

Middle District of Florida Holds That the United States Army Corps of Engineers Did Not Need to Prepare an Environmental Impact Study Because Their Environmental Assessment Accurately Identified the Pertinent Environmental Circumstances, Examined Controlling Data, and Articulated a Satisfactory Explanation

In response to the continuous erosion of shoreline in Lido Key, located in the City of Sarasota (“City”), the City and the United States Corps of Engineers (“Corps”) put forth a beach nourishment plan aimed at strengthening Lido Key’s shoreline. The project proposed to dredge and borrow sand from nearby areas. Some of these nearby areas fell within “Outstanding Florida Waters” which are subject to special protections under Section 403.061(28), Fla. Stat. In order to complete the proposed nourishment plan, the Corps first completed an analysis under the National Environment Policy Act (“NEPA”), looking at the impacts of the proposed project and alternative options. Upon completing the analysis, the Corps determined that there was “no significant impact on the human environment” and thus, according to NEPA, the Corps was not required to prepare an Environmental Impact Study (“EIS”).

Save Our Siesta Sands, Inc., (“SOSS2”) filed suit, arguing that the Corps’ assessment and ultimate findings under NEPA failed to address the project’s full environmental effect and violated the requirements under NEPA, the Clean Water Act (“CWA”), the Endangered Species Act (“ESA”), and the Marine Mammal Protection Act (“MMPA”). SOSS2 argued that the Corps’ ultimate finding should have shown significant impacts caused by the project, requiring the Corps to complete an EIS.

The Middle District of Florida ruled in favor of the Corps. The court noted that, under NEPA, the Corps’ decision not to prepare an EIS after a finding of no significant impact on the environment must satisfy four criteria: (1) the Corps must identify a relevant environmental concern; (2) the Corps must take a “hard look” at the problem in its analysis; (3) if a finding of no significant impact results from the analysis, the Corps “must be able to make a convincing case for its finding”; and (4) if the agency does find significant impact, the EIS requirement can only be avoided if the Corps “finds that changes or safeguards in the project sufficiently reduce the impact to a minimum.”

First, the court found that the first criterion—a relevant environmental concern—was satisfied because the Corps correctly described the environment and the potential impact of the project on the environment. Second, the court found that the Corps had successfully taken a “hard look” at the project through an administrative record continuing over 25,000 pages, “including [a] roughly 900-page environmental assessment and finding.” While SOSS2 argued that the environmental assessment “did not include any baseline information about how [the] project would impact the hydro-ecology and local economy,” the court rejected this argument, stating that the assessment correctly included environmental, species, and human effects baselines.

The court determined the third and fourth criteria were also satisfied by the environmental assessment. Although the Corps had relied on older data by incorporating an environmental assessment from 2002, the agency's findings were convincing because the data was still reliable and the Corps specifically created the 2018 assessment to update the project's environmental basis. Moreover, "the Corps' decision to credit older [data] receives substantial deference due to the agency's expertise" in the area. The Corps correctly identified the pertinent environmental circumstances, examined the controlling data, and articulated a satisfactory explanation—complying with NEPA.

The court further found that the CWA was not violated because the Corps properly followed guidelines set forth in Section 4.04(b) of the CWA. The Corps' analysis properly described the pertinent "factual determinations and, supported by the extensive administrative record, reasonably conclude[d] with a finding of compliance."

Lastly, the court found that the Corps did not violate the ESA or the MMPA. The court reasoned that SOSS2 failed to show that the Corps had acted arbitrarily or capriciously. The Corps consulted with the National Marine Fisheries Service ("NMFS") and the United States Fish and Wildlife Service ("FWS") about the project's consequences to endangered species and their food sources. Both NMFS and FWS had authored biological opinions which, supplemented by the administrative record, supported the Corps' analysis of the affected protected species. Therefore, the Middle District of Florida held that the Corps arrived at rational conclusions compelled by a thorough review of the project's effect on the affected environment.