## PMLevyCOLPEm Resource

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**Subject:** FW: Scanned Document
**Attachments:** document2009-05-05-095557.pdf

John & Paul: Attached is a copy of portions of a PowerPoint presentation from the Corps' Huntington District regarding the Corps Section 404 alternatives analysis. I've made some additions/changes to it, as well as highlighted and made some notations to parts that I think are especially significant. I'm providing this to you to give you some indication of what I will be looking for in your LEDPA analysis. Maybe of some help to you and your consultants. If you want to share with your consultants in the writing of the LEDPA analysis, please do so. I can also discuss with either of you, or your consultants if you want me to do so.
Don

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**Subject:** FW: Scanned Document
**Sent Date:** 5/5/2009 10:27:27 AM
**Received Date:** 5/5/2009 10:28:03 AM
**From:** Hambrick, Gordon A SAJ

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| **Files** | **Size** | **Date & Time** |
|---|---|---|
| MESSAGE | 1031 | 5/5/2009 10:28:03 AM |
| document2009-05-05-095557.pdf | 2997508 | |

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**Priority:** Standard
**Return Notification:** No
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# Section 404 of the Clean Water Act
# Alternative Analysis

**The Corps is neither a project proponent, nor a project opponent.**

**Alternative Analysis Required**

•404(B)(1) Guidelines [Subpart B- Compliance with Guidelines] requires under "40 CFR 230.10(a)-Restrictions on Discharge" no discharge shall be permitted if there is a **practicable alternative** to the proposed discharge which would have less adverse impact on the aquatic ecosystem (waters of U.S.) so long as the alternative does not have other significant adverse environmental consequences (with one exception under 404(b)(2) for commercial navigation)

**Section 404(B)(1) Guidelines Overview**

•The Guidelines are:

• binding regulations published by the Environmental Protection Agency at 40 CFR Part 230 on December 24, 1980

•for Specification of Disposal Sites for Dredged or Fill Material

•categorized into nine Subparts (A-I)

**404(b)(1) Guidelines Subparts**

•Subpart A-General

•Subpart B-Compliance with the Guidelines

•Subpart C-Potential impacts on Physical and Chemical Characteristics of Aquatic Ecosystem

•Subpart D-Potential Impacts on Biological Characteristics of the Aquatic Ecosystem

•Subpart E-Potential Impacts on Special Aquatic Sites

•Subpart F-Potential Effects on Human Use Characteristics

•Subpart G-Evaluation and Testing

•Subpart H-Actions to Minimize Adverse Effects

•Subpart I-Planning to Shorten Permit Processing Time

**Subpart A-General**

•Purpose and Policy

- To restore and maintain the chemical, physical and biological integrity of waters of the U.S. through the control of discharges of dredged and fill material

- Dredged or fill material should not be discharged into the aquatic ecosystem unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or cumulatively

•Definitions

- Practicable- "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purpose"

- Special Aquatic Sites- includes sanctuaries and refuges, wetlands, mud flats, vegetated shallows, coral reefs and riffle and pool complexes (listed in Subpart E)

**Subpart B-Compliance with the Guidelines**

- Purpose of Alternative Analysis
  - Opportunity for applicant to demonstrate their proposed or preferred alternative is the least damaging practicable alternative to the aquatic ecosystem that meets the project purpose

- Restrictions on Discharge
  - No discharge of dredged or fill material shall be permitted if there is a practicable alternative with less adverse impact to the aquatic ecosystem…[may only permit least environmentally damaging practicable alternative]

- Restrictions for Special Aquatic Sites [Water Dependency Test]
  - 1st Presumption - When a discharge doesn't require siting within a special aquatic site to achieve the basic purpose it is viewed as non-water dependent
  - 2nd Presumption – Practicable alternatives not involving special aquatic sites are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise

- It is the **applicant's responsibility** to rebut the two presumptions concerning special aquatic sites through an Alternatives Analysis
  - Aren't practicable
  - Aren't available
  - Aren't less environmentally damaging

