



Florida Department of Environmental Protection

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3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard, Jr.
Secretary

June 27, 2012

Eric P. Summa
Chief, Environmental Branch
Planning Division
U.S. Army Corps of Engineers, Jacksonville District
701 San Marco Blvd.
Jacksonville, FL 32207-0019

Project: Herbert Hoover Dike Rehabilitation Project
Phase: Culvert 7, 9 and Taylor Creek Culvert Abandonment
Subject: Exemption for Construction and Instrument Installation Activities
File No.: 0234604-016

Dear Mr. Summa,

The U.S. Army Corps of Engineers (Corps) submitted an application to the Department of Environmental Protection (Department) requesting an exemption pursuant to Subsection 373.406(6), Florida Statutes (F.S.) to for the Herbert Hoover Dike Rehabilitation Project - Culverts 7, 9 and Taylor Creek Culvert Abandonment (File No.: 0234604-016) on May 14, 2012. On June 4 the Department issued a request for additional information (RAI-1) and received the Corps RAI response on June 14. This permit exemption only authorizes activities specified in the project description identified below.

PROJECT LOCATION:

The project has three different locations in Okeechobee County. Culvert 7 (Figure 1) is located adjacent to Lake Okeechobee, approximately two miles southwest of the S-193 Structure, within Section 4, Township 38 South, Range 35 East. Culvert 9 (Figure 2) is located approximately $\frac{3}{4}$ of a mile northwest of the S-191 Structure within Section 6, Township 38 South, Range 36 East. Taylor Creek Culvert (Figure 3) is located adjacent to Taylor Creek and Lake Okeechobee, just west of the S-193 Structure, within Section 35, Township 37 South, Range 35 East.

As staff to the Board of Trustees, the Department has reviewed the activities described above, and determined that the activity is subject to a Board of Trustees Lease Agreement, dated September 14, 1936 (IWE number 29123) issued to the United States of America. Right of Entry granted by the South Florida Water Management District for the proposed project may be required.

Approximately 0.5 acres of wetlands may be temporarily impacted by these construction activities. All of the surface waters and wetlands to be directly impacted by construction of the project are Class I Waters.

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PROJECT DESCRIPTION:

This project is part of continuing rehabilitation of the Herbert Hoover Dike. This project involves installing a shallow cutoff wall to abandon buried and non-functional culverts 7, 9 and Taylor Creek, installing a landside toe drain feature and drainage blanket feature.

Activities associated with this project include installation of a cutoff wall sufficient to cutoff seepage from within or around the structure conduit. A landside seepage collection toe drain will be installed within the embankment. The toe drain will be approximately as wide as the seepage cutoff feature. The embankment will then be restored to the existing embankment cross section profile, matching the existing embankment cross section.

FINDINGS OF FACT:

In accordance with the requirements of 373.406(6), F.S., the Corps is required to provide the Department with the necessary information to determine whether "...this activity will have only minimal or insignificant individual or cumulative adverse impacts on the water resources of the state." Department staff have reviewed the information submitted regarding the proposed construction and instrument installation and have determined that the proposed activities described above qualify for the requested exemption based on the following findings of fact:

1. There are no significant individual or cumulative adverse impacts on water resources anticipated from the proposed activities.
2. The proposed activities have a short term construction duration, which will have minimal temporary impacts to a regularly maintained drainage conveyance system;
3. Any impacts to wetlands resulting from implementation of the project will be avoided, minimized, and mitigated, as appropriate.

