



Alternatives Analysis Review

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Contents

Chapter 62-331, F.A.C. Alternatives Analysis Avoidance and Minimization



Chapter 62-331, F.A.C.

State 404 Program

- **State 404 Program rules**
- **Contains environmental standards for the State 404 program**
- **Brings in requirements of federal regulations, including the 404(b)(1) Guidelines (but does not directly incorporate the guidelines)**
- **Will be effective on the date the U.S. Environmental Protection Agency (EPA) publishes approval of the program in the Federal Register**



Alternatives Analysis

When is it Needed?

- **Required during review of an individual permit application**
- **Alternatives Analysis is required to call a project “administratively complete” – prior to public notice**



Flexibility

404 Handbook, section 1.4

- **Commensurate with project size**
- **Memo/Regulatory Guidance Letters**
 - **1993 – EPA/U.S. Army Corps of Engineers (USACE) Appropriate Level of Analysis Required for Evaluating Compliance with the Section 404(b)(1) Guidelines Alternatives Requirements**
 - **1995 – Regulatory Guidance Letter (RGL) 95-01: Guidance on Individual Permit Flexibility for Small Landowners**
 - **RGL 05-06: Expired Regulatory Guidance Letters**



Why Evaluate Alternatives?

- **The Department is required to analyze alternatives that could achieve the applicant's purpose and need**
- **Purpose is to document avoidance and minimization**
- **Applicant is responsible for providing documentation**
 - Pre-application meeting
- **State 404 Program Individual Permits**
 - 404 Applicant's Handbook Appendix C
 - Administratively Complete
- **Mitigation sequence:**
 - First, avoid impacts
 - Then, minimize unavoidable impacts
 - Finally, compensate for impacts



Alternatives

Rule 62-331.053, F.A.C.

(1) No dredge or fill activity shall be permitted if there is a practicable alternative to the proposed activity which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. The Agency shall require the applicant to submit an alternatives analysis completed in accordance with the provisions below. Guidance for completing an alternatives analysis is in Appendix C of the 404 Handbook.



Alternatives – 2

Rule 62-331.053, F.A.C.

(a) For the purpose of this condition, practicable alternatives shall include, but shall not be limited to:

- 1. Activities which do not involve dredging or filling in state-assumed waters;**
- 2. Locations where dredge or fill activities would have less adverse impact than the proposed project location, so long as the alternative does not have other significant adverse environmental consequences.**



Alternatives – 3

Rule 62-331.053, F.A.C.

(b) An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics considering overall project purposes. If it is otherwise a practicable alternative, an area not presently owned by the applicant which could reasonably be obtained, utilized, expanded, or managed to fulfill the basic purpose of the proposed activity may be considered.



Alternatives – 4

Rule 62-331.053, F.A.C.

(c) Where the dredge or fill activity proposed within a special aquatic site does not require access or proximity to or siting within the special aquatic site to fulfill its basic purpose (i.e., is not “water dependent”), practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise. In addition, where a dredge or fill activity is proposed within a special aquatic site, all practicable alternatives to the proposed activity which do not involve dredging or filling within a special aquatic site are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise.



Alternatives – 5

Rule 62-331.053, F.A.C.

(d) To the extent that practicable alternatives have been identified and evaluated under the Coastal Zone Management Program, a Clean Water Act section 208 program, or other planning process, such evaluation shall be considered by the Agency as part of the consideration of alternatives under this section. Where such evaluation does not contain all information required under this section, the additional information shall be provided to the Agency for review.



