



<p>SUBJECT Mitigation Site Monitoring, Modifications, And Release Procedures</p>	<p>FINAL NUMBER GE07-04(B)</p>	<p>EFFECTIVE DATE 09/20/2007</p>	<p>VALIDATION DATE 01/25/2016</p>	<p>SUPERSEDES or RESCINDS</p>
<p>WEB LINK(S) www.oregon.gov/ODOT/HWY/TECHSERV/Pages/technicalguidance.aspx</p>				
<p>TOPIC/PROGRAM <u>Wetlands Program</u></p>	<p>APPROVED SIGNATURE Original signed by: Susan Haupt Geo-Environmental Manager</p>			

PURPOSE

To establish guidelines and direction for Region Technical staff and Central Geo-Environmental Natural Resource staff for monitoring report submittals, obtaining written closure on successful compensatory mitigation sites, and requesting from the U.S. Army Corps of Engineers (Corps) and/or Department of State Lands (DSL) permit modifications associated with mitigation.

GUIDANCE

Annual Monitoring Reporting and Submittal Procedures

Monitoring at the frequency and duration described in the permit is required even when sites are meeting all success criteria, except when a permit modification specifically changes that timeline.

1. Monitoring shall be conducted as required in Corps and/or DSL permits and shall address permitted success criteria.
2. Annual monitoring reports where maintenance has been identified as a need shall include an implementation schedule.
3. Annual monitoring reports that identify a need for corrective action (e.g., site is failing and needs more than minor maintenance), shall include a corrective action plan and permit modification request.
4. Final monitoring reports that identify the site as successful shall include a request for official written sign-off from the Corps and DSL, as appropriate.
5. Monitoring reports completed to meet Corps permits should be sent to the appropriate Corps Enforcement Specialist (not to be confused with Regulatory Project Managers or the ODOT-Corps Liaison).
6. Monitoring reports completed to meet DSL permits should be sent to the appropriate DSL liaison.
7. Annual monitoring reports will follow the format provided by Department of State Lands Removal-Fill Guide.
8. Annual reports will be submitted directly by Region to the DSL and the Corps, as appropriate, and will be copied to NRUtrans.

Obtaining agreement that compensatory mitigation or site restoration obligations have been met:

9. Requests for final Corps approval of mitigation or restoration success should be either sent **as separate correspondence or explicitly stated in the monitoring report cover letter**. The request should clearly and succinctly state that all success criteria and mitigation conditions have been met. If a mitigation or restoration site does not meet the success criteria or mitigation conditions, permit close-out may not be appropriate.
10. The Corps will notify ODOT when the mitigation/restoration obligations for a permit have been met. In situations where additional issues need to be resolved, the Enforcement Specialist will notify ODOT.
11. Requests for final DSL approval of mitigation or restoration success should be either sent **as separate correspondence or explicitly stated in the monitoring cover letter**. The letter should explicitly state that the site is meeting success criteria and that monitoring obligations have been satisfied.
12. If all required monitoring reports have been submitted, the site meets permit conditions, and no response is received by DSL within 90 days of requesting 'sign-off,' then the site is deemed in-compliance and no further monitoring required (OAR 141-085-0151(6)). ODOT will request written confirmation of sign-off or that sign-off obligation has otherwise been met.

Seeking permit modifications for mitigation or restoration sites:

13. A permit modification is required under the following conditions:
 - a. A substantial change to the approved planting plan (species, location, size of plantings, or number of plants), or other mitigation design detail to better reflect site conditions or species availability.
 - b. Changes in permitted success criteria to more closely match site characteristics. Sometimes success criteria are not realistic based on site specific conditions. This recognizes that the site is not meeting success criteria but may still be considered an ecological success.
 - c. To obtain corrective action plan approval.
 - d. Discontinuing monitoring due to early site success when permit conditions require continued monitoring.
 - e. To substantially alter timelines in an existing permit (e.g., planting deadlines, mitigation plan due date, monitoring report extension, etc).
 - f. Other circumstances may arise that require written agreement in the form of a permit modification that are not listed here. Coordinate closely with Geo-environmental and Corps/DSL liaisons as appropriate.
14. For Corps permit modifications listed as items a and d above, contact the ODOT Corps Liaison, as these are not compliance-related. For example, this might involve ODOT seeking modifications to an approved mitigation plan (i.e., change in the planting plan due to lack of available stock) prior to beginning the permitted action.
15. When a Corps permit modification is needed to address site failure (including those that are self-reported), the Corps Enforcement Specialist should be contacted (refer

to attached map), with a CC to the ODOT-Corps Liaison. The request will be processed by either an Enforcement Specialist or by the ODOT-Corps Liaison depending on the appropriate action (enforcement action or not) and the complexity of the modification, to ensure a timely response. The Corps will notify ODOT of the point(s) of contact for the modification.

16. For DSL permit modifications, contact the ODOT-DSL Liaison for your Region.

Examples of Non-Compliance Issues Associated with Mitigation and Restoration Sites:

- Mitigation plan not submitted on schedule
- Not meeting vegetation success criteria
- Not meeting hydrology success criteria
- Not meeting acreage goal
- Exceeded permitted scope of work

DEFINITIONS

Asset Management Steering Committee: reports to ODOT's Asset Management Executive Steering Committee; responsible for recommending strategies that optimize funding and life-cycle decisions for operations, maintenance and construction business functions.

Corps Enforcement Specialist: Corps staff responsible for advising on non-permitted activities or activities that allegedly violate an issued permit.

