



**US Army Corps
of Engineers®**

ROD-SOF for DA Permit SAJ-2009-03221
Attachment D – DA Permit Special Conditions

20 Pages

Special Conditions:

1. **Reporting Address:** The Permittee shall submit all reports, notifications, documentation and correspondence required by the general and special conditions of this permit, preferably in an electronic format, to the following address:

For standard mail: U.S. Army Corps of Engineers, Regulatory Division, Special Projects and Enforcement Branch, 10117 Princess Palm Avenue, Suite 120, Tampa, FL 33610-8302.

For electronic mail (preferred): CESAJ-Mine.Team@usace.army.mil (not to exceed 10 MB).

For electronic submittals greater than 10 MB, the Corps recommends using an FTP site, such as the AMRDEC Safe Access File Exchange:
(<https://safe.amrdec.army.mil/SAFE/Welcome.aspx>)

The Permittee shall reference this permit number, SAJ-2009-03221(SP-MEP), on all submittals.

2. **Commencement Notification:** Within 10 days from the date of the initial commencement of work authorized by this permit, and within 10 days from the date of commencement for each phase/mining unit thereafter, the Permittee shall provide a written notification of that date of commencement to the Corps.

3. **As-Built Certification:** Within 60 days of completion or cessation of a period of year or more of authorized work within each phase/mining unit, the Permittee shall submit as-built drawings of the authorized work within that phase and a completed "As-Built Certification By Professional Engineer" form (**Attachment C**) to the Corps. Upon expiration of the construction window identified in General Condition 1, the Permittee shall submit a final as-built drawing and certification for all phases/mining units. The as-built drawings for each phase/mining unit and the final submittal shall be signed and sealed by a registered professional engineer and shall include the following:

- a. A plan view drawing of the location of the authorized work footprint, as shown on the permit drawings, with transparent overlay of the work as constructed in the same scale as the permit drawings on 8½-inch by 11-inch sheets. The plan view drawing should show all "earth disturbance," including wetland impacts and water management structures.
- b. A list of any deviations between the work authorized by this permit and the work as constructed. In the event that the completed work deviates, in any manner, from the authorized work, describe on the attached "As-Built Certification By Professional Engineer" form the deviations between the work authorized by this permit and the work as constructed. Clearly indicate on the as-built drawings any deviations that have been listed. Please note that the depiction and/or description of any deviations on the drawings and/or "As-Built Certification By Professional Engineer" form does not constitute approval of any deviations by the Corps.
- c. The Department of the Army permit number on all sheets submitted.

- d. In addition to the signed and sealed paper as-built drawings, the Permittee shall also provide electronic copies in .pdf format (sized to 8½-inch by 11-inch sheets) and in .shp format for each phase/mining unit and for the final as-built.

4. Permit Compliance and Availability: The Permittee will require its contractors and/or agents to comply with the terms and conditions of this permit in the construction and maintenance of this project, and will provide each of its contractors and/or agents associated with the construction or maintenance of this project with a copy of this permit. A copy of this permit, including all conditions, tables, figures and maps, will be available at the project site during mining and mitigation work of this project.

5. Cultural Resources/Historic Properties:

- a. No structure or work shall adversely affect impact or disturb properties listed in the National Register of Historic Places (NRHP) or those eligible for inclusion in the NRHP.
- b. If during the ground disturbing activities and construction work within the permit area, there are archaeological/cultural materials encountered which were not the subject of a previous cultural resources assessment survey (and which shall include, but not be limited to: pottery, modified shell, flora, fauna, human remains, ceramics, stone tools or metal implements, dugout canoes, evidence of structures or any other physical remains that could be associated with Native American cultures or early colonial or American settlement), the Permittee shall immediately stop all work and ground-disturbing activities within a 100-meter diameter of the discovery and notify the Corps within the same business day (8 hours). The Corps shall then notify the Florida State Historic Preservation Officer (SHPO) and the appropriate Tribal Historic Preservation Officer(s) (THPO(s)) to assess the significance of the discovery and devise appropriate actions.
- c. Additional cultural resources assessments may be required of the permit area in the case of unanticipated discoveries as referenced in accordance with the above Special Condition ; and if deemed necessary by the SHPO, THPO(s), or Corps, in accordance with 36 CFR 800 or 33 CFR 325, Appendix C (5). Based, on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume on non-federal lands without written authorization from the SHPO for finds under his or her jurisdiction, and from the Corps.
- d. In the unlikely event that unmarked human remains are identified on non-federal lands, they will be treated in accordance with Section 872.05 Florida Statutes. All work and ground disturbing activities within a 100-meter diameter of the unmarked human remains shall immediately cease and the Permittee shall immediately notify the medical examiner, Corps, and State Archeologist within the same business day (8-hours). The Corps shall then notify the appropriate SHPO and THPO(s). Based, on the circumstances of the discovery, equity to all parties, and considerations of

the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume without written authorization from the State Archeologist and from the Corps.

6. Notice of Permit: The Permittee shall complete and record the "Notice of Department of the Army Permit" form (**Attachment D**) with the Clerk of the Circuit Court, Registrar of Deeds or other appropriate official charged with the responsibility of maintaining records of title to or interest in real property within the county of the authorized activity. Within 90 days from the effective date of this permit, the Permittee shall provide a copy of the recorded Notice of Permit to the Corps clearly showing a stamp from the appropriate official indicating the book and page at which the Notice of Permit is recorded and the date of recording.

7. Permit Modifications: It is the Permittee's responsibility to request a modification of this permit, including to deviate from any of the terms and conditions, permit drawings, or attachments, from the Mining Team or other appropriate Jacksonville District Regulatory section. The Corps reserves the right to fully evaluate, amend, and approve or deny the request for modification of this permit. The Permittee agrees for the purposes of compliance with this DA permit, where the conditions of the FDEP and DA permits conflict, the DA permit shall apply. A modification of the FDEP environmental resource permit does not automatically constitute a modification of this DA permit. Should any other agency require and/or approve changes to the work authorized or obligated by this permit, the Permittee is advised a modification to this permit instrument is required prior to initiation of those changes.

