

CHAPTER 11

MANAGING THE COAST (6): THE NATIONAL INTEREST AND
THE CONSISTENCY OF FEDERAL ACTIONS

The California Legislature, in passing the 1976 Coastal Act, declared that the California coastal zone "is a distinct and valuable natural resource of vital and enduring interest to all the people" and that its "permanent protection . . . is a paramount concern to present and future residents of the State and nation." (30001)

The Coastal Act, in its declaration of the necessity for continued State coastal planning and management through the Coastal Commission, specifies two of the reasons: (1) "to protect regional, state, and national interest in assuring the maintenance of the long-term productivity and economic vitality of coastal resources necessary for the well-being of the people of the state;" and (2) "to provide maximum state involvement in Federal activities allowable under Federal law or regulations or the U. S. Constitution which affect California's coastal resources." (30004(b)). These are the statutory foundations for the consideration of the national interest in the CCMP's management of the coastal zone - discussed in Section A below - and the administration of the Federal consistency clause - Section B below.

This chapter describes how California has taken the national interest into account in the development of its coastal management program and describes the process the Coastal Commission uses to consider greater than local concerns in the siting of certain types of facilities that have been clearly defined as being in "the national interest." This is not intended to be a statement, rule, or regulation defining the "national interest"; rather, it is a demonstration of how the program addressed the national interest in its development and a description of the procedures used by the Coastal Commission to identify, participate in the planning for, and give adequate consideration to the national interest in the implementation of the CCMP. Relevant Federal agencies have had extensive opportunities to review and participate in the development of both Sections A and B below, as well as in the development of the overall California Coastal Management Program.

A. The National Interest in the California Coastal Zone

The California Coast Is A National Resource

The California coastline is of more than local or even State importance; it is a resource of national significance; it comprises more than half the western coastline of the contiguous 48 states.

Visitors from across the country enjoy the scenic beauty and recreational facilities along the coast. Foreign goods bound for consumers in inland States and U. S. products on their way to distant countries pass through California ports. Petroleum and other minerals, timber, and farm and fishery products from the coastal zone are shipped to the rest of the nation.

Use of the coastal land area and adjacent waters for national defense and national security is of paramount importance and is among the highest priority in the management of the coastal zone. Many of the military installations located along the coast have defense missions requiring operational use of the coastal zone. In addition, military installations are important components in their local areas, and represent a stable and substantial contribution to the coastal and State economy.

Recognizing the distinct and irreplaceable value of this country's coastline, the Congress enacted the Coastal Zone Management Act, which states, ". . . it is national policy . . . to preserve, protect, develop, and where possible, to restore or enhance, the resources of the nation's coastal zone for this and succeeding generations" (Section 303(e)). This language is almost identical to one of the objectives of Proposition 20, ". . . to preserve, protect, and where possible, to restore the resources of the coastal zone" (27001); and to one of the basic declarations of the Coastal Act, "the permanent protection of the (California coastal zone) is a paramount concern to present and future generations of the state and nation." (30001)

Under the CZMA, California has received financial assistance for the development of its coastal management program. The Coastal Act is the foundation of the CCMP submitted to the Department of Commerce. Once approved by the Secretary of Commerce, the CCMP provides the basic policies for determining both State and national interests in the California coastal zone. The CZMA further requires Federal agencies to comply with the approved State coastal management program to the maximum extent practicable. (Sections 307(c) and (d))

To ensure the national interest is adequately addressed in the CCMP, the CZMA requires that the State coastal "management program provides for adequate consideration of the national interest involved in planning for, and in the siting of facilities (including energy facilities in, or which significantly affect, such state's coastal zone), and that the program assures that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude uses of regional benefit. (Section 306(e)(2))

Table 1

CONSIDERATION OF THE NATIONAL INTEREST IN CALIFORNIA'S COASTAL MANAGEMENT PROGRAM

National Interest in Siting Facilities for:	Associated Facilities	Sogilzant Federal Agencies Modified From List Provided by OCM (15 CFR 923.13)	National Interest Considered In Coastal Act and Conservancy Act Sections
1. Energy production and transmission.	Oil and gas wells; storage and distribution facilities; refineries; nuclear, conventional powerplants; deepwater ports	Federal Energy Administration, Federal Power Commission, Bureau of Land Management, Nuclear Regulatory Commission, Geological Survey, Dept. of Transportation, Corps of Engrs., Maritime Administration.	30260, 30261, 30262, 30263, 30264, 30113, 30232, 30250(b), 30254, 30255, 30515, 30211, 30608, 30504, 30001.5, 30004, 30250(b), 30255, 30232, 30515, 30001.2, 30443(a)(5), 30901(c), 30413(b)(c), 30700, 30700.5, 30701, 30702, 30705, 30706, 30707, 30708, 30233, 30008
2. Recreation (of an interstate nature).	National seashores, parks, forests, large and outstanding beaches and recreational waterfronts; wildlife reserves; wilderness and recreation areas.	National Park Service, Forest Service, Bureau of Outdoor Recreation, Fish and Wildlife Service.	30250(c), 30252, 30254, 30255, 30212.5, 30213, 30220, 30221, 30222, 30223, 30501(c), 30210, 30211, 30212, 30001, 30001.5, 30004(b), 30210(b), 30235, 30233, 30234, 30008
3. Interstate Transportation.	Interstate highways, airports, aids to navigation; ports and harbors, railroads.	Department of Transportation, Corps of Engineers, Maritime Administration, Interstate Commerce Commission.	30001, 30001.2, 30001.5, 30003, 30004(b), 30254, 30255, 30700, 30700.5, 30701, 30702, 30703, 30705, 30706, 30707, 30708, 30261, 30262, 30501(c), 30232, 30233, 30008
4. Production of food and fiber.	Prime agricultural land and facilities; forests; mariculture facilities, fisheries.	Department of Agriculture, Fish and Wildlife Service, National Marine Fisheries Service.	30001, 30001.2, 30001.5, 30004(b), 30501(c), 30234, 30703, 30241, 30242, 30243, 30250, 30255, 30256, 30231, 30233, 30009, 31153-31155, 31200-31215
5. Preservation of life and property.	Flood and storm protection facilities; disaster warning facilities.	Corps of Engineers, Federal Insurance Administration, NOAA, Soil Conservation Service, ASCS, HUD	30001, 30004(b), 30231, 30232, 30235, 30236, 30253(1),(2), 30501(c), 30250(b), 30008
6. National defense and aerospace.	Military installations defense manufacturing facilities; aerospace launching and tracking facilities.	Department of Defense, NASA	30003, 30008
7. Historic, cultural aesthetic and conservation values.	Historic sites, natural areas; areas of unique cultural significance; wildlife refuges; areas of species and habitat preservation.	Register of Historic Places, National Park Service, Fish and Wildlife Service, National Marine Fisheries Service, HUD.	30001, 30001.5, 30004(b), 30230, 30231, 30232, 30233, 30235, 30236, 30240, 30244, 30250(a), 30251, 30253(5), 30255, 30501(c), 30008, 31251-31265, 31300-31306, 31350-31356
8. Mineral resources.	Mineral extraction facilities needed to directly support activity.	Bureau of Mines, Geological Survey.	30001, 30001.2, 30001.5, 30004(b), 30008, 30501(c), 30255, 30262, 30233(6), 30705(5)

