

hard look at the direct, indirect, and cumulative impacts⁷⁴ of the proposed project, as well as Twin Pines' proposed mitigation measures and alternatives to the project.

IV. The proposed project violates Clean Water Act 404(b)(1) Guidelines.

The 404(b)(1) Guidelines are substantive environmental criteria used to evaluate whether a proposed activity complies with Section 404 of the Clean Water Act. The Guidelines reflect two key principles: first, the degradation or destruction of wetlands may represent an irreversible loss;⁷⁵ and second, the Corps should not permit the discharge of dredged or fill material “unless it can be demonstrated” that the discharge will not have an unacceptable adverse impact.⁷⁶ In other words, unless Twin Pines can prove that the proposed mine would not have an unacceptable impact—which it has not—the Corps may not grant a Section 404 permit.⁷⁷

The comments below address each relevant criterion: aquatic impacts, practicable alternatives, avoidance and minimization, mitigation, and protected species.

A. The proposed mine would significantly degrade aquatic resources.

Under the 404(b)(1) Guidelines, the Corps may not grant a Section 404 permit if the proposed action would “cause or contribute to significant degradation of the waters of the United States,” including wetlands.⁷⁸ To determine whether a proposed project would significantly degrade wetlands or other waters, the Corps must consider direct, secondary, and cumulative impacts, including impacts to wildlife, recreation, aesthetics, and economics.⁷⁹ Here, the impacts of the proposed mine would significantly harm thousands of acres of wetlands and tens of thousands of feet of streams, as well as the wildlife that live there. In addition, the proposed mine would likely harm the neighboring Okefenokee National Wildlife Refuge and Okefenokee Wilderness.

1. Direct Impacts

⁷⁴ To determine the scope of the cumulative impacts analysis, the Corps should identify resources within the project impact zone (for example, air quality, water quality, wildlife, and sociocultural resources), determine the geographic areas occupied by those resources outside of the project impact zone, and set the largest of those areas as the zone for the cumulative impacts analysis. Council on Environmental Quality, *Considering Cumulative Impacts under the National Environmental Policy Act* (January 1997) at 15.

⁷⁵ 40 C.F.R. § 230.1 (“The guiding principle should be that degradation or destruction of special sites may represent an irreversible loss of valuable aquatic resources.”).

⁷⁶ *Id.* (“Fundamental to [the] Guidelines is the precept that 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 in combination with known and/or probable impacts of other activities affecting the ecosystems of concern.”).

⁷⁷ In other words, the burden of proof is not on the public to demonstrate that the proposed project would be harmful, *the burden is on Twin Pines*.

⁷⁸ 40 C.F.R. § 230.10(c).

⁷⁹ 40 C.F.R. § 230.10(c)(1)-(4); 40 C.F.R. § 230.11.