

APPENDIX C

**COASTAL ZONE MANAGEMENT ACT FEDERAL CONSISTENCY
DETERMINATION**

**MODIFICATIONS TO C-111 SOUTH DADE NORTH AND SOUTH
DETENTION AREAS AND ASSOCIATED FEATURES**

SOUTH DADE, FLORIDA

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**COASTAL ZONE MANAGEMENT ACT AND FLORIDA COASTAL MANAGEMENT
PROGRAM FEDERAL
CONSISTENCY DETERMINATION**

Enforceable Policy. Florida State Statutes considered “enforceable policy” under the Coastal Zone Management Act (www.dep.state.fl.us/cmp/federal/24_statutes.htm). Florida Department of Environmental Protection is the lead in implementing this chapter for those projects which SFWMD is the local sponsor.

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 Policies	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: The proposed project is not located seaward of the mean high water line and would not affect shorelines or shoreline processes.

Chapters 186 and 187, State and Regional Planning. These chapters establish the State Comprehensive Plan which 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 orderly social, economic and physical growth.

Response: The project meets the primary goal of the State Comprehensive Plan through preservation and protection of the environment. The proposed work will be coordinated with the State through 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: The proposed project purpose is to retain current flood protection measures and enhance the hydrologic regime in south Florida. Therefore, this work 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 existing habitat within the project area consists of wetlands, former agricultural lands, upland vegetation, and borders Cape Sable Seaside Sparrow critical habitat. The Corps determination is that protected species are not likely to be adversely affected by, and no adverse modification to critical habitat will occur from the project. Preconstruction surveys will be conducted to minimize any disturbance in compliance with the USFWS consultation. Wetland impacts within the project area are expected to be offset by the creation of wetlands within the North Detention Area due to enhancements in Contract 8, as well as the expected increase in the duration of hydroperiods due to the project within Everglades National Park. See the Environmental Assessment for further discussion of wetlands and cultural resources (Sections 4.5 and 4.15).

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

Response: The property proposed for this project is already in public ownership. The proposed project would comply with the intent of this chapter.

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 project would help improve environmental conditions at state parks or aquatic preserves in the region. The project is consistent with this chapter.

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

Response: Archival research, field work and consultation with the State Historic Preservation Officer (SHPO), have been conducted in accordance with the National Historic Preservation Act, as amended; the Archeological and Historic Preservation Act, as amended and EO 11593. Consultation between the SHPO and other concerned parties commenced on June 28, 2005 stating a Phase I Cultural Resources Survey was necessary. A letter dated August 16, 2005 was received from the SHPO concurring with the Corps determinations on four sites within the project area and that the project will not affect historic properties included in or eligible for inclusion in the National Register of Historic Places. The project will be consistent with the goals of this chapter. A new SHPO letter is being coordinated for the alternatives within the Environmental Assessment this proposed project.

The project will not have an adverse effect on any historic properties included in or potentially eligible for inclusion in the National Register of Historic places. Conditions to protect undiscovered resources will be implemented as follows: Language will be included in construction contract specifications outlining the steps to be taken in the event that undiscovered historical properties are encountered. An informational training session, developed by a professional archaeologist, will be conducted for the contractor's personnel to explain what kinds of archaeological/cultural materials might be encountered during construction of the impoundment, and the steps to be taken in the event these materials are encountered. A professional archaeologist will conduct periodic monitoring of the project area during construction to determine if activities are impacting unanticipated cultural resources. The proposed action is consistent with these Acts. Historic preservation compliance will be completed to meet all responsibilities under Chapter 267.

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: Contribution of the project area to the State's tourism economy would not be compromised by project implementation. The project would be compatible with tourism for this area due to the potential increase in water levels within ENP. Therefore, the project would be 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: A turnaround at Richmond Drive will be constructed to safely allow motorists to turn around where access to Everglades National Park will be limited by a lock.

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: This project is inland and not expected to adversely affect saltwater resources.

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

Response: The non-federal sponsor for this project is the South Florida Water Management District, which is the state agency responsible for implementing this statute. Coordinated planning has been done with this agency to ensure compatibility with established policies. The 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 work does not involve the transportation or discharging of pollutants. Conditions will be placed in the contract to handle any inadvertent spill of pollutants. Therefore, the project would comply with this chapter.

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: This work does not involve the exploration, drilling or production of gas, oil or petroleum product and therefore 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 work does not involve land development as described by this chapter; therefore, this chapter is not applicable.

Chapter 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 work 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 Protection.

Response: An Environmental Assessment has been prepared and will be reviewed by the appropriate resource agencies including the Department of Environmental Protection.

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: Project implementation will include appropriate erosion control plans and measures to ensure compliance.