Appendix B

Review of Regulatory Requirements and Coordination

US ARMY CORPS OF ENGINEERS
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

REVIEW OF REGULATORY REQUIREMENTS and COORDINATION

for the

Wastewater Reuse Pilot Project -Miami-Dade

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COMPREHENSIVE EVERGLADES
RESTORATION PLAN

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Section 1 Introduction

Timely meeting applicable regulatory requirements, including the processing and approval of all required permits, is critical to the design, construction, and operation of the proposed CERP Wastewater Reuse Technology Pilot Project (WRTP Project). To that end, the Corps and District (SFWMD), as Federal and Local Project Sponsor's respectively, have assembled a Project Delivery Team (PDT) which includes representatives from federal, state, and local agencies with legal jurisdiction, and/or individuals who possess special expertise with respect to potential WRTP Project impacts. The membership includes representatives from the Environmental Protection Agency (EPA), Florida Department of Environmental Protection (Department), United States Geological Service (USGS), United States Fish and Wildlife (USFWS), and Miami-Dade County.

In order to ensure that all required authorizations are processed and approved in a coordinated and timely manner, the WRTP Project PDT has included the *Identification of Necessary Permits* (presently WIP 37.3.6.1.1), and *Identification and Review of Applicable Regulations* (presently WIP 37.3.3.1.1.1) as project activities within the WRTP Project Management Plan (PMP). The text which follows is intended to summarize the results of the aforementioned regulatory review.

In order to provide the most concise evaluation of probable regulatory requirements and coordination, certain assumptions regarding the proposed WRTP Project have been made based on the PMP, as well as direction provided by the PDT. The most important of these being that the proposed WRTP Project will be constructed in south Miami-Dade and will discharge either directly to wetlands (estuarine or freshwater), or to an existing Class III conveyance canal. Substantial deviation from the aforementioned assumptions will necessitate revisiting the text that follows.

Section 2 Federal Authorizations

The proposed WRTP Project will require several Federal, and/or Federally delegated, authorizations prior to initiating construction and/or operation (C&O). The required Federal authorizations (e.g. Section 404 Permitting, and Section 7 Endangered Species Act Coordination) are discussed in the sub-sections which immediately follow this section. In order to eliminate duplication within this report, many of the federal regulatory programs, which have been delegated to the state (e.g. NPDES), have been included under the section entitled "State of Florida Authorizations, Coordination and Permits" (see Section 3 below).

Section 2.1 Water Resource Development Act (WRDA)

The proposed WRTP Project will be required to address the requirements of the Water Resource Development Act of 2000 (WRDA 2000), which authorized it. WRDA 2000 contains numerous provisions relevant to water quality and permits. Specifically, in accordance with Section 601 (b)(1)(A), the proposed WRTP Project will need to be implemented in a manner which ensures "the protection of water quality in, the reduction of the loss of fresh water from, and the improvement of the environment of the South Florida ecosystem." Additionally, the proposed WRTP Project will need to be implemented to "achieve and maintain the benefits to the natural system and human environment described in the Plan" as long as the project is authorized.

It is important to note also that Section 601(b)(2)(A)(i-ii), of the WRDA 2000, states "In carrying out activities described in CERP, the Secretary (of the Army) shall take into account the protection of water quality by considering applicable State water quality standards; and include such features as the Secretary determines are necessary to ensure that all ground water and surface water discharges from any project feature authorized by this subsection will meet all applicable water quality standards and applicable water quality permitting requirements."

The aforementioned requirements of WRDA 2000 were acknowledged in a March 5, 2002 implementation guidance memorandum form the Corps's Chief of Planning and Policy Division, in Washington, to the Commander of the Corp's South Atlantic Division. The memorandum states that "The District must develop procedures and process for assuring that each existing and future Project Implementation Reports comply with subsections 601(h)(4)(A)(iii)(I), (II), (III), IV, (V), (VI), (VII), and (VIII) of WRDA 2000. Presumably, the intent expressed in this memorandum would also apply to PPDRs.

Section 2.2 Section 7 Endangered Species Act Consultation

As described in Section 5.2.6 of the MPMP, Section 7(a)(2) of the Endangered Species Act (16 U.S.C. 1531 et seq.) requires that Federal actions do not jeopardize the continued existence of a federally listed species nor modify their designated critical habitat. The Corps determination of affect, either "adversely affect" or not likely to adversely affect", will be based on the best scientific and/or commercial available data, and will be made following informal consultation with United States Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NMFS). The informal consultation will be designed to accomplish the following;

1) Identify listed or proposed species or designated or proposed critical habitat which may be located within (or make use of) the study area, and;

2) Determine what effect the action may have on these species or critical habitats; (3) explore ways to modify the action to reduce or remove adverse effects to the species or critical habitats, and;

3) Determine the need to enter into formal consultation for listed species or designated critical habitats, or conference for proposed species or proposed critical habitats; and

4) Explore modifications which may benefit the species.

The informal consultation will culminate in preparation of a Biological Assessment (BA), which may be included in the PPDER. The BA will have to be submitted at a mutually agreeable time, or no more than 180 calendar days after receipt of a species list from the Service(s). The BA describes the project, evaluates it's effect on listed species or critical habitat, describes measures to avoid, reduce, or eliminate adverse effects or enhance benefits, and states the Corps' official determination. The determination will be based on an impact evaluation which should include an evaluation of direct, indirect, and cumulative effects.

Formal consultation will be initiated, at the Corps requests, after determining the proposed action may affect listed species or critical habitat. Alternatively, formal consultation will be initiated if the USFWS (through their informal consultation) does not concur with a finding that the proposed action is "not likely to adversely affect the listed species or critical habitat."

Should formal consultation be initiated, the USFWS will formulate a biological opinion as to whether the action, taken together with cumulative effects is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. The USFWS will also determine the amount or extents of anticipated incidental take in an incidental take statement included in the biological opinion.

Formal consultation is concluded within 90 days after its initiation unless extended in accordance with the provisions of 50 CFR § 402.14. Within 45 days after concluding formal consultation, the USFWS delivers its biological opinion. For more detailed information on the consultation process

required by the ESA, see the Endangered Species Consultation Handbook (U.S. Fish and Wildlife Service and NMFS 1998), which is posted on the World Wide Web at http://endangered.fws.gov/consultations/s7hndbk/s7hndbk.htm.

In order to ascertain whether the any listed species (or their designated critical habitat) will be adversely affected as a result of the proposed WRTP Project, representatives from the US Fish and Wildlife Service (USFWS) will be consulted to determine if federally listed species reside in the project area. As described in the Introduction, USFWS representatives are presently active members of the WRTP Project PDT, and have already begun investigating the potential involvement with listed species.

