



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

OFFICE OF THE GENERAL COUNSEL

DEC 10 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Eugene A. Wimpee
6425 Cottage Hill Road
Mobile, Alabama 36695

Dear Mr. Wimpee:

This office has received your federal consistency appeal dated July 24, 2003. In your appeal, you request a fee waiver due to hardship. Please fill out the enclosed fee waiver application form, have it notarized and return it to this office.

Please note that if your request for a fee waiver is denied, you will be required to submit the application fee within twenty days of receipt of the denial or your appeal will be dismissed. 15 C.F.R. § 930.126(e).

If you have any questions regarding this matter, please contact Catherine Lewers in my office at (301) 713-2967, extension 218.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl Gleaves".

Karl Gleaves
Assistant General Counsel
for Ocean Services



GUIDANCE REGARDING CONSISTENCY APPEAL PROCESSING FEES

Section 307(i) of the Coastal Zone Management Act of 1972 (CZMA), as amended, provides that, with respect to appeals under sections 307(c)(3) and (d), the Secretary of Commerce shall collect an application fee of not less than \$200 for minor appeals and not less than \$500 for major appeals, unless the Secretary, upon consideration of an applicant's request for a fee waiver, determines that the applicant is unable to pay the fee. The Secretary shall also collect such other fees as are necessary to recover the full costs of administering and processing such appeals under section 307(c).

In order to meet the requirements of section 307(i) of the CZMA, the following guidance is provided for applicants who wish to appeal a state objection under sections 307(c)(3) or (d) of the CZMA.

Type of Appeal: A "major" appeal is one involving a project with a value of at least \$1 million or one that, in the Secretary's determination, would involve significant administrative costs to the agency. All other appeals will be considered "minor" appeals by the Secretary. The applicant shall state in his notice of appeal whether the applicant considers the appeal to be major or minor and shall state the value of the project. Where the applicant has, as part of the request for a permit or federal assistance, indicated the value of the project, a copy of that portion of the permit or federal assistance application should accompany the notice of appeal.

Application Fee: The applicant shall include with the notice of appeal a check made payable to NOAA in the amount of either \$200 for a minor appeal or \$500 for a major appeal, or request an application fee waiver. Upon receipt of the notice of appeal and the application fee (or waiver of the fee), the Secretary will begin processing the appeal.

Application Fee Waiver: In the event an applicant for a minor appeal believes the requirement of the payment of an application fee will impose a financial hardship, the applicant may request an application fee waiver by including with the notice of appeal a properly completed and executed application for a waiver. If the Secretary denies the waiver request, the fee must be received within 30 days of receipt of the Secretary's denial or the appeal will be dismissed with prejudice. There will be no waiver of the application fee for appeals having a value of over \$1 million.

Processing Fee: The Secretary will notify the applicant of the amount of the processing fee, which shall be before the issuance of the Secretary's decision. The processing fee together with the application fee will be set to cover the estimated full cost of administering and processing the appeal taking into account the complexity of the appeal. Currently we estimate that the processing fee for a minor appeal will range from \$1,000 to \$3,000. It is expected that the processing fee for a major appeal will be at a minimum \$5,000. This fee does not apply to appeals under section 307(d).

Hearing Fee: In order to develop the record more fully, the Secretary may, on his own initiative or upon request, order a hearing. If a hearing is ordered, the Secretary will notify the applicant of the amount of the actual costs incurred as a result of conducting the hearing. The applicant shall be responsible for payment of the hearing fee, which shall be due seven days after the public hearing. These costs will include costs for travel and per diem expenses of Department of Commerce employees participating in the conduct of the hearing, as well as costs of procuring a hearing venue, equipment rentals and services, providing public notice, recording the proceeding, providing a hearing transcript to the agency, and any other costs necessary to hold the hearing. This fee does not apply to appeals under section 307(d).

Failure to Pay a Fee: If a required fee is not paid in full when due, the Secretary will suspend processing of the appeal. He will promptly notify the applicant in writing of the amount of fee due. Upon receipt of the required fee within the time established in the notice of delinquency, the Secretary will deem the fee to have been paid on the date the fee was due. The extension of time in which to cure a fee payment delinquency, however, will not extend the deadline for submission of any brief or other document required to process the appeal. The Secretary will dismiss an appeal with prejudice if the full fee is not received within 30 days of receipt of the Secretary's notice of delinquency.

Refund Policy: No refunds will be given. NOAA will periodically compare estimated costs with actual costs incurred and adjust the processing fee as appropriate.

Attachment

COASTAL ZONE MANAGEMENT ACT CONSISTENCY APPEAL

_____) FEE WAIVER FORM
(Appellant))
v.)
_____)
(State))

I, _____, request that the Department of Commerce waive the application and processing fees for my consistency appeal pursuant to 16 U.S.C. § 1456(i)(2)(B) and 15 C.F.R. § 930.125(e). I state that because of economic hardship, I am unable to pay these fees and I believe I am entitled to relief. In support of this application, I answer the following questions.

1. Have you ever requested waiver of fees in any other consistency appeal?

_____ Yes _____ No

2. Have you retained an attorney to represent you in this appeal?

_____ No

3. Are you filing this request on your own behalf or on behalf of a corporation or other entity?

_____ on my own behalf

_____ on behalf of a corporation or other entity

4. If you are filing this request on your own behalf, please answer all parts of Question 4; otherwise, please skip to Question 5.

a. Are you presently employed?

_____ No

If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer. (List both gross and net salary.)

If the answer is no, state the date of last employment and the amount of your salary or wages per month. (List both gross and net salary.)

- b. In the last twelve months, have you received income from any of the following sources?

Business, profession or other form of self-employment? Yes No

Rent payments, interest or dividends? Yes No

Pensions, annuities or life insurance? Yes No

Support, including alimony, payment of living expenses, or other provision of shelter, etc? Yes No

Gifts or inheritances? Yes No

Any other sources? Yes No

If the answer to any of the above is yes, describe each source of income and state the amount received for each category during the past twelve months.

- c. Do you have any cash assets, including, but not limited to, money in checking, savings, or any other accounts?

Yes No

If the answer is yes, state the total value of such assets.

- d. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

_____ Yes _____ No

If the answer is yes, state the total value of such assets.

- e. List any persons who are dependent on you for support, state your relationship to those persons, and indicate how much you contribute to their support.

5. If you are filing this request on behalf of a corporation or other entity, please answer all parts of Question 5, otherwise, please skip to Question 6.

- a. Describe the nature of the entity.
- b. What is the value of the entity's assets?
- c. What is the total of any debts the entity has?
- d. How much cash does the entity have?
- e. What income does the entity have?
- f. What is your relationship to the entity?

6. Describe any circumstances not addressed above that demonstrate economic hardship.

I declare that the foregoing is true and correct.

Applicant's Signature

Date

Full mailing address

Telephone number

SUBSCRIBED AND SWORN to me the _____ day of _____, 20__

Notary Public or other
Officer authorized to
Administer oath