

## **CHAPTER 6**

# **COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS**

This chapter provides a description of the major Federal regulations and Executive orders that may currently or in the future apply to the various alternatives analyzed in this *Supplemental Environmental Impact Statement on Rock Mining in the Lake Belt Region of Miami-Dade County, Florida (Lake Belt SEIS)*.

### **6.1 NATIONAL ENVIRONMENTAL POLICY ACT OF 1969**

The purposes of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), as amended, are to (1) declare a national policy that will encourage productive and enjoyable harmony between man and his environment, (2) promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man, (3) enrich the understanding of the ecological systems and natural resources important to the Nation, and (4) establish a Council on Environmental Quality (CEQ). NEPA establishes a national policy requiring that Federal agencies consider the environmental impacts of major Federal actions significantly affecting the quality of the human environment before making decisions and taking actions to implement those decisions. Implementation of NEPA requirements in accordance with CEQ regulations (40 CFR 1500–1508) can result in a Categorical Exclusion, an environmental assessment, a Finding of No Significant Impact, or an environmental impact statement (EIS). This supplemental environmental impact statement (SEIS) has been prepared in accordance with NEPA requirements, CEQ regulations (40 CFR 1500 et seq.), and U.S. Army Corps of Engineers (USACE) provisions for implementing the procedural requirements of NEPA (33 CFR 230; ER 200-2-2). It discusses reasonable alternatives and their potential environmental consequences.

As allowed under NEPA, this document has been prepared to supplement the *Final Programmatic Environmental Impact Statement, Rock Mining – Freshwater Lakebelt Plan, Miami-Dade County, Florida (Final Lakebelt PEIS)*. The Notice of Intent was issued in Volume 71, Number 192 of the *Federal Register* on Wednesday, October 4, 2006 (see Appendix A of this SEIS). A systematic interdisciplinary approach to planning has been used and alternatives have been studied, developed, and described.

### **6.2 ENDANGERED SPECIES ACT OF 1973**

The Endangered Species Act of 1973 (7 U.S.C. 136; 16 U.S.C. 460 et seq.) is intended to prevent the further decline of endangered and threatened species and to restore these species and their habitats. Section 7 of the act requires Federal agencies having reason to believe that a prospective action may affect an endangered or threatened species or its habitat to consult with the U.S. Fish and Wildlife Service (FWS) of the U.S. Department of the Interior and/or the National Marine Fisheries Service of the U.S. Department of Commerce to ensure that the action does not jeopardize the species or destroy its habitat. If, despite reasonable and prudent measures to avoid or minimize such impacts, the species or its habitat would be jeopardized by the action, a review process is specified to determine whether the action may proceed as an incidental taking (50 CFR 17).

Formal consultation with the FWS was initiated on April 22, 2006, and continued through August 31, 2006. On August 17, 2006, the USACE announced the completion of its Biological Assessment concerning the permits that were approved by the USACE in 2002 related to the mining activities under Alternative 2 (USACE 2006a), and on August 31, 2006, the FWS released its Biological Opinion concurring with the USACE's Biological Assessment (see Appendix D of this SEIS). The Biological Opinion related to mining impacts reflected in Alternatives 1 and 2.

On May 14, 2008, the USACE initiated formal consultation with the FWS on potential impacts on the endangered wood storks from proposed mining activities associated with the Final Lake Belt SEIS. A Biological Assessment was prepared by the USACE and submitted to the FWS on October 17, 2008. After initial review and consultation with the FWS, the Biological Assessment was modified by the USACE and resubmitted to the FWS in December 2008. The FWS determined that they had received the information necessary to enter into formal consultation December 15, 2008. The FWS is in the process of completing a Biological Opinion associated with further potential mining activities in the Lake Belt. Before

a Record of Decision is issued related to the *Final Lake Belt SEIS*, the USACE will receive and consider the FWS's Biological Opinion.

