APPENDIX XI

WASHINGTON COASTAL ZONE MANAGE-
MENT PROGRAM SUPPLEMENT
April, 1976

In response to further Federal agency comments received on the WCZMP-January 1976 document, the Department of Ecology has made several substantive and procedural changes and/or additions to the Program. Based on those comments and further discussions with OCZM, a supplement has been submitted for inclusion in the program.

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DANIEL J. EVANS
GOVERNOR

March 29, 1976

Dr. Robert M. White, Administrator
National Oceanic and Atmospheric Administration
U. S. Department of Commerce
Washington, D. C. 20240

Dear Dr. White:

I am pleased to transmit to you several amendments and modifications to the Washington State Coastal Zone Management Program. The original program document was sent to you on December 12, 1975, and since that time, a number of matters have arisen that require clarification and modification in that document.

I have reviewed and approved the attached amendments and modifications and hereby declare them to be part of the Washington State Coastal Zone Management Program.

I believe that the attached material will resolve the questions and concerns raised by the various reviews of the program document, and that you should be in a position to approve Washington State's program with no further difficulty.

The program document will be reprinted soon with the attachments incorporated into it, along with minor clerical and informational corrections that are needed.

I am looking forward to an early approval of the program and to our continuing relationship with your office as the program is administered.

Thank you for your effort and concern on our behalf.

Sincerely,

Daniel J. Evans
Governor

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enclosures

AMENDMENTS AND MODIFICATIONS TO
WASHINGTON STATE COASTAL ZONE MANAGEMENT PROGRAM 3/29/76

FLOODING PARAGRAPH FOR ADDITION TO CHAPTER II, PAGE 6

Flooding within the coastal zone includes coastal type flooding which results from the high spring tides combined with strong winds from winter storms, riverine overbank flooding and the combination of the two. Storms that produce the surges also bring heavy rains and, therefore, the high river flows are held back by tides producing flooding at river mouths. Major damages occur within the flood plains which have experienced the greatest growth and development, and these are the streams draining westerly into Puget Sound.

ADD TO END OF INTRODUCTION OF CHAPTER III - PAGE 23:

Each of the agencies and programs discussed in this chapter, and again in Chapter V, have their own mandates and purposes which include, but are not limited to, concern for the coastal zone. In that provisions of the Shoreline Management Act require uniform application of SMA provisions, and direct that the planning of various agencies be consistent with SMA, it provides the single most comprehensive mandate for managing the coastal zone.

Along with SMA are the State Environmental Policy Act (SEPA) and the Environmental Coordination Procedures Act (ECPA) which in more general terms require uniformity of purpose, planning, and regulation.

PAGE 66-67 - REPLACE THE PARAGRAPH BEGINNING "THE SECOND PROGRAM .... FEDERAL FUNDS." WITH:

The second program includes portions of an overall flood plain management program. Those portions, which are statutory requirements, include a very minimal attention toward maintenance of flood control works pursuant to Ch. 86.26 RCW, and the administration of the State Flood Coastal Zone permit program pursuant to Ch. 86.16 RCW. Since the permit program can only be administered within the riverine flood plains of established flood control zones, it only applies to the fourteen major streams in the coastal zone. Zone permits are required within the zones for any works, structures and improvements which adversely influence the regimen of the stream or might adversely affect the security of life, health and property against damage by flood waters. Current Department of Ecology policy is to establish new zones only at the request of local governments. The Department of Ecology has been designated by the Governor to coordinate the National Flood Insurance Program (NFIP) (PL 93-234) in Washington. Flood plain management regulations in the coastal and all riverine flood plains of the coastal zone counties are the responsibility of local governments under the National Flood Insurance Program standards and criteria as set forth in 24 CFR 1910.3. Failure to meet those requirements and purchase flood insurance might result in the loss of federal aid to communities and individuals associated with construction or acquisition of building in the special flood hazard areas.

CHAPTER III - PAGE 94 -- REMOVE LAST PARAGRAPH FROM OFFICE OF COMMUNITY DEVELOPMENT DESCRIPTION AND ADD:

The Office of Community Development has two other roles in the coastal zone including handling of A-95 review for local Coastal Zone Management grants as discussed earlier. Also, the Office of Community Development administers HUD 701 grants, some of which may be used for Coastal Zone Management-related endeavors. As a part of this activity, the Office of Community Development maintains a library of local comprehensive plans and zoning regulations, and assists locals in such planning endeavors.

ADDITION TO HUD IN CHAPTER IV, PAGE 108:

The Federal Insurance Administration (FIA). Responsibility for administering the National Flood Insurance Program rests with the Federal Insurance Administration. The Flood Disaster Protection Act of 1973 (PL 93-234) is designed to call a halt to the all too prevalent practice in many of the flood prone communities of building indiscriminately in flood hazard areas. Local governments must adopt, administer and enforce land use control measures in their building codes, zoning ordinances, subdivision regulations, health regulations and construction specifications in order to meet this objective. This program and the Act will also improve the federal post-disaster assistance program by substituting the insurance indemnification for the current system of disaster loans. Of the 114 flood prone communities within the coastal zone counties, 96 are currently participating in the emergency program and meeting the program requirements. Flood insurance studies are currently under contract by HUD-FIA and underway for the nine counties in the coastal zone which are the most subject to flood damages. These will provide base flood elevations and delineation of the flood hazard and coastal high hazard areas for local communities to meet their flood plain management regulation requirements. The Department of Ecology will encourage and assist all communities toward conjunctive administration of the building, shoreline, and flood plain management efforts into a single permit system in the interests of economy and efficiency.

ADDITION TO COAST GUARD IN CHAPTER IV, PAGE 109:

Much of the Coast Guard's activity is directed by, and authorized by, the Navigational Servitude Act and the Commerce clause of the U. S. Constitution, which, among other things, require provisions for the safety of vessel traffic. In the pursuit of these duties, the Coast Guard has acquired some form of control over hundreds of small parcels of land and bedland in the state for navigational aids and has a constant program of maintenance and alteration of these aids to account for the changing needs of vessel traffic safety.

ADDITION TO CHAPTER V , EXCLUDED LANDS. REMOVE SECOND TO LAST PARAGRAPH (THIRD FROM BOTTOM, LEFT COLUMN, PAGE 118) AND REPLACE WITH:

In the process of developing this program, several federal agencies have taken the position that the "excluded lands" language contained in Section 304(a) is intended to exclude from a state's coastal zone all federal lands, irrespective of jurisdictional status. Since clarification of this issue is pending before the U. S. Attorney General, Department of Justice, it is the interim policy of the State to exclude all federal lands, irrespective of

jurisdictional status, from the previously defined coastal zone until such time as the U. S. Attorney General or his designee renders an opinion as to the exact meaning of the "excluded lands" clause.

The interim position of the State to exclude all federal lands pending the resolution of the above issue shall not in any way diminish or negate the force and operation of the federal "consistency provisions" contained in this amended program and defined under Section 307 of the Coastal Zone Management Act. It is the intent of the State of Washington to abide by and adhere to the opinion of the Department of Justice and any subsequent legal determinations, and to amend this program accordingly.

ADDITIONS TO "THE STATE'S MANAGERIAL NETWORK" IN CHAPTER V

THE FOLLOWING TO BE INSERTED AFTER THE END OF PAGE 120 AND BEFORE THE BEGINNING OF "STUDIES AND INFORMATION BASE" WHICH BEGINS ON PAGE 121:

The Shoreline Management Act of 1971 clearly placed the Department of Ecology in the lead role for the implementation of SMA and for Coastal Zone Management. The 1971 Act is the basic authority. Unusual among state statutes, the Act provides regulatory and permit authority and planning and coordinative functions. This explicit authority providing the Department lead role is expressed in 98.58.300:

> "The department of ecology is designated the state agency responsible for the program of regulation of the shorelines of the state, including coastal shorelines and the shorelines of the inner tidal waters of the state, and is authorized to cooperate with the federal government and sister states and to receive benefits of any statutes of the United States whenever enacted which relate to the programs of this chapter."

The pervasiveness of the Act is further defined in 90.58.280:

> "The provisions of this chapter shall be applicable to all agencies of state government, counties, and public and municipal corporations and to all shorelines of the state owned or administered by them. (1971 ex.s. c 286 § 28.)"

The Act also provides that the adjoining uplands are to be managed consistently with the coastal resource itself, i.e., that the state and its local governments avoid having parallel management programs which are not coordinated. This concern applies to all agencies and local government as set forth in 90.58.340:

> "All state agencies, counties, and public and municipal corporations shall review administrative and management policies, regulations, plans and ordinances relative to lands under their respective jurisdiction adjacent to the shorelines of the state so as the (to) achieve a use policy on said land consistent with the policy of this chapter, the guidelines, and the master programs for the shorelines of the state. The department may develop recommendations for land use control for such lands. Local governments shall, in developing use regulations for such areas, take into consideration any recommendations developed by the department as well as any other state agencies or units of local government."

By these two provisions then the tools for meeting the need for coordination are provided, along with the other provisions of SMA. The responsibility for implementation of the process is vested jointly in the Department of Ecology and local government. The roles and relationships are spelled out in 90.58.050:

> "This chapter establishes a cooperative program of shoreline management between local government and the state. Local government shall have the primary responsibility for initiating and administering the regulatory program of this chapter. The department shall act primarily in a supportive and review capacity with primary emphasis on insuring compliance with the policy and provisions of this chapter."

In addition to defining the relationship between local government and the Department of Ecology, the Act also provided that the Department was to represent its interest and preserve the integrity of the policies before federal interests. The Act, 98.38.260 provides the following:

> "The state, through the department of ecology and the attorney general, shall represent its interest before water resource regulation management, development, and use agencies of the United States, including among others, the federal power commission, environmental protection agency, corps of engineers, department of the interior, department of agriculture and the atomic energy commission, before interstate agencies and the courts with regard to activities or use of shorelines of the state and the program of this chapter. Where federal or interstate agency plans, activities, or procedures conflict with state policies, all reasonable steps available shall be taken by the state to preserve the integrity of its policies."

THE FOLLOWING ADDITION IS INSERTED AFTER THE LIST OF EXAMPLES ON PAGE 124, AND BEFORE THE LAST PARAGRAPH OF THE LEFT COLUMN OF PAGE 124:

The discussion that follows is intended to show the managerial network in operation, and the comprehensive influence and direction provided by the Shoreline Management Program in the operation of the network. The policies and programs of SMA provide the uniformity and coordination that is essential in the CZM network. The Environmental Procedures Coordination Act provides uniformity and coordination, but on a more general level. The coastal zone, and all shorelines are the subject of special effort by the state, and thus SMA provides a particularly coordinative as well as regulatory function.

THE FOURTH PARAGRAPH OF THE FIRST EXAMPLE IS CHANGED TO READ:

The Department of Ecology would be called upon to implement regulations under such state laws as the Water Resources Act, the Water Pollution Control Act, the Washington Clean Air Act, and of course, the Shoreline Management Act.

In addition, the proposer of the transfer station could elect to use the procedures made available by the Environmental Coordination Procedures Act administered by DOE. Since in most cases an offshore transfer system would require leases of underwater bedlands for both the installation of the station itself and the pipeline to the shore, the Department of Natural Resources as manager of state-owned bedlands and tidelands would fulfill its responsibilities under the Public Lands Act and statutes relating to tidelands, shorelands, and harbor areas. The Department of Natural Resources' lease will be based on the Department of Natural Resources' leasing policies which are in turn, cognizant and reflective of the policies, regulations and processes of shoreline management.