Once the Corps has completed its review of a modification request, the Permittee shall provide a revised copy of this DA permit to the Corps for review and approval that reflects the proposed modification, plus any previous modifications approved by the Corps. The revised copy will include a listing and description of all approved modifications by number beneath the Project Description on Page 1 of this DA permit, for example: Modification #1: A change in the boundaries of Wetland R-26-7, as shown in Sheet 18 of 30 of Map 4-8-C-a, of the Compensatory Mitigation Plan (**Attachment G**). Once the Corps approves the modification, the Permittee shall use that revised copy of the DA permit, including for the purpose of compliance with the Permit Compliance and Availability special condition.

8. Erosion Control: Prior to the initiation of any work authorized by this permit, the Permittee shall install erosion control measures along the perimeter of all work areas to prevent the displacement of fill material outside the work area into waters of the United States. Immediately after completion of the final grading of the land surface, all slopes, land surfaces, and filled areas shall be stabilized using sod, degradable mats, barriers, or a combination of similar stabilizing materials to prevent erosion. The erosion control measures shall remain in place and be maintained until all authorized work is completed and the work areas are stabilized.

9. Fill Material: The Permittee shall use only clean fill material for this project. The fill material shall be free from items such as trash, debris, automotive parts, asphalt, construction materials, concrete block with exposed reinforcement bars, and soils contaminated with any toxic substance, in toxic amounts in accordance with Section 307 of the Clean Water Act.

10. Endangered Species Act:

- a. **Incidental Take Permit & Habitat Conservation Plan:** This permit does not authorize the Permittee to take an endangered species, in particular the eastern indigo snake (*Drymarchon corais couperi*), Florida scrub-jay (*Aphelocoma coerulescens*), wood stork (*Mycteria americana*), and Audubon's crested caracara (*Polyborus plancus audubonii*). In order to legally take a listed species, the Permittee must have separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or a Biological Opinion (BO) under ESA Section 7, with "incidental take" provisions with which you must comply). The enclosed United States Fish and Wildlife Service Incidental Take Permit (ITP) and Habitat Conservation Plan (HCP) (**Attachment E**) contains mandatory terms and conditions to implement the reasonable and prudent measures. Authorization under this permit is conditional upon compliance with all of the mandatory terms and conditions associated with incidental take of the enclosed ITP (and any amendments thereto), which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take permit (and any amendments thereto), where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute noncompliance with this permit. The United States Fish and Wildlife Service is the appropriate authority to determine compliance with the terms and conditions of its ITP, and with the ESA.
- b. **Eastern Indigo Snake Protection Measures and Inspection:** The Permittee shall comply with U.S. Fish and Wildlife Service's "Standard Protection Measures for the Eastern Indigo Snake", as provided in **Attachment E** of this permit. The Permittee shall evacuate all gopher tortoise burrows, active or inactive, prior to site manipulation in the vicinity of the burrow. If excavating potentially occupied burrows, active or inactive, individuals must first obtain state authorization via a Florida Fish and Wildlife Conservation Commission (FWC) Authorized Gopher Tortoise Agent permit. The excavation method selected shall minimize the potential for injury of an indigo snake. The Permittee shall follow the excavation guidance provided in the most current FWC Gopher Tortoise Permitting Guidelines found at <http://myfwc.com/gophertortoise>. If the Permittee encounters an eastern indigo snake, the Permittee must allow the snake to vacate the area prior to additional site manipulation in the vicinity. The Permittee shall inspect holes, cavities, and snake refugia other than gopher tortoise burrows each morning before planned site manipulation of a particular area, and if occupied by an indigo snake, no work shall commence until the snake has vacated the vicinity of the proposed work.

11. Spill or Release Reporting: In the event of a spill or unscheduled release, from a mine pipeline or other source associated with the authorized activity, that affects wetlands, streams, other waters of the United States, or a mitigation area required by a Department of the Army authorization, the Permittee shall include the Corps Mining Team in any reporting required by another agency.

12. Compliance Status – Annual Report: Separately from the compensatory

mitigation reporting required by Special Conditions 19 and 21, and the long-term management reporting required by the Compensatory Mitigation Plan (**Attachment G**), the Permittee shall submit an annual report for compliance status on March 1st of every year until the project has been completed or the construction window expires. The report shall include the following items:

- a. The status of compliance for each General and Special Condition of this DA permit, individually. If a condition of the permit is not in compliance the Permittee shall include a proposal to bring the project into compliance with the permit;
- b. description of project completion at the time of the report, including:
 - i. the acreage of Corps-jurisdictional wetlands and other surface waters, and the linear footage of Corps-jurisdictional streams, directly impacted (for example by filling, clearing, or demucking) during the reporting period and cumulatively,
 - ii. the acreage of reclamation in progress or initially completed during the reporting period and cumulatively,
 - iii. the acreage of wetland mitigation (by type) and the linear footage of stream mitigation (by type) initially implemented during the reporting period and cumulatively,
 - iv. the functional value of wetland mitigation (using UMAM) and of stream mitigation (using the FDEP stream habitat assessment methodology) that achieved performance standards during the reporting period and cumulatively, and
 - v. a comparison between the above information and the UMAM mitigation ledgers (herbaceous wetlands, forested wetlands, and streams), as provided in **Attachment F**.

The Permittee may include copies of reports required by other agencies, such as the Florida Department of Environmental Protection; however, the Corps' annual report shall specifically address compliance with this DA permit.

If the Corps determines that the Permittee is not in compliance with the terms and conditions of this permit, the Corps may exercise its discretion to suspend authorization to discharge dredged or fill material into waters of the United States pursuant to 33 C.F.R. § 325.7.

