

CHAPTER 25 COASTAL ZONE CONSISTENCY

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25. COASTAL ZONE CONSISTENCY

25-1 OVERVIEW

In an effort to resolve conflicts between competing uses in the nation's coastal zone, Congress passed the **Coastal Zone Management Act (CZMA)** in 1972. The **CZMA** sought to preserve, protect, develop, and where possible, restore and enhance the resources of the nation's coastal zone. In order to achieve its goal, Congress provided coastal states with incentives to encourage them to develop and implement comprehensive management programs which balance the need for coastal resource protection with the need for economic growth and development within the coastal zone.

The **CZMA** authorizes the federal government, through the Secretary of Commerce, to provide coastal states with grant-in-aid to assist with the development and implementation of their coastal management programs. Coastal states are first required to submit their management programs to the Secretary of Commerce's designee, the Director of the National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management for approval. When the state management program receives federal approval, **Section 307** of the **CZMA** provides the state with the ability to review federal activities within or adjacent to their coastal zone to determine whether the federal activity complies with the enforceable policies included in the state's approved management program.

Section 307 of the **CZMA** and its implementing regulations, **15 CFR 930**, stipulate that all federal agency activities that affect any land or water use or natural resource of the coastal zone must be consistent, to the maximum extent practicable, with the enforceable policies of the state's federally approved management program. Federal licenses or permits, and federal financial assistance for activities affecting any land or water use or natural resource of the coastal zone are required by **Section 307** to be fully consistent with the enforceable policies of state coastal management programs.

The **Florida Coastal Management Act of 1978 (Chapter 380, Part II, F.S.)** authorized the state to develop a comprehensive state coastal management program based on existing **Florida Statutes** and rules. The Florida Coastal Management Program (FCMP) received federal approval on September 24, 1981.

The FCMP consists of a network of twenty-four **Florida Statutes** administered by nine state agencies and the five water management districts, designed to ensure the wise use and protection of the state's water, cultural, historic, and biological resources; to minimize the state's vulnerability to coastal hazards; to ensure compliance with the state's growth management laws; to protect the state's transportation system; and to protect the state's proprietary interest as the owner of sovereign submerged lands. **Figure 25.1** provides a list of **Florida Statutes** included in the FCMP. **Figure 25.2** lists the participating state agencies.

The State of Florida's review of federal activities for consistency with the **CZMA** is coordinated by the Department of Environmental Protection (DEP), which serves as the lead agency for the FCMP. DEP uses the State Clearinghouse (SCH), which is located within DEP, to facilitate the coordination process. Federal agencies and applicants are required by the FCMP to provide the SCH with a detailed description of proposed federal activities in accordance with **15 CFR 930**. Proposed federal activities are distributed by the SCH to each FCMP member agency with a statutory interest in the activity (consistency reviewer). Comments provided by the FCMP agencies are used by DEP to make a determination on behalf of the State of Florida regarding the consistency of a proposed federal action with the policies included in the FCMP.

25-1.1 Federal Consistency

As a member of the FCMP network, the Department participates in the review of federal activities to ensure consistency with the FCMP statutes under its purview, and reviews federal activities within or adjacent to the state to ensure that the federal activity will not result in adverse impacts to the state transportation system, or the Department's ability to perform its statutory functions. Individual federal actions are evaluated by the Department for compliance with the applicable requirements of **Chapter 334** and **Chapter 339, F.S.**

When the Department is seeking federal funding, a determination of consistency with the FCMP may be required prior to the allocation of federal funds for the project. If the project also requires a federal license or permit, a separate consistency review for federal licenses or permit applications may be required in accordance with **15 CFR 930, Subpart D** and **Section 380.23, F.S.** Consistency reviews of projects which require permits from the U.S. Army Corps of Engineers (USACE) or the U.S. Coast Guard (USCG), or a state Environmental Resource Permit are conducted during the state permit review. In accordance with **Section 380.23, F.S.**, the issuance or denial of the state permit serves as the state's consistency decision for analogous USACE or USCG permits. Procedures governing the consistency review of analogous state permits are included in **Section 373.428, F.S.**

25-2 PROCEDURE

25-2.1 Projects Requiring a Consistency Review

Projects that require a Federal Consistency Determination are those with federal funding and/or projects that will require a federal action (i.e. connection to interstate). Projects must undergo a consistency review if federal funds are to be used in any phase of the project implementation. Federally-funded EA and EIS projects are always, and Type 2 CEs are usually subject to consistency review. State Environment Impact Reports (SEIRs) do not require a Federal Consistency Determination during PD&E, but the project itself may require a consistency review during design as there is often a federal license or permit required. Type 1 CE and Programmatic CE projects are exempt from consistency review.

