



## PUBLIC NOTICE

### **Regional Permit 38 Fill Material Placed in Waters of the United States for Linear Transportation Crossings in the State of Illinois**

**U.S. ARMY CORPS OF ENGINEERS  
CHICAGO DISTRICT**

**PUBLIC NOTICE/APPLICATION NUMBER: LRC-2023-0098 (CEMVR-RD-2021-1227)**

**COMMENT PERIOD BEGINS:** February 10, 2023

**COMMENT PERIOD EXPIRES:** March 10, 2023

**ADOPTING OFFICE:** U.S. Army Corps of Engineers, Chicago District  
231 South LaSalle Street, Suite 1500, Illinois 60604

You are authorized to perform work in accordance with the terms and conditions specified below.

**NOTE:** The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office, acting under the authority of the Commanding Officer.

#### **1. Authorized Work.**

**Proposed Limits.** (a) Activities required for the construction, expansion, modification, or improvement of linear transportation projects that result in impacts of up to 1 acre of waters of the United States. (b) Temporary fills for construction are authorized. (c) Linear transportation projects covered by this Regional General Permit must not result in permanent impacts to aquatic resources that exceed 500 linear feet as measured along the impacted stream corridor or 1 acre total of waters of the United States.

**2. Project Location.** All waters of the United States in Illinois within the regulatory boundaries of the Rock Island District, St. Louis District, Chicago District, Louisville District, and Memphis District.

### **3. Permit Conditions:**

#### **A. General Conditions:**

1. The permittee must notify the District Engineer (DE) in their respective Corps Regulatory District for authorization of this Regional General Permit (RGP). The notification must include detailed drawings and sufficient information to determine if the proposed work conforms to the criteria and conditions of the RP, as well as a mitigation plan (see Section D), if unavoidable stream or wetland impacts will occur as a part of the project. Department of the Army (DA) permit application (ENG Form 4345) should be used for this purpose.
2. The time limit for completing the work authorized ends 5 years from the date the permit is re-issued. If you commence or are under contract to commence this activity before the date the regional permit expires, you will have twelve months from that date to complete your activity under the present terms and conditions of this regional permit. The time limit for submittals ends 60 days prior to the expiration of the RP, unless the RP is modified, reissued or revoked. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before that date is reached.
3. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party. If you sell the property associated by this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization. Should you wish to cease to maintain the authorized activity, or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
4. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

7. The permittee understands and agrees that, if future operations by the United States requires the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army of his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

8. All work authorized under this regional permit will be in association with bridge, culvert, and roadway construction across waters of the United States.

9. The Corps of Engineers will determine on a case by case basis if a particular project proposal will fall under the conditions of this regional permit.

## **B. Special Conditions:**

1. This regional permit is limited to excavation activities and fill material placed in wetlands or below the ordinary high water mark of other waters for bridge and/or culvert construction or replacement associated with bridge and/or culvert removal, or culvert extension. Linear transportation projects covered by this Regional General Permit must not result in permanent impacts to aquatic resources that exceed 500 linear feet as measured along the impacted stream corridor or 1 acre total of waters of the United States. New bridge, culvert, or roadway alignments must be based upon sound conservation and safety bases.

2. Minor stream shaping and channel realignment is authorized where necessary to provide adequate flow conveyance and proper alignment of the channel through the bridge or culvert. Linear transportation projects covered by this Regional General Permit must not result in permanent impacts to aquatic resources that exceed 500 linear feet as measured along the impacted stream corridor or 1 acre total of waters of the United States.

3. Riprap shall be clean native fieldstone, clean quarry run rock, or appropriately graded clean broken concrete with all reinforcing rods and I or wire cut flush with the surface of the concrete. It shall be the permittee's responsibility to maintain the riprap such that any reinforcement material that becomes exposed in the future is removed, the concrete pieces shall be appropriately graded, and no piece shall be larger than 3 feet across the longest flat surface. The width for placing a riprap toe in the streambed will vary depending on the size of the riprap used (see attached drawing). Asphalt, broken concrete containing asphalt, petroleum-based material, and items such as car bodies are specifically excluded from this authorization.

