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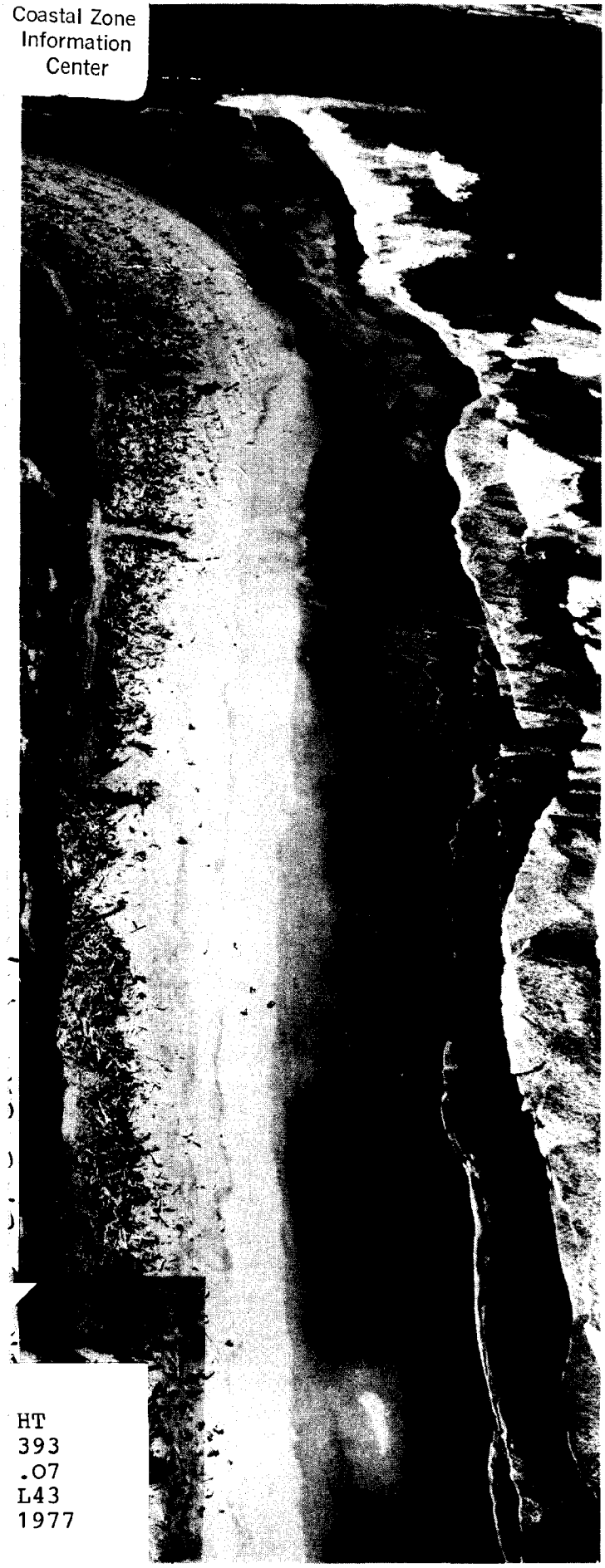

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INTERGOVERNMENTAL COORDINATION:

PERILS AND POTENTIALS FOR COASTAL STATES

INTERGOVERNMENTAL
RELATIONS
DIVISION·
EXECUTIVE
DEPARTMENT
STATE OF OREGON

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Intergovernmental Coordination: Perils and Potentials for Coastal States

Oregon State
Executive Department
Intergovernmental Relations Division
Donald L. Jones, Administrator

1978

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Leslie Lehmann and Clark Worth

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EXECUTIVE SUMMARY

Intergovernmental Coordination: Perils and Potentials for Coastal States

Intergovernmental Relations Division, State of Oregon

The federal Coastal Zone Management Act of 1972 establishes a bold new approach for managing the nation's coastal resources. This new approach has important implications for coastal states and the local governments.

In the Act, Congress provides coastal states with a strong role in managing their own resources. The Act's "federal consistency provisions" are the basis for this assurance of shared management reponsibilities. Outlined in Sec. 307, these provisions require coastal states to review federal grant applications, development proposals and permit applications for consistency with the states' Coastal Management Programs.

As one of the first states to develop a Coastal Management Program, Oregon thoroughly examined these new consistency requirements. Using funds from U.S. Department of Housing and Urban Development, Intergovernmental Relations Division (IRD) assisted Oregon's Coastal Management agency in this examination. IRD proposed integrating CZM consistency review with the existing A-95 review process.

Intergovernmental Coordination: Perils and Potentials for Coastal States explains IRD's proposal in detail. As the title suggests, however, the report is broader than CZM federal consistency requirements. It includes other intergovernmental issues important to states. The comments on funding for intergovernmental coordination, for example, are particularly timely. Finally, IRD uses the Coastal Zone Management Act to explore current weaknesses in the federal system.

The Intergovernmental Relations Division's study outlines a number of specific recommendations for:

- state coastal management agencies;
- state and areawide clearinghouses;
- Office of Management and Budget;
- Office of Coastal Zone Management;
- Governors; and
- local governments.

The study is aimed to open discussion on certain intergovernmental issues, stimulating development of alternative management approaches among the nation's coastal states.

Introduction

The federal Coastal Zone Management Act confronts the nation's coastal states and local governments with many challenges and opportunities. This report focuses on federal consistency provisions of the Act, and their impact on intergovernmental coordination.

Land Conservation and Development Commission (LCDC) recently adopted a Coastal Management Program (CMP) for Oregon. As Oregon's coastal management agency, one of LCDC's responsibilities is to develop procedures for review of federal actions (grants-in-aid, development proposals, and permit applications) in the coastal zone. The Act requires these federal actions to be consistent with the state's CMP.[1]

Early in 1976, LCDC asked Intergovernmental Relations Division (IRD) of the State Executive Department to review the "federal consistency" portion of Oregon's Draft CMP. IRD had several concerns about the impact of "consistency" requirements on intergovernmental coordination. As the State A-95 Clearinghouse, IRD's primary concern was potential duplication between consistency review and the existing A-95 review of federal actions. IRD was also concerned about local government participation in consistency decisions.

In response, IRD applied for and was awarded a joint demonstration grant from U.S. Department of Housing and Urban Development (HUD) and Office of Coastal Zone Management (OCZM) to study possible integration of federal consistency requirements with A-95. This was particularly appropriate since recent revisions to OMB Circular A-95 urged that notification of A-95 clearinghouses be expanded to include "significant" federal licenses and permits. A portion of IRD's grant went to coastal councils of governments (designated as areawide A-95 clearinghouses) to study consistency problems from a local/areawide perspective.

Many public agencies attempt to provide intergovernmental coordination. Coordination is one of LCDC's objectives as a comprehensive land use planning agency. Coordination requirements are part of most federal programs, including Coastal Zone Management and HUD "701." And coordination is an essential function of management agencies at each level of government.

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[1] Coastal Zone Management Act of 1972, P.L. 92-583, Sec. 307, A-C.

Unfortunately, this universal interest in coordination can result in a series of separate, independent intergovernmental review requirements. A-95 is often undermined as a single, comprehensive system for state and local review of federal actions. The outcome may be confusion rather than consensus, with costly delays and unnecessary paperwork for applicants and agencies.

With a strong A-95 system and early progress on a coastal management program, Oregon is in a particularly good position to propose innovative solutions at this time.

It is important to note that problems affecting the intergovernmental structure are not the "fault" of individual agencies. However, these problems are often difficult to perceive from within specific programs. Remedies therefore depend upon each agency's willingness to examine its role in the system and to cooperate with other participants.

Background: The Coastal Zone Management Act

The Act (copy attached) identifies conservation and development of coastal resources as national policy. States are encouraged and assisted in developing Coastal Management Programs which provide wise ecological, cultural and economic use of land and water in the coastal zone. Federal, state, and local governments, as well as the public, cooperate in designing and implementing these programs.

The Act requires states' CMPs to include:

- identification of coastal zone boundaries;
- acceptable land and water uses;
- inventory of areas of particular concern;
- legislative and judicial authority for state control of land and water uses;
- guidelines on priority of uses;
- organizational structure for implementing program; and
- consideration of national interest.

The Act also includes provisions to assure that federal grant programs, permits, and direct development projects in the coastal zone are consistent with the approved CMP. These requirements, commonly referred to as the "federal consistency" provisions, are the focal point of this study.

Under the federal consistency provisions, state and local government applications for federal assistance must be reviewed for consistency with the CMP through the A-95 process. The draft regulations for Section 307 of the Act also state that federal development proposals should be reviewed for consistency through A-95 clearinghouses, although the actual decision is made by the federal proponent.[2] Finally, applications for federal licenses or permits affecting land or water uses in the coastal zone must certify these activities to be consistent with the CMP. However, no specific provisions exist for using A-95 to review permits for consistency. Sec. 307 regulations do encourage states to identify specific permits which they feel should be subject to certification.[3]

These consistency certifications must accompany copies of the application submitted to both the federal permit agency and the state coastal management agency. The Act requires public notice be given for all certifications, and public hearings be provided as appropriate. Failure to respond within six months indicates state concurrence with the certification. However, the state is urged to respond as quickly as possible.

Federal agencies may not approve grant applications or permits which are inconsistent with the CMP. However, consistency decisions may be appealed.

