



Letter of Permission Procedures for Salton Sea Management Program 10-Year Plan

**U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT**

BUILDING STRONG®

CLEAN WATER ACT SECTION 404 LETTER OF PERMISSION PROCEDURES FOR COVERED ACTIVITIES UNDER THE SALTON SEA MANAGEMENT PROGRAM (SSMP) 10-YEAR PLAN PROJECTS

Issuance Date: October 31, 2024

ACTION ID: SPL-2019-00951-KJD

AUTHORITY: 33 CFR §325.2(e)(1)(ii)

Purpose:

The U.S. Army Corps of Engineers (Corps), Los Angeles District seeks to establish new Letter of Permission (LOP) procedures under Section 404 of the Clean Water Act (CWA) to more efficiently authorize discharges of dredged or fill material into waters of the U.S. associated with the implementation of the State of California's Salton Sea Management Program (SSMP) 10-Year Plan. The proposed SSMP LOP procedures would specify a permitting process by which site-specific SSMP 10-Year Plan projects could be authorized. Proposed projects authorized by the new LOP procedures would result in no more than minor individual and cumulative adverse environmental effects, must comply with regulatory program requirements, including the Section 404(b)(1) Guidelines [40 Code of Federal Regulations (CFR) Part 230], and meet the criteria identified in this notice, including the general permit conditions.

Regulatory Context:

In accordance with 33 CFR §325.2(e)(1), the Corps is authorized to use "alternative procedures", including LOPs, to authorize activities under the Corps Regulatory Program

pursuant to Section 10 of the Rivers and Harbors Act (RHA) and/or Section 404 of the CWA, as follows:

- i. In those cases subject to Section 10 of the RHA when, in the opinion of the district engineer, the proposed work would be minor, would not have significant individual or cumulative impacts on environmental values, and should encounter no appreciable opposition.
- ii. In those cases subject to Section 404 of the CWA after:
 - A. The district engineer, through consultation with federal and state fish and wildlife agencies, the Regional Administrator, U.S. Environmental Protection Agency (USEPA), the state water quality certifying agency, and, if appropriate, the state Coastal Zone Management Agency, develops a list of categories of activities proposed for authorization under LOP procedures;
 - B. The district engineer issues a public notice advertising the proposed list and the LOP procedures, requesting comments, and offering an opportunity for public hearing; and
 - C. A Section 401 Water Quality Certification (WQC) has been issued or waived and, if appropriate, Coastal Zone Management Act (CZMA) consistency concurrence obtained or presumed either on a generic or individual basis. Any project-specific regulated activities authorized by LOP must also meet the LOP general conditions listed below.

The new SSMP LOP procedures would be specifically pursuant to 33 CFR §325.2(e)(1)(ii).

Background:

On March 22, 2021, the Corps published a Special Public Notice announcing the request from the State of California's Natural Resources Agency (CNRA), Department of Water Resources (DWR), and California Department of Fish and Wildlife (CDFW) (SSMP Team) to establish new LOP procedures by which regulated activities associated with the implementation of SSMP 10-Year Plan projects could receive Corps permit authorization. The SSMP Team is working with partners such as Riverside and Imperial Counties, Salton Sea Authority, and non-governmental organizations such as Audubon (SSMP Partners) to design, construct and implement SSMP projects. The State of California is proposing to implement approximately 29,800 acres of habitat restoration and dust suppression projects on lakebed areas that have been, or will be, exposed at the Salton Sea by the year 2028. The SSMP 10-Year Plan would provide for multiple benefit projects that combine dust suppression with habitat restoration to the extent practicable. A minimum of 14,900 acres of proposed projects under the SSMP 10-Year Plan must be aquatic habitat restoration projects. These projects would primarily convert exposed lakebed to either pond habitat suitable for fish and wildlife or wetland habitat which would provide dust suppression as a secondary function. Similarly, while dust suppression projects would be designed to primarily improve air quality by suppressing fugitive dust emissions, they may also provide habitat benefits by establishing vegetation or creating wetland habitat. Within the Planning Area, opportunity areas have

been identified for the Proposed Project where site-specific restoration and suppression projects would be proposed under the new SSMP LOP procedures (Figure 1).

The full SSMP 10-year Plan Project Description can be found on the SSMP Team's website at: <https://saltonsea.ca.gov/planning/ssmp-draft-description-project/>.