25-2.2 Consistency Review at the Advance Notification Phase

For projects requiring the preparation of an Advance Notification (AN) Package, the District ETDM Coordinator or Project Manager prepares the package in accordance with **Part 1, Chapter 3** of the *PD&E Manual* and **Chapter 5** of the *ETDM Planning and Programming Manual*. The completed AN package is emailed along with a Programming Screen Notice to the SCH and to each FCMP member agency with a statutory interest in the activity (consistency reviewer). The SCH may then forward the information to additional interested parties, if needed. See **Figure 25.3** for the Federal Consistency Review Process in the Environmental Screening Tool (EST).

Issuance of the electronic notice for the Programming Screen begins a 45-calendar day comment period, to allow for the distribution, discussion and receipt of agency responses consistent with the Programming Screen and federal consistency review. Upon notification by the District ETDM Coordinator/Project Manager, consistency reviewers are responsible for providing comments in the EST to ensure that the project complies with the statutes and requirements within their jurisdiction. Each state agency's consistency reviewer will also indicate whether or not the project is consistent with the FCMP.

The SCH has 15 days after receipt of all comments to complete the federal consistency review for the State of Florida. The SCH consolidates the consistency reviewers' comments, reviews them, and indicates a determination of the project's consistency with the FCMP in the EST. This consistency decision is based on the consistency findings of all state agencies with a statutory interest in the project.

Should additional review time be required, a written request for a 15-day time extension must be submitted to the District ETDM Coordinator within the initial 45-day comment period. If more than a 30-day extension is required by the SCH, the project should be placed into dispute resolution (**Section 25-2.4.1**) until the review is complete. The District shall not proceed with further project development before receiving a consistency determination.

The finding of consistency is included in the **Final Programming Screen Summary Report** in the Appendix of the EA or EIS or referenced in the Type 2 CE and the following standard statement is placed in the Coastal Zone portion of the Type 2 CE, EA, or EIS:

"The State of Florida has determined that this project is consistent with the Florida Coastal Zone Management Plan."

For an EA or EIS, reference the location of the finding in the **Appendix**. For example, add "See Final Programming Summary Report" after the standard statement.

Whenever a project is determined to be inconsistent with the FCMP, a letter of inconsistency will be issued by the DEP on behalf of the state. A finding of inconsistency must cite the section of the relevant statute under the reviewing agency's authority with which the project is inconsistent, and must identify actions that can be taken to resolve the conflict. Prior to actually issuing a finding of inconsistency, the reviewing agency should immediately call the SCH if problems are identified. If any consistency reviewing agency

indicates that the project is not consistent, this would trigger discussions with the SCH and possibly initiate the dispute resolution process (**Chapter 5** of the **ETDM Planning and Programming Manual**). If an inconsistency letter is received, it is uploaded to the EST to support documentation for the project diary.

If significant concerns are identified during the AN review, the District will be advised by DEP of conditions of approval or the need for additional coordination. The SCH should be provided with project information of sufficient scope and detail to determine whether the project is consistent with the requirements of all applicable FCMP statutes. The requested project information should be provided as soon as the information becomes available. All issues or concerns identified during the AN review should be addressed. When **National Environmental Policy Act (NEPA)** documents are prepared for the project, a draft document may be used to provide the required data and information. If significant concerns are not identified during the review, additional coordination will not be required unless the nature, location, or scope of the project is substantially changed. The District is still required to comply with all conditions needed to ensure compliance with the FCMP.

Unless state agencies object to a project as stated above, the AN consistency determination is sufficient documentation. A project once found to be consistent will remain consistent unless the nature, location or scope of the project has been substantially changed after the AN consistency review; or the DEP advises the Department and FHWA (or other Lead Federal Agency) in writing that as a result of new circumstances or information relevant to the effects of the project, the DEP has determined that the project is inconsistent with the FCMP, or a new consistency review is required to determine the project's consistency with the FCMP.

25-2.3 Subsequent Consistency Review

During development of the Type 2 CE, EA, or EIS, the consistency determination made at the AN stage may be modified if after the review of the document, an FCMP agency determines that the project is no longer consistent. Changes in a determination can come at any stage of project development.

25-2.4 Mediation of Determinations of Inconsistency

25-2.4.1 Mediation During the Advance Notification Phase

If a recommendation or determination of inconsistency with the FCMP is made by the SCH and its consistency reviewing agencies during the AN phase, the project will go through the ETDM Dispute Resolution Process, which is discussed in detail in **Chapter 5** of the **ETDM Planning and Programming Manual**. The goal of the ETDM dispute resolution process is to resolve conflicts at the agency staff level, providing as many opportunities for resolution as possible prior to elevation of the dispute within FDOT and the review agencies. Once the dispute has been resolved, the entire dispute resolution process will be documented in the EST. The **EST Handbook** provides additional guidance on tracking and documenting the dispute resolution process.