Section 923.15 of the CZMA regulations provide that "No separate national interest 'test' need be applied and submitted other than evidence that the . . . national interest facilities have been considered in a manner similar to all other uses, and that appropriate consultation with . . . Federal agencies . . . has been conducted." The following sections are the required evidence.

Planning for the National Interest

Previous experience has demonstrated the difficulty of defining the national interest in the planning and siting of facilities. There are typically many different participants with various interpretations. Throughout the development of the California Coastal Management Program, efforts were made to solicit comments and review statements to ensure that there would be no inherent conflict between the national interest and the policy base of the program. The California Coastal Management Program is a comprehensive program designed to consider the multiple water and land uses in the coastal zone. Accordingly, trade-offs must be made with respect to the allocation of land and water resources with priority designations being required to resolve conflicts. Because of the widespread participation in the development of the program, the policies are reflective of the needs and interests of local, State, and national governments. Furthermore, the California Coastal Act of 1976 and other elements of the CCMP provide substantive policies and procedural requirements for continuing to give adequate consideration of the national interests in facility siting in the future.

Recognizing its responsibilities to the rest of the nation, California in its coastal planning has made every effort to consider the national interest in issues affecting the coast. The Coastal Management Program recognizes national defense and national security as important aspects of national interest, because without the attainment of these objectives all other goals and objectives can be threatened. The Coastal Act's policies on the protection of agricultural land and marine and wildlife habitat recognize the importance of California farm production and fisheries to the rest of the nation and also acknowledge the world food shortage. The policies calling for recreational and public oriented uses to have a high priority along the coast reflect the increasing popularity of the coast as a tourist destination.

The Coastal Act's energy and industrial development policies, especially important because of the increased interest and activities resulting from the Department of the Interior's leasing of Outer Continental Shelf (OCS) areas for petroleum exploration and extraction, take into account California's role in addressing national energy needs. The energy policies are based on a willingness to respond with a broader State role in meeting the nation's energy needs while, at the same time, properly planning for and protecting California's environmental, economic, and legal interests.

Table 1 illustrates how California's management program has addressed the national interest. The first three columns of the table are drawn from NOAA's regulations on the CZMA national interest requirements. (15 C.F.R. 923.15). The right hand column of the table lists the Coastal Act and Conservancy Act sections that address these requirements which are other than local in nature. In addition to these statutory sections, other regulation provisions that are an integral part of the CCMP further accommodate national interest considerations. (See for example, 4A . 4, Section 00041. of Local Coastal Program Regulation, Appendix 5). Further evidence of the Coastal Commission's consideration of national interest is provided by the December 10, 1976, report to the Congress by the Comptroller General of the United States which documents the long and extensive participation of Federal agencies in the development of the CCMP.¹

The Coastal Commission is given authority under Section 30330 of the Coastal Act to exercise the primary responsibility for the implementation of the Coastal Act and to exercise any and all powers granted to the State by the Federal CZMA. The Commission looks to the following sources for policies and information that must be taken into account to adequately consider national interests in exercising both its planning and management responsibility:²

- a. Federal laws and regulations;
- b. Policy statements from the President of the U.S. (e.g., National Energy Plan);
- c. Special reports, studies, and comments from Federal and State Agencies;
- d. Testimony received at public hearings and Coastal Commission deliberations;
- e. Certificates, policy statements, and solicited opinions issued on specific projects by Federal regulatory agencies such as FPC, ERDA, FEA, etc.;
- f. Statements of the national interest issued by NOAA, and other Federal agencies.

¹The Coastal Zone Management Program: An Uncertain Future. (See especially pp. 59-61.)

²Priorities are not intended by the order of the sources.

The process of synthesizing these various sources of information is broken down into four basic steps which can occur concurrently.

1. Planning for Facility Siting Impacts

The Coastal Commission is empowered to prepare and adopt any additional plans and maps and undertake any studies it deems necessary and appropriate to accomplish the purposes, goals, and policies of the Coastal Act, provided that adoption occurs only after public hearing (30341). This authority gives the Commission long- and short-range planning capability to determine impacts of land and water uses in the coastal zone, in advance of specific development permit requests. This authority will benefit all parties concerned with facilities siting. The public hearing requirements ensure that all interested parties will have an opportunity to participate in the management process.

