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

- Sustainable in context of adjacent land uses
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- Sustainable in context of adjacent land uses
- Sustainable in context of natural processes
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- Sustainable in context of adjacent land uses
- Sustainable in context of natural processes
- Provides benefits in addition to aquatic functions
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- Sustainable in context of adjacent land uses
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- Provides benefits in addition to aquatic functions
- Replaces critical aquatic functions
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- Little or no adverse environmental impacts
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- Provides benefits in addition to aquatic functions
- Replaces critical aquatic function
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- Provides short and long term benefits
Environmentally Preferable Mitigation:

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- Compatible with existing holistic watershed plans
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- Replaces critical aquatic function
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- Provides short and long term benefits
- Compatible with existing holistic watershed plans
- Includes good stewardship and long term protection provisions
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- Provides habitat corridor or other habitat links
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- Provides short and long term benefits
- Compatible with existing holistic watershed plans
- Includes good stewardship and long term protection provisions
- 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
Mitigation is not Environmentally Preferable

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?