It is important to note that the potential for listed species involvement will likely become part of the Alternatives Evaluation Matrix. As such, the potential for listed species and/or their designated critical habitat could result (in and of itself, or when considered with other evaluation criteria), in the elimination of one or more alternatives from further consideration

Section 2.3 Fish and Wildlife Coordination Act (FWCA)

The central objective of the FWCA is to allow for equal consideration of wildlife conservation with other features of water resource development programs. Under provisions of the FWCA, the USFWS has the authority to investigate and report on all proposals for work and/or other related activities in or affecting the waters of the United States that are sanctioned, permitted, assisted, or conducted by the Federal government. Section 2(b) of the FWCA allows the USFWS to make recommendations to the Corps that establish measures to prevent loss of or damage to wildlife resources, as well as to provide concurrently for the development and improvement of such resources.

The Corps and the USFWS have established coordination procedures and policy for funding of USFWS involvement. The Corps provides transfer funds to support the activities of the USFWS as set forth in a Scope of Work (SOW). The SOW includes provisions for the FWS's provision of timely letters or longer reports containing USFWS recommendations. The SOW also defines the Corps' responsibilities. The SOW and funds transfer for CERP projects is renewed annually, according to needs anticipated in the PMP and as subsequently amended.

As determined in the SOW, the USFWS will provide Planning Aid Letters (PALs) or Planning Aid Reports (PARs) during the early planning phases of the PPDR, as noted above. PALs will be provided timely according to the PMP schedule. Under CERP, it is understood that FWS representatives to the PDT are team members, and as such will be aware of ongoing PDT needs for FWS input. The purpose of PALs and PARs is to identify problems and opportunities related to the conservation and enhancement of fish and wildlife resources. The USFWS may review conceptual alternatives, provide recommendations for development of new conceptual alternatives, and recommend the course for future coordination. Key objectives for these reporting documents are to ensure that a process for promoting conservation and restoration of "unique or scarce" resources and/or habitats is introduced early in the planning process and carried through detailed design, construction, and post-construction monitoring.

In addition to the PALs, the USFWS will draft a Coordination Act Report (CAR), which is also known as a 2(b) Report. The purpose of this report is to provide the views and recommendations of the Secretary of the Interior in his/her report to Congress prior to Congressional authorization and funding. Therefore, the CAR is provided as a Draft report, prior to the deadline for compiling the PPDR/DEIS, so that it can be considered in final recommendation of alternatives and

incorporated into the consolidated PPDR/DEIS that is printed and circulated for agency and public review. The report should document the results and findings of the Service's studies, planning, and coordination. It should recommend those actions considered necessary by the FWS to accomplish the fish and wildlife conservation goal of the FWCA. The CAR addresses all alternatives evaluated in the PPDR, but focuses on the selected plan. The draft CAR and its findings and recommendations are then available for public release during the public comment period. To the extent that the selected plan is modified as a result of the public review process, the draft 2(b) Report is revised and finalized early enough to be made an integral part of the final EIS and PPDR.

In addition to their aforementioned responsibilities, the USFWS will make recommendations during the planning process regarding mitigation of impairments to fish and wildlife habitats. Avoidance and minimization of any adverse effects is the initial focus of the Service's early planning assistance. The Programmatic EIS for the Comprehensive Plan (Corps 1999) stated that the construction features would be designed to first avoid and then minimize impacts to wetlands or other aquatic sites and natural upland habitats. The Corps concluded that separable mitigation features were not included in the Comprehensive Plan, but a commitment was made to provide separable compensatory mitigation under two conditions: (1) unavoidable impacts on "unique or scarce" habitats, or (2) impacts on existing wetland compensatory mitigation sites that were established by authorized regulatory permits.

Section 2.4 National Environmental Policy Act (NEPA) Coordination

The National Environmental Policy Act (NEPA) of 1969 contains provisions for full public disclosure, that require federal agencies to prepare documents and reports that substantiate that those agencies are acting in compliance with the letter and spirit of the act. As a federal project, the proposed WRTP Project will be subject to the requirements of NEPA. Compliance with NEPA requirements will be documented within the PPDR, and it’s integral Environmental Impact Statement (EIS) document. The coordination required by NEPA will addresses the requirements of a wide range of federal laws including; the Endangered Species Act of 1958, the National Historic Preservation Act of 1966, the Clean Water Acts of 1966 and 1972, the U.S. Fish and Wildlife Coordination Act of 1958, and more.

Section 2.5 Section 404 of the Federal Clean Water Act (CWA) Permitting

Should the proposed WRTP Project involve the placement of fill (e.g. fill for berms, discharge pipes, etc.), the project will be subject to Section 404 of the Clean Water Act (CWA). Section 404 of the CWA requires authorization from the Secretary of the Army, acting through the United States Army Corps of Engineers (ACOE), prior to the discharge of dredged or fill material into waters of the United States, whether navigable or non-navigable. It is the Corps’ present position that wetlands adjacent to waters of the United States are, due to their proximity, also subject to ACOE jurisdiction.

Some of the individual project elements associated with the proposed WRTP Project may require ACOE Dredge and Fill Permits. By way of example, any wastewater facilities to be constructed over jurisdictional wetlands, or discharge pipes into jurisdictional canals (or wetlands) will be subject to ACOE jurisdiction under Section 404 of the CWA and/or the Rivers and Harbors Act of 1899.

In order to obtain ACOE authorization, the need for the project and water dependency must be clearly demonstrated. Additionally, adverse impacts to wetlands, both direct and secondary, must be avoided to the greatest extent practicable. Following impact avoidance, impact minimization

must also be demonstrated. Although unique to CERP projects, following avoidance and minimization, mitigation need only be provided for impacts to mitigation required by prior Federal Permit.

In order to achieve timely ACOE permit issuance, the WRTP Project's Pilot Project Design Report (PPDR) will document the alternative selection process. The alternative selection process should then provide the basis for the required Avoidance and Minimization demonstration. Mitigation, whenever practicable. If a 404 permit is required, all necessary information will be provided as an integral part of the Pilot Project Design Report Phase. To this end, the Pilot Project Design Report (PPDR) will contain sufficient information to allow the Corps to fully evaluate the WRTP Project, resulting in timely 404 Permit issuance upon completion of the PPDR.

It is important to note that the ACOE does not issue Section 404 permits to itself. In light of the foregoing, should the Corps ultimately become responsible for constructing the WRTP Project, they will, in accordance with Section 404(b)1 guidelines, provide all information required to meet the intent of Section 404, including; completing an application, and public noticing procedures.

Section 2.6 National Historic Preservation Act

In order to, among other things, "foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony", and to "contribute to the preservation of nonfederally owned prehistoric and historic resources", on October 15, 1966, Congress established the National Historic Preservation Act (16 USC 470). Under Section 470a(b)(1) of the act, individual state historic preservation programs can be established to meet the intent of the NHPA. In order to provide responsible stewardship of Florida's numerous historical resources, the State of Florida has an appointed State Historic Preservation Officer (SHPO), and a federally approved State Historic Preservation program.