2. Review of Applications for Coastal Development Permits

During the period until local coastal programs are developed and certified, a Coastal Commission permit is required to construct or carry out development in the coastal zone. The Commission ordinarily requires a local approval in concept of proposed project before it will complete the processing of a Coastal Commission permit. This requirement can be waived for good cause.

A permit applicant is generally required to provide the following information:

- a. Description of the proposed development project site and vicinity using maps, plans, photos, etc.;
- b. Present use and plans;
- c. Alternatives to the project or mitigation measures to lessen impact;
- d. Description of the applicant's legal interest in the property;
- e. An Environmental Impact Report or Statement or a negative declaration if required; and
- f. Additional information as required by the Commission.

Each application is reviewed by the staff in one of the Regional Coastal Commission offices and an evaluation is made to determine whether the proposed activity is compatible with the Coastal Act. The Regional Commission acts on the recommendation of the staff.

The national interest is also considered as part of this evaluation. When appropriate, Federal agencies are afforded an opportunity to assist the Commission staff in this evaluation by providing information and Federal agency views on the proposed development. Applications for major permits (i.e., those not eligible for an administrative permit under the Commission's regulations) are reviewed by a Regional Commission at a public hearing. Federal agencies and other interests are thus given the opportunity to voice the national interest which is considered by the Regional Commission in making its decision. Projects that the State Legislature defined as being of greater than local importance and proposals for development in important resource areas are subject to appeal to the State Coastal Commission. The State Commission can also "pull up" for direct consideration any permit application to a Regional Commission to expedite the review process.

On appeal or on projects directly reviewed by the State Commission, the staff evaluates the proposal, including any national interest aspects of the development. Federal agencies and other interests are allowed to participate in the staff's evaluation both by making their interests known to the staff in preparing its recommendation to the Commission and in the Commission's public hearing. Finally, aggrieved parties (including Federal agencies) can seek judicial review of a Commission decision if they believe that the national interest is not adequately considered.

3. Federal Consistency Determinations

Section B of this chapter outlines in some detail the procedures that California will use in evaluating the consistency of Federal activities and projects subject to the requirements of Section 307 of the CZMA. The consideration of national interest are required to be incorporated into the development of local coastal programs which will, when certified, form one basis for the Coastal Commission's consistency determination; and (2) the State Coastal Commission will retain the primary authority for evaluating projects and activities subject to the Federal Consistency determinations.

4. Local Coastal Program Development

Preparation of local coastal programs will involve all local, regional, State, and Federal agencies having an interest in the planning area. Integrating the policies and proposals of various agencies and resolving conflicts will require extensive cooperation. Local governments are responsible for providing maximum opportunities for involvement of all affected public agencies. Specific procedures for seeking participation for determining key decision points involving other agencies will be defined in the LCP work programs and carried out during the LCP preparation.

At the same time, public agencies - local, regional, State, and Federal - have an obligation to provide information and assistance to the local governments. Moreover, it is in their interest to do so, because, after certification of the LCP, all governmental agencies, with the exception of certain Federal activities, must carry out their development activities within the coastal zone consistent with the LCP.

Because local governments will participate in the State's implementation of the Federal consistency provisions, LCPs can affect Federal actions; therefore, it is essential that the views of Federal agencies affected by the local program be considered in its development. In the Commission's Local Coastal Program Manual (Attachment A), specific Federal agencies that have a particular interest or can provide information on each of 14 policies are identified in the section, "Agencies and Sources of Information." The Federal agencies will be provided the opportunity to articulate their perceptions of the national interest and to provide technical information so that local governments can consider this in preparing their LCPs.

The Coastal Act states that "the Legislature . . . finds and declares the public has the right to fully participate in decisions affecting coastal planning, conservation, and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation." (Section 30006) Citizen participation cannot change the State's coastal policies as set forth by the Legislature in the Coastal Act. But within the flexibility allowed in applying those policies at the local level, public involvement will be an important factor in planning, implementing, and reflecting greater than local concerns in California's coastal conservation and development program.

One aspect of public participation is public hearing requirements. Section 30503 of the Coastal Act specifically requires that "local governments shall hold a public hearing or hearings on that portion of the program which has not been subjected to public hearings within four years of such submissions." State planning and zoning laws also require a public hearing by both the planning commission and the local legislative body prior to adoption of all general plans or zoning ordinance amendments. In addition, Section 30510(a) of the Coastal Act provides for the submittal of the LCP pursuant to a resolution adopted by the local government after public hearing. Finally, the Regional Commission and, if appealed or raised on its own motion, the State Coastal Commission will hold public hearings for the review and approval of LCPs.

Important as public hearings are, the full public participation envisioned by the Coastal Act will be much earlier in the planning, with informational meetings, advisory reviews, and other such means of giving the widest possible range of interests an opportunity to participate in the plan preparation and to reflect national interest.

The Coastal Commission, under Section 30339 of the Coastal Act, has the responsibility for "ensur(ing) full and adequate participation by all interested groups and the public" in the Commission's work, and "recommend(ing) to any local government preparing or implementing a local coastal program and to any State agency . . . any additional measures to assure open consideration and more effective public participation . . ." The Commission will, to the extent staff resources permit, provide assistance to local governments with their citizen participation efforts, and promote citizen awareness at the state-wide and regional level through various methods such as publishing a newsletter and providing assistance in organizing public forums on regional issues.

