

Nomination Received by Council on Environmental Quality, Executive Office of the President
For the CEQ NEPA Pilot Project Program
<http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/nepa-pilot-project-nominations>

PART I. NOMINATOR

First Name:	Donald
Last Name:	Kinard
Organization:	U.S. Army Corps of Engineers, Jacksonville District, Regulatory Division
Project Title:	AEIS for Continued Phosphate Mining in Central Florida Phosphate District
Submitted by:	Federal Agency
Date Received:	06/13/2011

PART II. SHORT ANSWERS

I. What Federal agency or agencies will be involved in this pilot project?

The Regulatory Branch of the Jacksonville District, US Army Corps of Engineers is serving as the lead Federal agency for preparation of this AEIS. The US Environmental Protection Agency, Region 4 (USEPA), is serving as a cooperating agency. Additionally, on behalf of the State of Florida, the Florida Department of Environmental Protection (FDEP) is serving as a cooperating agency. Beyond these three agencies with primary involvement in the AEIS, a large group of additional Federal, state, regional, and local agencies have committed to being participating agencies and as such, they will be involved heavily during the public scoping process as well as during future review cycles of the Draft and Final AEIS documents.

Participating agencies (confirmed and invited) will include: U.S. Fish & Wildlife Service, U.S. Geological Survey, U.S. Dept. Agriculture-NRCS, NOAA-National Marine Fisheries Service, Florida Dept. of Agriculture and Consumer Services, Florida Dept. of Transportation, Florida Fish & Wildlife Conservation Commission, Charlotte Harbor National Estuary Program, Southwest Florida Regional Planning Council, Central Florida Regional Planning Council, Southwest Florida Water Management District, Peace River/Manasota Regional Water Supply Authority, County Governments (Polk, Hardee, DeSoto, Charlotte, Lee, Sarasota, Manatee, and Hillsborough), and the City of Northport. Additionally, the Seminole and Miccosukee Tribes have been invited to participate in the AEIS.

II. What is the Federal action to which this NEPA pilot project applies?

The AEIS is an assessment of the issuance of Section 404 permits to 2 phosphate mining companies which have pending applications before the USACE for multiple mine expansions within the CFPD, a 1.3 million acre geographic area in Central Florida within which phosphate ore deposits are readily mine-able using dragline and/or hydraulic dredging technologies that have been applied in this region since the late 1800s. Mining of upland areas is regulated by the FDEP, but typically mining also impacts waters of the United States either directly through excavations or during dragline re-location, pipeline conveyance of mined materials, or other ancillary mining-related operations. The USACE,

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USEPA, and FDEP are collaborating on this AEIS in order to more holistically address the direct, indirect, and most importantly the cumulative hydrologic, ecologic, and socioeconomic effects of the proposed concurrent expansion of mining into the southern portions of the CFPD. The AEIS is to evaluate the potential effects of these multiple mine expansions on resources within the CFPD as well as on other lands downstream of the mining activities that are tributary to the Charlotte Harbor National Estuary (CHNE). Thus, the AEIS must address environmental concerns regarding how to avoid, minimize, and mitigate for impacts on the natural and human environmental resources extending downstream to the CHNE, which has been designated as an Aquatic Resource of National Importance (ARNI).