Prior to recommending a preferred alternative, the PDT will complete a cultural resources investigation. This investigation will include an evaluation of the impacts of alternative plans upon historical, architectural, and archaeological resources. All studies will be coordinated with the SHPO in accordance with the *National Historic Preservation Act, as amended (PL 89-665)* and the *Archeological and Historic Preservation Act, as amended (PL93-291)*. Ideally, early coordination will be initiated concurrent with public scoping.

Initially, a comprehensive archival and background review will be completed, and an historical overview will be compiled. An assessment will be made of architectural and engineering features that may be affected, and an archeological sample survey will be undertaken. Project areas will be visited to determine field conditions. The National Register eligibility of all historic properties that may be affected will be established and efforts will be made to avoid or reduce effects to National Register eligible properties. For those National Register historic properties that will be adversely affected, mitigation plans will be developed in consultation with the SHPO. Documentation will be submitted for review to the SHPO and the Federal Advisory Council on Historic Preservation (ACHP), as appropriate. All NHPA assessments and coordination should be concluded by the end of the NEPA compliance process, under the direction of a professional archeologist who is familiar with the requirements of the NHPA.

Section 3 State of Florida Authorizations, Coordination, and Permits

The State of Florida's Department of Environmental Protection (Department) has been charged with responsibility of protecting the majority of natural resources within the State of Florida, including Air and Water Quality. As such, they have several important permitting/regulatory

programs that may be applicable to the proposed WRTP Project. Some examples of potentially applicable permitting/regulatory programs are as follows; Chapters 373.1501, State Water Quality Certification, Regulation of Aquatic Preserves, Sovereign State Lands Regulation, National Pollutant Discharge Elimination System (NPDES) Permitting, UIC Permitting, Consumptive Water Use Permitting (which is typically accomplished by Florida's Water Management Districts), Domestic Wastewater Permitting (including treatment facilities and reuse facilities), and RCRA/CERCLA Regulation.

Section 3.1 Section 373.1501, Florida Statutes

The proposed WRTP Project will be subject to the requirements of Section 373.1501, F.S. Sub-part 373.1501(5)(c), F.S. requires that reasonable certainty be provided (to the Department) to document that the proposed WRTP Project will be consistent with applicable law and regulations, and can be permitted and operated as proposed. In the development of the proposed WRTP Project, the District is required to:

1. Analyze and evaluate all needs to be met in a comprehensive manner and consider all applicable water resource issues, including water supply, water quality, flood protection, threatened and endangered species, and other natural system and habitat needs.

2. Determine with reasonable certainty that all project components are feasible based upon standards engineering practices and technologies and are the most efficient and cost-effective of feasible alternatives or combination of alternatives, consistent with restudy purposes, implementation of project components, and operation of the project.

3. Determine with reasonable certainty that all project components are consistent with applicable law and regulations, and can be permitted and operated as proposed. For purposes of such determination, the District is required to convene a *pre-application conference* with all federal, state and local agencies with applicable regulatory jurisdiction. Agencies with applicable regulatory jurisdiction shall participate in the pre-application conference and provide information necessary for the District's consistency determination.

4. Provide reasonable assurances that the quantity of water available to existing legal users shall not be diminished by implementation of project components so as to adversely impact existing legal users, that existing level of service for flood protection will not be diminished outside the geographical area of the project component, and that water management practices will continue to adapt to meet the needs of the restored natural environment.

5. Ensure that implementation of project components is coordinated with existing utilities and public infrastructure and that impacts to, and relocation of, existing utility or public infrastructure are minimized.

Section 3.2 State Water Quality Certification

As a federally sponsored project, the proposed WRTP Project will, in accordance with Section 401 of the Clean Water Act (CWA), require State Water Quality Certification (WQC). Additionally, in accordance with Section 1341 of the CWA, the proposed WRTP Project shall require a State WQC prior to receiving federal licenses or permits. Based on preliminary discussions with DEP, unless there are significant dredge and fill issues, which would require a CERPRA (or EFA) Permit, the DEP can issue the WQC as part of the NPDES/Wastewater/Reuse Permit.

In order to receive State WQC, s. 373.1502(3)(b)(2), F.S. requires that "State water quality standards will be met to the maximum extent practicable", and that "Under no circumstances shall the project component cause or contribute to violation of state water quality standards."

State Surface Water Quality Standards are contained within Chapter 62-302, F.A.C., whereas State Ground Water Quality Standards are contained within Chapter 62-520, F.A.C.

Surface Water Quality Standards, by definition, include "standards composed of designated present and future most beneficial use (classification of waters), the numerical and narrative criteria applied to a specific water use or classification, the Florida antidegradation policy, and moderating provisions." In more simplistic terms, Chapter 62-302, F.A.C. provides a designated use based listing of water body classifications, and numeric and narrative surface water quality criteria to be applied to various classifications.

Class I water bodies are afforded the highest level of protection, and have been designated suitable for potable water supplies. Class II water bodies are afforded the next highest level of protection, and have been designated suitable for shellfish propagation or harvesting. Class III water bodies are afforded the next highest level of protection, and have been designated suitable for recreation, and propagation and maintenance of a healthy, well balanced population of fish and wildlife. Class IV water bodies are afforded the next highest level of protection, and have been designated suitable for agricultural water supplies. Class V water bodies are afforded the least level of protection, and have been designated suitable for navigation, utility and industrial use.

Rule 62-302.530, F.A.C. provides a table of the numeric and narrative surface water quality standards which apply to the aforementioned Classes of Waters, except within zones of mixing. In addition to the aforementioned numerical standards, Rule 62-302.700, F.A.C. provides additional (antidegredation) protection to Outstanding Florida Waters (OFWs), and Outstanding National Resource Waters. Waters within Biscayne Bay National Park, and the Biscayne Bay Aquatic Preserve are presently considered OFWs. In accordance with Chapter 62-4(2)(c) and Rule 62-302.700(8), the baseline for defining the existing ambient water quality within Outstanding Florida Waters is the year prior to the designation (1979) or the year prior to the date of the permit application, whichever is more stringent.

In addition to the additional protection afforded to OFWs, portions of Biscayne National Park described in the document entitled "Outstanding National Resource Waters Boundary Map for Everglades National Park" (June 15, 1989) have been designated as Outstanding National Resource Waters. In accordance with Rule 62-302.700(10)(d), in general, the baseline for defining the existing ambient water quality within Outstanding National Resource Waters is the five year period between March 1, 1976, and March 1, 1981.

Similar to Surface Water Quality Standards, Ground Water Quality Standards include, use based, numeric and narrative based water quality criteria. Within the study area, groundwater may be classified as either G-I, G-II, G-III, G-IV, or F-I. Class G-I applies to potable ground water, within single source aquifers, with total dissolved solid (TDS) contents less than 3,000 mg/L. Class G-II generally applies to potable ground water, within aquifers, with total dissolved solid contents less than 10,000 mg/L. Class G-III applies to non-potable ground water, within single source aquifers, with total dissolved solid contents of 10,000 mg/L (or greater). Class G-III also applies to ground water with total dissolved solid contents between 3,000 and 10,000 mg/L, which has been reclassified by the Commission as having no reasonable potential as a future source of drinking water, or has been designated by the Department as an exempted aquifer pursuant to Rule 62-

528.300(3),, F.A.C. Class G-IV applies to non-potable ground water, within confined aquifers, with total dissolved solid contents greater than 10,000 mg/L.

