



U.S. Department
of Transportation

Federal Highway
Administration

Florida Division Office

223 West College Avenue
Tallahassee, Florida 32301

March 2, 1983

IN REPLY REFER TO: HEC-FL

Ms. Victoria J. Tschinkel
Florida Department of Environmental Regulation
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32301

Dear Ms. Tschinkel:

Subject: Florida - Coastal Zone Consistency Determination

We have received your January 28, 1983 letter discussing the consistency requirements of the Coastal Zone Management Act (15 CFR 930). As mentioned in your letter, we have been working with you and members of your staff to develop procedures for the satisfactory implementation of both 15 CFR 930 and Florida's Coastal Management Program (CMP). We agree that the November 30th meeting involving representatives of your agency, the Florida Department of Transportation (FDOT), and the Federal Highway Administration (FHWA) was both beneficial and helpful. This meeting provided all three agencies the opportunity to discuss their concerns and provide input for the satisfactory implementation of Florida's CMP.

We have reviewed the issues identified in your January 28 letter which will be incorporated into a future Memorandum of Understanding (MOU) between your agency, FDOT, and FHWA. We agree with you that a decision on coastal zone consistency should be reached for Federal-aid highway projects during the A-95 Advance Notification stage, in accordance with Subpart F of 15 CFR 930. If the appropriate State agency finds that a proposed project is not consistent with the State's coastal zone plan, Subpart F of 15 CFR 930 requires the responsible agency (DER in Florida) to describe how the proposed project is inconsistent with specific elements of the management program.

In your January 28 letter, you indicated that at the Advance Notification stage, "many comments can be offered which address any specific concerns in the project area as well as typical potential problems which usually attend roadway construction and operation anywhere." You also indicated in your letter that "the consistency statement will be accompanied by the comments and concerns raised during the interagency review, which should

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be evaluated and resolved in the environmental document and project design phases." We agree that all appropriate agencies should respond to the A-95 Advance Notification and should provide their comments on the proposed highway project. In addition, we agree that both FDOT and FHWA should evaluate and resolve these comments during the development of the environmental document. However, the review of A-95 Advance Notifications and determinations of coastal zone consistency are two separate and distinct functions. Therefore, it is not appropriate to include A-95 review comments as a part of coastal zone consistency letters. A-95 comments on individual highway projects should be provided in a separate letter. In accordance with Subpart F of 15 CFR 930, the coastal zone consistency letters should only contain comments to describe how the proposed project is inconsistent with specific elements of the management program; and alternative measures (if they exist) which, if adopted by the applicant agency, would permit the proposed project to be conducted in a manner consistent with the management program.

This office cannot meet our responsibilities as a funding agency and cannot meet the requirements of Subpart F of 15 CFR 930 unless there is a complete separation of A-95 comments and consistency comments. The regulations prohibit this office from authorizing Federal-aid funds unless a project has been determined to be consistent with the Coastal Zone Management Program. This requires a clear and concise consistency determination, as outlined in the regulations, so that this office can identify whether the project is consistent or not consistent. We cannot provide funds in instances where the consistency determination is vague, such as when we receive a consistency letter that reads "the project is consistent; however, in order to assure consistency, the following pages of comments must be considered in further project development." We have no idea what statements of this nature mean. What violation of the Coastal Zone Plan caused the comments to be written? Do all comments have to be incorporated into the project in order for the project to be consistent? If appropriate consideration is given to all comments but none are incorporated into the project, is the project inconsistent? Are there just some of the comments that must be fully incorporated in order for the project to be consistent?

In summary, your January 28, 1983 letter indicates that you still desire to include A-95 comments as a part of your consistency determination. As indicated above, this is not in accordance with the requirements of subpart F of 15 CFR 930 and is unacceptable to this office since we cannot comply with the requirements of the regulation to provide funds for projects unless there is a clear and concise consistency determination.

Sincerely yours,

P. E. Carpenter

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Division Administrator