25-2.4.2 Mediation During Subsequent Consistency Review

If a state agency determines that a project is inconsistent at a later stage of project development, the agency must provide DEP with a written determination signed by the agency head or authorized designee which includes the following:

1. The specific statutes, rules, or regulations with which the project is in conflict; and
2. Provide for the Department's consideration of suggested alternatives, if any, that would allow the project to be consistent with the FCMP.

Where an agency fails to identify the authority with which the project is in conflict, or the agency's objection is signed by an unauthorized individual, the determination will not form the basis of a finding of inconsistency by DEP, the lead coastal management agency.

If DEP receives a state agency objection or notice of a pending objection; the Department will be advised of the basis for the objection. DEP will work in consultation with the Governor's Office, the Department, and the objecting agency to resolve the objection prior to the need for a formal state consistency decision. If the objection cannot be resolved, the DEP will provide the Department; FHWA (or other Lead Federal Agency), and the NOAA Office of Ocean and Coastal Resource Management with a state consistency objection letter in accordance with **15 CFR 930**.

When the Department receives a **Letter of Inconsistency** from DEP, or when it is communicated via the Director level or above that a **Letter of Inconsistency** is anticipated, the Department will not advance the project to the next development phase (design) until an agreement, allowing the objection to be lifted, is reached between the objecting agency and the Department. The DEP will mediate interagency disputes in an attempt to resolve conflicts. This mediation will be a tiered process, beginning with the interagency review group and continuing, if necessary, to the agency head.

If, after the DEP mediation, an objecting agency continues to deem the project to be inconsistent, the Department and/or the DEP may seek Gubernatorial mediation in accordance with **Section 380.23(2)(b), F.S.**

In the event of a disagreement between DEP and FHWA (or other Lead Federal Agency) regarding whether or not a federal assistance activity is subject to consistency review, the Lead Federal Agency may seek mediation by the Secretary of Commerce in accordance with **15 CFR 930.99**. In such cases, the procedures and time limits set forth in **15 CFR 930, Subpart G**, will apply.

25-3 REFERENCES

1. Chapter 380, Part II, Florida Statutes.
2. Federal Consistency with Approved Coastal Management Programs, 15 CFR 930, Vol. 44, No. 123.
3. A Guide to the Federally Approved Florida Coastal Management Program.
4. Section 373.428, Florida Statutes.
5. Florida Coastal Management Program State Clearinghouse Manual.
http://www.dep.state.fl.us/secretary/oip/state_clearinghouse/manual2.htm
6. Florida Department of Transportation, Efficient Transportation Decision Making (ETDM) Planning and Programming Manual
7. Florida Department of Transportation, Environmental Screening Tool (EST) Handbook

25-4 HISTORY

8/18/1999

The enforceable policies of the Florida Coastal Management Program, Florida's federally approved management program, consist of the following Florida Statutes and their implementing regulations. The authority derived from these statutes is applied by the state agencies charged with their implementation to ensure protection of Florida's coastal resources.

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| Chapter 161 | Beach and Shore Preservation |
| Chapter 163, Part II | Intergovernmental Programs: Growth Policy; County and Municipal Planning; Land Development Regulation <i>Enforceable policy includes only Sections 163.3164; .3177(6)(a), (10)(h&l), & (11)(a&c); .3178(1) & (2)(d-j); .3180(2)(a-c), (5)(a&c), (6), & (8); .3194(1)(a); .3202(2)(a-h); and .3220(2)&(3)</i> |
| Chapter 186 | State and Regional Planning |
| Chapter 252 | Emergency Management |
| Chapter 253 | State Lands <i>Section 253.61(1)(d) is not approved as enforceable policy</i> |
| Chapter 258 | State Parks and Preserves |
| Chapter 259 | Land Acquisitions for Conservation or Recreation |
| Chapter 260 | Florida Greenways and Trails Act |
| Chapter 267 | Historical Resources |
| Chapter 288 | Commercial Development and Capital Improvements |
| Chapter 334 | Transportation Administration |
| Chapter 339 | Transportation Finance and Planning |
| Chapter 373 | Water Resources |
| Chapter 375 | Outdoor Recreation and Conservation Lands |
| Chapter 376 | Pollutant Discharge, Prevention and Removal |
| Chapter 377 | Energy Resources <i>Sections 377.06, .24(9), and .242(1)(a)5 are not approved as enforceable policy</i> |
| Chapter 379 | Fish and Wildlife Conservation <i>Sections 379.2551 and .362 are not approved as enforceable policy</i> |
| Chapter 380 | Land and Water Management <i>Section 380.23(3)(d) is not approved as enforceable policy</i> |
| Chapter 381 | Public Health; General Provisions <i>Enforceable policy includes only Sections 381.001, .0011, .0012, .006, .0061, .0065, .0066, and .0067</i> |
| Chapter 388 | Mosquito Control |
| Chapter 403 | Environmental Control <i>Section 403.7125(2) and (3) are not approved as enforceable policy</i> |
| Chapter 553 | Building Construction Standards <i>Enforceable policy includes only Sections 553.73 and .79</i> |
| Chapter 582 | Soil and Water Conservation |
| Chapter 597 | Aquaculture |

