

**PART 3: ENVIRONMENTAL COMPLIANCE INFORMATION**

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### **C.3 Compliance with Environmental Laws, and Executive Orders**

#### **C.3.1 Environmental Laws**

The following documents required compliance with specific federal acts, Executive Orders (EO), and other applicable environmental laws. The following sections provide a summary of environmental compliance with each Act, EO, or applicable law.

##### **C.3.1.1 Anadromous Fish Conservation Act**

Anadromous fish species would likely not be affected by the proposed Project. The National Marine Fisheries Service (NMFS) provided a Programmatic Biological Opinion (BO) for the Comprehensive Everglades Restoration Plan (CERP) to the Corps on December 17, 2013. LOCAR is in compliance with this Act.

##### **C.3.1.2 The Archaeological and Historic Preservation Act**

The Archaeological and Historic Preservation Act (AHPA) was enacted in 1974 to preserve and protect archaeological and historic resources located on lands impacted by federal actions.. The Recommended Plan would have no adverse effects to historical or archaeological sites.

##### **C.3.1.3 Bald and Golden Eagle Protection Act**

The Bald and Golden Eagle Protection Act (BGEPA), enacted in 1940, prohibits anyone from "taking" bald eagles, including their parts, nests, or eggs, without a permit issued by the Secretary of the Interior. While areas of foraging habitat used by bald eagles may be within the Project Area, impacts to these areas are not likely to adversely affect this protected species. Potentially suitable nesting and foraging habitat for bald eagles occur within the Project Area. There are known bald eagle nests located near the Study Area, with the closest nest located approximately 2.13 miles (mi) to the east. The proposed Project is in compliance with this Act.

##### **C.3.1.4 Clean Air Act of 1963**

The existing air quality within South Florida is considered good. Section 176 (c) of the Clean Air Act requires that federal agencies assure that their activities comply with the federally approved Clean Air Act state implementation plans for geographical areas designated as "non-attainment" and "maintenance" areas under the act. The proposed Project is not located within a "non-attainment" area since there are none within the state of Florida. The only new potential source of air pollution as a result of this Project would be from construction and operation of electric pump station(s). The potential for permanent sources of air emissions are not expected from electric pump stations. However, operations staff must determine if stations would be exempt from air permitting or if a permit would be required. The Project would be implemented in compliance with this act.

##### **C.3.1.5 Clean Water Act of 1972**

Full compliance would be achieved with issuance of a Water Quality Certification (WQC) under Section 401 from the State of Florida. A Section 404 (b)(1) evaluation is in **Subsection C.3.4**. During construction, the Project may require dewatering permits and National Pollutant Discharge Elimination System (NPDES) permits depending on means and methods of construction. All required permits would be obtained prior

to construction activities. All state water quality standards would be met. The proposed Project would not adversely impact water quality and complies with the Clean Water Act.

#### **C.3.1.6 Coastal Barrier Resources Act and Coastal Barrier Improvement Act of 1990**

The official Coastal Barrier Resources System (CBRS) maps were reviewed. The proposed Project does not fall into any designated Coastal Barrier Resources Act (CBRA) areas. Therefore, these Acts are not applicable to this Project.

#### **C.3.1.7 Coastal Zone Management Act of 1972**

A Federal Consistency determination was prepared in accordance with the provisions of 15 CFR Part 930, and is located in **Subsection C.3.5**. The Corps considered the enforceable policies of the State of Florida's coastal management program. The proposed Project is consistent with the enforceable policies of Florida's approved Coastal Zone Management program to the maximum extent practicable. The Florida State Clearinghouse responded via letter dated December 4, 2023 stating the Department supports the project in achieving progress toward meeting the state's objectives for the restoration of the greater south Florida ecosystems.

#### **C.3.1.8 Endangered Species Act of 1973**

The Corps coordinated the proposed Project with the USFWS and NMFS. Consultation with the USFWS was initiated in June 2023 with preparation of a BA. See **Annex A** for the complete list of federally listed species and critical habitat provided in the BA that was prepared for this Project. A BO from the USFWS was received November 30, 2023 and is included in **Annex A**. The Corps determined there would be no effect to species under NMFS purview. No further NMFS consultation is required.

#### **C.3.1.9 Estuary Protection Act of 1968**

The proposed Project does not directly affect any estuaries. The proposed Project will provide benefits by providing storage for water north of Lake Okeechobee to improve the timing and quantity of flows to the Lake and indirectly the estuaries via water releases under the Water Control Plan for Lake Okeechobee. The proposed Project complies with the Act.

#### **C.3.1.10 Farmland Protection Policy Act of 1981**

The Corps coordinated with the U.S. Department of Agriculture (USDA) and Natural Resources Conservation Service (NRCS) to meet the requirements of the Farmland Protection Policy Act (7 U.S.C. Section 4201) . Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops. The land is also used as cropland, pastureland, rangeland, forestland, or other land, but cannot be used as urban built-up land. According to 7 CFR Section 657.5, unique farmland is land other than prime farmland that is used for production of specific high-value food and fiber crops. Most of the land in central and southern Florida used for agricultural production has been designated Unique Farmland; these lands are used in producing feed, food, fiber, forage, and/or oilseed crops. A determination was made that areas within the disturbance footprint of the Recommended Plan are not prime farmland under The Farmland Protection Policy Act (7 U.S.C. § 4201). The proposed Project complies with the Act.

**C.3.1.11 Federal Water Project Recreation Act of 1965/Land and Water Conservation Fund Act**

The Recommended Plan would create new recreational opportunities as presented in **Appendix F**. The LOCAR recreation plan identifies, evaluates, and addresses the impacts of LOCAR implementation on existing recreational use within the South Florida ecosystem and identifies and evaluates potential new recreation, public use, and public educational opportunities. Continued recreation planning is performed during detailed Project Engineering and Design. The proposed Project would not adversely affect existing recreational opportunities. Instead, it will create new recreational opportunities within the Lake Okeechobee Watershed (LOW). This Project complies with the act.

**C.3.1.12 Fish and Wildlife Coordination Act of 1958, As Amended**

The central objective of the Fish and Wildlife Coordination Act is to allow for equal consideration of wildlife resources. Representatives from the USFWS were involved in Project planning, development, and evaluation, focusing on the effects to fish and wildlife resources and natural wildlife management areas. The Fish and Wildlife Coordination Act Report was received on November 17, 2023 and is included in **Annex A**.

**C.3.1.13 Magnuson-Stevens Fishery Conservation and Management Act**

The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. Section 1801 et seq.) and Public Law 104-208 reflect the Secretary of Commerce and Fishery Management Council authority and responsibilities for the protection of Essential Fish Habitat (EFH). Federal agencies that fund, permit, or carry out activities that may adversely impact EFH are required to consult with the NMFS regarding the potential effects of their actions on EFH. The Corps determined there would be a slight benefit to essential fish habitat as discussed in the LORS Final Supplemental EIS (Corps 2007) and the LOSOM Draft EIS (Corps 2022). The proposed Project is in full compliance with this Act.

**C.3.1.14 Marine Mammal Protection Act of 1972**

West Indian manatees inhabit the coastal and major inland waters of South Florida, including Central and Southern Florida (C&SF) Project canals. Manatees are not expected to be adversely affected by the proposed Project. All construction is inland and interaction between construction activities and manatees is not expected. Early consultation with the USFWS was initiated for the manatee (**Annex A**). The proposed Project incorporates safeguards used to protect the West Indian manatee and other threatened and endangered (T&E) species during construction and operation. The Corps would be in full compliance with the Act at the time of construction.

**C.3.1.15 Marine Protection, Research, and Sanctuaries Act**

This Act is not applicable. Ocean placement is not a component of the proposed Project.

**C.3.1.16 Memorandum on Government-to-Government Regulations with Native American Tribal Governments**

This Presidential Memorandum directs the federal government to operate within a government-to-government relationship with federally recognized Native American Tribes. The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized Tribal governments. Each executive

department and agency shall apply the requirements of the EO 12875 (*Enhancing the Intergovernmental Partnership*) and EO 12866 (*Regulatory Planning and Review*) to design solutions and tailor federal programs, in appropriate circumstances, to address specific or unique needs of Tribal communities. The Corps consulted with the MTI, STOF, Seminole Nation of Oklahoma, and Thlopthlocco Tribal Town during the National Environmental Policy Act process and during planning efforts for LOCAR. The proposed Project complies with this memorandum. Coordination letters are included in **Appendix A of the EIS**.

#### **C.3.1.17 Migratory Bird Treaty Act of 1918**

Migratory and resident bird species have been observed within the Project Area and are likely to use available habitat for foraging, nesting, and breeding. The proposed Project would have the potential to adversely impact overwintering, nesting, or foraging songbirds that use uplands in the Project footprint. However, the proposed Project is expected to benefit migratory wading birds in Lake Okeechobee by reducing the duration of high lake stages and along the reservoir shoreline, therefore improving habitat and increasing availability of forage species (i.e., amphibians, fish, and aquatic invertebrates). Migratory bird surveys would be conducted prior to construction. The Corps is in compliance and would be in full compliance with the Act at the time of construction.

#### **C.3.1.18 National Environmental Policy Act of 1969**

This Act encourages public participation and comment on federal projects and requires agencies to cooperate with other federal agencies and state and local governments, and to involve public stakeholders. Initial public coordination for the proposed Project began with an Notice Of Intent (NOI) to prepare an EIS. On April 24, 2023, an NOI to prepare an EIS was published in the *Federal Register* (FR; FR Volume 88, Number 78). Public scoping meetings were held on April 27, 2023. Environmental information on this Project has been compiled, and a Draft EIS was prepared as a separate document. A Notice of Availability of the Draft EIS was published in the *Federal Register* to begin the 45-day review period. All comments received during the public meetings and the review periods, along with responses, were included in **Appendix A of the Final EIS**.

#### **C.3.1.19 National Historic Preservation Act of 1966**

Compliance with the National Historic Preservation Act (NHPA, as amended (PL 89-665) is pending. Consultation with the Florida SHPO, Seminole Tribe of Florida, Miccosukee Tribe of Indians, Thlopthlocco Tribal Town, Seminole Nation of Oklahoma, and Muscogee Nation was initiated on July 25, 2023. The Corps has determined the Preferred Alternative poses no adverse effects to historic properties. Consultation with the SHPO and the appropriate federally recognized tribes is ongoing and will be finalized prior to implementation of the Proposed Action. The Project will be in compliance with the goals of this Act upon completion of coordination as stated above.

#### **C.3.1.20 Native American Graves Protection and Repatriation Act, as Amended**

Federal agencies must inventory all Native American human remains and funerary objects in their possession and control, attempt to identify the affiliated Tribe(s), and repatriate the items to the appropriate group. This Act also applies to inadvertent discoveries. There is a required delay in the disturbance of a site containing human remains until consultation with affiliated Tribes is accomplished. The Project Area does not occur on federally owned lands or reservation lands. This Act is not applicable.

**C.3.1.21 Noise Control Act**

This Act sets forth an objective to ensure health and well-being by mitigating noise disturbances in the environment. The effects of noise from LOCAR are described in **Appendix C, Part 2**. The Corps is in compliance with this act.

