliminate the Facility and pump its wastewater by sanitary lift station to the City of Orville. In February, 2005, this proposal was rejected by the Wayne County Board of Commissioners.

16. In a letter dated May 3, 2005, Respondent stated that it had authorized its Engineer to prepare an updated General Plan, developed around a new wastewater treatment plant.

17. The violations of the NPDES permit constitute violations of ORC §§ 6111.04 and 6111.07, with each day of violation a separate violation.

18. Compliance with ORC Chapter 6111. is not contingent upon the availability or receipt of financial assistance.

19. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to

result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purpose of ORC Chapter 6111.

V. ORDERS

1. Respondent shall achieve and maintain compliance with the final effluent limitations of the NPDES permit as expeditiously as practicable, but not later than the dates established in the following schedule:

   a. Within one (1) month of the effective date of these Orders, Respondent shall submit a general plan for plant and sewer system improvements;

   b. Within ten (10) months of the effective date of these Orders, Respondent shall submit detailed plans for plant and sewer system improvements;

   c. Within seventeen (17) months of the effective date of these Orders, Respondent shall advertise for construction bids, receive bids and award contracts;

   d. Within eighteen (18) months of the effective date of these Orders, Respondent shall commence construction;

   e. Notify the Northeast District Office within seven (7) days of initiation of construction;

   f. Within thirty (30) months of the effective date of these Orders, Respondent shall complete construction;

   g. Notify the Northeast District Office within seven (7) days of completion of construction;

   h. Within thirty-two (32) months of the effective date of these Orders, Respondent shall attain operational level of the treatment works and meet final effluent limitations;

   I. Notify the Northeast District Office within seven (7) days of attaining operational level; and

   j. Within three (3) months of the effective date of these Orders and every three (3) months thereafter until operational level is attained, Respondent shall submit to the Northeast District Office written status reports.

2. Respondent shall pay to Ohio EPA the amount one hundred five thousand dollars ($105,000.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111.

3. Within thirty (30) days of the effective date of these Orders, Respondent shall pay to Ohio EPA five thousand dollars ($5,000.00) of the penalty established in Order No. 2. Payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" to the following address: Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent.

   A photocopy of the check shall be sent to the Ohio EPA, Northeast District Office, in accordance with Section X of these Orders.

4. In lieu of paying the remaining one hundred thousand dollars ($100.000.00) of the civil penalty, Respondent shall, within two (2) years of the effective date of these Orders, pursuant to the schedule set forth below, develop a Construction Wetland Plan ("Plan") to be approved by Ohio EPA, Northeast District Office, and thereupon create pursuant to said Plan, as a supplemental environmental project, a wetland of approximately 2 acres, to be located on the site of the current wastewater treatment lagoon. The cost of said wetland shall be at least one hundred thousand dollars ($100,000.00).

   a. Within ninety (90) days of the effective date of these Orders, Respondent shall submit to Ohio EPA, Northeast District Office, a Plan that shall contain the relevant information as set forth in the United States Army Corps of Engineers Checklist, attached hereto as Attachment 1 and incorporated by reference herewith as if fully rewritten herein. The Plan shall also contain such information as may be required by Ohio EPA;

   b. Respondent shall respond, in writing, to any questions or comments Ohio EPA, Northeast District Office, may have regarding the Plan within 30 (thirty) days of the date of the date on the correspondence from Ohio EPA;

   c. Respondent shall construction the wetland in accordance with the approved Plan;

   d. Within two (2) years of the effective date of these Orders, Respondent shall complete construction of the wetland in accordance with the approved Plan; and

   e. Within seven (7) days of the completion of the wetland construction, Respondent shall notify Ohio EPA, Northeast District Office, in writing.

5. Should Respondent fail to complete, within the required time periods, the supplemental environmental project set forth in Order No. 4, above, Respondent shall pay to Ohio EPA one hundred thousand dollars ($100,000.00) of the civil penalty in accordance with the procedures in Order No. 3.

