8.1 FEDERAL LAWS AND REGULATIONS

Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c)

The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c), enacted in 1940, and amended several times since then, prohibits anyone, without a permit issued by the Secretary of the Interior, from "taking" bald eagles, including their parts, nests, or eggs. The Act provides criminal penalties for persons who "take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle. . . [or any golden eagle], alive or dead, or any part, nest, or egg thereof." The Act defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb." Spawning, foraging or feeding habitat for the bald eagle (*Haliaeetus leucocephalus*) are present within the Protected Species study area (see Section 4.6 – Protected Species), therefore the Act would apply. The U.S. Fish and Wildlife Service (USFWS) is the lead agency tasked with ensuring compliance with Bald and Golden Eagle Protection Act.

Clean Air Act

The CAA of 1970 (42 U.S.C. § 1857 et seq., as amended and recodified in 42 U.S.C. § 7401 et seq.) requires the U.S. Environmental Protection Agency (EPA) to establish national ambient air quality standards (NAAQS). The EPA has primary and secondary NAAQS for the following air pollutants; ozone, respirable particulate matter (PM_{10}), fine particulate matter ($PM_{2.5}$), carbon monoxide (CO), nitrogen dioxide (NO_2), sulfur dioxide (SO_2), and lead. The primary standards are intended to protect the public health, while the secondary standards are aimed at protecting the public welfare. The CAA also requires each state to prepare an air quality control plan, hereafter referred to as a State Implementation Plan (SIP). Under the CAA, the primary responsibility for achieving and maintaining the NAAQS rests with the state and local agencies. Accordingly, state and local air quality management agencies are also designated as the primary permitting and enforcement authorities for most CAA requirements. States can develop their own ambient air quality standards in addition to the federal standards (NAAQS). Similar to the NAAQS, the State of South Carolina has established ambient air quality standards (SCAAQS) for the State that also apply to the Project site (SCDHEC Regulation 61-62.5). The SCAAQS include the same pollutants and criteria as the NAAQS, and in addition include gaseous fluorides (as hydrogen fluorides). A State Implementation Plan (SIP) is developed and used to determine ways the NAAQS and State Ambient Air Quality Standards will be achieved or maintained. The SIP for South Carolina identifies the ways in which NAAQS will be achieved or maintained within the state, including the Project site. The agencies responsible for ensuring compliance with this act would include the EPA and the SCDHEC.

Furthermore, Section 176(c) of the CAA requires a General Conformity determination for all federally sponsored or funded actions that are located within areas designated as non-attainment or maintenance per the NAAQS. Areas that meet the NAAQS are classified as “attainment” areas, while areas that do not meet these standards are classified as “non-attainment” areas. Areas that were

designated as a non-attainment area but that were later re-designated as an attainment area and that are required to develop a maintenance plan are called "maintenance" areas. The severity of the classifications for non-attainment range in magnitude from: marginal, moderate, serious, severe, and extreme. All criteria pollutants for Charleston County are in attainment of the NAAQS and the SCAAQS (EPA 2016) (see Section 3.13 – Air Quality); therefore, a General Conformity determination would not be required.

Clean Water Act

The Federal Water Pollution Control Act, commonly referred to as the CWA (33 U.S.C. § 1251 et seq.) provides guidance for the restoration and maintenance of the chemical, physical, and biological integrity of the nation's waters. The EPA is the lead agency for the CWA. Amendments to the CWA were enacted in 1981 (Municipal Wastewater Treatment Construction Grants Amendments (P.L. 97-117)) and in 1987 (Water Quality Act of 1987 (Public Law [P.L.] 100-4). The CWA is further intended to achieve a level of water quality that allows for recreation opportunities in and on the water and to promote the propagation of fish and wildlife. Four sections of the CWA are especially pertinent to the Project: Section 303, which requires that states develop TMDLs for water bodies included on the Section 303(d) list of impaired waters as a means of reducing water pollution; Section 402, which governs NPDES requirements; Section 404, which addresses condition-specific discharges into waters of the U.S.; and Section 401, which requires state certification of any permission granted under the auspices of Section 404. It should be noted that Section 401 requirements are presented after Section 404 in this document because Section 401 requirements are dependent on the actions taken in compliance with Section 404.

Section 303

Under Section 303(d) of the CWA and EPA's Water Quality Planning and Management Regulations (40 C.F.R. Part 13), states, territories, and authorized tribes are required to develop lists of impaired waters. A state's Section 303(d) impaired waters list is comprised of all waters where the state has identified that required pollution controls are not sufficient to attain or maintain applicable water quality standards. Section 303 also requires that states develop TMDLs for water bodies included on the Section 303(d) list of impaired waters as a means of reducing water pollution. A TMDL is the maximum amount of a pollutant a water body can receive and still meet water quality standards.

State waters that do not attain their designated uses are included in the state's Section 303(d) list of impaired waters. Several waters in the study area are listed as impaired waters (see Section 3.3 – Water Quality). The Proposed Project discharges either directly or indirectly into these impaired water bodies. Consequently, a reduction in pollutant loads would be necessary to meet water quality standards. Structural or non-structural BMPs would need to be employed to reduce pollutant loads or prevent further impairment (see Section 4.2 – Hydrology and Section 4.3 – Water Quality). SCDHEC would be the agency responsible for ensuring compliance with this section of the CWA.

Section 402

The primary method by which the CWA imposes pollutant control limits is the NPDES permit program, established under Section 402 of the CWA. As part of the NPDES program, any point source discharge of a pollutant or pollutants into any waters of the U.S. must be permitted. waters of the U.S. include navigable waters; all other waters where the use, degradation, or destruction of the waters could affect interstate or foreign commerce; tributaries to such waters; and wetlands that are adjacent to these waters.

The agency responsible for ensuring compliance with this section of the CWA would be the SCDHEC. The SCDHEC Stormwater Permitting Section provides administration and oversight of the NPDES Permitting Program. As the Proposed Project would include modifications (including the removal and/or addition of materials) to waters of the U.S. (see Section 4.5 – waters of the U.S.), the Proposed Project would be subject to the requirements of Section 402 (see Section 4.3 – Water Quality). See the description of the South Carolina NPDES Stormwater Program.