**C.3.1.22 Resource Conservation and Recovery Act, as Amended by the Hazardous and Soils Waste Amendments of 1984; Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act of 1966; Toxic Substances Control Act of 1976**

Hazardous, toxic, and radioactive waste (HTRW) surveys will be conducted as required. The removal and excavation is not expected to result in the discovery or generation of HTRW materials. The proposed action involves ground disturbances. Compliance with this Act would be achieved prior to land certification by the South Florida Water Management District (SFWMD). If any items regulated under these laws are discovered, the Corps and SFWMD would comply with applicable requirements. The proposed Project is currently in compliance and will continue to meet the requirements of this Act throughout construction and operation.

**C.3.1.23 Rivers and Harbors Act of 1899 and 1953**

The proposed Project would not obstruct navigable waters of the United States. The Project was subjected to public notice and other evaluations normally conducted for activities subject to the Act. The proposed Project complies with this Act.

**C.3.1.24 Safe Drinking Water Act**

The Safe Drinking Water Act sets standards for the quality of drinking water and regulates contaminants that may be harmful to human health. The proposed Project does not affect water quality for drinking water such as the surficial aquifer system and the Upper Floridan aquifer. The proposed Project complies with this Act.

**C.3.1.25 Seminole Indian Claims Settlement Act of 1987**

The Florida Indian (Seminole) Land Claims Settlement Act of 1987 directed the SFWMD, State of Florida, and STOF to execute an agreement for the purposes of resolving Tribal land claims and settling the lawsuit filed by the STOF. Agreements to resolve Tribal land claims were executed between the three parties, which included conveyance of land and payment of consideration to the Tribe and implementing legislation by the U.S. Congress and Florida Legislature. An agreement known as the Water Rights Compact (Compact) was also executed between the State of Florida, SFWMD, and STOF. The Compact specifically defined STOF's water rights. This Compact was adopted into federal and state law. It includes a series of provisions establishing the Tribe's rights and creating several "entitlements" to water for three of the Tribe's reservations. The STOF's Big Cypress and Brighton Reservations lie within the LOCAR Study Area. Water supply deliveries to these reservations are not affected by LOCAR and may actually improve. Any modeled decreases in water supply deliveries would not be expected under real-world conditions due to the Compact requirements. Complete performance summaries for water supply to the reservations are included in **Appendix C, Part 2**. This Project complies with this Act.

**C.3.1.26 Submerged Lands Act of 1953**

The proposed Project reduces freshwater flows to the Northern Estuaries, ultimately benefitting the ecological habitats occurring on submerged lands of the State of Florida. No construction is expected on submerged lands; therefore, this Act is not applicable.

**C.3.1.27 Wild and Scenic Rivers Act of 1968, as Amended**

There are no designated wild and scenic river reaches within the Project Area that would be affected by Project-related activities. This Act is not applicable.

**C.3.2 Executive Orders****C.3.2.1 EO 11514, Protection and Enhancement of Environmental Quality**

EO 11514 directs federal agencies to “initiate measures needed to direct their policies, plans, and programs so as to meet national environmental goals.” The objectives of the proposed Project are focused on environmental protection. The proposed Project complies with this EO.

**C.3.2.2 EO 11593, Protection and Enhancement of the Cultural Environment**

EO 11593 directs federal agencies to provide leadership in preserving, restoring, and maintaining the historical and cultural environment of the nation. Agencies of the executive branch of the federal government shall (1) administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations; (2) initiate measures necessary to direct their policies, plans and programs in such a way that federally owned sites, structures, and objects of historical, architectural or archaeological significance are preserved, restored, and maintained for the inspiration and benefit of the people; and (3), in consultation with the Advisory Council on Historic Preservation, institute procedures to assure that federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures and objects of historical, architectural or archaeological significance. The proposed Project takes into consideration the preservation of non-federally owned cultural resources of significance. The proposed Project complies with this EO.

**C.3.2.3 EO 11988, Floodplain Management**

EO 11988 directs federal agencies to avoid siting projects in floodplains and to avoid inducing further development of flood-prone areas. The Project is not a development, but, rather, a restoration action. Commitment of lands to Project restoration would preclude such development. The Project helps restore and preserve the natural and beneficial uses of the floodplain. The Project will be operated in a manner that maintains the existing level of service of flood protection. The Project complies with the goals of this EO.

**C.3.2.4 EO 11990, Protection of Wetlands**

EO 11990 directs federal agencies to avoid developing and locating projects in wetlands. The proposed Project Area is located within freshwater wetlands and upland habitats. The proposed Project avoided wetlands to the maximum extent practicable. The objectives of the Project are focused on environmental protection. A net functional benefit to wetlands within and adjacent to the Project Area is expected. The Project complies with this EO.



### **C.3.2.5 EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations**

EO 12898 directs federal agencies to provide full participation of minorities and low-income populations in the federal decision-making process, and further directs agencies to fully disclose any adverse effects of plans and proposals on minority and low-income populations. There was sufficient public input to feel confident that scoping was successful and that the breadth of the potential impacts were communicated and understood by the public. The objectives of the proposed Project are focused on environmental protection. Implementation of the Project would benefit all population groups by providing restoration of wetlands and other natural resources within the Project Area. LOCAR benefits quality of life by improving the estuarine environment and contributing to hydrological improvements in the LOW. The proposed Project would improve the quality of human life by providing improved estuarine conditions for fish and wildlife. This translates into aesthetic and economic benefits for sport fishing and other recreational communities.

An environmental justice analysis was conducted (**Appendix C, Part 2**). It determined that the proposed Project would not result in adverse human health or environmental effects. The proposed Project would not disproportionately adversely affect any minority or low-income population. The Recommended Plan would not (a) exclude persons from participation in, (b) deny persons the benefits of, or (c) subject persons to discrimination because of their race, color, or national origin, nor would the Recommended Plan adversely impact “subsistence consumption of fish and wildlife.” Therefore, the proposed Project complies with this EO.

### **C.3.2.6 EO 12962, Recreational Fisheries**

EO 12962 requires the evaluation of federally funded, permitted, or authorized actions on aquatic systems and recreational fisheries. The Recommended Plan is expected to have a beneficial effect, with slight improvements in recreational fisheries in the Northern Estuaries. The proposed Project is currently in compliance and would continue to meet the requirements of this Act throughout construction and operation.

### **C.3.2.7 EO 13007, Indian Sacred Sites**

This EO directs federal land managing agencies to accommodate and facilitate the accessibility and ceremonial utilization of Indian sacred sites by Indian religious practitioners while ensuring that sites are not adversely physically impacted. The Recommended Plan would have no adverse effect to historic properties and cultural resources. This EO is not applicable.

### **C.3.2.8 EO 13045, Protection of Children from Environmental Health Risks and Safety Risks**

Pursuant to EO 13045, each federal agency must “identify and assess environmental health risks and safety risks that may disproportionately affect children, and ensure that its policies, programs, activities, and standards address disproportionate risks to children that results from environmental health risks or safety risks.” The proposed Project would not result in environmental health risks or safety risks that may have a disproportionate effect on children. Children would not be near any of the construction operations and activities should not have an impact on children. The proposed Project complies with this EO.

**C.3.2.9 EO 13089, Coral Reef Protection**

There are no hardground or coral reef communities located within the proposed Project Area or the nearshore waters affected by the Project. The Project is not expected to adversely impact coral reefs or coral reef resources. This EO is not applicable.

**C.3.2.10 EO 13122, Invasive Species**

The proposed project has the potential to allow expansion of exotic and/or invasive species, due to construction and operational changes to the current water management system. Construction measures to reduce the spread of exotic and/or invasive species would be included in the contract specifications. An Invasive and Nuisance Species Management Plan was prepared and is included in **Annex F**. The plan objectives are to prevent and/or reduce the establishment of non-native species within the Project Area. The proposed Project complies with this EO.

**C.3.2.11 EO 13175, Consultation and Coordination with Indian Tribal Governments**

EO 13175 sets forth fundamental principles to guide agencies in formulating and implementing policies that have Tribal implications. The EO also sets forth policymaking criteria to which agencies must adhere to the extent permitted by law. These principles and policymaking criteria apply to an agency's, regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Native American Tribes, on the relationship between the federal government and Native American Tribes, or on the distribution of power and responsibilities between the federal government and Native American Tribes (Section 1(a)). The Corps has and will continue to consult with the appropriate federally recognized tribes on the proposed Project. This includes consultation with members and representatives of the STOF, MTI, Seminole Nation of Oklahoma, and Thlopthlocco Tribal Town. The proposed Project complies with this EO.

**C.3.2.12 EO 13186, Responsibilities of Federal Agencies to Protect Migratory Birds**

Migratory and resident bird species have been observed within the proposed Project footprint and are likely to use available habitat for foraging, nesting, and breeding. The proposed Project would have the potential to adversely impact overwintering, nesting, or foraging songbirds that use uplands in the Project footprint. However, the proposed Project is expected to benefit migratory wading birds in Lake Okeechobee by reducing the duration of high lake stages and along the reservoir shoreline, therefore improving habitat and increasing availability of forage species (i.e., amphibians, fish, and aquatic invertebrates). The Project would comply with this EO.

**C.3.2.13 EO 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis**

EO 13990 emphasizes the need to guarantee clean air and water, minimize risks associated with hazardous chemicals and pesticides, ensure responsible actions by polluters, decrease greenhouse gas (GHG) emissions, strengthen readiness for climate change impacts, revive and expand national landmarks and monuments, and give equal importance to environmental justice and employment. GHG emissions from construction and operation of the Recommended Plan are discussed in **Appendix C.1.2**. The Project complies with this EO.

#### **C.3.2.14 EO 14008, Tackling the Climate Crisis at Home and Abroad**

This EO directs prioritization to the climate crisis in terms of foreign policy and national security strategies. Construction and operation of the Recommended Plan would be consistent with the U.S. Department of Defense’s Climate Action Plan. A full environmental justice analysis was completed (**Appendix C, Part 2**). The analysis demonstrates that the alternatives would not have disproportionately adverse climate-related effects on disadvantaged communities. This Project complies with this EO and would continue to comply with the EO at the time of construction.

#### **C.3.2.15 EO 14096, Revitalizing Our Nation’s Commitment to Environmental Justice for All**

This order establishes a policy that encourages a comprehensive approach to environmental justice across all government sectors. This Project complies with this EO and would continue to comply with the EO at the time of construction. A full environmental justice analysis was completed (**Appendix C, Part 2**). The analysis demonstrates that the Alternatives would not disproportionately adversely affect communities with environmental justice concerns.

#### **C.3.3 Compliance with Florida Statutes**

The State of Florida enacted several laws pertaining to the implementation of the CERP projects. Florida Statutes (F.S.) Sections 373.1501 and 373.470, set out the intent of the Florida Legislature regarding CERP and require the SFWMD to submit a report for review and approval by the Florida Department of Environmental Protection (FDEP). According to F.S. Section 373.026(8)(b), each project component must be submitted prior to formal submission of a request for authorization from Congress and prior to receiving an appropriation of state funds for construction and other implementation activities (except the purchase of lands from willing sellers). F.S. Section 373.026 also lays out the criteria for FDEP approval and the procedures to be followed by the SFWMD and FDEP for submitting and reviewing requests for approval. F.S. Section 373.1502 establishes permitting requirements and procedures for certain permits for CERP projects. F.S. Sections 373.470 and 373.472 create the “Save Our Everglades Trust Fund” and identify the funding and reporting requirements and procedures for distributions from the trust fund.