FIGURE 25.1 Florida Coastal Management Program Statutes

Department of Community Affairs
Department of Environmental Protection
The Office of Tourism, Trade & Economic Development
Department of Agriculture and Consumer Services
Department of Health
Department of State, Division of Historical Resources
Department of Transportation
Fish and Wildlife Conservation Commission
Division of Emergency Management
Northwest Florida Water Management District
St. Johns River Water Management District
South Florida Water Management District
Southwest Florida Water Management District
Suwannee River Water Management District

FIGURE 25.2 Florida Coastal Management Program Agencies

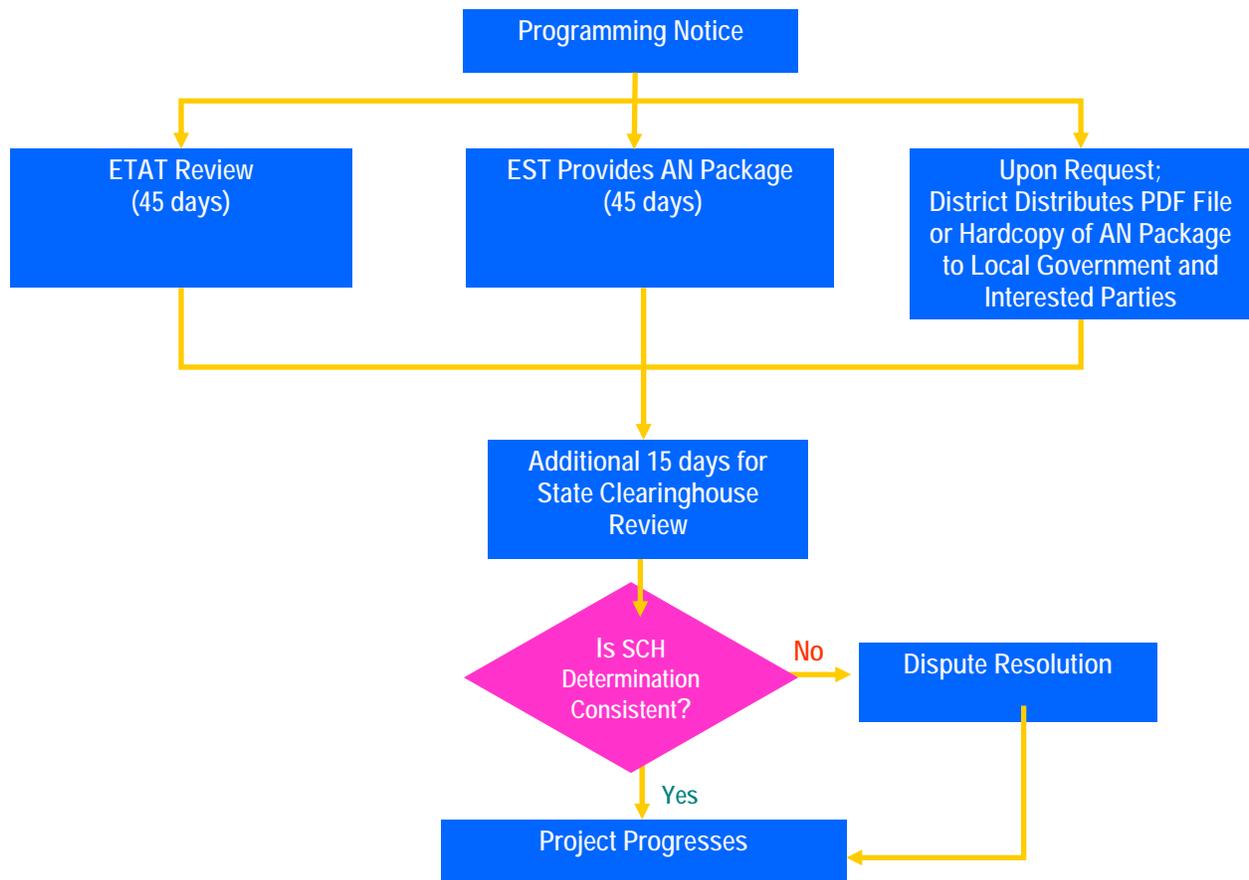


FIGURE 25.3 Federal Consistency Review Process in the Environmental Screening Tool (EST)