



# Financial Assurances of Compensatory Mitigation Projects

U.S. ARMY CORPS OF ENGINEERS

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## What are financial assurances?

A mechanism to help ensure that a compensatory mitigation project is successfully completed. Financial assurances provide resources to correct, complete, or replace a compensatory mitigation project in the event that the responsible party (permittee, mitigation bank sponsor, or in-lieu fee program sponsor) is unable or unwilling to do so. In other words, financial assurances help to manage the risk of failing to successfully complete a compensatory mitigation project, including its performance standards (milestones).



## What are the requirements for financial assurances?

Financial assurances are considered to be one of the 12 fundamental elements of a compensatory mitigation plan. U.S. Army Corps of Engineers (USACE) regulations state that sufficient financial assurances or an alternative mechanism shall be required to ensure a high level of confidence that a compensatory mitigation project will be successfully completed in accordance with applicable performance standards. Some parties, such as some state government agencies, do not have the legal authority to post financial assurances but are able to provide that high level of confidence by executing a formal documented commitment to successful completion of mitigation projects. In some situations that commitment may be a sufficient guarantee of performance.

## What forms may financial assurances take?

Performance bonds, letters of credit, escrow accounts, casualty insurance, and legislative appropriations have all been used to provide financial assurances for mitigation projects. The decision as to what is an appropriate financial assurance mechanism is the USACE District's decision.

## How is the amount of a financial assurance determined?

The amount of a financial assurance is determined by the responsible party (permittee, mitigation bank or in-lieu fee program sponsor) in consultation with USACE. The amount of the assurance will include consideration of the size of the project, complexity, degree of completion, likelihood of success, etc. The dollar amount of assurances is based on the full cost of providing compensatory mitigation and may include costs for:

- Land
- Planning, design, & engineering
- Construction & Planting
- Monitoring & maintenance
- Reasonably foreseeable corrective measures
- Contingencies
- Legal & administrative measures

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### What is the timing for implementation of a financial assurance?

- Financial assurances must be in place prior to commencing permitted work in waters of the U.S. (including wetlands and streams).
- Financial assurances can be phased out as mitigation projects meet their performance milestones. The conditions for phasing out or releasing financial assurances must be spelled out in the permit, mitigation plan, or the mitigation bank or in-lieu fee program instrument.
- USACE must receive notice not less than 120 days in advance of a termination or expiration of a financial assurance.

### How do financial assurances differ from financing for long-term management of mitigation projects?

Financial assurances help guarantee successful completion of a mitigation project. Financial assurances are released when all project performance measures have been met. To date, few claims have been made on financial assurances.

Funding for long-term management of mitigation projects is used to finance the long-term management of mitigation projects after all performance standards have been met.



### Who would receive payments from the assurances?

If USACE determines that it is necessary for the financial assurances to be used to ensure successful completion of the mitigation project, the funds will be made payable to a party acceptable to USACE. That beneficiary or designee would agree to use the funds to correct or replace the mitigation project. The financial assurances are NOT paid to USACE.

USACE Institute for Water Resources (IWR) with the authorization and support of USACE Headquarters developed a guide to financial assurances for compensatory mitigation entitled "*Implementing Financial Assurance for Mitigation Project Success*". This guide reviews key design and implementation issues and considerations relating to the use of financial assurances for mitigation project success. It describes and compares key features of alternative assurance instruments. It can be downloaded from the IWR website at [http://www.iwr.usace.army.mil/Portals/70/docs/iwrreports/Financial\\_Assurance.pdf](http://www.iwr.usace.army.mil/Portals/70/docs/iwrreports/Financial_Assurance.pdf)

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