Public Notice

U.S. Army Corps of Engineers, Norfolk District

CENAO-REG

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Virginia Off-Site Mitigation Location Guidelines

Norfolk District Corps of Engineers has worked closely with a number of federal, state, and local government agencies (including the Virginia Department of Environmental Quality, the U.S. Fish and Wildlife Service, Virginia Department of Game and Inland Fisheries, and Region III of the Environmental Protection Agency) to develop the attached guidelines for selection of offsite compensatory mitigation site locations. The objectives of these guidelines are to improve the environmental benefits associated with compensatory mitigation projects and to assist the regulated public in locating suitable compensatory mitigation project sites.

These guidelines are only intended to apply to offsite compensatory mitigation projects or projects that are not located on the site of a proposed impact to waters of the U.S. (including wetlands). They would apply to all offsite mitigation projects including permittee responsible or project specific mitigation, mitigation banks, and in-lieu fee program mitigation project sites. They do not alter or replace any current regulations or regulatory requirements. They do not alter in any way the mitigation sequence specified in the 1990 Corps-EPA Mitigation MOA or in the Clean Water Act Section 404(b)(1) Guidelines (40 CFR part 230). The Corps does not consider compensatory mitigation until impacts to waters of the U.S. (including wetlands) have been first avoided and then minimized to the extent practicable.

The attached guidelines are in 3 sections. Any proposed off-site compensatory mitigation should be evaluated in terms of these 3 sections. The first section, Part A, identifies current regulatory requirements and practices for offsite compensatory mitigation projects.

The second section, Part B consists of recommendations for development of mitigation projects. The applicant, project proponent, or agent should provide documentation indicating the extent to which the proposed off-site mitigation project addresses these recommendations when submitting a proposal for an offsite compensatory mitigation plan. These recommendations are not mandatory but incorporating them in a mitigation proposal increases the likelihood of establishing a sustainable compensatory mitigation project.

The last section, Part 3 consists of a number of criteria that increase the likelihood of a compensatory mitigation project providing important environmental gains or benefits. A compensatory mitigation project that meets one or more of these criteria is more likely to provide environmental benefits than one that does not. Mitigation proponents are strongly encouraged to identify potential mitigation projects that meet one or more of these criteria.

Any questions may be directed to Steve Martin of my staff at (757) 201-7787 or by e mail at steven.m.martin@usace.army.mil.

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Chief, Regulatory Office

Off-Site Mitigation Location Guidelines –February 12, 2008

Preface: These guidelines are intended to improve the environmental benefits associated with compensatory mitigation projects, to assist the regulated public in locating compensatory mitigation sites, and to meet state and federal regulatory and resource agency objectives for compensatory mitigation projects. Satisfying these guidelines does not guarantee approval of a mitigation site.

A. General Regulatory requirements and practices for off site compensatory mitigation:

1) Off-site mitigation is preferred within same 8 digit HUC Catalog Unit or an adjacent HUC Catalog Unit in same river basin and topographic region/province (coastal plain, piedmont, mountain). If offsite mitigation is proposed outside of this area, documentation must be provided that indicates that no suitable sites are available within the area.
2) The exception to the above is that mitigation banks by state law must be located within same 8 digit HUC Catalog Unit or an adjacent HUC Catalog Unit in same river basin. Other restrictions on service area may include topographic region/province (coastal plain, piedmont, mountain) and ecoregion.
3) Mitigation should be in-kind (e.g. palustrine mitigation for palustrine impacts, estuarine for estuarine) to the extent that it is practicable. Wetland mitigation should not be used to compensate for stream and open water impacts and vice versa without justification.

B. The recommendations below are in addition to all legal and regulatory requirements for no net loss of wetland or stream acreage or function. They do not replace or offset any requirements for sequencing of mitigation options. These recommendations do not address mitigation credit ratios or the amount of mitigation that may be required for a given permit.

The following criteria must be evaluated and documented when selecting mitigation areas:

1) Wetland restoration, such as in prior converted cropland, should be considered before wetland creation. Proposals to create wetland areas through excavation or grading of upland forests are unlikely to be approved.
2) Stream restoration or enhancement opportunities should be considered in conjunction with preservation of streams and associated riparian buffers. Stream preservation as a sole source of mitigation should only be for exemplary systems under documentable threat of loss or degradation and when preservation of an exemplary system offsets impacted functions.
3) Mitigation sites should be contiguous with or connected to other aquatic areas, otherwise, they may not meet the goals of restoring and maintaining the chemical, biological and physical integrity of the Nation's waters. Isolated or fragmented wetland mitigation areas are unlikely to be approved. Proposed wetland mitigation

sites connected solely to other waters and wetlands by drainage ditches may not be approved.