Section 404

Section 404 of the CWA establishes a program to regulate the discharge of dredged or fill material into waters of the U.S., including wetlands. Any activity where material is placed in waters of the U.S. and has the effect of either replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of any portion of water requires a permit from the Corps. Examples of "fill material" that could be used for the construction of the proposed ICTF Project include: rock, sand, clay, soil, rip-rap, or any material that could be used for roadbase, bridge abutments, erosion control, etc. As the Proposed Project would include modifications (including the removal and/or addition of materials) to waters of the U.S. (see Section 4.5 – Waters of the U.S.), it would be subject to the requirements of Section 404.

404 (b)(1) Guidelines

Under Section 404(b)(1) of the CWA, the EPA, in conjunction with the Corps, developed "guidelines" to insure compliance with Section 404 of the CWA when evaluating permit applications. These guidelines are specifically referred to as the "404(b)(1) Guidelines." These guidelines are heavily weighted towards preventing environmental degradation of waters of the U.S. and therefore place additional constraints on Section 404 discharges. The 404(b)(1) Guidelines specifically outline four conditions that must be satisfied in order to make a determination that a proposed discharge complies with these guidelines. These conditions are referred to as "restrictions on discharge." In general, these four "restrictions on discharge" do not allow the Corps to issue a permit if a discharge would:

1. have a "practicable" alternative which would have less adverse impact on the aquatic ecosystem as long as the alternative does not have other significant adverse environmental consequences.
2. cause or contribute to violations of any applicable state water quality standard; violate toxic effluent standards; jeopardize the continued existence of an endangered or threatened species; or violate any marine sanctuary.
3. cause or contribute to significant degradation of the waters of the U.S.
4. not have taken appropriate and practicable steps to minimize potential adverse impacts of the discharge on the aquatic ecosystem.

Each of these "restrictions" has specific requirements in order to determine compliance. Appendix B outlines compliance with these "restrictions."

The agencies responsible for ensuring compliance with Section 404 would be the Corps, the USFWS, and the National Marine Fisheries Service (NMFS). As the Proposed Project would include modifications (including the removal and/or addition of materials) to waters of the U.S. (see Section 4.5 – Waters of the U.S.), the Proposed Project would be subject to the requirements of Section 404. The Corps would be responsible for establishing consistency with all applicable elements of the statute.

Section 401

Section 401 of the CWA dictates that applicants for federal permits that result in discharges to navigable waters must obtain a certification from SCDHEC that the proposed activity will not violate state water quality standards. This includes individual or general federal permits issued pursuant to Section 404 of the CWA (33 U.S.C. 1344), Sections 9 and 10 of the Federal Rivers and Harbors Act of 1899 (33 U.S.C. 401-403), and permits or licenses issued by the Federal Energy Regulatory Commission (16 U.S.C. 1791, et seq.). The Corps Section 404 permit applications cannot be issued without a state-issued Section 401 Water Quality Certification. SCDHEC's Regulation 61-101, entitled Water Quality Certification, directs the processing of applications for certification.

As the Proposed Project would include discharges to navigable waters (see Section 4.3 – Water Quality) the Proposed Project would be subject to the requirements of Section 401. The agencies responsible for ensuring compliance with this section of the CWA would be SCDHEC with support provided by the EPA.

Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) of 1972 (16 U.S.C. §§ 1451–1465) established a national policy to preserve, protect, develop, and restore the Nation's coastal zones. Under this act two national programs were created, the National Coastal Zone Management Program (CZMP) and the National Estuarine Research Reserve System. The CZMP is administered by NOAA's Office of Ocean

and Coastal Resource Management (OCRM). The CZMA is intended to "encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as the needs for compatible economic development." Further, it includes provisions for extensive coordination, cooperation, and participation guidelines for federal and state agencies, local governments, and the public.

Since the study area is located in one of the eight coastal counties that require the Coastal Zone Consistency Certification or other state permits (see Section 4.3 – Water Quality), the CZMA applies to this activity. The South Carolina Ocean and Coastal Resource Management (OCRM) must review the Project through a process called "Coastal Zone Consistency Certification" to make sure that it is consistent with the state coastal management policies before any state or federal permit can be issued for a project in the coastal zone.

Community Environmental Response Facilitation Act

The Community Environmental Response Facilitation Act was enacted to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to require the federal Government, before termination of federal activities on any real property owned by the Government, to identify real property where no hazardous substance was stored, released, or disposed of. In the case of any real property owned by the United States and transferred to another person, the United States Government should remain responsible for conducting any remedial action or corrective action necessary to protect human health and the environment with respect to any hazardous substance or petroleum product or its derivatives, including aviation fuel and motor oil, that was present on such real property at the time of transfer. Since the Project site was previously owned by the United States Government as a Navy base, the U.S. Navy and EPA would be the entities responsible for assuring compliance with this Act. This Act applies to the Proposed Project due to the previous ownership and operation by the U.S. Navy (see Section 4.15 – Hazardous, Toxic, and Radioactive Waste).

Comprehensive Environmental Response, Compensation, and Liability Act

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510; 42 U.S.C. 9601 et seq.) commonly known as Superfund, was enacted by Congress on December 11, 1980. EPA's Office of Solid Waste and Emergency Response (OSWER) in Washington, D.C. oversees the Superfund program, however the U.S. Navy and SCDHEC would also be responsible agencies. This law created a tax on the chemical and petroleum industries and provided broad federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. CERCLA established prohibitions and requirements concerning closed and abandoned hazardous waste sites; provided for liability of persons responsible for

releases of hazardous waste at these sites; and established a trust fund to provide for cleanup when no responsible party could be identified. The law authorizes two kinds of response actions: short-term removals, where actions may be taken to address releases or threatened releases requiring prompt response; and long-term remedial response actions, that permanently and significantly reduce the dangers associated with releases or threats of releases of hazardous substances that are serious, but not immediately life threatening. These actions can be conducted only at sites listed on EPA's National Priorities List (NPL). One NPL site (Macalloy Corporation) is located south of the Project area.

Impacts to Superfund sites or dangerous concentrations of hazardous materials/wastes are not anticipated (see Section 4.15 – Hazardous, Toxic, and Radioactive Waste). However, if discovery of unknown contamination occurs, the Proposed Project would be subject to Superfund regulations. Also, the Navy's permitting process requires stoppage of work if an unanticipated discovery occurs.