- No discharge shall be permitted if it:
  - Violates any applicable State water quality standard
  - Violates any applicable toxic effluent standard or prohibition (under section 307 of the CWA)
  - Jeopardizes the continued existence of endangered or threatened species under ESA or results in likelihood destruction or adverse modification of designated critical habitat
  - There is not sufficient information to determine compliance with the guidelines

- Factual Determinations [Evaluation Continues] gleaned from EIS
  - Physical Substrate Determinations
  - Water Circulation
  - Suspended Particulate/Turbidity Determinations
  - Contaminant Determinations
  - Aquatic Ecosystem and Organism Determinations

- Proposed Disposal Site Determinations
- Determination of Cumulative Effects on the Aquatic Ecosystem
- Determination of Secondary Effects on the Aquatic Ecosystem

**Alternative Analysis Preparation and considerations:**

•Project Purpose [Where do I start??]
- Application should clearly state the project purpose
- Based on the project purpose, the Corps will determine the basic purpose and overall purpose
- Applicant should present a full range of alternatives based on the overall purpose

**Project Purposes:**
- Basic: The essential purpose of the project used to determine water-dependency
- Overall: Determined by the Corps from the applicant's perspective and is defined to determine the range of practicable alternatives
  - The overall project purpose directly relates to the analysis of the alternatives considered + geographic scope of search area

see next page for LNP

**Basic-vs-Overall Purpose**

•Basic Purpose (e.g. coal removal)
- Used to determine dependency for projects involving special aquatic sites

•Overall Purpose (e.g. to allow maximum extraction of high quality coal reserves in a safe, environmentally sound, and cost effective manner)
- Used to determine practicability of alternatives + geographic scope

**Documenting Alternatives**

•The range of alternatives & level of detail should be commensurate with the level of impacts associated with the proposal

•Consider those that would involve both smaller and larger aerial or surface area coverage as well as alternatives that would be sited in different locations

•Each alternative should indicate how impacts to aquatic resources have been avoided or minimized to the maximum extent practicable

High impact / higher detail

emphasis

**Documenting Aspects of Practicable Alternatives**

•Technical and Logistical Factors
- Access
- Transportation Needs
- Utilities and infrastructure constraints
- Topography
- Available Construction Techniques

•Provide impacts on aquatic ecosystem as well as overall environment for each alternative considered

w PC Report
Lawsuit
Most vulnerable
was project purpose

Applicant

- Provide rationale for selection of the alternative identified as least environmentally damaging
- Present both adverse and/or beneficial impacts (e.g. use of pre-law or existing facilities or out of stream sediment control)
- Identify practicable alternatives that have no significant or readily identifiable difference in impact from the least environmentally damaging practicable alternative (e.g. same extent of impact but worse stream quality in preferred alternative)
- The activity will not cause or contribute to significant degradation of waters of the U.S. including adverse effects on human health, life stages of organisms dependent on the aquatic ecosystem, ecosystem diversity, productivity and stability, and recreational, aesthetic, and economic values
- Address the consequences on the applicant and the public of not implementing or forgoing the project
  - local economics
  - generation of electricity
- Reference Subpart H for Actions to Minimize Adverse Effects
  - Location of Discharge
  - Control of Material
  - Elements affecting method of dispersion
  - Existing Technology

**Most Frequent Lack of Information for Alternative Analysis**

- Not included in application, although most likely performed (e.g. planning and sequencing, implementation of AOC+ Optimization and etc)
- Do not include the full range of practicable alternatives and a "No Action" alternative
- Lack substantive analysis of the project and its anticipated effects
- Don't provide detailed comparison between alternatives

Adapted from a PowerPoint presentation by
Mike Hatten
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South Regulatory Section
At website:
http://www.lrh.usace.army.mil/_kd/Items/actions.cfm?action=Show&item_id=9855&destination=ShowItem

from LNP Public Notice

Levy Public Notice

Basic: To meet the public's need for electric energy.

Overall: To meet the public's need for increased electrical baseload generating capacity in the Central Florida area.