6. Respondent has expressed concern that completion of the treatment works pursuant to the schedule contained herein may be delayed as a result of funding contingencies or that the wetland supplemental environmental project may be less than two acres. Upon request by Respondent, the Director may, at his sole discretion, extend in writing any time periods established by these Orders for a period not to exceed twenty-four (24) months and may reduce the acreage amount of the wetland supplemental environmental project to accommodate aesthetics and the penalty amount.

7. Unless otherwise provided herein, Respondent shall submit all documents required under these Orders to Ohio EPA, Northeast District Office, in accordance with Section X.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and Ohio EPA's Division of Surface Water acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is a corporate officer who is in charge of a principle business function of Respondent.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to the operation of the Facility.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

Unless otherwise specified, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office
Division of Surface Water
2110 E. Aurora Road
Twinsburg, OH 44087
Attn: DSW Enforcement Coordinator

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency

Joseph P. Koncelik
Director

3/20/06
Date

IT IS SO AGREED:
Village of Marshallville

By

3/6/06
Date

ROBERT BROOKER
Print Name

MAYOR
Title

Approved by motion 3/6/06

US Army Corps of Engineers
Buffalo District

Checklist

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ATTACHMENT 1

Corps of Engineers Checklist for Preparing Compensatory Mitigation Plans [1] for the Buffalo District

This checklist serves as a technical guide for permit applicants preparing compensatory mitigation plans to offset the impacts to aquatic resources authorized under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. The checklist provides a framework that will improve the consistency of mitigation plans, and ensure the quality of the resource to be established. This checklist is consistent with the National Research Council's Guidelines for Self-Sustaining Mitigation.

Each applicant should provide a document that contains all relevant information and comprises a complete mitigation project. This will assure that the proposal can be appropriately reviewed with regard to the proposed aquatic resource impacts, thereby, increasing the probability for the establishment of a functioning replacement wetland or stream in perpetuity. The Corps of Engineers regulatory project manager may request additional information to aid in this review. Applicants may supply any additional information that supports the evaluation of the mitigation proposal. The following information was developed to provide guidance with respect to the submittal of compensatory mitigation plans which can be evaluated efficiently in association with a Department of the Army permit application; however, the information required may vary from project to project. Large scale drawings should be provided in triplicate. All of the following information, if applicable, must be provided on 8.5" x 11" paper:

I. Overall Mitigation Goals and Objectives

The goals of mitigation must be clearly stated in the mitigation plan. The basic purpose of compensatory mitigation is the functional replacement of wetland or stream functions and values that are lost through construction of a permitted activity. Typically the objective is to provide a minimum of 1:1 functional replacement, i.e. no net loss of functions, with an adequate margin of safety to reflect anticipated success. Individual state requirements may differ. In some cases, a larger mitigation ratio may be needed to adequately replace the functions of those aquatic resources impacted by development. Goals of a mitigation site must be specific, measurable, and attainable within a specified timeframe.

A. Describe the overall objectives in terms of the water regime, vegetation structure, and habitat features to be restored, created, or enhanced.

B. Describe the overall functions lost at the impact site and overall functions to be gained at the proposed mitigation site.

C. Describe the aquatic resource type and functions for which the mitigation project is intended to compensate.

II. Baseline Information of Proposed Impact Site and Proposed Mitigation Site

A. Location

1. Include a road map, USGS map, NWI map, NRCS County soil map, FEMA map, zoning or planning map and aerial photography/satellite imagery depicting the geographic relationship between the proposed impact site(s) and the proposed mitigation site(s).
2. Provide identification coordinates of proposed impact and mitigation site(s) in latitude/ longitude (decimal format), township, county and Hydrologic Unit Code (HUC).

B. Impact Site

1. Describe and quantify the aquatic resource type (i.e. acreage of wetlands/ponds, length of stream) proposed to be impacted. This should be detailed and should provide such information as whether a wetland is emergent, scrub-shrub, forested or a combination of two or more of these classes. Stream classifications should be provided based on Cowardin or Rosgen techniques or other forms of stream classifications. Include temporary and permanent impacts to the aquatic environment.

2. Describe both site specific and landscape level wetland or stream functions and values at each impact site using parameters in an approved functional assessment method for the region. These described functions will dictate the minimum functions that must be replaced at the proposed mitigation site.