13. Compliance Status – Five-Year Review: Every five years, starting from the date of issuance of this DA permit, the Permittee shall prepare a summary report of the project's compliance status, including the authorized work, schedule, monitoring program, reporting process, compensatory mitigation, and other aspects of the authorized work. The review will include consideration of the annual compliance reports required by Special Condition 12, the compensatory mitigation reports required by Special Conditions 19 and 21, site inspections, and other information as available. The Permittee shall submit the summary report to the Corps, USEPA, USFWS, and FDEP. The USEPA, USFWS, and FDEP can provide comments on the

summary report which the Corps will consider when reviewing whether or not the Permittee is in compliance with the terms and conditions of this permit. If the Corps determines that the Permittee is not in compliance with the terms and conditions of this permit and the plan for remediation is not acceptable to the Corps or the plan fails, the Corps may exercise its discretion to suspend authorization to discharge dredged or fill material into waters of the United States pursuant to 33 C.F.R. § 325.7.

14. Compensatory Mitigation Plan and Summary: The Permittee shall implement the approved final Compensatory Mitigation Plan included as **Attachment G** of this permit, including Section 1.6 (Mitigation Work Plan), Appendix 2-2-B-i (Stream Report), and Appendix 4-3-B (Myakka River Headwaters Restoration Plan) as compensatory mitigation for the authorized impacts to waters of the United States. As summarized in Text Table CMP-4 of the Compensatory Mitigation Plan, the required compensatory mitigation includes:

Onsite (Wingate East)

- a. Preservation (Phase A-1) of 291.5 acres of onsite wetlands (258.05 acres forested and 33.40 acres herbaceous) along with associated upland buffers, providing 45.90 units of wetland function (41.42 units forested, 4.47 units herbaceous), as specified in Table 4-8-B-vii and Map 4-8-C-a of the Compensatory Mitigation Plan (**Attachment G**).
- b. Preservation (Phase A-1) of 11,474 linear feet (2.17 miles) of onsite streams, providing 1,748 units of stream function as specified in Table 4-8-B-xv and Map 4-8-C-a compensatory mitigation plan. Each stream segment shall have a minimum 120-foot wide (60 feet on either side of the channel) preserved riparian buffer.
- c. Enhancement and Preservation (Phase A-2) of 27 acres of onsite wetlands (7.35 acres forested and 19.70 acres herbaceous) along with associated upland buffers, providing 4.16 units of wetland function (0.91 units forested, 3.25 units herbaceous), as specified in Table 4-8-B-ix and Map 4-8-C-a of the Compensatory Mitigation Plan (**Attachment G**).
- d. Establishment and Preservation (Phase A-3) of 607.9 acres of onsite wetlands (206.14 acres forested, 401.75 acres herbaceous) along with associated upland buffers, providing 136.68 units of wetland function (40.15 units forested, 96.52 units herbaceous), as specified in Table 4-8-B-v and Map 4-8-C-a of the Compensatory Mitigation Plan (**Attachment G**).
- e. Establishment and preservation (Phase A-3) of 10,338 linear feet (1.96 miles) of on-site stream mitigation, providing 2,342 units of stream function as specified in Table 4-8-B-xiv, Map 4-8-C-a, and Appendix B-i of the compensatory mitigation plan (**Attachment G**). Each stream segment shall have a minimum 120-foot wide (60 feet on either side of the channel) preserved riparian buffer.

Offsite (Wingate Extension)

- f. Establishment and preservation (Phase A-3) of 45.32 acres of offsite herbaceous wetlands along with associated upland buffers, on the adjacent Wingate Extension parcel, providing 19.02 units of wetland function as specified in Table 4-8-B-v(H) and Map 4-8-C-a of the Compensatory Mitigation Plan (**Attachment G**).

Offsite (Myakka River Headwaters)

- g. Preservation (Phase B) of 87.79 acres of offsite wetlands in the Myakka River Headwaters Restoration Area (87.51 acres forested and 0.28 acres herbaceous) along with associated upland buffers, providing 14.48 units of wetland function (14.42 units forested, 0.06 units herbaceous), as specified in Table 4-8-A-xvi, and Figures 6 through 6G of Appendix 4-3-B, of the compensatory mitigation plan (**Attachment G**).
- h. Preservation (Phase B) of 2,350 linear feet (0.45 miles) of offsite natural streams and riparian buffers in the adjacent Myakka River Headwaters Restoration Area (East Parcel) providing, 374.13 units of stream function, as specified in Table 4-8-B-xv-a and Figures 6 through 6G of Appendix 4-3-B of the compensatory mitigation plan.
- i. Enhancement and Preservation (Phase B) of 43.71 acres of offsite wetlands in the Myakka River Headwaters Restoration Area (41.03 acres forested and 2.68 acres herbaceous) along with associated upland buffers, providing 6.57 units of wetland function (6.15 units forested, 0.42 units herbaceous), as specified in Table 4-8-A-xvi, and Figures 6 through 6G of Appendix 4-3-B of the compensatory mitigation plan (**Attachment G**).
- j. Enhancement and Preservation (Phase B) of 2,385 linear feet (0.45 miles) of offsite natural streams and riparian buffers in the adjacent Myakka River Headwaters Restoration Area (West Parcel), providing 907.87 units of stream function, as specified in Table 4-8-B-xv-a and Figures 6 through 6G of Appendix 4-3-B of the compensatory mitigation plan.
- k. Establishment and Preservation (Phase B) of 3.56 acres of offsite wetlands (0.9 acres forested, 2.66 acres herbaceous) along with associated upland buffers, in the Myakka River Headwaters Restoration Area, providing 1.76 units of wetland function (0.43 units forested, 1.33 units herbaceous), as specified in Table 4-8-A-xvi, and Figures 6 through 6G of Appendix 4-3-B, of the compensatory mitigation plan (**Attachment G**).

In addition, the applicant will provide the specific wetland types by Florida Land Use and Cover Classification System (FLUCCS) and acreages for individual wetland establishment areas as shown in Table 4-8-B-v of the compensatory mitigation plan (**Attachment G**), unless the Corps approves adaptive management measures as described in the Mitigation Adaptive Management/Alternatives Special Condition of this permit.