### **6.3 NATIONAL HISTORIC PRESERVATION ACT OF 1966**

The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) requires that sites with significant national historic value be placed on the National Register of Historic Places, maintained by the Secretary of the Interior. The major provisions of the act for USACE consideration are Sections 106 and 110. Both sections aim to ensure that historic properties are appropriately considered in planning Federal initiatives and actions. Section 106 is a specific, issue-related mandate to which Federal agencies must adhere. It is a reactive mechanism driven by a Federal action. Section 110, in contrast, sets out broad Federal agency responsibilities with respect to historic properties. It is a proactive mechanism with emphasis on ongoing management of historic preservation sites and activities at Federal facilities. No permits or certifications are required under the act.

Section 106 requires the head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking to ensure compliance with the provisions of the act. It compels Federal agencies to "take into account" the effect of their projects on historical and archeological resources and to give the Advisory Council on Historic Preservation the opportunity to comment on such effects. Section 106 mandates consultation during Federal actions if the undertaking has the potential to affect a historic property. This consultation normally involves State or Tribal Historic Preservation Officers, or both, and may include other organizations and individuals such as local governments and American Indian Tribes. If an adverse effect is found, the consultation often ends with the execution of a Memorandum of Agreement that states how the adverse effect will be resolved.

Prior to initiation of ground-disturbing activities, systematic archeological surveys should be performed. Such surveys will be completed and the results reviewed prior to issuance of the permits under this document. The purpose of the surveys will be to locate and assess the significance of historic properties and determine if activities proposed under the permit will adversely affect these properties. If it is determined that significant historic properties will be adversely affected by the project, a plan will be developed, in consultation with the State Historic Preservation Officer, to avoid, minimize, or mitigate effects on historic properties. Actions under the plan shall be completed prior to initiation of ground-disturbing activities. All work will be conducted in compliance with the National Historic Preservation Act of 1966, as amended (Public Law 89-655) and the Archeological and Historic Preservation Act, as amended (Public Law 93-291). See Section 4.4 for analysis associated with cultural and historical resources in this *Lake Belt SEIS*.

### **6.4 CLEAN WATER ACT OF 1972**

The Clean Water Act (CWA) (33 U.S.C. 1251 et seq.), which amended the Federal Water Pollution Control Act, was enacted to "restore and maintain the chemical, physical, and biological integrity of the Nation's water." The CWA prohibits the "discharge of toxic pollutants in toxic amounts" to navigable waters of the United States. Section 313 of the CWA requires all branches of the Federal Government engaged in any activity that might result in a discharge of runoff of pollutants to surface waters to comply with Federal, State, interstate, and local requirements.

Section 404 of the CWA gives the USACE permitting authority over activities that discharge dredge or fill materials into waters of the United States, including wetlands. The mining proposed in the Lake Belt area under the various alternatives evaluated in this SEIS would require a Section 404(b)(1) evaluation before they could be implemented. Nine Section 404(b)(1) permits were issued by the USACE in 2002 and a tenth was issued approximately 18 months later under the CWA for the areas that would be mined under Alternative 2 based on analysis presented in the *Final Lakebelt PEIS* and its associated Record of Decision. A mining permit sample is included in Appendix E of this SEIS, "Permits," and copies of the 2002 permits are available from the USACE. Based on the District Court's ruling of January 2009, new permits will need to be approved under Section 404(b)(1) before any additional mining is allowed in the Lake Belt.

The CWA also provides guidelines and limitations for effluent discharges from point-source discharges and establishes the National Pollutant Discharge Elimination System (NPDES) permit program. The NPDES program is administered by the U.S. Environmental Protection Agency (EPA), pursuant to regulations in Title 40 of the *Code of Federal Regulations* (CFR), Part 122 et seq., and authority may be delegated to states. Sections 401 through 405 of the Water Quality Act of 1987 added Section 402(p) to the CWA, requiring that EPA establish regulations for permits for stormwater discharges associated with industrial activities, including construction activities that could disturb 5 or more acres. Stormwater provisions of the NPDES program are set forth in Title 40 of the CFR, Section 122.26. Permit modifications are required if discharge effluent is altered.

## **6.5 CLEAN AIR ACT OF 1972**

The Clean Air Act (CAA) (42 U.S.C. 7401 et seq.) is intended to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” Section 118 of the CAA (42 U.S.C. 7418) requires that each Federal agency with jurisdiction over any property or facility engaged in any activity that might result in the discharge of air pollutants comply with “all Federal, state, interstate, and local requirements” with regard to the control and abatement of air pollution.