3. For all waters proposed to be impacted, provide a detailed discussion of the existing surrounding upland buffers. This description should document the width of buffers, as well as the quality and denseness of buffers (i.e. the percent cover of each vegetative stratum).

C. Overall Watershed Improvements

1. Describe aquatic resource concerns in the watershed (e.g. flooding, water quality, habitat) and how the impact site contributes to overall watershed/regional functions. When available, identify watershed or other regional plans that describe aquatic resource objectives.

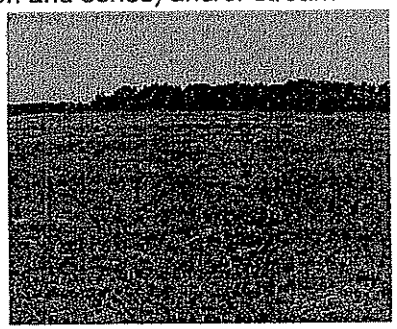
2. Describe the contribution to overall watershed/regional functions that the mitigation site(s) is intended to provide.

D. Proposed Mitigation Site

1. Provide name, location and detailed drawing of the proposed mitigation site.
2. Provide names, addresses, and telephone numbers for all responsible parties including but not limited to: landowner (s), developer(s), consultant(s), and engineer(s).

E. Physical Attributes of Mitigation Site

1. Describe overall project including size, type, functions and amount of impact to aquatic and other resources. Provide a delineation of all aquatic resources present. Provide length of project reach.
2. Describe both site specific and landscape level wetland or stream functions and values to be enhanced or restored using parameters in an approved functional assessment method for the region. Assess the stream condition (aggrading, degrading, migrating excessively, excessive erosion, excess sediment in system, etc).
3. Describe existing soils through a soil profile description (e.g., soil survey classification and series) and/or stream substrate (locate soil samples on site map). Include results of standard soils analyses, including percent organic matter, structure, texture, and permeability.
4. Include photographs of aquatic resources in their current state, including upstream and downstream areas for streams.
5. Provide bed material type, sinuosity, valley slope, stream slope, thalweg details, pool-to-pool spacing, width to depth ratios, and other technical measurements or ranges, including watershed size and discharge of stream, if applicable.
6. Describe historic and current land use of proposed mitigation site and adjacent areas (i.e. prior converted cropland).
7. Describe watershed context/surrounding land use in terms of impairment status or type, general watershed land uses, landscape connectivity, and relative amount of aquatic resource area the site represents for the watershed and/or region.
8. Provide a plan view and section view drawings of existing conditions, and longitudinal profile.



III. Mitigation Site Selection & Justification

A. Existing Conditions

1. Describe location, including rationale for choice of mitigation site.
2. Indicate present property owner and availability of property.
3. Indicate distance from project site, if mitigation is offsite. Indicate if mitigation is in or out of the same watershed as impact site. If the proposed mitigation is off-site and/or out-of-kind, explain why on-site or in-kind options are not practicable or environmentally preferable.
4. Indicate history of previous land use and adjacent areas including development, field tiling, channelization, stream relocation, ditching, etc. Discuss non-native landscape plantings, pipelines, power lines, roads, distance and location to nearest structures, if any.
5. Provide any letters received from federal or state resource agencies in reference to the proposed site (i.e. U.S. Fish and Wildlife Service, DNR, SHPO, etc.).

B. Future Sustainability

1. Discuss future use of mitigation site and compatibility after project is complete.
2. Indicate any existing conservation easements, deed restrictions, encroachments, or rights-of-way. Demonstrate how any restrictions would be addressed.
3. Explain how the design is sustainable and self-maintaining.
4. Provide evidence that an adequate and reliable source of water exists. Can be described by means of a water budget or overall written description.
5. Indicate what entity, if any, controls the water flow and the water control structures to and/or from the site. Arrangements must be made by the applicant that guarantees appropriate water flow in the mitigation area during and after the establishment of the mitigation project. The agreement must be in writing and submitted to the Corps for review.

IV. Mitigation Work Plan

A. Site Preparation

1. Indicate parties responsible for construction.

2. Provide base topographic maps including project name, general location, application number, scale, elevations, north arrow, designer name, date of design, and existing features.