The Corps does not require compensatory mitigation above and beyond the minimum amount necessary to provide compensation for the loss of waters of the

United States associated with the activities authorized by this permit. Although permit drawings, mitigation plan attachments, or other parts of this permit may reference additional wetland or stream establishment, enhancement, preservation, or other activities, the Permittee is not responsible for those additional activities under this permit.

15. Mitigation Commencement Timeframes:

- a. Onsite Wetland and Stream Preservation: As described in the Conservation Easement – Preservation Mitigation Areas Special Condition of this permit, prior to initiating any work authorized by this DA permit the Permittee shall complete the **Phase A-1** preservation mitigation.
- b. Onsite Wetland Enhancement: As described in the Conservation Easement – Preservation Mitigation Areas Special Condition of this permit, prior to initiating any work authorized by this DA permit the Permittee shall preserve **Phase A-2** mitigation areas. Prior to initiating any mining activities, the Permittee shall complete wetland enhancement activities as described in Section 1.6 and Table 4-8-B-ix of the Compensatory Mitigation Plan (**Attachment G**),
- c. Onsite Wetland Establishment: As described in Section 1.6 and Text Table CMP-11 of the Compensatory Mitigation Plan (**Attachment G**), the Permittee shall perform final grading of each wetland mitigation site, including muck placement, no later than 18 months after completion of mining operations, including backfilling with sand tailings.
- d. Onsite Stream Establishment: As described in Appendix 2-2-B-i of the Compensatory Mitigation Plan (**Attachment G**), the Permittee shall perform final grading and initial planting of each stream mitigation site no later than 24 months after completion of mining operations, including backfilling with sand tailings.
- e. Wingate Extension Wetland Establishment: As described in 1.6 of the Compensatory Mitigation Plan (**Attachment G**), the Permittee shall perform final grading of each wetland mitigation site, including muck placement, no later than 18 months after completion of mining operations, including backfilling with sand tailings.
- f. Myakka River Headwaters: As described in Text Table CMP-8B, and Appendix 4-3-B of the compensatory mitigation plan (**Attachment G**), the Permittee shall perform final grading and initial planting of each wetland and stream mitigation site no later than 24 months after permit issuance.

16. Mitigation Performance Standards – Preserved Wetlands: The Permittee shall achieve the performance standards for wetlands preserved as mitigation as identified in the Performance Standards section of the approved final Compensatory Mitigation Plan (**Attachment G** to this DA permit).

17. Mitigation Performance Standards – Preserved Upland Buffers: The Permittee shall achieve the performance standards for uplands preserved as wetland buffers, both as part of the Immediate Phase 1A preservation and as buffers

for enhanced or established wetlands later, as identified in the Performance Standards section of the approved final Compensatory Mitigation Plan (**Attachment G** to this DA permit).

18. Mitigation Performance Standards - Enhanced Wetlands: The Permittee shall achieve the performance standards for wetlands enhanced as mitigation as identified in the Performance Standards section of the approved final Compensatory Mitigation Plan (**Attachment G** to this DA permit).

In addition, the Permittee shall achieve the UMAM scores for individual enhanced wetland polygons, as described in Table 4-8-B-ix and Map 4-8-A-iii in the Compensatory Mitigation Plan (**Attachment G**), prior to being released from monitoring and reporting as described in the Release from Mitigation Implementation Monitoring and Reporting special condition of this DA permit.

19. Mitigation Performance Standards - Established Wetlands: The Permittee shall achieve the performance standards for wetlands established as mitigation as identified in the Performance Standards section of the approved final Compensatory Mitigation Plan (**Attachment G** to this DA permit).

In addition, the Permittee shall achieve the UMAM scores for individual established wetland polygons, as described in Table 4-8-B-v and Map 4-8-A-iii in the Compensatory Mitigation Plan (**Attachment G**), prior to being released from monitoring and reporting as described in the Release from Mitigation Implementation Monitoring and Reporting special condition of this DA permit.

20. Mitigation Performance Standards - Preserved Streams: The Permittee shall achieve the performance standards for streams and riparian areas (upland and wetland) preserved as mitigation as identified in the Performance Standards section of the approved final Compensatory Mitigation Plan (**Attachment G** to this DA permit).

21. Mitigation Performance Standards - Established Streams: The Permittee shall achieve the performance standards for streams and riparian areas (upland and wetland) established as mitigation as identified in the Performance Standards section of the approved final Compensatory Mitigation Plan (**Attachment G** to this DA permit).

22. Wetland Compensatory Mitigation Monitoring and Reporting Timeframes (Implementation): To document progress towards and achievement of the wetland performance standards identified in the Performance Standards section of the approved final Compensatory Mitigation Plan (**Attachment G** to this DA permit), the Permittee shall complete the following:

Enhanced Wetlands

- a. Perform a time-zero monitoring event of each wetland enhancement area within 60 days of completion of the enhancement activities identified in the approved final Compensatory Mitigation Plan and the Wetland Work Plan.
- b. Submit the time-zero report to the Corps within 60 days of completion of the monitoring event. The report will include a detailed plan view drawing

- of the enhanced mitigation areas, and at least one paragraph depicting baseline conditions of the mitigation site(s) prior to initiation of the compensatory mitigation objectives.
- c. Following completion of the initial enhancement activities, initially perform semi-annual monitoring of each mitigation area for the first two years and then perform annual monitoring thereafter.
 - d. Submit annual monitoring reports to the Corps within 60 days of completion of the monitoring event, or on a set schedule as approved by the Corps. The Permittee shall combine semi-annual monitoring into one annual monitoring report.
 - e. Monitor each mitigation area(s) and submit annual monitoring reports to the Corps until the Corps determines that the mitigation area(s) have achieved their performance standards in accordance with the wetland performance standards identified in the approved final Compensatory Mitigation Plan (**Attachment G**) and provides notification that the Permittee can cease monitoring of such mitigation areas in accordance with the Mitigation Implementation Completion Special Condition of this permit.