Finally, and perhaps most importantly, the Commission's regulations for local coastal program development required that local governments must consider recommended uses of more than local importance in their LCP preparation. The LCP regulations require that "at a minimum, all notices for public review sessions, availability of review drafts, studies, or other relevant documents or actions pertaining to the preparation of a local coastal program shall be mailed to: (1) any member of the public who has so requested . . .; and (2) all of the State and Federal agencies listed in . . . the Local Coastal Program Manual." (Act 5 Section 00050, LCP Regulations.) In this way, organizations concerned about the national interest and Federal agencies will be assured of having the opportunity to participate in the local coastal program development and to express their views to the Coastal Commission for consideration in determining whether a LCP should be certified.

Federal/State Cooperation to Protect the National Interest

California has received extensive assistance and cooperation from many Federal agencies in the preparation of the California Coastal Management Program. (Chapter 13 discusses this participation in greater detail.) Through this process, there was an opportunity for national interests, as perceived by Federal agencies, to be incorporated into the preparation of the Coastal Program. Although there is expected to be general support for the Coastal Act objectives among Federal agencies, there may be disagreements in applying the Coastal Act's policies to particular circumstances. Continued cooperation can ensure that the national interest is protected through a uniform application of the Coastal Act policies to the entire coastal zone by whichever local, State, or Federal agency has regulatory jurisdiction.

Where the California Coastal Management Program would conflict with an overriding national need under circumstances unforeseen when the CCMP was being prepared, it may be necessary for the Federal government to deviate from the program policies in carrying out a Federal activity or project that is in the national interest. The CZMA makes provisions for this deviation by requiring that Federal activities and projects must be consistent with the CCMP only "to the maximum extent practicable." The CZMA also provides that Federal licenses, permits, and assistance can be authorized by the Secretary of Commerce despite a determination by the State of inconsistency with the California Coastal Program - if the activity or project is found to be consistent with the objectives of the CZMA, as amended, or otherwise necessary in the interest of national security. (This finding, however, would not compel the responsible Federal agency to authorize such an activity or project.) Such cases of Federal override are expected to be rare. Except for national defense and national security needs as established by the President and the Congress, the determination of national interest needs, along with any measures necessary to mitigate the adverse impacts of meeting these needs, should be made cooperatively by the affected local, regional, State and Federal agencies.

The consideration of the national interest in non-Federal projects is accommodated in the CCMP by providing for an appeal of a local decision to the State Coastal Commission on specific types of projects that the Legislature found would be of greater than local significance, namely major public works projects and major energy facilities. Local governments are also required to consider these and other uses of more than local importance in the preparation of the LCPs. Most Federal developments and activities will fall into this category. If, for some reason, the need for a public works project or energy facility development that would serve a greater than local public need is not anticipated at the time the local coastal program is being prepared, a special provision in the Coastal Act allows the State Commission to amend the LCP to accommodate the facility.

Excluded Federal Lands

The national interest in the coast also includes consideration of activities of Federal agencies in facility construction, grant programs, and regulatory programs. To bring the activities of the many Federal agencies within the context of comprehensive planning, the CZMA included the "Federal consistency" requirements (quoted below) and encouraged Federal agencies to coordinate and cooperate with the State to meet the purposes of the CZMA. However, the CZMA also excludes "from the coastal zone . . . lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents." (Section 304(a)). In response to the CZMA, the California Coastal Act includes identical language. (Section 30008). Because there was some disagreement as to the scope of this exclusion clause, NOAA requested an advisory opinion from the U.S. Attorney General in an attempt to clarify the matter. An August 1976 opinion held that all lands owned by the United States are excluded from the coastal zone. In its draft Section 307 regulations, NOAA has proposed to also exclude from the coastal zone lands leased or otherwise used or held in trust by the Federal Government based on further Justice Department review of its August, 1976, opinion. While the Coastal Commission does not agree with either of these opinions, based on comprehensive management principles, it will abide by these preliminary conclusions in the administration of the CCMP for purposes of the CZMA. However, the Coastal Commission reserves the right to include Federally-owned and/or leased lands in the coastal zone in the event judicial, legislative, or administrative modification should occur.

Although all lands owned by the Federal government are excluded from the California coastal zone, Federal activities, including development projects on these lands which directly affect the coastal zone, must be consistent, to the maximum extent practicable, with the California Coastal Management Program. Under CZMA Sections 307(c)(1) and (2), Federal agencies are responsible for determining whether their activities directly affecting the coastal zone are consistent to the maximum extent practicable with the California Coastal Management Program. If the Coastal Commission disagrees with a Federal agency decision, mediation by the Secretary of Commerce or judicial review may be sought. Federal agencies, and in particular the Navy which is the Federal agency most dependent on coastal installations for its continued operations, have displayed increasing sensitivity to environmental issues in their operations. The Navy has cooperated in the development of the California Coastal Management Program by making its interests known to the State. It is Navy policy to conduct Navy activities to the maximum extent practicable consistent with the CCMP so long as national defense objectives are met.

Other Federal agencies have also indicated their willingness to cooperate in a similar manner. There has, for example, been extensive cooperation with the Army Corps of Engineers, which shares regulatory authority with the Coastal Commission over the waters and wetlands of the coastal zone; with the Federal Power Commission on the siting of LNG facilities; and with the Environmental Protection Agency on air and water quality standards. Through a continuation of this process of discussion, negotiation, and mediation when necessary, among local, State, and Federal interests, differences can be addressed cooperatively, and the entire coastal zone can be treated as an interrelated environmental and socio-economic system.