This is an instance where the Legislature might have to enact new statutes because the Department of Natural Resources' authority to lease bedlands

from outer harbor lines seaward is presently unclear. Provisions of the Seashore Conservation Act would be implemented by the Parks and Recreation Commission. Hydraulic permits would have to be obtained from the Departments of Fisheries and Game.

THE THIRD PARAGRAPH OF THE SECOND EXAMPLE IS CHANGED TO READ:

The state has provided a network through which this public interest can be addressed. Under SEPA, an EIS may be required for a marina development. The project definitely would require an SMA substantial development permit from a county or city. Unless the tidelands are privately owned (none have been sold by the state since 1969) the owner would have to lease the tidelands and any bedlands either from the Department of Natural Resources or from a public port district. By statute the Department of Natural Resources cannot sign the lease until the applicant has received appropriate Army Corps permits.

The Department of Ecology handles the state review of the Corps of Engineers' permits, and will not clear such permits until requirements of the SMA are satisfied. As mentioned before, the Department of Natural Resources will lease on the basis of its lease policies which were developed in recognition of the SMA.

The Departments of Fisheries and Game generally look closely at marina proposals to see if natural fish runs are affected (particularly in the mouths of streams and rivers) or if activities such as dredging, bulkheading, or landfills are harmful to fish or bird or waterfowl habitat. Both agencies would have to approve a hydraulic permit.

THE FOLLOWING IS ADDED AFTER THE LAST PARAGRAPH OF THE SECOND EXAMPLE:

In this example, as with the prior one, the major coordinative devices (SMA, SEPA, ECPA, if it is used, and Corps Section 10) are administered by or through the Department of Ecology. Four major agencies of the state (Department of Natural Resources, Department of Social and Health Services, Department of Fisheries and Department of Game) have the authority and responsibility of controlling certain important aspects of the marina, and these agencies have the necessary expertise to assure that these aspects are properly developed. The Department of Ecology also administers specific programs (water quality, noise, floods, water supply) which are selectively brought to bear on the project. However, the Department of Ecology also provides overall evaluation and judgement of the project from the SMA perspective, in addition to assuring that the special interests are alerted to the proposal, and that the concerns of these interests are made part of the state's reaction to the proposal.

THE FOLLOWING IS ADDED AT THE END OF THE THIRD AND FOURTH EXAMPLES:

The review and coordination functions and the various agency roles are as described in the earlier examples.

THE FOLLOWING IS ADDED AFTER THE THIRD PARAGRAPH IN THE FIFTH EXAMPLE:

In addition to the various state regulations, the local shoreline program may have additional regulations to which the logging operator must adhere.

THE FOLLOWING REPLACES THE FEDERAL HISTORY IN CHAPTER V:

History of Federal Participation in the Washington Program

Federal participation in Washington's program began modestly during the development of guidelines for the Shoreline Management Act. Federal agencies were invited to contribute views, and the final guidelines reflected those federal contributions.

Federal agencies were also asked to participate in a state-federal task force to review local master programs. Since 1973, this task force has grown to include more than 20 federal agencies.

With the passage of the Coastal Zone Management Act in 1972, state and federal interest in Washington's coastal zone increased.

In 1974, the state began to develop its coastal zone management program and a major effort to increase federal involvement began. Efforts were hampered somewhat because many agencies were not informed about the Act, and were unprepared to work with it. Also, the Department of Commerce had not yet finalized the 306 program guidelines, and many legal questions relating to the provisions of the Act were unanswered. Many agencies were uncertain if, or how, the Act would affect their programs.

Some two dozen federal agencies were identified as being "principally affected" by the State's program. Specific contact people were selected by the agencies, and correspondence was directed to the contacts.

Early in 1975, a meeting was held at the Federal Regional Council offices to discuss the State's program and to identify areas which would be of particular concern to a group of federal agencies with common concerns.

In February of 1975, the State sent a questionnaire to the identified federal agencies, and a number responded with details about their coastal zone management concerns, activities, programs, problems and expectations.

In late March of 1975, the State distributed the preliminary program document, displaying in black and white positions and policies of the State which had not been fully understood by federal agencies. The document stimulated extensive federal comment, which in turn clarified the policies and positions of federal agencies which had not been perceived by the State.

Many of the federal views identified legitimate deficiencies or desirable modifications to the program. Others were based on a misunderstanding of the State's program or a different interpretation of the Coastal Zone Management Act. A few were based on unrealistic expectations of the State's capability--or legal obligation--to provide detailed analyses or projections or initiate programs.

Generally, the objections addressed the following: lack of involvement in the development of the program; the need for a concise description of the overall program; the definition of coastal zone boundaries; lack of information on specific kinds of "permissible uses," "priorities of use," and "areas of particular concern"; inadequate expression of regional and national interests; and administrative or operational mechanisms for coordination and consistency. (See Appendix F.)

In May of 1975, the State was given preliminary approval. Full approval was withheld, in part because of the many federal objections.

The State began revamping its program, paying special attention to the deficiencies and misunderstandings which had been brought out through the federal review.

In June of 1975, the State met with federal agencies in the offices of the Federal Regional Council. At this meeting, several topics were discussed: procedures for ensuring consistency of federal actions with an approved Washington program; the ways in which federal views had been considered; and the opportunity of federal agencies for "full participation." No conclusive agreements were reached on any of these topics. The concept of several sub-committees of federal and state agencies with common interests was explored and later rejected; it became apparent that common interests were difficult to identify, that such an approach would be unwieldy, and that there was more need for individual agency consultation.

During the ensuing months, the State began a massive information-gathering effort, described in the next section. State-federal communication throughout the fall and early winter focussed on development and refinement of these "informational packets."

In mid-December of 1975, the State published its substantially revised coastal zone management program. The distribution was officially handled by the Office of Coastal Zone Management in Washington, D. C. Federal reaction swiftly followed distribution of the document. Very soon it became apparent to the State that concern centered on two issues: the State's position on "excluded federal lands"; and procedures for ensuring consistency.

Discussions with a number of agencies over the next few months failed to bring resolution. As a result, in March of 1976, the State substantially revised its excluded lands policy pending the opinion of the U. S. Attorney General which had been sought by NOAA.

During the same month, the State published and distributed its "Operational Guidelines for Federal Consistency."

Other objections and comments were addressed in further revisions to the program document and also in an addition to Appendix F.

RELATIONSHIP OF FEDERAL PACKETS TO THE PROGRAM - TO BE ADDED TO "DEVELOPMENT OF A STATE/FEDERAL COORDINATION SYSTEM" IN CHAPTER V, ADD PRIOR TO LAST PARAGRAPH ON PAGE 132:

The packets are parts of the Washington Coastal Zone Management process, and thus part of the CZM effort now underway. The packets are not, however, considered to be part of this program document. While all of the State's policy, especially regarding excluded lands and consistency, is in the program document, the packets contain information that will be useful in the future. The packets can become the basis by which minor arrangements for specific problems can be made. From an operational and an informational standpoint, the packets are very much a part of the CZM program effort.

ADDITION TO CHAPTER V. INSERT PAGE 133, RIGHT COLUMN, AS THIRD AND FOURTH PARAGRAPHS OF "INCORPORATION OF WATER POLLUTION AND AIR POLLUTION REQUIREMENTS:

Program development has been coordinated with both authorities and the state CZM program is developed in compliance with the Federal Water Pollution Control Act and the Clean Air Act. The policies and actions undertaken in conformance with the Washington State CZM program are intended to further the objectives of the federal air and water quality program.

While state air and water quality programs are adequate to control direct discharges and emissions which could directly and significantly impact the coastal water, the control of non-point sources of pollution to coastal waters is considerably more complicated. These authorities mostly fall within the Department of Ecology and require a comprehensive approach which must be incorporated into the total management scheme. For this purpose, the state program has been cognizant of, and has coordinated its program with, local, and area wide interstate plans applicable to areas within the coastal zone. In fact, local governments' primary management tool in the coastal zone, the local master program, was mandated by the SMA to be consistent with other state and local programs "to achieve a use policy on said land and master programs." Other specific programs that are directed to non-point pollution include the Section 208 of the Federal Water Pollution Control Act area wide waste treatment management planning. At present, two 208 areas are located in the Coastal Zone. As these planning programs get underway, the Department will assure coordination between the local effort and the state CZM program. Most specific to the state's water quality planning program is the considerable effort of the Department in basic planning under Section 303(e) of the Federal Water Pollution Control Act which enters into an advanced phase in the coming year to address non-point problems to meet the 1983 national water quality objectives. Success in meeting national water quality goals is dependent on a coordinated effort among the several state programs. Additional state programs for the protection of the upland watershed include the State Forest Practices Act and Hydraulics Permits issued by the Departments of Fisheries and Game.

THE LAST DOCUMENT OF THIS ATTACHMENT IS THE "OPERATIONAL GUIDELINES" FOR CONSISTENCY. THIS DOCUMENT WILL BE REFORMATTED AND INSERTED INTO THE CONSISTENCY DISCUSSION ON PAGES 133-134 OF THE EXISTING PROGRAM DOCUMENT.

ADDITION TO CHAPTER VI UNDER "PROGRAM COORDINATION OBJECTIVES" AND SPECIFICALLY "FEDERAL COORDINATION," PAGE 140:

5. (new) There may arise a conflict between the state and a federal agency during administration of the program, and resolving such conflicts is certainly an objective of this program. The method employed by the state will first be bi-lateral discussions with the federal agency to solve the problem. Should that fail, the state will either drop the matter or use one of the following possible solutions. The last, resolution in federal court, is seen to be the least desirable method.

1. Appeal to a higher federal authority, such as the parent department of the agency.

2. Bring the matter to a panel of CZM representatives of various state, local, and federal entities, called together for the purpose of airing such conflicts.

3. Bring the matter before a mediation service to be provided by the Department of Commerce.

4. Bring the matter to federal court.

ADD TO "PROGRAM ENHANCEMENT OBJECTIVES" IN CHAPTER VI, PAGE 143:

The Outer Continental Shelf, and its future, are of great concern to the State from environmental, economic, jurisdictional, and management standpoints. The State will undertake whatever investigations and actions are needed and proper to ensure good management of this area and to clarify the State's role in that management.

ADDITIONAL PROGRAM ENHANCEMENT OBJECTIVES FOR CHAPTER VI, PAGE 143:

Several federal agencies are responsible for programs that are directly parallel to many programs in DOE and other state agencies. Examples are air quality, water quality, fisheries resources, timber management, wildlife, energy, and transportation. Whenever programs of such a dual nature affect the coastal zone, the Department will work, using the packets, multi-lateral discussions, memoranda of agreement, and other appropriate means, to promote and arrange compatibility of policy, objectives, methods, and practices. By this means, the CZM program can ensure consistent treatment of the coastal resource through such dual programs, and possibly assist such programs toward more rapid attainment of mutually sought goals and standards.

New Objective

The State Legislature has recently expanded the scope of the Thermal Power Plant Site Evaluation Council to embrace the siting of all types of energy facilities, and this new energy act also addresses other energy problems and issues. Insofar as energy facilities and other concerns may affect the coastal resource, the Department will work with the state's new energy program and the federal energy agencies to ensure compatible state/federal energy efforts as they affect the coastal zone, especially insofar as facilities siting is concerned.