Department of Transportation Act, Section 4(f)

Section 4(f) of the USDOT Act of 1966 (49 U.S.C. § 303(c)) provides protection for publicly owned parks, recreation areas, wildlife and waterfowl refuges, and historic properties or archaeological sites on or eligible for listing on the National Register of Historic Places (the National Register). With respect to the Navy Base ICTF, the FRA is responsible for protection of these resources, collectively referred to as 4(f) resources. While not binding on FRA, FRA can look to FHWA regulations (23 C.F.R. part 774) to guide its interpretation and implementation of Section 4(f).

Specifically, Section 4(f) provides that:

> "The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the states, in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of lands crossed by transportation activities or facilities… The Secretary may approve a transportation program or project…requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significant, or land of an historic site of national, state, or local significance (as determined by federal, state, or local officials having jurisdiction over the park, area, refuge or site) only if:
>
> - There is no prudent and feasible alternative to using that land; and
> - The program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use."

A "use" of a protected property can occur in one of three ways:

- When land is permanently incorporated into a transportation facility (i.e., demolition or land acquisition);

- When there is a temporary occupancy of land that is adverse in terms of the statute's preservationist purposes (i.e. physical alteration of the land during construction); or
- When there is a constructive use of a Section 4(f) property (i.e. ancillary impacts such as noise, vibration or visual impacts).[106]

An alternative is not feasible if it cannot be built as a matter of sound engineering judgment. In determining whether an alternative is prudent, the FRA may consider whether the alternative would result in any of the following: (1) compromise the Project to a degree that is unreasonable for proceeding with the Project in light of its stated purpose and need, (2) unacceptable safety or operational problems, (3) after reasonable mitigation the Project results in severe social, economic, or environmental impacts; severe disruption to established communities; severe disproportionate impacts on minority or low-income populations; or severe impacts on environmental resources protected under other federal statutes, (4) additional construction, maintenance, or operational costs of an extraordinary magnitude, (5) other unique problems or unusual factors, (6) multiple factors that, while individually minor, cumulatively cause unique problems or impacts of extraordinary magnitude.

A *de minimis* impact involves the use of a Section 4(f) property that is generally minor in nature. For a historic site, a determination of *de minimis* impact may be made when all three of the following criteria are satisfied:

- The process required by Section 106 of the NHPA results in the determination of "no adverse effect" or "no historic properties affected" with the concurrence of the SHPO and/or THPO, and ACHP, if the ACHP is participating in the Section 106 consultation;
- The SHPO and/or THPO, and ACHP, if the ACHP is participating in the Section 106 consultation, is informed of USDOT's intent to make a *de minimis* impact determination based on their written concurrence in the Section 106 determination; and
- USDOT has considered the views of any consulting parties participating in the Section 106 consultation.

The study area contains two parks that are considered 4(f) resources (Riverfront Park, unnamed community park, and Chicora-Cherokee Community Park), a single park that is considered both a 4(f) and a 6(f) resource (unnamed community park), and 11 historic properties that are considered 4(f) resources. Impacts are discussed in Section 4.18 4(f)/6(f) Resources. As federal funds may be used for the Proposed Project and there will be "uses" to 4(f) resources, this Act applies (see Section 4.18 4(f)/6(f) Resources). Because USDOT may provide funding for the ICTF Project, Section 4(f) applies.

[106] A Constructive use occurs when the transportation project does not incorporate land from a Section 4(f) resource but the project's proximity impacts are so severe that the protected activities, features, or attributes that qualify a resource for protection under Section 4f) are substantially impaired. Substantial impairment occurs only when the protected activities, features, or attributes of the resource are substantially diminished.

Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986

The Emergency Planning and Community Right-to-Know Act (EPCRA) requires facilities to prepare for chemical emergencies by developing response plans and communicating with local, state, and federal officials when on-site quantities of regulated substances exceed threshold planning quantities. Annual reporting requirements are triggered for facilities that manufacture, process or store "hazardous substances" in quantities greater than their corresponding reportable quantities (RQs) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Under Section 311 and 312, facilities must report to State Emergency Response Commissions (SERC), Local Emergency Planning Commissions (LEPC), and local fire departments using the Tier2Submit program. Under Section 313, facilities must complete and submit a Toxic Chemical Release inventory form (Form R) annually if the facility manufactures or otherwise uses one of the over 600 Toxics Release Inventory (TRI) chemicals above the applicable threshold quantity.

Since the Project site's purpose covers potential temporary storage of hazardous substances incident to transportation activities (see Section 4.15 – Hazardous, Toxic, and Radioactive Waste), the Act applies. The agency responsible for compliance with this regulatory requirement would be the EPA.

Endangered Species Act

The Federal ESA of 1973, as amended[107], requires a federal agency authorizing, funding or carrying out a project within its jurisdiction to determine whether any federally listed threatened or endangered species may be present within a study area and determine whether the agency's action could affect any federally listed species. Threatened and endangered species (which are identified in 50 C.F.R. §§ 17.11–17.12) are protected and prohibited from "take," defined as direct or indirect harm or harassment, unless a ESA Section 10 permit is granted to an entity other than the federal agency or a Biological Opinion with incidental take provisions is rendered to a federal lead agency via ESA Section 7 consultation. Pursuant to the requirements of the ESA, an agency reviewing the Proposed Project within its jurisdiction must determine whether any federally listed or proposed species may be present in the study area and determine whether the Proposed Project is likely to jeopardize the continued existence of such species or result in the adverse modification or destruction of the habitat for such species (16 U.S.C. § 1536(a)). Under the ESA, habitat loss is considered to be an impact to a species. Therefore, any Project-related impacts to these species or their habitats would be considered significant and would require mitigation.

The agencies responsible for enforcement of this regulatory requirement would include the USFWS, the Corps, and the NMFS. The Protected Species study area includes potential habitat for federally

[107] 16 U.S.C. 1536

listed animals and plants (see Section 4.6 – Protected Species); therefore, the Proposed Project would be subject to the requirements of the ESA.

Executive Order (EO) 13045, Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (April 1997); requires that each federal agency: shall make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children; and shall ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks. Off-site community impacts are anticipated to affect the human health and safety of the community that includes children (see Section 4.17 – Human Health and Safety), therefore the requirements of this EO will apply. The Corps is charged with ensuring compliance with this EO.