The SFWMD’s State Compliance Report addressing the criteria for approval listed in F.S. Section 373.1501 is included in **Annex B**. In addition to the above-described statutory requirements, other sections of Chapters 373 (*Water Resources*) and 403 (*Environmental Control*) of F.S. may apply to various aspects of CERP project planning and implementation. F.S. Chapter 403 and the implementing rules contain the requirements for facilities that discharge or potential discharge pollutants to surface and groundwaters regulated under the federal Clean Water and Safe Drinking Water Acts, and/or discharge air pollutants regulated under the federal Clean Air Act. Based on the information contained in this FS, the Recommended Plan complies with the applicable F.S. A detailed explanation of how the Project complies with the applicable requirements for CERP projects contained in the F.S. can be found in **Annex B**.

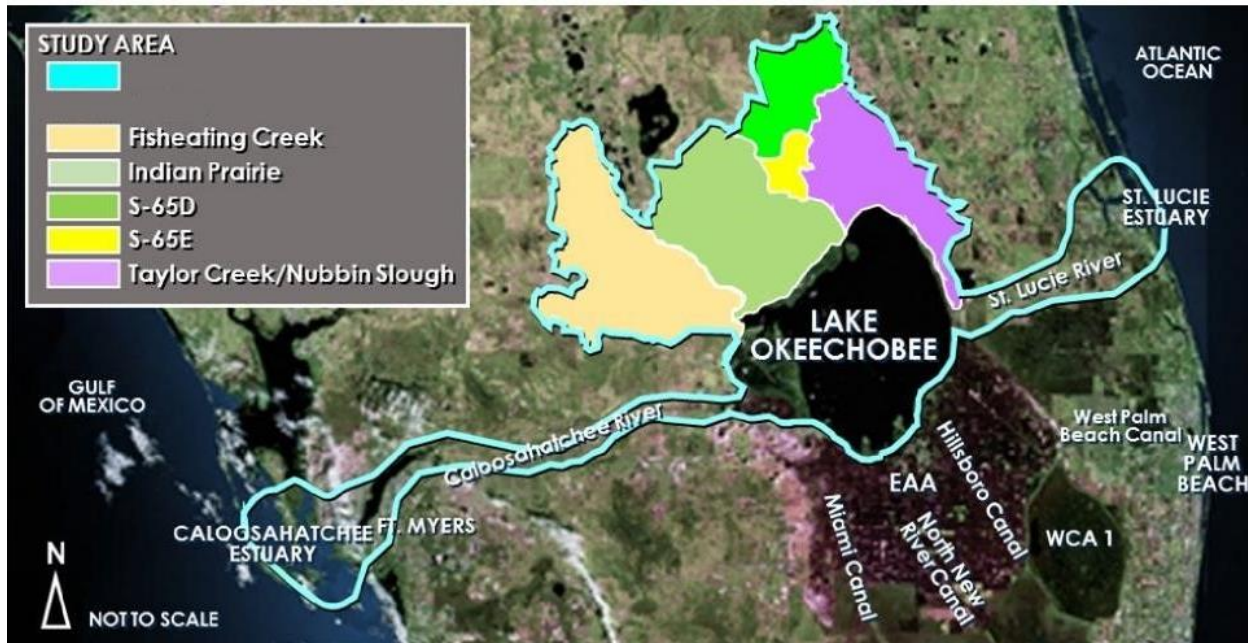
#### **C.3.4 Clean Water Act Section 404(b)(1) Evaluation**

The Section 404(b)(1) Evaluation addresses, at a general level, the potential environmental effects of the wetland alterations expected from dredge and fill and construction of the proposed Project. Subsequent, site-specific, Section 404(b)(1) Evaluations will be completed for individual project components, or groups thereof, during the Clean Water Act permitting process when project level design files are completed for construction. During plan formulation, it was determined that this plan is the alternative that meets

project objectives and is the least environmentally damaging practicable alternative (LEDPA) that is cost effective.

### Location

The Study Area (**Figure C.3-1**) for LOCAR encompasses LOW, Lake Okeechobee, and the Northern Estuaries.



**Figure C.3-1. LOCAR Study Area Map.**

### Project Description

The Recommended Plan includes a 200,000 acre-foot (ac-ft) aboveground storage reservoir north of Canal 41A (C-41A) and various recreational features (**Figure C.3-2**). The reservoir would cover an area of approximately 12,800 acres (ac) and be designed to have an average storage depth of 17 feet (ft) at its normal full-storage level. The reservoir would include two pump stations, two outflow culverts, an outflow canal, an interior divider dam with a gated control structure, and two ungated overflow spillways.

**Construction.** The reservoir would be constructed with a perimeter dam and an interior divider dam, with each having an average height of approximately 33 ft above average ground elevation. The perimeter dam encompasses (or consists of) approximately 18 mi of levees, allowing for recreational opportunities. Material from the Project footprint and the surrounding seepage canal would be used to construct the dams. A gated outflow culvert would be constructed on the west side of the reservoir to discharge water into C-41A, upstream of Structure 83 (S-83), while another gated culvert would be constructed near the southeast side of the reservoir to discharge water into C-41A, downstream of S-83.

The reservoir would be constructed to have two storage cells (i.e., east and west) split by an interior divider dam to reduce wave runup. The interior divider dam would include a 1,500-cubic-foot-per-second, gated water-control structure to allow for controlled conveyance of water between the two cells. Each cell would include an ungated overflow spillway designed to discharge into C-41A.

A seepage canal would be constructed outside the perimeter dam of the reservoir. Seepage from the reservoir would collect in the canal and be returned to the reservoir via seepage pump stations. If the seepage pump stations were not operational, the seepage collected in the canal would eventually overflow into the C-41A via overflow weir structures.



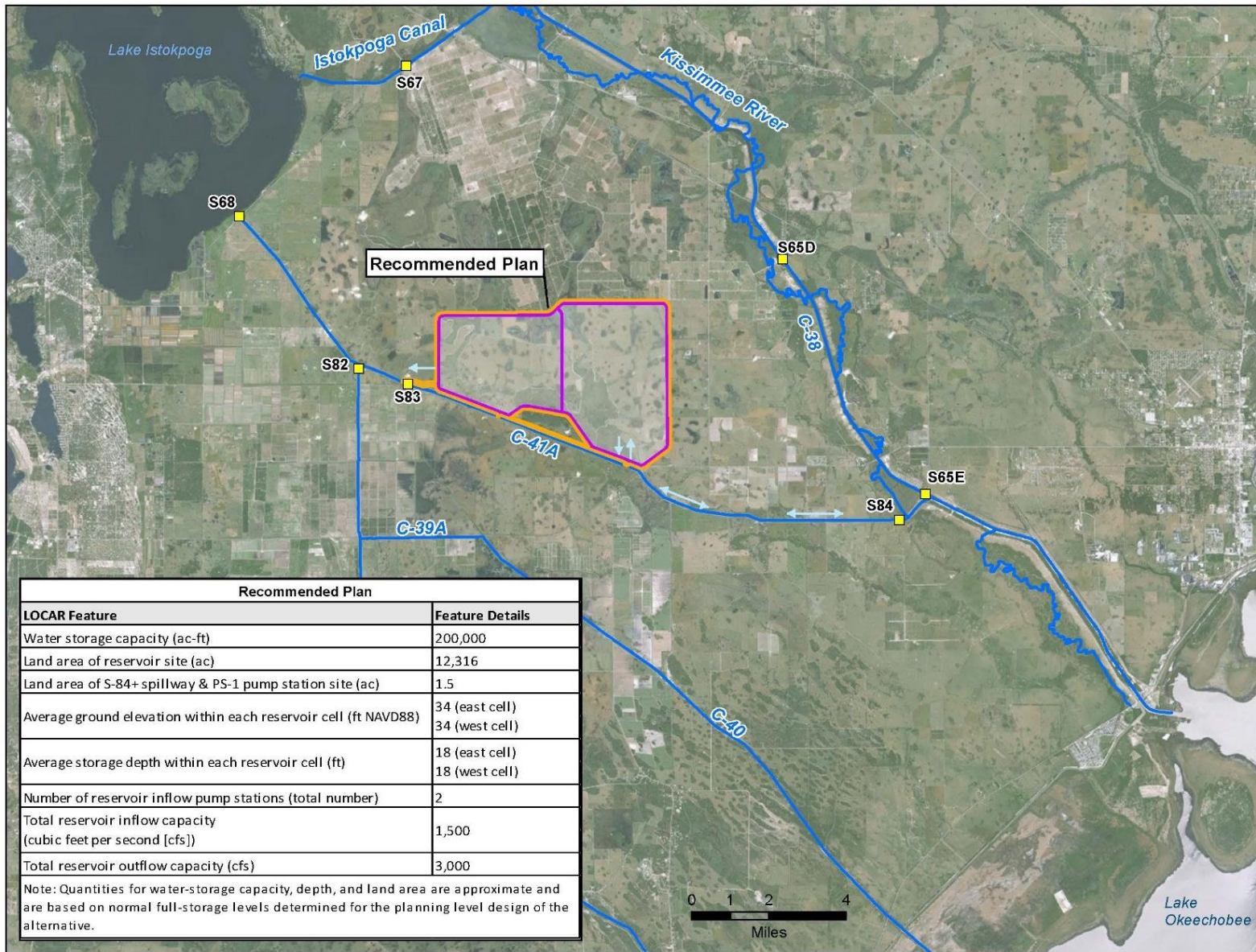


Figure C.3-2. LOCAR Recommended Plan features.

### **Authority and Purpose**

The CERP was approved in Section 601 of Water Resources Development Act (WRDA) of 2000. The Corps and the SFWMD executed a Design Agreement for the design of elements of the CERP and South Florida Ecosystem Restoration Project (Design Agreement, May 2000). The CERP Master Program Management Plan (MPMP) was developed and approved by the Corps and SFWMD for the purposes of describing the framework and processes to be used for managing and monitoring implementation of CERP. The proposed project, the SFWMD North of Lake Okeechobee Storage Reservoir Section 203 Study is being completed under the authority of Section 203 of WRDA 1986, as amended. The purpose of the SFWMD Section 203 Study is to identify aboveground storage north of Lake Okeechobee, in line with Component A of the CERP Yellow Book authorized in WRDA 2000.

The C&SF Project, as constructed, had unintended adverse impacts to the Greater Everglades, including Lake Okeechobee, the Northern Estuaries, Water Conservation Area (WCA) 3, Everglades National Park, and Florida Bay. Historically, freshwater flowed southward from Lake Okeechobee to Florida Bay from surface (e.g., sloughs, transverse glades, and overland from or through wetlands) and groundwater sources. This resulted in a mosaic of vegetative communities as well as narrower range of salinity fluctuations in Florida Bay than occurs today. While historic conditions sustained healthy and extensive ecological communities (e.g., ridge and slough, wet prairies, tree islands, sawgrass prairies, mangrove communities, and seagrass beds), these communities have been degraded under the managed system. The purpose of LOCAR is to improve the quantity, timing, and distribution of water flows into Lake Okeechobee and the Northern Estuaries.

