



ROY COOPER
Governor

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MEMORANDUM

TO: Coastal Resources Commission
FROM: Daniel Govoni
SUBJECT: Federal Consistency

The federal Coastal Zone Management Act (CZMA; 16 USC 1451 et seq.) provides states with a strong voice in federal agency actions through what are known as “federal consistency” provisions. While federal agencies are exempt from permitting requirements, the CZMA requires that federal actions that could have reasonably foreseeable coastal effects, within and outside the coastal zone, must be found consistent with the enforceable policies of a state’s federally-approved coastal management program. Under the CZMA, federal actions that trigger the federal consistency review process fall into four categories: federal agency activities, federal licenses or permits, outer continental shelf (OCS) plans, and federal assistance to state and local governments (15 CFR 930).

Federal agency activities are typically projects performed by a federal agency or a contractor on behalf of the federal agency; for example, U.S. Army Corps of Engineers (Corps) inlet dredging and beach renourishment projects or improvements to U.S. military bases. Federal license or permit activities are activities performed by a private entity that would require a federal permit, license, or other form of federal authorization; for example, Corps of Engineers 404 permits for development projects outside of N.C. Coastal Area Management Act (CAMA) jurisdiction (if within CAMA jurisdiction, a CAMA permit would convey federal consistency approval). OCS plans approved by the federal Bureau of Ocean Energy Management (BOEM) are also subject to federal consistency reviews, as are federal financial grants to state and local governments for development projects; for example, Housing and Urban Development (HUD) or Federal Highway Administration funds.

Federal agency activities that may have direct or indirect impacts on coastal resources or uses must be found consistent *to the maximum extent practicable* with the federally-approved enforceable policies of the state’s coastal management program. Additionally, the CZMA requires non-federal applicants for federal authorizations and funding be found *fully consistent* with the enforceable policies of the approved coastal management program. An approved enforceable policy includes the CAMA, N.C. Dredge and Fill Law, and any CRC rule that is legally binding under state law and that has been reviewed and approved by the NOAA Office for Coastal Management (OCM).

It is the federal agency, federal permit applicant, or federal funding recipient's responsibility to determine when a federal consistency determination is needed from a state. When a federal agency or applicant has determined that a proposed federal activity may have a coastal effect in North Carolina, a federal consistency determination must be prepared and submitted to DCM for concurrence with our approved enforceable policies.

For federal license or permit activities, and federal assistance activities, state coastal programs must have previously requested and listed those federal activities they believe could have a coastal effect, and this list must have been approved by NOAA OCM before federal consistency can be applied. If a state wishes to review an "unlisted" federal license or permit activity, it must notify the applicant and the federal agency and seek NOAA OCM approval to review the activity based on reasonably foreseeable coastal effects.

When DCM receives a federal consistency determination, DCM will often circulate the proposed project to other state agencies and may issue a public notice or hold a public hearing. DCM will consider all comments received and will review the proposed project for conformance with the state's approved enforceable policies. DCM will then either find the proposed action consistent, consistent with conditions, or object and find the proposal inconsistent with our approved enforceable policies. In the case of an objection, either party may seek mediation through NOAA.

On average, DCM reviews approximately 50 federal consistency determinations a year and approximately 95% of these proposals are found consistent with our approved coastal program. The majority of these consistency determinations are routine and consist primarily of U.S. military base improvement projects, National Park Service projects, and HUD grants. However, the federal consistency process has played an important role in our ability to coordinate on important and sometimes controversial projects, including the State Ports' Dredged Material Management Plans, BOEM's proposed wind energy lease and site assessment activities for the Kitty Hawk Wind Energy Area, and applications for BOEM permits to conduct geological and geophysical (seismic) surveys in federal waters off North Carolina's coast. Federal consistency is also an important mechanism for our state to be engaged in any proposed oil and gas development plans and lease sales.

I look forward to discussing DCM's federal consistency program at our upcoming meeting in Sunset Beach.