4. Measures must be taken for heavy equipment usage in wetland areas to minimize soil disturbance and compaction. All exposed soils and other fills as well as any work below the ordinary high water mark must be permanently stabilized at the earliest practicable date using permanent native vegetation, bioengineering methods, or armoring.
5. Any spoil material excavated, dredged, or otherwise produced, must not be returned to the waterway or wetlands but must be deposited in a self-contained area in compliance with all state statutes. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
6. This permit does not authorize construction in environmentally sensitive areas, such as mussel beds, fish spawning areas, waterfowl nesting areas, fens, bogs, seeps, or sedge meadows.
7. Any excavation or placement of temporary or permanent fill must be performed in a way that would not result in the physical destruction of important fish spawning areas, including smothering of downstream spawning areas via turbidity.
8. Temporary and permanent structures must be installed to maintain low flow conditions and to pass normal and expected high flows.
9. Petroleum products, other chemicals, and other unsuitable materials (e.g. trash, debris, asphalt, etc.) will be prevented from entering water bodies, streams, and wetlands.
10. Appropriate soil erosion and sediment control measures must be used and maintained during project construction. Erosion control and sediment control features (i.e. silt fences, silt ditches, silt dikes, silt basins etc.) must be installed to provide continuous control throughout the construction and post construction period as well as the re-vegetation of all disturbed areas upon project completion.

### **C. Temporary Impacts/Restoration Requirements:**

1. Material used as temporary fill for access, cofferdams, or other temporary structures required for the construction of highway crossings shall be included in the project plans or specifications and shall be clean, appropriately sized material and shall be free of loam, sod, and other deleterious materials.
2. All temporary structures and fill will be removed completely no later than 30 days after they are no longer needed for construction activities. Temporary fill materials, cleared vegetative materials, construction debris, including old bridge materials, and other fill not necessary for meeting the project purpose must be disposed of at an upland area or licensed landfill as appropriate.

3. Temporary work pads, cofferdams, access roads and other temporary fills shall be constructed of clean coarse aggregate or non-erodible non-earthen fill material that will not cause siltation. Sandbags, pre-fabricated rigid materials, sheet piling, inflatable bladders and fabric lined basins may be used for temporary facilities. Temporary work/fills shall be constructed in a manner to maintain flow in these waters by utilizing dam and pumping, fluming, culverts, or other such techniques.
4. All areas affected temporarily must be returned to pre-construction contours and must be re-vegetated with native vegetation if not armored.
5. Side slopes of a newly constructed channel will be no steeper than 2:1 and planted with permanent, perennial, native vegetation if not armored.
6. If jurisdictional wetlands and/or streams will be excavated within the permit area, the permittee will side-cast and stockpile the topsoil (top 10-12 inches), if practicable and/or if site conditions allow, that is being removed during the initial construction, to re-establish the topsoil once construction is complete. The soil must be returned to its original contours and a reestablished topsoil shall be present prior to the re-planting of vegetation. This ensures that the organic/hydric soils that were present prior to construction are returned to their natural condition and can provide for a fertile habitat to re-plant vegetation and increase the survival rate of any new habitat.
7. The applicant shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2010).

#### **D. Mitigation:**

1. Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal. If the cumulative permanent loss of wetland exceeds 0.10 acres or for stream losses that exceed 3/100 acres, compensatory mitigation is required and must follow the regulations published in the Federal Register dated April 10, 2008 under 33 CFR Parts 332 and 40 CFR Part 230 – Subpart J entitled “Compensatory Mitigation for Losses of Aquatic Resources,” and any such Corps regulation/guidance that would supplement these mitigation requirements. Proposed projects resulting in wetland or stream loss will be required to provide adequate mitigation to replace lost aquatic functions and values.
2. The amount of mitigation required will be determined during review for authorization under this permit as per the mitigation rule requirements. Mitigation must be adequate to offset unavoidable impacts or losses to regulated waters of the United States (WOUS). For all permanent stream losses greater than 3/100 acre, completion of the applicable Illinois Stream Mitigation Method will determine adequate compensatory stream mitigation. The Corps has the final approval in determining the appropriate and

practicable mitigation necessary. The discharge of fill material into WOUS prior to Corps approval of the mitigation plan is prohibited.