New Objective

Washington State will soon be faced with greater amounts of incoming crude oil shipped by tanker. The possibility of a single oil tanker receiving terminal located in the Port Angeles vicinity has become a serious proposal. The Department will devote special effort to assist, via CZM, the feasibility determination of this proposal. If the proposal is found feasible, the Department will work toward the best siting, design, and management of this terminal using the CZM program as the focal point of this effort.

New Objective

Flooding and other natural hazards and their consequent damage are matters of great concern in Washington State, and with the establishment of an operational CZM program, a new relationship of local, state and federal partners is evolving. The subject of this relationship should be pursuit of compatible flood plain and hazard area management plans, policies, objectives, and regulations. Shoreline management has a very comprehensive approach to the management of uses on the floodplains, and when combined with other local endeavors and the federal flood damage reduction program in a compatible manner, can achieve the aims of all concerned.

New Objective

Emphasis in the program development stage has been on the development of regulations and standards, enforcement, and on the development of broad management local and regional plans. While these elements of the program are essential, there is now the need to examine the needs of some specific land and water uses with requirements for sitings within the coastal zone from a broader, coastal zone-wide perspective. The need would include studies and positive policy for the location and siting of such uses as boating and energy facilities, and other use of greater than local interest.

New Objective

Emphasis in the development of local shoreline master programs has been on the onshore, upland land use aspects of the program. This element is most critical to, and has historically been, the prerogative of local government. However, the resultant local programs often neglect or inadequately address complicated issues involving the management of the beds and surfaces of marine waters. Water areas have historically and continue to be managed by a multiplicity of state and federal agencies. There is now a need to examine local programs in light of state and national policies and to bring some degree of consistency between and among the programs at all levels of government.

ADDITION TO CONCLUSION, PAGE 143:

As the CZM program continues, there will arise a need to formalize the refinements through the program amendment process.

Where a possible amendment will affect various entities, then the Department will endeavor to develop such amendments in concert and consultation with those entities, as well as providing the opportunity for review.

When this happens, the proposed amendments will be sent to the Department of Commerce with a request for review and if appropriate, approval.

UPDATE TO APPENDIX A
STATUS OF LOCAL MASTER PROGRAMS

Submitted Programs Since October 1975

Hoquiam (Grays Harbor County)
Island County
- Coupeville
- Langley
- Oak Harbor

Kitsap County
- Poulsbo

Raymond (Pacific County)
Everett (Snohomish County)
Stanwood (Snohomish County)
San Juan County
Anacortes (Skagit County)
Thurston County
- Olympia

ADD TO AREAS OF PARTICULAR CONCERN, CHAPTER V, PAGE 130:

A POLICY STATEMENT BY GOVERNOR DANIEL J. EVANS, ON THE SITING OF SINGLE, MAJOR CRUDE PETROLEUM TRANSFER SITE AT PORT ANGELES. SUPPLEMENTING AND AMENDING THE JANUARY 1976 WASHINGTON STATE COASTAL ZONE MANAGEMENT PROGRAM.

Background

Faced with impending actions in both the private and public sectors on the issue of oil transfer in Northern Puget Sound and the Strait of Juan de Fuca, there is an urgent need to clarify and make known the State's position regarding an oil terminal at or west of Port Angeles. Supportive policy expressions have already been issued by the Oceanographic Commission, the Legislature, private groups and the Office of the Governor. The need to reassert the State position results from the fact that the State of Washington has submitted its Coastal Zone Management program, the nation's first, to the U. S. Department of Commerce for review. With federal approval, state and federal agencies will be expected to conduct their activities consistent with the State program. Washington's Coastal Zone Management program, while based primarily on the 1971 Shoreline Management Act, also includes the body of State legislation and programs which

affect and manage land and water uses in the coastal zone. The inclusion of these additional programs brought about concern as to whether or not the major terminal was supported by and a part of the State Coastal Zone Management Program.

Coastal Zone Management Policy on an Oil Terminal at or West of Port Angeles

The State of Washington, as a matter of overriding policy, positively supports the concept of a single, major crude petroleum receiving and transfer facility at or west of Port Angeles. This policy shall be the fundamental, underlying principle for State actions on the North Puget Sound and Straits oil transportation issue and is specifically incorporated within the Washington State Coastal Zone Management program. State programs, and specifically State actions in pursuit of the intent of federal consistency, shall be directed to the accomplishment of this objective. Further, it is the policy of the Washington Coastal Zone Management program to minimize adverse effects in the area, and to seek mitigation of unavoidable adverse impacts.

Policy on the Expansion of Existing Oil Terminal Facilities

The use of a single offloading site at Port Angeles has the dual purpose of lessening vessel traffic in the inland marine waters and the number of transfer points with their associated spill problems. The objectives of this major proposal is to reduce the risk factor of a major oil spill by reducing the number of transfer sites, the amount of vessel traffic in constricted channels, and the amount of environmentally sensitive marine waters to be exposed to the risk.

The offloading facility and transportation system at Port Angeles shall be designed to include provisions to supply existing refineries in Whatcom and Skagit Counties. Unless specific plans and firm commitments to connect to the Port Angeles facility are included, individual expansions to existing offloading facilities or proposals to deepen channels to accommodate deeper draft vessels are considered inconsistent with the single terminal concept as incorporated in the State Coastal Zone Management program.

TO BE ADDED TO APPENDIX F: VIEWS AND RESPONSES, JAN. 1 - MARCH 29, 1976

Federal Agency Views	Responses
PARTICIPATION	
Lacked "full opportunity" to participate in the revision of the program. (DOT)	The Department of Ecology disagrees. Comments from DOT and all other agencies which reviewed the March 1975 program were used extensively in program revision. In addition, communication was enhanced by a workshop in June of 1975, and numerous bilateral meetings throughout the fall and winter of 1975.
BOUNDARIES	
All land and water used by federal agencies--regardless of jurisdictional status--should be excluded from the state's coastal zone. (DOT, USDA, DOD)	The Department of Ecology has agreed to this definition as an "interim" policy, pending the opinion of the U.S. Attorney General. However, federal agencies must nonetheless abide by the consistency provisions of the CZMA.
The boundaries of the state's coastal zone are too large, and should be limited to the area needed to protect marine land and waters. (BPA)	The emphasis of management is on the state's resource boundary. The second tier is intended to be an "administrative" boundary. The guidelines for federal consistency point out the application of the boundaries to the determination of consistency. Generally, the emphasis is on the narrow resource boundary.
Wants AF and Navy property identified and located on the maps. (DOD)	Since the federal agency determines consistency, that agency would be aware of the jurisdictional status of its lands. There is no need for the Department to map federal lands.
PERMISSIBLE USES	
Questions the uses permitted under the "aquatic" environment. (FEA)	The Department acknowledges that the aquatic environment has not been adequately defined. Through its work program, the state will address this problem, possibly through the development of a model ordinance.

Wants formal delineation of the use boundaries. (DOD)	As part of the work program, the Department intends to develop maps designating uses in each master program.
NATIONAL AND REGIONAL INTERESTS	
The program contains no "explicit and detailed statement of policy concerning the siting of energy facilities in the coastal zone." (FEA)	The role of the TPPSEC has been expanded by SB 3172 to include all energy facilities, not just thermal ones.
Air Force installations should be designated as a major regional activity, and Air Installation Compatible Use Zones should be recognized by the state. (AF)	The state recognizes Air Installation Compatible Use Zones. However, while the program does not designate "major regional activities" as such, the state recognizes the national interest inherent in the mission of the Air Force.
The state should address the national interest in the siting of facilities in the program document itself, not in the "informational packets." (DOT)	The Department agrees, and has done so.
There is insufficient evidence of the state's capability to deal with state and regional energy problems. (FPC)	The state's new energy office, and the expanded powers of TPPSEC, should help to answer this objection. The state's coastal zone program will, in addition, incorporate any forecasts provided by the FPC.
PACKET SYSTEM	
The packet system should contain no "essential provisions" that are not an "integral part" of the program document. Uncertain as to the role of the packet system. (DOT, DOD, FEA)	The Department agrees that all "essential provisions" should be part of the program document, and has incorporated into the program its procedures for consistency, coordination, conflict resolution, etc. The packets will be periodically updated to more accurately represent the missions of the federal agencies, and thus provide up-to-date background information so that the state can more adequately recognize and consider national interests.

CONSISTENCY

Objects because the procedures for federal consistency are not part of the program. (DOT, DOD)

Operational guidelines for federal consistency have been incorporated into the amended program.

Objects because determination of federal consistency will largely be made by the state rather than by a federal agency. (DOD)

The consistency guidelines developed by the state and distributed in March, 1976, require federal agencies to make the initial determination of consistency with regard to activities and developments.

The program lacks any procedural regulations for resolving state/federal conflicts regarding consistency. (DOD)

This lack has been remedied in the consistency procedures which are now part of the program.

Questions the time frame and process for handling permit and license review. (DOT)

These matters are spelled out in the consistency guidelines.

Will fish and wildlife agencies have to comment twice on such matters as Corps permits, once for the state system and once for the federal? (NOAA)

No.

Federal agencies need not comply with state and local administrative procedures. (DOD)

True, federal agencies need not comply with state or local permit systems. However, they must abide by the consistency procedures.

COORDINATION AND CONFLICT RESOLUTION

The program lacks a means of coordination or of conflict resolution. These items should be part of the program, not the packet system. (DOT)

Conflict resolution with regard to consistency is addressed in the consistency guidelines. The Department, under its work program, will actively seek to devise an effective coordinating forum.

Wants to be assured of prompt resolution of DOD-state conflicts regarding consistency. (DOD)

See consistency guidelines.

MISCELLANEOUS

State should give consideration to development of "port reception facilities for the collection, treatment, and disposal of oily wastes from vessels." (MA)	The Department sees this as a possible topic of study.
Separate appendices might be developed for "more specific and detailed data based on each of the 20 or more key shoreline uses or activities...." (MA)	Under the work program, the Department will be addressing such uses as marinas, aquaculture, etc.
Prior to approval, wants strong commitment that certain energy related objectives will be implemented within a "reasonable time frame." (FEA)	As the new state energy office develops, new policies will be adopted by the coastal zone program.
Wants new local master program guidelines more in accordance with facility siting provisions. (FEA)	Facility siting provisions will be addressed in subsequent updates of local programs.
Wants another environmental category to take care of energy facilities. (FEA)	All energy facility siting is handled by TPPSEC as a result of new state legislation (SB 3172). The authority of TPPSEC overrides that of local shoreline master programs, so there is no need for an environmental designation specifically for energy facilities.
Encourages the state to evaluate extension of the jurisdiction of TPPSEC beyond thermal power. (FEA)	The legislature has done so, in SB 3172.
Wants more thorough review of living coastal resources, relating biological, economic and social data. (NOAA)	The state has already developed an extensive inventory in the preparation of local shoreline master programs. The Department, however, recognizes that more data is desirable, and will be developing more under the work program.
The program lacks basic goals and objectives to assure consideration of important plant and animal populations, identification and management of significant habitat areas and living resource use zones. (NOAA)	These goals and objectives have long been part of the Shoreline Management Act, and are addressed by local shoreline master programs.