With exception of Class G-IV, for which the Department establishes applicable standards on a case by case basis, all aforementioned classes of groundwater must meet the criteria contained within Rule 62-520.400, F.A.C., "Minimum Criteria for Ground Water". Class G-I and G-II must also meet the criteria contained within Rule 62-520.420, F.A.C., "Standards for Class G-1 and Class G-II Ground Water".

In light of the federal requirements, state requirements, and the 2000 ACOE/SFWMD CERP design agreement, The proposed WRTP Project shall be designed so as to not cause or contribute to violation of state water quality standards. Moreover, the design of the proposed WRTP Project shall take into account the improvement and protection of water quality, and shall meet state water quality standards to the greatest extent practicable. Details on how the foregoing will be accomplished will be developed within the Pilot Project Design Report Phase, and documented within the PPDR. For the WRTP Project, the Department's shall conduct their WQC review concurrently with their review under the Department's rules on reuse (62-600, F.A.C. series). Issuance of permits under the aforementioned rules shall be considered final agency action, and shall constitute State WQC for the WRTP Project.

It is important to note that the PDT is presently looking to the Department to clearly identify the applicable water quality standards and discharge targets that will be applied to the proposed WRTP Project. The PDT is also presently looking to the Department to identify the reasonable assurances necessary to demonstrate consistency with the applicable water quality standards and discharge targets. The Department's early Identification of applicable water quality standards, discharge targets, and required reasonable assurances would be consistent with collaboration requirements within s. 373.026(8)(b), and would aid in ensuring "to the greatest extent practicable that project components will go forward as planned." It is important to note that as of this date, the Corps policy requires that the appropriate water quality certification be issued before scheduled construction, and that WQC issuance is a target for federal PPDR approval. Notwithstanding the foregoing, the Corps is presently considering modifying their policy such that a letter form the Department noting that a complete application has been filed and that permit issuance is imminent may be sufficient for initiating construction, prior to issuance of a WQC.

Section 3.3 Coastal Zone Management (CZM)

The proposed WRTP Project will need to be consistent with the Florida's Coastal Zone Management Program (CZMP). Florida's CZMP was established in order to meet the requirements of the Federal Coastal Zone Management Program (CZMP). The Federal CZMP was authorized by the Coastal Zone Management Act (CZMA) of 1972. One of stated purposes of the CZMA is to "encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs…". To that end, the CZMP's state-federal partnership leaves day-to-day management decisions at the state level within those states, such as Florida, which have approved coastal management programs. Within the State of Florida, the Florida Department of Environmental Protection (FDEP) acts as the State Clearinghouse, and is presently charged with these day-to-day decisions, including determinations of consistency with Florida's Coastal Zone Management Program (CZMP).

Florida's CZMP, which was approved in September of 1981, is based on 23 state laws and their regulations that are implemented by a network of 10 agencies. A 15-member Governor's Coastal Advisory Committee advises the Governor and the Legislature on coastal management issues and program implementation. Some of the 23 state laws incorporated into Florida's CZMP include;

Chapter 161 Beach and Shore Protection, Chapters 186 and 187 State and Regional Planning, Chapter 252 Disaster Preparation, Response, and Mitigation, and more.

Due to Florida's unique geography, which includes in excess of 8,400 miles of tidally influenced shoreline, the entire state has been determined to lie within the regulated Coastal Zone. Because the proposed WRTP Project is a Federally sponsored project, is subject to Federal regulatory requirements, and is located within the regulated Coastal Zone, the WRTP Project will be reviewed for consistency with Florida's CZMP on an individual basis. Early coordination with the FDEP should assist in timely issuance of a Coastal Zone Consistency Determination for the proposed project.

Section 3.4 Comprehensive Everglades Restoration Plan Regulation Act (CERPRA) Permitting

Sub-section 373.1502(3)(b), F.S. authorizes the Department to issue permits for the construction, operation, or maintenance of CERP project components under CERPRA unless the project component is otherwise subject to 373.4592 (EFA), s. 373.4595 (LOPA), or the DEP's rules on reuse of reclaimed water (Chapter 62-610, F.A.C.). Since the latter is applicable, CERPRA Permits will not be required.

Section 3.5 Consumptive Water Use Permitting

In accordance with s. 373.219, F.S., the Water Management District typically requires permits for the consumptive use of water. At the present time it is uncertain whether the proposed WRTP Project will require Consumptive Water Use Permits. Supplemental water for dilution, construction dewatering, and/or the witdrawl of water from a conveyance canal, as applicable, could trigger the requirements for a Consumptive Water Use Permit. Should a Consumptive Water Use Permit be required, in accordance with s. 373.323, F.S., the PDT must demonstrate that the proposed WRTP Project represents a reasonable-beneficial use (as defined in s. 373.019), will not interfere with any presently existing legal uses of water, and is consistent with the public interest. A final determination on the need for Consumptive Water Use Permits will be made later in the PPDR phase, once alternatives have been more fully developed. Since construction methods and sequencing may vary by contractor, the PDT will likely require the contractor to obtain any required temporary dewatering permits.

Section 3.6 Generic NPDES Permitting

Federal law, specifically 40 CFR 122.26(b)(14)(x), prohibits point source discharges of stormwater from certain construction activities to waters of the United States without benefit of an NPDES permit. Under the State of Florida's delegated authority to administer the NPDES program, construction activities associated with the proposed WRTP Project, can most likely be authorized under the Department's Generic Permit for Stormwater Discharge from Construction Activities that Disturb Five or More Acres of Land. The Department's Generic NPDES permitting program is administered in accordance with Chapter 62-621, F.A.C., and was authorized by s. 403.0885, F.S.

In order to utilize the generic permit, applicants must make timely submission of DEP Form 62-621.300(4)(b), the *Notice of Intent (NOI) to Use Generic Permit For Stormwater Discharge From Construction Activities That Disturb Five Or More Acres Of Land*. In addition to providing information regarding the applicant, location, activity, and discharge, applicants must abide by all conditions included within the permit including maintaining current Stormwater Pollution Prevention Plans (SWPPPs) which detail (among other things) all erosion and sedimentation controls to be utilized through the duration of construction.

It is important to note that, recent revisions to the EPA's NPDES program have reduced the threshold for requiring an NPDES Construction permit from five to one acres, with a corresponding lowering of the Generic Permit coverage to one acre. It is anticipated that reflective changes will be made in the State program, prior to construction activities associated with the proposed WRTP Project. In light of the foregoing, a NOI will likely need to be filed for the proposed WRTP Project.