Corrective Action Plan: a plan that recognizes that the mitigation or restoration site associated with an authorized project is in non-compliance, and either 1) proposes necessary steps/action that needs to be taken to bring the mitigation site into compliance or, 2) proposes an alternative plan for implementation, which could include mitigation at a nearby or distant location, or the purchase of credits at a mitigation bank to offset the original project impacts.

Maintenance: necessary steps either to maintain site success or to bring a site into compliance with vegetation-related success criteria; consists mainly of weeding, re-planting, watering, or other minor site activities.

Mitigation Site: a site constructed to offset aquatic resource impacts.

Monitoring report: an annual or biennial report that updates the status of site success that is submitted to regulatory agencies to meet permit conditions. Monitoring reports also include recommendations for maintenance or other site actions needed to meet permit conditions/success criteria.

Non-compliance: a site not meeting success criteria or permit conditions as stated in the Corps or DSL permit.

ODOT- Corps Liaison: Corps staff assigned to work on ODOT projects that do not involve violations or non-compliance issues.

ODOT-DSL Liaison: DSL permit coordinator assigned to work on ODOT projects.

Regulatory Project Manager: Corps staff responsible for reviewing and issuing permits for a particular area, usually based on county boundaries.

Site Restoration: a site temporarily impacted by construction activities that requires restoration to pre-construction conditions.

Successful: a site that is meeting all success criteria as stated in the permit or permits issued or modified by the Corps and/or DSL.

BACKGROUND/REFERENCE

Permits obtained from the Corps and the DSL often include conditions that require the successful construction of compensatory mitigation and/or restoration sites to offset project impacts. Compensatory mitigation sites are recognized as high priority assets by the Asset Management Steering Committee. These standard procedures are provided in an effort to manage these sites in a cost-effective manner.

Site success is determined by employing criteria that commonly include vegetation and hydrology parameters. Permits are binding contracts between ODOT and the Corps, and between ODOT and DSL. Successful sites for which monitoring obligations have been met require sign-off by the Corps and DSL.

This guidance sets forth requirements for regulatory coordination by ODOT staff and defines mitigation site monitoring roles/responsibilities of Region and Geo-Environmental.

RESPONSIBILITIES

Regions Will:

1. Provide maintenance, monitoring and corrective work as needed to meet permit conditions, until the end of the monitoring period and permit conditions have been met, or alternative mitigation has been approved by Corps and/or DSL as appropriate.
2. Provide financial support for maintenance, monitoring and corrective work during construction and through the plant establishment period.
3. Submit all monitoring reports directly to appropriate regulatory agencies on time.
4. Copy Wetlands Program Coordinator on all written correspondence with regulatory agencies.
5. Contract when needed with consultants to monitor, correct, and maintain mitigation sites (GE will provide support for this via ATAs and standardized SOWs).
6. Inform and coordinate with GE on mitigation sites that need corrective action, or long-term monitoring or maintenance so funds can be allocated.
7. Coordinate with GE regarding mitigation site failure and development of an acceptable remediation plan.
8. Implement standards and procedures developed by GE, regulatory agencies, and/or by committee (such as use of report templates, submittal procedures, coordination, and elevation procedures, field data collection procedures, coordination procedures, etcetera).
9. Partner with and provide feedback to GE on continuous improvement and during development of standards and procedures.
10. Ensure technical adequacy of mitigation monitoring reports.

11. Update GE's monitoring databases when request by GE, as needed to add new projects (all Region-delivered projects including design-build) and update project status information.
12. Submit requests to GE for corrective action funds each year when monitoring, maintenance, and corrective actions will exceed \$10,000 per project per year.
13. Submit permit modification requests in a timely manner.
14. Obtain sign-off from Corps and DSL for successful sites upon completion of monitoring obligations.

Geo-Environmental Will:

1. Develop monitoring program goals and performance measures to track Mitigation Monitoring Program success.
2. Provide financial support for post-construction monitoring, maintenance and corrective action following the first year after construction until permit conditions have been met.
3. Provide support and guidance to consultants and regional staff on an as-needed basis (such as elevation of issues to regulatory agencies for problem sites, negotiating success criteria, and providing training).
4. Ensuring fiscal responsibility of monitoring fund expenditures and budget management through tracking and reporting.
5. Approve corrective action plans before they are submitted to Corps and DSL.
6. Coordinate meetings with DSL and the Corps to review wetland mitigation site status—to determine which sites will be released and which sites require additional monitoring, maintenance, corrective action, or permit modification.
7. Assume monitoring and reporting responsibilities for wetland mitigation sites that are not being monitored or maintained in accordance with developed standards or when monitoring funds are not expended in accordance with ODOT procedures.
8. Track mitigation site actions and results (planning, permitting, construction, monitoring, reporting, maintenance, and remediation) to explore opportunities for program improvement and efficiencies.
9. In coordination with Regions and regulatory agencies, develop statewide standards and procedures for mitigation monitoring and reporting for implementation including field data collection protocols that support information systems requirements (i.e. database tracking).
10. Periodically conduct review of mitigation sites and monitoring program by reviewing monitoring reports and success of mitigation sites for quality assurance. Provide to the ODOT Procurement Office approved standardized statements of work to simplify the contracting process for Region for monitoring and corrective action.
11. For the OTIA III bridge program, oversee contracts and annual mitigation monitoring requirements.

CONTACT INFORMATION

Title: Geo-Environmental Section Manager
Branch/Section: Technical Services/Geo-Environmental Section
Phone: (503)986-3508
E-mail: Susan.HAUPT@odot.state.or.us