3. For stream losses of 3/100 acres and wetland losses of 1/10-acres or less, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment.

4. Existing approved stream or wetland banks or in-lieu fee programs should be utilized (where appropriate) to purchase credits to compensate for wetland or stream impacts. Prior to commencing land disturbing activities, the applicant shall submit documentation of the purchase/allocation of mitigation credits from the appropriate wetland bank. Specific mitigation conditions to ensure mitigation success will be included on a case-by-case basis in the authorization letter accompanying this permit.

5. If prospective permittees are not able to utilize stream or wetland banks, permittee responsible mitigation will be required. The permittee shall provide a wetland and/or stream mitigation plan with their Department of the Army application. For permittee responsible mitigation conditions, please refer to Appendix A of this regional permit

6. Compensatory mitigation may be required for any stream or wetland impacts, however, for projects impacting jurisdictional wetlands or other special aquatic sites, the permittee will provide a mitigation plan for approval which follows the regulations published in the Federal Register dated April 10, 2008 under 33 CFR Parts 325 and 332 and 40 CFR Part 230 entitled "Compensatory Mitigation for Losses of Aquatic Resources; Final Rule". Permittees must take all practicable measures to avoid and minimize impacts to waters of the United States by both temporary and permanent fills. Once such measures are taken, linear transportation projects covered by this Regional General Permit must not result in permanent impacts to aquatic resources that exceed 500 linear feet as measured along the impacted stream corridor or 1 acre total of waters of the United States, through the discharge of dredged or fill material in conjunction with each road crossing project. Compensatory wetland mitigation is required if the loss of wetland exceeds 0.10 acre. Mitigation must be adequate to offset unavoidable impacts or losses to regulated waters of the United States. The district engineer will consider the project factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal. The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., onsite).

#### **E. Historic Properties/Archaeological:**

1. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). In cases where the DE determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places (National Register), the activity is

not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) are met.

2. Federal permittees should follow their own procedures for complying with the requirements of Section 106 of NHPA, permittee's must provide the DE with the appropriate documentation to demonstrate compliance with those requirements.

3. Non-federal permittee's must submit information to the DE if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register, including previously unidentified properties. For such activities, the information must state which historic properties may be affected by the proposed work and include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO), as appropriate, and the National Register (see 33 CFR 330.4(g)). The DE shall make a reasonable and good faith effort to ensure that appropriate identification efforts are carried out, which may include background research, consultation, history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the DE shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects, and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the DE either that the activity has no potential to cause effects, or that consultation under Section 106 of the NHPA has been completed.

4. The DE will notify the prospective permittee within 45 days of receipt of a complete application whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA Section 106 consultation is required, the non-Federal applicant cannot begin work until Section 106 consultation is completed.

5. Permittee's should be aware that section 110k of the NHPA (16 U.S.C. 16 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the

undertaking occurs on or affects historic properties on tribal lands, or ancestral homelands, or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

6. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the Nation Register of Historic Places.

## **F. Endangered Species:**

1. No activity is authorized under this regional permit which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under Section 7 of the Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under this regional permit which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed to address the effects of the proposed activity on a listed species or critical habitat.

2. Federal permittees and their designated state agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the Corps with the appropriate documentation to demonstrate compliance with those requirements. The Corps will review the documentation and determine whether it is sufficient to address ESA compliance for the activity, or whether additional ESA consultation is necessary.

3. Non-federal permittees must provide the Corps with the appropriate documentation to demonstrate compliance with the ESA. If the authorized activity may have the potential to effect any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in designated critical habitat, permittee shall not begin work on the activity until notified by the DE that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The DE will determine whether the proposed activity “may affect” or will have “no effect” on listed species and designated critical habitat.



4. Authorization of an activity by this regional general permit does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. Fish and Wildlife Service (USFWS), both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the USFWS webpage.