To compliment Federal agencies' efforts to avoid Federal conflicts with the State's management program, State and local planning for the areas surrounding Federal lands will be coordinated with local Federal representatives so, to the maximum extent practicable, these areas are used in a manner consistent with national needs. As a result of this coordination, the California Coastal Management Program will assist in protecting Federal lands from incompatible surrounding uses. It is anticipated that Federal land-holding agencies, being equally aware that environmental problems do not respect jurisdictional boundaries, will do their utmost to comply with applicable Coastal Management Program policies as required by the CZMA.

Considering the National Interest in Energy Facilities

As outlined in Chapter 9, the California Coastal Act requires that the public welfare must be considered both in permit and local coastal program certification decisions where coastal dependent industrial facilities, and particularly energy facilities, are involved (30260). In addition, energy facility developments are accorded special treatment after local coastal programs have been certified (30515). Where these programs would prevent the development of an energy facility that is needed to serve an area greater than that included within the certified local coastal program, the Commission can amend the local program after a careful balancing of social, economic, and environmental effects and after consideration of impacts on the public welfare.

In addressing these required findings, the Commission will consider the expressions of the national interest in proposed energy facilities, in local coastal programs. The Commission will also consider the information, policies, and other expressions of national interest provided by the following agencies:³

Office of the President, e.g., National Energy Plan;

U.S. Congress, e.g., Federal legislation;

Interior Department, e.g., OCS leasing schedules;

Federal Energy Administration, e.g., Report to Congress on Disposition of Alaskan Oil;

Federal Power Commission, e.g., certificates for LNG importation projects;

Nuclear Regulatory Commission, Office of Technology Assessment, General Accounting Office, Commerce Department.

State Mechanisms for Considering the National Interest in Energy

At the broadest level of energy planning, under the Warren-Alquist Energy Resources Conservation and Development Act, the State Energy Resources Conservation and Development Commission is responsible for planning for California's energy needs by analyzing the demand and supply of all forms of energy, and by evaluating the economic, environmental, and other impacts of energy policy alternatives. (Public Resources Code Section 25300-25309.) The results of such analyses and the Energy Commission's policy recommendations are submitted to the Governor and Legislature every two years as the Energy Commission's Biennial Report. The first nine-volume report has been issued after extensive hearings on drafts of the report. The Coastal Commission will consider the conclusions and recommendations of the Energy Commission in making energy facility siting and planning decisions under the Coastal Act.

The California Public Utilities Commission is responsible both for determining the State's interest in major gas supply projects in proceedings before the Federal Power Commission, and for making FPC positions known to the Coastal Commission. The Coastal Commission considers both PUC and FPC briefs and judgments in its gas facility siting and planning responsibilities.

Mechanisms for dealing with the national interest in specific types of energy facilities are discussed in Chapter 9.

B. Consistency of Federal Actions

Federal Requirements

Section 307 of the CZMA includes what are generally referred to as "Federal consistency" provisions. These provisions require the following:

o Federal activities

"(c)(1) Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved State management programs."

o Federal development projects

"(2) Any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practicable, consistent with approved State management programs."

³List not intended to be exclusive.

o Federal licenses and permits

"(3)(A) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state, or its designated agency, a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such certifications, and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state, or its designated agency, shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state, or its designated agency, fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state, or its designated agency, has concurred with the applicant's certification, or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this title or is otherwise necessary in the interest of national security."

o Licenses and permits

(B) After the management program of any coastal state has been approved by the Secretary under Section 306, any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any land use or water use in the coastal zone of such state, attached to such plan a certification that each activity which is described in detail in such plan complies with such state's approved management program and will be carried out in a manner consistent with such program. No Federal official or agency shall grant such person any license or permit for any activity described in detail in such plan until such state or its designated agency receives a copy of such certification and plan, together with any other necessary data and information, and until - - -

"(i) such state or its designated agency, in accordance with the procedures required to be established by such state pursuant to subparagraph (A), concurs with such person's certification and notifies the Secretary and the Secretary of the Interior of such concurrence;"

"(ii) concurrence by such state with such certification is conclusively presumed, as provided for in subparagraph (A);" or

"(iii) The Secretary finds, pursuant to subparagraph (A), that each activity which is described in detail in such plan is consistent with the objectives of this title or is otherwise necessary in the interest of national security."

"If a state concurs or is conclusively presumed to concur, or if the Secretary makes such a finding, the provisions of subparagraph (A) are not applicable with respect to such person, such state, and any Federal license or permit which is required to conduct any activity affecting land uses or water uses in the coastal zone of such state which is described in detail in the plan to which such concurrence or finding applies. If such state objects to such certification and if the Secretary fails to make a finding under clause (iii) with respect to such certification, or if such person fails substantially to comply with such plan as submitted, such person shall submit an amendment to such plan, or a new plan, to the Secretary of the Interior. With respect to any amendment or new plan submitted to the Secretary of the Interior pursuant to the preceding sentence, the applicable time period for purposes of concurrence by conclusive presumption under subparagraph (A) is 3 months."

o Federal assistance

"(d) State and local governments submitting applications for Federal assistance under other Federal programs affecting the coastal zone shall indicate the views of the appropriate state or local agency as to the relationship of such activities to the approved management program for the coastal zone. Such applications shall be submitted and coordinated in accordance with the provisions of Title IV of the Intergovernmental Coordination Act of 1968 (82 Stat. 1098). Federal agencies shall not approve proposed projects that are inconsistent with a coastal state's management program, except upon a finding by the Secretary that such project is consistent with the purposes of this title or necessary in the interest of national security."

In summary, Section 307 requires that Federal activities directly affecting the coastal zone, including development projects, must be consistent to the maximum extent practicable with a Federally approved State coastal management program. Federal agencies are generally constrained from taking the following actions unless a state has found that proposed activities would be consistent with its management program:

- a. issuing a license or permit for any activity affecting the coastal zone;
- b. providing financial assistance to State or local government proposals affecting the coastal zone; and
- c. granting a license or permit for an activity affecting the coastal zone, covered by a plan for the exploration or development of, or production from, areas leased under the Outer Continental Shelf Lands Act.