Does not describe how the Outer Continental Shelf will be managed. (NOAA)	The state has applied for funds to mitigate the onshore impacts of OCS activities. While the state's authority to manage OCS hasn't been fully determined, the Department will, under the work program, explore the legal and managerial issues involved.
Wants flood plain management criteria to be included to ensure a unified state policy. (HUD)	The amended program addresses this.
There is no adequate system for ensuring that the coastal zone program and local master programs are "substantively consistent with the environmental plans prepared under the Federal Clean Air Act and the Federal Water Pollution Control Act." (EPA)	The state's authority for both air and water quality rests with the Department of Ecology, which is also the state's designated coastal zone manager. The directors of all of the pertinent programs regularly confer as members of the Department's Executive Policy Committee.
Air and water quality standards were not used in designating shoreline environments or defining permissible uses. (EPA)	These standards are built in to the state's program, and by virtue of the CZMA, take precedence when alternative uses are being considered.
The interrelationship among state agencies, with authorities affecting the coastal zone, is not explained. (EPA)	This has been addressed in the amended program.
Not all local shoreline master programs have been approved. (EPA)	Most of the master programs have been submitted to the state for approval. Even without approved local master programs, sufficient direction exists, through the draft master programs, the shoreline management guidelines, and other programs to manage land and water uses in the coastal zone.
In general, local shoreline master programs make no reference to the CZMA or how its provisions will be incorporated. (DOD)	The relationships between local master programs and the coastal zone management program have been more directly addressed in the amended program.

March 25, 1976

State of Washington
Department of Ecology

Memo to: Federal Agencies with Interests
in Washington's Coastal Zone

From: John A. Biggs, Director,
Washington State Department of Ecology

Subject: Operational Guidelines

Since the distribution of Washington's proposed coastal zone management program in December, we have received many questions about state-federal coordination. You have asked--quite understandably--how we propose to handle coordination of grants, activities, developments, and authorizations as required under Sec. 307 of the Coastal Zone Management Act.

The attached quidelines are our explanation, and should be read in the context of the Washington Coastal Zone Management Program. You'll see that they are simply written, in question-and-answer form. We hope they will provide the answers you have been seeking.

As you may know, some important decisions which will undoubtedly affect state-federal coordination are pending. One pertains to the state's authority to administer NPDES permits to federal agencies. Another relates to the extent of the state's authority under the CZMA to influence Outer Continental Shelf activities.

A third relates to the matter of excluded lands. The state has decided to exclude all federal lands, regardless of jurisdictional status, pending the opinion of the U.S. Attorney General which has been requested by the National Oceanic and Atmospheric Administration. However, the consistency requirements of Sec. 307 of the CZMA will still apply to these excluded lands. Once the legal opinion of the Attorney General has been rendered, the State of Washington will abide by that opinion.

These guidelines may be revised to accommodate resolution of these and other matters, after consultation with federal agencies.

We have attempted to cover all bases in these guidelines. However, we may have missed some important considerations. Please do not hesitate to contact Emily Ray at (206) 753-3829 to discuss your concerns.

JB:pam
030808

Attachments

O P E R A T I O N A L G U I D E L I N E S

For Federal Consistency

Washington State Coastal Zone Management Program

Department of Ecology
Olympia, Washington 98504

March 25, 1976

C O N T E N T S

Chapter		Page
I.	Consistency of Federal Grants	1
II.	Consistency of Federal Developments	4
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IV.	Consistency of Federal Permits and Licenses	14

Attachments

A. Coastal Zone Boundaries

B. A-95 Form

C. Clearinghouses in the Coastal Zone

D. Matrix--Agency Activities Subject to Coordination

E. A-85 Circular

CONSISTENCY OF FEDERAL GRANTS

1. What is a grant?

"Grant" refers to federal assistance to state and local entities.

2. Where must federal grants be consistent?

Generally, the 15 coastal zone counties and the 38 coastal zone cities when the grant project may affect the coastal resource (see Attachment A).

3. What grants are subject to the consistency requirement of Sec. 307(d) of the Coastal Zone Management Act?

Grants subject to the consistency requirement include the following types of grants if the proposal may affect the coastal resource:

Planning assistance to the state
Grants and loans for coastal protection
Grants and loans for stream modification, shore protection, or flood control
Public works, ports, or industries
Housing projects
Purchase of recreational and wildlife areas
Wildlife management programs
Mining reclamation
Transportation facilities
Business loans

The agencies most likely to be affected are shown on the matrix, Attachment D.

4. Who will determine if a grant is consistent, or subject to consistency?

DOE, on behalf of the state, will make this determination, including whether the grant project will have an impact on the coastal zone.

5. What are the duties of the federal agency?

The federal agency's responsibilities begin upon receipt of an application for assistance from a state or local entity of government. First, the federal agency must insure that the application has been circulated in accordance with the A-95 process. Second, the federal agency must check to see if the state's statement of consistency, or statement that the grant project is not subject to consistency, is attached.

6. How will the state become aware of grants subject to the consistency requirement?

Through the A-95 process. Identification by the state of grants subject to consistency will become easier with the new A-95 form, to be implemented in April (see Attachment B). It directly addresses the shoreline/coastline question in two ways. It asks if a water area is involved (naming Shoreland, Salt Water and Tide Land), and also whether a shoreline permit will be required.

7. What are the responsibilities of the Department of Ecology?

DOE will learn of proposals for federal assistance from local entities of government through the Weekly Project Notification Log published by the Office of Community Development.

Requests by state entities for assistance are often not carried by the log. DOE will learn of these directly from the Office of Program Planning and Fiscal Management, the clearinghouse for state proposals.

Upon identifying a proposal as being of coastal zone significance, DOE will review it for consistency. DOE's review will include contacting local government and other agencies for input, and evaluating the request in terms of applicable state laws and the policies and regulations governing shoreline management (see the Washington Coastal Zone Management Program).

DOE will then prepare a statement of consistency, sending copies to the appropriate clearinghouse and to the applicant.

8. What if DOE says that the proposal is not consistent with the state's coastal zone management program?

The federal agency will not approve it. The only exception would be if the Secretary of Commerce finds that the proposal is consistent with the purposes of the act, or that the proposal is necessary in the interests of national security.

9. Can you, by example, show how the process for consistency of grants will work?

Let us suppose the Port of Olympia plans to extend its pier with construction funds from the Economic Development Administration.

a. The Port sends preapplication notice to the local clearinghouse, the Thurston Regional Planning Council. The preapplication clearly indicates shoreland/saltwater involvement.

b. The local clearinghouse starts its 30-day review and informs OCD.

c. OCD publishes a brief description of the proposal in the weekly log, including mention of shoreland/saltwater involvement.

d. The 30-day state review period begins. This review overlaps with the local review.

e. DOE receives a copy of the log, notes the Port proposal, and if necessary seeks further information from the Port. DOE then prepares a consistency statement, using local input, and evaluating the proposal against applicable state laws and the policies and regulations governing shoreline management.

f. Consultation with all affected parties may be requested.

g. DOE sends copies of the statement concerning CZ significance of the Port's project to the Thurston Regional Planning Council and to the Port itself.

h. The clearinghouse forwards comments, including DOE's, to the Port.

i. The Port submits its application to EDA with all comments attached to it.

j. EDA reviews the proposal. Assuming that the comments are favorable, and that DOE finds the proposal consistent with the state's coastal zone program, EDA makes its decision.

10. How will a federal funding agency know if a grant is subject to consistency, if no statement of consistency accompanies it?

All grant requests from state and local entities of government which are located in the 15 coastal counties must have a statement regarding coastal zone significance. Most statements will be statements of non-significance--in other words, the proposal does not have any apparent impact on the resource boundary.

Because a statement by the state will accompany each grant proposal, the federal funding agency is freed of the burden of determining whether or not a proposal should have such a statement of consistency.

If by some mischance a proposal arrives at the federal funding agency without a consistency statement, the federal agency should immediately contact the federal coordinator at DOE.

CONSISTENCY OF FEDERAL DEVELOPMENTS

1. What is a development?

The A-95 circular defines direct federal development as "planning and construction of public works, physical facilities, and installations or land and real property development (including the acquisition, use, and disposal of real property) undertaken by or for the use of the Federal Government or any of its agencies; or the leasing of real property for Federal use when the use or intensity of use of such property will be substantially altered." This is the definition accepted by the Washington Coastal Zone Management Program since the A-95 procedure will play an important role in consistency procedures.

2. Where must federal developments be consistent?

Sec. 307(c)(2) of the Coastal Zone Management Act applies to a federal development project in the coastal zone of a state. For the Washington Coastal Zone Management Program, this means any federal development fitting the direct development definition, which occurs within the first tier, will be subject to Sec. 307(c)(2).

3. Who determines whether developments are consistent?

The federal agency does. The duties of federal agencies are to:

a. Make this determination with state involvement as a routine matter;

b. Officially notify the state of this determination through the A-95 process; and

c. Explicitly address the consistency of the proposed development with the WCZMP if a negative declaration or a draft environmental impact statement is made under the National Environmental Policy Act.

d. Respond to any state requests for more information or comment on the proposed development.

4. How, specifically, does the federal agency make the determination?

The federal agency evaluates the proposed development against the policies, environment designation, and regulations of Shoreline Management. The project is also required to be consistent with air and water quality standards and other pertinent state regulations.

If the substance of these policies and regulations is met by the development, the proposal is consistent.

(Note: There may arise cases where a federal agency must obtain a state or locally issued permit such as an NPDES permit. The courts have not ruled definitely on these matters, but should the courts require federal compliance with any of the CZM relevant administrative procedures, then successful compliance with them will be prerequisite for consistency).

5. How does the federal agency notify the state of its determination?

The most convenient and timely way is to use the existing A-95 system. In addition to the other A-95 information, the federal agency should include one of the following four responses together with other required disclosures on the A-95 application ("Uniform Washington State Clearinghouse Project Notification and Review Application"):

a. "The development is not subject to the consistency requirements of Sec. 307 of the CZM Act of 1972."

b. "This development is consistent with the Washington CZM program."

c. "This development is not consistent with the Washington CZM program, but no practicable alternative exists to carry out the legal purpose for which the development is designed."

d. "This development is not consistent with WCZMP but no practicable alternative exists to meet the national security need filled by this development."

The federal agency should also indicate the date by which it intends to make a final decision whether to proceed with the project.

While A-95 will provide the state with sufficient advance warning, the federal agency also can contact the state directly. The state has further opportunity to be informed through review of a negative declaration or a draft environmental impact statement submitted through the NEPA process, if that is required.

6. Suppose the federal agency is unable to make the consistency determination at the time of sending out its A-95 notification?

The A-95 notification should indicate the possibility of CZM relevance, and say that a consistency determination will be forthcoming. The federal agency should ask for state involvement in making the determination and send it to DOE as soon as possible.

7. What will the state do when it receives the consistency determination?

The state, acting through DOE, will review the proposal and in so doing will seek the views of other relevant state agencies, local governments, and other appropriate sources. The nature and conduct of this review will depend on the type and magnitude of the federal proposal.

If the state agrees with the federal assertion (that is, with whichever of the four consistency statements shown above is used), then nothing more will be done.

If the state does not agree with the federal determination, the state will notify the federal agency and arrange a meeting or meetings to seek resolution of any differences.