### **General Description of Dredged or Fill Material**

Several Project features are expected to involve the release of dredged or fill material into wetlands or other aquatic resources or excavation in wetlands for conveyance purposes. However, specific information is unknown at this time. Additional Section 404(b)(1) documents will be completed for individual features when actual fill material needs are identified when project level design files are completed for construction and the Clean Water Act permitting process. The specific characteristics (general characteristics discussed below), quantities, and sources of dredged or fill material would be determined during planning and design activities for each component of the proposed project.

### **General Characteristics of Material**

The surficial geology of the LOCAR Project Area consists of Holocene freshwater peat and organic soils deposited within the Kissimmee River alluvial floodplain. The floodplain is over drained and stranded due to the extensive canal network. In the Indian Prairie, the surficial geology consists of Holocene soils developed on nearshore marine sands and silts that were deposited during the last high seas stand approximately 120,000 years ago. The geomorphic setting of the Indian Prairie sub-basin is best described as a dry prairie with depressional wetlands that are saturated during the wet season.

The material from the reservoir footprint is expected to be reused in construction of the embankment. Soil testing would be conducted to better define the soil characteristics and, as a result of that soil testing, other placement options may be pursued.

***Quantity of Material***

Material from construction of the seepage canal would be produced for placement with the construction of the embankment (Appendix B). The planning level embankment slurry wall installation and excavated material would be expected to be nearly 460,000 bank cubic yards (BCY).

***Source of Material***

The fill material is expected to consist of material excavated from within the reservoir footprint and construction of the seepage canal.

**Description of the Proposed Discharge Site*****Location***

The excess excavated material would be used for embankment fill. The excavated material is not expected to be moved off-site.

***Size***

There will not be a discharge site outside of the reservoir footprint.

***Site***

A confined site on the reservoir footprint would be used.

***Habitat***

All excavated material would be placed in the reservoir footprint.

***Timing and Duration of Discharge***

Installation timing of the Project features has yet to be determined. The time and duration of discharge would be further defined during the detailed design phase.

**Description of Placement Method**

The excavated material would be trucked to placement or staging stockpile areas.

**Factual Determinations (Section 230.11)*****Physical Substrate Determinations***Substrate Elevation and Type

The natural topography of the area is nearly flat, with slopes less than 2 percent, with the exception of the unnatural features (e.g., canals and levees).

Sediment Type

The substrate at the reservoir site is expected to be calcium carbonate limestone rock overlain with sandy and silty soils.

Dredge/Fill Material Movement

There will be substantial movement of material for this Project. The embankment fill is expected to come from within the reservoir footprint. The seepage canal excavation will be used as embankment fill. Best



management practices (BMP) would be employed during construction to control movement of sediment into undisturbed areas and areas outside the construction footprint.

#### Physical Effects on Benthos

No adverse impacts to benthic organisms are anticipated other than displacement of those organisms in the construction footprint of the proposed Project.

#### ***Water Circulation, Fluctuation, and Salinity Determination***

An ecological monitoring plan (**Annex D**) was developed to monitor hydrology, water quality, and associated changes within the Project Area.

#### ***Suspended Particulate/Turbidity Determinations***

In general, any short-term impacts to water quality associated with construction of the Project would be ameliorated by construction sequencing, BMPs for erosion and sedimentation control, and monitoring during construction. Longer-term impacts to water quality not associated with fill and associated with the operation of Project features would be addressed through operational monitoring and adaptive management actions, if potentially adverse effects are observed or predicted.

#### Expected Changes in Suspended Particulates and Turbidity Levels in the Vicinity of the Placement Site

Although site-specific information is unknown at this time, temporary localized increases in suspended particulates and turbidity levels can be expected during construction of some of the Project features. Such increases are generally short term and insignificant. All appropriate measures to reduce and contain turbidity would be employed to prevent violations of state water quality standards.

#### Effects on Chemical and Physical Properties of the Water Column

##### Light Penetration

During construction operations, there would be a temporary insignificant reduction in light penetration in the canals in the immediate vicinity of the activity. Once construction is complete, light penetration is expected to return to preconstruction levels.

##### Dissolved Oxygen

During construction operations, there would be a temporary reduction in the dissolved oxygen (O<sub>2</sub>) content in the water column due to organic sediment oxygen demand from the disturbed soils in the immediate vicinity of the activity. Once construction is complete, dissolved oxygen is expected to return to preconstruction levels.

##### Toxic Metals, Organics, and Pathogens

Generally, no toxic metals, anthropogenic organics, or pathogens are anticipated at this time to be released by Project construction. Additional discussion on these items would be provided during further planning and design on Project components.

##### Aesthetics of the Water Column

During construction, visual aesthetics would be negatively impacted. After completion, aesthetics would improve due to a reduction in exotic species.

### Effects on Biota

#### Primary Productivity and Photosynthesis

Placement of excavated materials would temporarily adversely affect wetlands in the immediate vicinity of construction by destroying vegetation and smothering biota. Similarly, wetlands within the reservoir footprint would be permanently converted to deepwater ecosystems, reducing primary productivity and photosynthesis. However, overall Project operation would improve the quality of wetland habitat downstream in Lake Okeechobee through stage regulation effects.

#### Suspension/Filter Feeders

During construction operations, there would be a temporary increase in turbidity and possibly a decrease in suspension/filter feeders due to construction activities. This temporary increase in turbidity would be short term and should not have any long-term negative impact on these highly fecund organisms. The implantation of the Project should benefit these organisms by converting what is primarily agriculture and upland habitat into a deepwater aquatic system.

#### Sight Feeders

During construction operations, there would be a temporary increase in turbidity and possibly a decrease in sight feeders due to construction activities. No significant impacts on these organisms are expected as most sight feeders are highly mobile and can move outside the affected area. When the Project is operational, sight feeders would benefit from the conversion of agriculture and upland habitat into a deepwater aquatic system.

### ***Contamination Determinations***

From the 1920s through the 1960s, most of the land parcels incorporated in the LOCAR Project footprint were cultivated for agricultural use. A few parcels continue to be farmed, but the area is mostly pasture. Residual pesticide contamination associated with past and present crop production can be detected in the soils. However, concentrations are not likely to present unacceptable risks to human health or environmental receptors. For parcels that are frequently inundated under present hydrologic conditions, the proposed Project is not likely to significantly increase the risk of environmental harm associated with the fate and transport of the residual contamination. For parcels that are not frequently inundated under present hydrologic conditions, the proposed Project may increase the risk of environmental harm associated with the fate and transport of residual contamination.

During PED, testing and analysis would be performed on the Project Area to determine if remedial actions are warranted.

### ***Aquatic Ecosystem and Organism Determinations***

No long-term adverse impacts on aquatic organisms are anticipated. Lake Okeechobee and estuarine ecosystems are expected to greatly improve because of implementation of the Recommended Plan. The proposed Project is not expected to cause or contribute to violations of state water quality standards, jeopardize the existence of any federally T&E species, or impact a marine sanctuary. No significant degradation is expected and all appropriate and practicable steps would be taken to minimize impacts.

### Effects on Plankton

No adverse impacts to plankton are anticipated.

### Effects on Benthos

No adverse impacts to benthic organisms are anticipated other than displacement of those organisms in the construction footprint of the proposed Project. Reduction of freshwater flows to the Northern Estuaries would improve habitat for the benthos.

### Effects on Nekton

Design features to reduce risks to larval fish will be investigated during the PED phase. There should be no adverse impacts to freshwater swimming aquatic organisms, including fishes, during construction. Additionally, no adverse impacts are expected downstream in the waters of the Northern Estuaries and the adjacent coastline. Estuarine fish species most likely to occur in these areas include the small forage species, such as killifish, mosquito fish, juvenile sciaenids, silversides, and mullets. Larger secondary consumers include gray snapper, tarpon, snook, red drum, and spotted seatrout.

### Effects on Aquatic Food Web

Periphyton forms the base of the food web within the Project Area. Implementation of the Project is expected to increase periphyton mat biomass and productivity throughout the site, as well as freshwater diatoms. No adverse impacts to the aquatic food web are anticipated other than minor temporary impacts within the construction footprint.

### Effects on Special Aquatic Sites

#### Hardground and Coral Reef Communities

There are no hardground or coral reef communities located within the proposed Project Area or the nearshore waters affected by the Project. Corals found within the waters of Biscayne Bay are outside of the APE.

#### Sanctuaries and Refuges

There are no sanctuaries or refuges within the Project footprint, and none should be impacted by the Project.

#### Wetlands

The dominant vegetation community in the region is improved pastures with a mix of wet and dry prairies, freshwater marshes, hardwood swamps, cypress swamps, mesic temperate hammock, and pine flatwoods. As a result of the Project, approximately 2,053 ac of wetlands would be removed by construction and excavation activities; 867 ac of the Project Area are above-ground impoundment (AGI) ponds. Any impacts to wetlands resulting from implementation of the project component will be avoided, minimized, and mitigated, as appropriate. This loss will be offset with benefits to Lake Okeechobee ecosystems and is not anticipated to have any adverse effects. The proposed Project is anticipated to provide positive ecological benefits, including improving hydroperiods and hydro-patterns in the watershed, by improving the quantity, timing, and distribution of water delivered to Lake Okeechobee and the downstream estuaries.

#### Mud Flats

There are no mud flats within the construction footprint or areas impacted by the proposed Project.

#### Vegetated Shallows

Submerged aquatic vegetation (SAV) is present throughout the nearshore waters of Lake Okeechobee and in the Northern Estuaries. SAV within Lake Okeechobee is composed almost entirely of hydrilla (an invasive

exotic species), pondweed, bladderwort, Chara, coontail, and tape grass. Increased time in the ecologically preferred stage envelope for Lake Okeechobee would provide improvement to SAV. Reduction of the number of high and damaging freshwater flows to the Northern Estuaries could provide improvements to estuarine and marine SAV by ensuring adequate salinities occur more often. However, insufficient baseflow conditions could have negative impacts to freshwater and oligohaline adapted tape grass and larval fish habitat in the upper Caloosahatchee Estuary and in the St. Lucie River.

#### Riffle and Pool Complexes

There are no riffle or pool complexes within the Project footprint, and none should be impacted by the proposed Project.

#### Effect on Threatened and Endangered Species

There are 28 federally listed T&E species potentially present in the Project Area. A BA submitted to USFWS on August 16, 2023 is included within **Annex A** of this Final EIS to document potential effects to T&E species. The Corps and USFWS consulted on a determination of “No Effect” or “Not Likely to Adversely Affect” decision for several of the federally listed species within the Project Area. Five of the federally listed species were identified by Corps to have “May affect” determinations. A BA is included within **Annex A** to document potential effects to T&E species. The USFWS reviewed the BA, and a BO from the USFWS was received on November 30, 2023 is included in **Annex A**.

