



**US Army Corps  
of Engineers®**

**12512-SPL  
REGULATORY PROGRAM  
STANDARD OPERATING PROCEDURE  
FOR EVALUATION OF PROPOSED  
COMPENSATORY MITIGATION SITES**



**Los Angeles  
District**

**REVISIONS SHEET**

NO.	DATE	DESCRIPTION	NOTES
0	07.27.2016	Initial Version	

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**1.0 Purpose.** The purpose of this document is to outline the process for evaluating compensatory mitigation sites as required for processing of Department of the Army (DA) permits, mitigation bank prospectuses, and in lieu fee (ILF) mitigation plans under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act.

**2.0 Applicability.** This process applies to the Regulatory Program within Los Angeles District (SPL). Subordinate offices or organizations shall not modify this procedure to form a specific procedure. This procedure is applicable for all “new” (i.e., not requests to re-verify or modify previously-issued permits) permit applications, preconstruction notifications (PCNs), mitigation bank prospectuses, and in lieu fee (ILF) mitigation plans received after effective date of this process. For NWP re-verification requests where the compensatory mitigation site evaluation checklist (“checklist”) was not completed previously, use of the checklist is required in order to ensure adequacy of compensatory mitigation proposals, to ensure compliance

with the 2008 Mitigation Rule (33 CFR Part 332), and to comply with this new QMS procedure designed to ensure compensatory mitigation is sufficient to offset authorized impacts. For individual permits (SIP and LOP) and bank prospectuses, if the original application or prospectus predates this QMS procedure, the checklist would not be required for subsequent modification requests (time extension or activity modifications), unless the requested modification includes a proposal for an alternative compensatory mitigation site(s). Similarly, for ILF mitigation plans, if the original plan submittal predates this QMS procedure, the checklist would not be required. In addition, in cases where compensatory mitigation has already been constructed or where the applicant can otherwise fully demonstrate substantial resources have been expended or committed in reliance on previous guidance governing compensatory mitigation for DA permits, the checklist would not be required.

### **3.0 References.**

Compensatory Mitigation for Losses of Aquatic Resources (33 C.F.R. Part 332).

### **4.0 Related Procedures.**

SPD QMS No. 12501. SOP for Determination of Mitigation Ratios

SPD QMS No. 12505 Uniform Performance Standards for Compensatory Mitigation Requirements

### **5.0 Definitions.**

**Buffer** - An upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, streams, lakes, marine and estuarine systems from disturbances associated with adjacent land uses.

**Compensatory mitigation** - The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

**Condition** - The relative ability of an aquatic resource to support and maintain a community of organisms having a species composition, diversity, and functional organization comparable to reference aquatic resources in the region.

**Enhancement** - The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

**Establishment (creation)** - The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and functions.

**Functional/condition assessment method** - Any approved, scientifically based method to evaluate current functions or condition of an aquatic resource. The aquatic resource is compared to similar aquatic resources (reference resources) that are relatively unaltered. The approach is based on combining variables that are

typically structural measures or indicators that are associated with one or more ecosystem functions. Functions normally fall into one of three major categories: (1) hydrologic (e.g., storage of surface water), (2) biogeochemical (e.g., removal or transformation of elements and compounds), and (3) habitat (e.g., maintenance of characteristic plant or animal communities). Condition assessments typically combine functions, and specific functions are not assessed, whereas most functional assessments allow users to score each function.

**Functions** - The physical, chemical, and biological processes that occur in ecosystems.

**Impact** - Adverse effect.

**In-kind** - A resource of a similar structural and functional type to the impacted resource.

**In-lieu fee program** - A program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for DA permits. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor. However, the rules governing the operation and use of in-lieu fee programs are somewhat different from the rules governing operation and use of mitigation banks. The operation and use of an in-lieu fee program are governed by an in-lieu fee program instrument.