Therefore, based on the information submitted to the Department, it has been determined that the proposed activity is exempt under Subsection 373.406(6), F.S. This determination hereby relieves the Corps from the need to obtain a regulatory permit for the activities described herein in accordance with the requirements of Part IV of Chapter 373, F.S

TERMS OF EXEMPTION

- 1) This determination is based on the information the Corps provided to the Department and the statutes and rules in effect when the application was submitted. This determination is effective only for the specific activity proposed.
- 2) This letter does not absolve the Corps from the responsibility of obtaining other permits (federal, state, or local) or other legal authorizations which may be required for the activity.
- 3) Nothing herein authorizes any entrance upon or activities on property, which is not owned or controlled by the Corps of local sponsor, or conveys any vested rights or any exclusive privileges.
- 4) This exemption does not absolve the Corps from complying with the information on file with the Department.
- 4) This determination of qualification shall automatically expire if site conditions materially change or the governing statutes or rules are amended. In addition, any substantial modifications (to be

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determined in conjunction with the Department) in your plans should be submitted to the Department for review, as changes may result in a permit being required.

- 5) Activities that qualify for this exemption must be conducted in a manner that does not cause or contribute to a water quality violation, under Chapter 62-302, Florida Administrative Code (F.A.C.). To meet this requirement, the Permittee shall use appropriate erosion and turbidity control measures such as the best management practices and guidelines described in Chapter 6 of the *Florida Land Development Manual: A Guide to South Land and Water Management*.
- 6) If prehistoric or historic artifacts (including but not limited to pottery or stone tools associated with Native American cultures, early colonial, or American settlements) are encountered at any time within the project site area, the permitted project should cease all activities involving subsurface disturbance in the immediate vicinity of such discoveries. The Permittee, or other designee, should contact the Florida Department of State, Division of Historical Resources, Review and Compliance Section at (850) 245-6333 or (800) 847-7278. Project activities should not resume without verbal and/or written authorization from the Division of Historical Resources. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, Florida Statutes.
- 7) The determination of exemption, based on the information submitted by the Corps, may be revoked if (i) the area of work should significantly increase or scope of the proposed activities is substantially modified, (ii) if the basis for the exemption is determined to be materially incorrect, or (iii) if the activities cause or contribute to violations of state water quality standards, or (iv) any of the terms of this exemption are violated.

NOTICE OF RIGHTS OF SUBSTANTIALLY AFFECTED PARTIES:

This notice of determination that your activity qualifies for an exemption pursuant to Subsection 373.406(6) constitutes final agency action by the Department unless a timely petition for an administrative hearing is filed pursuant to sections 120.569 and 120.57 of the Florida Statutes. If a sufficient petition for an administrative hearing is timely filed, this determination automatically becomes proposed agency action subject to the result of the administrative review process. Therefore, on the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department.

Be advised that adjacent landowners and other parties who may be substantially affected by the proposed activities allowed under this determination of exemption have a right to request an administrative hearing on the Department's decision that the proposed activity qualifies for this exemption. Because the administrative process is designed to determine final agency action on the application in the event of a petition being filed, the administrative hearing may result in a final determination that the proposed activity is not authorized under the exemption established under Chapter 373, F.S.

The Department will not publish notice of this determination. Publication of this notice by you is optional and is not required for you to proceed. However, in the event that an administrative hearing is held and the Department's determination is reversed, proceeding with the proposed activity before the time period for requesting an administrative hearing has expired would mean that the activity was conducted without the required authorization.

If you wish to limit the time within which all substantially affected persons may request an administrative hearing, you may elect to publish, at your own expense, the enclosed notice (Attachment

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1) in the legal advertisement section of a newspaper of general circulation in the county where the activity is to take place. A single publication will suffice.

For the purposes of publication, a newspaper of general circulation means a newspaper meeting the requirements of Sections 50.011 and 50.031, F.S. In the event you do publish this notice, within seven days of publication, you must provide to the following address proof of publication issued by the newspaper as provided in Section 50.051, F.S. If you provide direct written notice to any person(s) as noted above, you must provide to the following addresses a copy of the direct written notice.