Section 109 of the CAA (42 U.S.C. 7409 et seq.) directs EPA to set National Ambient Air Quality Standards (NAAQS) for criteria pollutants. EPA has identified and set NAAQS under Title 40 of the CFR, Part 50, for the following criteria pollutants: particulate matter, sulfur dioxide, carbon monoxide, ozone, nitrogen dioxide, and lead. Section 111 of the CAA (42 U.S.C. 7411) requires establishment of national standards of performance for new or modified stationary sources of atmospheric pollutants. Section 160 of the CAA (42 U.S.C. 7470 et seq.) requires that specific emission increases be evaluated prior to permit approval to prevent significant deterioration of air quality. Section 112 of the CAA (42 U.S.C. 7412) requires specific standards for releases of hazardous air pollutants (including radionuclides).

The mining and processing of limestone proposed in the Lake Belt area requires air permits under a state permitting program. The state regulations are implemented to control emissions of air pollutants such that the requirements of the CAA (including NAAQS and emission limits) are met. These permits have been obtained, bringing this project into compliance with the act. An analysis of the potential impacts of the proposed alternatives in terms of their impact on air quality was completed for this SEIS in Section 4.8. Currently, both mining activity and cement plants are permitted under state and county permitting programs, which would implement the requirements under the CAA.

## **6.6 COASTAL ZONE MANAGEMENT ACT OF 1972**

Congress passed the Coastal Zone Management Act in 1972 (16 U.S.C. 1451) as a means to provide management for the coastal resources of the United States. The program, administered by the National Oceanic and Atmospheric Administration, aims to balance the development of coastal regions, including the Great Lakes, with economic and environmental issues.

A Federal consistency determination in accordance with Title 15 of the CFR, Part 930, Subpart C, is included in Appendix F of this SEIS, “Florida Coastal Zone Management Program Federal Consistency Evaluation Determination.”

## **6.7 FARMLAND PROTECTION POLICY ACT OF 1981**

The Farmland Protection Policy Act of 1981 (7 U.S.C. 4201) attempts to minimize the effects federally funded programs have on the conversion of farmland to non-agricultural uses. The act specifically targets the urban sprawl resulting from the conversion and the associated waste of resources and energy.

According to Title 7 of the CFR, Section 658.2(c)(1)(i) of the Farmland Protection Policy Act, Federal permitting, licensing, or rate approval programs for activities on private or non-Federal lands are not governed by this act. Therefore, mining activities occurring within the Lake Belt area are not subject to this act.

## **6.8 NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT OF 1990**

The Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001 et seq.) establishes a means for American Indians to request the return or repatriation of human remains and other cultural items presently held by Federal agencies or federally assisted museums or institutions. The act also contains provisions regarding the intentional excavation and removal of, inadvertent discovery of, and illegal trafficking in American Indian human remains and cultural items. Major actions under this law include (1) establishing a review committee with monitoring and policymaking responsibilities; (2) developing regulations for repatriation, including procedures for identifying lineal descent or cultural affiliation needed for claims; (3) providing oversight of museum programs designed to meet the inventory requirements and deadlines of this law; and (4) developing procedures to handle unexpected discoveries of graves or grave goods during activities on Federal or Tribal lands. All Federal agencies that manage land or are responsible for archeological collections obtained from their lands or generated by their activities must comply with this act. USACE managers of ground-disturbing activities on Federal and Tribal lands are to be aware of the statutory provisions treating inadvertent discoveries of American Indian remains and cultural objects. Regulations implementing the act are found in Title 43 of the CFR, Part 10.

## **6.9 SOLID WASTE DISPOSAL ACT OF 1965**

The Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. 6901 et seq.), as amended, governs the transportation, treatment, storage, and disposal of hazardous waste and nonhazardous waste (that is, municipal solid waste). Under the Resource Conservation and Recovery Act of 1976, EPA defines and identifies hazardous waste; establishes standards for its transportation, treatment, storage, and disposal; and requires permits for persons engaged in hazardous waste activities. Regulations imposed on a generator or on a treatment, storage, or disposal facility vary according to the type and quantity of hazardous waste generated, treated, stored, or disposed of, and the methods of treatment, storage, and disposal. The State of Florida has adopted by reference portions of the Federal regulations into its *Florida Administrative Code* Rule 62-730. An analysis of issues related to the generation and disposal of hazardous wastes associated with mining-related activities in the Lake Belt is included in Section 4.9 of this SEIS.