Section 3.6 NPDES Permitting

In addition to the generic NPDES Permit, Section 403.0885, F.S. authorizes the Department to implement a state NPDES program, and to assume the federal NPDES permitting program from the United States Environmental Protection Agency (EPA). To that end, within Rule 62-620.100(3), F.A.C., the Department has incorporated by reference selected parts of Title 40 of the Code of Federal Regulations (CFR) dealing with NPDES permitting of domestic wastewater facilities.

The proposed WRTP Project will, in accordance with Chapter 62-620, F.A.C., undergo a review for compliance with the state administered NPDES program concurrently with its "62-600 regulation series" review, and the issued permit (or modification) will be a single combined permit. As presently conceived, the Reuse Pilot Project will be built in cooperation with the Metro Dade County Water Sewer Authority, and be constructed and permitted as a modification of their existing permitted facilities. It is important to note that, as part of the review process, the EPA will be provided an opportunity to comment on and/or object to the proposed WRTP Project. In accordance with Rule 62-620.320(10)(b), a permit (or modification) cannot be issued for the proposed project if the EPA "has objected to issuance of the permit (or modification)."

In order to achieve timely NPDES Permit issuance, the WRTP PDT will ensure that Pilot Project Design Report (PPDR) contains sufficient information to allow the Department to fully evaluate the proposed project for compliance with NPDES Operational Permit issuance criteria. Additionally, as members of the PDT, EPA and Department representatives are expected to voice early, any concerns regarding NPDES permitting.

Section 3.7 Aquatic Preserves

The legislative intent of Chapter 258, F.S., which regulates activities within designated Aquatic Preserves, is to recognize their "exceptional biological, aesthetic, and scientific value" and to ensure that the state-owned submerged lands within Aquatic Preserves are "set aside forever as aquatic preserves or sanctuaries". It is anticipated that the proposed WRTP Project will discharge to estuarine wetlands within (or adjacent to) the Biscayne Bay Aquatic Preserve. In order to address Chapter 258's "set aside" requirement, the PDT will likely need to demonstrate that the proposed WRTP Project will not adversely affect the Biscayne Bay Aquatic Preserve's exceptional biological, aesthetic, and/or scientific values.

Sub-section 258.42(1)(a), F.S. requires that the Board of Trustees maintain aquatic preserves such that "No further sale, lease, or transfer of sovereignty submerged lands shall be approved or consummated by the trustees except when such sale, lease, or transfer is in the public interest." In addition to the anticipation that any proposed activities over sovereign submerged lands will clearly be in the public interest, it is anticipated that the sale, lease, or transfer of sovereign submerged lands would not even be required. Particularly, since the proposed activities are not likely to pre-empt other uses of the submerged lands (see also Section 3.8).

In addition to the aforementioned restrictions, dredging and filling within Aquatic Preserves is restricted by s. 258.42(3)(a), F.S. It is important to note however that this restriction does not extend to alterations which, in the opinion of the Trustees, are necessary to enhance the quality or

utility of the preserve or the public health, such as those likely to be associated with the proposed WRTP Project.

Perhaps the largest impact associated with conducting activities within Aquatic Preserves is the Special Protection afforded to them within Rule 62-302.700, F.A.C. Specifically, Rule 62-302.700, F.A.C. states that "It shall be the Department policy to afford the highest protection to Outstanding Florida Waters (OFWs) and Outstanding Natural Resource Waters." Because Aquatic Preserves are, by definition, also classified as Outstanding Florida Waters (Rule 62-302.700(2)(f), F.A.C.), the proposed WRTP Project will be designed to minimize potential water quality impacts to the greatest extent practicable. Temporary impacts to water quality associated with the proposed WRTP Project can likely be authorized if the Department determines that they meet the criteria within Rule 62-4.242(2)(a)2, F.A.C.

Section 3.8 Sovereign State Lands Regulation

As described in s. 253.03, F.S., the Board of Trustees of the Internal Improvement Trust Fund of the State is "vested and charged with the acquisition, administration, management, control, supervision, conservation, protection, and disposition" of sovereign state lands. As such Chapter 253 effectively regulates activities over Sovereign state lands from a proprietary standpoint. To that end, s. 253.77(1), F.S. states that "A person may not commence any excavation, construction or other activity of the state, the title of which is vested in the Board of Trustees of the Internal Improvement Trust Fund under this chapter, until the person has received the required lease, license, easement, or other form of consent authorizing the proposed use."

It is anticipated that the proposed WRTP Project may involve minor activities over Sovereign State Lands. Some examples of this may include discharge pipe installation, spreader swale construction, and/or berm construction. Since these minor activities are not likely to pre-empt other users, and because any material removed will likely be of limited economic value, the Department can likely issue a Consent of Use to grant the necessary proprietary interest. Due to the interdependence of the Chapter 253, F.S. and Chapter 373, F.S., and because of similarities in the public interest criteria associated with the two programs, State Lands Authorization will likely be sought concurrently with "62-600 Series" Watewater Permits.

Section 3.9 RCRA/CERCLA

The Resource Conservation and Recovery Act (RCRA) was enacted in 1976 to address the issue of how to safely manage and dispose of the huge volumes of municipal and industrial waste generated nationwide. The RCRA program is administered by EPA's Office of Solid Waste (OSW). RCRA Subtitle C establishes the regulatory structure for managing hazardous waste from the time it is generated until its ultimate disposal.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly referred to as Superfund, was enacted on December 11, 1980. CERCLA provides EPA's Office of Emergency and Remedial Response (OERR) the authority to respond to releases or threatened releases of hazardous substances, pollutants, or contaminants that may endanger human health or the environment. CERCLA also requires the reporting of releases of hazardous substances, establishes the liability of persons responsible for releases of hazardous substances, and establishes a trust fund to provide for cleanup when no responsible party can be identified.

Within the State of Florida, the Department's Waste Cleanup Division is responsible for all activities relating to the cleanup of sites contaminated by hazardous wastes or other pollutants and for conducting investigations of ground water contamination. The Waste Cleanup Division, also

provides scientific and engineering technical assistance and reviews for the Division's non-petroleum cleanup programs.

As presently conceived, to the greatest extent practicable, all facilities associated with the proposed WRTP Project will be constructed on lands presently in public ownership. In order to minimize the potential for unforeseen costs, or delays, associated with site remediation, lands considered for use in this project, will be subjected to preliminary Site Assessments, or Phase I Audits.

Despite the PDT's desire to construct all facilities within lands presently under public ownership, the potential need for additional real estate does exist. Should acquisition of real estate be required to construct the proposed WRTP Project, the PDT will conduct pre-transactional environmental assessments. The purpose of these assessments is to evaluate environmental concerns or issues that may be associated with the properties intended for acquisition. Such environmental concerns or issues are referred to as "Recognized Environmental Conditions" in general accordance with ASTM Standard Practice for Environmental Site Assessments. A recognized environmental condition is defined as:

> "The presence, or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, or a material threat of a release of any hazardous substances or petroleum products onto structures on the property or into the ground, ground water or surface water of the property. The term includes hazardous substances or petroleum products even under conditions in compliance with laws. The term is not intended to include deminimus conditions in compliance that generally do not present a material risk of harm to public health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate agencies.