8. What will the state do if agreement with the federal agency cannot be reached?

The CZM Act provides no explicit means of resolution in the case of conflict over consistency determinations involving developments, so the state will:

a. Drop the matter;

b. Bring the matter before a mediation forum involving all key parties (such an informal body to be established);

c. Seek the good offices of NOAA to seek accommodation; or

d. Take the matter to federal court.

9. What will the state do if a federal agency starts a development without making a consistency determination or notifying the state of such determination?

If the state should learn of a pending federal development or one already underway (it usually will by virtue of NEPA, Federal Register, Section 10 Permit, citizen comments, or other means), and if the state believes this development to be subject to Sec. 307(c)(2), then the state will immediately notify the federal developing agency of this situation and request a determination of consistency.

At the same time the state will undertake to make its own determination and if the project is found to be consistent, the matter will end. If, however, the federal agency does not feel that the development is subject to 307(c)(2), or disagrees with the state's determination, the state will call for meetings to resolve the conflict. If the conflict cannot be resolved, the state will resort to one of the options described in #9 above.

10. Can you provide more detail as to types of development, and federal agencies involved?

The matrix in Attachment D provides the various kinds of developments subject to Sec. 307(c)(2), and the most likely federal agencies to undertake such development.

Note, however, that any federal agency is subject to 307(c)(2). The matrix only lists the most probable agencies based on information acquired to date.

11. Can you provide an example of how a typical consistency determination would work?

Suppose the Navy proposes to acquire land adjacent to the Trident site in Kitsap County. Let us also assume the property is in state ownership, so the Navy would need to acquire title from the Washington State Department of Natural Resources and provide a statement that the proposed use will be consistent with the Washington CZM program. The steps would be as follows:

a. The Navy announces its intentions via the A-95 process, and provides a consistency response listed in #6 above. The Navy determines the intended use to be consistent with the adjacent local shoreline program and state guidelines, and selects the second sentence of the four consistency statements.

b. The A-95 notice goes to OPP&FM, the state clearinghouse, which sends it to DOE, as well as other state agencies and to Kitsap County.

c. DOE leads the CZM review and considers the input it gets from the Section 10 permit, DNR, other state agencies, Kitsap County, and DOE field personnel who review the proposal for compliance with the state's environmental programs.

d. DOE finds that the land acquisition is generally consistent. This finding is conveyed to the Navy.

12. How can after-the-fact claims of inconsistency by the state be prevented?

There is a time span between the federal agency's announcement of consistency and its final decision to build or not to build. The length of this time span depends on the various decision-making processes involved, and the various federal administrative processes that come into play. At a minimum, the time span should be the time needed to complete the A-95 process. A project of any significance will be lengthened by the NEPA process, Section 10, or others.

It is essential that a federal agency declare an intended decision date when it announces its intentions to undertake a development. This can be done by looking ahead and adding the various procedures together to come up with a reasonable date. In reality, this date may be set back because of court actions or negotiations, but a reasonable date should nevertheless be established. If the state has not acted by that date, then the federal agency would have a legitimate basis for demanding that the state make its position known.

If the state wants more time to work out a consistency problem, it will request the same of the developing agency.

13. What if the developing agency wishes to make revisions in the proposed development?

If the federal agency proposing the development, as a result of the review process, revises its proposal substantially, the federal agency will notify DOE of any significant changes in the proposal.

CONSISTENCY OF FEDERAL ACTIVITIES

1. What is an activity?

The "activities" referred to in Sec. 307(c)(1) of the Coastal Zone Management Act are distinguished from "developments" in that the emphasis changes from construction to uses of the environment. Examples are plans, policies, environmental impact statements, and regulations which, though general in nature, will ultimately have a physical impact on the coastal zone. Activities include, but are not limited to, those which affect:

Priority of uses
Siting or placement of uses
Design of uses
Permissibility of uses
Operation or conduct of new or existing uses when such operation would result in physical changes in the coastal zone such as air and water pollution, covering of water surface, removal of vegetation or new construction
Disposition of land, or sale or lease of land to nonfederal entities

For a complete list of agencies most likely to be affected, see the matrix, Attachment D.

2. Where must activities be consistent?

In the first and second tiers (see Attachment A), when the activity directly affects the coastal resource.

3. Who determines whether an activity directly affects the coastal resource and is consistent?

The federal agency makes this determination. To make this determination, and to provide for state consideration of these matters, the consistency duties of federal agencies in Washington's CZM program are:

a. To actually make the determination of consistency (state assistance is available);

b. To notify the state in timely fashion of this determination through the A-95 or A-85, or directly; and

c. To respond to any state requests for more information on the proposed activity.

4. How, specifically, does the federal agency make the determination?

The federal agency compares the activity to the policies, environment designations, and regulations of the Shoreline Management Act, guidelines and local shoreline master programs. The activity should also be examined in light of water quality, air quality, and other pertinent state regulations.

If the substance of these policies and regulations is met by the activity, then the activity is consistent.

Should a federal agency encounter any unknowns or difficulty in learning whether its proposal complies, the agency should seek assistance from the DOE CZM federal coordinator.

5. How, specifically, does the federal agency notify the state of its determination?

Probably the most convenient and timely way is to use the A-95 and A-85 systems as they now operate. In addition to the other A-95 and A-85 information, the federal agency should include whichever of the following four sentences it feels is appropriate:

a. "The activity is not subject to the consistency requirements of Sec. 307 of the CZM Act of 1972."

b. "This activity is consistent with the Washington CZM program."

c. "This activity is not consistent with the Washington CZM program, but no practicable alternative exists to carry out the legal purpose for which the activity is designed."

d. "This activity is not consistent with WCZMP but no practicable alternative exists to meet the national security need filled by this activity."

The federal agency should also stipulate the date by which it plans to make a final decision on whether or not to proceed with the activity. Ongoing activities are seen as consistent for the present time, so this procedure is aimed at dealing with decisions to conduct new activities or alter existing activities.

A-95 and A-85 will provide the state with sufficient advance warning. The state can contact the federal agency directly, or rely on NEPA, if more information on the activity is needed.

6. What will the state do?

The state, acting through DOE, will review the activity and in so doing will seek the views of other state agencies, local governments, and other appropriate sources. The nature of this review will depend on the type and magnitude of the federal activity.

If the state agrees with the federal assertion, that is, with whichever of the four consistency statements shown above that the federal agency used, then nothing more will be done.

If the state does not agree with the federal determination, formal notice will be sent to the federal agency and a meeting or meetings will be held to solve the problem.

7. What will the state do if the problem cannot be solved?

The CZM Act provides no explicit means of relief in this case so the state will:

a. Drop the matter;

b. Bring the matter before a mediation forum involving all key parties (such an informal body to be established);

c. Seek the good offices of NOAA to seek accommodation; or,

d. Take the matter to federal court.

8. What will the state do if a federal agency starts an activity without making a consistency determination or notifying the state of such determination?

If the state should learn of a pending federal activity or of one already underway, (it usually will by virtue of NEPA, Federal Register, Section 10 Permit, citizen comment, or other means), and if the state believes this activity to be subject to Sec. 307(c)(1), then the state will immediately notify the federal agency of this situation and request a determination of consistency.

At the same time the state will undertake to make its own determination and if the activity is found to be consistent, the matter will end. If, however, the federal agency does not feel that the activity is subject to 307(c)(1), or disagrees with the state's determination, the matter will be taken up in meetings called for the purpose; or failing there, the state will resort to one of the options described in #7 above.

9. Can you provide a specific example of how a typical consistency determination for an activity would work?

To provide a more graphic understanding of how our processes for consistency of activities work, an example is provided. The example is the issuance of administrative regulations by the U.S. Fish and Wildlife Service. The "issuance" of these regulations is the "activity" in this case. For our example we shall say that this particular issuance is for regulations that stipulate F.W.S. policy on the filling of coastal wetlands. These regulations would thus be used by all F.W.S. people in their deliberations regarding the filling of wetlands. The most common occasion of such deliberations would be F.W.S. reviews of pending Corps of Engineers Section 10 permits. However, such regulations would also guide F.W.S. personnel in their dealings with state and local government on many issues.

The F.W.S., like any other federal agency, would first conceive the need for, and produce a draft of, the proposed regulations. At this point, in addition to the other steps it would take, the F.W.S. should ask its regional office of Washington State to do the following:

a. Compare the draft regulations to the Washington Coastal Zone Management Program and make a determination as to whether the draft would be consistent with it, and

b. Send this determination to the Department of Ecology for its review requesting response within a certain time period. This can be done via the A-85 process.

The above accomplishes and reflects several things. First, F.W.S. has already demonstrated that it is aware of the Coastal Zone Management relevance of its proposed regulations and is thus aware that the requirement of Sec. 307(c)(1) applies. Secondly, F.W.S. is alerting the state to its proposed action and putting the state on notice that an event is pending, and must be dealt with.

The matter is now in state hands. DOE will lead the state review in the matter. If DOE finds that the proposed regulations are consistent, and agrees with the F.W.S. determination, the matter will end; DOE will prepare itself for the final adoption of the F.W.S. regulation if the final regulations are basically the same as the proposed regulations.

There are two other possibilities. F.W.S. may believe that the proposed regulations are not consistent with Washington's coastal zone management program but still necessary in the national interest, or, F.W.S. may believe the proposed regulations are indeed consistent but DOE may find differently.

In event of such a disagreement, DOE would call for a meeting with F.W.S. and others to settle the matter. Failing to solve the problem by this means, DOE would resort to the options listed in #7 above.

10. <u>This all sounds fine, but what if the state does nothing for awhile, and suddenly claims that a proposed activity is inconsistent at the last minute, or even after it has begun? Especially if the federal agency has lived up to its end by making and announcing its determination properly?</u>

There is a time span between the moment the federal proposal (and consistency determination) is announced, and the time the federal agency actually decides to conduct the activity or not. The length of this time span depends on the various decision-making apparatuses involved, and the various federal administrative processes that come into play. At a minimum, the time span should be the time needed to complete the A-95 or A-85 processes. This could be lengthened by the NEPA process, Section 10, or others.

It is essential that a federal agency declare a final decision date when it announces its intentions to undertake an activity. This can be done by looking ahead and adding the various procedures together to come up with a reasonable date. In reality, this date may be set back because of court actions or negotiations, but a reasonable date should nevertheless be established. If the state has not acted by that date, then the federal agency would have a legitimate basis for demanding that the state make its position known.

11. What if the federal agency proposing the activity should desire to revise that activity?

If the federal agency proposing the activity, as a result of the review process, wishes to revise its activity substantially, the federal agency will notify DOE.

CONSISTENCY OF FEDERAL PERMITS AND LICENSES

1. What permits and licenses are subject to the consistency requirement?

Authorizations subject to the consistency requirement of Sec. 307(c)(3) of the Coastal Zone Management Act include the following:

Section 10 permits
Section 404 permits
Permit for mineral extraction and exploratory drilling
Licenses for transportation devices, terminals and facilities (such as bridges over navigable water, airports, deepwater ports, anchorages and layups)
NPDES permits
Power plants and facilities

For the list of agencies involved, see the matrix, Attachment D.

2. Where must federal permits and licenses be consistent?

In the first tier of the state's coastal zone and further inland if the proposed project will affect first tier land and water uses.

3. What if the issuing agency isn't sure if a permit or license is subject to the consistency requirement?

Check with the federal coordinator at DOE for guidance.

4. Who "certifies" that permits and licenses are consistent?

No one.