## **6.10 EXECUTIVE ORDER 11988, FLOODPLAIN MANAGEMENT**

Executive Order 11988, *Floodplain Management* (May 24, 1977), requires Federal agencies to establish procedures to ensure that the potential effects of flood hazards and floodplain management are considered for any action undertaken in a floodplain, and that floodplain impacts be avoided to the extent practicable.

## **6.11 EXECUTIVE ORDER 11990, PROTECTION OF WETLANDS**

Executive Order 11990, *Protection of Wetlands* (May 24, 1977), requires Federal agencies to avoid any short- or long-term adverse impacts on wetlands wherever there is a practicable alternative. Each agency must also provide opportunity for early public review of any plans or proposals for new construction in wetlands.

Section 4.2 of this SEIS discusses the expected impacts of the different alternatives on wetlands. Mitigation sites have been identified for consideration in this SEIS to achieve complete mitigation if alternatives that require additional mitigation are implemented. The proposed mitigation plan is described in Chapter 5 of this SEIS.

## **6.12 EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS**

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (February 11, 1994), requires each Federal agency to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. Executive Order 12898 requires the Federal Government to review the effects of its programs and actions on minorities and low-income communities.

An environmental justice analysis was completed on the proposed alternatives and is included in Section 4.13 of this SEIS.

## **6.13 EXECUTIVE ORDER 13112, INVASIVE SPECIES**

Executive Order 13112, *Invasive Species* (February 3, 1999), requires Federal agencies to prevent the introduction of invasive species, to provide for their control, and to minimize their economic, ecological, and human health impacts.

The considered alternatives take all feasible and prudent measures to minimize the introduction and spread of invasive species. The removal and eradication of melaleuca in the Pennsuko Wetlands is an integral part of the proposed mitigation plan, as discussed in Chapter 5.

## **6.14 ACTS AND EXECUTIVE ORDERS THAT ARE NOT APPLICABLE TO THIS LAKE BELT SEIS**

**Fish and Wildlife Coordination Act of 1958 (16 U.S.C. 661).** This act is not applicable because no waters or channels of a body of water will be modified.

**Wild and Scenic River Act of 1968 (16 U.S.C. 1271).** This act is not applicable because no rivers designated under this act are in the study area.

**Estuary Protection Act of 1968 (16 U.S.C. 1221).** This act is not applicable because no estuaries would be affected by this project.

**Marine Mammal Protection Act of 1972 (16 U.S.C. 1361).** This act is not applicable because no marine mammals occur in the study area; therefore no impact is expected to occur.

**Federal Water Project Recreation Act of 1965, as amended (16 U.S.C. 460).** This act is not applicable because no Federal recreation funds would be expended by this project.

**Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).** This act is not applicable because the waters within the project boundaries do not fall under its jurisdiction.

**Resource Conservation and Recovery Act of 1976 (42 U.S.C. 321 et seq.).** This act has been determined not to be applicable, as there are no items regulated under the act either being disposed of or affected by this project.

**Toxic Substances Control Act of 1976 (15 U.S.C. 2601 et seq.).** It has been determined that this act is not applicable to this project, as there are no items regulated under the act either being disposed of or affected by this project.

**Submerged Land Act of 1953 (43 U.S.C. 1301 et seq.).** This act is not applicable because the land affected by the project is not under jurisdiction of this act.

**Anadromous Fish Conservation Act (16 U.S.C. 757).** This act is not applicable because no anadromous species occur in waters affected by this project.

**Executive Order 13089, Coral Reef Protection.** This order is not applicable to this project. No species, habitats, or other natural resources associated with coral reefs will be affected.

**Executive Order 12114, Environmental Effects Abroad of Major Federal Actions.** This order is not applicable to this project. The actions being considered in this SEIS are not expected to have significant effects on the environment outside the geographical boundaries of the United States or its territories.