

Compliance with Environmental Laws

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1.0 National Environmental Policy Act of 1969

A scoping letter for the Site 1 Impoundment was mailed to Federal, State, and local agencies; Native American Tribes; private organizations and interested parties to solicit their views, comments, and information about resources, study objectives, alternatives, and important features within the study area by letter dated August 13, 2003. Comments received were reviewed and incorporated in project planning. Early identification of issues had been conducted as part of the Water Preserve Area (WPA) Feasibility Study, of which the Site 1 Impoundment had been a component. Scoping, a Notice of Intent to Prepare an Environmental Impact Statement (EIS), and a Draft EIS were all released for the WPA Feasibility Study between June 2000, and October 2001. Environmental information on the project has been compiled and project effects evaluated. The assessment has been included in the Environmental Assessment (EA) integrated with the Project Implementation Report (PIR). Copies of the report or a Notice of Availability of the Draft Site 1 Impoundment PIR and EA had been mailed to Federal, State, and local agencies; Native American Tribes; private organizations and interested parties to solicit comments on the project by letter dated February 15, 2005. All comments received have been considered and incorporated as appropriate. Responses have been prepared and included in Annex B. The project is in compliance with the National Environmental Policy Act.

2.0 Endangered Species Act of 1973

Consultation for Threatened and Endangered Species was initiated with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) on August 13, 2003. A list of threatened and endangered species resources and critical habitat was received from each agency, including the Florida Fish and Wildlife Conservation Commission (FFWCC) for state-listed species. Consultation concluded with the NMFS with receipt of the letter dated February 18, 2005. A biological assessment to listed species was coordinated with the USFWS dated July 26, 2005 following a request from the USFWS to provide additional information on effects. By letter dated August 31, 2005, the USFWS concurred with the Corps' determination of may affect, not likely to adversely affect, listed species. Consultation with the USFWS has concluded. Section 5.3.9 of the PIR addresses the effects to threatened and endangered species. Commitments to protect and avoid impacts to state and federally listed species are included in Section 7.2.17 of the report. This project is in full compliance with the Act.

3.0 Fish and Wildlife Coordination Act of 1958

This project has been coordinated with the USFWS and the FFWCC. A planning aid report (PAR) was received from the USFWS on September 15, 2003. A PAR was received from the FFWCC on October 14, 2003 and April 18, 2005. Representatives from both agencies have been involved in the project planning, development and evaluation, with particular interests in effects to fish and wildlife resources and natural wildlife management areas. A draft Fish and Wildlife Coordination Act Report (FWCA Report) has been received from the USFWS dated November 9, 2004 and FFWCC dated October 11, 2004 and the recommendations and concerns have been

addressed or incorporated into this document. A Final FWCA Report has been received from the USFWS and the FFWCC on May 3, 2005 and April 18, 2005, respectively. The Corps has reviewed and incorporated recommendations of the reports as appropriate. Responses to recommendations of the report are included following each report in Annex A. The Corps will continue to coordinate with USFWS and FFWCC throughout design and construction for practicable measures to avoid impacts and enhance opportunities to fish and wildlife species and habitat. This project is in full compliance with the Act.

4.0 National Historic Preservation Act of 1966 (Inter Alia)(PL 89-665, the Archeology and Historic Preservation Act (PL 93-291), and Executive Order (E.O.) 11593)

In accordance with procedures contained in Section 106 of the *National Historic Preservation Act* of 1966 (Public Law 96-665) as amended in 1992 and 36 *C.F.R.*, Part 800: *Protection of Historic Properties*; the *National Environmental Policy Act* of 1969 as amended; Chapter 267, Florida Statutes; Florida's Coastal Management Program, and other implementing state regulations, in order to evaluate the impact and adverse effects or potential adverse effects to historic properties listed, or eligible for listing, to the National Register of Historic Places, a cultural resources assessment has been conducted for the Site 1 Impoundment Project Area, Palm Beach County, Florida. (Quad. Coral Springs NE: T47S/R41E-Sections 19, 20, 21, 28, 29 and 30).