#### ***Proposed Disposal (Placement) Site Determinations***

Excavated material would be used for the reservoir embankments. There would be no long-term adverse impacts to the Project Area resources as a result of the placement of the excavated material.

#### Mixing Zone Determination

The dredged material would not cause unacceptable changes in the mixing zone water quality requirements, as specified by the State of Florida’s WQC permit procedures. No adverse impacts related to depth, current velocity, direction and variability, degree of turbulence, stratification, or ambient concentrations of constituents are expected from implementation of the Project.

#### Determination of Compliance with Applicable Water Quality Standards

LOCAR complies with water quality standards applicable to the Project and adjacent waters. Proposed features are located in and adjacent to waters designated as Class III by the State of Florida. In accordance with Chapter 62-302, Florida Administrative Code., *Surface Water Quality Standards*, the use classification of Class III waters is “Fish Consumption; Recreation, Propagation, and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife.” In addition to the minimum and general criteria for surface waters found in F.A.C. Subsection 62-302.500(1), there are numerous water quality criteria for specific parameters for Class III waters listed in F.A.C. Rule 62-302.530. Although the proposed plan is not expected to affect most of the parameters listed in this rule, certain parameters (e.g., turbidity and dissolved oxygen) listed in the criteria may be affected by construction and operations activities. The construction and operation of the proposed Project components would comply with federal and state water quality standards.

### ***Potential Effects on Human Use Characteristics***

#### Municipal and Private Water Supply

Water supply cutbacks would be expected if the Lake Okeechobee Regulation Schedule (LORS) remains unchanged from the currently authorized operation schedule. Modeling was performed to determine if the current proposed operational changes (LOSOM) would affect water supplies. Refer to **Appendix C, Part 2**, for additional information pertaining to LOCAR water supply analyses.

#### Recreational and Commercial Fisheries

There will be no impact to recreational fishing by boat. Bank fishing opportunities could be positively increased by addition of access points around proposed structures. The proposed Project would benefit recreational and commercial fisheries in Lake Okeechobee and through salinity improvements within the Northern Estuaries.

#### Water-related Recreation

Water-related recreation will be improved by Project features. Further detail is included in **Appendix F**.

#### Aesthetics

The proposed Project would enhance the overall aesthetics of the Project Area. Exotic plant control may enhance the aesthetics of the area.

#### Parks, National and Historical Monuments, National Seashores, Wilderness Areas, Research Sites, and Similar Preserves

The Project would enhance environmental conditions at these types of sites within the Project Area.

### ***Essential Fish Habitat***

#### Essential Fish Habitat in the Area

The Project Area includes the Northern Estuaries. Lake Okeechobee flows into the Northern Estuaries. The St. Lucie Canal feeds into the St. Lucie Estuary, while the Caloosahatchee Canal/River feeds into the Caloosahatchee Estuary to the west.

#### Caloosahatchee River

The Caloosahatchee River Estuary contains EFH for juvenile brown shrimp, juvenile gray snapper, smalltooth sawfish, juvenile pink shrimp, adult and juvenile red drum, adult and juvenile Spanish mackerel, and juvenile stone crab. Downstream habitats include oyster reefs and seagrass beds (i.e., SAV).

#### St. Lucie Estuary

The Study Area is within the jurisdiction of the South Atlantic Fishery Management Council (SAFMC) and is located in areas designated as EFH for wormrock, live-bottom habitat, American oyster, pink shrimp, white shrimp, brown shrimp, Florida red drum, grouper, gray snapper, white grunt, red porgy, spiny lobster, and the snapper-grouper complex. In addition, the nearshore hardbottom habitat outside of the St. Lucie Estuary is designated as EFH-Habitat Areas of Special Concern (EFH-HAPC) for the snapper-grouper complex.

#### Assessment of Effects on Hardground and Coral Reef Communities

This Project is not expected to affect coral reefs or hardbottom communities. There are no coral reefs or hardbottom communities located within the proposed Project Area or the nearshore waters affected by the Project.

#### Assessment of Effects on Sanctuaries and Refuges

There are no sanctuaries or refuges within the Project footprint, and none should be impacted by the Project.

#### Assessment of Effects on Wetlands

The dominant vegetation community in the region is mostly improved pastures, with a mix of wet and dry prairies, freshwater marshes, hardwood swamps, cypress swamps, mesic temperate hammock, and pine flatwoods. As a result of the Project, approximately 2,053 ac of wetlands would be removed by construction and excavation activities; 867 ac of the Project Area are AGI ponds. This loss will be offset with benefits to Lake Okeechobee ecosystems and is not anticipated to have any adverse effects. The proposed Project is anticipated to provide positive ecological benefits, including improving hydroperiods and hydro-patterns in the watershed, by improving the quantity, timing, and distribution of water delivered to Lake Okeechobee and the downstream estuaries.

#### Assessment of Effects on Mud Flats

There are no mud flats within the construction footprint or areas impacted by the Project.

#### Assessment of Effects on Vegetated Shallows

SAV is present throughout the nearshore waters of Lake Okeechobee and in the Northern Estuaries. SAV within Lake Okeechobee is composed almost entirely of hydrilla (an invasive exotic species), pondweed, bladderwort, Chara, coontail, and tape grass. Increased time in the ecologically preferred stage envelope for Lake Okeechobee would provide improvement to SAV. In the Northern Estuaries, the trend shows the following species in order from the shoreline to the deeper waters: widgeon grass, turtle grass, manatee grass, shoal grass, and Johnsons seagrass. Reduction of freshwater flows to the Northern Estuaries would provide improvements to SAV.

#### Assessment of Effects on Riffle and Pool Complexes

There are no riffle or pool complexes within the Project footprint, and none should be impacted by the Project.

#### ***Assessment of Effects on Plankton***

No adverse impacts to plankton are anticipated.

#### ***Assessment of Effects on Benthos***

No adverse impacts to benthic organisms are anticipated other than displacement of those organisms in the construction footprint of the Project.

#### **Assessment of Effects on Nekton**

There should be no adverse impacts to freshwater swimming aquatic organisms, including fishes, during construction of LOCAR. Additionally, no adverse impacts are expected downstream in the Northern Estuaries or the adjacent coastline. Estuarine fish species most likely to occur in these areas include the small forage species, such as killifish, mosquito fish, juvenile sciaenids, silversides, and mullets. Larger secondary consumers include gray snapper, tarpon, snook, red drum, and spotted seatrout.

***Determination of Effects on Essential Fish Habitat***

The overall benefit to the regional system is expected to be far greater than the localized adverse effects. Restoration of Lake Okeechobee watershed hydrology and the increase in spatial extent of protected wetland acreage in the region would produce extensive cumulative beneficial effects. These beneficial effects are expected to substantially outweigh the cumulative adverse effects produced by the aquatic ecosystem alterations that may be necessary to construct some of the Project components.

**Determination of Cumulative Effects on the Aquatic Ecosystem**

The overall benefit to the regional system is expected to be far greater than the localized adverse effects. The hydrologic restoration of the LOW and the increase in spatial extent of protected wetland acreage in the region would produce extensive, cumulative beneficial effects. These beneficial effects are expected to substantially outweigh the cumulative adverse effects produced by the aquatic ecosystem alterations that may be necessary to construct some of the Project features.

**Determination of Secondary Effects on the Aquatic Ecosystem**

No adverse secondary impacts on the aquatic ecosystem will occur due to construction. During construction, the sites would be contained with sedimentation barriers. Erosion would be controlled by appropriate erosion control techniques. Sedimentation would be controlled during construction. An ecological and water-quality monitoring plan will be implemented during and after construction. Specific environmental commitments, engineering and design commitments, and operational commitments will be incorporated to avoid, minimize, and/or mitigate for adverse effects.

**Findings of Compliance or Non-compliance with the Restrictions on Discharge**

No significant adaptations of the guidelines were made relative to this evaluation.

At this time, no practicable alternatives exist that have less adverse impact on the aquatic ecosystem without presenting other significant adverse environmental consequences. The alternatives all have beneficial impacts to Lake Okeechobee.

The discharge of fill materials is not anticipated to cause or contribute to violations of any applicable state water quality standards for Class III waters or Outstanding Florida Waters, where applicable. The discharge operation is not anticipated to violate the Toxic Effluent Standards of Section 307 of the Clean Water Act (CWA).

The placement of fill materials in the Project Area is not anticipated to jeopardize the continued existence of any T&E species or result in the likelihood of destruction or adverse modification of any critical habitat, as specified by the Endangered Species Act of 1973, as amended.

The placement of fill material is not anticipated to result in significant adverse effects on human health and welfare, including municipal and private water supplies, recreational and commercial fishing, plankton, fish, shellfish, wildlife, and special aquatic sites. The life stages of aquatic species and other wildlife are not anticipated to be adversely affected. Significant adverse effects on aquatic ecosystem diversity, productivity and stability, and recreational, aesthetic, and economic values are not anticipated.

Based on the guidelines, the proposed discharge site for the discharge of fill and/or dredged material is specified as complying with the requirements of these guidelines.

### C.3.5 Coastal Zone Management Act Consistency Statement

**FLORIDA COASTAL MANAGEMENT PROGRAM**  
**FEDERAL CONSISTENCY EVALUATION PROCEDURES**  
**Lake Okeechobee Component A Reservoir**  
**Highlands County**

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

**Applicability of the Coastal Zone Management Act.**

**Table C.3-1** summarizes the process and procedures under the Coastal Zone Management Act for Federal Actions and for Non-federal Applicants. There are separate requirements for activities on the Outer Continental Shelf (subpart E) and for “assistance to an applicant agency” (subpart F).

**Table C.3-1. Process and Procedures under the Coastal Zone Management Act.**

| Item                         | Non-federal Applicant<br>(15 CFR 930, subpart D)  | Federal Action<br>(15 CFR 930, subpart C)                 |
|------------------------------|---|---|
| Enforceable Policies         | Reviewed and approved by NOAA (in Florida <a href="https://www.dep.state.fl.us/cmp/federal/24_statutes.htm">https://www.dep.state.fl.us/cmp/federal/24_statutes.htm</a> ) | Same  |
| Effects Test                 | Direct, indirect (i.e., 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 <sup>1</sup>                |
| 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  |

CFR—Code of Federal Regulations; NOAA—National Oceanic and Atmospheric Administration

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



### Coastal Zone Consistency Statement by Statute/Enforceable Policy

#### ***F.S. Parts I and II, Chapter 161, Dennis L. Jones Beach and Shore Preservation Act***

Coastal areas are among the state's most valuable natural, aesthetic, and economic resources, and they provide habitat for a variety of plant and animal life. The state is required to protect coastal areas from imprudent activities that could jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access. Coastal areas used, or likely to be used, by sea turtles are designated for nesting, and the removal of vegetative cover that binds sand is prohibited. This statute provides policy for the regulation of construction, reconstruction, and other physical activities related to the beaches and shores of the state. Additionally, this statute requires the restoration and maintenance of critically eroding beaches.