Federal activities, including development projects undertaken by Federal agencies on Federally owned lands, are subject to the Federal consistency provisions when the actions directly affect the coastal zone under the jurisdiction of the California Coastal Management Program.

A State finding that an activity regulated or supported by a Federal agency would be inconsistent with the State coastal management program can be appealed to the Secretary of Commerce (the Department of Commerce is responsible for administering the CZMA) who can overrule the State and allow the proposed activity to be conducted if it is found the proposed action is either consistent with the objectives of the CZMA or necessary in the interest of national security. Although states are given the responsibility for making these determinations of Federal consistency under the CZMA, in California the local coastal programs will be regarded as a refinement of the State coastal management program and local governments will, therefore, be afforded the opportunity to participate in determining whether Federal activities and Federal projects would be consistent with the State (and the local) coastal program.

The Federal consistency provisions will provide local governments with considerably more involvement in decisions on Federal activities along the coast, but under the CZMA the views of Federal agencies that would be affected by the local program must be considered in the development of the program before it can be applied to Federal actions.

Administration of the Federal Consistency Provisions

Once the California program is approved by the Secretary of Commerce, the Coastal Commission intends to carry out its responsibilities in connection with the Federal consistency provisions as follows:

- (a) Federal activities including development projects directly affecting the coastal zone (Sections 307(c)(1) and (2)).
- (i) Memoranda of Understanding with Federal Agencies.

Federal agencies will be requested to enter into memoranda of understanding with the Coastal Commission with regard to any Federal activities including development projects in the coastal zone that would require a coastal agency permit if they were undertaken by other than a Federal agency. These memoranda of understanding will be used to assist the Federal agency in assuring that the Federal activity or development project is consistent to the maximum extent practicable with the State's management program. In most cases a public hearing will be held on the requested memorandum of understanding, with the Federal agency invited to participate. The local government having jurisdiction over the area where the proposed activity or development project would be located will also be invited to participate in the public hearing. Local government representatives will be afforded the opportunity to assist the Coastal Commission in its deliberations by presenting a determination regarding the consistency of the Federal action with the certified local coastal program.

If the Coastal Commission determines that the proposed activity or development project is consistent to the maximum extent practicable with the management program, it will request that the Federal agency enter into a memorandum of understanding. If the Coastal Commission determines that the proposed Federal activity or development project is inconsistent with the management program, it will not enter into a memorandum of understanding with the Federal agency. In the latter case, if the Federal agency disagrees with the Coastal Commission's finding and decides to go forward with the action, it will be expected to (a) advise the Coastal Commission in writing that the action is consistent, to the maximum extent practicable, with the coastal management program, and (b) set forth in detail the reasons for its decision. In the event the Coastal Commission seriously disagrees with the Federal agency's consistency determination it may request that the Secretary of Commerce seek to mediate the serious disagreement as provided by Section 307(h) of the CZMA, or it may seek judicial review of the dispute.

If a Federal agency does not choose to participate in the voluntary memorandum of understanding process, the Federal agency must utilize some other procedure (OMB A-95 project notifications, Environmental Impact Statements, etc.) supplemented as necessary pursuant to the requirements of the CZMA. Regardless of the alternative notification process used by a Federal agency, it must assure that the Coastal Commission is notified of all Federal activities including development projects in the coastal zone at the earliest practicable time in the planning process. The process must also provide adequate opportunity for the Coastal Commission to hold a public hearing and to determine the consistency of the proposed action with the CCMP. The notification must include a description of the activity, a discussion relating the coastal zone effects of the action to the relevant requirements of the management program, and sufficient supporting information for the Coastal Commission to review the Federal agency's consistency determination.

(ii) Consistency of Federal Activities Not Requiring Coastal Permits.

Memoranda of understanding will not be requested with regard to Federal activities including development projects which would not otherwise require coastal agency permits. However, such actions conducted by any Federal agency which will directly affect coastal zone resources will be expected to be undertaken in a manner consistent, to the maximum extent practicable, with California's coastal program as required by the CZMA. The Coastal Commission, with the assistance of local government representatives, will review Federal agency decisions to determine whether Federal actions directly affect the coastal zone, and if there is such an impact, whether the Federal action is consistent to the maximum extent practicable with the coastal program. This review process will include a timely notice and public hearing, with the Federal agency and local governments having jurisdiction over the affected area being invited to participate in the public hearing. Local government representatives will be afforded the opportunity to assist the Coastal Commission in its consideration of the Federal agency's consistency determination by presenting a determination of the consistency of the Federal activity or project with the certified local coastal programs for the affected jurisdictions. If the Coastal Commission finds that the Federal activity or development project directly affects the coastal zone and is not consistent with the management program, and the Federal agency disagrees and decides to go forward with the action, it will be expected to (a) advise the Coastal Commission in writing that the action is consistent, to the maximum extent practicable, with the coastal management program, and (b) set forth in detail the reasons for its decision. In the event the Coastal Commission seriously disagrees with the Federal agency's consistency determination, it may request that the Secretary of Commerce seek to mediate the serious disagreement as provided by Section 307(h) of the CZMA, or it may seek judicial review of the dispute.

(iii) State Monitoring and Review of Federal Activities Including Development Projects.