III. How will this pilot project reduce the costs and time needed to complete the NEPA process?

USACE has conducted permit application reviews for proposed mines on a mine-by-mine basis. Mining applications within the CFPD receive public comment from many different stakeholders including NGOs, Federal, state, and local agencies, and the general public. The potential cumulative effects of phosphate mining in the CFPD has been a concern. Based on a mining summit hosted by the Corps in May 2010, the Corps determined that stakeholders involved desire a more efficient and effective process for information gathering, and analysis, and additional opportunities for public participation. To determine the best way to adequately assess the cumulative impacts of phosphate mining in the CFPD, the Corps determined that pending permit applications had similarities that provide a basis for evaluating their environmental consequences together in a single impact statement. Rather than conducting separate EIS for each application, the Corps hopes to reduce redundancy and inefficiencies by holistically addressing the impacts and alternatives of the proposed applications within the CFPD. The objectives are to determine the key issues of concern to all stakeholders, to evaluate potentially significant impacts, and to determine alternatives that will most effectively avoid, minimize, and mitigate impacts to the environment from a holistic view. Where unavoidable impacts exist, the AEIS evaluations will ensure appropriate mitigation strategies are defined to compensate for impacted resources. By addressing these issues, the AEIS will establish an overarching framework under which the current NEPA evaluations of the pending similar permit applications can be completed. The 3 agencies have committed to executing this AEIS in a collaborative and inclusive manner and believe that proactive communications approach will be key to controlling the duration and associated costs of the AEIS. All 3 agencies are supportive of the AEIS process aligned with the CEQ's goals of: better information; a fairer process; better integration; conflict prevention; improved fact-finding; increased social partnerships and trust; easier implementation; enhanced environmental stewardship; and, hopefully, reduced litigation. Stakeholder opinions and scoping recommendations have been solicited during phosphate mining-related summits and conferences that technically fall outside of the NEPA process. Examples of these above-and-beyond-NEPA communication efforts are detailed under Part III of this application.

IV. How will this pilot project ensure rigorous environmental protection?

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This AEIS is an excellent candidate as a pilot project because of the scale and diversity of environmental protection being addressed within this large study area. The CFPD alone comprises approximately 1.3 million acres within Hillsborough, Polk, Hardee, DeSoto, Sarasota, and Manatee Counties, and additional study areas downstream of the proposed mines include much of Charlotte County and an as-yet undefined portion of Charlotte Harbor proper. Within this large area, ecological and water resources ranging from uplands and freshwater systems through estuarine environments will be included in this regional environmental protection review. Phosphate “life of mine” permits typically address actions measured over the course of multiple decades. The environmental protection period addressed through this AEIS is accordingly long in duration; the AEIS will address the effects of the proposed mines for no less than a 50-year period extending out through 2060. Since mine reclamation and prospective stream and wetland restoration commitments extend well beyond the actual mining operations, the functional assessment period of record will likely include many years beyond this nominal planning and evaluation horizon. Thus, this AEIS will address rigorous environmental protection of natural and human environmental resources for the better part of the remainder of the current century. This comprehensive AEIS will serve as the foundational element for future NEPA reviews that could “tier” off from or incorporate by reference this important study, thus making the review process more efficient and timely while still rigorous in terms of environmental protection.

The AEIS is unique in that it is a regulatory NEPA action rather than a project development NEPA review. However, many stakeholders advocate for this AEIS to be a broader, programmatic planning effort under which the regulatory aspects of mine permit applications will be addressed but through which grander land and water management objectives could also be evaluated. The nexus between regional land and water management objectives, and the USACE’s regulatory jurisdiction is what provides this candidate NEPA pilot project unique qualities and very broad stakeholder focus, all of which will contribute to the AEIS’s long-range influence on rigorous environmental protection for resources within this very large regional study area.

V. How will this pilot project improve the quality and transparency of agency decisionmaking?

This AEIS will foster compatibility between Federal and state permitting of phosphate mines. Issues raised during the scoping process included perceived conflict between permitting requirements and restoration/reclamation requirements of the two programs. The AEIS will identify mechanisms to better integrate Federal and state requirements, and expedite the applicable regulatory decision-making processes. The quality of decision-making will be improved through enhanced policies and procedures based on the AEIS evaluations planned.

The CEQ’s Collaboration in NEPA: A Handbook for NEPA Practitioners indicates that one of the primary goals of NEPA is “to encourage meaningful public input and involvement in the process of evaluating the environmental impacts of proposed federal actions.” Unfortunately, the full potential for actively identifying and engaging all Federal, Tribal, state and local agencies, affected and interested parties, and the public at large in

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collaborative environmental analysis and Federal decision-making is rarely realized. This AEIS has been designed with collaboration as a primary goal.