### **G. Water Quality Certification:**

Water quality certification. The conditions listed in the attached letter from the Illinois Environmental Protection Agency, Log No: C-0234-21, are considered to be part of this Regional Permit. Find it here: [MVR-2021-1227 RP 38 \(army.mil\)](https://www.army.mil/eis/research/Document.do?docID=1227&docType=PERMIT)

### **Further Information:**

**1. Congressional Authorities:** You have been authorized to undertake the activity described above pursuant to:

- (X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
- (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
- ( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

### **2. Limits of this authorization.**

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

**3. Limits of Federal Liability.** In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

**4. Reliance on Applicant's Data.** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

**5. Reevaluation of Permit Decision.** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.
- d. Such a reevaluation may result in a determination that is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

**6. Extensions.** General condition 2 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

**This Permit became effective 03/15/2022** when signed by the federal official acting for the District Engineer of the Lead Illinois District: Rock Island. You can find the signed the document at the following link: [MVR-2021-1227 RP 38 \(army.mil\)](https://www.army.mil/pressroom/2021/12/27/mvr-2021-1227-rp-38)

## Appendix A

### Permittee Responsible Mitigation Conditions

When permittee responsible mitigation is deemed appropriate to compensate for stream/wetland impacts, the following conditions will apply:

#### **A.) Permittee Responsible Mitigation General Conditions:**

1. Mitigation shall be constructed prior to or concurrent with the construction of the main project.
2. The technical specifications listed in the permittee's mitigation document will be used as a compliance document for construction, monitoring, site protection, etc., of the mitigation plan. However, the information contained in this document is superseded by any additional permit conditions or written specifications provided by the Corps of Engineers.
3. If excavation and construction are completed outside an optimal seeding period, temporary erosion control protection shall be implemented immediately upon completion of excavation and construction and shall be maintained until such time as riparian or wetland plantings can be completed during an optimal period. Permanent plantings shall then be completed during the next optimal seeding period.
4. The boundaries of mitigation sites shall be identified clearly by the placement of permanent markers.
5. If tiling is present in a wetland mitigation site, the tile must not detract from the function of the wetland.
6. Mitigation sites shall be fenced with a permanent fence if any domestic livestock are to be allowed to graze adjacent areas.
7. Your responsibility to complete the required mitigation as set forth in the project details will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the Corps of Engineers.
8. The mitigation site shall be protected from future activities that may interfere with or be detrimental to stream or wetland functions and values.
9. An as-built mitigation plan must be submitted to the Corps of Engineers and the Illinois Environmental Protect Agency by December 31 in the year that the mitigation is complete. This information will use GPS coordinates for location information. The as-built plan must include details, plan view drawings, and cross sectional drawings of all excavations and fills at the mitigation site(s). It must also include planting plans, planting lists, and maps showing

the locations of all areas that were wetland prior to construction, all areas that are to be created wetland, all preserved stream channel segments, created or relocated stream channels, existing and proposed riparian buffers, riffle-pool structures, filter strips, all splash basins, and all other structures (including all streambed stabilization structures).

10. Annual monitoring reports shall be submitted to the Corps of Engineers by December 31 for at least five years for emergent wetland or grass/shrub riparian mitigation sites, and at least 10 years for forested wetland or forested riparian mitigation sites, or in-stream structures. The annual reports must include photos, a map with drawn boundaries indicating exactly what areas are wetland according to the 1987 Corps of Engineers Wetland Delineation Manual (Technical Report Y-87-1) and 2008 Midwest Regional Supplement, a vegetative cover map of created wetlands indicating Dominant species in each vegetative community, and an assessment of wetland hydrology in each vegetative community. The reports must also include assessments of the functionality of each splash basin stabilization structure, new stream meandered sections, and aerial coverage calculations of native vegetation within each filter strip or riparian zone and any corrective actions taken or needed. The results of the reports will be documented annually and submitted to the District as specified in RGL 06-03, <http://www.usace.army.mil/CECW/Documents/cecwo/reg/rgls/rgl06-03.pdf> All annual monitoring reports shall be formatted for 8.5 x 11- inch paper.