4) Mitigation areas should not be selected if future foreseeable upstream or upgradient activities, including activities on adjacent properties, are likely to cause adverse effects to the mitigation area (e.g. future upstream activities increase the channel forming discharge characteristics [Q, duration, frequency], and cannot be accommodated appropriately [i.e. the design is intended to accommodate existing and projected discharges]) . Areas likely to be developed in the foreseeable future include areas adjacent to existing development and areas currently zoned or identified for future development in a locality's comprehensive plan, long-range plan, or zoning overlay.
5) Where riparian buffer protection is proposed it should provide greater protection than any current state or local requirements (for example, prohibition of logging which is exempt within portions of Resource Protection Areas identified under the Chesapeake Bay Preservation Act ordinances) and should enhance water quality and/or fish and wildlife habitat. Unless otherwise impracticable, a minimum of a 100-foot wide buffer on each side of the stream should be established for mitigation purposes on streams for optimal credit. Establishment of buffers should strive for 3 zones of vegetative cover (trees, shrubs, and herbaceous zones), where appropriate, for water quality maintenance and improvement. No credit will be given to buffers maintained in lawn or similarly landscaped/artificially maintained cover. Only in extraordinary circumstances will credit be given for preservation, enhancement, or restoration activities associated with third or lower order streams where only one side or bank of the stream is the mitigation area. Examples of circumstances where credit may be given include: streams where one side or bank of the stream is already protected in perpetuity by a legal instrument; streams where one side or bank of the stream has rock cliffs, very steep slopes, or other geo-physical characteristic that precludes future development along the bank.
6) Any potentially conflicting land uses on the mitigation site or adjacent properties should be identified, including but not limited to drainage easements, utility easements and rights-of-way, liens, timber and mineral rights, and rights of ingress/egress.
7) The use of the property for mitigation purposes should be consistent with local planning documents (e.g. comprehensive and long-term plans, zoning overlays).
8) Restoration, enhancement, or preservation of streams of an order that is commensurate with that which is being impacted (as determined in the field). For example, if a first or second order stream is impacted, compensation should be located on a first or second order stream, where practicable.
9) The feasibility of providing legal protection of the mitigation site through the recordation of a third party conservation easement to be held by a state, local, or non-governmental conservation agency, including land trust.

C. Identification and selection of mitigation sites that satisfy one or more of the following criteria are strongly encouraged:

1) Abutting or adjoining an existing reserve or conservation area such as a National Wildlife Refuge, National Park, State Wildlife Management Area, Natural Area Preserve, State Park, local parks or protected areas, non-profit conservation organization properties or portfolio areas (The Nature Conservancy (TNC), land trusts, Izaak Walton League, etc.) or creating or contributing to a corridor connection linking existing reserves, conservation areas, or large wetland or aquatic resource systems (e.g. Dismal Swamp, Clinch River system) to other habitats. Such corridors should provide for wildlife movement through urban or agricultural landscapes. One potentially useful tool for identifying corridors is the "Virginia Conservation Lands Needs Assessment". Additional information can be found at http://www.dcr.virginia.gov/natural_heritage/vclna.shtml.
2) Conserve or restore habitat for one or more state or federal-listed species, including Federally designated critical habitat or State designated Threatened and Endangered Species Waters.
3) Conserve or restore wetland, stream, or riparian habitat for species identified as rare by DCR- Division of Natural Heritage (e.g. S1-S2 and G1-G5 species) or for Species of Greatest Conservation Need identified in the Virginia Wildlife Action Plan (e.g., Tier I - IV). However, if only Tier III or IV species are represented, the site should provide habitat for an assemblage of those species. Additional information on Species of Greatest Conservation Need can be found at http://bewildvirginia.org/species/.
4) Conserve or restore wetland, stream, or riparian areas and associated buffer areas identified by DCR – Division of Natural Heritage, or TNC as rare or imperiled natural communities (e.g. sinkhole ponds on the Coastal Plain or Ridge and Valley provinces of Virginia, especially when impacts involve the same type of habitat).
5) Contribute to improved water quality through wetland or stream restoration associated with identified/designated impaired waters (with an emphasis on implementation of TMDL restoration plans).
6) Remove barriers to fish passage in areas previously identified by VDGIF as meriting improvement.
7) Restore, enhance, or preserve aquatic resources and/or associated riparian areas identified as meriting restoration/conservation in an approved Federal, state, or local watershed management plan or in conservation plans prepared by non profit conservation organizations such as TNC.
8) Conserve and/or restore the entire watershed associated with stream systems. Proof of control may range from full legal protection (e.g. legally binding real estate restriction such as open space easements or declaration of restrictions) to written guarantees by local governments that stricter runoff standards would be applied in that watershed.
9) Remediate inputs of substantial amounts of sediments or removal of other pollutants to downstream waters (as part of wetland or stream restoration activities);
10) Conserve or restore areas designated by VDGIF as wild trout streams or Anadromous Fish Use Areas.