

# **Chapter 6**      **Federal Consistency Certification**

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Under the federal [Coastal Zone Management Act](#) (CZMA), coastal states with an approved coastal management plan are able to review federal permits and activities to determine if they are consistent with the state’s management plan. They can either “concur” or “object” to the consistency certification. This regulatory obligation is in addition to the California regulations generally contained in the [California Coastal Act](#).

The California Coastal Management Program (CCMP) was developed by the California Coastal Commission (CCC) in 1976 and approved by the National Oceanic and Atmospheric Administration (NOAA) in 1977. This allows the CCC to review federal projects and activities to determine if they are consistent with California’s Coastal Management Program (16 United States Code [USC] Section 1456; 15 Code of Federal Regulations [CFR] part 930.30; Public Resources Code [PRC] Sections 30008 and 30330).

## **6.1 When Federal Consistency Review is Necessary**

The CCC’s federal consistency authority applies to activities that are undertaken, funded, or permitted by federal agencies or if they occur on federal lands. Such activities, whether or not they occur inside or outside of the coastal zone, are subject to the federal consistency CZMA provisions if they have the potential to affect resources in the coastal zone. During such reviews, the CCC determines whether the proposed activities are consistent with the Chapter 3 policies of the Coastal Act and may refer to certified LCP policies as guidance for determining such consistency. Most of the Department’s projects have federal funding or require other federal approvals. Therefore, the Department’s projects with federal funding or approvals that may affect land or water uses or natural resources need federal consistency review. In cases of joint state/federal projects, a federal consistency certification is often conducted as part of the CCC coastal development permit review process; however, the consistency certification is still required if a local jurisdiction is issuing a coastal permit. The federal regulations relating to consistency certifications are at [15 CFR, part 930, et seq.](#)

In most cases, no federal consistency concurrence is required if the CCC has issued a coastal development permit, but formal documentation from the CCC federal consistency unit may still be needed for federal permitting agencies to comply with their federal consistency requirements. If a local government has issued a coastal development permit or an exemption determination, the CCC federal consistency certification and concurrence are typically still required.

## **6.2 Procedure for Consistency Certification Waiver Request**

If it is determined that the project will not affect coastal uses or resources, a request for a waiver of the consistency certification requirement may be submitted to the CCC federal consistency

unit for confirmation. Coordination with the federal consistency unit prior to submittal will confirm whether a request for a waiver is appropriate. The consistency certification waiver request must contain a brief description of the proposed development or activity; the project or activity location; and the basis for the request, including an analysis of the proposed project's or activity's consistency with applicable Chapter 3 policies, sufficient for the CCC to evaluate whether the project or activity would affect coastal resources. Within 30 days of receiving the consistency certification waiver request and all applicable supporting information for a proposed development project, the executive director of the CCC will review the submittal and determine one of the following: (1) the subject consistency certification is waived, (2) additional information is necessary to adequately review the consistency certification waiver request, and request such information for review, or (3) the subject consistency certification is not waived and a consistency certification for the proposed project or activity must be submitted for review by the CCC. A waiver will not be issued, however, until after the final, local decision-maker hearing is held and the appeal period has closed.

### **6.3 Content and Submittal Materials for Consistency Certification**

A federal consistency certification is prepared by the applicant and, in general, includes a brief evaluation of the relationship of the proposed activity and any reasonably foreseeable coastal effects to the enforceable policies of the management program and a statement indicating that the proposed action will be undertaken in a manner that is consistent with the CCMP (15 CFR, part 930.57). The consistency certification must evaluate the project relative to the enforceable policies of the CCMP. Policies contained in Chapter 3 of the Coastal Act provide the standard of review for the federal consistency review process.

There is no standard application form for a consistency certification. The applicant is required to submit the following information to the CCC (which is considered to be the consistency certification): the statement that “the proposed activity complies with California’s approved coastal zone management program and will be conducted in a manner consistent with such programs;” a copy of the federal permit application; a detailed project description, including any associated activities; an assessment of the potential effects on coastal resources; comprehensive data and information sufficient to support the consistency certification; and an evaluation of the consistency of the project and its associated facilities with the Chapter 3 policies of the Coastal Act (15 CFR Sections 930.57(a), 930.57 (b), and 930.58).