To assist in implementing the procedures set forth in paragraphs (i) and (ii) above, the Coastal Commission will monitor all Federal activities including development projects that may directly affect the coastal zone. This monitoring effort will rely upon existing inter-governmental coordination procedures - the A-95 notification and review process, review of environmental impact statements, and review of Corps of Engineers public notices - supplemented as necessary with special coordination with individual Federal agencies. The Coastal Commission will make every effort to notify Federal agencies of potential inconsistent Federal activities as early as possible in the Federal agencies' planning process. At the same time, it is expected that each Federal agency proposing to conduct Federal activities including development projects which may directly affect the coastal zone will notify the Coastal Commission at the earliest practicable time. These reciprocal efforts can assist the parties in identifying potential conflicts with the State's management program and, once identified, the Federal agency and the Coastal Commission can work towards early resolution of the problem.

(b) Federal Licenses and Permits Subject to Certification for Consistency.

(i) Federal License and Permit List.

The following Federal agency licenses and permits will be subject to the certification process for consistency with the management program, under Section 307(c)(3) of the CZMA, if the activity being licensed or permitted affects land or water uses in the coastal zone:

Department of Defense - U.S. Army Corps of Engineers:

- o Permits and licenses required under Sections 9 and 10 of the Rivers and Harbors Act of 1899;
- o Permits and licenses required under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972;
- o Permits and licenses required under Section 404 of the Federal Water Pollution Control Act of 1972 and amendments; and
- o Permits for artificial islands and fixed structures located on the Outer Continental Shelf (Rivers and Harbors Act of 1899 as extended by 43 U.S.C. 1333(f)).

Nuclear Regulatory Commission:

- o Permits and licenses required for siting and operation of nuclear power plants.

Department of the Interior - Bureau of Land Management - U.S. Geological Survey:

- o Permits and licenses required for drilling and mining on public lands (BLM).
- o Permits for pipeline rights-of-way on the Outer Continental Shelf.
- o Permits and licenses for rights-of-way on public lands.

Environmental Protection Agency:

- o Permits and licenses required under Sections 402 and 405 of the Federal Water Pollution Control Act of 1972 and amendments.
- o Permits and applications for reclassification of land areas under regulations for the prevention of significant deterioration (PSD) of air quality.

Department of Transportation - U.S. Coast Guard:

- o Permits for construction of bridges under 33 USC 401, 491-507 and 525-534.
- o Permits for deepwater ports under the Deepwater Port Act of 1974 (PL 93-627).

Department of Transportation - Federal Aviation Administration:

- o Certificates for the operation of new airports. (Federal Aviation Regulations, Part 139)

Federal Power Commission:

- o Licenses for construction and operation of hydroelectric generating projects including primary transmission lines.
- o Certifications required for interstate gas pipelines.
- o Permits and licenses for construction and operation of facilities needed to import, export, or transship natural gas or electrical energy.

This listing is intentionally limited to those Federal licenses and permits that may significantly affect coastal land and water uses. This is desirable to minimize the administrative burdens on the governmental entities as well as on the applicant. If it is found that the issuance of other Federal permits and licenses causes significant effects on coastal land and water uses, the consistency requirements will be applied to those permits or licenses through administrative addition to the list above.

(ii) License and Permit Activities Within the Coastal Zone.

Within the coastal zone, a Coastal Commission permit will be required from non-Federal applicants for the above activities. A memorandum of understanding will be requested from Federal agency applicants for the above activities. The issuance of a Coastal Commission permit* or agreement on a memorandum of understanding will be deemed to be a determination by the State that the proposed Federal license or permit activity is consistent with the management program, and no further certification will be required. In cases where no Coastal Commission permit has been applied for but where one is required, the Coastal Commission will process a certification of consistency concurrent with the permit application. The Coastal Commission will not review whether a Federal license or permit activity in the coastal zone is consistent with the management program except in connection with a Coastal Commission permit application if a permit is required.

To ensure that the national interest is adequately protected, where the State's primary management authority over the above activities has been delegated to a local government upon the certification of a local coastal program, the local decision will be automatically reviewed by the Coastal Commission. The Coastal Commission's decision on the appeal, or on the review of a local permit that was not or could not be appealed, will be deemed to be the State's determination of the consistency of the proposed activity with the California Coastal Management Program. Consequently, the Coastal Commission will have the lead role and during its deliberations it will consider the views of local governments with certified local coastal programs for the affected areas.

*The issuance of a permit for an electric transmission line or a thermal power plant by the State Energy Resources Conservation and Development Commission pursuant to Section 30413 of the Coastal Act is considered a Coastal Commission permit for purposes of this section.

(iii) License and Permit Activities Outside of the Coastal Zone.

Outside of the coastal zone (for example, on excluded Federal lands or on uplands beyond the coastal zone boundary), consistency certifications for the above licenses and permits will be required only in cases where the Coastal Commission determines that the activity being licensed or permitted could have a substantial effect on land and water uses in the coastal zone. This determination will be made on a case-by-case basis in the course of the monitoring program described in paragraph (a)(iii). It is not anticipated that many licenses and permits outside of the coastal zone will require certification. At the same time, those that do will probably be of considerable interest to the public because of the potential for substantial impact on the coast. Consequently, consistency certifications for Federal license or permit activities outside of the coastal zone will be processed as much as possible as if they were applications for Coastal Commission permits under the Coastal Act and its implementing regulations to allow for timely public notice and hearings. The local governments having jurisdiction over the area that would be affected by the proposed activity will be invited to participate in the public hearing. Local government representatives will be afforded the opportunity to participate in the Commission's deliberations and to present a determination of the consistency of the proposed activity with the certified local coastal programs for the affected jurisdictions.

(iv) Coastal Commission Objections to Federal License and Permit Activities.