Should the PDT identify Recognized Environmental Conditions within any portion of the proposed WRTP project site, the PDT will either opt to purchase a different property on which to construct the proposed facilities, require the current owner to remediate the site to acceptable levels prior to closing, or purchase the site and remediate the recognized condition(s). Should the PDT opt to remediate the site, all corrective actions will be consistent with the requirements of RCRA and CERCLA, with due consideration given to the site's intended land use within a particular CERP project element.

As local sponsor, it is presently the District's position that any portions of properties with recognized environmental conditions which will eventually be inundated (e.g. STAs, above ground impoundments, etc) be cleaned to a level based upon ecological risk (as opposed to human health). It is also presently the District's position that the Sediment Quality Assessment Guidelines (SQAGs) listed in Table 4 of the *Approach to the Assessment of Sediment Quality in Florida Coastal Waters,* published by McDonald Environmental Services, Ltd. in 1994 shall serve as the appropriate target goal wherever practicable.

Section 3.10 Reuse of Reclaimed Water Permitting

Florida Statutes s. 403.064(1) and 373.250(1) establishes "encouragement and promotion of water conservation and reuse of reclaimed water" as a state objective, and "state that water conservation and reuse are in the public interest". Section 403.021(2), F.S. establishes that no wastes are to be discharged to any waters of the state without first being given the degree of treatment necessary to protect the beneficial uses of such water. Section 403.051(2)(a),, F.S., requires that any

Department planning, design, construction, modification or operating standards, criteria, and requirements for wastewater facilities be developed as a rule. To this end, the Department has promulgated rules governing the reuse of reclaimed water, and included them within Chapter 610, F.A.C. Rules regarding the discharge of reclaimed water directly to wetlands are contained within Chapter 62-611 (please see section 3.11).

In accordance with Rule 62-610.800(1), F.A.C., "construction, modification, or operation of a reuse system requires a permit from the Department in accordance with Chapter 62-620. As described in Rule 62-610.800(3), reuse permits shall be combined with the permit for the wastewater treatment plant (Chapter 620 F.A.C). In order to obtain "reuse" permits, PDTs are required to, in accordance with Rule 62-610.310, F.A.C., submit engineering reports in support of the application for reuse. The engineering reports will serve as the preliminary design report, and shall evaluate the potential for adverse impacts to surface and/or groundwater. In accordance with Rule 62-610.310(3), F.A.C., the engineering report shall contain the following information:

1. Land Use Requirements including boundaries, setbacks, wells, and classified waters.

2. Soils Information including texture, conductivity, available water capacity, organic content, pH, sodium absorption ratio, cation exchange capacity, and chemical characteristics.

3. Hydrogeological surveys including solution openings, sinkhole features, aquifer head relationships, and horizontal and vertical conductivities.

4. A project evaluation which includes an evaluation of the overall long-term effect of the proposed project, design element justification, flow forecasts, and an evaluation of the proposed project with respect to public health, safety, and welfare.

As presently conceived, the proposed WRTP Project may discharge directly to receiving (freshwater or estuarine) wetlands, triggering the need for compliance with Chapter 62-611, F.A.C. (please see Section 3.11, which follows). More likely, the proposed reuse facility will discharge to a conveyance canal (e.g. L-31 East Canal) providing some level of aquifer recharge. For the latter case, Rule 62-610.555(4), F.A.C., governs discharges of reclaimed water to surface waters, which are directly connected to Class F-I, G-I, or G-II ground water. Ground waters in Southeast Florida having total dissolved solids (TDS) less than 10,000 mg/L are considered Class G-II and are designated for potable use. Rule 62-610.555(4)(b), F.A.C., notes that an example of a surface water directly connected to ground water is a canal in Southeast Florida, which is an extension of the Biscayne Aquifer

The reclaimed water must meet the principal treatment and disinfection requirements contained within Rule 62-610.563(2), F.A.C. These requirements include:

1. Minimum of secondary treatment, chemical feed facilities, filtration, and high-level disinfection.

2. Following filtration, total suspended solids shall not exceed 5.0 mg/L (single sample maximum).

3. The annual average total nitrogen (TN) shall not exceed 10 mg/L.

In addition to the above requirements, the reclaimed water will need to meet other discharge limitations established by procedures within Chapter 62-650, F.A.C. (please see Rule 62-

610.555(4)(f), F.A.C.). Specifically, the reclaimed water will also need to meet any water quality based effluent limitations (WQBELs) to ensure compliance with state water quality standards in the receiving surface water. For most surface waters in Florida, the WQBEL analysis probably will result in limitations on Total Nitrogen (TN) more stringent than the 10-mg/L limit stated above. A complete listing of surface water quality standards are contained within 62-302, F.A.C.

As is true for any new or expanded surface water discharge, the Antidegradation Policy in Rules 62-4.242 and 62-302.300, F.A.C. also applies (please see Rule 62-610.555(4)(f), F.A.C.). This includes the public interest and reuse feasibility tests and represents a significant constraint on any new or expanded surface water discharge. It is important to note that, in light of the foregoing, it would be very difficult to permit any new or expanded surface water discharge that does not qualify for classification as "reuse." Please note that criteria for categorizing projects as either "reuse" or "effluent disposal" are contained within Rule 62-610.810, F.A.C.

In addition to the foregoing requirements, Rule 62-610.555(4)(f), F.A.C. requires that reuse recharge projects be designed and operated such that the ground water standards in Chapter 62-520, F.A.C. will be met at the point or points where the reclaimed water/surface water mixture enters the ground water system. The ground water standards are, for the most part, the primary and secondary drinking water standards. The main difference is that Chapter 62-520, F.A.C., establishes a ground water standard for total coliforms of 4 per 100 mL in lieu of the primary drinking water standards for coliform organisms. Depending on a number of factors (location of the points of entry into the ground water system, quality of the reclaimed water, and others), this may result in additional treatment needs at the wastewater treatment facility.

In addition to the foregoing requirements, it is important to note that Chapter 62-600, F.A.C. contains requirements related to domestic wastewater treatment facilities, including detailed requirements for various levels of disinfection. It is also important to note that Chapter 62-601, F.A.C. outlines monitoring requirements for domestic wastewater facilities (including those that provide reclaimed waster for reuse, while Chapter 62-620, F.A.C. contains the basic permitting requirements for domestic wastewater and reuse facilities.

It is anticipated that the information described above will be provided as an integral part of the Pilot Project Design Report Phase (PPDRP). As such, for the proposed WRTP Project, the Pilot Project Design Report (PPDR) will need to contain sufficient information to serve as the Engineering Report, and allow the Department to fully evaluate its proposed use of reclaimed water. Based on discussions with personnel in DEP's, Domestic Wastewater Program, all Wastewater Permitting required by this project will be completed by DEP's Southeast Florida District Office in West Palm Beach.

