

*New Mitigation Rule
Avoidance-Minimization Requirements
Individual Permit Applications*



33 CFR Part 325.1(d)(7)

Savannah District

What Must an Application Include?

- Rule requires a statement describing how impacts to waters of the US are to be avoided and minimized
- Practically speaking a 404(b)(1) alternatives analysis is required



Individual Permits

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Processing Steps (120 days)

1. Application **with 404(b)(1) alternatives analysis**
2. Public Notice
3. 30-day comment period
4. Agency coordination
5. 404(b)(1) Evaluation & Public Interest Review
6. Permit decision



404 (b)(1) Guidelines

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*1990 Memorandum of Agreement
Between
USACE and USEPA
Provides Guidance Regarding
Exercise of Discretion
Under the Guidelines*



404 (b)(1) Guidelines

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Exercise of Discretion


*Use a Common Sense Approach
for Project Development
and
Permit Application Preparation*



404 (b)(1) Guidelines

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Basic Project Purpose


- 
- Project purpose drives the alternatives analysis process
 - Applicant provides Corps with need and purpose statement
 - Maximizing profits for commercial/residential developments is not an acceptable project purpose
 - With applicant input, the Corps determines basic project purpose
 - Practicable alternative must meet the basic project purpose



404 (b)(1) Guidelines

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Sequential Steps

- 
- **Determine water dependency**
 - **Consider off-site alternatives**
 - **Avoid unnecessary impacts**
 - **Minimize unavoidable impacts**
 - **Compensatory mitigation**



Water Dependency

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- A marina is water dependant
- Houses, golf courses, malls and lakes **are not** water dependant
- Don't waste time with this step





Off-Site Alternatives

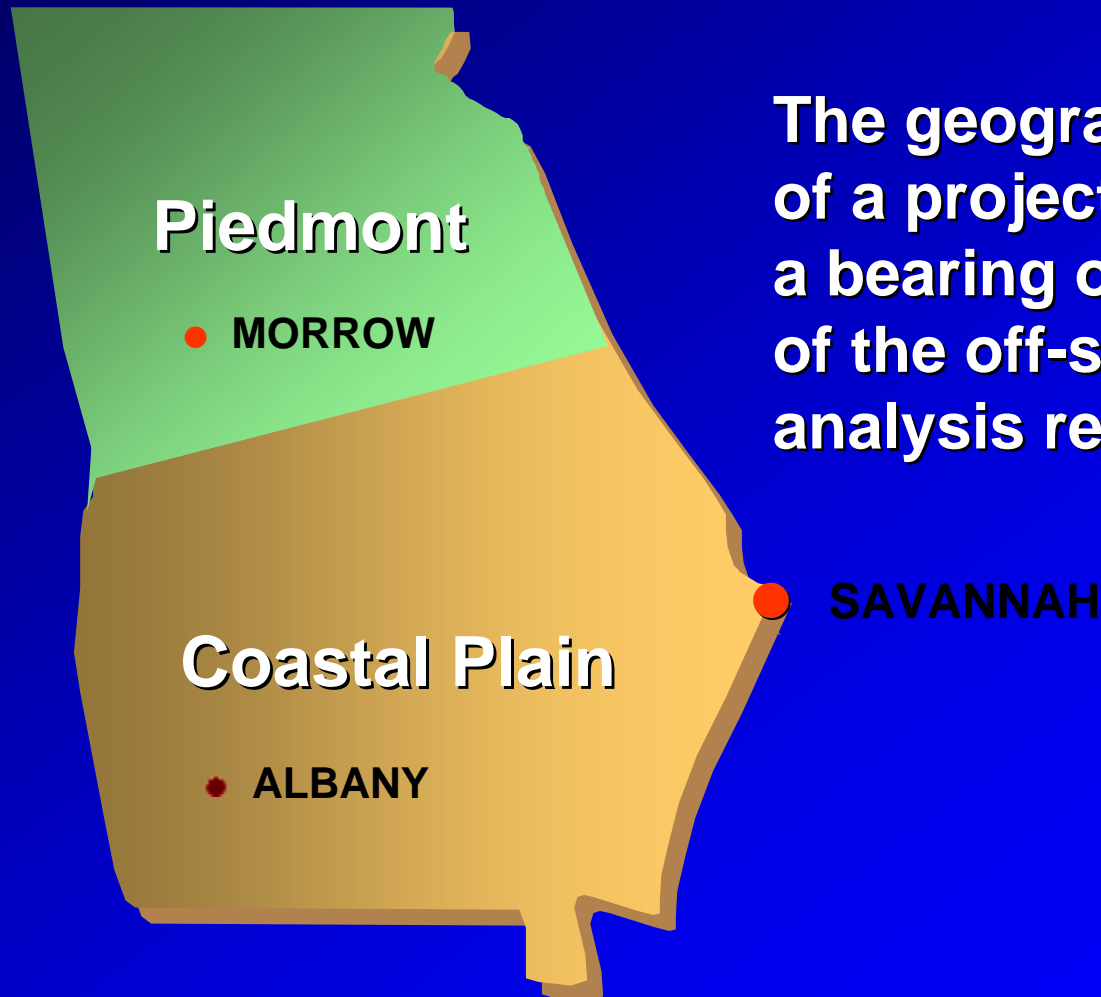
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For a non-water dependent project, an alternative site that would involve less adverse impact on the aquatic environment is presumed to exist