The State Historic Preservation Officer's (SHPO) initial response to the *Scoping Notice for the Site 1 Impoundment Project* (DHR No. 2003-7651) stated that due to project conditions to environmentally similar areas where archaeological sites are recorded, there existed the possibility of cultural resources within the project area and a professional archaeological investigation was necessary. A review of the Florida Master Site Files, in January 2004, indicated no recorded archaeological or historic sites within the project area, and a site visit discovered extensive adverse impact to the topography due to current and past land uses. Subsequent USACE correspondence with the SHPO, dated January 23, 2004, described the area north of Hillsboro Canal as heavily impacted by invasive nuisance-exotic vegetation and past agricultural practices (including an existing commercial nursery and livestock pasture) and recommended that a cultural resources survey would not be necessary. This letter also referred back to previous correspondence with SHPO (DHR No. 2002-1774) in which the areas of Hillsboro Aquifer Storage and Recovery (ASR) wells located within the Site 1 Project Area were not likely to contain unknown cultural resources. The SHPO concurred in a letter dated March 15, 2004 that due to existing conditions, no cultural resources survey was necessary (DHR No 2004-1133 (2003-7354)), subject to the following conditions:

- Unanticipated discovery language included in the construction contracts, and protective steps should be taken in the event archaeological/cultural materials are recovered.
- Training sessions be conducted for the project manager, contractors and heavy equipment operators by a Corps or professional archaeological. The training session would include what kinds of archaeological/cultural materials might be encountered and the appropriate steps to be taken in case of an unanticipated discovery of such materials.

- Periodic monitor of the project by a Corps or professional archaeologist to determine if construction activities are impacting unanticipated cultural resources.

No cultural assessment or determination has been made for the project area south of the Hillsboro Canal and further consultation is necessary if project extends into this area in the future. This project is in full compliance with the Act.

5.0 Clean Water Act of 1972

All State water quality standards will be met. A Section 404 (b)(1) evaluation has been prepared and included in this report in Annex C. The Water Quality Certification (WQC) will be met by the CERPRA permit. The project is in compliance with this Act.

6.0 Clean Air Act of 1972

The existing air quality within south Florida is considered good, and the region attains all National Ambient Air Quality Standards. No air quality permits would be required for this project. This project will be coordinated with U.S. Environmental Protection Agency for compliance with Section 309 of the Act. Contact with the Broward County Environmental Protection Department (EPD) did not yield written concurrence as adequate pump specification info was not available for submission. The Corps will use existing vendor-supplied pump data to solicit a written response from the Broward County EPD with regards to compliance with the local/state air permitting process and conformity with the CAA State Implementation Plan. Also, prior to operations, either the Corps or the SFWMD will submit an Air General Permit notification form for all qualifying project pumps (on a fuel rate/emissions basis).

7.0 Coastal Zone Management Act of 1972

A federal consistency determination in accordance with 15 CFR 930 Subpart C has been included in the draft PIR report in Annex C. The consistency review, delegated to the state of Florida, has been conducted on the information provided in the draft PIR. The State has determined, at this time, the project is in compliance with the Act. However, a final determination will be based on resolution of identified issues with state agencies and review of the Final PIR. Final consistency determination will be determined during the environmental permitting stage.

8.0 Farmland Protection Policy Act of 1981

This project has been coordinated with the Natural Resources Conservation Service (NRCS) in accordance with the Act. The determination that no prime or unique farmland would be impacted in the Hillsboro project area by implementation of this project has been made by the NRCS in a letter dated October 1, 2003. The project is in compliance with the Act.

9.0 Wild and Scenic River Act of 1968

No designated Wild and Scenic river reaches would be affected by project related activities.

10.0 Marine Mammal Protection Act of 1972

The West Indian manatee does occur near some of the project sites. Incorporation of the safeguards used to protect threatened or endangered species during construction and operation would protect any marine mammals in the area; therefore, we do not anticipate that the project will result in take as defined by Marine Mammal Protection Act. Manatee protection is managed by the USFWS. Coordination will continue with that agency as construction and operational guidelines are incorporated to avoid impacts to this species.