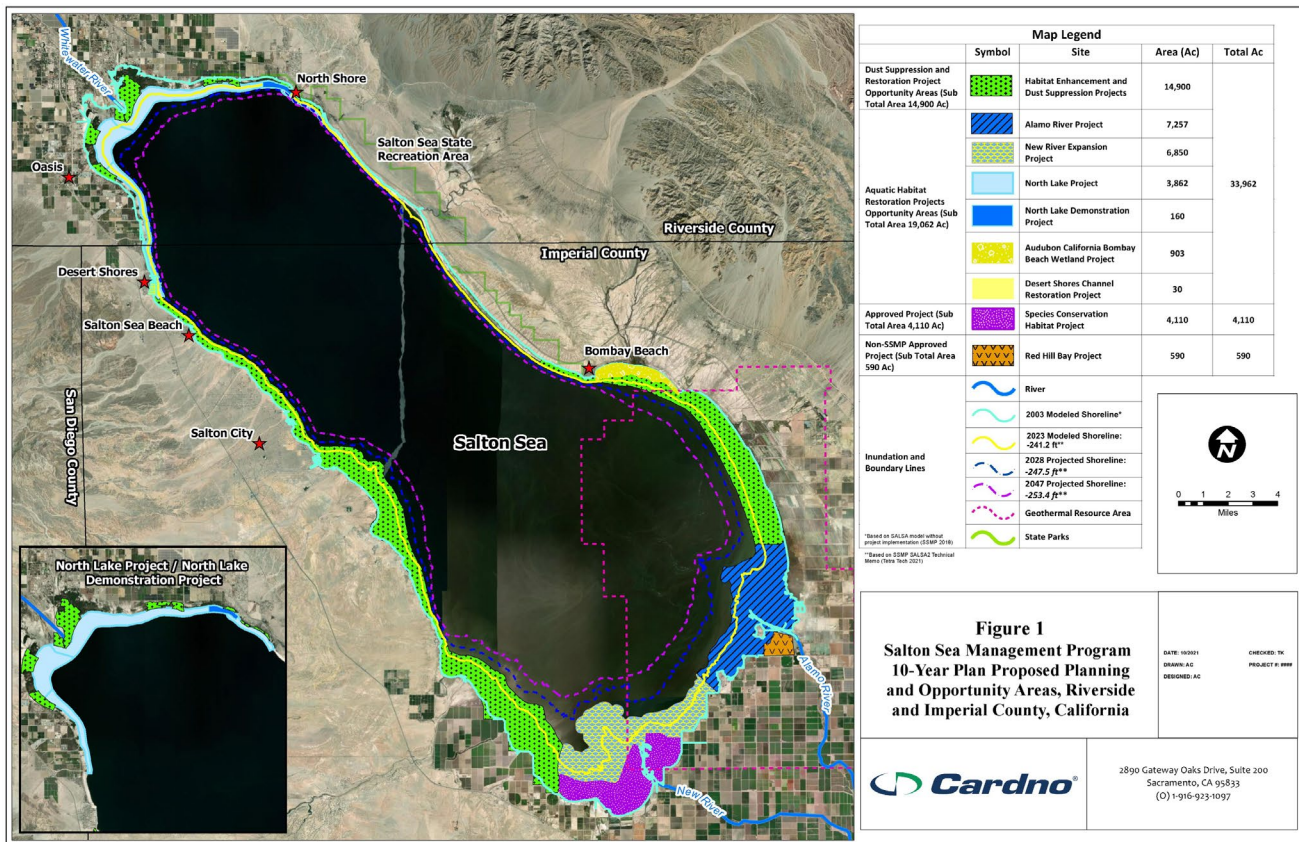


Figure 1. Salton Sea Management Program 10-Year Plan Proposed Planning and Opportunity Areas, Riverside and Imperial Counties, California.

Location:

The approximately 63,000-acre proposed Planning Area for the Proposed Project would include various locations within, along, and adjacent to the Salton Sea, within or near the cities or towns of Mecca, Desert Shores, Salton City, Westmorland, Calipatria, and Bombay Beach in Imperial and Riverside counties, California (Figure 2). Specifically, the Proposed Project would generally occur within exposed lakebed areas located below an elevation of -228 feet mean sea level (msl) based on the North American Vertical Datum of 1988 (NAVD 1988)¹ and would be located on the following United States Geological Survey (USGS) 7.5-

¹ The conversion for this coordinate system is NAVD 1988=NGVD 29+2.1.

minute topographic quadrangle maps: Fink (USGS 2018), Wister (USGS 2018), Niland (USGS 2018), Calipatria (USGS 1976), Westmorland West (USGS 2018), Kane Spring (USGS 2018), Kane Spring NE (USGS 2018), Truckhaven (USGS 2018), Oasis (USGS 2018), Mecca (2018), Mortmar (USGS 2018), and Durmid (USGS 2018). The proposed Project Area is defined in aqua blue in Figure 2. Known jurisdictional waters of the United States (U.S.) that occur within the Proposed Project area include the Salton Sea and the Whitewater, New, and Alamo Rivers.



Figure 2. Vicinity map of Salton Sea in relation to southern California and border with Mexico.

SSMP LOP Terms, Procedures, Conditions, and Mitigation Framework:

Site-specific LOPs would be issued only for those covered activities where the proposed project meets all of the criteria identified in this notice. The Corps may exercise its discretion to determine whether a proposed project may be authorized under the new SSMP 10-Year Plan LOP procedures, may be authorized with the addition of special conditions, or may not be authorized under these procedures and will instead require alternative permit processing (Nationwide, Regional General, or Standard Individual Permit).

Cumulatively, SSMP projects authorized by these LOP procedures would result in no net loss of aquatic ecosystem functions and services but rather would provide a net benefit. However, in compliance with the Final Mitigation Rule 33 C.F.R. §332.3(k) and pursuant to Section 404(b)(1) Guidelines (40 C.F.R. § 230.91), compensatory mitigation for individual SSMP projects that would result in the permanent loss of aquatic resources may be required. Aquatic resource gains and benefits of the SSMP Program would be documented in annual reporting provided to the Corps. All temporary impacts to aquatic resources would be restored to preconstruction conditions as soon as practicable.

A. LOP Terms:

1. Eligibility Criteria: To qualify for an LOP under these procedures, proposed projects must meet the following criteria:

- a. Occur around the Salton Sea generally between the water surface elevations measured in 2003 and projected for 2028, i.e., marking the extent of the Salton Sea's recession for purposes of the SSMP 10-Year Plan (Figure 1);
- b. Be consistent with the State of California's SSMP 10-Year Plan;
- c. Be a covered activity associated with aquatic habitat restoration and/or dust suppression and restoration, as described herein (Table 1);
- d. Result in no more than minor individual and cumulative impacts to the aquatic environment;
- e. Comply with Section 404(b)(1) guidelines, SSMP LOP general conditions (Appendix A), and SSMP LOP mitigation framework (Appendix A).

2. Proposed SSMP 10-Year Plan Covered Activities: The proposed covered activities eligible for authorization by an SSMP LOP are those that would require a discharge into waters of the U.S. and would be associated with the implementation of aquatic habitat restoration and dust suppression and restoration projects under the SSMP 10-Year Plan located around the Salton Sea.