Executive Order 11296 (Flood Hazard Evaluation Guidelines)

EO 11296, issued in 1966, was developed to direct federal agencies to integrate flood policy and programs into their procedures. EO 11296 was the first EO to direct agencies to not increase flood risk through their actions and to fund or provide technical assistance to their activity in flood hazard areas. EO 11296 directed the heads of the executive agencies to provide leadership in encouraging a broad and unified effort to prevent uneconomic uses and development of the Nation's flood plains and to lessen the risk of flood losses with federal lands, installations, and federally financed or supported improvements. EO 11296 was replaced with an updated order on floodplain protection in 1977, titled EO 11988 (Floodplain Management).

Executive Order 11514, Protection and Enhancement of Environmental Quality

In furtherance of the purpose and policy of the NEPA of 1969 (P.L. No. 91-190, approved January 1, 1970), EO 11514 instructed the federal government to provide leadership in protecting and enhancing the quality of the Nation's environment to sustain and enrich human life. Federal agencies were directed to initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals. The heads of federal agencies must monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate federal, state and local agencies in carrying out their activities as they affect the quality of the environment. Agencies must have procedures developed to ensure the fullest practicable provision of timely public information and understanding of federal plans and programs with environmental impact in order to obtain the views of interested parties.

These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage state and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment. The agency responsible for ensuring compliance with this EO is the Corps because the agency may issue a Section 404 permit, which is a federal action. Opportunities and mechanisms the Corps has provided to share and receive information with the public, stakeholders, governmental agencies, tribes, and non-governmental organizations (NGOs) are described in Section 9.1 – Public and Stakeholder Coordination.

Executive Order 11988 Floodplain Management and 13690, Establishing a Federal Flood Risk Management Standard

EO 11988, issued in 1977, directs federal agencies to issue or amend existing regulations and procedures to ensure that the potential effects of any action it may take in a floodplain are evaluated and that it's planning programs and budget requests reflect consideration of flood hazards and floodplain management. The purpose this EO is to "avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support or floodplain development wherever there is a practicable alternative." Guidance for implementation of EO 11988 is provided in the floodplain management guidelines of the U.S. Water Resources Council, 40 C.F.R. 6030, dated February 10, 1978, and in A Unified National Program for Floodplain Management (FEMA 248), prepared by the Federal Interagency Floodplain Management Task Force. EO 11988 was amended on January 30, 2015, when the President signed Executive Order 13690, Establishing a Federal Flood Risk Management Standard (FFRMS).

The agency responsible for ensuring compliance with these EOs is the Corps and the EOs would apply because the entire Project site falls within floodplains (see Section 4.2 – Hydrology).

Executive Order 11990, Protection of Wetlands

EO 11990, issued in 1977, is intended "to minimize the destruction, loss, or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands." To meet this intent, EO 11990 requires federal agencies, in planning their actions, to consider alternatives to wetland sites and limit potential damage if an activity affecting a wetland cannot be avoided. EO 11990 applies to:

- the acquisition, management, and disposition of federal lands and facilities construction and improvements projects which are undertaken, financed, or assisted by federal agencies; and
- Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulation, and licensing activities.

EO 11990 directs the Corps to provide leadership and take action to minimize the destruction, loss, or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands in implementing civil works.

The agency responsible for ensuring compliance with this EO would be the Corps. Based on the waters of the U.S. study area, which includes wetlands (see Section 4.5 – Waters of the U.S.), the Proposed Project would be subject to the requirements of EO 11990.

Executive Order 11593, Protection and Enhancement of the Cultural Environment

The federal government shall provide leadership in preserving, restoring and maintaining the historic and cultural environment of the Nation. Federal agencies have responsibilities consonant with the provisions of the following acts: NEPA of 1969 (83 Stat. 852, 42 U.S.C. 4321 et seq.), the NHPA of 1966 (80 Stat. 915, 16 U.S.C. 470 et seq.), the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461 et seq.), and the Antiquities Act of 1906 (34 Stat. 225, 16 U.S.C. 431 et seq.). Federal agencies must initiate measures to assure that where as a result of federal action or assistance a property listed on the National Register of Historic Places is to be substantially altered or demolished, timely steps be taken to make or have made records, including measured drawings, photographs and maps, of the property, and that copy of such records then be deposited in the Library of Congress as part of the Historic American Buildings Survey or Historic American Engineering Record for future use and reference. Agencies may call on the United Stated Department of the Interior (USDOI) for advice and technical assistance in the completion of the above records. Since there are historical resources in the study area that are or may be eligible for the NRHP (see Section 4.10 – Cultural Resources), the Proposed Project would be subject to the requirements of this act. The agency responsible for ensuring compliance with this EO would be the Corps.

Executive Order 12185, Conservation of Petroleum and Natural Gas

EO 12185, issued in 1979, requires that each federal agency, as defined in Section 103(a)(25) of the Powerplant and Industrial Fuel Act of 1978 (92 Stat. 3297), shall effectuate through its financial assistance programs the purposes of that Act relating to the conservation of petroleum and natural gas. The Proposed Project would be subject to the requirements of this EO (see Chapter 7 – Irreversible and Irretrievable Commitments of Resources). The FRA would be the lead agency charged with maintaining compliance with this EO.

Executive Order 12898, Environmental Justice

EO 12898, issued in 1994, refers to "nondiscrimination in federal projects substantially affecting human health and the environment" and "providing minority communities and low-income communities with access to public information on, and an opportunity for public participation in, matters relating to human health or the environment." In particular, it involves preventing minority

and low-income communities from being subjected to disproportionately high and adverse environmental effects of federal actions. FHWA has two orders related to Environmental Justice: Department of Transportation Order 5610.2(a) (May 12, 2012) and FHWA Order 6640.23A (June 14, 2012). The intent of these orders is very similar to EO 12898.

The agencies responsible for ensuring compliance with this EO would be the EPA and the Corps. Based on data provided by the U.S. Census Bureau, Black or African American minority populations that meet CEQ guidelines for the presence of a minority Environmental Justice population (i.e., the minority population exceeds 50 percent of the total population) are present in the study area (see Section 4.16 – Socioeconomics and Environmental Justice), therefore the Project must comply with EO 12898.