The Act calls for the applicant to "certify." However, the applicant could not reasonably provide certification until all local and state permits have been acquired. Many applicants find it convenient to apply for local, state, and federal permits simultaneously. The state does not wish to introduce more time and essentially another permit system into the process.

Therefore, the state is abandoning the concept of certification in favor of a "declaration" of consistency.

5. If the applicant isn't charged with certification, how does the federal issuing agency know if a proposed project is consistent?

The state will, after review of an application for a license or permit, "declare" the proposal to be consistent with the state's coastal zone

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The state will, after review of an application for a license or permit, "declare" the proposal to be consistent with the state's coastal zone

management program. This declaration will take the place of the certification mentioned in Sec. 307(c)(3). In some instances, the state may declare that the proposed project is not subject to the consistency requirement.

6. What form will the declaration take?

It will be in the form of a letter from DOE to the issuing agency stating that the applicant has met the state and local authorization requirements of the coastal zone management program.

7. What are the duties of the federal issuing agency?

When an applicant submits his application for a permit or license, the federal issuing agency should determine if the proposed project is subject to the 307(c)(3) requirement of the CZMA. (A Section 404 permit for a minor activity in an upland lake would not be relevant to the coastal zone and, therefore, not subject to the consistency requirement.)

If the proposed project is of coastal zone relevance, the federal agency sends a copy of the application to DOE.

8. Some federal agencies already submit permit and license applications to the DOE for review. What is different under the coastal zone program?

There are two differences. First, the federal issuing agency should include in the transmittal of information a notation of coastal zone significance. Second, the federal agency should send the information to the federal coordinator in addition to the usual contact.

9. What are the duties of DOE?

DOE will seek efficient concurrent review of application through existing systems. DOE will also monitor the progress of the application insofar as state and local permit systems are involved. When all the required state and local permits have been acquired, DOE will send its "declaration" to the federal issuing agency.

10. What is the time frame involved in permit and license review?

The normal time frame for review of federal permits and licenses. The review period begins when DOE receives the application accompanied by the federal agency's notification of coastal zone relevance.

If state and local permit procedures are delayed through court action, delayed hearings, or negotiations, the time period may be extended. When DOE sees this possibility, it will inform the federal agency.

11. How long does the "declaration" of consistency by the state remain in effect?

For two years. It will then expire if a local shoreline permit was required and construction has not yet begun.

12. Can you provide an example of how the process of assuring consistency of federal permits and licenses would work?

Mr. Jones of Thurston County wishes to build a major pier along the front of his property on Budd Inlet. He checks with the Thurston Regional Planning Council and learns he will need at least a shoreline permit and a Section 10 (Corps) permit.

a. Mr. Jones applies simultaneously for the local shoreline permit and the Section 10 permit.

b. The Corps of Engineers receives the application and examines it for coastal zone implications. It adds the notation that the proposal is of coastal zone relevance, then forwards two copies of the application to DOE. One copy goes to the usual Corps contact; the other goes to the federal coordinator.

c. DOE leads the CZM review, eliciting comments from other state agencies and checking with the Thurston Regional Planning Council to learn the county's action on the local shoreline permit. The county has approved it.

d. DOE finds that the project is consistent with the coastal zone management program. DOE sends a "declaration" to this effect to the Corps and sends copies to the Thurston Regional Planning Council and the applicant, Mr. Jones.

13. What if the state says a proposed action is inconsistent, and the applicant or the issuing federal agency disagrees?

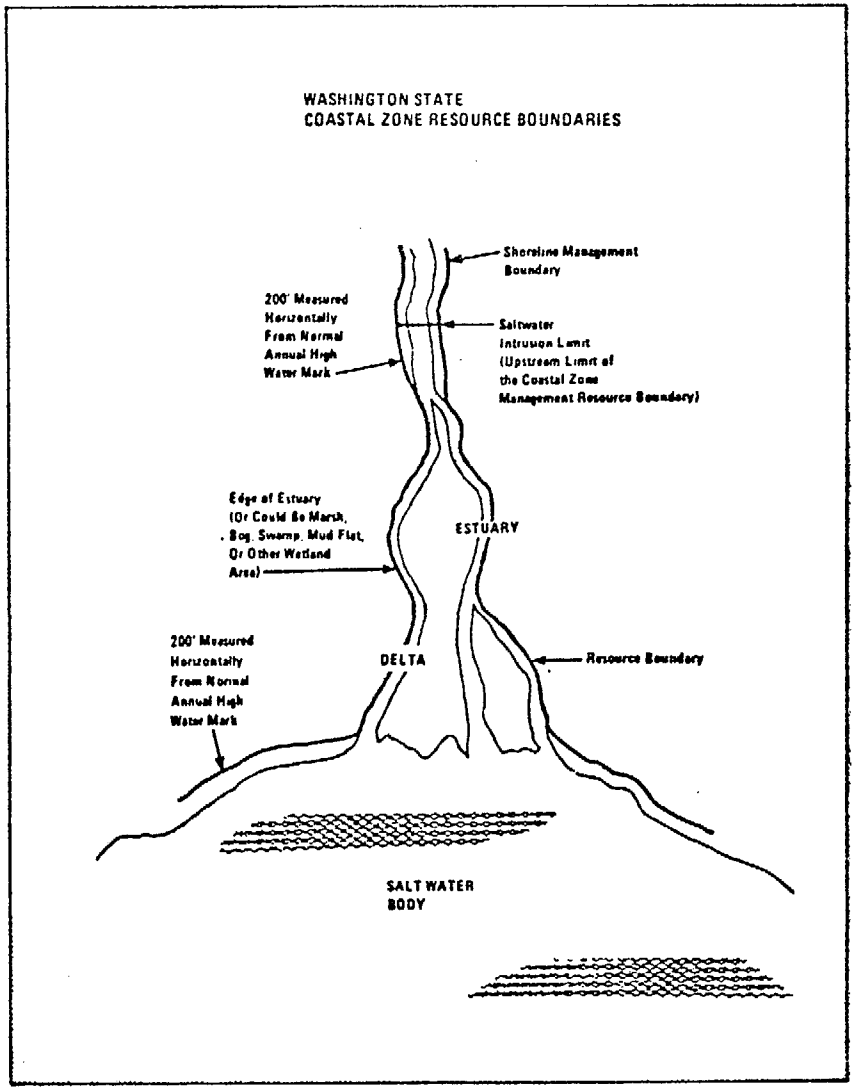
Only action by the Secretary of Commerce or a court ruling can override the state's action.

14. What if the applicant wishes to revise the scope or intent of the permit or license?

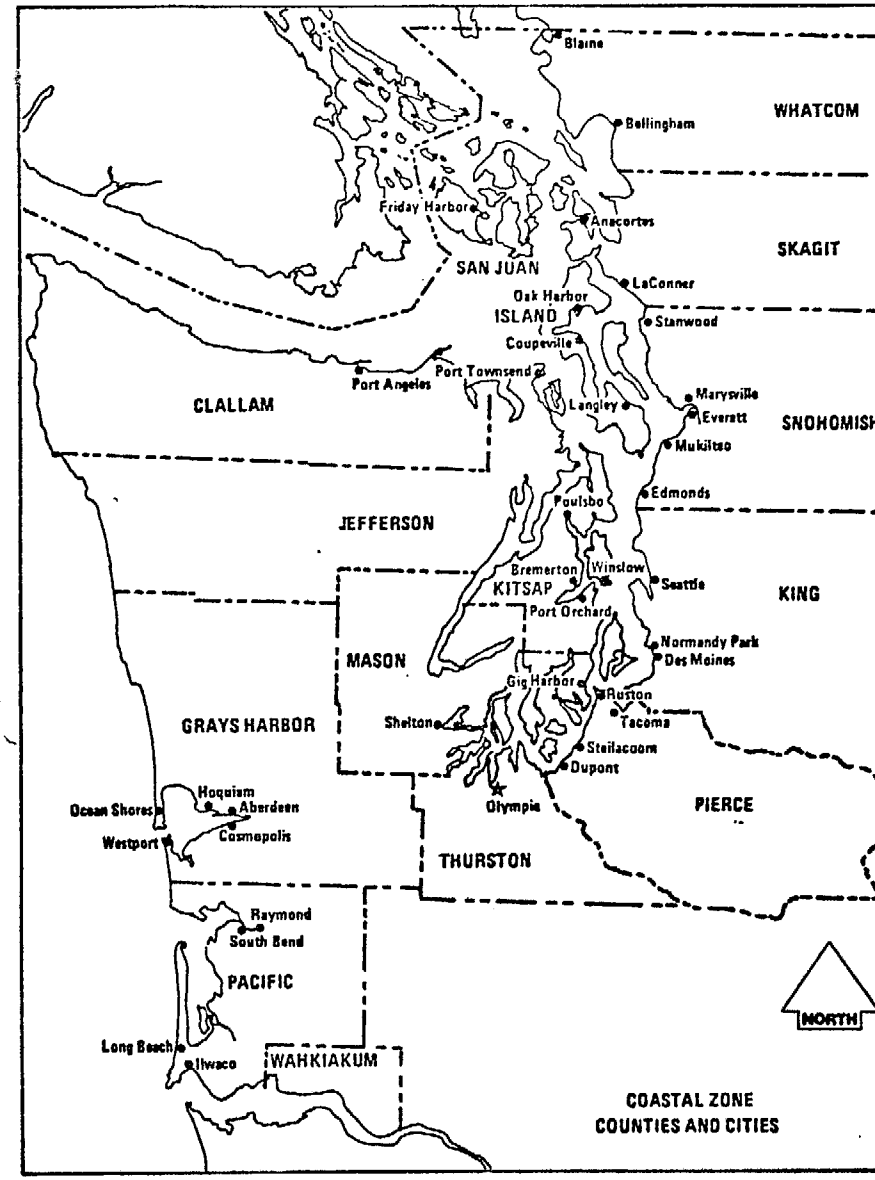
If substantial revisions are proposed, the application must be resubmitted.

ATTACHMENT A

COASTAL ZONE BOUNDARIES



The Washington State coastal zone management area embodies a two-tier concept. The first tier is that area defined by the Shoreline Management Act of 1971. It includes the marine waters and their associated wetlands, and those uplands 200 feet back from the ordinary highwater mark. It also extends seaward for three miles, and up-



The second tier, or administrative boundary, consist of the 15 coastal counties shown above.

The use of the two tiers provides a basis for differentiating in terms of both the need for control and the intensity of control. The most imme-

ATTACHMENT B

(DRAFT)

UNIFORM WASHINGTON STATE CLEARINGHOUSE PROJECT
NOTIFICATION AND REVIEW APPLICATION

1. PROJECT IDENTIFICATION

Special District Clearinghouse Identifier No.	Special State Clearinghouse Identifier No.	Uniform Washington State Clearinghouse Identifier No.

