



Oregon

Theodore R. Kulongoski, Governor

Ocean and Coastal Management Program

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, Oregon 97301-2540

Phone (503) 373-0050

FAX (503) 378-6033

www.oregon.gov/LCD/OCMP

August 15, 2008

Mr. Kerry Kehoe, Federal Consistency Specialist
Coastal Programs Division
Office of Ocean and Coastal Resource Management, NOAA
1305 East-West Highway, 11th Floor
Silver Spring, MD 20910

Attention: CZMA Program Change Comments

Dear Mr. Kehoe:

Thank you for this opportunity to comment on the procedures for submitting to the Coastal Programs Division (CPD) changes to the Oregon Coastal Management Program (OCMP). Oregon has experienced problems over the years keeping its program updated. This is due in part to the size and complexity of the OCMP, but is more directly related to the cumbersome procedures for compiling, submitting, reviewing, and approving updates that are burdensome for both the state and the CPD. These procedures require the diversion of staff resources that we simply cannot provide and still meet the obligations of our program to local governments, state agencies, and the public. The opportunity cost of achieving full compliance within the current system has proven so high as to be an obstacle, resulting in a current six-year backlog of changes to Oregon's program.

It is our view that much of the difficulty in the current procedure for compiling and submitting program changes stems from the requirement for a detailed comparison of old and new versions of state laws, state rules and regulations, and local comprehensive plans and ordinances. While this side-by-side comparison may have some utility, it turns out to have little or no practical value to either CPD or the state, and has become a barrier to making federal consistency determinations that reflect current conditions

We are pleased, therefore, that OCRM has begun this process of revising the way program change requests are compiled, submitted, reviewed, and approved. We offer here the outlines of a different approach that we believe will better meet all of our needs under the Coastal Zone Management Act (CZMA). Direct responses to NOAA's goals, as listed in the public notice, are included as an appendix to this letter.

State and local laws are modified frequently. Most of these changes are minor adjustments that

do not fundamentally affect the authority of a state agency to take action with regard to coastal resources or uses. For example, a local change to a map or a zoning provision which is consistent with the statewide planning goals does not raise any significant issues relative to the need for CPD review. Likewise, the legislature regularly updates agency statutes without making significant changes to the state's regulatory approach or resource management policy framework. We support a simplified process that emphasizes the stability of the broad policies of a state's coastal program, and de-emphasizes the details of implementation:

1. Changes in Statute or Agency Rule

Following a change in state law or administrative rule, the state coastal program would submit a report on the amended provisions. The report would follow a standard format or checklist as envisioned in the Federal Register notice (May 20, 2008; page 29093). The report would include the text of the new provision; briefly describe the effect of the change on coastal uses and resources; and assess whether the change might affect the approvability of the program under Section 306(d) of the CZMA, which provides for 26 core elements that each coastal program must contain. The CPD would review the state's assessment and conclusion, and approve those changes in law or rule that would (i) not affect the viability of the coastal program with respect to Section 306(d); and (ii) not result in a conflict over the state's new or revised enforceable policy.

A more detailed analysis may be required, including strikethrough and underline documentation necessary to understand the change, would be required when:

- The changes are judged by the state or CPD to affect approvability under Section 306(d);
- Enforceable policies are significantly affected by a change in state law.

This more in-depth approach would only be taken following the simplified analysis of the initial report.

2. Changes in Local Enforceable Policies.

Local programs, authorities, and enforceable policies, and their roles in state coastal programs vary widely. Therefore, for changes to local enforceable policies such as comprehensive plan provisions, land use regulations and maps, we suggest two alternatives:

Alternative A - The CPD would adopt a regulation that allows a state program to determine that a change in local enforceable policies is consistent with the underlying enforceable policies of state statute or rule that were approved by CPD under Section 306(d). A state would submit an annual summary of local amendments that are consistent with underlying state enforceable policies, along with the dates of approval by the state coastal program of the changes;

or,

Alternative B - The CPD and each state would enter into a Memorandum of Understanding that specifies the conditions under which a state would submit changes to local statutes and administrative rules and regulations, and local enforceable policies.

We believe the public interest is best served by a streamlined and efficient process that allows state programs to effectively maintain up-to-date program documents while assuring an

appropriate oversight role by the CPD. The process described in this correspondence provides adequate safeguards to assure that any significant changes impacting federal interests can be identified and thoroughly reviewed.

Thank you again for the opportunity to participate in your review of the program change process. If you have any questions or comments regarding our input, please contact Mr. Jay Charland at (503) 373-0050 x253, or via email at jay.charland@state.or.us.

Sincerely,

Robert J. Bailey, Manager
Oregon Coastal Management Program

cc Dale Blanton, OCMP
Jay Charland, OCMP
Paul Klarin, OCMP

Appendix – Detailed Responses to Items in the Federal Register

1. Establishing a clearer and more efficient and transparent process for program change review;

Oregon supports this as a broad goal of the new program change procedure.

2. Describing clearer approval/ disapproval criteria and how these apply;

As stated in the letter, the only applicable criteria are first, the program continues to meet the standards set forth in Section 306(d) of the CZMA, and second, the revised program does not place an unacceptable burden on a federal agency operating in the coastal zone. Absent either of those circumstances, OCRM should approve any change to a coastal program.

3. Using the statutory language of the CZMA, including time lines, extensions, and preliminary approval;

Oregon supports the faithful application of the CZMA to the program update process. In particular, Oregon believes that any updated state program which continues to meet the standards of Section 306(d) of the CZMA should be acceptable to OCRM (ref. CZMA Section 306(e)(3). Section 306 is the basis for the Secretary approving a program change.). Oregon supports the timeline laid out in Section 306(e), and believes that the timeline can be met if states and OCRM use the streamlined procedure proposed herein.

4. Keeping the “routine” concept to streamline the process for truly routine changes, but do away with “routine program changes (RPCs)” and “Amendments” and replace with just “program changes;”

Oregon supports this as a broad goal of the new program change procedure. The level of analysis should be tailored to fit the complexity of the change in the state’s program. Assigning labels or categories to changes does not add to the process.

5. Removing the “substantial” evaluations currently done by states and replace with just describing what the change is to the program. Further evaluations (by states or NOAA) would be for specific CZMA, NEPA, ESA, NHPA, etc., purposes, *e.g.*, is a NEPA Environmental Assessment or Environmental Impact Statement, or ESA consultation needed;

Oregon supports this as a broad goal of the new program change procedure. The level of analysis should be tailored to fit the complexity of the change in the state’s program. Assigning labels or categories to changes does not add to the process.

6. Establishing use of NEPA categorical exclusions;

Oregon supports this as a broad goal of the new program change procedure. Oregon requires further explanation from NOAA on the exact intent and nature of this proposal before a final determination of the appropriateness of this suggestion can be made.

7. Submitting underline/strikeout documents showing changes to previously approved policies; and

Oregon believes this is an unnecessary and overly burdensome requirement. There may be instances where such a technique is employed to clearly explain a program change, but this should be an available tool, not a strict requirement.

8. Creating a program change checklist that states would submit to ease state and NOAA paperwork burdens and promote consistent submissions and NOAA analyses.

Oregon supports this as a broad goal of the new program change procedure. Both OCRM and the states would benefit from a clear set of requirements and expectations in the program change process. This checklist could form the basis for a preliminary report, as described in our letter.

One item on this checklist would be formal notification of federal agencies about program changes. A list of federal agencies and points of contact for notifications of program changes updated and maintained by OCRM would greatly improve this step in the process.