Section 3.11 Wetlands Application

Chapter 62-611, F.A.C., provides State regulations and standards for domestic wastewater discharges to wetlands. Essentially, this rule controls (1) the quality and quantity of wastewater which may be discharged to wetlands and (2) the quality of water discharged from wetlands to contiguous surface waters. It also provides water quality, vegetation, and wildlife standards which provide protection of other wetland functions and values, and establishes permitting procedures and extensive monitoring requirements for wastewater discharges to wetlands.

A facility may discharge domestic wastewater to a wetland if a permit is issued pursuant to Chapter 62-611, F.A.C. Additionally, certain facilities may discharge to wetlands through an "experimental wetland exemption" upon issuance of an Order (usually in the form of a permit)) in

accordance with Rule 62-600.120(3), F.A.C. In either case a wastewater permit application must be submitted.

Due to the "pilot" nature of the proposed WRTP Project, it may be able to be permitted under the "experimental wetland exemption" criteria of Rule 62-600.120(3), F.A.C. The stated intent of Rule 62-600.120(3), F.A.C., is to "encourage experiments which are designed to lead to the development of new information regarding low-energy approaches to the advanced treatment of domestic wastes and to encourage the conservation of wetlands and fresh waters."

In order to qualify under Rule 62-600.120(3), F.A.C., the PDT would, as discussed above, submit an application for a Domestic Wastewater Permit (or modification, as appropriate), and petition the Secretary of DEP. Issuance of the Order could exempt wetland discharges, for a period up to five (5) years, from selected water quality criteria contained in Chapter 62-302, F.A.C. Issuance of the Order would be subject to the following provisions;

1. The applicant must affirmatively demonstrate that the wetlands ecosystem may reasonably be expected to assimilate the waste discharge without significant adverse impact on the biological community within the receiving waters; and,

2. Granting the exemption must be in the public interest and must not adversely affect public health or the cost of public health or other related programs; and,

3. The public must be restricted from access to the waters under consideration; and,

4. The waters cannot used for recreation; and,

5. The applicant must affirmatively demonstrate that presently specified criteria are unnecessary for the protection of potable water supplies or human health; and,

6. The exemption must not interfere with the designated use of contiguous waters; and,

7. Scientifically valid experimental controls must be provided by the applicant and approved by the Department to monitor the long-term ecological effects and waste recycling efficiency.

Based on discussions with DEP Staff, Rule 62-611.600(1), F.A.C., incorrectly indicates that the appropriate application form for permitting wastewater discharge to wetlands is Form 62-620.910(16), F.A.C. Form 62-620.910(16), F.A.C., is "The Request for Approval of Monitoring Plans for Discharge of Domestic Wastewater to Wetlands" form. Although misidentified, Form 62-620.910(16), F.A.C. will actually need to be submitted, and in accordance Rule 62-611.700(1), F.A.C approved, prior to filing an actual permit (or modification) application. Once the proposed monitoring plan has been approved, the PDT can file an application (for permit or modification) to discharge to wetlands using Forms 62-620.910(1) and (2), F.A.C., the domestic wastewater permit application forms.

Also based on discussions with DEP Staff, references in Chapter 62-611, F.A.C., to a facility having to obtain a separate operation permit are obsolete. Regardless of whether a facility uses the experimental exemption or is permitted under Chapter 62-611, F.A.C., requirements for the facility's operation are included in the wastewater permit issued by the Department.

Chapter 62-611, F.A.C., classifies natural wastewater wetlands based on the level of treatment provided by the wastewater facility. A treatment wetland must receive a minimum of secondary treatment with nitrification; whereas, a receiving wetland must receive effluent that has been

treated to advanced wastewater treatment standards (e.g., annual average concentrations for $CBOD_5$: 5 mg/L; TSS: 5 mg/L; TN: 3 mg/L; TP: 1 mg/L).

Certain classes of natural wetlands are prohibited for use as wastewater wetlands. Wetlands within Outstanding Florida Waters (OFWs), Class I waters, and areas designated as areas of critical state concern as of October 1, 1985, are all **not** allowed to be used as treatment wetlands, but can be used as receiving wetlands. Wetlands that are within Class II waters and herbaceous wetlands that are neither "Cattail Dominated" nor "Hydrologically Altered" are **not** allowed to be used as treatment or receiving wetlands.

Chapter 62-611, F.A.C., limits the quantity of wastewater allowed to be discharged to a wetland permitted under the rule. Per Rule 62-611.350(1), F.A.C., natural unaltered wetlands may receive hydraulic loading rates up to two inches per week (equivalent to 128.90 acres per mgd), while natural hydrologically altered wetlands may receive hydraulic loading rates up to six inches per week (equivalent to 42.967 acres per mgd).

In addition to limitations on the quantity of wastewater allowed to be discharged to wetlands, Chapter 62-611, F.A.C., sets forth minimum requirements on the quality of wastewater allowed to be discharged to wetlands permitted under the rule. Limitations on total nitrogen and total phosphorus loading rates to treatment wetlands are established in Rule 62-611.400(2), F.A.C. For a natural unaltered treatment wetland, these loading rates are 25 $g/m^2/yr$ and 3 $g/m^2/yr$, respectively. For natural hydrologically altered treatment wetlands, these loading rates are 75 $g/m^2/yr$ and 9 $g/m^2/yr$, respectively. Regardless of these allowable maximums, the applicant must provide the Department with reasonable assurance that all other Department rules, including the qualitative design criteria, water quality standards and criteria, and the biological criteria in Chapter 62-611, F.A.C., will be met.

Rule 62-611.450(1), F.A.C., limits the discharge from both natural treatment and receiving wetlands to 3.0 mg/l total nitrogen, 0.2 mg/l total phosphorus, and 0.02 mg/l un-ionized ammonia, unless a Water Quality Based Effluent Limitation (WQBEL) has been established, or phosphorus has been shown not to be a limiting nutrient on the downstream waters.

Rule 62-611.500(1), F.A.C., exempts natural treatment and receiving wetlands from the following general and specific water quality standards established in Chapter 62-302, F.A.C.: dissolved oxygen; nutrients; chronic toxicity; turbidity; total coliforms; biological integrity; and transparency. However, Rule 62-611.500, F.A.C., establishes alternate criteria for dissolved oxygen, nutrients, biological integrity, and chronic toxicity. Also, Rule 62-611.500(3), F.A.C, establishes additional criteria for fish and vegetation beyond the standards in Chapter 62-302, F.A.C.

Monitoring requirements for wetlands receiving and treating wastewater are quite extensive in comparison with other wastewater disposal options. Monitoring requirements differ for different types of wastewater wetlands. Because receiving wetlands receive highest quality of effluent, they are afforded a less rigorous monitoring program per 62-611.700(1), F.A.C. Tables 1 – 3 in Rule 62-611.700(1), F.A.C., provide the water quality, sediment and biota monitoring that must be performed in a wastewater wetland depending on the class of wetland.