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2 "Federal Consistency with Approved Coastal Zone Management Programs," Proposed Regulations, U.S. Dept. of Commerce, Federal Register, Sept. 28, 1976, p. 47887.

3 Ibid., p. 42888.

The Act also requires coastal management agencies to do the following:

- develop and implement CMP;
- coordinate development and implementation of CMP with federal, state, local and areawide agencies;
- administer OCZM grants to develop and implement CMP;
- hold public hearings on development of CMP;
- provide for Governor's approval of CMP;
- identify state and local government authority to assure that land and water use regulations and development plans comply with the CMP (and to resolve conflicts among competing uses); and
- acquire property when necessary to achieve conformance with CMP.

The following discussion considers the Coastal Zone Management Act's "consistency" requirements in the context of Oregon's statewide land use legislation.

Oregon's Coastal Management Program

Oregon's CMP is based on the 1973 Oregon Land Use Act (ORS 197.005-.430). This legislation requires state and local government comprehensive land use planning.

ORS 197.005-.430 created Land Conservation and Development Commission. The Act authorizes LCDC to develop and adopt Goals and Guidelines which establish state policy for management of land, air and water resources. Cities and counties are required to develop coordinated comprehensive plans, zoning and subdivision ordinances which conform to these Goals and Guidelines. State agency and special district plans and actions must also conform to Goals and Guidelines, and local comprehensive plans.

LCDC used these requirements to construct Oregon's CMP. In essence, the CMP has three components:

- local comprehensive plans;

- state agency regulatory programs; and

- LCDC Goals and Guidelines.[4]

LCDC's criterion for determining "consistency," then, is to be conformance to these three components.

The Problem

IRD agreed with LCDC on the consistency criteria, but remained concerned about the process being developed for consistency review of federal grant requests, federal direct development proposals and federal permit applications.

IRD has several functions which form the basis of this concern. One responsibility is management of HUD's "701" comprehensive planning program. IRD also acts as a liaison between the Governor and local government, and operates the State Permit Coordination Center. However, it was IRD's role as State A-95 Clearinghouse that raised concerns about potential duplication between A-95 review and an independent review for "consistency."

LCDC was prepared to utilize the A-95 process for review of grant requests and federal development proposals. IRD concurred with LCDC's initiative in selecting a list of "significant" federal permits.

The point of contention was that LCDC proposed to test the "consistency" of federal permits according to state agency decisions on similar state permits. For example, the Division of State Lands would examine Corps of Engineers permits for consistency, the State Department of Environmental Quality would review Environmental Protection Agency permits, and so on. These state permit agencies would conduct "mini" reviews, circulating the federal permit to

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[4] Oregon Coastal Management Program Environmental Impact Statement, U.S. Dept. of Commerce, 1976, p. 1071.

affected state agencies, local governments, and the public for comment.

IRD believed all federal actions in the coastal zone could be reviewed through A-95. This would reinforce A-95 as a single, comprehensive management system, simplify state/federal coordination, and allow full participation by local governments in "consistency" decisions. Also, the existing A-95 process already included review for conformance with the three components of Oregon's CMP.

Oregon's A-95 System

OMB Circular A-95 implements portions of the Intergovernmental Cooperation Act of 1968. The Circular requires grant applications for federal aid programs having significant impact (as determined by OMB) on state and local government plans, policies and programs to be submitted for review by state and areawide A-95 clearinghouses. Similar notification requirements apply to federal development proposals, and plans prepared by state agencies as conditions for federal assistance.

Federal agencies are encouraged to develop memoranda of agreement with state and areawide clearinghouses. These agreements identify which federal development proposals are subject to review and describe coordination and review procedures. In Oregon, state and areawide clearinghouses have negotiated several such memoranda with federal agencies and are presently developing others.[5] State agencies and local governments participated with the clearinghouses in these negotiations with federal agencies. Northwest Federal Regional Council assisted in developing the memoranda.

The Governor designated IRD in the Executive Department as State Clearinghouse, and councils of governments (composed of cities and counties) as areawide clearinghouses in Oregon's 14 substate administrative districts. Areawide clearinghouses solicit comments on proposals from affected local governments, while IRD circulates notifications among appropriate state agencies for comment.

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[5] Final memoranda have been developed with Bureau of Reclamation, National Park Service, U.S. Fish & Wildlife Service & U.S. Forest Service. Memoranda are in progress with Bureau of Land Management, Bonneville Power Administration and U.S. Air Force.

The State Clearinghouse provides state/local coordination through a weekly bulletin summarizing all notifications received for review and a quarterly report listing grants awarded within the state. These reports are widely circulated at the state and local level. Interested agencies which were not notified directly by clearinghouses may request to review projects described on the weekly bulletin. Thus, the bulletin serves as a double-check on clearinghouse notification procedures. The state clearinghouse also provides assistance in resolving state/local concerns expressed through the review.

Applicants must notify clearinghouses as early as possible in project planning. This "early warning" allows problems to be addressed with minimum cost to all participants. Clearinghouses have 30-60 days to review notifications, resolve conflicts and make recommendations. If no problems are identified, the review concludes in 30 days with a recommendation for approval. If conflicts arise, the clearinghouse acts as a mediator to resolve differences or to express the Governor's priorities. This process is illustrated in Figure 1 (Appendix E).

Notifications include: identity of applicant; geographic location; description of proposed activity; maps if appropriate; indication of whether an EIS will be submitted; federal program title; and estimated dates of formal application and implementation. Clearinghouses may request additional information necessary for evaluation of proposals. Federal development proponents follow the same notification guidelines.[6]

Clearinghouses only recommend. They have no veto authority. However, federal agencies must justify actions which are contrary to clearinghouse recommendations. In addition, federal agencies may not fund applications which were not reviewed through the A-95 process (confirmed by a recent Oregon court case: Hood River Co. vs. U.S. Department of Labor).

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[6] "Circular A-95," U.S. Office of Management & Budget, Federal Register, Jan. 13, 1976, pp. 2053 & 2056.

A-95 allows state and local government to influence federal agency decision-making. Since the federal government has assumed increasing responsibility for local needs, A-95 has the effect of returning to state and local governments some traditional control over their own affairs.

A-95 offers the following to state and local governments:

- early notice about federal activities which affect localities;
- forum to resolve interagency conflicts;
- opportunity to influence federal decision-making;
- familiar review procedures;
- a single state contact point for federal notifications;
- a central coordinative mechanism for state and local review of federal actions;
- strengthened management capability; and
- opportunities to economize and enhance program effectiveness.

Besides being a tool for intergovernmental coordination, A-95 provides private developers with information on local and state requirements while projects are being planned. The A-95 process assists applicants in resolving problems and integrating projects with ongoing community programs.

Revisions to A-95

Revisions to OMB Circular A-95, adopted January 13, 1976, relate specifically to CZM federal consistency provisions:

- Clearinghouse functions include...assuring that the state agency...responsible for administration of the approved program for management of the

coastal zone is given opportunity to review requests for federal assistance covered by A-95, Part I, and direct federal development proposals covered by A-95, Part II for their relationship to such program and their consistency therewith;[7]

- Comments and recommendations made by or through clearinghouses...are for the purpose of assuring maximum consistency of federal or federally assisted projects with state, areawide and local comprehensive plans. Suggested comments include relationship of the project to the approved state program of the coastal zone and its consistency therewith;[8]

- Agencies responsible for granting federal licenses and permits for development projects and activities which would have a significant impact on state, interstate, areawide or local development plans or programs or on the environment are strongly urged to consult with state and areawide clearinghouses and to seek their evaluations of such impacts prior to granting such licenses or permits.[9]

Memoranda of agreement between federal agencies and A-95 clearinghouses in Oregon include state review of significant federal permit programs. In addition, federal permit agency regulations implementing A-95 revisions (e.g. U.S. Army Corps of Engineers, Dept. of the Interior, Environmental Protection Agency) require that clearinghouses be notified of applications for significant federal permits.

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7 Ibid., pp. 2053 & 2056

8 Ibid., p. 2054.

9 Ibid., p. 2056.

Development of the IRD Proposal

IRD's primary task under the HUD/OCZM demonstration grant was to develop a method for integrating review for "consistency" with the ongoing A-95 review process. The proposal which follows reflects the work of both IRD staff and coastal councils of governments.

Region X's Federal Regional Council (FRC) also took an active interest in the project, and gave IRD valuable advice and assistance. (FRC has two roles affected by the proposal: enforcement of A-95 at the federal level, and coordination of federal permit information.)

Our study demonstrated that integrating CZM with A-95 review would require minimal modifications to Oregon's existing A-95 system. No liberties would be taken with the A-95 Circular. IRD believed A-95 could be used to integrate not only HUD "701" comprehensive planning requirements with CZM requirements, but all significant federal or federally assisted projects with state and local programs. However, this is true only if A-95 remains a single review system.

Under IRD's proposal, the consistency review processes for grant applications and federal development proposals would be identical. This required participation by LCDC, described below.

The process for review of federal permit applications would occur as follows (see Figure 2):

1. Applicant requests permit application and consistency certification form from federal regulatory agency.

2. Permit applicant returns completed application to federal agency, stating whether proposal is consistent with CMP.

3. Federal agency sends consistency certification and application (including project summary required by A-95) to the state clearinghouse and to affected areawide clearinghouses. Clearinghouses may consolidate reviews if the project requires federal assistance and/or federal permits.

4. State clearinghouse circulates applications and other necessary review information among affected state agencies, including LCDC, and notifies public as required.