In support of this central goal, the 3 agencies involved in leading phosphate mining regulatory review have come together to produce what we consider to be a model process for fully achieving NEPA's goal of obtaining meaningful input and involvement. Through proactive outreach and communications with all stakeholders, a more transparent decision process is being promoted. A decision science-based approach to alternatives analysis that will meet the "hard look" criterion in a manner that will allow all interested parties to more easily understand the basis for the final decisions regarding what constitutes the acceptable options for least environmentally damaging practicable alternative(s). The methods planned will allow thorough sensitivity analyses to graphically demonstrate the ramifications of applying varied assumptions regarding the nature and weighting of evaluation criteria applied during alternatives review and comparison. Visualization of results will be enhanced using GIS tools to clearly show how the alternatives meet the purpose and need for the project while optimizing environmental protection. Most importantly, the analytical methods to be applied will be easily replicable and understandable to the layperson; esoteric terms and procedures will be avoided as this AEIS analysis is conducted and then presented to the public.

VI. Will this pilot project develop best practices that can be replicated by other agencies or applied to other Federal actions or programs? Please describe?

This AEIS is an exemplary application of NEPA on an area wide level. It concurrently addresses the permitability of multiple mine projects. Its spatial scale for the multiple mine projects is very large, addressing hundreds of square miles of impact and requiring correspondingly very large areas of mine reclamation and natural habitat restoration. The temporal scale requires impact assessment and mitigation over multiple decades. These unique features, and the extremely high regional profile the AEIS already enjoys, make this NEPA action an excellent candidate for CEQ use as a pilot project that can demonstrate best practices that could improve traditionally applied approaches to NEPA review. Examples of AEIS elements which offer potential for replication and broad application as a minimum include:

- Above-and-beyond outreach and scoping of issues of concern to a broad range of governmental agencies, other stakeholders, and the public. These have already included "pre-NEPA" workshops and conferences, and there is potential for additional activities conducted with stakeholder groups during the course of AEIS execution.**
- Use of a project website, the internet, and social media to supplement traditional communication methods for NEPA-related information dispersal to interested parties. We believe that the AEIS Team's collective uses of these media to support the AEIS objectives of inclusion and collaboration can serve as a model of how to do this effectively.**
- Application of state of the art technology tools for "real time" polling of stakeholder opinions during public meetings. Use of electronic comment forms and database management of comments to improve management of public input and integration**

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of key scoping findings into a refined NEPA evaluation scope and schedule. Use of web meeting technology to expedite work sessions despite travel limitations on agency participants.

- Use of innovative yet layperson-friendly alternatives comparison techniques borrowing concepts and processes from traditional decision science techniques but avoiding the vernacular and technical jargon that historically has hindered broader understanding of these tools. Use of GIS tools to also support layperson understanding of alternative comparison results.

Many if not most of the planned elements of this AEIS would be good candidates for replication and application on other NEPA reviews nationwide for similar Federal actions or regulatory programs.

PART III. PROJECT DESCRIPTION

(See attachment on following page.)



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P.O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

June 15, 2011

REPLY TO
ATTENTION OF

Regulatory Division

Ms. Nancy H. Sutley
Executive Office of the President
Council on Environmental Quality
Washington, D.C. 20503

Dear Ms. Sutley:

In response to the Chair of the Council on Environmental Quality's (CEQ) recent invitation to interested parties to nominate innovative pilot projects "that accomplish the NEPA goals of transparency and informed decision making in a more timely and effective manner," the Jacksonville District, U.S. Army Corps of Engineers (Corps) is pleased to nominate our Areawide Environmental Impact Statement (AEIS) for Continued Phosphate Mining in the Central Florida Phosphate District. The AEIS will analyze the impacts and alternatives of similar proposed phosphate mining applications for Clean Water Act Section 404 authorization. We believe that the AEIS would provide CEQ with an excellent NEPA pilot project demonstrating how to more effectively leverage and coordinate federal, state, tribal, and local environmental review, consultation, and permit review through early collaboration and inclusive consultation.