An integral part of the monitoring program is the baseline monitoring period. The baseline monitoring period is used to determine background conditions in the wetland prior to discharge of reclaimed water. The length of baseline monitoring for treatment wetlands is one year while receiving wetlands only require a one time monitoring event. Stage monitoring in a receiving wetland should be set up continuously for at least 6 months, preferably longer, at the point(s) of

discharge from the wetland. The purpose of stage monitoring is to determine the hydroperiod of the wetland system prior to wastewater application.

Chapter 62-611, F.A.C., does not reference the Department's antidegradation provisions of Chapter 62-4, F.A.C. However, because discharges to the natural treatment or receiving wetlands are discharges to surface waters, the antidegradation requirements of Rules 62-302.300 and 62-4.242, F.A.C., apply. Note, in those cases where the wetland is being restored, created, or enhanced (i.e., being classified as reuse), an antidegradation analysis should be simple and in almost every case support the project.

Chapter 62-611, F.A.C., also neglects to address ground water quality issues. Rule 62-601.700(1), F.A.C., states that wastewater treatment facilities which are designed so that some or all of the reclaimed water or effluent may enter ground waters shall provide ground water monitoring to assess the effects of this waste upon ground waters. Baseline and operational monitoring plans should include ground water monitoring programs as required by item 10 of DEP Form 62-620.910(19), F.A.C., "Request for Approval of Monitoring Plans for Discharge of Domestic Wastewater to Wetlands." These plans should be in accordance with Rule 62-522.600, F.A.C.

Central to the aforementioned rules is a determination on whether or not discharge and/or receiving wetlands can be classified as "reuse" wetlands. Rule 62-610.810(2)(g), F.A.C., states certain wetlands for wastewater treatment may be classified as "reuse" when wetlands are being created, restored, or enhanced, provided the applicant makes an affirmative demonstration that reclaimed water will be used to create, restore, or enhance the wetland. The wetland creation, restoration, or enhancement aspects must be described in detail and documented both prior to initial permit issuance and upon renewal. Please note that wetlands that are classified as reuse are permitted under Chapter 62-611, F.A.C., as opposed to the Department's rules on Reuse of Reclaimed Water and Land Application (Chapter 62-610, F.A.C). Notwithstanding the foregoing, wastewater wetlands that are Class I waters or are contiguous to Class I waters, will be subject to the additional levels of treatment contained within Rules 62-610.554, and 62-610.555, F.A.C.

Section 4 Local Permitting

In addition to the aforementioned Federal and State programs, Miami-Dade County's Department of Environmental Management (DERM) has permitting programs for wastewater facilities, coastal resources, wetland and forest resources, and surface water management. The rules governing the foregoing are contained within Chapter 24 of the Miami-Dade County Code, which is known as the Miami-Dade County Environmental Protection Ordinance.

DERM's Water & Wastewater Division is responsible for preventing pollution during the removal and treatment of wastewater. DERM's Water & Wastewater Treatment program was designed to protect Miami-Dade's residents and water supply from the potential pollution problems associated with water and wastewater treatment. The Water & Wastewater Division has been charged with monitoring water and wastewater treatment systems operated in Miami-Dade County, and ensuring that they conform to environmental standards. Based on the foregoing, the proposed WRTP Project will require a permit from DERM's Water & Wastewater Division, prior to construction and operation (C&O).

DERM's Coastal Resources Section is responsible for managing Miami-Dade County's coastal resources, in order to preserve their ecological, commercial and recreational value. The Coastal Resources Section administers the coastal wetland dredge and fill program, the Class I coastal

construction permit program, and the marine facilities operating permit program. This section also does biological assessments of coastal areas and offers Best Management Practices for the operation of permitted facilities. Should the proposed WRTP Project directly affect (e.g. involve dredging or filling within) Miami-Dade's Coastal Wetlands, a permit from DERM's Coastal Resource Section would be required prior to construction and operation (C&O).

DERM's Wetland and Forest Resources Section is responsible for protecting upland habitats through the Forest Restoration and Management Program and the Tree Preservation Program. It is also responsible for administering the freshwater wetlands construction, dredge and fill programs, Tree Removal Permit Program and the Natural Forest Community Program. Should the proposed WRTP Project directly affect (e.g. involve dredging or filling within) Miami-Dade's freshwater wetlands, a permit from DERM's Wetland and Forest Resources Section would be required prior to construction and operation (C&O).

DERM's Restoration & Enhancement Section is responsible for administering the Biscayne Bay Restoration and Enhancement Program, and monitoring water quality in the Bay. Although this section presently has no permitting responsibility, they will undoubtedly be reviewing the proposed WRTP Project and providing comments to Miami-Dade's Environmental Quality Control Board (EQCB). As such, close coordination with DERM's Restoration & Enhancement Section should be maintained throughout the PPDR Phase of the proposed project.

In addition to DERM's involvement with the proposed WRTP Project, Miami-Dade County will also likely be reviewing the proposed project for Comprehensive Plan Consistency, Site Plan Approval, and Building Permits.

In order for the proposed WRTP Project to be found consistent with a particular county's Comprehensive Plan, the proposed project's land uses have to be consistent with those designated within the Comprehensive Plan. Because of the somewhat passive nature of the majority of the proposed WRTP Project, the majority of the project will likely be determined to be consistent. Another consistency determination is that associated with the Comprehensives Plan's stated Goals, Policies, and Objectives. Due to the net environmental benefit associated with the proposed the proposed WRTP Project, it will likely be determined to be consistent. Should, the proposed WRTP Project be found to be inconsistent, a Comprehensive Plan amendment will be required.

Certain components associated with the proposed WRTP Project may, due to their nature or design, trigger the county development review process. Miami-Dade's development review process is designed to ensure that the proposed project is consistent with the county's codified land development codes. For similar reasons as stated in the discussion on Comprehensive Plan consistency, the proposed WRTP Project will likely either be determined to be exempt from the development review process, or will be determined to be consistent with the county's land development codes. In order to avoid project delays, early in the Pilot Project Design Report Phase, the PDT should seek formal determinations of Comprehensive Plan consistency, and Development Review applicability.

In addition to the foregoing county requirements, certain non-exempt structures (e.g. some pump stations) which are to be constructed as part of the proposed WRTP Project certain CERP projects may require local building permits. In order to achieve building permit issuance, proposed structures must be designed in accordance with applicable building codes and standards. Early coordination between the structure designers (and/or contractors) and local building department officials should ensure timely issuance of the required building permits.

It is important to note that, for federally sponsored projects in which the local sponsor takes the lead in construction, the local sponsor, in this case, the SFWMD, would generally be responsible for obtaining local permits. For federally sponsored projects in which the federal government takes a lead in construction, the Corps generally claims sovereign immunity from local permitting requirements. Notwithstanding the foregoing, the Corps makes every effort to ensure that a project meets the substantive requirements of local regulations.