

In his report, Rheinhardt explains that many of these questions cannot be answered without additional studies and modeling. Hughes agrees. In the light of such scientific controversy and incomplete and inadequate information, the Corps should require Twin Pines to prepare an EIS, especially when the proposed mine would adjoin the Okefenokee Swamp.

**c. The mitigation plan addresses too few functions.**

One reason Twin Pines created wetlands will likely fail is that it does not appear that it will be treating the topsoil that it removes from the site in a sufficiently careful manner. First, the soil used to create a wetland must be wetland soil, so Twin Pines will have to separate the wetland soil that it removes from the upland soil that it removes. Third, the wetland soil redeposited on the tailings must be at a sufficient depth to support wetland functions. Six inches may not be enough.<sup>182</sup> Finally, in its Corps application it appears that Twin Pines will stockpile its soil for 30 days.<sup>183</sup> In its state surface mining permit, Twin Pines states that it will stockpile its top soil for up to 6 months.<sup>184</sup> Stockpiling the topsoil for any extended time will make it more difficult for plant seeds to survive.

Even if Twin Pines were successful in creating wetlands on the site, these wetlands could not offset the functions lost during the mining. First, considering the poor success rate of created wetlands, it is unlikely that all of the wetlands would survive. Second, the mitigation would involve an uncompensated temporal loss. It will not be possible for Twin Pines to create wetlands that would immediately offset the wetlands that will be destroyed. Third, the MOA provides that more than one acre of wetlands should be restored or created when the “*likelihood of success of the mitigation project is low.*”<sup>185</sup> Twin Pines contends that the created wetlands will offset the wetlands that it will destroy on a one-for-one basis. In light of the temporal loss, this is impossible.

**V. The proposed project violates Clean Water Act Public Interest Guidelines.**

In addition to the 404(b)(1) Guidelines, the Corps must comply with its own Public Interest Guidelines. While the 404(b)(1) Guidelines establish substantive criteria relating to a project’s impact on aquatic resources, the Public Interest Guidelines obligate the Corps to evaluate whether the environmental and social costs of a project outweigh the economic benefit to the applicant.<sup>186</sup> As part of its analysis, the Corps may consider factors like “conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, ... recreation, water supply and conservation, water quality, ... and, in general, the needs and welfare of the people.”<sup>187</sup>

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<sup>182</sup> Rheinhardt Report at 3.

<sup>183</sup> Permit Application at 10.

<sup>184</sup> SMLUP at 4.

<sup>185</sup> Interagency MOA on Mitigation at 5 (emphasis added).

<sup>186</sup> 33 C.F.R. § 320.4(a)(1); 33 C.F.R. § 320.4(b)(4) (Corps may not issue permit to alter “important” wetlands unless “the benefits of the proposed alteration outweigh the damage to the wetlands resource”); *see also Slagle v. U.S.*, 809 F. Supp. 704 (D. Minn. 1992) (Section 404 permit denied because it was not in the public interest).