Established Wetlands

- a. Perform a time-zero monitoring event of each wetland establishment area within 60 days of completion of the compensatory mitigation construction and initial implementation activities identified in the approved final Compensatory Mitigation Plan and the Wetland Work Plan.
- b. Submit the time-zero report to the Corps within 60 days of completion of the monitoring event. The report will include a detailed plan view drawing of the established mitigation area(s).
- c. Following completion of the compensatory mitigation construction and initial implementation activities, initially perform semi-annual monitoring of each mitigation area for the first two years and then perform annual monitoring thereafter.
- d. Submit annual monitoring reports to the Corps within 60 days of completion of the monitoring event, or on a set schedule as approved by the Corps. The Permittee shall combine semi-annual monitoring into one annual monitoring report.
- e. Monitor the mitigation area(s) and submit annual monitoring reports to the Corps until the Corps determines that the mitigation area(s) have achieved their performance standards in accordance with the wetland performance standards identified in the approved final Compensatory Mitigation Plan (**Attachment G**) and provides notification that the Permittee can cease monitoring of such mitigation areas in accordance with the Mitigation Implementation Completion Special Condition of this permit.

23. Wetland Compensatory Mitigation Reporting Format (Implementation): The

Permittee shall submit all monitoring documentation to the Corps on 8½-inch by 11-inch pages (preferably in an electronic format), and include the following:

- a. Project Overview:
 - i. Department of the Army Permit Number
 - ii. Name and contact information of Permittee and consultant
 - iii. Name of party responsible for conducting the monitoring and the date(s) the inspection was conducted
 - iv. A brief paragraph describing the purpose of the approved project, acreage and type of aquatic resources impacted, and mitigation acreage and type of aquatic resources authorized to compensate for the aquatic impacts.
 - v. Written description of the location, any identifiable landmarks of the compensatory mitigation project including information to locate the site perimeter(s), and coordinates of the mitigation site (expressed as latitude, longitude, UTM, state plane coordinate system, etc.)
 - vi. Dates compensatory mitigation commenced and/or was complete
 - vii. Dates of any corrective or maintenance activities conducted since the previous report submission
 - viii. Specific recommendations for any additional corrective or remedial actions.
- b. Requirements: List the monitoring requirements and performance standards, as specified in the approved mitigation plan and special conditions of this permit, and evaluate whether the compensatory mitigation project site is successfully achieving the approved performance standards or trending towards success. A table is a recommended option for comparing the performance standards to the conditions and status of the developing mitigation site.
- c. Summary Data: Summary data should be provided to substantiate the success and/or potential challenges associated with the compensatory mitigation project. Photo documentation may be provided to support the findings and recommendations referenced in the monitoring report and to assist the PM in assessing whether the compensatory mitigation project is meeting applicable performance standards for that monitoring period. Submitted photos should be formatted to print on a standard 8½-inch x 11-inch page, dated, and clearly labeled with the direction from which the photo was taken. The photo location points should also be identified on the appropriate maps.
- d. Maps and Plans: Maps shall be provided to show the location of the compensatory mitigation site relative to other landscape features, habitat

types, locations of photographic reference points, transects, sampling data points, and/or other features pertinent to the mitigation plan. In addition, the submitted maps and plans should clearly delineate the mitigation site perimeter(s). Each map or diagram should be formatted to print on a standard 8½-inch x 11-inch page and include a legend and the location of any photos submitted for review. As-built plans may be included.

- i. For electronic copies of maps and plans, the Permittee shall provide those copies in .pdf format (sized to 8½-inch by 11-inch sheets) and in .shp format.
- e. Conclusions: A general statement shall be included that describes the conditions of the compensatory mitigation project. If performance standards are not being met, a brief explanation of the difficulties and potential remedial actions proposed by the Permittee or sponsor, including a timetable, shall be provided. The District Commander will ultimately determine if the mitigation site is successful for a given monitoring period.

24. Stream Compensatory Mitigation Monitoring and Reporting Timeframes

(Implementation): To document progress towards and achievement of the stream performance standards identified in the approved final Compensatory Mitigation Plan **(Attachment G)**, the Permittee shall complete the following:

Established Streams

- g. Perform a time-zero monitoring event of each stream establishment area within 60 days of completion of the compensatory mitigation construction and initial implementation activities identified in the approved final Compensatory Mitigation Plan and the Stream Work Plan.
- h. Submit the time-zero report to the Corps within 60 days of completion of the monitoring event. The report will include a detailed plan view drawing of the stream establishment area(s).
- i. Following completion of the compensatory mitigation construction and initial implementation activities, initially perform semi-annual monitoring of each stream establishment area for the first three years and then perform annual monitoring thereafter for a minimum of seven years. However, if a stream segment is not trending toward success after the initial three year semi-annual monitoring period, the Corps may require the Permittee to extend the semi-annual monitoring.
- j. Submit annual monitoring reports to the Corps within 60 days of completion of the monitoring event, or on a set schedule as approved by the Corps. The Permittee shall combine semi-annual monitoring into one annual monitoring report.
- k. Monitor the stream establishment area(s) and submit annual monitoring reports to the Corps until the Corps determines that the stream establishment area(s) have achieved their performance standards in accordance with the stream performance standards identified in the approved final Compensatory Mitigation Plan **(Attachment G)** for five

consecutive years and provides notification that the Permittee can cease monitoring of such mitigation areas in accordance with the Mitigation Implementation Completion Special Condition of this permit. In addition, the Permittee shall monitor each stream establishment area at least until it can be reconnected to its watershed.