5. Areawide clearinghouses circulate application among affected local agencies, including county land use planning coordinators.

6. State agencies respond to the state clearinghouse within 30 days, indicating conflict or conformance with state plans and programs. (Extensions of time for reviews would be available.) State agencies would identify state permits required for the projects if those decisions were still pending.

7. Areawide clearinghouses respond to the state clearinghouse within 30 days, indicating conflict or conformance with local plans.

8. The state clearinghouse compiles all comments and forwards them to LCDC for final consistency determination.

9. LCDC then notifies the state clearinghouse of consistency decision or need for further evaluation.

10. The state clearinghouse and LCDC would hold a conference to resolve problems if necessary.

11. The state clearinghouse forwards state A-95 recommendations, including consistency decision, and public comments to federal permit agency(ies), applicant, and state permit agency(ies) having pending permit decisions.

12. Areawide clearinghouses forward local government comments to applicant.

13. If informal conferences were unsuccessful, applicat or affected parties could appeal consistency decisions to state permit agency(ies), LCDC, or the Secretary of Commerce.

The Act allows LCDC six months to determine consistency of applications for federal licenses and permits. An affirmative conclusion is presumed if LCDC does not respond within this period. However, coastal states are urged by Sec. 307 regulations to expedite this decision. Where conflicts are unresolved within A-95 time frames, or where state or local permit decisions have not been made, the Clearinghouse would identify these specific problems. In these cases, applicants will understand that LCDC's approval (and consequently A-95 recommendations) is conditioned upon obtaining specific permits, or resolving other conflicts.

In order to implement this proposal, an amendment adding public notice procedures to present A-95 review is needed. CZM federal consistency provisions require the state to establish such procedures and provide public notice for each federal license or permit certification. A-95 is an intergovernmental review system and does not presently provide broad public notice. The state clearinghouse would therefore augment its regular list of state and local agencies which receive project notifications, adding appropriate interest groups. Appropriate media in the impacted area would also be notified. Federal agencies would be asked to indicate in their public notice if a license or permit required CZM certification.

IRD proposes that implementing procedures for public notice include:

1. Each license or permit requiring certification would be listed in a special section of the weekly A-95 bulletin which the state clearinghouse presently distributes to state agencies, areawide clearinghouses, local governments, interested groups, Oregon's congressional delegation, legislators, private citizens, and businesses. Circulation of the bulletin would be expanded if necessary.

2. Each notice would ask that all comments be returned to the state clearinghouse within the 30-day review period. Comments would be compiled by the clearinghouse and copies forwarded to LCDC, state agencies requiring permits (if desired), and the federal permit agency(ies). The comments would be used by LCDC in determining CZM consistency and could be useful to permit agencies with decisions pending.

3. If LCDC determined a project warranted public hearing, a hearing announcement would also be distributed. Where several individual permit hearings were required, these could be consolidated with the CZM consistency hearing.

4. The state clearinghouse would attempt to minimize duplicate public notice where possible. This could be accomplished through cooperative agreements between the clearinghouse and state and federal agencies. (Duplicate notice not only burdens agencies with unnecessary cost, but may actually confuse interested parties, resulting in projects being overlooked).[10]

Review of Draft A-95/CZM Proposal

IRD's initial A-95/CZM proposal was reviewed by over 50 local, state and federal agencies. Their comments were used to refine and strengthen the original proposal.

Federal agencies were generally supportive of integrating "consistency" review with A-95, feeling it would simplify state/federal coordination and offer a single contact point for notification. Local governments were also supportive. They are familiar with A-95 and accustomed to using clearinghouses for technical assistance and conflict resolution.

State agencies had mixed reactions. Non-regulatory agencies saw A-95 as an opportunity to participate in "consistency" review. Some state regulatory agencies preferred to base "consistency" solely on their state permit decisions.

Lengthy discussions between IRD and LCDC staff resolved many initial problems. IRD agreed with LCDC to select "significant" permits for consistency review, limiting unnecessary administrative burdens. LCDC agreed to utilize A-95 for review of federal aid requests and federal development proposals.

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[10] This point was clarified by Keith Cubic, Planning Director of Douglas County, Oregon.

However, no consensus was reached on a review process for federal permits. LCDC established a Federal Consistency Task Force of state and local officials to recommend a final solution (a copy of the final Task Force report is attached as Appendix G).

IRD's work was not confined to Oregon's CMP. Extensive comments were written by IRD staff on OCZM's draft "307" regulations, pointing out the overlap between A-95 and "consistency" requirements. Changes in the proposed regulations reflected many of these comments:

> The proposed regulations encourage the Federal and state agencies to rely upon existing intergovernmental coordination procedures, particularly the OMB Circular A-95 (revised) notification and review system..., the A-95 process is beneficial because both Federal and State agencies are familiar with the process, it provides a basis through the development of memoranda of understanding to classify types of individual activities and projects requiring review, and reliance upon an existing coordination procedure will avoid waste and duplication of effort.[11]

Comments on Draft A-95/CZM Proposal

During review of IRD's draft A-95/CZM Proposal, comments were obtained in interviews with:

13 state agencies;

8 federal agencies;

2 local government lobby organizations

5 coastal councils of governments;

1 other state; and

3 miscellaneous organizations.

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[11] Op. Cit., "Federal Consistency with Approved Coastal Zone Management Programs," p. 42880.

In addition, IRD received substantive written comments from:

7 state agencies;

11 federal agencies;

2 local government lobby organizations;

5 councils of governments;

5 other states; and

3 miscellaneous individuals and organizations.

(These comments are summarized in Appendix D).

Comments on the draft proposal also led IRD to explore issues discussed in the following three sections.

"Excluded" Federal Lands

During the past two years, much of OCZM's attention has been drawn to a single clause of the federal consistency provisions which excludes certain federal lands from the coastal zone:

> Excluded from the coastal zone are lands the use of which is by law subject to the discretion of or which is held in trust by the federal government, its officers or agents.[12]

OCZM, many federal agencies and several coastal states disagreed whether activities on federal lands required review. OCZM has devoted substantial effort to interpretation of this clause, and many state coastal management agencies and federal agencies let it become their focus in coastal zone management. Delays in development and adoption of individual state coastal management programs resulted.

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12 Sec. 304(a), Coastal Zone Management Act of 1972.

IRD believes the intensity of this dispute is unwarranted. Most observers overlook the fact that states already have the ability to review proposed activities on federal land, under Part II of Circular A-95. By negotiating memoranda of agreement, federal land-holding agencies and state clearinghouses can establish mutually beneficial coordination procedures. Certain key activities can be selected for review, while other less important actions are not forwarded for review, thus preventing unnecessary administrative burden.

Memoranda of agreement do not ensure state or local government veto of significant activities on federal lands. They do outline "rules of the game," however, and place coordination in a regularized context. Since the agreements clearly spell out review procedures for all parties, these coordinative channels will work in most cases. Perhaps all significant activities on federal lands can be successfully reviewed in this fashion.

There may be exceptional cases where these procedures are ill-equipped to resolve disputes. Extraordinary coordinative measures or litigation may be required if differences can't be reconciled through negotiation. However, a system for federal-state-local coordination which works in a majority of cases is a successful system. Even for the extraordinary situations, this system will at least clarify issues to be resolved by other means.

Effective coastal resources management demands coordination of significant federal activities with states and local governments. In Oregon, for instance, federal agencies control nearly 40% of the land within coastal zone boundaries. Activities on those vast federal lands have substantial impact on the condition of the state's coastal resources. The Coastal Zone Management Act recognizes this problem, and requires coordination. But the needed coordinative system cannot be tailored to the extraordinary cases. Instead, local, state and federal agencies must learn to rely on regular procedures which are clear and ensure participation of all affected jurisdictions in decision-making.

Coordination among Federal Agencies

During review of IRD's draft proposal, the staff was particularly interested in comments from one federal agency. The agency suggested that it participate in Oregon's A-95 review. "We don't have a system to review actions of other federal agencies. Why can't we use yours?" the agency's representative asked.

Oregon's A-95 system provides an opportunity for local governments and state agencies to review and comment on federal actions. Closely patterned after the Circular, however, it does not give the same opportunity to federal agencies.

Principally concerned about mechanics of coordination between different levels of government, IRD's proposal neglected the problem of coordination among federal agencies. However, this federal agency representative identified such federal interagency coordination as an important, related need.

Coordinating federal agency actions with one another isn't a new idea. Congress has decorated much recent legislation with requirements for varieties of interagency review and cooperation. But no mechanism has been developed to weave these individual requirements into a central coordinative system.

This lack of regularized coordination at the federal level poses serious constraints. Agencies sometimes, inadvertently or not, "hide" their plans from other agencies. Decision-making processes are obscurred. Confusion about roles and responsibilities occurs. Issues "fall through the cracks," unaddressed. One result: the "red tape" citizens often associate with federal regulatory agencies.

Indeed, the size and number of modern federal agencies seem to demand a new coordinative system. There are hundreds of different agencies, nearly all impacting other agencies. These agencies are independently funded, use different planning regions and are housed separately. Yet as federal agencies proliferate, their program areas move closer to each other--even overlap. The complexity of these interrelationships makes coordination imperative.

Without a coordinative system, significant agency actions go unnoticed. Real issues frequently do not surface for discussion and no forum exists for their resolution anyway. The few opportunities for conflict resolution make mitigation of consequences difficult--there are few channels for compromise. Instead, decision-making is reduced to a simpler, "yes-no" framework.