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Aquatic Habitat and Restoration Activities/Projects

Covered Activities

LOP Procedures may be used to authorize permanent and temporary discharges of dredged or fill material into waters of the U.S. associated with aquatic resource habitat restoration around the Salton Sea consistent with the SSMP 10-Year Plan, including the following activities incidental to the construction and operation of SSMP 10-Year Plan projects:

- Habitat restoration and water quality improvement projects within the SSMP 10-Year Plan (Projects).
- Construction, enhancement, or removal of berms, including permanent berms for water diversion, temporary diversion during construction, earthen berms, installation of hard substrate on berms, such as riprap.
- Removal of invasive vegetation.
- Creation of pond habitat at different water depths and timing of inundation, including mudflats and shallow water, mid-depth habitat, deep-water habitat, swales or channels, bottom hard substrate.
- Installation of features to support bird nesting, resting, and foraging habitat, including floating islands, islands, snags or other vertical structures, areas of seasonal flooding.
- Creation of permanent vegetated wetlands and seasonally flooded habitats.
- Removal or installation of water conveyance and supply systems to provide water supply to the Projects, including:
 - Sedimentation/mixing basins, weirs and other structures in waterways to divert water,
 - Placement of check dams,
 - Water storage tanks,
 - Installation, sampling and gaging monitoring and supply wells,
 - Drilling new groundwater wells,
 - Solar pump stations and well pumps installation,
 - Inflow and outflow structures,
 - Dredge channels to pump stations or project infrastructure.
- Removal or installation of water dispersal and retention structures, including:
 - Shallow earthen swales,
 - Bunds and micro-catchments,
 - Check dams, weirs and concrete pipe culverts,

- Retention basins,
 - Storage basins,
 - Irrigation network and furrows,
 - Pumps and other water control infrastructure,
 - Prefabricated concrete box/arch culvert (or bridge footing/abutment, etc.).
- Installation of public amenities, passive recreation trails, ancillary public facilities within project nexus, including launch features for non-motorized boats, kayaks, paddle boards, passive recreation access compatible with an authorized aquatic resource habitat restoration or dust suppression project.
- Temporary construction, access, and dewatering involving temporary structures, work, and discharges, including cofferdams, necessary for construction activities, staging, or access fills or dewatering of construction sites, provided that the associated primary activity is an authorized project.

Upon completion of construction, temporary fill must be entirely removed to an area that has no waters of the U.S., dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations.

- Linear crossings to construct, repair, or maintain roads for permanent access to aquatic restoration or dust suppression project sites.
- Crossings of those waters associated with the construction, maintenance, or repair of electrical and communication utility lines and poles. Oil and gas utilities and pipelines are excluded.
- Maintenance and repair of existing or constructed SSMP-related features, including:
 - Construction features repairs,
 - Sediment removal (excavation or dredging, retrenching, periodic drainage),
 - Facilities maintenance,
 - Address potential for biological fouling at pipes and pumps in maintenance plans,
 - Invasive vegetation monitoring and control,
 - Repair of storm water and erosion damage.
- Pre-construction survey and investigations activities:
 - Monitoring and investigation/data collection activities:
 - Geotechnical soil sampling,
 - Drilling monitoring wells,
 - Stream gage installation.
 - Road improvements, if necessary to perform monitoring or data collection activities.

- Compensatory mitigation.
- Only non-toxic and non-hazardous materials would be placed into the aquatic environment including:
 - Clean earthen fill material (backfill), including dredged or excavated source material,
 - Portland cement concrete or asphalt concrete,
 - Aggregate base material,
 - UngROUTED rock riprap slope protection (inert),
 - Galvanized corrugated metal pipe(s),
 - Rock-filled basket gabion(s)
 - Filter fabric,
 - Geotextile,
 - Prefabricated concrete box/arch culvert (or bridge footing/abutment, etc.)

Ineligible Activities

A Standard Individual Permit process may be required to authorize permanent discharges of dredged or fill material into waters of the U.S. for ineligible activities associated with aquatic habitat restoration projects, including but not limited to the following:

- Activities that would have substantial, unmitigated impacts to the aquatic environment.
- Activities that are inconsistent with eligible activities provisions for covered activities.
- Water importation.
- Recreation activities without project nexus, including recreation marinas, boat ramps, recreation access not associated with aquatic resource habitat restoration and dust suppression around the Salton Sea.
- Public amenities that conflict with the overall purpose and need of the proposed aquatic resource restoration Project.
- Use of tires for construction activities or breakwalls in waters of the U.S.
- Gabions placement within water of the U.S.
- Activities that would substantially alter a compensatory mitigation site previously established for a Corps permit.

Covered Dust Suppression and Vegetation Enhancement Activities/ Projects

Covered Activities

LOP Procedures may be used to authorize permanent and temporary discharges of dredged or fill material into waters of the U.S. associated with dust suppression and restoration around the Salton Sea consistent with the SSMP 10-Year Plan, when associated with the following types of activities:

- Water-reliant and waterless dust suppression techniques²:
- Establishment of (non-invasive) vegetation,
- Removal of invasive vegetation,
- Construction of shallow-water habitat,
- Construction of freshwater wetlands,
- Shallow flooding,
- Stormwater spreading,
- Temporary surface roughening,
- Dust suppressant application,
- Sand fencing,
- Engineered roughening,
- Gravel or other cover,
- Enhancing soil crusts.

The same features and activities listed in the Aquatic Habitat Projects can also apply to Dust Suppression and Vegetation Enhancement projects.

Ineligible Activities

A Standard Individual Permit process may be required to authorize permanent discharges of dredged or fill material into waters of the U.S. for ineligible activities associated with dust suppression projects, including but not limited to the following:

² The primary purpose of these activities is to decrease dust emissions on the exposed lakebed at the Salton Sea and are not required to demonstrate any net increase in functions of aquatic resources or meet specified ecological objectives or performance criteria.

- Activities that would have substantial, unmitigated impacts to the aquatic environment.
- Activities inconsistent with covered aquatic habitat restoration or dust suppression activities.

B. SSMP LOP Procedures:

The LOP Procedures are broken down into four key sections or phases: pre-application coordination, initial determination of eligibility, LOP application submittal, and application processing. Compliance with the conditions and mitigation framework is required and outlined in these LOP Procedures. A flowchart showing an overview of the various steps included in implementing the LOP procedures is provided in Figure 3.