25. Stream Compensatory Mitigation Reporting Format (Implementation): The Permittee shall submit all monitoring documentation to the Corps on 8½-inch by 11-inch pages (preferably in an electronic format), and include the following:

a. Project Overview:

- i. Department of the Army Permit Number
- ii. Name and contact information of Permittee and consultant
- iii. Name of party responsible for conducting the monitoring and the date(s) the inspection(s) was conducted
- iv. Indication of stream type
- v. Current HAS score
- vi. A brief paragraph defining the purpose for the approved project, the linear foot and type of aquatic resources impacted, and the mitigation linear feet and type of aquatic resources authorized to compensate for the aquatic impacts
- vii. Written description of the location, any identifiable landmarks of the compensatory mitigation project including information to locate the site perimeter(s), and coordinates of the mitigation site (expressed as latitude, longitude, UTM's, state plane coordinate system, etc.)
- viii. Dates of any corrective or maintenance activities conducted since the previous report submission
- ix. Supporting documentation such as general observations relative to existing conditions, rainfall data, readings, calculations, and benchmark data
- x. Photographs showing upstream and downstream views of the stream restoration and the buffers
- xi. General habitat assessment including documentation of wildlife or signs of wildlife observed and an evaluation of the buffer community type (by FLUCCS)
- xii. Specific recommendations for any additional corrective or remedial actions (e.g., additional grading, abate undesirable plant species, etc.)

b. Requirements: List the monitoring requirements and performance

standards, as specified in the stream mitigation plan and special conditions of this permit, and evaluate whether the compensatory stream mitigation project site is successfully achieving the approved performance standards or trending towards success.

- c. **Summary Data:** Summary data shall be provided to substantiate the success and/or potential challenges associated with the compensatory mitigation project. Photo documentation shall be provided to support the findings and recommendations referenced in the monitoring report and to assist the PM in assessing whether the compensatory mitigation project is meeting applicable performance standards for that monitoring period. Submitted photos shall be formatted to print on a standard 8½-inch x 11-inch page, dated, and clearly labeled with the direction from which the photo was taken. The photo location points should also be identified on the appropriate maps.
- d. **Maps and Plans:** Maps shall be provided to show the location of the compensatory mitigation site relative to other landscape features, habitat types, locations of photographic reference points, transects, sampling data points, and/or other features pertinent to the mitigation plan. In addition, the submitted maps and plans should clearly delineate the mitigation site perimeter(s). Each map or diagram should be formatted to print on a standard 8½-inch x 11-inch page and include a legend and the location of any photos submitted for review. As-built plans may be included.

For electronic copies of maps and plans, the Permittee shall provide those copies in .pdf format (sized to 8½-inch by 11-inch sheets) and in .shp format.

- e. **Conclusions:** A general statement shall be included that describes the conditions of the compensatory mitigation project. If performance standards are not being met, a brief explanation of the difficulties and potential remedial actions proposed by the Permittee or sponsor, including a timetable, shall be provided. The District Commander will ultimately determine if the mitigation site is successful for a given monitoring period.

26. Rain Gauge Installation: Each phase/mining unit which contains established stream segments will have a rain gauge appropriately located and installed to collect and monitor daily rainfall data. The rain gauges will be used only until the subject stream reaches have experienced five bankfull rainfall events.

27. Bankfull Rainfall Event Monitoring: Monitoring after the first 5 bankfull rainfall events will be recorded within each proposed stream section. The Permittee shall include data from rain gages to the Corps in the annual compliance reporting. Post bankfull event, the Permittee shall provide a narrative for any adaptations or changes made to the subject stream reaches.

28. Monitoring for un-mined stream segments: The Permittee shall monitor undisturbed stream segments located within the project site. Water table piezometers (outside the stream bank) or staff gauges (within the stream channel) will be installed and datum surveyed during all phases of mining and reclamation within the project site. The Permittee will submit a map indicating the exact locations

of the piezometers and quarterly data to the Corps with the annual compliance reporting.

29. Release from Mitigation Implementation Monitoring and Reporting: For each mitigation area, the Corps will consider the Permittee's responsibility to complete implementation as set forth in this permit and the approved final Compensatory Mitigation Plan (**Attachment G**) fulfilled only after the Permittee meets all of the following requirements in a manner acceptable to the Corps:

- a. Demonstration of achievement of performance standards (as described in the Performance Standards section of the Compensatory Mitigation Plan) and in the Mitigation Performance Standards special conditions of this DA permit,
- b. Documentation of issuance of the approved long-term funding mechanism (surety bond) with sufficient funding to cover the completed area(s) (as described in the Long-Term Management Funding Special Condition of this DA permit),
- c. Documentation of execution of the associated revised standby trust agreement (as described in the Long-Term Management Funding and Long-Term Management Funding - Changes Special Conditions of this DA permit), and
- d. Documentation of the recorded conservation easement over the completed area(s), plat, and acceptance by the easement grantee (as described in the Conservation Easement – Implementation Mitigation Areas Special Condition of this DA permit)

After the Corps verifies that the Permittee has met these requirements, the Permittee shall no longer be responsible for the implementation monitoring of and reporting on the completed mitigation area(s) as required by this Permit. However, the Permittee, Successors and subsequent Transferees remain perpetually responsible to ensure that the mitigation area(s) remain successful by complying with the Long-term Management Special Conditions of this permit and by implementing the Long-Term Management Plan that is part of the approved final Compensatory Mitigation Plan (**Attachment G**).

30. Mitigation Adaptive Management/Alternatives: If the Corps determines that any compensatory mitigation area is not trending towards achievement of the wetland or stream performance standards identified in the approved final Compensatory Mitigation Plan (**Attachment G**), the Permittee shall develop and implement site- specific adaptive management actions to correct the mitigation deficiencies. Such actions may include but would not be limited to adjusting wetland hydrology, supplemental plantings, and increasing the frequency of exotic or nuisance species maintenance. The Permittee shall submit any such adaptive management plan to the USACE for approval prior to implementation, and include a description of the implementation and results in the annual monitoring reporting.

Within 60 days of notification by the Corps that the compensatory mitigation is unsuccessful, the Permittee shall submit to the Corps an alternate compensatory mitigation proposal sufficient to create the functional lift required under this permit.