Alternatives Review

Steps

- **Step 1: Define purpose and need**
- **Step 2: Identify alternatives**
- **Step 3. Describe and analyze alternatives for practicability**
- **Step 4: Identify the least environmentally damaging practicable alternative**



Project Purpose

The Department will examine:

- **The applicant's stated purpose and need**
- **The “basic” project purpose**
- **An “overall” project purpose**



Applicant's Purpose and Need

- **Significant thought**
- **Drives the alternatives analysis**
- **From the applicant's purpose and need statement, the Department defines the basic and the overall project purpose**
 - **Pre-application meeting**
 - **Modification/Request for Additional Information (RAI)**
- **Example: The purpose of the project is the construction of affordable housing for lower-mid income families. Affordable housing is needed in the northeastern portion of Palm Beach County as many of those who work in northeastern Palm Beach County live in southern St. Lucie County.**



Basic Project Purpose

- **Section 62-331.053(1)(c), F.A.C.**
- **“Basic project purpose” is the simplest description of what is being permitted**
- **Water Dependency**
- **Example: The basic project purpose is residential housing because residential housing is not water dependent, practicable alternatives are presumed to be available.**



Basic Project Purpose – 2

- **For non-water dependent activities in special aquatic sites:**
 - Presume that practicable alternatives not involving a special aquatic site are available AND
 - such alternatives are less damaging
 - Applicant must “clearly” rebut presumptions
- **“Special Aquatic Sites”**
 - Sanctuaries and refuges
 - Wetlands
 - Mud flats
 - Vegetated shallows
 - Coral reefs
 - Riffle and pool complexes
- **404 Handbook 2.0, 45.**



Special Aquatic Site

404 Handbook, section 2.0

45. “Special aquatic sites” means sanctuaries and refuges under state and federal laws or local ordinances, wetlands, mud flats, vegetated shallows, coral reefs, and riffle and pool complexes. They are geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region.



Overall Project Purpose

- **Section 62-331.053(1)(b), F.A.C.**
- **Project purpose affects the range of alternatives, so it should be the starting point for every discussion of alternatives**
- **Should:**
 - **Be defined in fundamental terms**
 - **Reflect what is being proposed**
 - **Not be too broad**
 - **Focus on the “what” of the project, not as much on the “how” or “where”**



Overall Project Purpose – 2

- **Specific to define applicant's needs**
 - Not too restrictive
 - Not too broad
- **Define the geographic scope**
- **Need is not discussed in section 62-331.053(1), F.A.C.**
 - **Is considered under Department public interest review**



Overall Project Purpose – 3

- **Example: The overall project purpose is because the need is in northeastern Palm Beach County, the alternatives analysis would focus on alternative sites in that area. The construction of affordable residential housing in northeastern Palm Beach County.**



Framing the Project Purpose

Most Protective

- **Overall project purpose**
- **Underlying or public purpose**
- **Few modifiers**
- **Includes reasonable range**

Least Protective

- **Applicant's specific wishes**
- **Highly detailed**
- **Focus on minimizing cost and/or maximizing profitability**
- **Excludes most alternatives**



Examples

- a) To develop a 225-lot single-family residential development at the southeast intersection of Interstate 10 and Toledo Blade Boulevard**
- b) To develop a residential development in Northwest Florida**
- c) To develop a single-family residential subdivision near Interstate 10 in Crestview, Florida, to meet local demand for this type of housing**



Remember

- **The Alternatives Analysis is required for an application to be administratively complete**
- **If the applicant's alternative analysis uses a project purpose the Department does not concur with (too restrictive or too broad in geographic scope) the analysis will need to be revised (RAI)**
- **Once the basic and overall project purpose is defined, the Department will evaluate alternatives that are practicable**



Practicability

404 Handbook, section 2.0

33. “Practicable” means available and capable of being done after taking into consideration cost, existing technology, and logistics considering overall project purposes.



Practicability

Section 62-331.053(1)(b), F.A.C.

“An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics considering overall project purposes.”



Availability

***Section 62-331.053(1)(b), F.A.C.,
(cont.)***

- **“...If it is otherwise a practicable alternative, an area not presently owned by the applicant which could reasonably be obtained, utilized, expanded, or managed to fulfill the basic purpose of the proposed activity may be considered.”**
- **Often referred to as “off-site” alternatives**



Practicability – Cost

404 Handbook, section 2.0

33. “Practicable” means available and capable of being done after taking into consideration cost, existing technology, and logistics considering overall project purposes.