Off-Site Alternatives

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The geographic location of a project site can have a bearing on the intensity of the off-site alternatives analysis required



Off Site Alternatives

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Geographic Location – Coastal Plain

- 
- Many Lower Coastal Plain sites are at least 1/3 wetland (2/3 upland)
 - An intensive off-site alternatives analysis may not be required for a Coastal Plain site that is 1/3 wetland or less
 - The amount of wetlands on Upper Coastal Plain sites will vary considerably and this guidance may not be applicable



Off-Site Alternatives

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Geographic Location – Piedmont

- **Most Piedmont sites are < 10% wetland**
- **The amount of wetland on a Piedmont site will not have much of an affect on the intensity of the off-site alternatives analysis required**
- **Piedmont sites are dominated by perennial and intermittent streams**
- **The off-site alternatives analysis required for a Piedmont site with few streams may not be as intensive**



Off-Site Alternatives

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Urban vs. Rural


- In urban areas, remaining undeveloped properties are generally surrounded and dominated by degraded aquatic systems
- Aquatic functions provided by the wetlands and streams that remain in urban areas are extremely important
- Projects in urban areas will require a more intensive off-site alternatives analysis



Off Site Alternatives

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Urban vs. Rural

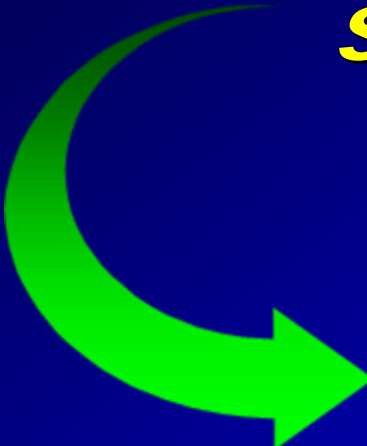
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- **The aquatic systems in rural areas are generally more intact and functional**
 - **Impacts associated with rural projects do not typically result in a major degradation of aquatic functions for the system**
 - **The alternatives analysis required for a rural project may not be as intensive**



Off-Site Alternatives

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Scale of Aquatic Impacts

- 
- **The larger the aquatic impact relative to the size of the project area, the more rigorous the requirement to conduct an intensive analysis of off-site alternatives**
 - **One acre impact on a two acre site would require a very intensive off-site analysis**
 - **One acre impact on a 100-acre site would require a much less intensive analysis**



Off-Site Alternatives

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Do I Really Have To Do One?

- Geographic location, aquatic impacts and size of project will influence the intensity of the off-site alternatives analysis
- But the answer is **YES**, an off-site alternatives analysis is required with every individual permit application
- Must provide 3 sites → Preferred and 2 alternates



Avoidance

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Once the Preferred Project Site is Selected, Unnecessary Impacts to the Aquatic Environment Must be Avoided to the Maximum Extent Practicable



Avoidance

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Common Mistakes

- 
- Wholesale filling of aquatic resources for the creation of developable lots in a residential subdivision will not pass the avoidance step
 - Very difficult to demonstrate avoidance for a recreational amenity lake in a residential subdivision



Avoidance

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Simple Rules

- **If total avoidance is impossible, propose aquatic impacts as the last resort!**
- **Roads should cross aquatic systems at narrowest points**
- **Do not run utilities through aquatic systems**
- **Avoid impacts to high quality aquatic systems and impact only low quality or degraded resources**
 - **For example, construct a bridge over a high quality perennial stream and place a culverts in degraded intermittent steams**



Minimization

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Unavoidable Impacts to the Aquatic Environment Must be Minimized to the Maximum Extent Practicable



Minimization

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Simple Rules

- 
- **Install bottomless culverts to allow free movement of aquatic organisms**
 - **Reduce fill slope from 4:1 to 3:1 or 2:1**
 - **Utilize state-of-the-art erosion and sedimentation control techniques on exposed soils and fill areas**
 - **Re-vegetate utility right-of-ways in wetlands with native plant species**
 - **Directionally bore utilities under high quality perennial streams**



Compensatory Mitigation

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*Only After Demonstrating that
Impacts to the Aquatic
Environment Have Been
Avoided and Minimized to the
Maximum Extent Practicable
Will Compensatory Mitigation
be Considered*



404 (b)(1) Guidelines

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Permit Decision

- The US Army Corps of Engineers can only issue a permit for the least environmentally damaging practicable alternative that meets the basic project purpose
- The only reason Savannah District has denied an individual permit is failure to comply with the 404 (b)(1) Guidelines