Executive Order 13112, Invasive Species

Each federal agency whose actions may affect the status of invasive species shall, to the extent practicable and permitted by law, (1) identify such actions; (2) subject to the availability of appropriations, and within administration budgetary limits, use relevant programs and authorities to not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions. Since there are invasive species documented within the Vegetation and Wildlife study area (see Section 4.4 – Vegetation and Wildlife), there is the potential for their spread due to construction operations. As a result, the Proposed Project would be subject to the requirements of this EO. The Corps would be the lead agency charged with maintaining compliance with this EO.

Executive Order 13186 – Responsibility of Federal Agencies to Protect Migratory Birds

EO 13186 outlines the responsibility of federal agencies to protect migratory birds. Agencies must support the conservation intent of the migratory bird conventions by integrating bird conservation principles, measures, and practices into agency activities and by avoiding or minimizing, to the extent practicable, adverse impacts on migratory bird resources when conducting agency actions. Since there are migratory birds documented within the Vegetation and Wildlife study area (see Section 4.4 – Vegetation and Wildlife), there is the potential for impacts due to construction and operations. As a result, the Proposed Project would be subject to the requirements of this EO. The Corps would be the lead agency charged with maintaining compliance with this EO.

Executive Order 13690 – Establishing a Federal Flood Risk Management Standard (FFRMS)

On January 30, 2015, the President signed EO 13690, which amended E.O. 11988, Floodplain Management, originally issued in 1977. FFRMS seeks to reduce the risk and cost of future flood disasters by ensuring that federal investments in and affecting floodplains are constructed to better withstand the impacts of flooding. It applies to Hazard Mitigation Assistance Grants, the Public Assistance Program, and any other FEMA grants when they fund construction activities in or affecting a floodplain. FEMA, the Corps, and Housing and Urban Development (HUD) have produced fact sheets in response to several frequently asked questions regarding the intended scope of FFRMS and the anticipated impacts to many of the programs of these agencies.

The agency responsible for ensuring compliance with this EO is the Corps and the regulations would apply because the entire Project site falls within floodplains (see Section 4.2 – Hydrology).

Farmland Protection Policy Act

The Farmland Protection Policy Act (FPPA) of 1981 (7 U.S.C. 4201 et seq.) is contained within the greater Agriculture and Food Act of 1981 and is intended to minimize the impact federal projects have on the unnecessary and irreversible conversion of farmland to nonagricultural uses. For the purpose of FPPA, farmland includes prime farmland, unique farmland, and land of statewide or local importance. Farmland subject to FPPA requirements does not have to be currently used for cropland. It can be forest land, pastureland, cropland, or other land, but not water or urban built-up land.

The Natural Resources Conservation Service (NRCS) is responsible for ensuring that impacts to farmlands covered by FPPA are minimized. Based on the land uses located within the study area (see Section 4.9 – Land Use and Infrastructure), the Proposed Project is not anticipated to impact farmland, and as such, would not be subject to the requirements of this act.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of 1947

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of 1947 (7 U.S.C. § 136 et seq.) established both procedures for registering pesticides with the USDA and labeling provisions. The act was originally concerned with the efficacy of pesticides and did not regulate pesticide use. In 1972, FIRFA was amended by the Federal Environmental Pesticide Control Act (FEPCA) by specially authorizing the EPA to strengthen the registration process by shifting the burden of proof to the manufacturer, enforce compliance against banned and unregistered products, and publicize the new regulations. In its current form, FIFRA is still primarily concerned the registration and labeling of pesticides but also prohibits such acts as using a pesticide in any manner not consistent with the label; dethatching, altering, defacing, or destroying any part of the container or label, and refusing permit authorized EPA inspections. While FIFRA provides the EPA with the authority to oversee the sale and use of pesticides, it does not fully supersede state, tribal or local law. The Proposed Project

would use pesticides during the construction and operation of the ICTF (see Section 4.15 – Hazardous, Toxic, and Radioactive Waste), therefore the requirements of this Act would apply. The agencies responsible for ensuring compliance with the provisions of the FIFRA include EPA and SCDHEC.

Fish and Wildlife Coordination Act

The Fish and Wildlife Coordination Act (FWCA) of 1934 (16 U.S.C. § 661 et seq.) ensures that fish and wildlife receive consideration equal to that of other project features for projects that are constructed, licensed, or permitted by federal agencies. The FWCA requires that the views of USFWS, NMFS, and the applicable state fish and wildlife agency be considered when impacts are evaluated and mitigation needs determined. A Coordination Act Report (CAR), documenting the findings and recommendations of the reviewing agencies, is required before the Record of Decision is signed.

The agencies responsible for ensuring compliance with the provisions of the FWCA include the Corps, USFWS, NMFS, and the SCDNR. Based on the fish and wildlife and habitat that are either known to exist or could exist within the Vegetation and Wildlife study area (see Section 4.4 – Vegetation and Wildlife and Section 4.6 – Protected Species), the Proposed Project would be subject to the requirements of FWCA.

Land and Water Conservation Fund Act, Section 6(f)

Section 6(f) properties are recreation resources funded by the LWCF Act (Public Law 88-578, 78 Stat 897). No property acquired or developed with assistance under the Act, can be converted to other than public outdoor recreation uses without the approval of the Secretary of the United States Department of the Interior (USDOI). The Secretary shall approve such conversion only if he/she finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he/she deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.

Park South received funding in 1982 through the USDOI and National Park Service's LWCF, and as a result, this park was also classified as a Section 6(f) property, however Park South is no longer a Section 6(f) resource. On August 9, 2012, the City of North Charleston executed a simultaneous declaration of confirmation of restrictive covenant and release of limitation of use for Park South. This document removed the limitation of use for Park South and placed the limitation of use on a 15-acre parcel described in Section 3.16.5.1 as the unnamed community park. The exchange was approved by the USDOI (City of North Charleston 2012) (see Section 3.18 4(f)/6(f) Resources).

Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) of 1976 (16 U.S.C. 1801 et seq.), as amended and reauthorized in 2007 by the Magnuson-Stevens Fisheries

Conservation and Management Reauthorization Act (PL 109-479), promotes conservation and management of the Nation's fishery resources. In addition, the MSFCMA promulgated the term Essential Fish Habitat to ensure that fishery resources are managed through the regulation of EFH. The MSFCMA defines EFH as ". . . those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." The terms in this definition have been further defined by the U.S. Pacific Fishery Management Council to include:

- aquatic habitat and associated physical, chemical, and biological properties that are used by fish (historically used areas may be included);
- sediment, stream substrates, instream structure, and associated biological communities;
- the habitat required to support a sustainable fishery including that particular species' place in a properly functioning ecosystem; and
- the habitat required to support a full life cycle for the species under consideration.