11. The permittee (in a timely manner) will perform any corrective measures and monitoring deemed necessary by the Corps of Engineers to ensure the success of the project (including mitigation). The permittee will assume all liability for accomplishing this corrective work. The corrective actions may include such modifications to the mitigation site as re-grading, re-planting, additional erosion control, etc., or may involve relocating the mitigation to another location. The permittee must accomplish corrective measures involving re-grading or erosion control within 60 days from the date that they are notified of a need. Deadlines for corrective measures involving re-planting will be determined based on best planting dates. Deadlines for corrective measures involving the relocation of mitigation will be determined by the Corps of Engineers. Corrective action may also involve additional monitoring to ensure success.

12. Your responsibility to complete the required compensatory mitigation will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the Corps of Engineers.

13. Any future development or land-use conversion of the mitigation area for any purpose which may interfere with or be detrimental to stream or wetland functions is prohibited without prior written approval from the Corps of Engineers.

14. Projects with mitigation require recording of the permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property and provide proof of recording to the Corps of Engineers. If the permit cannot be recorded in the manner indicated, the permittee shall provide the Corps of Engineers with documentation of agreements, contracts, etc., demonstrating to the Corps of

Engineers' satisfaction that the mitigation site will be protected from future activities that may interfere with or be detrimental to wetland functions and values to a level of assurance equivalent to that provided by the aforementioned recording process. This requirement should be met prior to the project's construction.

**B.) For permittee responsible stream mitigation:**

1. Proposed project designs resulting in reductions in stream length will require applicants to seek foot-for-foot stream length replacement where practicable.
2. If a side slope of a newly constructed or modified channel is not protected by a suitable structural element, it will be no steeper than 2:1 and planted to permanent, perennial, vegetation or armored.
3. Native grass filter strips a minimum of 50 feet in width (measured from the top of the bank landward) shall be established along both sides of the realigned or modified channel unless there is a physical reason for not including one (such as a rock ledge). Filter strip establishment will be considered successful when there is at least 50% aerial coverage of native grasses and forbs in each 100 square foot area. Land ownership is not an acceptable reason for limiting filter strips.
4. Native trees and/or shrubs shall be planted along both sides of the realigned or modified channel. Replanting rates of trees and/or shrubs will be based on existing pre-project baseline vegetation conditions and the size of the selected tree/shrubs to be replanted. A survival rate of 100% of the replanted species shall be achieved each year for a period of 10 years from the establishment of the tree plantings.
5. Stream banks shall be stabilized with planted vegetation, riprap, or other suitable permanent bank stabilization measures to the limits of stream bank disturbance. Plantings of native prairie grasses are recommended where appropriate to diversify the stream bank protection.
6. The proposed channel shall have the same carrying capacity as the existing channel.
7. If the proposed channel grade is steeper than the grade of the existing channel, grade control structures are required at the upstream and downstream ends of the proposed channel. The downstream slopes of the grade control structures shall be no steeper than 20H: 1V and upstream slopes shall be no steeper than 4H: 1V. All structures must be keyed into the channel bed and banks and must be able to withstand and pass expected high flows. The structures must be V shaped with the point of the V pointing upstream. The sides of the V must be angled upstream (approximately 30 degrees measured along the shoreline). The center section will be lower in elevation than the outer sections to concentrate flows to the stream middle during periods of low flow. The structures must be submerged at normal stream flow (75% of the year). The structures must be fish passable at all times.

8. In-stream habitat structures and I or the use of rock riffles may be used to enhance aquatic habitat in the stream stretch modified by stream shaping or channel alignment. In-stream habitat structures should be constructed similar to grade control structures.

9. In areas where the stream channel is relocated, by-passed meanders must be preserved if they will not be a safety or structural hazard. The preserved meanders will remain as oxbow wetlands or pools.

10. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes.

11. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.

12. The applicant shall not cause:

- o A violation of applicable provisions of the Illinois Environmental Protection Act;
- o Water pollution defined and prohibited by the Illinois Environmental Protection Act;
- o A violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
- o Interference with water use practices near public recreation areas or water supply intakes

13. All areas affected by construction shall be mulched and seeded as soon after construction as possible. The applicant shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent erosion during construction shall be taken and may include the installation of staked straw bales, sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The applicant shall be responsible for obtaining an NPDES Storm Water Permit prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the Illinois Environmental Protection Agency's (IEPA) Division of Water Pollution Control, Permit Section.