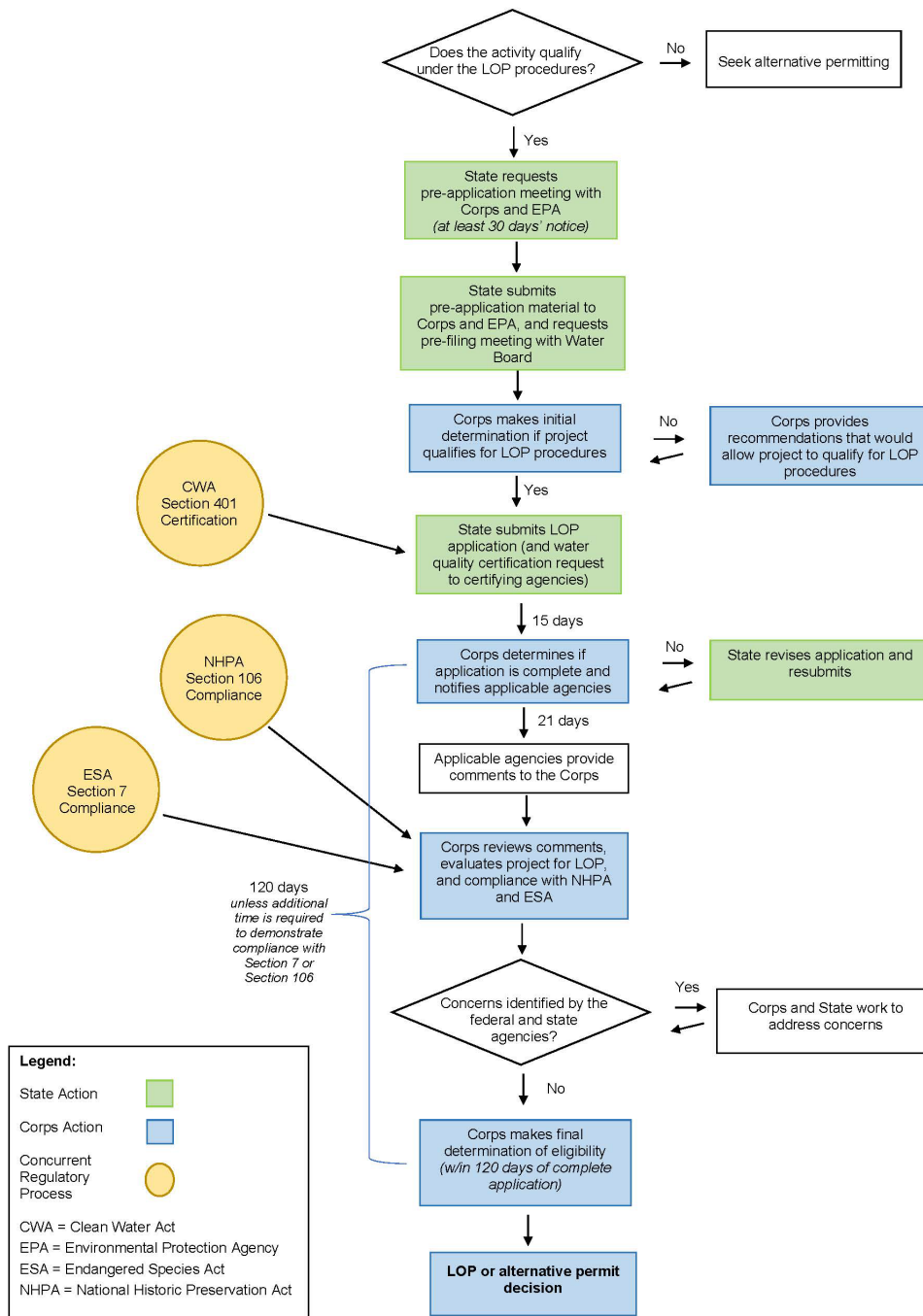


Figure 3. Flowchart for review process for permit applications pursuant to SSMP LOP procedures.

1. Pre-Application Coordination: The applicant (SSMP Team) would be required to request a pre-application meeting with the Corps and with the EPA Region 9 Wetland Section for all projects requiring authorization under the SSMP LOP procedures. The applicant would submit pre-application meeting requests to the Corps (via email at splregssmp@usace.army.mil), the U.S. EPA Region 9 Wetland Section (via email at mahdavi.sarvy@epa.gov), the Colorado River Basin Regional Water Quality Control Board (via email at Kai.Dunn@waterboards.ca.gov) and applicable federal and state Agencies who have an action related to implementation of the SSMP 10-Year Plan Project with as much lead time as possible, preferably with at least 30 days' notice³.

The 30-day pre-filing requirement for a Section 401 WQC would be initiated by the applicant's request for a pre-application meeting. Upon receipt of the request, the Corps would assign a project Action Identification Number (AID#). The Corps AID# would be required in the subject line of all subsequent submittals.

Pre-application materials shall be made available in electronic form as designated by the Corps once a Corps AID# has been assigned, and shall include the following:

- a. A site location map and appropriate aerial and other imagery of the proposed project site and vicinity showing the project site and its geographical, physical, and environmental context;
- b. A delineation of all onsite aquatic resources conducted in accordance with the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual and its Regional Supplement for the Arid West Region (Version 2.0 or newer);
- c. A project description, including as much of the information identified under 33 CFR §325.1(d) "Content of application" as is available, including plan and profile views of the proposed work relative to potential waters of the U.S. only showing areas, types, and acreages of aquatic resources to be impacted by the proposed project;
- d. A draft report, pursuant to 33 CFR §325.1(e) and §323.6(a), addressing compliance with the USEPA's 404(b)(1) Guidelines at 40 CFR Part 2308, including an analysis of off-site and on-site practicable alternatives and the relative environmental impacts of those alternatives as compared to the environmental impacts of the proposed project; and
- e. An explanation of how permanent losses and temporary impacts associated with the proposed activity are to be avoided, minimized, and compensated for and, if applicable a draft compensatory mitigation plan for permanent losses of waters of the U.S., in accordance with 33 CFR Part 332.