**Response: The proposed plans and information would be submitted to the state in compliance with this chapter. No work is proposed seaward of the mean high water line and would not affect shorelines or shoreline processes.**

#### ***F.S. Part II, Chapter 163, Intergovernmental Programs: Growth Policy, County and Municipal Planning; Land Development Regulation***

These statutes implement comprehensive planning programs to guide and control future development in the state. The comprehensive planning process encourages units of local government to preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare; prevent the overcrowding of land and avoid undue concentration of population; facilitate the adequate and efficient provision of public facilities and services; and conserve, develop, utilize, and protect natural resources within their jurisdictions.

#### Chapter 163, Community Planning Act

Enforceable policies include:

Section 163.3164, F.S. Community Planning Act; definitions;

Section 163.3177, F.S. Required and optional elements of comprehensive plan; studies and surveys

(3)(a). requiring the comprehensive plan to have a capital improvements element that considers the need and location of public facilities to encourage the efficient use of such facilities;

(6)(a). requiring comprehensive plans to have a future land use plan element designating proposed future general distribution, location, and extent of the uses of land for residential uses, commercial uses, industry, agriculture, recreation, conservation, education, public buildings and grounds, other public facilities, and other categories of the public and private uses of land; maximize the use of existing facilities and services through redevelopment, urban infill development, and other strategies for urban revitalization;

(6)(b). must consider land use compatibility issues around airports, and shall address land use compatibility consistent with chapter 333 regarding airport zoning;

(6)(d). designate environmentally sensitive lands for protection; and

(7)(a). include innovative approaches to development which may better serve to protect and maintain the economic viability of agricultural and other predominately rural land uses;

Subsection 163.3178 Coastal management. (1) local government comprehensive plans restrict development activities where such activities would damage or destroy coastal resources, and that such plans protect human life and limit public expenditures in areas that are subject to destruction by natural disaster.

(2) coastal management elements of comprehensive plans shall be based on studies, surveys, and data; be consistent with coastal resource plans prepared and adopted pursuant to general or special law; and contain:

(d) A component which outlines principles for hazard mitigation and protection of human life against the effects of natural disaster, including population evacuation, which take into consideration the capability to safely evacuate the density of coastal population proposed in the future land use plan element in the event of an impending natural disaster. The Division of Emergency Management shall manage the update of the regional hurricane evacuation studies, ensure such studies are done in a consistent manner, and ensure that the methodology used for modeling storm surge is that used by the National Hurricane Center.

(e) A component which outlines principles for protecting existing beach and dune systems from human-induced erosion and for restoring altered beach and dune systems.

(f) A redevelopment component which outlines the principles which shall be used to eliminate inappropriate and unsafe development in the coastal areas when opportunities arise.

(g) A shoreline use component that identifies public access to beach and shoreline areas and addresses the need for water-dependent and water-related facilities, including marinas, along shoreline areas. Such component must include the strategies that will be used to preserve recreational and commercial working waterfronts as defined in s. 342.07.

(h) Designation of coastal high-hazard areas and the criteria for mitigation for a comprehensive plan amendment in a coastal high-hazard area as defined in subsection (9). The coastal high-hazard area is the area below the elevation of the category 1 storm surge line as established by a Sea, Lake, and Overland Surges from Hurricanes (SLOSH) computerized storm surge model. Application of mitigation and the application of development and redevelopment policies, pursuant to s. 380.27(2), and any rules adopted thereunder, shall be at the discretion of local government.

(i) A component which outlines principles for providing that financial assurances are made that required public facilities will be in place to meet the demand imposed by the completed development or redevelopment. Such public facilities will be scheduled for phased completion to coincide with demands generated by the development or redevelopment.

(j) An identification of regulatory and management techniques that the local government plans to adopt or has adopted in order to mitigate the threat to human life and to control proposed development and redevelopment in order to protect the coastal environment and give consideration to cumulative impacts.

Subsection 163.3180 Concurrency. (2) Consistent with public health and safety, sanitary sewer, solid waste, drainage, adequate water supplies, and potable water facilities shall be in place and available to serve new development no later than the issuance by the local government of a certificate of occupancy or its functional equivalent. Prior to approval of a building permit or its functional equivalent, the local government shall consult with the applicable water supplier to determine whether adequate water supplies to serve the new development will be available no later than the anticipated date of issuance by the local government of a certificate of occupancy or its functional equivalent. A local government may meet the concurrency requirement for sanitary sewer through the use of onsite sewage treatment and disposal systems approved by the Department of Health to serve new development.

(5),

(a) If concurrency is applied to transportation facilities, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels of service to guide its application.

(e) If a local government applies transportation concurrency in its jurisdiction, it is encouraged to develop policy guidelines and techniques to address potential negative impacts on future development:

1. *In urban infill and redevelopment, and urban service areas.*
2. *With special part-time demands on the transportation system.*
3. *With de minimis impacts.*
4. *On community desired types of development, such as redevelopment, or job creation projects.*

Paragraph 163.3194(1)(a), F.S. After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.

Subsection 163.3202(2), F.S. Local land development regulations shall contain specific and detailed provisions necessary or desirable to implement the adopted comprehensive plan and shall as a minimum:

- (a) Regulate the subdivision of land.
- (b) Regulate the use of land and water for those land use categories included in the land use element and ensure the compatibility of adjacent uses and provide for open space.
- (c) Provide for protection of potable water wellfields.
- (d) Regulate areas subject to seasonal and periodic flooding and provide for drainage and stormwater management.
- (e) Ensure the protection of environmentally sensitive lands designated in the comprehensive plan.
- (f) Regulate signage.

(g) Provide that public facilities and services meet or exceed the standards established in the capital improvements element required by s. 163.3177 and are available when needed for the development, or that development orders and permits are conditioned on the availability of these public facilities and services necessary to serve the proposed development. Not later than 1 year after its due date established by the state land planning agency's rule for submission of local comprehensive plans pursuant to s. 163.3167(2), a local government shall not issue a development order or permit which results in a reduction in the level of services for the affected public facilities below the level of services provided in the comprehensive plan of the local government.

(h) Ensure safe and convenient onsite traffic flow, considering needed vehicle parking.

Local Government Development Agreement Act

Section 163.3220, F.S. The Legislature finds and declares that:

(2)(a) The lack of certainty in the approval of development can result in a waste of economic and land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development, and discourage commitment to comprehensive planning.

(b) Assurance to a developer that upon receipt of his or her development permit or brownfield designation he or she may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring there are adequate capital facilities for the development, encourages private participation in comprehensive planning, and reduces the economic costs of development.

(3) In conformity with, in furtherance of, and to implement the Local Government Comprehensive Planning and Land Development Regulation Act and the Florida State Comprehensive Planning Act of 1972, it is the intent of the Legislature to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development.

**Response: The proposed Project has been coordinated with various federal, state, and local agencies during the planning process. The Project meets the primary goal of the State Comprehensive Plan through preservation and protection of the environment.**

***F.S. Chapter 187, State Comprehensive Plan***

The state comprehensive plan provides basic policy direction to all levels of government regarding the orderly social, economic, and physical growth of the state. The goals, objectives, and policies of the state comprehensive plan are statewide in scope and are consistent and compatible with each other. The statute provides direction for the delivery of governmental services, a means for defining and achieving the specific goals of the state, and a method for evaluating the accomplishment of those goals.

**Response: The proposed Project has been coordinated with various federal, state, and local agencies during the planning process. The Project meets the primary goal of the State Comprehensive Plan through preservation and protection of the environment.**

***F.S. Chapter 252, State Emergency Management Act***

The state of Florida is vulnerable to a wide range of emergencies, including natural, technological, and manmade disasters and this vulnerability is exacerbated by the tremendous growth in the state's population, especially the growth in the number of persons residing in coastal areas, in the elderly population, in the number of seasonal vacationers, and in the number of persons with special needs. This chapter directs the state to reduce the vulnerability of its people and property to natural and manmade disasters; prepare for, respond to and reduce the impacts of disasters; and decrease the time and resources needed to recover from disasters. Disaster mitigation is necessary to ensure the common defense of Floridians' lives and to protect the public peace, health, and safety. The policies provide the means to assist in the prevention or mitigation of emergencies that may be caused or aggravated by the inadequate planning or regulation of facilities and land uses. State agencies are directed to keep land uses and facility construction under continuing study and identify areas that are particularly susceptible to natural or manmade catastrophic occurrences.

**Response: This Project is a restoration project and provides increased ability to store water in the natural system during hurricanes or floods. All structures will be built to federal and state standards. This Project would be consistent with the efforts of the Division of Emergency Management.**

***F.S., Chapter 253, State Lands***

The Board of Trustees of the Internal Improvement Trust Fund (Trustees) is vested and charged with the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by the state. Lands acquired for preservation, conservation, and recreation serve the public interest by contributing to the public health, welfare, and economy. In carrying out the requirements of this statute, the Trustees are directed to take necessary action to fully: conserve and protect state lands; maintain natural conditions; protect and enhance natural areas and ecosystems; prevent damage and depredation; and preserve archaeological and historical resources. All submerged lands are considered single-use lands to be maintained in natural condition for the propagation of fish and wildlife and public recreation. Where multiple uses are permitted, ecosystem integrity, recreational benefits, and wildlife values are conserved and protected.

No lease of the type covered by this law shall be granted, sold, or executed south of 26° north latitude off Florida's west coast and south of 27° north latitude off Florida's east coast ... After July 31, 1990, no oil or natural gas lease shall be granted, sold, or executed covering lands located north of 26°00'00" north latitude off Florida's west coast to the western boundary of the state bordering Alabama ... or located north of 27°00'00" north latitude off Florida's east coast to the northern boundary of the state bordering Georgia ...

**Response: The proposed Project would conserve, protect, restore, and enhance natural conditions within state lands. This project would make a positive contribution to preserving water, fish and wildlife, cultural, and wetland resources within the State of Florida and, therefore, complies with the intent of this chapter.**

***F.S. Chapter 258, State Parks and Preserves***

The Chapter addresses the state’s administration of state parks, aquatic preserves, and recreation areas, which are acquired to emblemize the state’s natural values and to ensure that these values are conserved for all time. Parks and preserves are managed for the non-depleting use, enjoyment, and benefit of Floridians and visitors and to contribute to the state’s tourist appeal. Aquatic Preserves have exceptional biological, aesthetic, and scientific value and are set aside for being maintained essentially in its natural or existing condition. Disruptive physical activities and polluting releases are highly restricted in aquatic preserves. State managed wild and scenic rivers possess exceptionally remarkable and unique ecological, fish and wildlife, and recreational values and are designated for permanent preservation and enhancement for both the present and future.