Project Title _____

2. APPLICANT INFORMATION

Applicant Agency

Applicant Mailing Address

Contact Person: Name, Title, Mailing Address, Telephone

3. PROJECT DESCRIPTION

4. PROJECT LOCATION

County or Counties	City or Cities	Unincorporated Community or other Common Area Name if Applicable

Section, Township and Range or Street Address if more applicable:

5. FUNDING INFORMATION

Federal Funds		State Funds		Applicant Funds			Total Funds
Grant	Loan	Grant	Loan	Cash	In-Kind	Other	

Federal Funding Agency and Sub-Agency

Federal Program Title | Catalogue Number

State Funding or Administering Agency

State Program Title

6. PLANNING AND PERMIT INFORMATION

Environmental Impact Statement	Yes	No	Pending
Project Exempt	___	___	
Threshold Determination	___	___	___
Negative Declaration Issued	___	___	___
EIS to be prepared Later	___	___	___
EIS Completed	___	___	

Relocation	Yes	No
Is Land Acquisition involved	___	___
Will Relocation be involved	___	___
Has a Relocation Plan been Prepared	___	___

Is Water Area Involved?	Indicate -	River	Lake	Shore-land	Salt Water	Tide Land	Flood Plain
Yes ☐ No ☐		___	___	△	X	X	___

STATE, METROPOLITAN AND REGIONAL CLEARINGHOUSES
in
Washington State's Coastal Zone

State Clearinghouse: Office of the Governor

For Local Agency

Ms. Anne Winchester
Office of Community Development
Office of the Governor
400 Capitol Center Building
Olympia, Washington 98504
Phone (206) 753-2203

For State Agency

Mr. Nicholas D. Lewis
Office of Program Planning and Fiscal Management
106 House Office Building
Olympia, Washington 98504
Phone (206) 753-5297

Regional Clearinghouse	Jurisdiction
CLALLAM COUNTY GOVERNMENTAL CONFERENCE	**Counties**
Mr. Kenneth W. Sweeney, Director Clallam County Governmental Conference 127 East 1st Street Port Angeles, Washington 98362 Phone (206)457-4562	Clallam
COWLITZ-WAHKIAKUM GOVERNMENTAL CONFERENCE	**Counties**
Mr. Fred L. Dayharsh, Director Cowlitz-Wahkiakum Governmental Conference Cowlitz County Courthouse Fifth Avenue Annex Kelso, Washington 98626 Phone (206)577-3041	Cowlitz Wahkiakum
GRAYS HARBOR REGIONAL PLANNING COMMISSION	**Counties**
Mr. Stanley L. Lattin, Director Grays Harbor Regional Planning Commission 207 1/2 East Market Street Aberdeen, Washington 98520 Phone (206)532-8812	Grays Harbor
ISLAND COUNTY PLANNING DEPARTMENT	**Counties**
Mr. Sydney W. Glover, Director Island County Planning Department P.O. Box 698	Island

PROJECT INFORMATION (Continued)

Shoreline Management Permit	Yes	No
Project Exempt		
Determination Pending		
Application Submitted		
Permit Approved		

ECPA PROCESS BEING USED?

_____ Yes _____ No
_____ ECPA Application Number
_____ Not Applicable

Comprehensive Planning

List or describe briefly plans affecting this project, include year of completion or adoption. List from general to specific (example: city comprehensive plan, regional sewer and water plan, complex facilities plan).

7. APPLICATION CHECKLIST

Other Required Application forms and project information prepared. (Check)

Federal	State	District Clearinghouse
☐ Federal Standard Form 424	____ Ref. 26 forms	☐ Project Map
☐ Detailed Federal Agency Application	____ Ref. 27 forms	☐ Detailed Project Description
	____ Ref. 28 forms	
	____ Ref. 29 forms	
	____ Ref. 31 forms	

8. APPLICANT SIGNATURE (To be signed by chief elected official or authorized official)

Signature _____ Date _____

Title _____

Agency _____

9. FOR DISTRICT CLEARINGHOUSE USE

Designated District Clearinghouse Agency _____

Date Completed Application Received by Clearinghouse _____

Time and Place Application will be given final Review by District Clearinghouse _____

_____
Authorized District Clearinghouse Official

10. FUNDING AGENCY ACTION (For Clearinghouse Use)

Agency Funding All or a Portion of Project	Amount	Funding Date

STATE, METROPOLITAN AND REGIONAL CLEARINGHOUSES
in
Washington State's Coastal Zone

State Clearinghouse: Office of the Governor

For Local Agency

Ms. Anne Winchester
Office of Community Development
Office of the Governor
400 Capitol Center Building
Olympia, Washington 98504
Phone (206) 753-2203

For State Agency

Mr. Nicholas D. Lewis
Office of Program Planning and Fiscal Management
106 House Office Building
Olympia, Washington 98504
Phone (206) 753-5297

Regional Clearinghouse	Jurisdiction
CLALLAM COUNTY GOVERNMENTAL CONFERENCE	**Counties**
Mr. Kenneth W. Sweeney, Director Clallam County Governmental Conference 127 East 1st Street Port Angeles, Washington 98362 Phone (206)457-4562	Clallam
COWLITZ-WAHKIAKUM GOVERNMENTAL CONFERENCE	**Counties**
Mr. Fred L. Dayharsh, Director Cowlitz-Wahkiakum Governmental Conference Cowlitz County Courthouse Fifth Avenue Annex Kelso, Washington 98626 Phone (206)577-3041	Cowlitz Wahkiakum
GRAYS HARBOR REGIONAL PLANNING COMMISSION	**Counties**
Mr. Stanley L. Lattin, Director Grays Harbor Regional Planning Commission 207 1/2 East Market Street Aberdeen, Washington 98520 Phone (206)532-8812	Grays Harbor
ISLAND COUNTY PLANNING DEPARTMENT	**Counties**
Mr. Sydney W. Glover, Director Island County Planning Department P.O. Box 698 Coupeville, Washington 98239 Phone (206)678-5111	Island

6. PLANNING AND PERMIT INFORMATION (continued)

Shoreline Management Permit

	Yes	No
Project Exempt		
Determination Pending		
Application Submitted		
Permit Approved		

ECPA PROCESS BEING USED?

_____ Yes _____ No
_____ ECPA Application Number
_____ Not Applicable

Comprehensive Planning

List or describe briefly plans affecting this project, include year of completion or adoption. List from general to specific (example: city comprehensive plan, regional sewer and water plan, complex facilities plan).

7. APPLICATION CHECKLIST

Other Required Application forms and project information prepared. (Check)

Federal	State	District Clearinghouse
☐ Federal Standard Form 424	___ Ref. 26 forms	☐ Project Map
☐ Detailed Federal Agency Application	___ Ref. 27 forms	☐ Detailed Project Description
	___ Ref. 28 forms	
	___ Ref. 29 forms	
	___ Ref. 31 forms	

8. APPLICANT SIGNATURE (To be signed by chief elected official or authorized official)

Signature _____ Date _____

Title _____

Agency _____

9. FOR DISTRICT CLEARINGHOUSE USE

Designated District Clearinghouse Agency _____

Date Completed Application Received by Clearinghouse _____

Time and Place Application will be given final Review by District Clearinghouse _____

_____

Authorized District Clearinghouse Official

10. FUNDING AGENCY ACTION (For Clearinghouse Use)

Agency Funding All or a Portion of Project	Amount	Funding Date

Regional Clearinghouse	Jurisdiction
THURSTON REGIONAL PLANNING CONFERENCE	Counties
Mr. Richard A. O'Neal, Director Thurston Regional Planning Council Room 332, County Courthouse Annex Olympia, Washington 98501 Phone (206) 753-8131	Thurston
WHATCOM COUNTY COUNCIL OF GOVERNMENTS	Counties
Mr. Thomas A. Randall, Director Whatcom County Council of Governments Whatcom County Courthouse 311 Grand Avenue Bellingham, Washington 98225 Phone (206) 676-6716	Whatcom

Regional Clearinghouse	Jurisdiction
JEFFERSON-PORT TOWNSEND REGIONAL COUNCIL	Counties
Mr. Joseph B. Steve, Chairman Jefferson-Port Townsend Regional Council County Courthouse Port Townsend, Washington 97368 Phone (206) 385-1427	Jefferson
MASON REGIONAL PLANNING COUNCIL	Counties
Mr. James E. Connolly, Director Mason Regional Planning Council P.O. Box 400 Shelton, Washington 98584 Phone (206) 426-1351	Mason
PACIFIC COUNTY REGIONAL PLANNING COUNCIL	Counties
Mr. Kenneth Kimura, Director Pacific County Regional Planning Council Courthouse, P.O. Box 66 South Bend, Washington 98586 Phone (206) 875-5591	Pacific
PUGET SOUND COUNCIL OF GOVERNMENTS	Counties
Mr. Mart Kask, Director Puget Sound Council of Governments 216 First Avenue South Seattle, Washington 98104 Phone (206) 464-7090	King Kitsap Pierce Snohomish
SAN JUAN COUNTY PLANNING DEPARTMENT	Counties
Mr. Robert R. McAbee, Director San Juan County Planning Department P.O. Box 61 Friday Harbor, Washington 98250 Phone (206) 378-2354	San Juan
SKAGIT REGIONAL PLANNING COUNCIL	Counties
Mr. Robert C. Schofield, Director Skagit Regional Planning Council 120 West Kincaid Street County Courthouse Annex #2 Mt. Vernon, Washington 98273 Phone (206) 336-2188 (Scan 738-2216)	Skagit

Method for Notification		Subject to Consistency	FPA	FHwyA	GSA	MINES	ARMY	AF	HEW	BRecl	FHmA	REA	ASCS	FRA	UMTA	NRC	SBA	OPS	ACHP	FS	EDA	C of E	NAVY	HUD	BLM	FWS	NPS	CG	EPA	FEA	FPC	BPA	RBC	SCS	MA	NOAA	NMFS	BIA	RuRecA	GS
A-95	GRANTS	Planning assistance to state		X					X													X		X															
		Stream modification, shore protection or flood protection											X									X																	
		Public works, ports, or industries																			X								X									
		Housing projects									X													X															
		Purchase of recreational or wildlife areas																								X	X												X
		Mining reclamation				X																																	
		Transportation facilities	X	X										X	X																								
		Business loans for businesses															X																						
A-95 FEDERAL REGISTER EPA	DEVELOPMENTS	Planning of public works, physical facilities or installations	X	X			X	X		X			X		X					X		X	X			X	X				X				X			
		Leasing, purchase, or disposition of non-federal land by a federal agency					X	X															X					X										
A-95 A-85 FEDER EGIS EPA	ACTIVITIES	Development of regulations which affect design, placement or permissibility of uses	X	X		X					X					X		X		X		X		X	X	X		X	X	X			X		X			
		Creation or adoption of a plan or program which could lead to physical changes in 1st tier	X	X		X	X	X	X	X	X	X		X	X					X		X	X	X	X	X	X	X	X	X	X		X		X		X		X
		Guidelines or policy which establishes a use priority for first tier					X	X										X	X	X		X	X		X	X		X	X	X						X		X	
DIRECT TO DOE	AUTHORIZATIONS	Dumping or depositing of materials																				X		R			R								R		R	
		Leases for mineral extraction and offshore drilling				X																		X															
		Licenses for transportation devices, terminals, utilities, facilities, anchorages, and layups having direct and significant physical impact on the first tier																									X											
		Federal source permits and ocean dumping permits																										X										
		Power plants and facilities													X															X	X								
		Permits for bridges over navigable water and causeways																									X											
		Other leases of federal land to nonfederal entities							X										X					X														

R = participates

Note: The above matrix is included for the purpose of illustration only. Agencies other than those checked may also be subject to consistency.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEPARTMENT OF ECOLOGY
COMMUNICATIONS & TRANSPORTATION CENTER
OLYMPIA, WA. 98504
JAN 22 9 41 AM '76

January 20, 1971

CIRCULAR NO. A-85
Revised

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Consultation with heads of State and local governments in development of Federal regulations

1. Purpose. This Circular, in accordance with certain general purposes of Title IV of the Intergovernmental Cooperation Act of 1968 (P.L. 90-577), provides that the chief executives of State and local governments will be given a reasonable opportunity to comment on major proposed Federal rules, regulations, standards, procedures and guidelines (hereafter called regulations), major interagency agreements concerning program operations and major organizational changes, any of which have a significant and nationwide effect on State and local governments. This Circular also provides for assistance by the Advisory Commission on Intergovernmental Relations (ACIR) in arranging to obtain State and local advice and comment on such matters, in cooperation with State and local general government associations. Circular No. A-85, dated June 28, 1967, is superseded by this revision.

