

Compensatory Mitigation Policy: Mitigation in Detention/Retention Basins

US Army Corps of Engineers
Denver Regulatory Office (DRO)

The 1990 *Memorandum of Agreement between the Department of the Army and Environmental Protection Agency concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines* (Corps/EPA MOA) provides direction for determining appropriate compensatory mitigation for Section 404 permits. The basic premise of the MOA is that the Corps of Engineers will strive to achieve a goal of no overall net loss of wetland functions. This fact was reiterated with the publication of Regulatory Guidance Letter No. 02-2, *Guidance on Compensatory Mitigation Projects for Aquatic Resource Impacts Under the Corps Regulatory Program*, on December 24, 2002.

The DRO periodically receives permit applications where compensatory mitigation is proposed within stormwater detention/retention basins (Basins). When evaluating the appropriateness of such mitigation proposals, the DRO will apply the following criteria:

1. Each mitigation proposal will be evaluated on its own merits, on a case-by-case basis.
2. If mitigation is approved in a Basin, installation of a forebay will be required to decrease sedimentation in the mitigation wetlands and allow for maintenance removal of sediment without disturbing the mitigation wetlands.
3. When available, a functional assessment of the aquatic resources proposed for impact by the overall project will be conducted. Compensatory mitigation will be based on compensation of the aquatic resource functions that would be impacted.
4. Mitigation credit for compensatory mitigation within Basins will be given for those functions adequately compensated within the Basins, e.g. flood attenuation, nutrient retention, etc. Additional on-site or off-site compensatory mitigation may be required to adequately compensate other functions impacted by the proposed project.