These structural problems at the federal level are somewhat analogous to those which led to creation of A-95. There are no guarantees that the funding, rule-making, and regulatory decisions of one federal agency are consistent with policies and programs of others.

One solution might be simplifying the structure of federal government. But no precedent exists for simplification through federal reorganization.

A second option would be for the Office of Management and Budget to create a new coordinative system for federal agencies. The system would enable affected federal agencies to review and comment on certain actions of other federal agencies, paralleling A-95. Federal Regional Councils might play an important role in such a system. The new system would not be used, nor could it work, for all federal agency actions. However, for selected actions requiring regular coordination, such a system might help answer the plea of the concerned federal agency described above.

It is certainly not appropriate to expect the A-95 system to incorporate federal interagency coordination. States have occasionally facilitated coordination among federal agencies, but have done so only when a lack of it threatened to affect the states adversely.

Providing funds for federal interagency coordination might also be a partial solution. With funds available, more cost-effective means for coordination could evolve. The potential for such funding is discussed in the following section.

The complex structure of today's federal government makes comprehensive interagency coordination extremely difficult. Individual states cannot be expected to find their own means to coordinate federal agencies. Only OMB is in a position to formulate long-term solutions. This coordination

is essential for successful management of the nation's coastal resources. Indeed, it is required by the Coastal Zone Management Act. Yet the details have so far been largely unaddressed by draft coastal management programs in Oregon and Washington.

Funding Intergovernmental Coordination

Federal funding for intergovernmental coordination is an issue underlying all the problems previously described. This need is frequently mentioned, though little study has been devoted to mechanisms for funding.

Intergovernmental coordination benefits both federal agencies as well as states and local governments. The direct costs of coordination (the money which supports A-95 clearinghouses, for instance), accrue disproportionately to states and local governments, however. On the federal side, only HUD "701" funds have been available for A-95. States and local governments have been forced to use substantial general funds to establish A-95 systems. It seems ironic that OMB created such a valuable coordinative tool, then denied funds necessary to make it an ongoing success.

As the scope of federal interest broadens and federal programs grow, expanded coordination becomes more imperative. Several years ago, a need for coordination of federal grant programs was identified. Now, coordination of federal resource management programs with state and local policies and plans is becoming equally important. A continuing source of federal funds is needed to construct and operate systems which provide federal-state-local coordination. In addition, federal funds must be allocated to establish interagency coordinative structures at the federal level.

The benefits of creating a source of federal funds for intergovernmental coordination are many. The most striking is that the actual costs of coordination may be reduced.

Intergovernmental coordination exists now in almost every federal, state and local program. Every agency and organization at each level of government has staff members with coordinative responsibilities. They are called "coordinators" or "public information representatives." Their proliferation

throughout government denotes broad acceptance of the need for coordination.

What are the costs of such coordination, though? They are seldom identified. Instead, the costs are hidden in such budget categories as "general administration," "program information," and "travel." Without measuring expenditures it becomes impossible to calculate the point of diminishing returns. A little coordination is good, but more is not always better.[13]

Once costs are known, decision-makers can better determine if the results of specific coordination procedures are worth the money spent. Does a $2 million federal program, for example, warrant $1 million spent on coordination? Couldn't cheaper alternative procedures be developed? The total cost of coordination might actually be reduced once more cost-effective systems evolve.

The rapid spread of agency "coordinators" and unrelated coordinative processes has not necessarily enhanced the quality of coordination. Many of those people placed in a coordinative role are taken from an agency's technical staff. Frequently, they resent being drawn away from their technical duties to fulfill new requirements for interagency coordination. They cite "too many meetings" and "unnecessary paperwork."

Since the time (and money) for this burgeoning coordination is being drained from budget items earmarked for other agency responsibilities, their disgust is understandable. Each hour or dollar spent on coordination is perceived as an hour/dollar withdrawn from the agency's "real" technical mission.[14] Also, the volume of existing, sometimes duplicative, coordination requirements makes many agencies extremely skeptical about any new requirements--even those which might simplify coordination through creation of a central system.

There may be several approaches for funding intergovernmental coordination. One possibility is earmarking a percentage of each federal program allocation for coordination. Preliminary studies have shown that a tiny percentage of federal grants received by state agencies in Oregon would

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13 This point was made by William H. Young.

14 This comment was clarified for us by Daniel Steinborn, EPA.

finance an expanded A-95 system.[15] Initially, OMB could use a standard percentage for all programs. Accurate cost figures would eventually demonstrate that certain types of programs require substantial coordination while others require little. New programs might require more coordination than renewed programs, for example.

With this information, OMB could develop a more complex formula identifying additional funds for programs needing more coordination. The cost information could also be used by Congress in assessing fiscal impacts of proposed legislation.

While this is only one possible funding scheme, it has the advantage of being accomplished at the federal level. Thus, funds for federal, state and local agencies could be generated. Alternative solutions attempted by states or local governments can only be short-range. They lack the comprehensive scope necessary to build a solid central coordinative system.

Nevertheless, declining HUD "701" funds and other factors may force states to find other interim funding. One option might be for a Governor to retain a portion of selected or all federal grants in the state to defray administrative costs associated with intergovernmental coordination. Although no states have attempted to do so, it is likely a well-developed plan would be successful if undertaken by a strong Governor.[16] With one success, other states would quickly follow.

Whether states struggle individually to meet their financial needs or OMB takes initiative at the federal level, it is clear that any system for intergovernmental coordination requires a continuing source of funds. The timing seems particularly appropriate now for developing such a means of support. While quantifying the costs of coordination is difficult, the costs of not having a central system for intergovernmental coordination are obvious.

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15 "Federal Funding for A-95," unpublished Oregon Executive Department memo from Leslie Lehmann to William H. Young, September 8, 1976.

16 This comment was confirmed in a speech by William Brussat, April 11, 1976 (Seattle).

Implementation Constraints

There are several potential implementation problems for coastal states which choose A-95 as a system to review federal actions for CZM "consistency."

First, an important prerequisit is that a strong A-95 system be in operation both at the state and local government level. A weak A-95 process risks being unreliable or politically vulnerable. The major advantages of using A-95 (familiarity for participants, single state contact point, broad participation of affected state and local government agencies) would no longer exist.

If a state has a viable A-95 system, and chooses to integrate consistency review with A-95, then other problems must be resolved. One discrepancy between A-95 and the consistency regulations is in the scope of coverage. OMB has selected "significant" federal aid programs as subject to A-95 review. (These now total approximately one-third of all federal grant-in-aid programs.) Likewise, federal agencies notify A-95 clearinghouses of direct federal development activities having "significant" impact on state and local plans, policies and programs. State and federal agencies are urged to develop memoranda of agreement which mutually determine "significance."

Under "consistency" regulations, all federal actions are subject to review by states. However, examination of each federal activity in the coastal zone would result in an unmanageable program.

Since the thrust of CZM is "land and water use," it would not be difficult to describe federal actions subject to consistency review in A-95 memoranda of agreement. Federal grants for activities affecting land and water use are already subject to A-95 requirements, along with important social service programs. States would probably want to exempt grant applications for social programs in the coastal zone from consistency review even though they would continue to be reviewed under A-95 provisions.[17]

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[17] Sandra Diedrich, Executive Director of Coos-Curry Intergovernmental Council, first clarified this point for IRD staff.

Another problem area surrounds local governments' role in CZM decision-making. Because Oregon's CMP is based upon both local government comprehensive plans and state agency regulatory programs, IRD suggested local governments and state agencies be given equal voice in consistency decisions. A-95 is an appropriate mechanism to solicit these comments from local governments for several reasons:

- staff assistance is provided to policy makers by areawide clearinghouses (especially important to small jurisdictions);

- A-95 is a familiar channel for notification, review and comment; and

- A-95 provides a forum for conflict resolution (important in cases of multi-jurisdictional impact).

Under IRD's proposal, local governments would evaluate projects for compliance with their comprehensive land use plans. Areawide clearinghouses would communicate this local evaluation along with other comments to applicants and state clearinghouse.

However, many state regulatory agencies feel local concerns are adequately represented in state permit decisions. These state agencies disagree with local government officials who believe an independent review at the local level is essential. Thus, local government and state agency satisfaction with their respective roles in decision-making has become a significant political concern in adopting consistency review procedures for Oregon.

Another potential implementation problem is disagreement among state agencies on a mechanism for "consistency" review. Of course, this is more apt to be an issue when A-95 and coastal management functions are located in different agencies.

In Oregon, the state clearinghouse is part of the Executive Department, while a resource management agency administers the CMP. IRD viewed "consistency" as an intergovernmental management problem, and looked for ways to mesh "consistency" review with the existing state/federal/local coordinative structure. IRD argued for broad participation in the review process.

Regulatory agencies have different objectives. They are concerned with fulfilling legislative mandates to conserve and develop resources. These resource management agencies tend to see a system like A-95, attached to the executive branch of government, as susceptible to local and political influence. Review of federal permit applications by non-regulatory agencies, especially those concerned with social and economic impacts, did not seem as important to state regulatory agencies as to IRD.

Finally, state regulatory agencies seem to identify review of federal permits as being more important, and even independent from, review of other categories of federal actions (grants-in-aid and development proposals) subject to consistency. IRD already has a state permit coordination function. Some state agencies expressed concern that using A-95 to review federal permits "might lead to something else," that IRD might become a "Giant Permit-Giver" in Oregon.