3. Provide representative cross-sections of mitigation site including elevations and scale.

4. Provide site preparation plan including permanent or temporary work areas, waste and structure removal, utility relocation, etc.

5. Describe Storm Water Pollution Prevention Plan, grading plan, and timing of construction to minimize impacts (i.e. seasonal). Work in waters must be conducted during low flow, when practicable, to minimize the release of sediments.

6. Indicate type of equipment, construction techniques and protective barriers to be utilized. High visibility construction fencing should be placed along permit area perimeter and around existing resources to be protected during construction.

7. Include a description of techniques used to eradicate existing invasive vegetation. Describe method for disposal of excavated soil from mitigation site.

8. List other required permits for mitigation construction.

9. Provide plans to control site hydrology (i.e. cofferdam, dewatering, pumping, temporary drainage construction) during construction.

B. Timing

1. Describe timing of mitigation: before, concurrent or after authorized impacts. If mitigation is not in advance or concurrent with impacts, explain why it is not practicable and describe other measures to compensate for temporal losses.

2. Provide a description of the mitigation construction sequence indicating anticipated start date, duration and completion of construction. Relate construction sequence to placement of fill in aquatic resources.

C. Wetland Design Specifications and Characteristics

1. Provide plan view drawing including: topography, microtopography, basin depths, normal water elevation, area of cut and fill, berm construction, water control structures (if any), spillways, location of habitat structures, water quality improvement features and other features where applicable.

2. Provide typical cross sections including basin slopes, normal water depth, high water depth, typical features, etc.

3. Describe micro features and heterogeneous topography.

4. Indicate each inundation area and provide the depth and slope.

5. Identify vegetation zones and species placement corresponding with inundation area (i.e. seasonally saturated, permanently inundated, etc.)

6. Identify location of monitoring stations and photo location direction.

7. Identify watershed size and water budget, if necessary.

8. Identify any planned upland or wetland habitat features including large woody debris, rock mounds, etc.

D. Stream Design Specifications and Characteristics

1. Provide plan view drawing indicating normal water elevation, ordinary high water elevation, topographic features, thalweg, sinuosity measurements, habitat enhancement features, etc.

2. Provide (grade) profile drawing including gradient, grade controls, grade elevations, grade limitations, etc.

3. Provide cross sectional (dimension) drawings including bankfull width and depth, floodplain width, flood-prone width, entrenchment ratio, etc.

4. Describe design and habitat features including: riffles, root-wads, root-mats, deflectors, etc. Indicate total cut and fill needed to reconfigure or create new channel. Indicate total rock fill to be used for habitat/stabilization structures.

5. Indicate flow rate, hydrologic flow regime, storm event flow characteristics, wetted perimeter, and other applicable engineering information.

6. Include biogeochemical information.

7. Provide stabilization features and soil and bank erosion rates, if applicable.

8. Indicate expected or existing canopy cover.

E. Vegetation Plan

1. Describe vegetation plan methods and any bioengineering techniques used.

2. Describe any expected volunteer native vegetation included in mitigation planning.

3. Provide a list of species to be seeded and planted, identified by scientific name, common name and indicator status. Use the current Regional USFWS *National List of Plant Species That Occur in Wetlands.* Vegetation may not consist of exotic or hybrid nursery species.

4. Provide transplanting plan including storage method, duration and handling.

5. Provide a detailed description of proposed species location within each varying habitat zone (i.e. short-term saturation, long-term saturation, draw-down zone and permanently flooded zone.) The proposed species establishment should coincide closely with the proposed hydrologic conditions in each zone of the wetland area.

6. Provide an invasive species control and/or management plan that describes the strategy to recognize and respond to the invasion of exotic vegetation. Contact Corps regulatory project manager and refer to Appendix H for a listing of exotic or nuisance species.

F. Soils

1. Describe soil profile, soil type, name, stability, organic matter content, nutrients, redox potential, particle size, depth to impervious layer, etc.

