MITIGATION LOP (LRL-2010-323) GENERAL CONDITIONS:

1. Discharges of dredged or fill material into “waters of the U.S.” must be minimized or avoided to the maximum extent practicable at the project site (i.e. on-site). In determining the minimal impact threshold, the Corps will consider the direct, secondary, and cumulative impacts of the fill or work and any mitigation measures.

2. The permittee shall ensure that sedimentation and soil erosion control measures are in place prior to any construction activity and that such measures are maintained throughout project construction. This shall include the installation of straw bale barriers, silt fencing, and/or other approved methods to control sedimentation and erosion. Sedimentation and erosion controls will not be placed in “waters of the U.S.,” except if specifically approved by the District.

3. The permittee shall ensure that areas disturbed by any construction activity, including channel banks, are immediately stabilized and revegetated with a combination of non-invasive grasses, legumes and shrubs compatible to the affected area and that will not compete with native vegetation.

4. The permittee shall ensure that all in-stream construction activity is not performed during periods of high stream flow or during the fish spawning season between April 1 through June 30 without first contacting and receiving the recommendations of the KDFWR for their expertise on impacts to the fishery resource. Additionally, the discharge of dredged and/or fill material in known waterfowl breeding and wintering areas must be avoided to the maximum extent practicable.

5. The permittee will ensure that the activity authorized will not disrupt movement of those aquatic species indigenous to the waterbody, including those species which normally migrate through the area unless the activity's specific purpose is to impound water.

6. The permittee shall ensure that all construction equipment is refueled and maintained on an upland site away from existing streams, drainageways and wetland areas. Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.

7. The permittee must comply with any case specific special conditions added by the Corps or by the State Section 401 WQC. The conditions imposed in the State Section 401 WQC are also conditions of this LOP.

8. The permittee shall ensure that no activity authorized by the LOP may cause more than a minimal adverse effect on navigation.

9. The permittee shall ensure proper maintenance of any structure or fill authorized by this LOP, including maintenance to ensure public safety.

10. The permittee shall not perform any work within any Wild and Scenic Rivers or in any river officially designated as a "study river" for possible inclusion in the system, unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity authorized by the LOP will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal Land Management agency in the area (e.g. U.S. Forest Service, Bureau of Land Management, the National Parks Service, or the U.S. Fish and Wildlife Service).

11. The permittee shall not perform any work under the LOP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which is likely to destroy or adversely modify the critical habitat of such species. The permittee shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work under the LOP until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. Authorization of an activity under the LOP does not authorize the "take" of a threatened or endangered species as defined under the Federal ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS or the National Marine Fisheries Service, both lethal and non-lethal "takes" of protected species are in violation of the ESA.

Obligations under Section 7 of the ESA, must be reconsidered by the Corps if (1) new information reveals impacts of the proposed action may affect listed species or critical habitat in a manner not previously considered; (2) the proposed action is subsequently modified to include activities which were not considered during consultation; or (3) new species are listed or critical habitat designated that might be affected by the proposed action.

12. If the permittee discovers any previously unknown historic or archaeological remains while accomplishing the activity authorized by the LOP, work must be immediately stopped and this office immediately notified. The District will initiate the Federal, tribal 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.

13. The permittee shall not perform any work under the LOP where the discharge of dredged and/or fill material would occur in the proximity of a public water supply intake.

14. No activity, including structures and work in “waters of the U.S.” or discharges of dredged or fill material may consist of unsuitable materials (e.g. trash, debris, car bodies, asphalt, etc.) and that materials used for construction or discharge must be free from toxic pollutants in toxic amounts.

15. The permittee shall, to the maximum extent practicable, design the project to maintain pre-construction downstream flow conditions. Furthermore, the work must not permanently restrict or impede the passage of normal or expected high flows and that the structure or discharge of fill must withstand expected high flows. The project must provide, to the maximum extent practicable, for retaining excess flows from the site and for establishing flow rates from the site similar to pre-construction conditions.

16. The permittee shall ensure that all temporary fills, authorized under the LOP, be removed in their entirety and the affected areas returned to pre-construction elevations.

17. Representatives from the Corps and/or Kentucky Division of Water may inspect any authorized activity or mitigation site at any time deemed necessary to ensure compliance with the terms and conditions of the LOP, Section 401 WQC, and applicable laws.

18. All work authorized by this LOP must be completed within **3 years** after the date of the Corps’ authorization letter, unless otherwise authorized by the Corps. If you find you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least three months before the expiration date.

19. The permittee, after completion of work under the LOP, shall submit a signed certification letter regarding the completed work and required mitigation, if applicable. The certification letter will include a statement that the work was done in accordance with the LOP authorization including compliance with all general and special conditions and completion of mitigation work.

O:\OP\Private\OP-F/ORM/Saved Letters/2010/LRL-2010-323/LOP Templates/LRL-2010-323 General Conditions.docx