While political constraints like the ones described above can be resolved, another significant issue remains. HUD's "701" program presently provides the only continuous federal funding for A-95 and other forms of intergovernmental coordination. A-95 clearinghouses also utilize substantial state and local funds. However, recent expansions in review requirements have pressed most clearinghouses to operate at or beyond capacity. Additional funding sources are needed if "consistency" review is added to clearinghouse responsibilities.

A Central Issue: The Changing Federal System

Duplication between federal requirements for state review of federal actions is not a problem unique to CZM federal consistency provisions. Many federal programs call for their own independent, special purpose reviews.

Congress and federal agencies are obviously convinced of the need to consider state and local government recommendations in decisions. Requirements for state and local review restore in part the original consitutional balance between state and federal government.

For nearly 200 years, state government concerned itself with human needs and use of land. Broad federal responsibility for the nation's social and economic well-being began in the 1930's when the Depression created problems impossible to solve at the local level. Franklin D. Roosevelt's "New Deal" introduced federal financing for public housing, public works, health, welfare, and economic security:

> Faced with the crisis of depression, Roosevelt made the federal government the chief instrument of relief and recovery; in doing so, he completely reversed the policy of his predecessor. It wasn't that Hoover enjoyed watching people lose their jobs and go hungry, but that he believed, on firm philosophic principle, that it was up to the state and local agencies to provide the solutions. In his defense, this was very much the traditional view. Even during the Progressive Era, which spawned the activist Presidencies of Teddy Roosevelt and Wilson, it was the state governments that were regarded as the best sources of innovation--"laboratories of reform" as they were called...But all that changed with the "New Deal."...[18]

Rapid growth and urbanization brought dramatic expansion of federal aid in the last decade. During the 1960's, faced with environmental crisis, the federal government began assuming increased responsibility for conservation of natural resources.

One result of this expanding federal perspective is that coordination problems are no longer related only to federal assistance. They now encompass the areas of resource management and regulatory activity.

Regardless of the nation's strong federalist tradition, reversal of this trend through resumption of state control is unlikely. The federal government will more likely continue redressing the power shift by attaching intergovernmental coordination requirements to federal programs. Although they began as processes, coordination systems are now an integral part of the governmental structure.

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[18] Rather, Dan, and Gates, Gary P. The Palace Guard, (New York: Random House, 1974), p. 22.

Unfortunately, problems for states are created when individual government agencies implement separate coordination procedures. One obvious problem is duplication. With multiple review requirements, agencies at all levels of government might be forced to reconsider a proposal several times. Without a central mechanism for review, federal grant and regulatory agencies could become confused if contradictory recommendations on the same project were received from various state and local agencies. Applicants and agencies would be burdened with extra paperwork, delay and costs.

Another important concern is management. Individual agencies are not responsible for the interrelationships of programs, and are usually not in a position to observe interprogram conflicts or duplication. This is true among agencies at each level of government as well as between different governmental levels.

Attempting to achieve coordination through independent review systems deprives governors and local government officials of the opportunity to integrate federal projects with state and local programs. "Vertical" ties are established among special purpose programs at each level of government. For example, health planners at the federal level communicate almost exclusively with their state and local counterparts. "Horizontal" coordination between health planning and other service areas such as transportation and education are often neglected.

In state government, this horizontal policy coordination is the responsibility of the Governor. If A-95 is to be the Governor's management tool, it must remain a single, comprehensive system through which the state can be contacted and respond to the federal government on interrelated activities. CZM is one of many federal programs which potentially undermines A-95 as a comprehensive review process.

National Governor's Conference addressed this problem with the following policy statement:

> (that) Congress and the Administration take immediate action to correct the confusing, contradictory duplicative and overlapping mass of federal requirements and definitions concerning both long-range and annual operational plans. Federal agencies should recognize the Governor as the chief state policy-maker and planner responsible

> for the coordination of all statewide and multi-jursidictional substate planning.
>
> The elected heads of local government should be recognized in the same capacity for all state and federal programs operating within their jurisdictions.
>
> An appropriate share of the funds of each functional federal grant program should be made available to the Governor for the purpose of relating functional plans to each other, to statewide goals and policies and to local development policies.[19]

In a similar vein, the Federal Commission on Paperwork offered these recommendations:

- Establishment of institutions to develop and manage an intergovernmental system.
- Define intergovernmental programs to include regulatory, as well as domestic assistance programs.
- Establish Council of Intergovernmental Program Planning and Coordination, chaired by the Vice-President and composed of major domestic departments to ensure that intergovernmental matters receive consideration in the formulation of agency policy and to encourage uniformity across the federal system.
- Establish Office of Federal Intergovernmental Program Management in OMB to review coordination requirements of intergovernmental programs.
- Federal Regional Councils should be institutionalized in statute (with) enhanced authority over intergovernmentl problems,...budget authority and required membership by agencies with domestic programs.[20]

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19 "Policy Positions," National Governor's Conference, June, 1975.

20 "Recommendations," Federal Commission on Paperwork, 1977.

Recommendations

This study began as an investigation of one small piece of Oregon's draft coastal management program. IRD staff soon discovered that federal consistency provisions of the Coastal Zone Management Act could only be accurately viewed in the context of a much larger intergovernmental framework. This expanded perspective made it almost meaningless to isolate recommendations solely related to "consistency." Instead, IRD's recommendations encompass the scope of intergovernmental coordination more broadly, and are directed at a variety of agencies and organizations.

IRD recommendations for OMB, Governors, state and areawide clearinghouses, state coastal management agencies, local governments and OCZM are summarized in this section.

STATE COASTAL MANAGEMENT AGENCIES

- Strongly consider using A-95 to fulfill federal consistency requirements of the Coastal Zone Management Act. With few modifications, A-95 will work in states having strong A-95 review systems;

- Examine other states' approaches to CZM consistency before adopting procedures;

- Solicit input from state and areawide A-95 clearinghouses on consistency. Use clearinghouse expertise in intergovernmental coordination to help design consistency procedures;

- Encourage active participation of the Governor and local officials in development of the Coastal Management Program.

STATE AND AREAWIDE CLEARINGHOUSES

- Become familiar with the Coastal Zone Management Act and its federal consistency provisions. Participate in development of the state's CMP;

- Inform Governor and local officials of CZM issues and others which affect existing coordinative systems. Encourage their active participation in development of the state's CMP;

- Encourage Governors and state coastal management agency ot use A-95 for CZM federal consistency, preventing potential duplication;

- Strengthen clearinghouse relations with state and federal resource management agencies. Recent revisions in the Circular require these expanded relations. Widening federal interest in resource management makes stronger ties even more vital;

- Study the potential for integrating review of federal permits with A-95;

- Develop Part II, A-95 memoranda of agreement with selected federal agencies. Clearinghouses must allow sufficient time for negotiation of memoranda.

OFFICE OF MANAGEMENT AND BUDGET

- Devote particular attention to the Coastal Zone Management Act and its federal consistency provisions. The Act will likely set many precedents for new resource management legislation. OMB's central management perspective can be useful to OCZM in solving the tough problems of intergovernmental coordination. This assitance can itself set precedents for the future;

- Monitor proposed legislation and federal agency rules which potentially undermine A-95. It is particularly important that OMB staff be available at an early date to offer information on A-95 and the existing network of systems that provide intergovernmental coordination. Additional staff and resources may be needed by OMB for this important role;

- Strengthen the role of Federal Regional Councils in federal-state policy coordination. IRD believes FRCs are the only existing entities in a position to accomplish ongoing central coordination, although their initial responsibility for grants coordination would have to be expanded. OMB can strengthen FRCs by broadening membership to include natural resource agencies and by providing central funding;

- Create sources of federal funds for intergovernmental coordination. A significant benefit will be identification of costs for coordination. Funds would be used to support central coordinative systems like A-95, and would also be available for OMB to use in its coordinative work;

- Study the potential for a system to provide federal interagency coordination.

OFFICE OF COASTAL ZONE MANAGEMENT

- In accordance with language used in draft regulations for Sec. 307 of the Coastal Zone Management Act, strongly encourage coastal states to use existing coordinative systems to fulfill federal consistency requirements. Further consultation with OMB may be desirable;

- Encourage coastal management agencies to establish ongoing contact with state and areawide clearinghouses in development and administration of coastal management programs;

- Continue encouragement of diverse, innovative approaches from coastal states in development of their CMPs. The program is a new one, and other states will benefit by OCZM's flexibility;

- Promote dialogue on key CZM-related issues among coastal states. Regular regional meetings sponsored by OCZM would enable a variety of federal, state and local officials to participate. There may be additional methods for building this dialogue and channels for communicating CZM information.

- Reconsider the decision to keep all OCZM staff in Washington. Regional OCZM offices would reinforce day-to-day contact with state and local officials, and could help make the program successful.

GOVERNORS OF COASTAL STATES

- Take an active role in development of your state's Coastal Management Program. The CMP is an extremely important document, largely determining the state's function in managing its coastal resources;

- Ensure participation by local government officials in development of the CMP. The success of the Coastal Zone Management Program hinges on local understanding and involvement. States must play a strong role in assuring participation by agencies at all three levels of government.

LOCAL GOVERNMENT OFFICIALS

- Scrutinize the Coastal Zone Management Act to determine its effect on your city or county. The Act establishes precedents which have important implications for your jurisdiction;

- Insist on an active role in development of your state's Coastal Management Program. Local input on vital resource management decisions can be guaranteed only by your active study and attention.