Florida Department of Environmental Protection
Office of Ecosystem Projects
Program Coordination and Regulation Section
3900 Commonwealth Blvd.
MS 24, Tallahassee, Florida, 32399

Electronic copies of reports and notices required by this permit shall be sent to
RPPS_Comp@dep.state.fl.us

Please retain this letter for your files as it reflects final agency action barring any administrative hearings which rule otherwise. The activities may be inspected by authorized state personnel in the future to insure compliance with appropriate statutes and administrative codes. If the activities are not in compliance, you may be subject to penalties under Chapters 373, 403, 253, and 258, F.S., as applicable.

If you have any questions concerning this action, please contact Christopher Weller at (850) 245-3197 or electronically at christopher.weller@dep.state.fl.us.

Sincerely,

Greg Knecht, Director
Office of Ecosystem Projects
Florida Department of Environmental Protection

GK/swf/cw

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52 Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Date

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ELECTRONIC COPIES FURNISHED TO:

Jim McAdams, USACE

Aaron Lassiter, USACE

FWCConservationPlanningServices@myfwc.com

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Sharon Kocis, USFWS

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Rebecca Elliot, FDACS

Margaret Gerrard Helton, Board of County Commissioners, Okeechobee County

Temperince Morgan, SFWMD

Nirmala Jeyakumar, SFWMD

Deborah Oblaczynski, SFWMD

Gregory Walker, FDEP, Division of Recreation and Parks

Marsha Connell, FDEP, Division of Recreation and Parks

Judy Warrick, FDEP, Division of State Lands

Ernie Marks, FDEP

Stacey Feken, FDEP

Kenny Hayman, FDEP

Stan Ganthier, FDEP

Dianne Hughes, FDEP

Brian Dougherty, FDEP

William Reuckert, FDEP

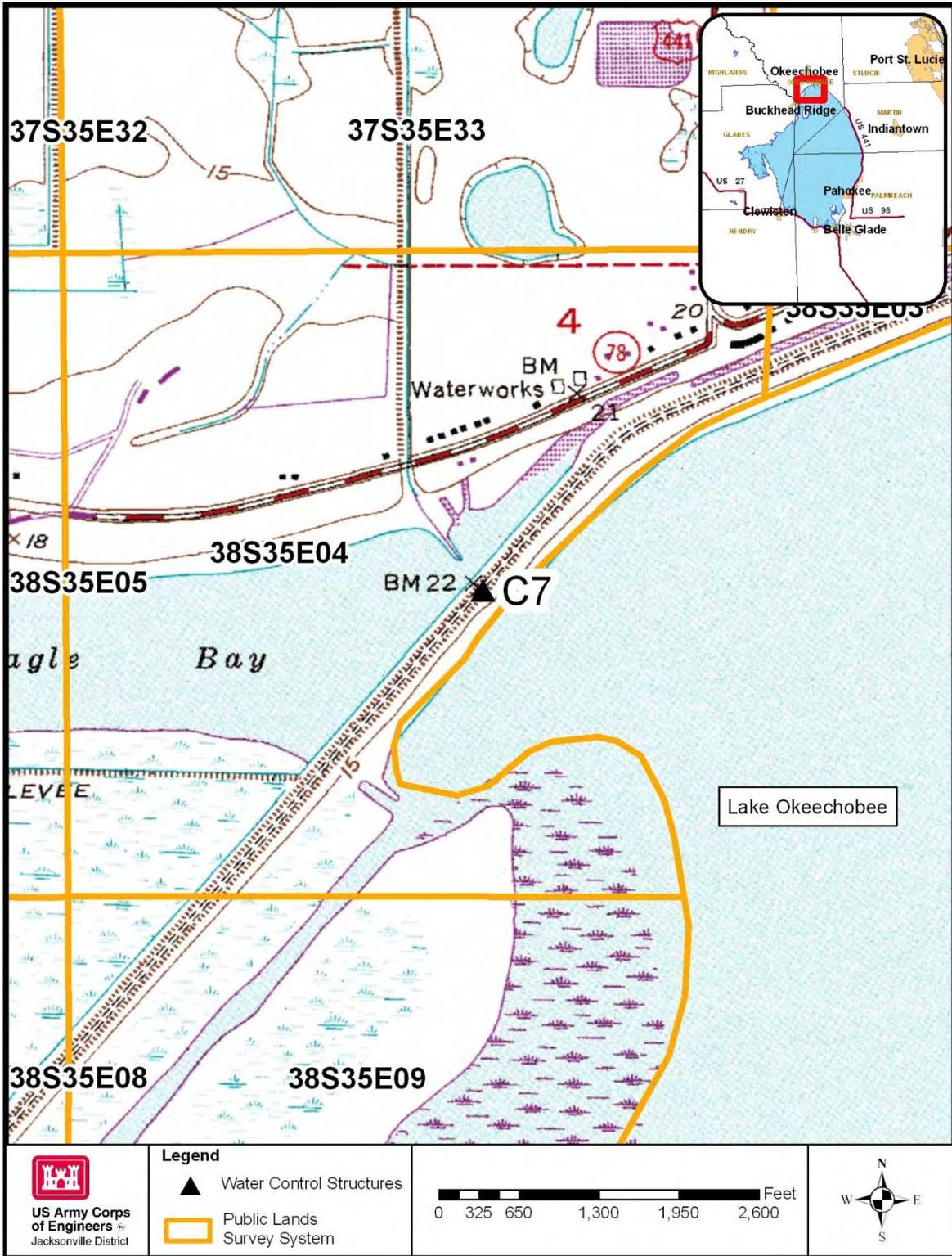


Figure 1: Location of culvert 7 (C7).