2. Background. Federal agencies administering assistance and other programs affecting State and local government normally issue regulations under which those programs are administered. These regulations may affect the conduct of State and local affairs, including management and organization, planning, program adjustments, and fiscal and administrative systems. Federal requirements may not be consistent among Federal agencies or permit needed flexibility for State and local governments. Heads of State and local governments, therefore, should be afforded an opportunity to comment on Federal regulations prior to issuance and certain Federal interagency agreements and organizational changes prior to implementation.

Method for Notification		Subject to Consistency	FPA	FHwyA	CSA	MINES	ARMY	AF	HEW	BRecl	FHmA	RLA	ASCS	FRA	UMTA	SRC	SBA	OPS	ACHP	FS	EDA	C of E	NAVY	HUD	BLM	FWS	NPS	CG	EPA	FEA	FPC	BPA	RBC	SCS	MA	NOAA	NMFS	BIA	BORecl	GS
A-95	GRANTS	Planning assistance to state		X					X													X		X				X				X			X			
		Stream modification, shore protection or flood protection											X									X																	
		Public works, ports, or industries																			X								X										
		Housing projects									X													X																
		Purchase of recreational or wildlife areas																								X	X												X	
		Mining reclamation				X																																		
		Transportation facilities	X	X										X	X																									
		Business loans for businesses															X																							
A-95 FEDERAL REGISTER EPA	DEVELOPMENTS	Planning of public works, physical facilities or installations	X	X			X	X		X			X		X					X		X	X			X	X				X				X				
		Leasing, purchase, or disposition of non-federal land by a federal agency					X	X															X					X											
A-95 A-85 FEDERAL REGIS EPA	ACTIVITIES	Development of regulations which affect design, placement or permissibility of uses	X	X		X					X					X		X		X		X		X	X	X		X	X	X			X			X			
		Creation or adoption of a plan or program which could lead to physical changes in 1st tier	X	X		X	X	X	X	X	X	X		X	X					X		X	X	X	X	X	X	X	X	X		X		X		X		X	
		Guidelines or policy which establishes a use priority for first tier					X	X										X	X	X		X	X		X	X		X	X	X						X		X	
DIRECT TO DOE	AUTHORIZATIONS	Dumping or depositing of materials																				X			R			R							R			R	
		Leases for mineral extraction and offshore drilling				X																		X															
		Licenses for transportation devices, terminals, utilities, facilities, anchorages, and layups having direct and significant physical impact on the first tier																									X												
		Federal source permits and ocean dumping permits																										X											
		Power plants and facilities													X															X	X								
		Permits for bridges over navigable water and causeways																									X												
		Other leases of federal land to nonfederal entities							X										X					X															

R = participates

Note: The above matrix is included for the purpose of illustration only. Agencies other than those checked may also be subject to consistency.

Regional Clearinghouse	Jurisdiction
JEFFERSON-PORT TOWNSEND REGIONAL COUNCIL	**Counties**
Mr. Joseph B. Steve, Chairman Jefferson-Port Townsend Regional Council County Courthouse Port Townsend, Washington 97368 Phone (206) 385-1427	Jefferson
MASON REGIONAL PLANNING COUNCIL	**Counties**
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Mr. Kenneth Kimura, Director Pacific County Regional Planning Council Courthouse, P.O. Box 66 South Bend, Washington 98586 Phone (206) 875-5591	Pacific
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Mr. Mart Kask, Director Puget Sound Council of Governments 216 First Avenue South Seattle, Washington 98104 Phone (206) 464-7090	King Kitsap Pierce Snohomish
SAN JUAN COUNTY PLANNING DEPARTMENT	**Counties**
Mr. Robert R. McAbee, Director San Juan County Planning Department P.O. Box 61 Friday Harbor, Washington 98250 Phone (206) 378-2354	San Juan
SKAGIT REGIONAL PLANNING COUNCIL	**Counties**
Mr. Robert C. Schofield, Director Skagit Regional Planning Council 120 West Kincaid Street County Courthouse Annex #2 Mt. Vernon, Washington 98273 Phone (206) 336-2188 (Scan 738-2216)	Skagit

Regional Clearinghouse	Jurisdiction
THURSTON REGIONAL PLANNING CONFERENCE	Counties
Mr. Richard A. O'Neal, Director Thurston Regional Planning Council Room 332, County Courthouse Annex Olympia, Washington 98501 Phone (206) 753-8131	Thurston
WHATCOM COUNTY COUNCIL OF GOVERNMENTS	Counties
Mr. Thomas A. Randall, Director Whatcom County Council of Governments Whatcom County Courthouse 311 Grand Avenue Bellingham, Washington 98225 Phone (206) 676-6716	Whatcom

3. Policies. Agencies will be guided, to the fullest practical extent consistent with Federal laws, by the following practices:

a. Whenever possible, agencies should engage in necessary consultation well in advance of the formal development and submittal of materials under this Circular so as to minimize the need for extensive review and discussion at the final stages of the development of regulations.

b. The central coordinating role of heads of State and local governments, including their role of initiating and developing State, regional, and local programs, will be supported and strengthened.

c. Federal regulations should not hamper the heads of State and local governments in providing effective organizational and administrative arrangements and in developing planning, budgetary, and fiscal procedures responsive to needs.

d. Duplication of reporting requirements and controls which are established by State and local governments will be avoided, and Federal agencies should rely wherever possible on internal or independent audits performed at the State or local level as provided in Circular No. A-73, dated August 4, 1965.

e. Except as may be required by law or special circumstances, agency regulations dealing with like matters (e.g., allowable costs, definitions of like terms, and procedures and information needed for determining eligibility in like cases) will be consistent both internally and with practices of other agencies.

4. Coverage. This Circular applies to major agency regulations and revisions thereof, major interagency agreements concerning program operations and major organizational changes, any of which have a significant and nationwide effect on State and local governments, including quasi-public agencies (e.g., urban

renewal agencies), and which directly affect one or more of the following:

a. Interstate relationships,

b. Intergovernmental relationships (e.g., State-local and interlocal),

c. Types of eligible recipients,

d. Designations of agencies within State or local governments,

e. Requirements affecting State or local personnel practices,

f. Organizational, planning, or fiscal activities of State and other governments, and

g. Roles and functions of heads of State or local governments.

5. Procedures for informing State and local government associations of proposed new or revised regulations, and significant organization changes having a nationwide effect.

a. The issuing agency will provide to the ACIR at least 20 copies and summaries of the proposed regulation or proposed organization change (in the case of interagency agreements, one of the parties to the agreement will take the lead in providing the necessary copies). This should be done not less than 45 days and, if practical, 60 days before the intended date of promulgation. Also, this should generally be done in advance of publication of proposed regulations in the Federal Register, although it may be necessary in some circumstances to have such publication occur simultaneously with or prior to the completion of the review process provided for in this Circular. If special legal or other circumstances do not permit at least 45 days for such notice and comment, the agency will advise the ACIR

3. Policies. Agencies will be guided, to the fullest practical extent consistent with Federal laws, by the following practices:

a. Whenever possible, agencies should engage in necessary consultation well in advance of the formal development and submittal of materials under this Circular so as to minimize the need for extensive review and discussion at the final stages of the development of regulations.

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of the time available and provide at least 60 copies of a summary on abstract in lieu of the full draft text of the regulation. Such summaries should describe the nature and significance of any changes in existing policies affecting State and local governments.

b. The ACIR will promptly transmit copies of the agency materials to each of the following State and local government associations: National Governors' Conference, Council of State Governments, International City Management Association, National Association of Counties, National League of Cities, and United States Conference of Mayors. Other groups representing central management units may be sent copies of material of concern to them. ACIR will also transmit a copy to the Office of Management and Budget.

c. Unless an earlier response is essential, the State and local government associations will be given a minimum of 30 days after receiving agency materials in which to comment, addressing comments directly to the Federal agency concerned, and transmitting copies to the ACIR and the Office of Management and Budget.

d. If requested either by the Federal agency concerned or by a State or local government association, the ACIR will arrange a meeting between representatives of the agency and the association (along with State or local chief executives or their representatives, where desirable) to consider the comments offered on the proposed regulations or organization changes.

e. If the agency does not accept major changes suggested by a State or local government association, it will promptly notify the association in writing of its decision, and will send a copy of the notification to the ACIR and the Office of Management and Budget. Within three days of receipt of notification, the State or local government association may request the ACIR to arrange a prompt meeting between representatives of the agency and the association to consider modifications of the proposed regulations. ACIR will notify the Office of Management and Budget of such a meeting.

f. When appropriate and desirable, the Office of Intergovernmental Relations shall also be advised of, and participate in any discussions and meetings under this paragraph.

g. The agency will supply seven copies of the regulation, when issued in final form to the ACIR for distribution to the State and local government associations.

h. Each agency should promptly designate one official to see that these provisions are carried out, and inform the State and local government associations, the Office of Management and Budget and the ACIR of the name of the official.

6. Additional functions of the ACIR.

a. The ACIR is prepared to assist agencies in developing new regulations covered by this Circular and will assist in assuring that regulations dealing with like matters are consistent, as provided in paragraph 3(d).

b. By January 31 of each year, the ACIR will make a report to the Director of the Office of Management and Budget concerning operations under this Circular during the preceding calendar year. Copies of the report will be furnished to each agency and the associations representing general units of State and local government.

7. General considerations. This Circular deals only with limited aspects of intergovernmental consultation: the development of regulations and organizational changes which significantly affect State and local governments. The Circular is not intended to limit the consultation process to these aspects of the intergovernmental problem. Well in advance of the stage of promulgating formal regulations or implementing significant organizational changes, consultation should be pursued actively with heads of State and local governments so that consultation need not be concentrated in a brief period prior to the proposed action. This is especially important in the case of new programs where consultation should include briefings on the nature and significance of such programs.

On the other hand, the Circular is not intended to limit the ability of agencies to carry out their mission responsibilities. It is not intended that all proposed regulations or revisions or organizational changes will be automatically channeled through the procedure called for in this Circular; no purpose would be served by creating congestion and delay. Judgment must be exercised by the agencies and by the State and local governments in applying the Circular and selectivity will be needed in determining which substantive and administrative regulations and organizational changes are significant enough to be put through the consultation arrangements.

This Circular is addressed primarily to new regulations or revisions of existing Federal regulations. However, agencies will give consideration to requests from heads of State and local governments to review and revise regulations already in effect, and to consult on such regulations with such officials on request.

8. Effective date. The provisions of this Circular become effective immediately.

GEORGE P. SHULTZ
DIRECTOR