³ These agencies include but are not limited to the CDFW and the five federal cooperating agencies that have jurisdiction by law or special expertise with respect to certain environmental effects associated with implementation of the SSMP 10-Year Plan: U.S. Bureau of Indian Affairs, U.S. Bureau of Land Management, U.S. Bureau of Reclamation, U.S. Fish and Wildlife Service, and Natural Resources Conservation Service.

The updated Map and Drawing Standards for the South Pacific Division (SPD) Regulatory Program shall apply to the pre-application materials. All coordinates shall be provided in decimal degrees (NAD 83).

2. Initial Determination of LOP Eligibility: Following the pre-application coordination, the Corps would make an initial determination as to whether the project may qualify for an SSMP LOP based on a preliminary determination that the proposed project meets the following requirements:

- a. Complies with the CWA Section 404(b)(1) Guidelines;
- b. Meets the SSMP LOP criteria; and
- c. Determined that Standard Individual Permit processing with Public Notice review would not result in a substantive change in the proposed project or compensatory mitigation.

If an initial determination is made that the proposed project would not qualify for an SSMP LOP, the Corps would provide recommendations that would allow the project to qualify.

3. LOP Application Submittal: Where a site-specific approved jurisdictional determination is required by regulation or recommended by the Corps, the applicant would not submit a permit application until the Corps has issued the final determination or instructed the applicant to proceed with submitting the application.

The applicant would notify the Corps of a permit request via email at splregssmp@usace.army.mil, ensuring the assigned Corps AID# is provided in the subject line. The application package would be provided in electronic form on the designated file transfer protocol (FTP) site at the time of the permit request notification.

To be considered complete, applications⁴ submitted for review under the SSMP LOP procedures would include all the information required for a standard permit application pursuant to 33 CFR §325.1(d), as well as the additional information listed below:

- a. A completed, signed Department of the Army Engineering Form 4345, which refers to the Corps' AID#;
- b. Statement of pre-application coordination with the Corps, and other agencies, if conducted, including a brief summary of any project-specific comments or concerns made by each agency and responses to them;
- c. An issued approved or preliminary Corps jurisdictional determination for the project area, if applicable, including a copy of the aquatic resources delineation map/drawing referenced in the Corps' determination;
- d. A completed ORM database bulk upload spreadsheet;

⁴ The updated Map and Drawing Standards for the SPD Regulatory Program shall apply to the application materials. All coordinates shall be provided in decimal degrees (NAD 83).

- e. Appropriate surveys, inventories, or reports that would allow the Corps to make a determination of the effect of the proposed project (and if necessary, consult) pursuant to the federal Endangered Species Act (ESA) or evidence of incidental take authorizations under ESA. A project-specific ESA report that makes a preliminary effect determination and complies with the process described in the program-level biological opinion for the SSMP 10-Year Plan [FWS-ERIV/IMP-22-0080603-S7] may be required;
- f. Evidence of compliance with Section 106 of the National Historic Preservation Act (NHPA) Programmatic Agreement, including a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties, if applicable. A cultural resources report would be provided as a separate PDF for confidentiality;
- g. A compensatory mitigation plan in accordance with 33 CFR Part 332 and the Los Angeles District's Mitigation and Monitoring Guidelines, if applicable. If compensatory mitigation is proposed at an approved mitigation bank or in-lieu fee program (ILF), the proposed bank or ILF site and type and amount of credits to be obtained must be identified;
- h. Copy of Section 401 Water Quality Certification application.

4. LOP Application Processing Procedures:

- a. Upon receipt of an application notification, the Corps would provide an email confirmation to the applicant and include the assigned Corps project manager.
- b. Within approximately fifteen (15) calendar days of receipt of an application, the Corps would determine if the application is complete. If an application is incomplete, the Corps will notify the applicant of the needed information items and the applicant will be required to resubmit.
- c. Within approximately fifteen (15) calendar days of receiving a complete application, the Corps would notify the applicable agencies that the complete application submittal is available on the designated FTP site and request the agencies provide comments on the following subjects:
 - i. Minimization of impacts to aquatic resources to the maximum extent practicable;
 - ii. Consistency of the proposed project and any required compensatory mitigation with the SSMP; and
 - iii. Whether federally listed species issues have been resolved in a manner consistent with the programmatic biological opinion for the SSMP 10-Year Plan.
 - iv. Whether the agency requests to be involved in the individual project phase NHPA section 106 process per the Programmatic Agreement.

- d. The agencies would provide comments to the Corps within 21 calendar days. Agency comments would be provided via email to the appropriate Corps project manager.
- e. Resolution or status of compliance with Section 106 of the NHPA, if applicable.
- f. Resolution or status of the Section 401 Water Quality Certification.
- g. Resolution or status of ESA Section 7, if applicable.
- h. After all comments are received from the resource agencies, the Corps would perform a final evaluation of the project. Any concerns identified by the resource agencies during the LOP notification process would be resolved before an LOP is issued.
- i. The Corps would review the comments received and make a final determination within 120 calendar days of receiving a complete application unless additional time is required to demonstrate compliance with Section 7 of ESA or Section 106 of NHPA.
- j. If the project meets the criteria for LOP authorization, an LOP would be issued, and
- k. If the project fails to meet the criteria for LOP authorization, the Corps will notify the applicant of the need for review through a Standard Individual Permit process.

5. SSMP LOP Conditions: See Appendix A.

6. SSMP LOP Mitigation Framework: See Appendix A.

C. Definitions:

Note, the following definitions of “permanent loss” and “temporary impacts” that are used in these SSMP LOP procedures are provided for clarity:

Permanent Loss: Waters of the U.S. that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity constitutes a loss of waters. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. [86 Fed. Reg. 2876 (Jan. 13, 2021)].

Temporary Impacts: Adverse effects to aquatic resources that occur for a short duration during authorized activities and are associated with the temporary discharge of dredged or fill material for construction or maintenance. Following completion of the permitted work, temporary structures must be removed to the maximum extent practicable, after their use has been discontinued, and all temporary fills must be removed in their entirety and the affected areas, including aquatic resources returned to pre-construction elevations and contours, conditions, and functionality, including revegetation as appropriate. Waters of the U.S. temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the U.S. [86 Fed. Reg. 2876 (Jan. 13, 2021)].

