

Mitigation Plan (33 CFR 332.4(c)/40 CFR 230.92.4(c))

A mitigation plan is required for all forms of compensatory mitigation, whether permittee-responsible mitigation, mitigation banks, or in-lieu fee mitigation projects.

Preparation and Approval of Mitigation Plans

Permittee-Responsible Mitigation

Individual Permits

- The permittee must prepare a draft mitigation plan and submit it to the district engineer (DE) for review.
- Then the permittee must prepare a final mitigation plan, which must be approved by the DE prior to issuing the individual permit.
- The final mitigation plan must be incorporated into the individual permit by reference.
- The final plan must include the 12 components listed below.
- The level of detail of the plan should be commensurate with the impacts.
- The DE may determine that it would be more appropriate to address any of the 12 components listed below as permit conditions, instead of components of a mitigation plan.

General Permits

- The DE may approve a conceptual or detailed mitigation plan.
- A final mitigation plan incorporating the 12 components listed below, at a level of detail commensurate with the impacts, must be approved by the DE before the permittee commences work in waters of the U.S.
- The DE may determine that it would be more appropriate to address any of the 12 components listed below as permit conditions, instead of components of a mitigation plan.

Using Mitigation Banks or In-Lieu Fee Programs

Individual Permits

For permittees meeting their mitigation obligations by securing credits from approved mitigation banks or in-lieu fee programs, their mitigation plans only need to include components 4 (baseline information) and 5 (determination of credits), and the name of the mitigation bank or in-lieu fee program to be used.

General Permits

For permittees meeting their mitigation obligations by securing credits from approved mitigation banks or in-lieu fee programs, their mitigation plans only need to include components 4 (baseline information) and 5 (determination of credits) and either the name of the mitigation bank or in-lieu fee program to be used or a statement indicating that a mitigation bank or in-lieu fee program will be used (contingent upon approval by the DE).

Mitigation banks and in-lieu fee programs must prepare a mitigation plan including the 12 components listed below for each mitigation project site.

12 Components of a Compensatory Mitigation Plan

1. Objectives. A description of the resource type(s) and amount(s) that will be provided, the method of compensation (restoration, establishment, preservation etc.), and how the anticipated functions of the mitigation project will address watershed needs.
2. Site selection. A description of the factors considered during the site selection process. This should include consideration of watershed needs, onsite alternatives where applicable, and practicability of accomplishing ecologically self-sustaining aquatic resource restoration, establishment, enhancement, and/or preservation at the mitigation project site.
3. Site protection instrument. A description of the legal arrangements and instrument including site ownership, that will be used to ensure the long-term protection of the mitigation project site.
4. Baseline information. A description of the ecological characteristics of the proposed mitigation project site, in the case of an application for a DA permit, the impact site. This may include descriptions of historic and existing plant communities, historic and existing hydrology, soil conditions, a map showing the locations of the impact and mitigation site(s) or the geographic coordinates for those site(s), and other characteristics appropriate to the type of resource proposed as compensation. The baseline information should include a delineation of waters of the United States on the proposed mitigation project site. A prospective permittee planning to secure credits from an approved mitigation bank or in-lieu fee program only needs to provide baseline information about the impact site.
5. Determination of credits. A description of the number of credits to be provided including a brief explanation of the rationale for this determination.
 - For permittee-responsible mitigation, this should include an explanation of how the mitigation project will provide the required compensation for unavoidable impacts to aquatic resources resulting from the permitted activity.
 - For permittees intending to secure credits from an approved mitigation bank or in-lieu fee program, it should include the number and resource type of credits to be secured and how these were determined.
6. Mitigation work plan. Detailed written specifications and work descriptions for the mitigation project, including: the geographic boundaries of the project; construction methods, timing, and sequence; source(s) of water; methods for

establishing the desired plant community; plans to control invasive plant species; proposed grading plan; soil management; and erosion control measures. For stream mitigation projects, the mitigation work plan may also include other relevant information, such as planform geometry, channel form (e.g., typical channel cross-sections), watershed size, design discharge, and riparian area plantings.

7. Maintenance plan. A description and schedule of maintenance requirements to ensure the continued viability of the resource once initial construction is completed.
8. Performance standards. Ecologically-based standards that will be used to determine whether the mitigation project is achieving its objectives.
9. Monitoring requirements. A description of parameters monitored to determine whether the mitigation project is on track to meet performance standards and if adaptive management is needed. A schedule for monitoring and reporting monitoring results to the DE must be included.
10. Long-term management plan. A description of how the mitigation project will be managed after performance standards have been achieved to ensure the long-term sustainability of the resource, including long-term financing mechanisms and the party responsible for long-term management.
11. Adaptive management plan. A management strategy to address unforeseen changes in site conditions or other components of the mitigation project, including the party or parties responsible for implementing adaptive management measures.
12. Financial assurances. A description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the mitigation project will be successfully completed, in accordance with its performance standards.

Other information. The DE may require additional information as necessary to determine the appropriateness, feasibility, and practicability of the mitigation project.