If, in connection with the review of proposed Federal license or permit activities under paragraphs (ii) or (iii), the Coastal Commission determines that a non-Federal applicant's proposed license or permit activity is not consistent with the State's management program as required by Section 307(c)(3)(A) of the CZMA, the Federal agency may not issue the license or permit unless the Secretary of Commerce, on her own initiative or upon appeal by the applicant, finds, after providing an opportunity for comments from the Federal agency involved and from the Coastal Commission, that the activity is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security. If the Coastal Commission objects to the consistency of a Federal applicant's proposed license or permit activity, and the Federal agency decides to go forward with the activity, the Coastal Commission may use the mediation or judicial review dispute resolution procedures described in paragraph (a)(i). In its draft Section 307 regulations, NOAA has proposed to exclude Federal agencies from the license and permit certification requirements and the appeal provisions of the CZMA. While the Coastal Commission does not fully agree with this position, it will abide by NOAA's decision in the administration of the CCMP for purposes of the CZMP. The Coastal Commission, however, reserves the right to subject Federal agencies to the certification requirement in the event administrative, judicial, or legislative modification should occur.

(c) Federal Licenses and Permits Described in Detail in OCS Plans.

The following Federal agency licenses and permits will be subject to the certification process for consistency with the management program under Section 307(c)(3)(B) of the CZMA if the activity being licensed or permitted is described in detail in an OCS exploration or development plan and affects land or water uses in the coastal zone:

Department of the Interior - U.S. Geological Survey

Approval of offshore drilling operations.

Approval of design plans for the installation of platforms.

Approval of gathering and flow lines.

Any other OCS-related Federal license or permit activities described in paragraph (b)(i) (for example, BLM pipeline rights-of-way on the OCS) which U.S.G.S. determines should be described in detail in OCS plans.

In accordance with the CZMA, Federal license and permit activities described in detail within exploration or development plans for OCS areas adjacent to California waters that have been leased under the Outer Continental Shelf Lands Act, will be subject to certification and State review. This process will assure that Federal license and permit activities described in detail in such plans, and affecting land or water uses in the coastal zone, are consistent with the State's management program. Consistency certifications for OCS plans will be processed as much as possible as if they were applications for coastal permits under the Coastal Act and its implementing regulations to allow for timely public notice and hearings. Local governments having jurisdiction over areas affected by OCS activity will be invited to participate in the public hearing. Local government representatives will be afforded the opportunity to participate in the Coastal Commission's deliberations and to present determinations of the consistency of the proposed OCS activity with the certified local coastal programs for the affected jurisdictions.

If the Coastal Commission determines that one or more of the Federal license or permit activities described in detail in an OCS plan are not consistent with the coastal management program as required by Section 307(c)(3)(B) of the CZMA, Federal agencies may not issue the licenses or permits described in detail in the OCS plan unless the Secretary of Commerce, on her own initiative or upon appeal by the lessee, finds, after providing an opportunity for comments from the Federal agencies involved and the Coastal Commission, that the Federal license or permit activities are consistent with the objectives of the CZMA or are otherwise necessary in the interest of national security.

(d) Federal Assistance Subject to Consistency with the Management Program.

To review State and local government applications for Federal assistance under Federal programs affecting the coastal zone, the Coastal Commission will use the Project Notification and Review System of OMB Circular A-95 authorized under Title IV of the Intergovernmental Coordination Act of 1968 and administered by Regional Clearinghouses and statewide by the Office of Planning and Research.

The scope of Coastal Commission review will be limited to ensuring that the proposed project is consistent with the coastal management program. In the event the Coastal Commission determines that the proposed project is not consistent with the management program, the Coastal Commission will attempt to resolve the inconsistency through negotiation with the applicant. If no resolution is possible, the Commission will forward its determination to the appropriate Federal agency and, as required by Section 307(d) of the CZMA, the Federal agency will not approve the proposed project unless the Secretary of Commerce finds that the project is consistent with the purposes of the CZMA or is in the interest of national security.

C. Incorporation of Federal Air and Water Quality Standards

Although the Coastal Plan recommended that California institute air or water quality standards more restrictive than Federal requirements in certain areas in order to address unique problems, the Coastal Act did not go as far. The Coastal Act does uphold Federal standards as enforced by existing State agencies. Local coastal programs must also incorporate as necessary the air and water quality standards prior to certification. Section 30522 of the Coastal Act states, "Nothing in this chapter shall permit the commission to certify a local coastal program which provides for a lesser degree of environmental protection than that provided by the plans and policies of any state regulatory agency." While the Coastal Commission cannot require local governments to incorporate more stringent standards, nothing prohibits the local governments from incorporating more stringent standards into their LCPs; however, these standards will not be applicable until they have been officially approved by the State regulatory agencies pursuant to the provisions of the Federal air and water quality laws. Section 30253(3) requires new development to be consistent with requirements imposed by an air-pollution control district or the State Air Resources Control Board.

The State Water Resources Control Board is recognized as having primary responsibility for the coordination and control of water quality and the administration of water rights pursuant to applicable law. The Coastal Commission is responsible for seeing that proposed development and local coastal programs do not frustrate the State Water Resources Control Board's programs. However, Section 15 of the Coastal Act amended the State Water Code to ensure that water agencies support the Coastal Commission's management program to protect the coastal marine environment. Treatment works within the coastal zone and those outside the coastal zone that serve the coastal zone require a coastal permit determined on siting and visual appearance, geographic limits, and development projections. The Coastal Commission must make the final determination on a permit prior to the time of final approval of the project by the State Water Resources Control Board. (30412).

The State Air Resources Board and local air pollution control districts, having been established pursuant to State law and consistent with Federal law, are the principal public agencies responsible for air quality, emission standards, and air pollution control programs. The Coastal Commission is not to modify air pollution standards set by the Air Resources Board, which, it is expected, will recommend ways that the Coastal Commission can assist in air quality programs. (30414)