D. References:

All documents referenced in this notice are available on or through the Corps' website at:
www.spl.usace.army.mil/regulatory.html.

Appendix A: Salton Sea Management Program (SSMP) 10-Year Plan Letter of Permission Procedures – Conditions

A. SSMP LOP Conditions

Any activity authorized by an SSMP LOP must meet the 28 general conditions listed below. Additionally, the Corps may include project-specific special permit conditions for any SSMP LOP.

General Conditions –

1. *Avoidance and Minimization.* The Permittee/Co-Permittees must provide a written statement describing avoidance and minimization measures used to minimize discharges to waters of the U. S. at the project site to the maximum extent practicable.
2. *Ineligible Activities.* Projects ineligible for an SSMP LOP include activities not evaluated for these LOP Procedures, activities that substantially alter a previously established compensatory mitigation site, or activities that are not associated with SSMP 10-Year Plan aquatic habitat restoration and dust suppression projects around the Salton Sea.
3. *Mitigation Policy.* On a case-by-case basis, compensatory mitigation may be required in compliance with the Final Mitigation Rule 33 C.F.R. §332.3(k) and pursuant to Section 404(b)(1) Guidelines [40 C.F.R. § 230.91]. Compensatory mitigation may be required to offset adverse impacts associated with unavoidable impacts to the aquatic ecosystem and the human environment (see SSMP LOP Procedures Appendix A, Part B).
4. *Soil Erosion and Sediment Controls.* Appropriate soil erosion and sediment controls, such as siltation or turbidity curtains, sedimentation basins, hay bales, and/or other means designed to minimize turbidity in the watercourse, shall be used and maintained in effective operating condition during project implementation. Projects are exempt from implementing controls if site conditions preclude their use or if site conditions are such that the proposed work would not increase turbidity levels above preconstruction baseline levels. All exposed soil and other fills, as well as any work below the ordinary high-water mark or high tide line, must be stabilized at the earliest practicable date to preclude inadvertent, adverse effects to adjacent and downstream aquatic resources and no later than November of the year the work is initiated to prevent erosion from storm events.
5. *Equipment.* If personnel would not be subjected to additional, potentially hazardous conditions, heavy equipment working in or crossing wetlands shall be placed on temporary construction mats (timber, steel, geotextile, rubber, etc.), or other measures must be taken to minimize soil disturbance, such as using low pressure equipment. Temporary construction mats shall be removed promptly following construction completion.

6. *Suitable Material*. No activity may use unsuitable materials (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (per Section 307 of the Clean Water Act).
7. *Management of Water Flows*. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
8. *Removal of Temporary Structures and Fills*. Any temporary fills must be removed in their entirety and the affected areas returned to their preconstruction conditions, including planting native riparian and/or wetland vegetation. If it is determined that the area of temporary impact has naturally reestablished native riparian and/or wetland vegetation to preconstruction conditions within two years from the date site restoration work is complete, the Permittee/Co-Permittees may not be required to restore the riparian and/or wetland vegetation. However, planting may be required in the event vegetation does not naturally reestablish. Also, Exotic Species Management may be required to prevent the establishment of invasive exotic vegetation. (See General Condition No. 14).
9. *Proper Maintenance*. Any authorized structure or fill shall be properly maintained, including maintenance to ensure safety and compliance with the terms and conditions of the SSMP LOP, including any special permit conditions. The Permittee/Co-Permittees is not relieved of this requirement if they desire to abandon the permitted activity, although they may make a good faith transfer of the permit to a third party in compliance with General Condition No. 25 below. Should the Permittee/Co-Permittees cease to maintain the authorized activity or desire to abandon it without a good faith transfer, they must obtain a modification of the issued SSMP LOP from the Corps, which may require restoration of the affected area.
10. *Preventive Measures*. Measures must be adopted to prevent potential pollutants from entering the watercourse. Within the project area, construction materials, and debris, including fuels, oil, and other liquid substances, shall be stored in a manner as to prevent any runoff from entering jurisdictional areas.
11. *Staging of Equipment*. Staging, storage, fueling, and maintenance of equipment must be located outside of the waters of the U.S., including wetlands, in areas where potential spilled materials will not be able to enter any waterway or other body of water.
12. *Work Limits*. All work authorized by an SSMP LOP shall be performed in strict compliance with the approved permit plans, which would be attached to the issued permit. The Permittee/Co-Permittees shall ensure that the construction design plans for the project do not deviate from the approved permit plans. Any modification to the

permit plans must be approved by the Corps prior to any active construction in waters of the U.S. or wetlands.

13. *Avoidance of Breeding Season.* With regard to federally listed avian species, avoidance of breeding season requirements shall be those specified in the Federal Endangered Species Act Section 7 consultation for the LOP (See General Condition 21). For all other avian species, to the maximum extent practicable initial vegetation clearing must occur in waters of the U.S. between September 15 and March 15, which is outside the breeding season, or be conducted in compliance with the Nesting Bird Management Plan.
14. *Exotic Species Management.* All salt cedar (*Tamarix spp.*), and other invasive non-native plants categorized as “High” on the California Invasive Plant Council’s (Cal-IPC) Invasive Plant Inventory (<http://www.cal-ipc.org/ip/inventory/index.php#categories>), must be removed from the affected area. The Permittee/Co-Permittees must ensure that the affected area remains free from these invasive, non-native species for a period of five years from completion of the project.
15. *Site Inspections.* The Corps shall be allowed to inspect the site at any time during and immediately after project implementation. In addition, compliance inspections of all mitigation sites shall be allowed at any time.
16. *Posting of Conditions.* A copy of the SMMP LOP General Conditions shall be included in all bid packages for the project and be available at the work site at all times during periods of work and must be presented upon request by any Corps or other agency personnel with a reasonable reason for making such a request.
17. *Pre-Project Operations and Maintenance Plan.* The Permittee/Co-Permittees will develop a written Operations and Maintenance (O&M) plan to be submitted for review to landowners and applicable regulatory agencies. The plan will include: a written description for all O&M activities, a description of the permanent and temporary impacts in waters of the U.S., purpose of the proposed O&M activity, maps showing O&M location(s) (including decimal degrees latitude and longitude coordinates), location of staging and stockpiling areas, written documentation regarding compliance with all applicable special conditions of this permit, and a description of all measures to avoid and minimize impacts to waters of the U.S. and other sensitive habitats and species.
18. *Post-Project Report.* Within 45 days of completion of impacts to waters of the U.S., including wetlands, as-built drawings with an overlay of federal jurisdictional waters that were impacted and avoided must be submitted to the Corps. Post-project photographs, which document compliance with permit conditions, must also be provided. Within six months of completion of each phase of authorized discharges of dredged or fill material into waters of the U.S., including wetlands, and upon completion of each authorized O&M activity, the Permittee/Co-Permittees shall submit a post-project implementation memorandum to the Corps that includes the following information:

- a. Date(s) work within waters of the U.S., including wetlands, was initiated and completed;
- b. Summary of compliance status with each special condition of the issued permit (including any non-compliance that previously occurred or is currently occurring and corrective actions taken or proposed to achieve compliance);
- c. Color, annotated photographs (including map of photopoints and decimal degrees latitude and longitude coordinates) taken at the project site before and after construction for those aspects directly associated with permanent impacts to waters of the U.S., including wetlands, such that the extent of authorized discharges of fill material can be verified;
- d. One copy of as-built drawings for the entire project. Electronic submittal (Adobe PDF format) is required; and
- e. Signed Certificate of Compliance (See General Condition 26).

19. *Annual Reporting.* An annual report on completed O&M activities, conducted between July 1 to June 30 of each year, subject to this permit shall be submitted to the Corps by October 1 of each year. This report will also be provided to the CBRWQCB, CDFW and USFWS. The annual report will also include:

- a. A list of authorized completed O&M activities;
- b. Discussion that impacts at each site were not exceeded;
- c. Photographs shall be included of sites that are representative of each activity that was performed under the permit;
- d. This report shall be received and reviewed by the Corps for compliance with the special conditions of this permit and then provided to the resource agencies for their review; and
- e. Field site visits may be performed by the Corps, as a part of the compliance evaluation.

20. *Water Quality.* An individual Section 401 Water Quality Certification must be obtained (see 33 C.F.R. 330.4(c)).

21. *Endangered Species.*

- a. No activity is authorized which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal ESA, or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized which "may affect" a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the activity. Indirect effects are those effects on listed species and critical habitat that are caused by the LOP activity and are later in time, but still are reasonably certain to occur.
- b. Permittee/Co-Permittees must adhere to the procedures outlined in the Salton Sea 10-Year Management Plan Programmatic Biological Opinion (SSMP 10-Year Plan PBO) issued by the USFWS on February 23, 2023 [FWS-ERIV/IMP-

22-0080603-S7 regarding any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect federally listed endangered or threatened species or designated critical habitat, the application must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete application. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until ESA Section 7 consultation has been completed.

- c. As a result of formal or informal consultation with the USFWS the district engineer may add species-specific permit conditions to LOPs.
- d. Authorization of an activity by an LOP does not authorize the "take" of a threatened or endangered species as defined under the 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, the ESA prohibits any person subject to the jurisdiction of the U.S. to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.
- e. Activities authorized under LOP Procedures shall comply with the conservation measures identified in the SSMP 10-Year Plan PBO to ensure the activity will not adversely affect federally listed species; however, additional project-specific measures may be required pursuant to an ESA Section 7 consultation for a specific project.

22. Historic Properties.

- a. In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places (Register), the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
- b. The Permittee/Co-Permittees must adhere to the procedures outlined in the *2024 Programmatic Agreement Between the U.S. Army Corps of Engineers and*

the California State Historic Preservation Officer Regarding Compliance with the National Historic Preservation Act for the Salton Sea Management Program, Phase I, 10-Year Plan Projects That Require a Department of the Army Permit, Imperial and Riverside Counties, California (SSMP 10-Year Plan PA) for compliance with the requirements of the NHPA regarding historic properties that may be affected by the proposed work for the SSMP 10-Year Plan.

23. *Discovery of Previously Unknown Remains and Artifacts.* If the Permittee/Co-Permittees discovers any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an SSMP LOP, they must immediately notify the district engineer of what they have found and adhere to the procedures agreed to in the SSMP 10-Year Plan PA (2024) executed in accordance with section 106 of the NHPA. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
24. *Air Quality.* No activity is authorized that causes or contributes to any new violation of national ambient air quality standards, increases the frequency or severity of any existing violation of such standards, or delays timely attainment of any such standard or interim emission reductions, as described in the applicable California State Implementation Plan for the Salton Sea Air Basin. As part of the Corps application package, the applicant shall submit an air quality emission and impact analysis for the proposed activity if the project would result in long-term or permanent stationary (point or area) source or indirect mobile source emissions, or if the proposed activity would result in area source and direct mobile source emissions that exceed the annual de minimis emissions thresholds for any criteria air pollutant or its precursors.
25. *Transfer of SSMP LOPs.* If the Permittee/Co-Permittees sells the property or does not renew a right-of-way agreement, temporary encroachment permit, or land access agreement associated with an SSMP LOP, the Permittee/Co-Permittees transfer the LOP to the new owner by submitting a letter to the Corps to validate the transfer. The letter may be submitted via email at splregssmp@usace.army.mil. A copy of the issued LOP and the name and all available contact information, including company name, addresses, telephone numbers, and e-mail, must be attached to the letter, and the letter must contain the following statement and signature:

When the structures or work authorized by this SSMP LOP are still in existence at the time the property is transferred, the terms and conditions of this SSMP LOP, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this SSMP LOP and the associated liabilities associated with compliance with its terms and conditions, the transferee must sign and date below.