**Response: The proposed Project includes constructing a 200,000-ac-ft storage reservoir that will store water during wet periods north of Lake Okeechobee for later use during dry periods and offer operational flexibility to draw and store water from the lake and the basin to improve its littoral ecosystems.**

**The St. Lucie Estuary is a designated Estuary of National Significance and Outstanding Florida Water. The North Fork of the St. Lucie River is a state aquatic preserve and part of Florida’s “Save Our Rivers” Program. The Indian River Lagoon is part of the National Estuary Program and an aquatic preserve. The proposed Project would improve delivery of water to the St. Lucie Estuary and Indian River Lagoon by reducing the frequency and volume of high-level flows from Lake Okeechobee, thus reducing the potential for impacts to estuarine and nearshore biota.**

**The Caloosahatchee River and Estuary are at the head of a vast estuarine and marine ecosystem that includes aquatic preserves managed by the State of Florida (e.g., Matlacha Pass, Estero Bay, and Pine Island Sound Aquatic Preserves), the Coastal and Heartlands National Estuary Partnership, and the J.N. Ding Darling National Wildlife Refuge (NWR) Complex, which includes the Caloosahatchee, Matlacha Pass, Pine Island, and Island Bay NWRs; along with numerous other state and local parks and recreation areas. The aquatic preserves are also outstanding Florida waterbodies. The proposed LOCAR would reduce the frequency and volume of high flows from Lake Okeechobee, thus reducing the impacts of low salinities on the estuarine and nearshore biota.**

**The proposed Project Area includes privately owned lands in the LOW. The proposed Project features act to rehydrate portions of the watershed, thereby increasing the spatial extent of wetlands.**

**The proposed Project would help enhance environmental conditions at state parks or aquatic preserves in the region. The proposed Project would comply with the intent of this chapter.**

***F.S. Chapter 259, Land Acquisition for Conservation or Recreation***

This chapter addresses public ownership of natural areas for purposes of maintaining the state’s unique natural resources; protecting air, land, and water quality; promoting water resource development to meet the needs of natural systems and citizens; promoting restoration activities on public lands; and providing lands for natural resource-based recreation. Lands are managed to protect or restore their natural resource values, and provide the greatest benefit, including public access, to the citizens of this state.

**Response: The potentially affected property is currently in private ownership.**

***F.S. Chapter 260 Florida Greenways and Trails Act***

A statewide system of greenways and trails is established to conserve, develop, and use the natural resources of Florida for healthful and recreational purposes. These greenways and trails provide open space benefiting environmentally sensitive lands and wildlife and provide people with access to healthful outdoor activities. The greenways and trails serve to implement the concepts of ecosystem management while providing, where appropriate, recreational opportunities such as horseback riding, hiking, bicycling, canoeing, jogging, and historical and archaeological interpretation.

**Response: The potentially affected property is currently in private ownership.**

***F.S. Chapter 267, Florida Historical Resources Act***

The management and preservation of the state's archaeological and historical resources are addressed by this chapter. This chapter recognizes the state's rich and unique heritage of historical resources and directs the state to locate, acquire, protect, preserve, operate, and interpret historical and archeological resources for the benefit of current and future generations of Floridians. Objects or artifacts with intrinsic historical or archeological value located on, or abandoned on, state-owned lands or state-owned submerged lands belong to the citizens of the state. The state historic preservation program operates in conjunction with the National Historic Preservation Act of 1966 to require state and federal agencies to consider the effect of their direct or indirect actions on [significant] historical and archeological resources. These resources cannot be destroyed or altered unless no prudent alternative exists. Unavoidable impacts must be mitigated.

**Response: The Corps consulted under Section 106 of the NHPA with the SHPO, MTI, STOF, Seminole Nation of Oklahoma, and Thlopthlocco Tribal Town.**

***F.S. Chapter 288, Commercial Development and Capital Improvement***

The statutory framework promotes and develops the general business, trade, and tourism components of the state economy. The chapter includes requirements to protect and promote the natural, coastal, historical, and cultural tourism assets of the state; foster the development of nature-based tourism and recreation; and upgrade the image of Florida as a quality destination. Natural resource-based tourism and recreational activities are critical sectors of Florida's economy. The needs of the environment must be balanced with the need for growth and economic development.

**Response: The proposed Project would be compatible with tourism for this area and, therefore, is consistent with the goals of this chapter.**

***F.S. Chapter 334, Florida Transportation Code***

The chapter addresses the state's policy concerning transportation administration. It establishes the responsibilities of the state, counties, and municipalities in the planning and development of the transportation systems serving the people of the state and to assure the development of an integrated, balanced statewide transportation system. This is necessary for the protection of public safety and general welfare and for the preservation of all transportation facilities in the state.

**Response: No public transportation systems would be impacted by this Project.**

***F.S. Chapter 339, Transportation Finance and Planning***

The chapter addresses the finance and planning needs of the state's transportation system.

**Response: No public transportation systems would be impacted by this Project.**

***F.S. Chapter 373, Florida Water Resources Act of 1972***

The waters of the state of Florida are managed and protected to conserve and preserve water resources, water quality, and environmental quality. This chapter addresses sustainable water management; conservation of surface and ground waters for full beneficial use; preservation of natural resources, fish, and wildlife; protecting public land; and promoting the health and general welfare of Floridians. The state manages and conserves water and related natural resources by determining whether activities will unreasonably consume water, flood properties, degrade water quality, or adversely affect environmental values.

Specifically, under Part IV of Chapter 373, FDEP, water management districts, and delegated local governments review and take agency action on wetland resource, environmental resource, and stormwater permit applications, which address the construction, alteration, operation, maintenance, abandonment, and removal of any stormwater management system, dam, impoundment, reservoir, or appurtenant work or works, including dredging, filling and construction activities in, on, and over wetlands and other surface waters.

**Response: The proposed Project includes constructing a storage reservoir that can capture approximately 200,000 ac-ft of water that currently flows from Lake Okeechobee to tide in the St. Lucie and Caloosahatchee Estuaries. The Project will not adversely impact water quality.**

**The proposed Project incorporates restoration components primarily intended to benefit freshwater wetlands and estuarine resources by distributing freshwater flows through the LOW. The goals and objectives of this Project are to improve habitat conditions for native wildlife species. Impacts of this Project have been detailed within an EIS and in the Section 404(b)(1) CWA Evaluation (Subsection C.4.39). This Project is in compliance with the intent of this chapter.**

**The non-federal sponsor for this Project is the SFWMD, which is the state agency responsible for implementing this statute. The Corps and SFWMD have coordinated planning efforts to ensure compatibility with established policies. The Project is consistent with the goals of this chapter.**

***F.S. Chapter 375, Outdoor Recreation and Conservation Act of 1963***

The chapter requires the FDEP to develop a comprehensive multipurpose outdoor recreation plan in coordination with other governmental entities, including the SFWMD. The purpose of the plan is to document recreational supply and demand, describe current recreational opportunities, estimate the need for additional recreational opportunities, and propose the means to meet the identified needs.

**Response: The potentially affected property is currently in private ownership. This Project complies with the chapter.**



***F.S. Chapter 376, Pollutant Discharge Prevention and Control Act***

Regulating the transfer, storage, and transportation of pollutants, and the cleanup of pollutant discharges is essential for maintaining the coastal waters, estuaries, tidal flats, beaches, and public lands adjoining the seacoast in as close to a pristine condition as possible. The preservation of the seacoast as a source of public and private recreation and the preservation of water and certain lands are matters of the highest urgency and priority. This chapter provides a framework for the protection of the state's coastline from spills, discharges, and releases of pollutants as a result of the transfer, storage, and transportation of such products. The release of pollutants into or upon any coastal waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of the state is prohibited. The chapter requires hazards and threats of danger and damages resulting from any pollutant discharge to be evaluated; requires the prompt containment and removal of pollution; provides penalties for violations; and ensures the prompt payment of reasonable damages from a discharge. Portions of Chapter 376, F.S., complement the national contingency plan portions of the federal Water Pollution Control Act.

**Response: The contract specifications would prohibit the contractor from dumping oil, fuel, or hazardous wastes in the work area and would require that the contractor adopt safe and sanitary measures for the disposal of solid wastes. A spill prevention plan would be required.**

***F.S. Chapter 377, Energy Resources***

The chapter addresses the regulation, planning, and development of the energy resources of the state. The chapter provides policy to conserve and control the oil and gas resources in the state, including products made therefrom and to safeguard the health, property, and welfare of Floridians. The FDEP is authorized to regulate all phases of exploration, drilling, and production of oil, gas, and other petroleum products in the state. The chapters describe the permitting requirements and criteria necessary to drill and develop for oil and gas. FDEP rules ensure that all precautions are taken to prevent the spillage of oil or any other pollutant in all phases of extraction and transportation. The state explicitly prohibits pollution resulting from drilling and production activities. No person drilling for or producing oil, gas, or other petroleum products may pollute land or water; damage aquatic or marine life, wildlife, birds, or public or private property; or allow any extraneous matter to enter or damage any mineral or freshwater-bearing formation. Penalties for violations of any provisions of this chapter are detailed.

Not approved as enforceable policy: Sections 377.06, .24(9), and .242(1)(a)5. All deal with regulation of oil and gas resources.

**Response: This chapter does not apply. This Project does not involve the exploration, drilling, or production of gas, oil, or petroleum products.**

***F.S. Chapter 379, Fish and Wildlife Conservation Commission***

The framework for the management and protection of the state of Florida's wide diversity of fish and wildlife resources are established in this statute. It is the policy of the state to conserve and wisely manage these resources. Particular attention is given to those species defined as being endangered or threatened. This includes the acquisition or management of lands important to the conservation of fish and wildlife. This chapter contains specific provisions for the conservation and management of marine fisheries resources. These conservation and management measures permit reasonable means and quantities of

annual harvest, consistent with maximum practicable sustainable stock abundance, as well as ensure the proper quality control of marine resources that enter commerce.

This chapter also supports and promotes hunting, fishing, and the taking of game opportunities in the State. Hunting, fishing, and the taking of game are considered an important part in the state's economy and in the conservation, preservation, and management of the state's natural areas and resources.

Sections 379.2511 (lease of state-owned water bottoms for growing oysters and clams) and 379.362 (wholesale and retail saltwater products dealers; regulation), F.S., are not approved as enforceable policy.

**Response: The goals and objectives of this Project are to improve habitat conditions for native wildlife species. This Project complies with the intent of this chapter.**

**The proposed project would help improve ecological conditions in the Northern Estuaries. Implementation of the Project would provide direct positive impacts on saltwater resources within the Caloosahatchee Estuary and St. Lucie Estuary by reducing the frequency and volume of high-level flows from Lake Okeechobee and improve the salinity balance. This will benefit seagrass, oysters, fish, and wildlife. Based on the overall impacts, the Project is consistent with the goals of this chapter.**

**The proposed Project would have a long-term beneficial effect on freshwater aquatic life and wildlife. The proposed Project would increase foraging opportunities for wading birds and other wildlife within the proposed Project Area. The Project would have a long-term beneficial effect on freshwater aquatic life and wildlife within the Caloosahatchee River and St. Lucie River through attenuation of peak high flows during the wet season, thus improving the salinity envelope for these species. The proposed Project would rehydrate portions of the watershed and add wetland habitat and is expected to significantly improve conditions for apple snails, fish, amphibians, alligators, and wading bird species throughout much of the Study Area. The proposed Project is consistent with the intent of this chapter.**

#### ***F.S. Chapter 380, Land and Water Management***

Land and water management policies are established to protect natural resources and the environment; and to guide and coordinate local decisions relating to growth and development. The statute provides that state land and water management policies, to the maximum possible extent, be implemented by local governments through existing processes for the guidance of growth and development and that all the existing rights of private property be preserved in accord with constitutions of this state and of the United States. The chapter establishes the Areas of Critical State Concern designation, the Florida Communities Trust as well as the Florida Coastal Management Act. The Florida Coastal Management Act provides the basis for the Florida Coastal Management Program which seeks to protect the natural, commercial, recreational, ecological, industrial, and aesthetic resources of Florida's coast.