This may include the purchase of mitigation credits from a Corps-approved mitigation bank. The alternate compensatory mitigation proposal may be required to include additional mitigation to compensate for the temporal loss of aquatic resource functions associated with the unsuccessful compensatory mitigation activities. The Corps reserves the right to fully evaluate, amend, and approve or reject the alternate compensatory mitigation proposal. Within 120 days of Corps approval, the Permittee will implement the alternate compensatory mitigation proposal.

31. Conservation Easement – Preservation Mitigation Areas (Phase A1 & A2):

Prior to initiating any work authorized by this DA permit, the Permittee shall preserve in perpetuity the Immediate Phase A1 and Phase A2 mitigation areas referenced in the approved Compensatory Mitigation Plan which includes 292 acres of wetlands, and 143 acres of uplands, and 11,474 linear feet of streams with riparian buffers, by recording a conservation easement consistent with **Attachment H** within the boundaries and location shown as the No Mine Areas in the attached permit drawings in the public records of Manatee County, with a legal description, survey, and scale drawings of the areas in question.

Prior to initiating any work authorized by this DA permit, the Permittee shall record the conservation easement in the public records of **Manatee** County, Florida. A certified copy of the recorded document, plat, and verification of acceptance from the Grantee shall be forwarded to the Corps within 30 days of recording. The Permittee shall also provide to the Corps a copy of the title insurance policy issued consistent with the September 15, 2016 Commonwealth Land Title Insurance Company title insurance commitment for File No. H20170424 in the amount of \$619,335.00. If the Permittee records the conservation easement more than 90 days from the effective date of the title insurance commitment (August 25, 2017), the Permittee will provide a gap report to the Corps for review.

In the event that this DA permit is transferred, proof of delivery of a copy of the recorded conservation easement to the subsequent Permittee or Permittees shall be submitted to the Corps together with the notification of permit transfer within 30 days of the transfer.

The Grantee shall not assign its rights or obligations under this conservation easement except to another organization qualified to hold such interests under the applicable state and federal laws, including §704.06 Florida Statutes, and committed to holding this conservation easement exclusively for conservation purposes. The Corps shall be notified in writing of any intention to reassign the conservation easement to a new grantee and shall approve the selection of the grantee. The new grantee shall accept the assignment in writing and a copy of this acceptance shall be delivered to the Corps. The conservation easement shall then be re-recorded and indexed in the same manner as any other instrument affecting title to real property and a copy of the re-recorded conservation easement furnished to the Corps. If the Permittee does not receive the Corps' approval of the grantee, the Corps may determine that the compensatory mitigation site is no longer appropriate and may require alternative compensatory mitigation.

Any other deviation from the established conservation easement cannot be performed without a modification to this permit instrument. The ability to modify or remove this conservation easement is neither implied nor guaranteed. If the conservation easement is removed for any reason, the Permittee shall provide

appropriate mitigation to compensate for functional wetland loss.

32. Conservation Easement – Implementation Mitigation Areas (Phase A3 and B): After the Corps determines in writing that an enhanced or established mitigation area (Phase A3 and Phase 3) have met the DA permit performance standards described in special conditions 19, 20 and 22 of this DA permit and in the approved final Compensatory Mitigation Plan (**Attachment G**), the Permittee shall preserve in perpetuity that mitigation area and its associated upland or riparian buffer by recording a conservation easement, using the template provided in **Attachment H**, in the public records of Manatee County, with a legal description, survey, and scale drawings of the areas in question.

Prior to recording the conservation easement, the Permittee shall submit a title insurance commitment in favor of the Grantee for the property which is being offered for preservation to show that the Permittee has clear title to the real property and can legally place it under a conservation easement. Any existing liens or encumbrances on the property shall be subordinated to the conservation easement or extinguished. The Permittee shall submit the legal description, survey, scale drawings, and title insurance commitment, together with copies of any encumbrances listed in the Schedule B of the title insurance commitment, to the Corps for review and approval prior to recording the conservation easement. If the Corps does not approve of the conservation easement because the Permittee has not demonstrated that it has clear title to the real property and can legally place it under a conservation easement, then the Corps may determine that the compensatory mitigation site is not appropriate and may require alternative compensatory mitigation.

Within 30 days of the Corps' approval of the conservation easement and title insurance commitment, the Permittee shall record the conservation easement in the public records of Manatee County, Florida. A certified copy of the recorded document, plat, and verification of acceptance from the Grantee shall be forwarded to the Corps within 30 days of recording. The Permittee shall also provide to the Corps a copy of the title insurance policy in an amount equal to the market value of the unencumbered property.

In the event that this DA permit is transferred, proof of delivery of a copy of the recorded conservation easement to the subsequent Permittee or Permittees shall be submitted to the Corps together with the notification of permit transfer within 30 days of the transfer.

The Grantee shall not assign its rights or obligations under this conservation easement except to another organization qualified to hold such interests under the applicable state and federal laws, including §704.06 Florida Statutes, and committed to holding this conservation easement exclusively for conservation purposes. The Corps shall be notified in writing of any intention to reassign the conservation easement to a new grantee and shall approve the selection of the grantee. The new grantee shall accept the assignment in writing and a copy of this acceptance shall be delivered to the Corps. The conservation easement shall then be re-recorded and indexed in the same manner as any other instrument affecting title to real property and a copy of the re-recorded conservation easement furnished to the Corps. If the Permittee does not receive the Corps' approval of the grantee, the Corps may determine that the compensatory mitigation site is no longer appropriate and may

require alternative compensatory mitigation.

Any other deviation from the established conservation easement cannot be performed without a modification to this permit instrument. The ability to modify or remove this conservation easement is neither implied nor guaranteed. If the conservation easement is removed for any reason, the Permittee shall provide appropriate mitigation to compensate for functional wetland loss.

33. Mitigation Implementation Financial Assurances: The Corps has determined that the State-approved mitigation financial assurances included with the approved final Compensatory Mitigation Plan (**Attachment G**) provide sufficient financial resources to complete or replace the permittee's obligations to implement the required mitigation and meet specified performance standards in this DA permit in the event that the permittee proves unable or unwilling to meet those obligations.