(Transferee)

(Date)

26. *Compliance Certification.* Each Permittee/Co-Permittees who receives an SSMP LOP from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation within 45 days after completing construction activities. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the SSMP LOP. The certification document will include:

- a. A statement that the authorized activity was done in accordance with the SSMP LOP authorization, including any general or activity-specific conditions;
- b. A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the Permittee/Co-Permittees secured the appropriate number and resource type of credits; and
- c. The signature of the Permittee/Co-Permittees certifying the completion of the activity and mitigation.
- d. The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

27. *Activities Affecting Structures or Works Built by the United States.* If an SSMP LOP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a Corps federally authorized Civil Works project (a "Corps project") the activity is not authorized until the Corps Engineering Division has issued the Section 408 permission to alter, occupy, or use the Corps project, and the district engineer issues the written SSMP LOP authorization.

28. *Unauthorized Dredge and/or Fill.* Except as authorized by this permit or any Corps-approved modification to this permit, no excavation or fill shall take place at any time in the construction or maintenance of this project within wetlands or non-wetland waters of the U.S. This permit does not authorize temporary placement or double handling of excavated or fill material within jurisdictional wetlands or waters outside the permitted area(s). This prohibition applies to all borrow and fill activities connected with this project. Unauthorized impacts could result in permit suspension and revocation, administrative, civil, or criminal penalties, and/or substantial, additional, compensatory mitigation requirements. As such, in accordance with the approved permit drawings attached to this permit, the Permittee/Co-Permittees shall install high-visibility silt fencing clearly marking the limits of disturbance to ensure mechanized equipment does not enter and/or work does not occur in preserved waters of the U.S. and/or wetlands.

B. Salton Sea Management Program 10-Year Plan Mitigation Framework

The following mitigation policies apply to LOPs (and Nationwide, Standard Individual, and Regional General Permits, as appropriate) issued within the Salton Sea and the New, Alamo, and Whitewater Rivers, adjacent creeks, washes, and agricultural drains.

Mitigation Policies –

1. *Mitigation Sequencing.* Under the Salton Sea Management Program 10-Year Plan the mitigation sequencing required pursuant to the CWA Section 404(b)(1) Guidelines (40 C.F.R. Part 230 and the [Memorandum of Agreement](#) (MOA) between USEPA and the Department of the Army, dated February 6, 1990), whereby the discharge of dredged or fill material into aquatic resources within the Corps' jurisdiction (i.e., waters of the U.S.) must first be avoided and/or minimized to the maximum extent practicable, is being applied to the SSMP Planning Area as well as at the individual project scale. Minimization measures would be met by demonstrating consistency with the SSMP LOP general and special conditions. After avoidance and minimization measures have been implemented to the maximum extent practicable, compensatory mitigation may be required to offset any unavoidable adverse impacts to ensure no net loss of aquatic resource area and functions, pursuant to the 404(b)(1) Guidelines.
2. *No Net Loss in Acreage and Functions.* Consistent with the Corps-USEPA MOA, the Corps' RGL 02-02, and the [Final Mitigation Rule \(33 C.F.R. Parts 325 and 332 \[40 C.F.R. Part 230\]\)](#), overall acreage, services, and functions of wetlands should not be reduced within the SSMP 10-Year Plan Planning Area at the program level. In consideration of the SSMP 10-Year Plan Process, permanent losses of aquatic resources (wetland and non-wetland) for individual SSMP projects shall be mitigated within the Salton Sea Watershed. The amount of required compensatory mitigation must be approved by the Corps, and, to the extent practicable, must be sufficient to replace lost aquatic resource functions.
3. *Preparation of a Mitigation Plan.* All habitat mitigation and monitoring plans shall comply with the requirements of the [Corps/EPA Final Mitigation Rule "Compensatory Mitigation for Losses of Aquatic Resources"](#) (33 C.F.R. Parts 325 and 332 [40 C.F.R. Part 230]) and the [Final 2015 Regional Compensatory Mitigation And Monitoring Guidelines for South Pacific Division USACE](#) (dated January 12, 2015, or as subsequently revised). The mitigation plan shall be reviewed in conformance with [SPD Uniform Performance Standards for Compensatory Mitigation Requirements \(QMS Procedure No. 12505\)](#).
4. *Recommended Restoration.* The Corps will evaluate restoration design plans for compensatory mitigation sites in consideration of the SSMP 10-Year Plan Strategic Mitigation Plan. The Corps will also apply its Regulatory Program [Standard Operating Procedure for Evaluation of Proposed Compensatory Mitigation Sites \(12512-SPL\)](#).

5. *Calculating Compensatory Mitigation.* Should individual SSMP projects or the SSMP Program overall result in the permanent loss of aquatic resources, compensatory mitigation shall be provided in conformance with SPD's [Standard Operating Procedure for Determination of Mitigation Ratios](#).
6. *Temporary Impacts.* The following mitigation measures would be required for projects or activities with temporary impacts to aquatic resources.
7. *Restoration On-site.* Following completion of construction, temporary fills must be removed in their entirety and placed in an upland area and contained or stabilized to prevent inadvertent releases to adjacent and/or downstream aquatic resources. Dredged material must be returned to its original location. All affected areas must be restored to preconstruction contours and elevations and revegetated, as appropriate (see 6.b.). Revegetation shall commence within three months following completion of the ground restoration work and must be completed within one growing season. If revegetation cannot begin due to seasonal conflicts (e.g., authorized impacts occurring in late fall/early winter should and shall not be revegetated until seasonal conditions are conducive to revegetation), exposed earth surfaces shall be stabilized immediately utilizing appropriate best management practices, such as biodegradable jute netting or straw matting, to minimize potential erosion caused by wind or water.
8. *Preparation of a Revegetation Plan.* All onsite revegetation efforts require preparation of a revegetation plan. The plan must be approved by the Corps prior to implementation. Revegetation is a minimization measure and does not necessitate preparation of a compensatory mitigation plan.
9. *Third-Party Mitigation Program or Mitigation Bank.* In accordance with 33 C.F.R. §332.8, an alternative method to satisfy any compensatory mitigation requirements is through the purchase of credits or payment of fees to a Corps-approved third-party mitigation program within the Watershed.