An LCP that the CCC has effectively certified and incorporated into the CCMP may provide guidance for analyzing project consistency with Chapter 3 policies where the LCP includes development standards applicable to the project area. In cases where the CCC has not incorporated a certified LCP into the CCMP, the LCP can be used to provide background information but is not used as guidance in analyzing project consistency with Chapter 3 policies. Only the Chapter 3 policies applicable to the project need to be analyzed. The comprehensive data requirement can be fulfilled by use of the technical studies developed during the environmental document process. In practice, documents prepared under the California

Environmental Quality Act (CEQA) and/or the National Environmental Policy Act (NEPA) have sometimes included chapters or appendices that contain specific federal consistency (i.e., Coastal Act Chapter 3) analyses, but any such federal consistency submittal needs a cover letter to the CCC clearly identifying that the CEQA/NEPA document contains such an analysis, and where in the document it can be found. Also, environmental analyses contained in CEQA/NEPA documents can be referenced in federal consistency submittals, where they can be used to supplement the analysis of a project's consistency with the applicable Coastal Act Chapter 3 policy. The [CCC's federal consistency webpage](#) contains several sample determinations. See also 15 CFR, Section 930.58.

The consistency certification must be sent to the CCC 90 days before final approval of the action; however, early communication with CCC staff prior to a submittal is highly recommended. It will be important to coordinate early with the local CCC office and the federal consistency unit prior to release of the draft environmental document to determine the appropriate time to process the federal consistency review. In most cases, consistency certification is required prior to finalizing the Finding of No Significant Impact or Record of Decision for environmental documents.

The CCC has 30 days from the day it receives the consistency certification and supporting documentation to respond. Once deemed complete, a staff report will be prepared and public notice provided for CCC action on the consistency certification within 6 months. CCC concurrence can be conclusively presumed if the CCC does not act within 6 months of the date the consistency certification is deemed complete. The CCC's hearing deadline may be extended ("stayed") if, on or before the hearing deadline, the Department and CCC agree to an extension ("stay") of the hearing deadline to allow CCC review to occur at a later hearing. A stay of the CCC's hearing deadline can be for no more than 180 days from the original hearing deadline as established by the date the consistency certification was deemed complete.

The CCC will hold a public hearing and may take action to concur with, conditionally concur with, or object to the consistency certification. Conditions must be based on the project or activity's consistency with Chapter 3 policies of the Coastal Act. If the Department does not agree with the conditions and/or does not modify the project or activity to incorporate the conditions, the CCC's conditional concurrence is treated as an objection.

An objection to a consistency certification may be based on findings that the information supplied is insufficient to enable the CCC to assess the activity for consistency with the Chapter 3 policies of the Coastal Act. In such cases, the CCC must identify the information and the reason it is necessary to assess consistency of the project or activity's consistency with applicable Chapter 3 policies of the Coastal Act. The CCC may also object to a consistency certification by finding the proposed project or activity is inconsistent with the Chapter 3 policies of the Coastal Act, in which case the CCC will identify alternative measures, where such measures exist, that would cause the CCC to concur with the consistency certification. A CCC objection to a consistency certification may be appealed to the Secretary of Commerce within 30 days from receipt of the objection.

## 6.4 Effect of an Objection

As is noted above, the CCC may either “concur” or “object” to the consistency certification. If the CCC objects, the project may not receive any federal approvals or funding unless the determination is overridden by the United States Secretary of Commerce after an appeal. On appeal, the Secretary of Commerce may override the CCC objection if he or she finds (1) the project is consistent with the objectives of the Coastal Zone Management Act, or (2) the project is otherwise in the interests of national security. The success rate of appeals to the Secretary is not high and it should not be assumed that an appeal will be successful.

More specific guidance on federal consistency is available at 16 USC Sections 1451–1464; 15 CFR Part 930 et seq.; and on the CCC’s federal consistency webpage. Please also refer to the [Federal Consistency Review Fact Sheet](#).