Cost – 2

- **“Our intent is to consider those alternatives which are reasonable in terms of the overall scope/cost of the proposed project. The term economic [for which the term "cost" was substituted in the final rule] might be construed to include consideration of the applicant's financial standing, or investment, or market share, a cumbersome inquiry which is not necessarily material to the objectives of the Guidelines.”**
- **Guidelines Preamble, "Alternatives," 45 Federal Register 85339 (12/24/80)**



Cost – 3

- **“The determination of what constitutes an unreasonable expense should generally consider whether the projected cost is substantially greater than the costs normally associated with the particular type of project.”**
- **“Generally, as the scope/cost of the project increases, the level of analysis should also increase.”**
- **1993 Memo re: appropriate level of analysis**



Cost – 4

Can more expensive alternatives be practicable?

- **What about sunk/sunken costs?**
- **What about profitability or return on investment?**
- **What about public works projects?**



Practicability – Technology/Logistics

404 Handbook, section 2.0 –

33. “Practicable” means available and capable of being done after taking into consideration cost, existing technology, and logistics considering overall project purposes.



Practicability – 2

Technology & Logistics

- **Zoning?**
- **Market area?**
- **Methods utilized in past projects?**
- **Other federal/state regulations or requirements?**



Practicability – 3

Flexibility

- **Up to two acres of non-tidal wetlands for the construction or expansion of a home or farm building, or expansion of a small business, it is presumed that alternatives located on property not currently owned by the applicant are not "practicable"...**
- **Presumption may be rebutted in certain circumstances**
- **Must still minimize and compensate for impacts**
- **RGL 95-01 re: flexibility for small landowners**



The Alternatives Test

Section 62-331.053(1), F.A.C.

“No dredge or fill activity shall be permitted if there is a practicable alternative to the proposed activity which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences...”



Environmental Impact Analysis

An otherwise practicable alternative should be rejected if it causes greater environmental damage.

- **The emphasis under 404 is on avoiding impacts to aquatic resources, but other ecosystem impacts must be considered.**



Reasonableness and Flexibility

- **The level of detail in an alternatives analysis shall be commensurate with the scale of the adverse environmental effects of the project. Analysis of projects proposing greater adverse environmental effects shall be more detailed and explore a wider range of alternatives than projects proposing lesser effects.**
- **404 Handbook, Appendix C**



Reasonableness and Flexibility – 2

- **But, record must contain sufficient information to demonstrate compliance**
- **It is not appropriate to consider compensatory mitigation in determining whether a proposed discharge will cause only minor impacts**
- **Even small project (i.e., single-family) evaluations must include sufficient information on the consideration of individual and cumulative impacts**
- **Rule 62-331.053, F.A.C.**



Inadequate Information

- **(3) No permit shall be issued for the following: ... (c) When there does not exist sufficient information to make a reasonable judgement as to whether the proposed activity will comply with the requirements of this Chapter**
- **62-331.053(3)(c), F.A.C.**



Alternatives Analysis

Special cases

- **General permits
(during rulemaking)**
- **Post-enforcement permits**
- **Large-scale planning
(HCP, SAMP, etc.)**



Impact Minimization

Section 62-331.053(3)(b), F.A.C.

(3) No permit shall be issued for the following:

...

(b) When appropriate and practicable steps have not been taken to minimize potential adverse impacts of the activity on the aquatic ecosystem



Real Life Applicability

In theory, all waters of the United States are protected

- **In practice, application of the alternatives analysis is often complex**
- **Greatest opportunity to protect resources, but often hardest part to implement**
- **Use critical thinking skills!**



Big Picture

40 CFR 230.1(d)

“From a national perspective, the degradation or destruction of special aquatic sites, such as filling operations in wetlands, is considered to be among the most severe environmental impacts covered by these Guidelines. The guiding principle should be that degradation or destruction of special sites may represent an irreversible loss of valuable aquatic resources.”



Examples

Walk-through examples



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