DRAFT

Federal Guidance on the Use of Off-Site and Out-of-Kind Compensatory Mitigation Under Section 404 of the Clean Water Act

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Purpose

- Audience: Corps regulatory staff and other involved parties

- Applicable to: ONLY decisions on whether off-site or out-of-kind mitigation is environmentally preferable to on-site or in-kind mitigation

Background

- Existing preference for on-site in-kind (1990 Mitigation MOA)
- Off-site and/or out-of-kind allowed when "environmentally preferable" (1995 Banking Guidance, 1999 ILF Guidance, 2002 NWPs)
- Automatic preference for in-kind and on-site is inconsistent with watershed approach (2001 NRC Report)

Development and Coordination

- Proposed in Mitigation Action Plan (MAP)
- MAP Interagency Workgroup
- Field staff brainstorming session
- ASWM conference call
- Stakeholder Forum
- Agency review
- Publication
- Incorporation into watershed guidance

Environmentally preferable mitigation is

Mitigation that compensates for aquatic resource functions lost at a permitted project site

in an ecologically successful, sustainable manner,

in the appropriate hydrogeomorphic setting.

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- Provides habitat corridor or other habitat links
- Provides unique or regionally important habitat

Mitigation is not Environmentally Preferable

- Characteristics that substantially limit or preclude site for compensatory mitigation
- Characteristics that reduce the suitability of a project site, but that may be addressed

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- Characteristics that substantially limit or preclude site for compensatory mitigation:

  -Site will not support establishment of natural wetland hydrology or mimic other natural wetland processes

  -Landscape not suitable for wetland type proposed

  -Project will cause substantial adverse direct, indirect, or cumulative impacts to other resources

  -Project creates safety concern

Mitigation is not Environmentally Preferable

Characteristics that reduce the suitability of a project site, but that may be addressed:

- Site is contaminated
- Project threatened by external factors preventing success
- Vulnerable to establishment of invasive species
- Ecologically important non-wetland species adversely affected
- Extensive maintenance required
- Project will not fully compensate for functions lost at impact site
- No long term protection assurance
- Likelihood of implementation/success low
- Severely degraded watershed

So, what do YOU think