Conclusion

Intergovernmental Relations Division began this study as part of a specific task. One of the first states to develop a Coastal Management Program under the Coastal Zone Management Act of 1972, Oregon had no precedents available when the state's Coastal Management Agency started its efforts to fulfill the Act's Sec. 307 requirements. IRD was to study the impact of these "federal consistency" procedures on intergovernmental coordination.

IRD closely examined the consistency requirements in light of Oregon's A-95 system. The study demonstrated that A-95 could easily encompass CZM federal consistency review. The obvious benefits for using A-95 seemed to outweigh potential losses.

This detailed examination of an intergovernmental problem led IRD staff to realize the conflicts and paradoxes in coastal zone management were not unique. In fact, the pattern seemed similar to many other federal programs. It appeared that the A-95/CZM issue was a common theme in the fabric of existing federal/state/local relations.

IRD's findings point to a major political trend: the nation's federal system is undergoing a dramatic structural change. Federal agencies are assuming vastly increased responsibilities in traditional areas of state and local concern. To balance this shift of power, coordination requirements have been added to most recent legislation. Unfortunately, there are no assurances these requirements will be effective. IRD identified several constraints to making this program-by-program coordination viable.

"Conclusion" may be a misnomer for any part of this study. The report concludes very little beyond its acknowledgement that A-95 can be used for CZM federal consistency review. While many coastal states can implement this recommendation successfully, it solves none of the major problems identified in the study. In fact, IRD found no easy solutions for these problems.

Intergovernmental Relations Division believes this study might be used to begin broad discussion about problems in the intergovernmental system. We need dialogue which more thoroughly dissects these issues.

The time is ripe for such dialogue. The Carter administration's leadership in reforming federal management procedures suggests that the discussion will be useful.

Epilogue: CZM Consistency Task Force

The Land Conservation and Development Commission as Oregon's designated Coastal Zone Management agency had decided early on to use the A-95 process for consistency determination on federal grants and federal development. The question of licenses and permits remained, however, and the debate on the best method to handle the consistency question remained unresolved, as this report testifies.

To reach a satisfactory conclusion, the Commission appointed a Task Force composed of state and local representatives, and asked them to make a recommendation for resolution of the consistency question.

The Task Force met and discussed the issues, many of which were inherent in the previous meetings between the Intergovernmental Relations Division and LCDC. While many issues were resolved, a fundamental question remained unsettled. The Department of Environmental Quality (DEQ) had significant reservations about the proposed consistency process recommended by the staff of LCDC.

In particular, DEQ was concerned that they, as a line agency, would have to make consistency determinations against all state-wide goals and guidelines and felt that they were not qualified to make these determinations. The DEQ recommended a process whereby consistency questions would be referred to the Department of Land Conservation and Development should the lead state agency be unable to determine compliance, or if a conflict arose. This proposal is contained on page 11 of the LCDC draft consistency proposal dated June 9, 1977 (revised).

Once these recommendations had been put in place, the Task Force Report was made to the Commission and adopted on June 10, 1977. Proposed rules for implementation will be distributed to local governments during September, 1977.

Acknowledgments

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members of Land Conservation and Development Commission;

staff members of Land Conservation and Development Commission, State of Oregon;

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Office of Coastal Zone Managemnet staff members;

other states, particularly Washington and California;

staff members of areawide clearinghouses in Oregon, especially Zach Taylor, Sandra Diedrich, Jack Lesch, Rod Orlando and Paul Howard;

local officials, espcially Jim Richards of Bay City and Ellen Lowe of Salem;

state and federal agency staff members too numerous to name individually.

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APPENDIX A

Public Law 92-583
92nd Congress, S. 3507
October 27, 1972

An Act

To establish a national policy and develop a national program for the management, beneficial use, protection, and development of the land and water resources of the Nation's coastal zones, and for other purposes.

CONG
FILE

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to provide for a comprehensive, long-range, and coordinated national program in marine science, to establish a National Council on Marine Resources and Engineering Development, and a Commission on Marine Science, Engineering and Resources, and for other purposes", approved June 17, 1966 (80 Stat. 203), as amended (33 U.S.C. 1101-1124), is further amended by adding at the end thereof the following new title:

Marine Resources and Engineering Development Act of 1966, amendment.

80 Stat. 998; 84 Stat. 865.

TITLE III—MANAGEMENT OF THE COASTAL ZONE

SHORT TITLE

SEC. 301. This title may be cited as the "Coastal Zone Management Act of 1972".

CONGRESSIONAL FINDINGS

SEC. 302. The Congress finds that—

(a) There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone;

(b) The coastal zone is rich in a variety of natural, commercial, recreational, industrial, and esthetic resources of immediate and potential value to the present and future well-being of the Nation;

(c) The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion;

(d) The coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations;

(e) Important ecological, cultural, historic, and esthetic values in the coastal zone which are essential to the well-being of all citizens are being irretrievably damaged or lost;

(f) Special natural and scenic characteristics are being damaged by ill-planned development that threatens these values;

(g) In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate; and

(h) The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.

DECLARATION OF POLICY

SEC. 303. The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations, (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with state and local governments and regional agencies in effectuating the purposes of this title, and (d) to encourage the participation of the public, of Federal, state, and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such managament programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint action particularly regarding environmental problems.

DEFINITIONS

SEC. 304. For the purposes of this title—

(a) "Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

(b) "Coastal waters" means (1) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes and (2) in other areas, those waters, adjacent to the shorelines, which contain a measurable quantity or percentage of sea water, including, but not limited to, sounds, bays, lagoons, bayous, ponds, and estuaries.

(c) "Coastal state" means a state of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of this title, the term also includes Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(d) "Estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term includes estuary-type areas of the Great Lakes.

(e) "Estuarine sanctuary" means a research area which may include any part or all of an estuary, adjoining transitional areas, and adjacent uplands, constituting to the extent feasible a natural unit, set

aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships within the area.

(f) "Secretary" means the Secretary of Commerce.

(g) "Management program" includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the state in accordance with the provisions of this title, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.

(h) "Water use" means activities which are conducted in or on the water; but does not mean or include the establishment of any water quality standard or criteria or the regulation of the discharge or runoff of water pollutants except the standards, criteria, or regulations which are incorporated in any program as required by the provisions of section 307(f).

(i) "Land use" means activities which are conducted in or on the shorelands within the coastal zone, subject to the requirements outlined in section 307(g).

MANAGEMENT PROGRAM DEVELOPMENT GRANTS

SEC. 305. (a) The Secretary is authorized to make annual grants to any coastal state for the purpose of assisting in the development of a management program for the land and water resources of its coastal zone.

(b) Such management program shall include:

(1) an identification of the boundaries of the coastal zone subject to the management program;

(2) a definition of what shall constitute permissible land and water uses within the coastal zone which have a direct and significant impact on the coastal waters;

(3) an inventory and designation of areas of particular concern within the coastal zone;

(4) an identification of the means by which the state proposes to exert control over the land and water uses referred to in paragraph (2) of this subsection, including a listing of relevant constitutional provisions, legislative enactments, regulations, and judicial decisions;

(5) broad guidelines on priority of uses in particular areas, including specifically those uses of lowest priority;

(6) a description of the organizational structure proposed to implement the management program, including the responsibilities and interrelationships of local, areawide, state, regional, and interstate agencies in the management process.

(c) The grants shall not exceed 66⅔ per centum of the costs of the program in any one year and no state shall be eligible to receive more than three annual grants pursuant to this section. Federal funds received from other sources shall not be used to match such grants. In order to qualify for grants under this section, the state must reasonably demonstrate to the satisfaction of the Secretary that such grants will be used to develop a management program consistent with the requirements set forth in section 306 of this title. After making the initial grant to a coastal state, no subsequent grant shall be made under this section unless the Secretary finds that the state is satisfactorily developing such management program. Limitation.

(d) Upon completion of the development of the state's management program, the state shall submit such program to the Secretary for

review and approval pursuant to the provisions of section 306 of this title, or such other action as he deems necessary. On final approval of such program by the Secretary, the state's eligibility for further grants under this section shall terminate, and the state shall be eligible for grants under section 306 of this title.

Grants, allocation.

(e) Grants under this section shall be allocated to the states based on rules and regulations promulgated by the Secretary: *Provided, however,* That no management program development grant under this section shall be made in excess of 10 per centum nor less than 1 per centum of the total amount appropriated to carry out the purposes of this section.

(f) Grants or portions thereof not obligated by a state during the fiscal year for which they were first authorized to be obligated by the state, or during the fiscal year immediately following, shall revert to the Secretary, and shall be added by him to the funds available for grants under this section.

(g) With the approval of the Secretary, the state may allocate to a local government, to an areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, to a regional agency, or to an interstate agency, a portion of the grant under this section, for the purpose of carrying out the provisions of this section.

80 Stat. 1262; 82 Stat. 208. 42 USC 3334.

Expiration date.

(h) The authority to make grants under this section shall expire on June 30, 1977.

ADMINISTRATIVE GRANTS

Limitation.

SEC. 306. (a) The Secretary is authorized to make annual grants to any coastal state for not more than 66⅔ per centum of the costs of administering the state's management program, if he approves such program in accordance with subsection (c) hereof. Federal funds received from other sources shall not be used to pay the state's share of costs.

