

APPENDIX C – COASTAL ZONE MANAGEMENT ACT CONSISTENCY

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**FLORIDA COASTAL ZONE MANAGEMENT PROGRAM
FEDERAL CONSISTENCY EVALUATION PROCEDURES**

**Modifications to Operating Criteria for S-190 Hendry
County, Florida**

Enforceable Policy. Florida State Statutes considered “enforceable policy” under the Coastal Zone Management Act (www.dep.state.fl.us/cmp/federal/24_statutes.htm).

Applicability of the Coastal Zone Management Act. The following summarizes the process and procedures under the Coastal Zone Management Act for Federal Actions and for non-Federal Applicants*

Item	Non-Federal Applicant (15 CFR 930, subpart D)	Federal Action (15 CFR, 930 subpart C)
Enforceable Polices	Reviewed and approved by NOAA (in FL www.dep.state.fl.us/cmp/federal/24_statutes.htm)	Same
Effects Test	Direct, Indirect (cumulative, secondary), adverse or beneficial	Same
Review Time	6 months from state receipt of Consistency Certification (30-days for completeness notice) Can be altered by written agreement between State and applicant	60 Days, extendable (or contractible) by mutual agreement
Consistency	Must be Fully Consistent	To Maximum Extent Practicable**
Procedure Initiation	Applicant provides Consistency Certification to State	Federal Agency provides “Consistency Statement” to State
Appealable	Yes, applicant can appeal to Secretary (NOAA)	No (NOAA can “mediate”)
Activities	Listed activities with their geographic location (State can request additional listing within 30 days)	Listed or Unlisted Activities in State Program
Activities in Another State	Must have approval for interstate reviews from NOAA	Interstate review approval NOT required.
Activities in Federal Waters	Yes, if activity affects state waters	Same

* There are separate requirements for activities on the Outer Continental Shelf (Subpart E) and for “assistance to an applicant agency” (subpart F).

** Must be fully consistent except for items prohibited by applicable law (generally does not count lack of funding as prohibited by law, 15 CFR 930.32).

Chapter 161, Beach and Shore Preservation. The intent of the coastal construction permit program established by this chapter is to regulate construction projects located seaward of the line of mean high water and which might have an effect on natural shoreline processes.

Response: Coastal construction is not proposed as a part of this project. The Proposed Action is not seaward of the mean high water line and would not affect shorelines or shoreline processes.

Chapters 163(part II), 186, and 187, County, Municipal, State and Regional Planning. These chapters establish the Local Comprehensive Plans, the Strategic Regional Policy Plans, and the State Comprehensive Plan (SCP). The SCP sets goals that articulate a strategic vision of the State's future. Its purpose is to define in a broad sense, goals, and policies that provide decision-makers directions for the future and provide long-range guidance for an orderly social, economic and physical growth.

Response: The Proposed Action has been coordinated with various Federal, state and local agencies during the planning process. The Proposed Action meets the primary goal of the State Comprehensive Plan through preservation and protection of the environment. The Proposed Action has been coordinated with the State through the review of this document.

Chapter 252, Disaster Preparation, Response and Mitigation. This chapter creates a state emergency management agency, with the authority to provide for the common defense; to protect the public peace, health and safety; and to preserve the lives and property of the people of Florida.

Response: Operations for Structure 190 (S-190) are currently described in Volume 4 of the Central & Southern Florida Project for Flood Control and Other Purposes, Master Water Control Manual for the Water Conservation Areas (WCAs), Everglades National Park (ENP), and ENP-South Dade Conveyance System (ENP-SDCS). The U.S. Army Corps of Engineers (Corps) has developed recommendations for modifications to the operating criteria for S-190 in coordination with the South Florida Water Management District (SFWMD) and Seminole Tribe of Florida. The overarching project need is to decrease restorative wet season surface water losses from Big Cypress Seminole Indian Reservation (BCSIR). Operational modifications to S-190 would result in a permanent change to the Master Water Control Manual for the WCAs, ENP, and ENP-SDCS, Volume 4. The modification does not impact a structure or feature of a structure whose performance involves potential life safety risks. It is anticipated that the Proposed Action will not adversely affect flood control within the project area. Therefore, the Proposed Action would be consistent with the efforts of Division of Emergency Management.

Chapter 253, State Lands. This chapter governs the management of submerged state lands and resources within state lands. This includes archeological and historical resources; water resources; fish and wildlife resources; beaches and dunes; submerged grass beds and other benthic communities; swamps, marshes and other wetlands; mineral resources; unique natural features; submerged lands; spoil islands; and artificial reefs.

Response: The objective of the Environmental Assessment (EA) is to evaluate alternative operating criteria for S-190. Operational modifications to S-190 would result in a permanent change to the Master Water Control Manual for the WCAs, ENP, and ENP-SDCS, Volume 4. Objectives of the Proposed Action include modifications to the current operating criteria for S-190 to:

- *Uphold the federal Indian trust responsibility to protect the Seminole Tribe's Tribal treaty rights, lands, assets, and resources*
- *Prevent over drainage of BCSIR by modifying the current S-190 operating criteria to be consistent with the C&SF Project for Flood Control and Other Purposes, Part I, Supplement 40, Addendum 1 dated 7 February 1964.*
- *Maintain higher groundwater elevations and increase water storage within the western portion of BCSIR*
- *To restore a more natural wetland hydroperiod on BCSIR and the Native Area located south of the West Feeder Canal and north of Big Cypress National Preserve.*
- *Enhance the operation of the Seminole Big Cypress Critical Restoration Project which is impacted by groundwater levels controlled by the operation of S-190.*

Implementation of the Proposed Action would beneficially affect natural resources within the project area. There is no dredge or fill as part of this project. The Proposed Action would comply with the intent of this chapter.