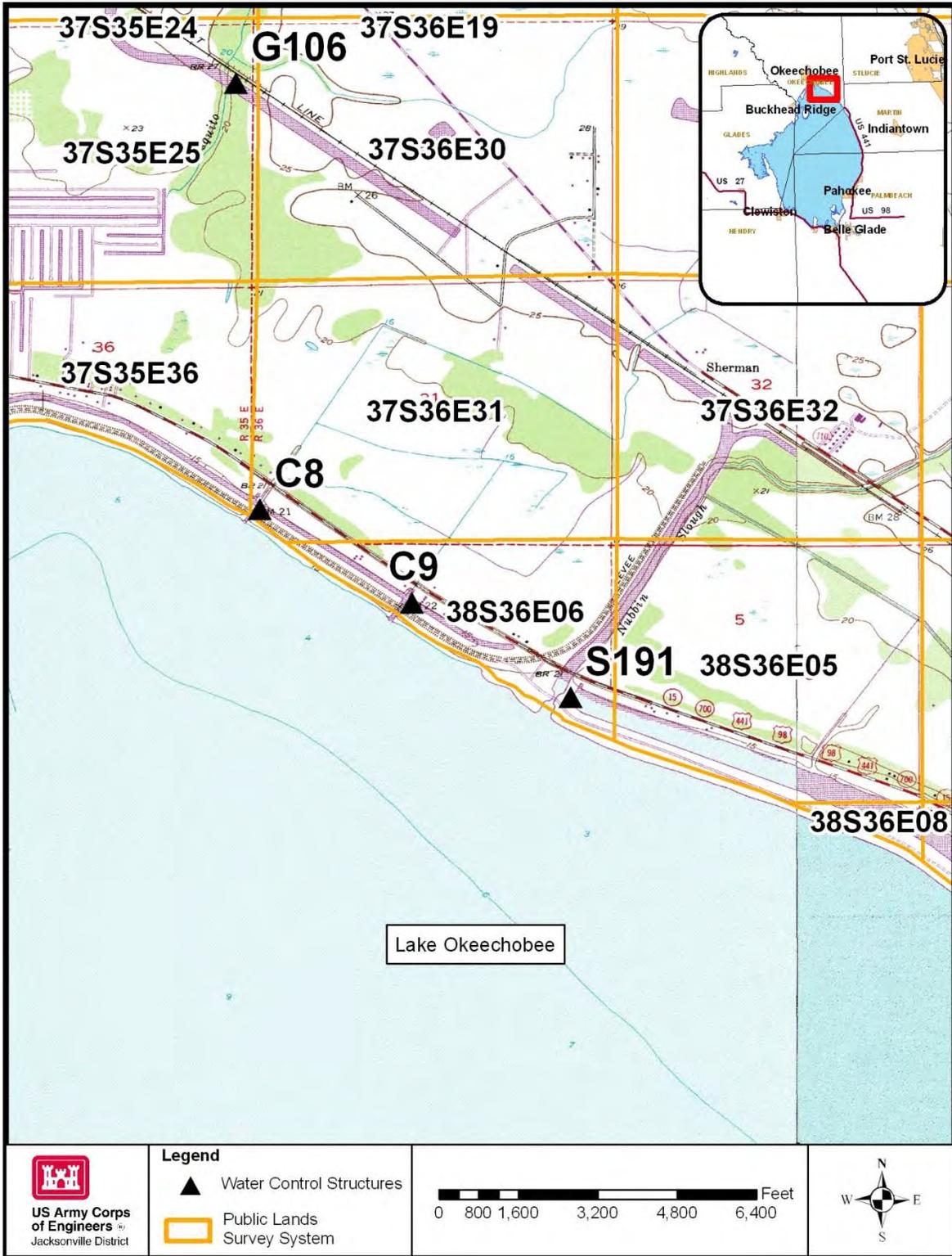


Figure 2: Location of Culvert 9 (C9).