**Mitigation bank** - A site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument.

**Out-of-kind** - A resource of a different structural and functional type from the impacted resource.

**Permittee-responsible mitigation** - An aquatic resource restoration, establishment, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

**Preservation** - The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

**Re-establishment** - The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

**Rehabilitation** - The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

**Restoration** - The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: reestablishment and rehabilitation.

**Stream network** - A system of naturally occurring stream segments that are linked together within a watershed.

**Stressor** - A human-caused source of disturbance within an ecosystem.

**Water budget** - An accounting of the total inflows and outflows from an ecosystem such as a mitigation site. Components of a water budget are: Precipitation, surface water inflow, surface water outflow, groundwater inflow, groundwater outflow, potential evapotranspiration, actual evapotranspiration, and change in storage.

**Watershed** - A land area that drains to a common waterway, such as a stream, lake, estuary, wetland, or ultimately the ocean.

**Watershed plan** - A plan developed by federal, tribal, state, and/or local government agencies or appropriate non-governmental organizations, in consultation with relevant stakeholders, for the specific goal of aquatic resource restoration, establishment, enhancement, and preservation. A watershed plan addresses aquatic resource conditions in the watershed, multiple stakeholder interests, and land uses. Watershed plans may also identify priority sites for aquatic resource restoration and protection. Examples of watershed plans include, but are not limited to, special area management plans, advance identification programs, and wetland management plans. Habitat conservation plans and, in California, natural community conservation plans, may provide additional sources of watershed planning information.

**Watershed profile** - A watershed profile is a qualitative or quantitative accounting of the relative abundance, diversity and condition of aquatic resources in a geographically bounded watershed area. In this definition diversity means a description of the types of aquatic resources in the watershed area and their spatial distribution (see Bedford 1996 and Bedford et al 1999).

**Wetlands complex** - A grouping of two or more neighboring wetlands that are hydrologically and biologically connected, and have natural land cover between them.

## **6.0 Responsibilities.**

**Regulatory Project Managers (PMs):** For any actions where the PM determines compensatory mitigation is necessary to offset unavoidable impacts to aquatic resources, he/she must follow the procedures provided herein to evaluate any proposed permittee-responsible compensatory mitigation sites for likelihood of success per 33 C.F.R. 332.3(d): Site Selection. In addition, the PM must follow the procedures provided herein to evaluate bank prospectuses and ILF mitigation plans. PMs must complete the mitigation site evaluation checklist and include it in the administrative record.

**Supervisor:** The Section and/or Branch Chief may review mitigation site evaluation checklists completed by the PM, as appropriate, especially for projects with substantial adverse impacts to waters of the U.S., for controversial projects, and for preliminary determinations where the applicant has expressed disagreement.

## **7.0 Procedures.**

Historically, the Los Angeles District (SPL) Regulatory Program has lacked a standardized process or guidance

for evaluating compensatory mitigation sites associated with processing of Department of the Army (DA) permits under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act. In addition, the 2008 mitigation rule (33 C.F.R. Part 332) does not provide a detailed process for selecting compensatory mitigation sites (see 33 C.F.R. Part 332.3(d)). However, it does provide some general guidelines and a list of factors the district engineer must consider. To address this long-standing need, a Project Delivery Team (PDT) was formed to develop a process for evaluating compensatory mitigation sites, as well as accompanying guidance for Regulatory project managers. The purpose of this new, district process is to reduce inconsistency between project managers and offices in evaluating compensatory mitigation sites, to incorporate current scientific understanding of mitigation concepts, and to require documentation of these key decisions, thereby reducing uncertainty on behalf of the regulated community regarding what are and are not acceptable compensatory mitigation sites.

#### 7.1 For permittee-responsible mitigation proposals:

7.1.1 A PM receives a complete permit application or preconstruction notification (PCN), including a statement describing how impacts to waters of the United States are to be compensated for (hereinafter referred to as a “compensatory mitigation proposal”) or a statement explaining why compensatory mitigation should not be required for the proposed impacts. At the applicant’s discretion, he/she may provide a conceptual mitigation plan as part of the permit application.

7.1.2 Upon evaluation of the permit application or preconstruction notification (PCN), a PM may determine compensatory mitigation is necessary to offset unavoidable impacts to aquatic resources.