The NMFS consults with federal agencies under the MSFCMA in a process similar and often parallel to the ESA Section 7 consultation. Because the Proposed Project would modify designated EFH (see Section 4.7 – Essential Fish Habitat), consultation with NMFS is anticipated in conformance with the requirements of MSFCMA and would be initiated by the Corps.

Marine Mammal Protection Act of 1972

The MMPA of 1972 (16 U.S.C. 1361 et seq.) expresses the intent of Congress that marine mammals be protected and encouraged to develop in order to maintain the health and stability of the marine ecosystem. The Act imposes a perpetual moratorium on the harassment, hunting, capturing, or killing of marine mammals and on the importation of marine mammals and marine mammal products without a permit from either the Secretary of the Interior or the Secretary of Commerce, depending upon the species of marine mammal involved. Such permits may be issued only for purposes of scientific research and for public display if the purpose is consistent with the policies of the Act. The appropriate Secretary is also empowered in certain restricted circumstances to waive the requirements of the Act. The USFWS is responsible for ensuring compliance with this act. The Protected Species study area may contain the presence of suitable foraging and calving habitat for the West Indian manatee (see Section 3.4 – Vegetation and Wildlife and Section 3.6 – Protected Species). Therefore, it is anticipated that the Proposed Project would be subject to the requirements of the MMPA.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA), which was first enacted in 1918[108], implements domestically a series of treaties between the United States and Great Britain (on behalf of Canada), Mexico, Japan,

[108] 16 U.S.C. 703-712

and the former Soviet Union that provide for international migratory bird protection. The MBTA authorizes the Secretary of the Interior to regulate the taking of migratory birds; the act provides that it shall be unlawful, except as permitted by regulations, "to pursue, take, or kill any migratory bird, or any part, nest or egg of any such bird," (16 U.S.C. § 703). This prohibition includes both direct and indirect acts, although harassment and habitat modification are not included unless they result in direct loss of birds, nest, or eggs. The current list of species protected by the MBTA includes several hundred species. The act offers no statutory or regulatory mechanism for obtaining an incidental take permit for the loss of nongame migratory birds.

Compliance with the MBTA would be addressed through compliance with the ESA and the USFWS and the SCDNR are responsible for ensuring compliance with this Act. Based on the nesting habitat present within the study area (see Section 3.6 – Protected Species), it is anticipated that the Proposed Project would be subject to the requirements of the MBTA.

National Emissions Standards for Hazardous Air Pollutants

National Emission Standards for Hazardous Air Pollutants (NESHAPS)[109] are stationary source standards for hazardous air pollutants. HAPs are those pollutants that are known or suspected to cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental effects. Part 61 NESHAPs regulate only seven HAPs: asbestos, beryllium, mercury, vinyl chloride, benzene, arsenic, and radon/radionuclides. The NESHAPs are delegated to the states but both EPA and the states, in this case, SCDHEC, implement and enforce these standards.

The Proposed Project contains a number of buildings with the potential to contain asbestos or metals-based paints that may require demolition or significant renovations (see Section 4.15 – Hazardous, Toxic, and Radioactive Waste). Therefore asbestos and lead paint surveys will be required and any structures confirmed to contain asbestos and/or lead-based paint would need to be addressed according to the Asbestos NESHAP prior to their renovation/demolition.

National Environmental Policy Act

NEPA of 1969 (42 U.S.C. § 4321 et seq., PL 91-190) obligates federal agencies to evaluate a proposed action, including feasible and reasonable alternatives, and identify mitigation measures to minimize adverse effects when federal agencies propose to carry out, approve, or fund a proposed action that may have a significant effect on the environment. Compliance with NEPA comes in a variety of chronological steps to determine a project's overall significance, as explained in further detail in Chapters 1 and 2.

[109] 40 C.F.R., Part 61

The Corps is the lead federal agency under NEPA for the Proposed Project. Other federal agencies such as EPA and FRA will rely on the EIS/EIR that the Corps prepares to satisfy NEPA requirements for their individual approvals of the Proposed Project, as needed, and where appropriate.

National Historic Preservation Act

The NHPA of 1966 (16 U.S.C. § 470 et seq.) requires federal agencies to take into account the effects of a proposed action on properties that have been determined to be eligible for listing in, or are listed in, the NRHP.

Section 106 of this act requires that federal agencies having direct or indirect jurisdiction over a proposed Federal, federally assisted, or federally licensed undertaking, prior to approval of the expenditure of funds or the issuance of a license, take into account the effect of the undertaking on any district, site, building, structure, or object included in or eligible for inclusion in the NRHP, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to the undertaking. If archaeological deposits are found during Project activities, work would be stopped. Discoveries would be assessed to determine the significance of the find as required under Section 106.

The agency responsible for ensuring enforcement of the NHPA, as it applies to the Proposed Project, will be the Corps and FRA, which will consult with additional agencies such as the SHPO, as needed. Based on the record of historic resources in the study area (see Section 3.10 – Cultural Resources), the Proposed Project would be subject to the requirements of the NHPA.

Native American Graves Protection and Repatriation Act

The Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (23 U.S.C. § 3002) requires federal agencies to *(a)* establish procedures for identifying Native American groups associated with cultural items on federal lands, *(b)* inventory human remains and associated funerary objects in federal possession, and *(c)* return such items upon request to the affiliated groups. The law also requires that any discoveries of cultural items covered by the NAGPRA be reported to the head of the federal entity, who would notify the appropriate Native American group.

Despite the low potential for encountering intact archaeological features or deposits in most of the study area (see Section 3.10 – Cultural Resources), in the event of an accidental discovery of a Native American grave, NAGPRA would apply to the Proposed Project, and the Corps, with assistance from the Native American Heritage Commission (NAHC), would be responsible for ensuring compliance with this regulation.

Noise Control Act

The Noise Control Act (NCA) of 1972 (42 U.S.C. §§ 4901–4918) was established to control excessive noise that jeopardizes human health and welfare. Under this act, any federal department or agency with jurisdiction over a particular property or facility or engaged in any activity resulting in, or which may result in, the emission of noise shall comply with federal, state, interstate, and local requirements respecting the control and abatement of environmental noise.