The permittee shall submit written proof that they have executed and funded the financial assurance instrument prior to initiating the authorized work.

34. Mitigation Implementation Financial Assurances - Changes: If, at any time, the Corps determines that the type or amount of the approved financial assurance mechanism is not sufficient to meet the Corps' mitigation requirements associated with this DA permit, or if the State financial assurance has been terminated, or partially released by the State prior to the Corps' determination that any part of the mitigation is successful in accordance with the Wetland Performance Standards or the Stream Performance Standards Special Conditions of this permit and can be released from monitoring in accordance with the Mitigation Implementation Completion Special Condition of this permit, the Permittee shall provide the Corps with financial assurances to ensure a high level of confidence that the required mitigation will be successfully completed in accordance with applicable Corps performance standards. The Corps shall review and approve the new financial assurance instrument, and the Permittee shall execute and fund it, prior to commencing or continuing the permitted activity.

35. Mitigation Implementation Financial Assurances - Termination or Revocation: The Permittee shall provide the Corps written notice at least 120 days in advance of any termination or revocation of any financial assurance instrument, and notice at least 30 days in advance of modifications, amendments, and partial releases.

36. Mitigation Implementation Financial Assurances - Release: The Permittee can request release or partial release from mitigation implementation financial assurances when (1) the Corps determines that any part of the compensatory mitigation has met the requirements of the Wetland Performance Standards or the Stream Performance Standards and the Mitigation Implementation Completion Special Conditions, (2) the Corps has released the Permittee from further monitoring in accordance with the Mitigation Monitoring Release special condition of this permit, and (3) the Permittee has executed and funded the long-term funding mechanism pursuant to the Long-Term Management Funding Mechanism special condition of this DA permit. The Permittee shall not request a release of the State Financial Assurances from the State of Florida until the Corps concurs.

37. Long-Term Management: After recording of a conservation easement over a

mitigation area, the Permittee (or Corps-approved responsible party) shall maintain that compensatory mitigation area in a condition in accordance with the performance standards and the Long-term Management Plan that are part of the approved final Compensatory Mitigation Plan (**Attachment G**). The Long-term Management Plan includes a description of long-term management needs, and annual cost estimates for these active long-term management needs.

Also included in the Long-Term Management Plan are requirements for an Ecological Baseline Report and annual reporting to document the ecological conditions within the preserved mitigation areas, maintenance activities expenses, and the effects of secondary uses within the mitigation areas.

38. Long-Term Management – Secondary Uses: As stated in the Long-Term Management Plan, the primary function of all of the mitigation areas, including the upfront preservation mitigation areas, is to serve as compensatory mitigation under Section 404 of the Clean Water Act for impacts to waters of the United States authorized by this DA permit. Any secondary uses of these areas that conflict with that primary function and will jeopardize the objectives of the approved Compensatory Mitigation Plan, as determined by the Corps, shall be prohibited. If the Corps determines that a secondary use is conflicting with the primary function and jeopardizing the objectives of the approved Compensatory Mitigation Plan, then the Permittee will stop that secondary use until further review and approval by the Corps.

39. Grazing: The Permittee shall prohibit grazing by cattle or any other captive livestock or game species within mitigation areas where implementation is not complete in accordance with the Wetland Performance Standards or the Stream Performance Standards Special Conditions and sections of the Compensatory Mitigation Plan, and the Mitigation Implementation Completion Special Conditions, and within preserved mitigation areas except in areas where the Corps has approved a grazing management plan. The purpose of the grazing management plan shall be to manage grazing as a secondary use of mitigation areas. If the Permittee wishes to pursue cattle grazing as a secondary use of a mitigation area, the Permittee must submit to the Corps a cattle grazing management plan demonstrating to the Corps satisfaction that cattle grazing is consistent with the objectives of the Compensatory Mitigation Plan. The Permittee must receive the Corps' review and approval before initiating cattle grazing as a secondary use of a mitigation area.

40. Long-Term Management Funding: Prior to initiating the authorized work, the Permittee must submit proof that the long-term management financial assurance included with the Long-Term Management Plan (Appendix 4-4-C) of the approved compensatory mitigation plan (**Attachment G**) has been funded with an initial principal of \$1,413,750 and executed. The initial principal of \$1,413,750 is estimated to fund the management of the "Phase A1" and "Phase A2" preservation areas, including approximately 291.45 acres of preservation of wetlands, 11,474 lf of preservation of streams, and 143 acres of adjacent upland buffers. The Permittee must provide a cost estimate for long-term management of additional mitigation areas as they are requested by the Permittee to be released from mitigation implementation and put under long-term management. The Corps must review and approved the proposed cost estimate and receive written proof from the Permittee that the long-term management financial assurance principal has been increased by

the appropriate amount before releasing the mitigation area from mitigation implementation requirements.

41. Long-Term Management Funding - Changes: If, at any time, the Corps determines that the type or amount of the approved long-term management financial assurance mechanism is not sufficient to meet the Corps' mitigation requirements associated with this DA permit, the Permittee shall provide the Corps with revised financial assurances to ensure a high level of confidence that the required mitigation will be successfully completed in accordance with applicable Corps performance standards. The Corps shall review and approve the new financial assurance instrument, and the Permittee shall execute and fund it, prior to commencing or continuing the permitted activity.

42. Long-Term Management Funding - Termination or Revocation: The Permittee shall provide the Corps written notice at least 120 days in advance of any termination or revocation of any financial assurance instrument, and notice at least 30 days in advance of modifications, amendments, and partial releases.

43. Long-Term Management Funding - Release: If the Permittee demonstrates to the Corps' satisfaction that any or all of the mitigation areas have become self-sustaining, the Permittee may request partial or complete release from the long term management funding obligations and reporting requirements. The Permittee or other responsible party shall continue to maintain the mitigation areas in accordance with permit performance standards and the approved Long-term Management Plan as necessary.

End of Special Conditions