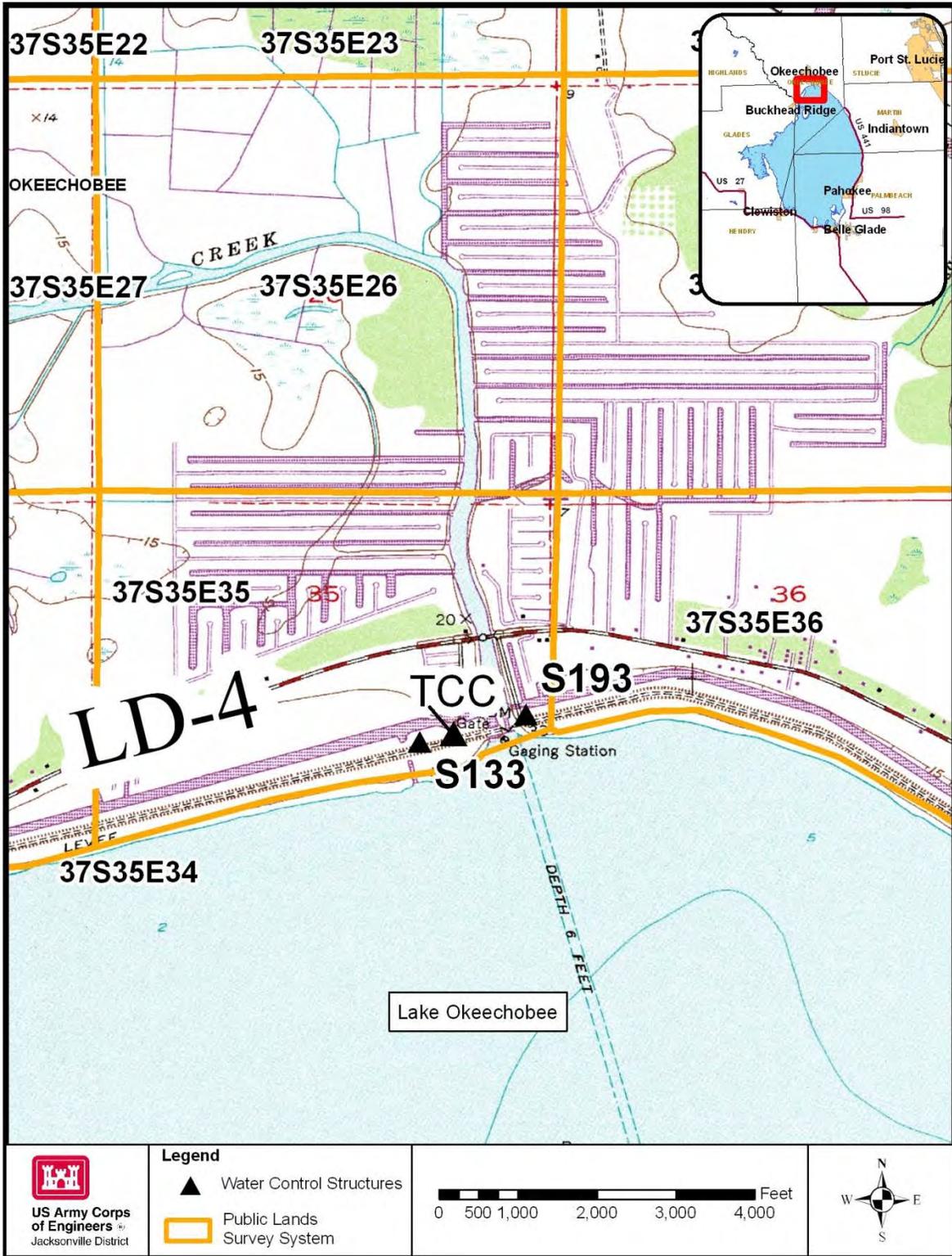


Figure 3: Location of Taylor Creek Culvert (TCC).

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ATTACHMENT 1

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF AGENCY ACTION

The Department of Environmental Protection gives notice that the following activity proposed by the Army Corps of Engineers (Corps) was determined to be exempt pursuant to subsection 373.406(6), Florida Statutes, on June 27, 2012. The activity is located at three separate sites (Culvert 7, Culvert 9 and Taylor Creek Culvert), adjacent to Lake Okeechobee. Culvert 7 is located adjacent to Lake Okeechobee, approximately two miles southwest of the S-193 Structure, within Section 4, Township 38 South, Range 35 East. Culvert 9 is located approximately $\frac{3}{4}$ of a mile northwest of the S-191 Structure within Section 6, Township 38 South, Range 36 East. Taylor Creek Culvert is located adjacent to Taylor Creek and Lake Okeechobee, just west of the S-193 Structure, within Section 35, Township 37 South, Range 35 East. The Department's determination authorizes the Corps to install a shallow cutoff wall and landside toe drains to property abandon buried and non-functioning culverts.

A person whose substantial interests are affected by the Department's decision may petition for an administrative proceeding (hearing) in accordance with Sections 120.569 and 120.57, Florida Statutes (F.S.). The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mailstation 35, Tallahassee, Florida 32399-3000, within twenty-one days of publication of this notice. A petitioner must mail a copy of the petition to the applicant at the address indicated above, at the time of filing. Failure to file a petition within this time period shall constitute a waiver of any right such person may have to request an administrative determination (hearing) under Sections 120.569 and 120.57 of the Florida Statutes. Any subsequent intervention will be only at the discretion of the presiding officer upon the filing of a motion in compliance with rule 28-5.207 of the Florida Administrative Code.

The petition shall contain the following information: (a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Department File Number and the county in which the project is proposed; (b) A statement of how and when each petitioner received notice of the Department's action or proposed action; (c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action; (d) A statement of the material facts disputed by Petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Department's action or proposed action; (f) A statement of which rules of statutes petitioner contends require reversal or modification of the Department's action petitioner wants the Department to take with respect to the Department's action or proposed action.

The file containing the application for the above determination is available for public inspection during normal business hours, 8:00a.m. to 5:00p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, 3900 Commonwealth Boulevard, MS 24.