The agencies responsible for ensuring compliance with this act would be the Corps and the City of North Charleston. Typically, compliance with the NCA is addressed through compliance with local long-term planning documents and municipal codes. The requirements of the NCA would apply to the Proposed Project, based on the high likelihood of construction-related and operation noise (see Section 4.12 – Noise and Vibrations); however, compliance with the NCA will be assessed based on the Proposed Project's ability to comply with local regulations and standards regarding noise levels, such as the North Charleston, South Carolina Code of Ordinances Article IX – Noise.

Process to Conduct Construction Activities in Areas under Land Use Controls at the Charleston Naval Complex

Construction of the Proposed Project must comply with LUCs provided in the U.S. Navy document: Process to Conduct Construction Activities in Areas under Land Use Controls at the Charleston Naval Complex, Revision 3, dated April 2007. The document requires submittal and approval of a "Charleston Naval Complex LUC Area Construction Permit." The permits are intended to ensure: 1) proper protection of workers and the public, 2) reporting of discovery of any unknown contamination, 3) management of excess soil and groundwater, and 4) posting and use of on-site safety information. In addition, the Division of Public Railways (DPR) has entered into VCCs for multiple parcels within the study area. These agreements with the SCDHEC require the DPR to comply with the process developed for the Navy document. The potential for the Proposed Project to have involvement with contaminated soils and groundwater and asbestos or metals-based paints is probable (see Section 4.15 – Hazardous, Toxic, and Radioactive Waste).

Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation and Liability Act

RCRA of 1976 (42 U.S.C. § 6901 et seq.) and CERCLA of 1980 (42 U.S.C. § 9601 et seq.) regulate the hazardous substance sites used by the principal federal agency related to the generation of, transport, storage, and disposal of hazardous materials. The operation of USTs became subject to the RCRA regulatory program with enactment of the Hazardous and Solid Waste Amendments of 1984.

The agencies responsible for ensuring compliance with RCRA and CERCLA include the EPA, the U.S. Navy, and the SCDHEC. In light of the former land uses on the former CNC, the Project site contains a

number of contaminated properties as identified in Phase 1 ESAs (see Section 3.15 – Hazardous, Toxic, and Radioactive Waste).

Rivers and Harbors Act

The Rivers and Harbors Act of 1899 (33 U.S.C. 403 et seq.) regulates the development and use of the nation's navigable waterways. Section 10 of the Act prohibits unauthorized obstruction or alteration of navigable waters of the U.S. and vests the Corps with authority to regulate discharges of fill and other materials into such waters.

Revised Guidance on CWA Jurisdiction Following the Supreme Court Decision in Rapanos v. U.S. and Carabell v. U.S. (Corps and EPA 2008b) also was applied in evaluating final jurisdiction of non-tidal waters that are considered traditional navigable waters (TNWs). The closest TNW is the Cooper River, which is located within the study area. Tidal surface waters of Noisette Creek, Shipyard Creek, and unnamed tributaries in the waters of the U.S. study area flow to the Cooper River, therefore, Section 10 does apply to the Proposed Project. Activities likely to occur from the Proposed Project regulated under the Rivers and Harbors Act include fill for bridge pilings, abutments, and/or roadway construction (see Section 4.5 – waters of the U.S.). The Corps will evaluate impacts from the Proposed Project under Section 10 of the Rivers and Harbors Act simultaneously with Section 404 of the CWA.

Sustainable Fisheries Act

The Sustainable Fisheries Act (SFA) of 1996 (PL 104-297) amended the MSFCMA (16 U.S.C. 1801 et seq.), which was the primary law governing marine fisheries management in the federal waters of the U.S. As stipulated under the SFA, consultation with NMFS is required for any activity that might adversely affect EFH. EFH includes those habitats on which fish rely throughout their life cycles. It encompasses habitats necessary to allow sufficient production of commercially valuable aquatic species to support a long-term sustainable fishery and contribute to a healthy ecosystem.

The agency responsible for ensuring compliance with SFA is the NMFS. Because the Proposed Project would modify designated EFH (see Section 4.7 – Essential Fish Habitat), consultation with NMFS is anticipated in conformance with the requirements of MSFCMA and would be initiated by the Corps.

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

The Fifth Amendment of the U.S. Constitution provides that private property may not be taken for a public use without payment of "just compensation." Additionally, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) (Pub. L. No. 91-646, 42 U.S.C. § 4601, et seq.), amended 1987: ensures that people who are displaced as a direct result of a federally funded project are treated fairly and equitably. Under the Uniform Act, persons whose real property is acquired or who are displaced in connection with a federally financed project are compensated in a fair and equitable manner. The Uniform Act helps individuals both financially and with advisory

services related to relocating their residence or business operation. Uniform Act benefits are available to both owner occupants and tenants of residential or business properties. In some situations, only personal property must be moved from the real property, which also is covered under the relocation program. Any person scheduled to be displaced would be furnished with a general written description of Palmetto Railways' relocation program that provides, at a minimum, detailed information related to eligibility requirements, advisory services and assistance, payments, and the appeal process. Relocation benefits would be provided to all eligible persons regardless of race, color, religion, sex, or national origin. Benefits under the Uniform Act, to which each eligible owner or tenant may be entitled, would be determined on an individual basis and explained in detail by an authorized right-of-away agent. Relocation assistance would be made available to businesses, including moving reimbursement, relocation notification, and re-establishment expenses.

The Uniform Act also ensures that assistance is available to those displaced and that relocation provisions are safe, sanitary, and affordable. The Proposed Project would result in relocations (see Section 4.16 – Socioeconomics and Environmental Justice) therefore, any person(s) whose property needed to be acquired as a result of the Proposed Project would be compensated by Palmetto Railways in accordance with the U.S. Constitution and the Uniform Act of 1970, as amended. The USDOT would be the lead federal agency for the Uniform Act.

