

	WATER RESOURCES DIVISION RESCISSION OF POLICY AND PROCEDURE	DEPARTMENT OF ENVIRONMENTAL QUALITY	
Rescinded Date: January 28, 2014	Subject: Federal Consistency Determinations		Category: <input type="checkbox"/> Internal/Administrative <input type="checkbox"/> External/Non-Interpretive <input checked="" type="checkbox"/> External/Interpretive
	Program Name: Water Resources Program		
	Number: 92-583-95-02	Page: 1 of 1	

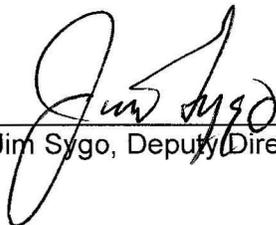
Water Resources Division (formerly Land and Water Management Division) Policy and Procedure No. 92-583-95-02, Federal Consistency Determinations, dated December 28, 1995, is rescinded. References to how permit applications are processed are obsolete. Guidance on federal consistency reviews is available through the National Oceanic and Atmospheric Administration.

DIVISION CHIEF APPROVAL:



 William Creal, Chief
 Water Resources Division

DEPUTY DIRECTOR APPROVAL:



 Jim Sygo, Deputy Director

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		EFFECTIVE DATE: 12/28/95
SUBJECT: Federal Consistency Determinations		ALSO SEE:
SECTION AND/OR UNIT: Great Lakes Shorelands Section Coastal Programs Unit	APPROVAL SIGNATURE: Original signed by Chris A. Shafer	
	TITLE: Chief, Great Lakes Shorelands Section	

PURPOSE: To Provide Guidance to Coastal Program and Land and Water Management Division (LWMD) staff on the Review of Federal Activities, Federal Permits, Licenses or Financial Assistance for Consistency with the Michigan Coastal Management Program (CMP).

DEFINITIONS: "FEDERAL LICENSE OR PERMIT" any certification, approval, or other form of permission which any federal agency is empowered to issue to an applicant. Includes renewals and major amendments of federal licenses and permit activities.

"FEDERAL ACTIVITY" any functions performed by or on behalf of a federal agency in the exercise of its statutory responsibilities.

"EFFECTS" direct effects which are caused by the activity and occur at the same time and place. Also includes indirect effects which may be caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

"CONSISTENT TO THE MAXIMUM EXTENT PRACTICABLE" consistent with the enforceable policies of a state coastal management program unless compliance is prohibited based upon the requirements of existing law applicable to the federal agency's operations or when such deviation is justified because of

an

unforeseen circumstance.

FORMS USED: Permit application form. (EQP 2733, revised 08/99)

WHO	DOES WHAT
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REVIEW OF FEDERAL LICENSES OR PERMITS WHERE NO STATE PERMITS ARE REQUIRED.

APPLICANT

1. Inquires at federal and/or state office about permit or license requirements.
2. Determines whether project will affect any land or water use or natural resource of the coastal zone.
3. If applicant determines project will not affect coastal resources, submits statement to the CMP that "the proposed activity is consistent with the state Coastal Management Program" and provides supporting information or completes federal permit application which includes a statement of consistency.

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**COASTAL PROGRAMS
UNIT (CPU)**

4. Determines whether license or permit is listed in the state CMP as activity subject to state review. If the project is not listed, see procedure for unlisted federal permits and licenses.

If the project is located outside coastal boundary but may affect coastal resources, the project is treated as an unlisted activity.
5. Determines whether supporting information is sufficient to support a concurrence of consistency. Contacts applicant for more information if information is incomplete.
6. If complete, begin project review of supporting information. Six-month review time clock begins. Notifies applicant if review will extend past three months.
7. Provide public notice (DEQ Calendar) and opportunity for public review and comment.
8. Concurs with applicant or objects to issuance of permit or license. If concurs, follow step 9. If do not concur, follow steps 10 and 11.
9. Notify applicant and federal agency of concurrence.
10. If the CMP does not concur with applicant's determination of consistency, notify the applicant, appropriate federal agency, and director of the federal office of Ocean and Coastal Resource Management.

Objection letter should include the following information: (1) Describe and cite the enforceable policy that the objection is based upon. (2) The objection letter must describe how the activity is inconsistent with state enforceable policies. (3) The objection must be timely. Letter must include the date the complete consistency certification (or determination) and necessary information was received by the state and the consistency review period began. If review extended beyond three months, cite date the applicant was notified of extended review. (4) Notify applicant of appeal rights to the U.S. Secretary of Commerce. Notify applicant that they must appeal within 30 days of receipt of the letter and that the appeal must be based on the two grounds for a state override: (a) consistent with the purposes and objectives of the CZMA, or (b) necessary for national security. (5) If objection is based on insufficient information, the letter must describe the information needed and why it is needed. (6) Objection letter must also include a description of alternatives (if they exist) that would make the project consistent.

APPLICANT

11. Upon receipt of non-concurrence, may appeal state objection to Secretary of Commerce within 30 days of receipt of state letter.

