

- “The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration;”
- “Whether the action is related to other actions with individually insignificant but cumulatively significant impacts;”
- “Whether the action will violate other environmental statutes;”
- “The degree to which the action may ...cause loss or destruction of significant scientific, cultural, or historical resources;” and
- “The degree to which the action may adversely affect an endangered or threatened species or its [critical] habitat.”<sup>42</sup>

As explained below, the proposed mine trips every one of these intensity factors.

In assessing the context and intensity of a proposed action, the Corps must consider all related actions together. In other words, “[l]arge projects may not be artificially segmented into smaller ones for the purpose of avoiding NEPA or minimizing the appearance of adverse environmental impact.”<sup>43</sup> As the regulations put it, “Significance cannot be avoided by terming an action temporary or breaking it down into small component parts.”<sup>44</sup> Here, that means that the Corps must evaluate the full 12,000-acre project—not just the first phase of the proposed mine.

Both the context and intensity of the proposed mine warrant the preparation of an EIS. Regarding context, because the proposed mine borders a National Wildlife Refuge and a “Wetland of International Importance,” it would have impacts in a local, regional, and national context.

Regarding intensity, the proposed mine implicates at least eight intensity factors. First, the proposed mine would have significant adverse impacts. Twin Pines concedes that Phase One of the proposed mine would impact at least 587 acres of wetlands and 4,658 linear feet of stream.<sup>45</sup> As discussed in Section IV(A) below, assuming a proportional amount of mining over the entire 12,000 acres, the proposed mine would, by conservative estimates, impact 2,400 acres of wetland and 23,000 linear feet of stream. And these numbers do not account for the secondary impacts to neighboring aquatic resources such as the Okefenokee Swamp. The numbers also do not reflect non-aquatic impacts, such as the destruction of habitat, the reduction of air and water quality through the release of contaminants, and the degradation of the visitor and wilderness experience due to light, dust, and noise from mining operations.

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<sup>42</sup> 40 C.F.R. § 1508.27.

<sup>43</sup> *Colony Fed. Sav. & Loan Ass’n v. Harris*, 482 F. Supp. 296, 302 (W.D. Pa. 1980) (describing “substantial case law”).

<sup>44</sup> 40 C.F.R. § 1508.27(b)(7).

<sup>45</sup> Permit Application at 19.