U.S. Coast Guard Regulations, 33 C.F.R. Parts 1–200

C.F.R. Parts 1-200 specify requirements for applying for a permit to construct or modify bridges crossing the navigable waters of the United States. It also sets forth the procedures by which the application is processed by the USCG. Repairs to a bridge which do not alter the clearances, type of structure, or any integral part of the substructure or superstructure or navigation conditions, but which consist only in the replacement of worn or obsolete parts, may, if the bridge is a legally approved structure, be made as routine maintenance without a formal permit action from the USCG. Bridge construction and bridge repair is required for the Proposed Project (see Section 1.7 – Description of the Proposed Project); however, the USCG confirmed in letters dated November 7, 2017, that a USCG bridge permit would not be required for the Noisette Creek bridge and the Shipyard Creek bridges. Therefore, adherence to these regulations would not apply.

The USCG would be the lead agency ensuring that regulation requirements are met for bridges crossing navigable waters of the United States under Section 9 of the Rivers and Harbors Act of 1899, as amended, 33 U.S.C. 401, and the General Bridge Act of 1946, as amended, 33 U.S.C. 525. The actions by the USCG require an evaluation under the terms of NEPA, as implemented by the CEQ Regulations (40 C.F.R. 1500-1508) and Commandant Instruction M 16475.1D. The permitting process will require that Palmetto Railways submit a permit application, including documentation of the environmental effects of the Proposed Project. The USCG will to consult with other federal agencies with legal jurisdiction or special expertise concerning environmental impacts. Comments are also gathered from the public notice and Local Notice to Mariners. During the permitting process, the USCG must

ensure that navigational and environmental considerations are carefully considered in each permitting decision. Navigation factors to be considered include the vertical and horizontal clearances, existing bridges on the waterway, complaints against existing bridges, recreational and commercial use of the waterway, including access by vessels to existing local service facilities. Environmental considerations include impacts on water quality, the coastal zone, floodplains, historic resources, wetland impacts, threatened or endangered species, noise, air quality, wild and scenic rivers, prime and unique farmlands, and relocations.

U.S. Army Corps of Engineers Regulations (33 C.F.R. Parts 320–331)

33 C.F.R. Parts 320–331 covers general regulatory policies, permits for dams and dikes in navigable waters of the U.S., permits for structures or work in or affecting navigable waters of the U.S., permits for discharges of dredged or fill material into waters of the U.S., permits for ocean dumping of dredged material, processing of department of the army permits, enforcement, public hearings, definition of waters of the U.S., definition of navigable waters of the U.S., nationwide permit program, and administrative appeal process.

Activities likely to occur from the Proposed Project include fill for bridge pilings, abutments, and/or roadway construction (see Section 4.5 – Waters of the U.S.). The Proposed Project would also include modifications (including the removal and/or addition of materials) to waters of the U.S. (see Section 4.5 – Waters of the U.S.). The Proposed Project would be subject to the requirements of these regulations.

NEPA-implementing Regulations (40 C.F.R. Parts 1500-1508)

NEPA is the basic national charter for protection of the environment. It establishes policy, sets goals (Section 101), and provides means (Section 102) for carrying out the policy. Section 102(2) contains ‘‘action-forcing’’ provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations in 40 C.F.R. Parts 1500-1508 implement Section 102(2). Their purpose is to outline for federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act; however, for this Proposed Project, the Corps is the lead federal agency.

FRA has developed Procedures for Considering Environmental Impacts (FR Doc. 99-13262) which supplement and adhere to 40 C.F.R Parts 1500-1508 and USDOT Order 5610.1C. Because Palmetto Rail may apply for FRA funding for the Proposed Project, FRA is a Cooperating Agency with the Corps. As such, FRA is responsible for performing the functions stated in CEQ 1501.6(b), which involves reviewing the work of the lead agency to ensure that its work product will satisfy the requirements of the FRA under FR Doc. 99- 13262.

U.S. Environmental Protection Agency Endangerment Finding and Cause or Contribute Finding (40 C.F.R. Chapter 1) (2009)

In its Endangerment Finding (40 C.F.R. Chapter 1), the Administrator of the EPA found that GHGs in the atmosphere threaten the public health and welfare of current and future generations. The Administrator also found that the combined emissions of these well-mixed GHGs from new motor vehicles and new motor vehicle engines contribute to the GHG pollution that threatens public health and welfare. Although the Endangerment Finding does not place requirements on industry, it is an important step in the EPA's process to develop regulations. This action was a prerequisite to finalizing the EPA's proposed GHG emission standards for light-duty vehicles, which were finalized in May 2010. In the EPA's Cause or Contribute Finding the Administrator found that the combined emissions of these well-mixed GHG from new motor vehicles and new motor vehicle engines contribute to the GHG pollution that threatens public health and welfare.

Railroad Noise Emission Compliance Regulations (49 C.F.R. Part 210)

These regulations prescribe the minimum compliance for enforcement of the Railroad Noise Emission Standards established by the Environmental Protection Agency in 40 C.F.R. part 201. The FRA is the lead agency to ensure these regulations are followed. The Proposed Project would result in railroad noise emissions (see Section 4.12 – Noise and Vibration).

8.2 STATE LAWS AND REGULATIONS

Coastal Tidelands and Wetlands Act (SC Code of Laws Ann. Section 48-39-10 et seq.), South Carolina Coastal Zone Management Program (1976, as amended), and SCDHEC/OCRM Rules and Regulations for Permitting in the Critical Areas of the Coastal Zone, R. 30-1, et seq., 1976 SC Code Ann., as amended

The Coastal Tidelands and Wetlands Act (SC Code of Laws Ann. Section 48-39-10 et seq.) was established to direct the proper management of natural, recreational, commercial, and industrial resources of the state's coastal zone. The Act established the South Carolina Coastal Council and directs the implementation of a comprehensive management plan for use of coastal resources and gives permitting authority over "critical areas." The Act also authorized the South Carolina Coastal Zone Management Program. The South Carolina Coastal Zone Management Act provides for the protection and enhancement of the state's coastal resources. These regulations can be found in SCDHEC-OCRM's Critical Area Permitting Regulations, published April 25, 2008. In critical areas of the coastal zone, it is OCRM policy that, in determining whether a permit application is approved or denied, OCRM "shall base its determination on the individual merits of each application, the policies specified in Sections 48-39-20 and 48-39-30 (of the Act)." The OCRM administers the South Carolina Coastal Zone Management Act and has direct permitting authority over the "critical areas" of the coast. OCRM must balance the public's desire to utilize South Carolina's natural resources while