Chapters 253, 259, 260, and 375, Land Acquisition. This chapter authorizes the state to acquire land to protect environmentally sensitive areas.

Response: Since this action includes operational changes to the current Master Water Control Manual for the WCAs, ENP, and ENP-SDCS, Volume 4, this chapter does not apply. Lands would not be acquired by the Federal government for the Proposed Action.

Chapter 258, State Parks and Aquatic Preserves. This chapter authorizes the state to manage state parks and preserves. Consistency with this statute would include consideration of projects that would directly or indirectly adversely impact park property, natural resources, park programs, management or operations.

Response: The Proposed Action area is not located on park lands. S-190 is the primary discharge structure in the Feeder Canal Basin located in southeastern Hendry County. The Feeder Canal Basin is located west of WCA 3A, southwest of the Everglades Agricultural Area, and north of the BCNP. It is anticipated that the Proposed Action will not adversely affect BCNP. The Proposed Action is consistent with this chapter.

Chapter 267, Historic Preservation. This chapter establishes the procedures for implementing the Florida Historic Resources Act responsibilities.

Response: The Proposed Action has been coordinated with the Florida State Historic Preservation Officer in accordance with the National Historic Preservation Act and the Archaeological and Historic Preservation Act. It is anticipated that the Proposed Action will not

adversely affect historic properties eligible or potential eligible for the National Register of Historic Places. The Proposed Action is consistent with the goals of this chapter.

Chapter 288, Economic Development and Tourism. This chapter directs the state to provide guidance and promotion of beneficial development through encouraging economic diversification and promoting tourism.

Response: The Proposed Action is not anticipated to have a negative impact on recreation in the project area. The Proposed Action is consistent with the goals of this chapter.

Chapters 334 and 339, Transportation. This chapter authorizes the planning and development of a safe balanced and efficient transportation system.

Response: The Proposed Action would not impact existing public transportation and is therefore consistent with the goals of this chapter.

Chapter 370, Saltwater Living Resources. This chapter directs the state to preserve, manage and protect the marine, crustacean, shell and anadromous fishery resources in state waters; to protect and enhance the marine and estuarine environment; to regulate fishermen and vessels of the state engaged in the taking of such resources within or without state waters; to issue licenses for the taking and processing products of fisheries; to secure and maintain statistical records of the catch of each such species; and, to conduct scientific, economic, and other studies and research.

Response: The Proposed Action is located completely inland and would have no effect on saltwater resources either directly or indirectly through discharge downstream. The Proposed Action is consistent with the goals of this chapter.

Chapter 372, Living Land and Freshwater Resources. This chapter establishes the Game and Freshwater Fish Commission and directs it to manage freshwater aquatic life and wild animal life and their habitat to perpetuate a diversity of species with densities and distributions which provide sustained ecological, recreational, scientific, educational, aesthetic, and economic benefits.

Response: It is anticipated that the Proposed Action will not negatively impact freshwater aquatic life or wild animal life. Implementation of the Proposed Action would beneficially affect natural resources within the project area. The project is consistent with the goals of this chapter.

Chapter 373, Water Resources. This chapter provides the authority to regulate the withdrawal, diversion, storage, and consumption of water.

Response: The Proposed Action consists of maintaining optimum canal elevations north of the S-190 structure at a higher elevation year round, as compared to current operations. The Proposed Action does not include any significant changes to the withdrawal, diversion, storage, or consumption of water. Therefore, this project is consistent with the goals of this chapter.

Chapter 376, Pollutant Spill Prevention and Control. This chapter regulates the transfer, storage, and transportation of pollutants and the cleanup of pollutant discharges.

Response: This chapter is not applicable as storage or transfer of pollutants will not result from the Proposed Action.

Chapter 377, Oil and Gas Exploration and Production. This chapter authorizes the regulation of all phases of exploration, drilling, and production of oil, gas, and other petroleum products.

Response: The Proposed Action does not involve the exploration, drilling or production of gas, oil or petroleum product and therefore, this chapter does not apply.

Chapter 380, Environmental Land and Water Management. This chapter establishes criteria and procedures to assure that local land development decisions consider the regional impact nature of proposed large-scale development. This chapter also deals with the Area of Critical State Concern program and the Coastal Infrastructure Policy.

Response: The Proposed Action does not involve land development as described by this chapter, therefore this chapter does not apply.

Chapters 388 (selected subsections on on-site sewage treatment and disposal systems) and 388 (Mosquito/Arthropod Control). Chapter 388 provides for a comprehensive approach for abatement or suppression of mosquitoes and other pest arthropods within the state.

Response: The Proposed Action would not further the propagation of mosquitoes or other pest arthropods.

Chapter 403, Environmental Control. This chapter authorizes the regulation of pollution of the air and waters of the state by the Florida Department of Environmental Regulation (now a part of the Florida Department of Environmental Protection).

Response: The EA which addresses project impacts has been reviewed by the appropriate resource agencies including the Florida Department of Environmental Protection. Significant effects on the human environment are not anticipated as a result of implementation of the Proposed Action. The Proposed Action complies with the intent of this chapter.

Chapter 582, Soil and Water Conservation. This chapter establishes policy for the conservation of the state soil and water through the Department of Agriculture. Land use policies will be evaluated in terms of their tendency to cause or contribute to soil erosion or to conserve, develop, and utilize soil and water resources both onsite or in adjoining properties affected by the project. Particular attention will be given to projects on or near agricultural lands.

Response: The Proposed Action would not cause or contribute to soil erosion and is related to the current Master Water Control Manual for the WCAs, ENP, and ENP-SDCS, Volume 4 to better utilize water resources in the region. The Proposed Action is an operational change to

existing infrastructure; no construction is proposed within this action. The project complies with the intent of this chapter.