11.0 Estuary Protection Act of 1968

The project will reduce the fresh water pulsed flows to the downstream estuaries. Fresh water flows are damaging to the estuaries, as salinity regimes within the estuaries are constantly fluctuating and harming the health of vegetation, fish, and other biota. Although minimal, this project is anticipated to benefit the downstream estuaries of the AIWW by capturing the fresh water in the storage impoundment, therefore reducing the fresh water flows to the estuaries. This project is in full compliance with the Act.

12.0 Federal Water Project Recreation Act

The principles of the Federal Water Project Recreation Act, (Public Law 89-72) as amended, have been fulfilled by complying with the recreation cost sharing criteria as outlined in Section 2 (a), paragraph (2).

13.0 Fishery Conservation and Management Act of 1976

The project has been coordinated with the National Marine Fisheries Service and is in compliance with the Act.

14.0 Submerged Lands Act of 1953

The project would not occur on submerged lands of the State of Florida. This Act is not applicable.

15.0 Coastal Barrier Resources Act and Coastal Barrier Improvement Act of 1990

There are no designated coastal barrier resources in the project area that would be affected by this project. These Acts are not applicable.

16.0 Rivers and Harbors Act of 1899

The proposed work would not obstruct navigable waters of the United States. The proposed action has been subject to the public notice, public hearing, and other evaluations normally conducted for activities subject to the Act. The project is in full compliance.

17.0 Anadromous Fish Conservation Act

Anadromous fish species would not be affected. The project has been coordinated with the National Marine Fisheries Service and is in compliance with the Act.

18.0 Migratory Bird Treaty Act and Migratory Bird Conservation Act

The project site currently is not used for migratory birds that could be affected by project activities. However, with the construction of the impoundment and vegetated littoral shelves, as well as its location adjacent to natural areas, it is anticipated that migratory birds, especially wading birds, would benefit by additional foraging areas provided by the project. The project is in compliance with these Acts.

19.0 Marine Protection, Research and Sanctuaries Act

The term "dumping" as defined in the Act (33 U.S.C. 1402)(f) does not apply to this project. Therefore, the Marine Protection, Research and Sanctuaries Act does not apply to this project. The disposal activities addressed in this document have been evaluated under Section 404 of the Clean Water Act.

20.0 Resource Conservation and Recovery Act of 1976

No substances regulated under this Act and related laws have been identified in project lands at this stage of planning. The project is in compliance.

21.0 Toxic Substances Control Act of 1976

The most prevalent chemicals known to have been applied to project area soil are pesticides. However, the Toxic Substances Control Act (TSCA) exempts pesticides from its regulations. With regard to other chemicals, no substances regulated under this Act and related laws have been identified in project lands. The project is in compliance.

22.0 Magnuson-Stevens Fishery Conservation and Management Act

Consultation for the Site 1 Impoundment area was initiated in August 2003. The NMFS responded in September 2003 that adverse effects to fish resources and Essential Fish Habitat (EFH) may occur as a result of this project. The NMFS requested an evaluation of impacts to living marine resources, including mangroves, seagrasses, live bottom communities, and the marine/estuarine water column that may be impacted by activities or operations of the project alternatives. In addition, any effects anticipated to EFH will require the preparation and

coordination of an EFH assessment. The draft PIR was submitted for coordination and concurrence of the determination of no effect. In a letter dated March 31, 2005, the NMFS concluded that it appears implementation of the alternatives may have a beneficial impact to living marine resources and requested clarification within the report as well as additional details on impacts, beneficial or adverse, to these resources. While the changes in flow rates are minimal, reducing the fluctuation of salinities caused by large fresh water pulsed flows, as well as reducing loading of phosphorus and nitrogen associated with the reduction of flows, would allow seagrass and mangrove habitat conditions in the downstream estuary to improve through a more sustained salinity regime. With these improvements in water quality, the appropriate conditions for sensitive estuarine biota, such as species dependent on this habitat for egg, larval, and juvenile stages, are anticipated to benefit or rebound. The project is not expected to adversely impact EFH resources. The Final PIR and EA documents the additional information and clarifies impacts. The project is in compliance with the Act.