7.1.3 If compensatory mitigation is required, the PM shall review the compensatory mitigation proposal or plan, if provided (or request a proposal or plan for review, if none was provided).

7.1.4 If the compensatory mitigation proposal or plan does not contain sufficient information to complete the required checklists (mitigation site evaluation checklist and mitigation ratio checklist) and worksheet (uniform performance standards worksheet), the PM will request a revised compensatory mitigation proposal or plan (such plan being conceptual, detailed or draft, as appropriate, for general permits (GP), and draft for standard individual permits).

7.1.5 The PM will complete the mitigation site evaluation checklist using the applicant’s compensatory mitigation proposal or plan.

- Each mitigation site/type shall be entered into a separate column (A, B, C, etc.) on the checklist.
- PMs must enter a separate justification for each applicable step within the checklist (enter comments in the “PM Justification” section and/or cite to an attachment if additional space is needed).

7.1.6 The PM will notify the applicant of his/her preliminary determination regarding the appropriateness of the proposed compensatory mitigation activities for the site(s) in question. If the preliminary determination is the proposed compensatory mitigation activities are not appropriate for the site, the applicant may either (a) submit a revised, draft mitigation plan for the same site(s) that addresses the issues identified in the checklist for Corps’ review and approval; or (b) submit an alternative compensatory mitigation proposal/plan for a new site(s) for evaluation by the PM. In the event the applicant elects option “b,” the PM will prepare a new mitigation site evaluation checklist. If the final determination is the proposed compensatory mitigation activities are appropriate for the site, the PM proceeds to step 7.1.7.

7.1.7 Once a final determination has been made regarding the appropriateness of the proposed compensatory mitigation activities and site(s), the PM will then complete QMS Procedure No. 12505: SPD Uniform Performance Standards for Compensatory Mitigation Requirements.

7.1.8 Once a final determination has been made regarding appropriate performance standards, the PM will then complete QMS Procedure No. 12501: SPD Standard Operating Procedure for Determination of Mitigation Ratios (a.k.a., the mitigation ratio checklist).

7.1.9 Once a final determination has been made regarding the required ratio(s) of compensatory mitigation, the PM will then review all other aspects of the mitigation plan and comment on the adequacy of the mitigation plan in accordance with 33 C.F.R. 332.4(c) and the SPD mitigation and monitoring guidelines. Once any additional comments are adequately addressed, the PM will then approve the final mitigation plan either before permit issuance (for individual permits) or optionally, after verification (for general permits only). The final determination must be included in the administrative record.

7.2 For bank prospectuses and in-lieu fee (ILF) mitigation plans, the PM will first determine appropriateness of proposed compensatory mitigation activities and site(s) early in the process (during review of prospectus) using this QMS procedure. The PM will then determine appropriate performance standards(s) using QMS Procedure No. 12505 later in the process once preliminary performance standards have been proposed (either as part of prospectus or draft instrument).

**8.0 Records and Measurements.**

8.1 All documents listed above will be filed in the corresponding project files in accordance with [ES-QMS140, Records Management](#).

Type	Description	Responsible Office	Location	Record Media	Retention	Disposition
R	Mitigation site evaluation checklist	Regulatory Division within SPL Districts/Field Offices	Project file folders in filing cabinets Regulatory Division within SPL District; Electronic Checklists in ORM Database	P/E	7 years	Send to records holding

8.2 A mitigation site evaluation checklist shall be completed for each permit application requiring permittee-responsible compensatory mitigation, or bank prospectus, or ILF mitigation plan and included in the administrative record.

8.3 The SPL Regulatory Division management shall periodically inspect project files to ensure compliance with this guidance.

## **9.0 Attachments.**

9.1 [12512.1-SPL Compensatory mitigation site evaluation checklist.](#)

9.2 [12512.2- SPL Instructional presentation for preparing compensatory mitigation site evaluation checklist](#)

9.3 [12513.3-SPL Compensatory mitigation site evaluation checklist examples.](#)

## **10.0 Flow Chart (see below).**

## Flow Chart. Evaluation of Proposed Compensatory Mitigation Sites

