

***Foothill/Eastern Transportation Corridor Agency
Federal Consistency Appeal
(Revised May 16, 2008)***

Frequently Asked Questions

On February 15, 2008, Foothill/Eastern Transportation Corridor Agency and its directors (collectively, TCA) filed an appeal with the Secretary of Commerce under the Coastal Zone Management Act in response to the California Coastal Commission's (CCC) objection to TCA's consistency certification for the proposed extension of California State Route 241 in Orange and San Diego Counties, California.

The following Frequently Asked Questions are intended to help the public better understand the nature of this appeal and the process the Secretary will follow in reviewing it.

What is the Coastal Zone Management Act?

The Coastal Zone Management Act (CZMA) was enacted in 1972 and is found at 16 U.S.C. §§ 1451-1466. The CZMA is designed "to preserve, protect, develop, and where possible, to restore or enhance" the Nation's coastal zone. This policy is in part accomplished through the development and implementation of state coastal management programs. To date, all coastal states except Illinois have federally-approved coastal management programs.

The Secretary of Commerce is responsible for administering the CZMA and the Secretary has delegated certain CZMA responsibilities to the National Oceanic and Atmospheric Administration (NOAA).

What is Federal consistency under the CZMA?

Under the CZMA, activities that require a federal license or permit must be consistent with the enforceable policies of a state's federally-approved coastal management program, if those activities will have reasonably foreseeable effects on any land or water use or natural resource of the state's coastal zone. This requirement applies regardless of whether the activity occurs in or outside of the state's coastal zone. License and permit applicants satisfy this obligation by furnishing the state with a certification, along with certain information about the project, when they apply for the necessary federal license or permit.

States may either concur or object to a consistency certification. They may object on grounds that: a) the proposed activity is inconsistent with the enforceable policies of the state's coastal management program; or b) the state lacks sufficient information to assess whether or not the proposed activity is consistent.

What is the consequence of a state's objection?

If a state objects to a proposed activity, the federal licensing agency may not authorize activities under the federal license or permit sought by an applicant unless the objection: a) is appealed to the Secretary; and b) on appeal, the Secretary "overrides" the objection of the state.

What does the Secretary consider on appeal from a state's objection?

The Secretary may override a state's objection if the proposed activity is either:

Consistent with the objectives of the CZMA. Projects consistent with the objectives of the CZMA are those where: a) the project furthers the national interest in the CZMA objectives in a significant or substantial manner; b) this national interest outweighs any adverse coastal effects (both separately and cumulatively); and c) there is no reasonable alternative available that would allow the activity to proceed consistent with the state program; or

Necessary in the interest of national security.

On appeal the Secretary does not review the state's application of its federally approved enforceable policies to a project; rather the Secretary's focuses on criteria described above. The Secretary may also determine whether all necessary procedural requirements were satisfied.

What is the procedure once an appeal is filed?

Under the CZMA, the Secretary must:

- Publish notice of the appeal in the Federal Register within 30 days of receipt.
- Close the decision record for the appeal within 160 days of publishing notice of receipt of the appeal. The Secretary may only extend this time frame by up to one 60 day period, and only: a) by unanimous agreement of the parties; or b) if the Secretary determines it necessary to receive supplemental or clarifying information
- Issue a decision within 60 days of closing the decision record.

NOAA has published procedural regulations that provide more specific information on how an appeal is processed. These regulations can be found at 15 C.F.R. Part 930, Subpart H.

NOAA's Office of the General Counsel supports the Secretary in his review and processing of any appeal.

During the appeal process, may I make my views known to the Secretary?

Yes. During the appeal process, there will be a 30-day period in which the public and Federal agencies may submit views to the Department of Commerce/NOAA. Notice of this comment period will appear in the Federal Register and in a publication of general circulation in the immediate area of the coastal zone likely to be affected by the proposed activity. The Federal Register notice will contain information on how to submit comments to the Secretary/NOAA.

Additionally, the Secretary may hold a public hearing at which time comments may be provided. Notice of any public hearing will also appear in the Federal Register. If a hearing is held, the comment period will be reopened and close 10 days after the hearing.

Will the Secretary send me a letter in response to my comments on the appeal?

No. Timely comment letters will be included in the administrative record for the appeal and will be considered by the Secretary as part of the decisionmaking process. Commentors should not anticipate a written response to their comment letters.

How can I obtain copies of pleadings and other papers filed by the parties in this case?

The Department of Commerce maintains a CZMA appeal web site that includes the proceedings for current appeals and also contains previous appeal decisions. It can be found at: <http://www.ogc.doc.gov/czma.htm>.

How can I view the public comments in this case?

Public comments on the appeal are available for public viewing during business hours at the NOAA Office of the General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Due to the large volume of the comment letters we have received, we are unable to make all public comments available on the website at this time.

Where can I obtain additional information about the CZMA and federal consistency?

NOAA's Office of Ocean and Coastal Resource Management maintains a website that provides extensive information on the CZMA and federal consistency. It can be found at <http://coastalmanagement.noaa.gov/welcome.html>.