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REVIEW OF LISTED FEDERAL LICENSES OR PERMITS WHERE JOINT FEDERAL/STATE PERMIT IS ALSO REQUIRED

APPLICANT

1. Inquires at federal and/or state office about permit or license requirements.
2. Determines whether project will affect any land or water use or natural resource of the coastal zone.
3. Completes joint state and federal permit application which includes a statement that "the proposed activity is consistent with the state Coastal Management Program" of consistency, submits application to the DEQ Permit Consolidation Unit (PCU) staff.

PCU

4. Determines whether application is complete. Contacts applicant for more information if application is incomplete.
5. Public notices project and/or provides for public hearing.
6. Sends complete application to the LWMD Field staff and U.S. Army Corps of Engineers. Send copy of application to relevant program staff, including all units in the Great Lakes Shorelands Section, for review and comment.

LWMD FIELD STAFF

7. Begins project review. Issuance of permit certifies consistency.
8. If permit application is denied, notify federal permitting agency. Denial letter to applicant must state that project is inconsistent with state coastal management program.

The denial letter should include the following information: (1) Describe and cite the enforceable policy that the objection/denial is based upon. (2) The objection letter must describe how the activity does not meet the criteria of the state enforceable policy. (3) The objection must be timely. Letter must include the date the complete application was received by the state. If a review extension was requested, cite date the applicant was notified of extension request. (4) Notify applicant of appeal rights of the consistency determination to the U.S. Secretary of Commerce to override state objection. Notify applicant that they must appeal within 30 days of receipt of the letter and that the appeal must be based on the two grounds for a state override: (a) consistent with the purposes and objectives of the CZMA, or (b) necessary for national security. (5) If denial is based on insufficient information, the letter must describe the information needed and why it is needed. 6. Objection letter must also include a description of alternatives (if they exist) that would make the project consistent (permissible).

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CONSISTENCY REVIEW PROCESS FOR FEDERAL ACTIVITIES

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| FEDERAL AGENCY | <ol style="list-style-type: none"> 1. Determines if activity is reasonably likely to affect any land or water use or natural resource of the Coastal Zone. If no effects are anticipated follows steps 2-4. If effects are anticipated, follows steps 5-12. 2. Provides CMP with statement of consistency with approved CMP, at least 90 days before agency action is planned to begin. |
| CPU | <ol style="list-style-type: none"> 3. Provide public notice (DEQ calendar) and opportunity for public review and comment. 4. Concur or disagrees with federal consistency determination of no effects. If concur, follows steps 4- 5. If do not concur, See steps 6-12). 5. Notifies federal agency of concurrence with determination. |
| FEDERAL AGENCY | <ol style="list-style-type: none"> 6. May proceed with activity. |
| CPU | <ol style="list-style-type: none"> 7. Disagrees with federal determination that project will not affect coastal resources. 8. Notifies federal agency of finding of that project will affect coastal resources. May request additional information if insufficient information has been provided to determine whether activity is consistent with enforceable policies of the state CMP. 9. Reviews information to determine whether activity is consistent to maximum extent practicable with enforceable policies of State CMP. Forty-five day review period begins. If additional review time is needed, may request additional 15 days. 10. Notifies federal agency of determination. 11. If CMP does not concur with the federal agency's determination of consistency, notify the appropriate federal agency and the Director of the federal office of Ocean and Coastal Resource Management. |
| CPU | <p>Objection letter should include the following information: (1) Describe and site the enforceable policy that the objection is based upon. (2) The objection letter must describe how the activity is inconsistent with state enforceable policies. (3) The objection must be timely. Letter must include the date the complete consistency certification (or determination) and necessary information was received by the state and the consistency review period began. If review extended beyond 45 days, cite the date the fifteen-day review extension was requested. (4) If objection is based on insufficient information, the letter must describe the information needed and why it is needed. (5) Objection letter must also include a description of alternatives (if they exist) that would make the project consistent.</p> |

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FEDERAL AGENCY AND CPU

12. If not consistent, attempt is made to resolve problems within remainder of 90-day period.
13. Enter into informal negotiations or apply to Secretary of Commerce for mediation of dispute.

CONSISTENCY REVIEW PROCESS FOR FEDERAL FINANCIAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

CPU

1. Review "State of Michigan Federal Project Review System Summary of Notices of Intent Received by State Clearinghouse" for projects that may affect any land or water use or natural resource of the coastal zone.
2. Request additional information if required to make determination of consistency.
3. If activity for which financial assistance is provided is determined to be inconsistent with state coastal management program, notify applicant, appropriate state and federal agency and director of the federal office of Ocean and Coastal Resource Management.

Objection letter should include the following information: (1) Describe and cite the enforceable policy that the objection is based upon. (2) The objection letter must describe how the financial assistance is inconsistent with state enforceable policies. (3) The objection must be made within the schedule determined by the state clearinghouse. (4) Notify applicant of appeal rights to the U.S. Secretary of Commerce. Notify applicant that they must appeal within 30 days of receipt of the letter and that the appeal must be based on the two grounds for a state override: (a) consistent with the purposes and objectives of the CZMA, or (b) necessary for national security. (5) If objection is based on insufficient information, the letter must describe the information needed and why it is needed. (6) Objection letter must also include a description of alternatives (if they exist) that would make the project consistent.

APPLICANT

4. Upon receipt of non-concurrence, may appeal state objection to Secretary of Commerce to override state objection within 30 days of receipt of state letter.