This letter is to serve as Part III of our online application submitted in accordance with the CEQ guidelines provided at the application website. We understand CEQ's interest in screening candidates for this pilot program quickly, and in the interest of brevity offer the following statements considered supplemental to the short answers provided under Part II of this application for consideration:

Describe the pilot project. What agency or agencies, geographic area, and natural resource management issues will be involved?

The Corps' AEIS is being jointly developed with the U.S. Environmental Protection Agency (USEPA) and the Florida Department of Environmental Protection (FDEP) as Cooperating Agencies, which represents a "collaborative first": the three major regulatory agencies all coming together to jointly produce a vitally important and comprehensive planning/regulatory NEPA document which will help shape phosphate mining decisions and processes for decades. We believe that this milestone AEIS will significantly enhance CEQ's efforts to identify and promote more efficient ways "to do effective environmental reviews that can be replicated across the Federal Government". This AEIS is being jointly conducted because of ongoing and proposed mining projects pursued by the two phosphate companies operating in this part of Florida (Mosaic Fertilizer, LLC and CF Industries, Inc.). Both companies have pending applications for Department of the Army permits pursuant to Section 404 of the Clean Water Act

(33 U.S.C. 1344). Phosphate mining activities generally involve mechanized land clearing, on-grade dozing and scraping for roads or staging areas, stock piling of muck or rock material for later pick up or storage, and fill for plants, maintenance trailers, etc. Any of these activities occurring in a jurisdictional wetland or other Waters of the United States would constitute "discharge of dredged or fill material".

The AEIS is unique in that it is a "regulatory" EIS addressing specific phosphate mining permit applications determined by the Corps to be "similar" actions, yet it also will be holistic in looking at the cumulative impacts from historical and ongoing mining within a very large study area. The Central Florida Phosphate District (CFPD) (see Figure 1) comprises approximately 1.32 million acres in Hardee, Hillsborough, Manatee, Polk, Desoto, and Sarasota counties and includes portions of six Central Florida watersheds: Hillsborough, Alafia, Little Manatee, Manatee, Myakka, and Peace Rivers. This region of Florida not only accounts for approximately 80 percent of the United States' current phosphate capacity, it is actually the world's largest phosphate producing area. As phosphate is a key component of agricultural fertilizers, the ore mined in this area has both national and international food security implications. The AEIS will fully consider a range of environmental, economic, and social factors in an environmentally sensitive area of Central Florida totaling over 2,150 square miles, and will also examine downstream cumulative impacts to the 850 square mile watershed that comprises USEPA's Charlotte Harbor National Estuary Program (CHNEP). The Charlotte Harbor Estuary has been designated by USEPA as an "Aquatic Resource of National Importance" (ARNI).

Within this very large study area, mining effects on surface and groundwater systems will be a key focus of the AEIS. These effects and their relationships to a broad range of ecological resources will be examined. Ecological resources to be considered will span the spectrum of upland terrestrial habitats, wetlands, ephemeral and permanent streams, major freshwater rivers, estuarine river reaches, and sensitive estuarine lagoonal systems. The array of fish and invertebrates, avifauna, and other wildlife species is similarly diverse, and includes a substantive number of Federally- and state-protected faunal and floral species. The AEIS will address agency and public concerns regarding risk of cumulative mining impacts on the quantity and quality of river water deliveries to the estuarine portions of the study area, with specific reference to whether regional compliance with minimum flows and levels set for these areas will be impacted.