Not approved as enforceable policy: Section 380.23(3)(d). [consistency review of] federal activities within the territorial limits of neighboring states when the Governor and the department determine that significant individual or cumulative impact to the land or water resources of the state would result from the activities.

**Response: The proposed Project incorporates restoration components primarily intended to benefit freshwater wetlands and estuarine resources by distributing freshwater flows through the LOW. The**

**goals and objectives of this Project are to improve habitat conditions for native wildlife species. Impacts of this Project have been detailed within an EIS. This Project complies with the chapter.**

***F.S. Chapter 381, Public Health: General Provisions***

The chapter establishes public policy concerning the state's public health system, which is designated to promote, protect, and improve the health of all people in the state.

Enforceable policy includes only Sections 381.001 Legislative intent; public health system; 381.0011 Duties and powers of the Department of Health.; 381.0012 Enforcement authority; 381.006 Environmental health; 381.0061 Administrative fines; 381.0065 Onsite sewage treatment and disposal systems; regulation; 381.0066 Onsite sewage treatment and disposal systems; fees; and, 381.0067 Corrective orders; private and certain public water systems and onsite sewage treatment and disposal systems.

**Response: This Project would not affect the state's public health system and, therefore, this chapter is not applicable.**

***F.S. Chapter 388, Mosquito Control***

Mosquito control efforts of the state are to achieve and maintain such levels of arthropod control as will protect human health and safety and foster the quality of life of the people, promote the economic development of the state, and facilitate the enjoyment of its natural attractions by reducing the number of pestiferous and disease-carrying arthropods. It is the policy of the state to conduct arthropod control in a manner consistent with protection of the environmental and ecological integrity of all lands and waters throughout the state.

**Response: The proposed Project would not further the propagation of mosquitoes or other pest arthropods. The Project complies with the chapter.**

***F.S. Chapter 403, Florida Air and Water Pollution Act***

Florida Air and Water Pollution control policies conserve state waters; protect and improve water quality for consumption and for the propagation of fish and wildlife; and maintain air quality to protect human health and plant and animal life. This chapter provides wide-ranging authority to address various environmental control concerns, including air and water pollution; electrical power plant and transmission line siting; the Interstate Environmental Control Compact; resource recovery and management; solid and hazardous waste management; drinking water protection; pollution prevention; ecosystem management; and natural gas transmission pipeline siting.

Not approved as enforceable policy: subsections 403.7125(2) and (3), F.S.

(2) The owner or operator of a landfill ... shall establish a fee, or a surcharge on existing fees or other appropriate revenue-producing mechanism, to ensure the availability of financial resources for the proper closure of the landfill.

(3) An owner or operator of a landfill ... may provide financial assurance to the department in lieu of the requirements of subsection (2).

**Response: An EIS addressing Project impacts has been prepared and would be reviewed by the appropriate resource agencies, including the FDEP. Environmental protection measures would be implemented to ensure that no lasting adverse effects on water quality, air quality, or other environmental resources would occur. The Project complies with the chapter.**

***F.S. Chapter 553, Building Construction Standards***

The chapter addresses building construction standards and provides for a uniform Florida Building Code.

Enforceable policy includes only Sections 553.73 (Florida Building Code) and 553.79 (Permits; applications; issuance; inspections).

**Response: An EIS addressing Project impacts has been prepared and would be reviewed by the appropriate resource agencies, including the FDEP. Environmental protection measures would be implemented to ensure that no lasting adverse effects on water quality, air quality, or other environmental resources would occur. WQC would be sought from the state prior to construction. The Project complies with the chapter.**

***F.S. Chapter 582, Soil and Water Conservation***

It is the state's policy to promote the appropriate and efficient use of soil and water resources, protect water quality, prevent floodwater and sediment damage, preserve wildlife, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state. Farm, forest, and grazing lands are among the basic assets of the state; and the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people. These measures help to preserve state and private lands, control floods, maintain water quality, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife and protect wildlife habitat, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

**Response: Project construction and implementation would include appropriate erosion control plans and measures to ensure compliance with the intent of the chapter.**

***F.S. Chapter 597, Florida Aquaculture Policy Act***

The chapter establishes public policy concerning the cultivation of aquatic organisms in the state. The intent is to enhance the growth of aquaculture, while protecting Florida's environment. This includes a requirement for a state aquaculture plan which provides for the coordination and prioritization of state aquaculture efforts, the conservation and enhancement of aquatic resources, and which provides mechanisms for increasing aquaculture production for the creation of new industries, job opportunities, income for aquaculturists, and other benefits to the state.

**Response: The proposed Project does not include aquaculture activities and, therefore, this chapter does not apply.**

### C.3.6 Statement of Findings Executive Order 11988 and 13690

#### C.3.6.1 Floodplain Determination

LOCAR is in the coastal state of Florida but not within a coastal zone. The proposed Lake Okeechobee Component A Reservoir (LOCAR) is 12,316 acres sited in an extensively drained and altered Zone A, 100-year, riverine floodplain located in Highlands County, Florida. The project area is interspersed with canals (C-41A, C-38) that capture and redirect flow; gated spillways to manage releases; and infrastructure to hold and route precipitation.

Land adjacent to and in the proposed project vicinity is in agricultural and livestock production with minimal flood hazards, low erosion potential and minimal elevation changes. Current use, which is expected to continue after LOCAR is constructed and operational, are not critical actions for which any level of flooding would be too great. There are no sensitive or irreplaceable resources, structures, utilities transportation corridors, functions, or concerns in the area; that could lead to catastrophic consequences if impacted; with potential for cascading damage or disruption; or that may affect human safety, health, or welfare.

#### C.3.6.2 Practicable Alternatives to Location in a Floodplain

Project sites in central and south Florida were considered within the context of project objectives, practicability, and Comprehensive Everglades Restoration Plan authorizing language. The recommended project area has sufficient, undeveloped property that can be economically converted to a reservoir; is accessible to Lake Okeechobee and the St. Lucie and Caloosahatchee estuaries and can support recovery of those ecosystems; has an adequate and consistent water supply; and would result in minimal social disruption. This project is not a critical activity for which any flooding would be too great or unacceptable nor does it impact critical activities.

Other alternatives considered for retaining water for water management and supply were determined to be impractical due to negative resources impacts, technical challenges, expense, or being ineffectual. Other alternative actions considered include dredging Lake Okeechobee, deep injection wells, dispersed water management, wetland attenuation features, and aquifer storage/recovery wells. LOCAR's impacts and performance when compared to other options led to its selection as the recommended plan.

| Feature  | Alternative 1 | Alternative 2 | Alternative 3 |
|--|---------------|---------------|---------------|
| Water storage capacity (acre-feet)                       | 200,000       | 200,000       | 200,000       |
| Land area of reservoir site (acres)                      | 13,000        | 20,500        | 14,900        |
| Average storage depth (feet)                             | 18            | 12            | 16            |
| Number of reservoir inflow pump stations (total number)  | 2             | 3             | 3             |
| Total reservoir inflow capacity (cubic feet per second)  | 1,500         | 1,500         | 1,500         |
| Total reservoir outflow capacity (cubic feet per second) | 3,000         | 3,000         | 3,000         |

LOCAR Alternatives

### **C.3.6.3 Compliance with Applicable Federal, State and Local Floodplain Protection Standards**

The proposed action conforms with federal, State of Florida and local floodplain protection standards.

### **C.3.6.4 Floodplain Criteria**

The floodplain determination sourcing is the November 18, 2015, Federal Emergency Management Agency Flood Insurance Rate Maps. The current freeboard value of 2-feet plus 1-percent-annual-chance-floodplain is assumed until the project Planning, Engineering and Design (PED) phase. This value is in keeping with Guidelines for Implementing E.O. 11988, Floodplain Management, and E.O. 13690, Section 1.B.3 Freeboard Value Approach for non-critical actions in riverine areas prone to flood hazards. During PED, Federal Flood Risk Management Standard (FFRMS) flood elevations will be evaluated using the Guidelines for Implementing E.O. 11988, Floodplain Management, and E.O. 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input, October 8, 2015, or more current guidance.

### **C.3.6.5 Public Review**

LOCAR, including descriptions of floodplain impacts, was subject to public scoping, public meetings sharing the proposed alternatives, and coordination with local, state, and federal agencies, landowners, the public and tribes in keeping with National Environmental Policy Act requirements. Scoping is described in Appendix A, Public Scoping Report for North of Lake Okeechobee Storage Reservoir Section 203 Study, October 2023. The public was given a second opportunity for review announced by a Notice of Availability published in the Federal Register on 26 October 2023 and through public meetings. The reservoir concept was also coordinated as part of the Central and Southern Florida Project Comprehensive Review Study, Final Integrated Feasibility Report and Programmatic Environmental Impact Statement, April 1999, and Lake Okeechobee Watershed Restoration Project, June 2022.

### **C.3.6.6 Impacts of the Proposed Action on the Floodplain**

The primary impact of LOCAR is the conversion of 12,316 acres of riverine floodplain to an open water reservoir and project construction.

Currently, the surrounding floodplain is managed to capture and store precipitation in agricultural impoundments. The water is used in agriculture and livestock production or passively recharges the groundwater. High flows, generally associated with precipitation and storms, is captured in local canals, and transferred to the Kissimmee River and Lake Okeechobee. These functions would not be altered, except where LOCAR captures and stores precipitation normally falling within the project footprint.

Construction and operation of the LOCAR is unlikely to affect the natural or beneficial values of the existing floodplain. LOCAR has been designed to capitalize on existing infrastructure, minimize new infrastructure outside of the reservoir footprint, and minimize impacts to water management operations within the study area. It is not expected that the presence of LOCAR would encourage direct or indirect development of nearby property.

### **C.3.6.7 Involved Agencies and Individuals**

Reference Appendix A, Final Environmental Impact Statement for North of Lake Okeechobee Storage Reservoir Section 203 Study, January 2024 for descriptions of public engagement and participants.

### **C.3.6.8 Other Relevant Information**

LOCAR is an individual, non-repetitive action with limited, local impacts that does not warrant a general area review.

National Flood Insurance Program criteria were used in assessing this action.

Public scoping, agency coordination, and public review of the proposed action did not identify irremediable concerns during National Environmental Policy Act scoping and review. The NEPA documentation and Feasibility Study will be available to the public for additional scrutiny during the 30-day waiting period after NEPA documentation finalization.

LOCAR was designed to minimize floodplain effects by capturing and managing precipitation that would normally be retained and recharged by the floodplain. The project does not encourage floodplain development or regional land use changes; does not affect flood loss risks or flood impacts on human safety, health, and welfare. LOCAR water management will mimic natural and beneficial floodplain values in areas converted to open water and maintain current water management regimes in the adjacent floodplain. Beneficial floodplain functions will be maintained by LOCAR and would not be interrupted in the surrounding area.