

Appendix D
Coastal Zone Management Act and Florida Coastal Management
Program
Federal Consistency Determination

Herbert Hoover Dike
Dam Safety Modification Study

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

HERBERT HOOVER DIKE DAM SAFETY MODIFICATION STUDY

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 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	Six (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).

1. Chapter 161, Beach and Shore Protection. 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.

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

2. 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 long-range guidance for orderly social, economic, and physical growth.

Consistency Statement: The project meets the primary goal of the State Comprehensive Plan. The proposed work will be coordinated with the State through review of this document.

3. Chapter 252, Disaster Preparation, Response and Mitigation. This chapter creates a State Emergency Management Agency, with authority to provide for the common defense; to protect the public peace, health and safety; and to preserve and protect the lives and property of the people of Florida.

Consistency Statement: The proposed project purpose is to strengthen and protect the existing lake levee system, thereby ensuring adequate flood control for residents of the region. No action may result in conditions that enhance the possibility of a project failure, resulting in an emergency and potentially causing significant damage to persons and property. Therefore, this work would be consistent with the efforts of the Division of Emergency Management.

4. Chapter 253, State Lands. This chapter governs the management of submerged State lands and resources within State lands. This includes archeological and historic 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; spoil islands; and artificial reefs.

Consistency Statement: The proposed activity will be coordinated with the State and appropriate State permits will be obtained. A Uniform Monitoring and Mitigation Assessment (UMAM) will be completed during Planning Engineering and Design (PED) to determine the acreage of any potential permanent wetland impacts, however, throughout the culvert replacement project, there were no permanent wetland impacts and the surrounding area is similar in nature (toe ditches). The Herbert Hoover Dike (HHD) itself is eligible for listing in the *National Register of Historic Places*. The proposed project will be coordinated with the State Historic Preservation Office during public review of the draft Environmental Impact Statement (EIS) as well as during the PED phase. The proposed action will be consistent with the intent of this chapter.

5. Chapters 253, 259, 260 and 375, Land Acquisition. These chapters authorize the State to acquire land to protect environmentally sensitive areas.

Consistency Statement: As part of the Tentatively Selected Plan (TSP), property outside of the current Federal right of way is not required. This project is consistent with this Chapter.

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

Consistency Statement: The proposed action will not impact any State parks or preserves. The HHD is a popular recreational resource in the area and construction areas would require heavy equipment traversing and working in the area of fishing, boating, sightseeing, and picnicking facilities that are along the HHD. Portions of the Lake Okeechobee Scenic Trail (LOST) would be temporarily closed during construction activities. However, there are multiple access points to enter and exit the LOST and closings would be coordinated with the Florida Department of Environmental Protection and the Office of Greenways and Trails. Portions of the HHD and LOST would be temporarily closed in the areas of active construction. This chapter is not applicable.

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

Consistency Statement: The proposed action will be coordinated with the State Historic Preservation Officer (SHPO) and will be consistent with the intent of this chapter.

8. Chapter 288, Economic Development and Tourism. This chapter directs the State to provide guidance and promotion of beneficial development through the encouragement of economic diversification and promotion of tourism.

Consistency Statement: Contribution from the study area to the state's tourism economy would not be compromised by project implementation. Portions of the Lake Okeechobee Scenic Trail (LOST) would be temporarily closed during construction activities. However, there are multiple access points to enter and exit the LOST, and closings would be coordinated with the FDEP and the Office of Greenways and Trails. Portions of the LOST are paved; pavement would be removed during construction and installation of the cutoff wall. The HHD rehabilitation authorization does not allow funds to be used to replace the asphalt paving on the LOST after construction is completed. The USACE is pursuing Section 111 Chief of Engineer's discretionary funds to replace the asphalt paving due to the limited authority to replace paved areas. If not approved, the pavement would not be replaced, and the LOST would be graded and graveled for continued use.

9. Chapter 334 and 339, Public Transportation. This chapter authorizes the planning and development of a safe and efficient transportation system.

Consistency Statement: The proposed action would not adversely affect existing public transportation of the area and therefore would be consistent with the goals of this chapter.

10. Chapter 370, Living Saltwater 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 of fisheries products; to secure and maintain statistical records of the catch of each such species; and to conduct scientific, economic and other studies and research.

Consistency Statement: The proposed project is located inland and would have no effect on saltwater resources either directly or indirectly through discharge downstream. The proposed project is only rehabilitation of the HHD embankment and does not propose changes to the Lake Okeechobee Regulation Schedule (LORS 2008). The proposed project is not applicable to this chapter.

11. 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, educational, aesthetic and economic benefits.

Consistency Statement: The HHD rehabilitation will be consistent with the goals of this chapter. Coordination with FWS and FWCC is ongoing with this project. The Fish and Wildlife Coordination Act Report is included within Appendix E of this document.

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

Consistency Statement: This work does not involve water resources as described in this chapter.

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

Consistency Statement: This work does not involve the transportation or discharge of pollutants. Conditions will be placed in the contract to handle inadvertent spills of pollutants such as vehicle fuels. The proposed action will comply with this chapter.

14. 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 resources.

Consistency Statement: The proposed action does not involve the exploration, drilling, or production of oil, gas, or other petroleum products; therefore this chapter does not apply.

15. Chapter 380, Environmental Land and Water Management. This chapter establishes criteria and procedures to assure that local land development decisions consider the regional impact of large-scale development.

Consistency Statement: The proposed project does not involve land development as described by this chapter; therefore, this chapter is not applicable.

16. Chapter 388, Arthropod Control. This chapter provides for a comprehensive approach for abatement or suppression of mosquitoes and other arthropod pests within the State.

Consistency Statement: The proposed work will not further the propagation of mosquitoes or other pest arthropods. The proposed action will be consistent with the goals of this chapter.

17. Chapter 403, Environmental Control. This chapter authorizes the regulation of pollution of the air and waters of the State by the Department of Environmental Protection.

Consistency Statement: Appropriate State permits will be obtained for this project. The draft EIS will be reviewed by the appropriate resource agencies including the Department of Environmental Protection.

18. Chapter 582, Soil and Water Conservation. This chapter establishes policy for the conservation of State soils 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 on-site and on adjoining properties affected by the work. Particular attention will be given to work on or near agricultural lands.

Consistency Statement: Project implementation would include appropriate erosion control plans and measures to ensure that adjacent agricultural land would not cause or contribute to soil erosion.