2. List source of soils, erosion control, topsoil segregation and soil compaction measures.

3. Identify color and chart used (Munsell or Earth Colors) and year published.

G. Hydrology

1. Describe any manipulation of hydrology required for construction of the site.

2. Identify source of water (precipitation, overbank flooding, groundwater and connection(s) to existing tributary system.

3. Describe the frequency and duration of inundation and saturation (hydrologic regime). Designs that manipulate natural wetland and stream processes with engineered structures requiring frequent maintenance should be avoided.

4. Indicate anticipated hydrologic changes, hydroperiod, and existing monitoring data.

H. Buffers

1. Include the proposed buffer areas to protect stream and/or wetland.

2. Specify plant species to be included in the buffer area (vegetation plan).

3. Identify area of proposed buffer including length, width and other special features.

V. Performance Standards

A. Identify clear, precise, quantifiable parameters that can be used to evaluate the status of desired functions. These parameters shall include but are not limited to hydrological, vegetative, fauna and soil measures. (i.e. wetland acreage, plant richness, percent vegetation cover, water inundation/saturation levels).

B. Describe how performance measures will be used to verify the objectives identified have been obtained.

C. Set target values or ranges for the parameters identified and deadline for establishment.

D. Provide a summary of goals.

VI. Site Protection and Maintenance

A. Responsible Parties

List parties responsible and their role (i.e. site owner, easement owner, maintenance implementation). If more than one party, identify primary party.

B. Legal Protection

Provide evidence of long-term legal protection instruments (i.e. conservation easement, fee simple donation, mortgage subordination waiver, management contract with federal, state, or local conservation organization).

C. Maintenance Plan and Schedule

1. Describe planned maintenance activities including plant replacement, non-native plant control, measures to control predation/grazing of mitigation plantings, and temporary irrigation for plant establishment.

2. Describe plans for water structure inspection, fertilization, erosion control, herbivore protection, trash removal, and/or any other maintenance activities.

3. Include protective measures such as signs, legal instruments, land use management plans, fences, and access control.

4. Provide schedule for planned inspections and maintenance activities.

VII. Monitoring Plan

A. Monitoring Report Content

1. Provide a monitoring schedule.

2. List parties responsible for monitoring. If more than one, identify primary party.

3. Provide as-built plan including elevations in mitigation areas, water level elevations, and acreage of wetland/open water. Explain any deviations from the approved mitigation plan.

4. Provide maps identifying monitoring stations, transects, planting zones, etc., as appropriate.

5. Include analysis of all quantitative monitoring data (success, failure, and remedial action).

6. Include photos taken during each monitoring period. Photos shall be taken from the same vantage point and in the same direction every year, and shall reflect material discussed in the monitoring reports. When percent cover or other parameters are referenced, photographs should be taken of the sampling quadrants or transects.

7. Indicate results of any qualitative monitoring of site characteristics, functions, and values.

8. Report on performance standards success or failure.

9. Suggest remedial activities for characteristics functions or values that do not meet the success criteria (Adaptive Management Plan).

B. Timing: As-built plans shall normally be submitted within 60 days following completion of construction. The first monitoring report shall generally be due one year after completion of mitigation construction. The site will normally be monitored for a minimum of five years and monitoring reports must be submitted yearly to the Corps. Failure to submit monitoring reports constitutes permit non-compliance.

C. Notification of Completion: Where appropriate, a current delineation of the mitigated wetland area or stream should be submitted with the final report. Following receipt of the final report, the Corps may require a site visit to verify the delineation and confirm completion of the mitigation effort.

VIII. Adaptive Management Plan

A. Identify responsible parties.

B. Identify remedial measures.

C. Initiate procedures for contingency measures.

D. Identify location for contingency mitigation.

IX. Financial Assurances

A. Financial assurances may be in the form of performance bonds, irrevocable trusts, escrow accounts, casualty insurance, letters of credit, or other approved instruments.

B. Financial assurances should be commensurate with the level of impact and the level of compensatory mitigation required. Financial assurances should be sufficient to cover contingency actions such as a default by the responsible party or a failure to meet performance standards.

Comments or Questions?

Public Affairs, CELRB-PA,
716-879-4209
1776 Niagara Street,
Buffalo, New York 14207