Allocation.

(b) Such grants shall be allocated to the states with approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the plan, population of the area, and other relevant factors: *Provided, however,* That no annual administrative grant under this section shall be made in excess of 10 per centum nor less than 1 per centum of the total amount appropriated to carry out the purposes of this section.

Program requirements.

(c) Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that:

(1) The state has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303 of this title.

(2) The state has:

(A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the state's management program is submitted to the Secretary, which plans have been developed by a local government, an areawide agency designated pursuant to regulations established under section 204 of the Demonstration

Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency; and 80 Stat. 1262; 82 Stat. 208, 42 USC 3334.

(B) established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (5) of this subsection and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this title.

(3) The state has held public hearings in the development of the management program.

(4) The management program and any changes thereto have been reviewed and approved by the Governor.

(5) The Governor of the state has designated a single agency to receive and administer the grants for implementing the management program required under paragraph (1) of this subsection.

(6) The state is organized to implement the management program required under paragraph (1) of this subsection.

(7) The state has the authorities necessary to implement the program, including the authority required under subsection (d) of this section.

(8) The management program provides for adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature.

(9) The management program makes provision for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, or esthetic values.

(d) Prior to granting approval of the management program, the Secretary shall find that the state, acting through its chosen agency or agencies, including local governments, areawide agencies designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, regional agencies, or interstate agencies, has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power—

(1) to administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(2) to acquire fee simple and less than fee simple interests in lands, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(e) Prior to granting approval, the Secretary shall also find that the program provides:

(1) for any one or a combination of the following general techniques for control of land and water uses within the coastal zone;

(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance;

(B) Direct state land and water use planning and regulation; or

(C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

(2) for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit.

(f) With the approval of the Secretary, a state may allocate to a local government, an areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency, a portion of the grant under this section for the purpose of carrying out the provisions of this section: *Provided*, That such allocation shall not relieve the state of the responsibility for ensuring that any funds so allocated are applied in furtherance of such state's approved management program.

80 Stat. 1262; 82 Stat. 208. 42 USC 3334.

Program modification.

(g) The state shall be authorized to amend the management program. The modification shall be in accordance with the procedures required under subsection (c) of this section. Any amendment or modification of the program must be approved by the Secretary before additional administrative grants are made to the state under the program as amended.

Segmental development.

(h) At the discretion of the state and with the approval of the Secretary, a management program may be developed and adopted in segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs: *Provided*, That the state adequately provides for the ultimate coordination of the various segments of the management program into a single unified program and that the unified program will be completed as soon as is reasonably practicable.

INTERAGENCY COORDINATION AND COOPERATION

SEC. 307. (a) In carrying out his functions and responsibilities under this title, the Secretary shall consult with, cooperate with, and, to the maximum extent practicable, coordinate his activities with other interested Federal agencies.

(b) The Secretary shall not approve the management program submitted by a state pursuant to section 306 unless the views of Federal agencies principally affected by such program have been adequately considered. In case of serious disagreement between any Federal agency and the state in the development of the program the Secretary, in cooperation with the Executive Office of the President, shall seek to mediate the differences.

(c)(1) Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.

(2) Any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practicable, consistent with approved state management programs.

Certification.

(3) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such

certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this title or is otherwise necessary in the interest of national security. Notification.

(d) State and local governments submitting applications for Federal assistance under other Federal programs affecting the coastal zone shall indicate the views of the appropriate state or local agency as to the relationship of such activities to the approved management program for the coastal zone. Such applications shall be submitted and coordinated in accordance with the provisions of title IV of the Intergovernmental Coordination Act of 1968 (82 Stat. 1098). Federal agencies shall not approve proposed projects that are inconsistent with a coastal state's management program, except upon a finding by the Secretary that such project is consistent with the purposes of this title or necessary in the interest of national security. 42 USC 4231.

(e) Nothing in this title shall be construed—

(1) to diminish either Federal or state jurisdiction, responsibility, or rights in the field of planning, development, or control of water resources, submerged lands, or navigable waters; nor to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more states or of two or more states and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

(2) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board, and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico.

(f) Notwithstanding any other provision of this title, nothing in this title shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or (2) established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control and air pollution control requirements applicable to such program. Ante, p. 816. 81 Stat. 485; 84 Stat. 1676. 42 USC 1857 note.

(g) When any state's coastal zone management program, submitted for approval or proposed for modification pursuant to section 306 of this title, includes requirements as to shorelands which also would be subject to any Federally supported national land use program which may be hereafter enacted, the Secretary, prior to approving such pro-

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gram, shall obtain the concurrence of the Secretary of the Interior, or such other Federal official as may be designated to administer the national land use program, with respect to that portion of the coastal zone management program affecting such inland areas.

PUBLIC HEARINGS

SEC. 308. All public hearings required under this title must be announced at least thirty days prior to the hearing date. At the time of the announcement, all agency materials pertinent to the hearings, including documents, studies, and other data, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the agency.

REVIEW OF PERFORMANCE

SEC. 309. (a) The Secretary shall conduct a continuing review of the management programs of the coastal states and of the performance of each state.

Financial assistance, termination.

(b) The Secretary shall have the authority to terminate any financial assistance extended under section 306 and to withdraw any unexpended portion of such assistance if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary; and (2) the state has been given notice of the proposed termination and withdrawal and given an opportunity to present evidence of adherence or justification for altering its program.

RECORDS

SEC. 310. (a) Each recipient of a grant under this title shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition of the funds received under the grant, the total cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

Audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of the grant that are pertinent to the determination that funds granted are used in accordance with this title.

ADVISORY COMMITTEE

Costal Zone Management Advisory Committee, establishment; membership.

SEC. 311. (a) The Secretary is authorized and directed to establish a Coastal Zone Management Advisory Committee to advise, consult with, and make recommendations to the Secretary on matters of policy concerning the coastal zone. Such committee shall be composed of not more than fifteen persons designated by the Secretary and shall perform such functions and operate in such a manner as the Secretary may direct. The Secretary shall insure that the committee membership as a group possesses a broad range of experience and knowledge relating to problems involving management, use, conservation, protection, and development of coastal zone resources.

Compensation, travel expenses.

(b) Members of the committee who are not regular full-time employees of the United States, while serving on the business of the committee, including traveltime, may receive compensation at rates not exceeding $100 per diem; and while so serving away from their

homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government service employed intermittently. 80 Stat. 499; 83 Stat. 190.

ESTUARINE SANCTUARIES

SEC. 312. The Secretary, in accordance with rules and regulations promulgated by him, is authorized to make available to a coastal state grants of up to 50 per centum of the costs of acquisition, development, and operation of estuarine sanctuaries for the purpose of creating natural field laboratories to gather data and make studies of the natural and human processes occurring within the estuaries of the coastal zone. The Federal share of the cost for each such sanctuary shall not exceed $2,000,000. No Federal funds received pursuant to section 305 or section 306 shall be used for the purpose of this section. Grants. Federal share.

ANNUAL REPORT

SEC. 313. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress not later than November 1 of each year a report on the administration of this title for the preceding fiscal year. The report shall include but not be restricted to (1) an identification of the state programs approved pursuant to this title during the preceding Federal fiscal year and a description of those programs; (2) a listing of the states participating in the provisions of this title and a description of the status of each state's programs and its accomplishments during the preceding Federal fiscal year; (3) an itemization of the allocation of funds to the various coastal states and a breakdown of the major projects and areas on which these funds were expended; (4) an identification of any state programs which have been reviewed and disapproved or with respect to which grants have been terminated under this title, and a statement of the reasons for such action; (5) a listing of all activities and projects which, pursuant to the provisions of subsection (c) or subsection (d) of section 307, are not consistent with an applicable approved state management program; (6) a summary of the regulations issued by the Secretary or in effect during the preceding Federal fiscal year; (7) a summary of a coordinated national strategy and program for the Nation's coastal zone including identification and discussion of Federal, regional, state, and local responsibilities and functions therein; (8) a summary of outstanding problems arising in the administration of this title in order of priority; and (9) such other information as may be appropriate.

(b) The report required by subsection (a) shall contain such recommendations for additional legislation as the Secretary deems necessary to achieve the objectives of this title and enhance its effective operation.

RULES AND REGULATIONS

SEC. 314. The Secretary shall develop and promulgate, pursuant to section 553 of title 5, United States Code, after notice and opportunity for full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, both public and private, such rules and regulations as may be necessary to carry out the provisions of this title. 80 Stat. 383.

AUTHORIZATION OF APPROPRIATIONS

SEC. 315. (a) There are authorized to be appropriated—

(1) the sum of $9,000,000 for the fiscal year ending June 30, 1973, and for each of the fiscal years 1974 through 1977 for grants under section 305, to remain available until expended;

(2) such sums, not to exceed $30,000,000, for the fiscal year ending June 30, 1974, and for each of the fiscal years 1975 through 1977, as may be necessary, for grants under section 306 to remain available until expended; and

(3) such sums, not to exceed $6,000,000 for the fiscal year ending June 30, 1974, as may be necessary, for grants under section 312, to remain available until expended.

(b) There are also authorized to be appropriated such sums, not to exceed $3,000,000, for fiscal year 1973 and for each of the four succeeding fiscal years, as may be necessary for administrative expenses incident to the administration of this title.

Approved October 27, 1972.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 92-1049 accompanying H.R. 14146 (Comm. on Merchant Marine and Fisheries) and No. 92-1544 (Comm. of Conference).