Technological advances and market changes have continually lengthened the expected life of phosphate mining, allowing mining of rock that could not have feasibly been mined in previous years, and thus many future NEPA reviews are anticipated for future mining permits. This comprehensive AEIS will serve as the foundational element for future NEPA reviews that could "tier" off from or incorporate by reference this important study, thus making the review process more efficient and timely. As briefly outlined in the online application for consideration, we

have conducted several actions that technically are above-and-beyond traditional NEPA requirements (enclosure), and are incorporating other approaches into the AEIS that we believe are, in the aggregate, an innovative combination of “best practices” for NEPA improvements. Our schedule calls for the AEIS to be finalized in 2013; use of this AEIS as one of CEQ’s pilot projects will allow other agencies to incorporate some of these ideas and best practices into their NEPA procedures in the very near future.

How will the pilot project be implemented? Are you nominating a pilot project that has already been implemented, is currently being implemented, or is proposed for implementation?

The agencies involved in collaborative execution of this AEIS have been engaged in the planning of these regional evaluations for over a year. Formal implementation of the NEPA process, however, began with the publication of the Notice of Intent to conduct this AEIS in the February 18, 2011, Federal Register. General information regarding the status of the AEIS activities underway may be reviewed on the project website: www.phosphateaeis.org. We are currently in the scoping process; two separate public scoping meetings were held within the study area on March 23 and 25, 2011, respectively. Scoping comments received via a web-based electronic submittal form as well as through traditional methods are currently being summarized and reviewed with the goal of using these comments to help refine the overall scope and schedule for the AEIS evaluations projected for the next 2-year period. In short, we are nominating this project that is in the relatively early stages of formal implementation.

If your pilot project is underway or is proposed for implementation, describe the timeline for implementation: When would the project start? When would it be completed? Describe any major intermediate milestones for implementation.

The nominal timeline for the AEIS called for completion of the Final AEIS within approximately 18 months from the NOI. However, there are several developments which we believe will require moderate extension of this timeline; the current anticipation is that the Final AEIS will be made available to the public by approximately the end of calendar year 2012, with the Record of Decision to be administratively finalized within the first or second quarter of 2013. More detailed information regarding intermediate milestones is in preparation now in response to the public scoping comments received to date.

Describe the resources that will be needed to implement the pilot project.

No specific resources are required of CEQ in order for this AEIS to be designated as one of its pilot projects. The AEIS is being conducted as a third party EIS; funding for the activities required to scope and then execute the AEIS in compliance with all NEPA requirements is being provided by the two phosphate company applicants.

Will the pilot project further an Administration priority?

The AEIS is an ideal candidate for pilot program designation in that it embodies the spirit of Executive Order 13563 by focusing on "Improving Regulation and Regulatory Review". It has been catalyzed by historical calls from federal, state, and local governments, NGOs, the public, and industry for a more regional, holistic evaluation of the environmental effects of multiple large-scale mining projects within a discrete geographic area but over an extended timeline. These calls for evaluation have stemmed from a range of stakeholders including the USEPA through members of the public; performance of the AEIS is thoroughly consistent with the Administration's objectives of establishing more cost-effective and timely decision making while maintaining - if not improving - the rigor of environmental protection of our nation's natural resources. The Corps, USEPA, and FDEP are jointly committed to meeting these prioritized Administration objectives. For the reasons outlined above, we respectfully request your consideration of the AEIS in response to your call for nominations dated March 17, 2011.

Sincerely,



Donald W. Knard
Chief, Regulatory Division

Enclosure

Copies Furnished:

Mr. Steve Sullivan/CESAJ-RD-S
Mr. Tunis McElwain/CESAJ-RD-SF
Mr. Charles Schnepel/CESAJ-RD-ST
Mr. John Fellows/CESAJ-RD-ST
Mr. Paul Gagliano/USEPA
Mr. Heinz Mueller/USEPA
Mr. Calvin Alvarez/ FDEP
Mr. John Coates/FDEP
Mr. Tom Simpson/CH2M HILL
Mr. Steven Gong/CH2M HILL