23.0 E.O. 11990, Protection of Wetlands

Wetlands of marginal quality on site will be eliminated with the construction of an impoundment. However, impoundment design will include wetland features, such as vegetated littoral shelves and deep-water refugia. Overall, the storage impoundment is anticipated to benefit the adjacent wetland systems. This project is in compliance with the goals of this Executive Order.

24.0 E.O. 11988, Flood Plain Management

The project has been evaluated in accordance with this Executive Order. This project is in compliance.

25.0 E.O. 12898, Environmental Justice

Executive Order 12898 requires the Federal Government to achieve environmental justice by identifying and addressing disproportionately high adverse effects of its activities on minority or low-income populations, and by involving potentially affected minorities in the public coordination process. This project would not result in adverse human health or environmental effects. The project is in compliance with the Executive Order.

26.0 E.O. 13089, Coral Reef Protection

This Executive Order applies to coastal projects that might directly or indirectly impact coral reefs. The Executive Order refers to "those species, habitats, and other natural resources associated with coral reefs." This project will not impact coral reefs or coral reef resources and therefore this Executive Order is not applicable.

27.0 E.O. 13112, Invasive Species

The project site has a 1,800-acre footprint. Much of the vegetation is invasive species, which will be removed within the immediate footprint as a consequence of construction of the impoundment. Construction equipment will use standard measures to avoid the spread of invasive species. In addition, project benefits include restoring the natural hydrology to two water conservation areas. Restored hydroperiods, and the restoration of more natural sheet flow are changes that will benefit native vegetation to the detriment of exotic species. Native vegetation will further benefit through reduction of contaminants in stored water and by allowing the native water (rain fed and seepage), versus canal water, to hydrate these natural areas. This project will not authorize, fund, or carry out any action that might spread or introduce invasive species. Therefore, this project complies with the goals of this Executive Order.

28.0 Bald and Golden Eagle Protection Act

The bald eagle is protected under the Bald and Golden Eagle Protection Act (16 U.S.C. § 668 et seq.). Take of bald eagles, their parts, eggs, and nests is prohibited by all three statutes. Take can occur in many forms including harm and harassment. During informal consultation with the FWS, the Corps determined that construction and operation of the Site 1 Impoundment Project was not likely to adversely affect the bald eagle. The FWS concurred. The level of effects to a species required in order to meet the "not likely to adversely affect" standard is that the effects must be insignificant and discountable, in other words, not measurable. Because the effects of the construction and operation of the Site 1 Impoundment Project meet the standard for "not likely to adversely affect" under the ESA, the effects cannot be measured and would not result in "take." Therefore, the construction and implementation of the Site 1 Impoundment Project is consistent with both the Bald and Golden Eagle Protection Act.

29.0 E.O. 13186, Responsibilities of Federal Agencies to Protect Migratory Birds

The Jacksonville District complies with this E.O and the Migratory Bird Treaty Act by avoiding significant nesting sites of colonial-nesting wading birds and by avoiding impacts to significant migratory bird habitat in project footprints. During the construction phase of projects we include, in all contract specifications for work where migratory birds may be present or be attracted to the site after clearing (as in scraping and leveling for impoundments), specifications requiring the presence of a migratory bird monitor before and during construction. The specification also recommends measures to avoid creating habitat attractive to nesting migratory birds such as least terns or black-necked stilts, actions to be taken if migratory bird nesting is discovered (including cessation of work until fledging is complete). CESAJ-PD-ES maintains expertise in migratory birds and can provide, as needed, orientation during initial construction contractor partnering. The Corps routinely coordinates these actions with Florida Fish and Wildlife Conservation Commission (FWC) the State agency charged with stewardship of migratory birds, and with FWS. The Project is in full compliance with the referenced Executive Order.

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