SENATE REPORT No. 92-753 (Comm. on Commerce).

CONGRESSIONAL RECORD, Vol. 118 (1972):

Apr. 25, considered and passed Senate.

Aug. 2, considered and passed House, amended, in lieu of H.R. 14146.

Oct. 12, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 8, No. 44:

Oct. 28, Presidential statement.

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APPENDIX B

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

January 2, 1976

CIRCULAR NO. A-95
Revised

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Evaluation, review, and coordination of Federal and federally assisted programs and projects

1. Purpose. This Circular furnishes guidance to Federal agencies for cooperation with State and local governments in the evaluation, review, and coordination of Federal and federally assisted programs and projects. The Circular promulgates regulations (Attachment A) which provide, in part, for:

a. Encouraging the establishment of a project notification and review system to facilitate coordinated planning on an intergovernmental basis for certain Federal assistance programs in furtherance of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and Title IV of the Intergovernmental Cooperation Act of 1968 (Attachment B).

b. Coordination of direct Federal development programs and projects with State, areawide, and local planning and programs pursuant to Title IV of the Intergovernmental Cooperation Act of 1968.

c. Securing the comments and views of State and local agencies which are authorized to develop and enforce environmental standards on certain Federal or federally assisted projects affecting the environment pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Attachment (C)) and regulations of the Council on Environmental Quality.

d. Furthering the objectives of Title VI of the Civil Rights Act of 1964.

This Circular supersedes Circular No. A-95 (Revised), dated November 13, 1973 (Part II, Federal Register, Vol. 38, No.

228, pp. 32874-32881, November 28, 1973). It will become effective February 27, 1976.

2. Basis. This Circular has been prepared pursuant to:

a. Section 401(a) of the Intergovernmental Cooperation Act of 1968 which provides, in part, that

> "The President shall . . . establish rules and regulations governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development..."

and the President's Memorandum of November 8, 1968, to the Director of the Bureau of the Budget ("Federal Register," Vol. 33, No. 221, November 13, 1968) which provides:

> "By virtue of the authority vested in me by section 301 of title 3 of the United States Code and section 401(a) of the Intergovernmental Cooperation Act of 1968 (Public Law 90-577), I hereby delegate to you the authority vested in the President to establish the rules and regulations provided for in that section governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development, including programs providing Federal assistance to the States and localities, to the end that they shall most effectively serve these basic objectives.
>
> "In addition, I expect the Bureau of the Budget to generally coordinate the actions of the departments and agencies in exercising the new authorizations provided by the Intergovernmental Cooperation Act, with the objective of consistent and uniform action by the Federal Government."

b. Title IV, section 403, of the Intergovernmental Cooperation Act of 1968 which provides that:

> "The Bureau of the Budget or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this Title."

c. Section 204(c) of the Demonstration Cities and Metropolitan Development Act of 1966 which provides that:

> "The Bureau of the Budget, or such other agency as may be designated by the President, shall prescribe such rules and regulations as are deemed appropriate for the effective administration of this section," and

d. Reorganization Plan No. 2 of 1970 and Executive Order No. 11541 of July 1, 1970, which vest all functions of the Bureau of the Budget or the Director of the Bureau of the Budget in the Director of the Office of Management and Budget.

3. Coverage. The regulations promulgated by this Circular (Attachment A) will have applicability:

a. Under Part I, to all projects and activities (or significant substantive changes thereto) for which Federal assistance is being sought under the programs listed in Attachment D or Appendix I of the Catalog of Federal Domestic Assistance whichever bears the later date. Limitations and provisions for exceptions are noted therein or under paragraph 8 of Part I.

b. Under Part II, to all direct Federal development activities, including the acquisition, use, and disposal of Federal real property; in addition, agencies responsible for granting licenses and permits for developments or activities significantly affecting area and community development or the physical environment are strongly urged to consult with clearinghouses on applications for such licenses or permits.

c. Under Part III, to all Federal programs as listed in Appendix II of the Catalog of Federal Domestic Assistance, requiring, by statute or administrative regulation, a State plan as a condition of assistance.

d. Under Part IV, to all Federal programs providing assistance to State, areawide, or local agencies or organizations for multijurisdictional or areawide planning.

4. "A-95: What It Is - How It Works." A fuller discussion of the background, purposes, and objectives of the Circular and of the requirements promulgated thereunder may be found in the brochure, "A-95: What It Is - How It Works,"

obtainable from the Office of Management and Budget or from Federal Regional Councils.

5. "A-95 Administrative Notes." From time to time OMB will issue "A-95 Administrative Notes" providing interim determinations or interpretations on matters of national scope relating to administration of the Circular.

6. Federal Regional Councils. Federal Regional Councils are responsible for coordinating the implementation of the requirements of this Circular at the Federal regional level. The Office of Management and Budget is responsible for policy oversight of the Circular and liaison with departmental and agency liaison officers on matters of national scale related to the requirements of the Circular.

7. Federal agency implementing procedures and regulations. Agencies will develop interim procedures and regulations implementing the requirements of this Circular revision which will become effective on February 27, 1976. The interim procedures and regulations will be published in the Federal Register no later than February 27, 1976. Agencies will promulgate final implementing procedures and regulations no later than April 29, 1976. OMB will assist and cooperate with agencies in developing such procedures and regulations.

8. Inquiries. Inquiries concerning this Circular may be addressed to the Regional A-95 Coordinator for the appropriate Federal Regional Council or to the Office of Management and Budget, Washington, D.C. 20503, telephone (202)-395-3031.

JAMES T. LYNN
DIRECTOR

Attachments

ATTACHMENT A
Circular No. A-95
Revised

REGULATIONS UNDER SECTION 204 OF THE DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT OF 1966, TITLE IV OF THE INTERGOVERNMENTAL COOPERATION ACT OF 1968, AND SECTION 102(2)(C) OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

PART I: PROJECT NOTIFICATION AND REVIEW SYSTEM

1. Purpose. The purpose of this Part is to:

a. Further the policies and directives of Title IV of the Intergovernmental Cooperation Act of 1968 by encouraging the establishment of a network of State and areawide planning and development clearinghouses which will aid in the coordination of Federal or federally assisted projects and programs with State, areawide, and local planning for orderly growth and development.

b. Implement the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 for metropolitan areas within that network.

c. Implement, in part, requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, which require that State, areawide, and local agencies which are authorized to develop and enforce environmental standards be given an opportunity to comment on the environmental impact of Federal or federally assisted projects.

d. Provide public agencies charged with enforcing or furthering the objectives of State and local civil rights laws with opportunity to participate in the review process established under this Part.

e. Encourage, by means of early contact between applicants for Federal assistance and State and local governments and agencies, an expeditious process of intergovernmental coordination and review of proposed projects.

2. Notification of Intent.

a. Any agency of State or local government or any organization or individual undertaking to apply for assistance to a project or major substantive modification thereto under a Federal program covered by this Part will be required to notify both the State and areawide planning and development clearinghouse in the jurisdiction of which the project is to be located of its intent to apply for assistance at such time as it determines it will develop an application.

In the case of applications for projects involving land or water use and development or construction in the National Capital Region (as defined in section 1(b) of the National Capital Planning Act of 1952, as amended) a copy of the notification will be sent to the National Capital Planning Commission (NCPC) in addition to the areawide clearinghouse and the appropriate State clearinghouse. NCPC is the official planning agency for the Federal Government in the National Capital Region.

In the case of an application in any State for an activity that is Statewide or broader in nature (such as for various types of research) and does not affect nor have specific applicability to areawide or local planning and programs, the notification need be sent only to the State clearinghouse. Involvement of areawide clearinghouses i the review in such cases will be at the initiative of th State clearinghouse.

Notifications will include a summary description of th project for which assistance will be sought. The summary description will contain the following information, as appropriate and to the extent available:

(1) Identity of the applicant agency, organization, or individual.

(2) The geographic location of the project to be assisted. A map should be provided, if appropriate.

(3) A brief description of the proposed project by type, purpose, general size or scale, estimated cost, beneficiaries, or other characteristics which will enable the clearinghouses to identify agencies of State or local

government having plans, programs, or projects that might be affected by the proposed projects.

(4) A statement as to whether or not the applicant has been advised by the funding agency from which assistance is being sought that he will be required to submit environmental impact information in connection with the proposed project.

(5) The Federal program title and number and agency under which assistance will be sought as indicated in Attachment D or the latest Catalog of Federal Domestic Assistance. (The Catalog is issued annually in the spring and is updated during the year.) In the case of programs not listed therein, programs will be identified by Public Law number or U.S. Code citation.

(6) The estimated date the applicant expects to formally file an application.

Many clearinghouses have developed notification forms and instructions. Applicants are urged to contact their clearinghouses for such information in order to expedite clearinghouse review.

b. In order to assure maximum time for effective coordination and so as not to delay the timely submission of the completed application to the funding agency, notifications containing the preliminary information indicated above should be sent at the earliest feasible time.

c. Applications from federally recognized Indian tribes are not subject to the requirements of this Part. However, Indian tribes may voluntarily participate in the Project Notification and Review System and are encouraged to do so. Federal agencies will notify the appropriate State and areawide clearinghouses of any applications from federally recognized Indian tribes upon their receipt. Where a federally recognized Tribal Government has established a mechanism for coordinating the activities of Tribal departments, divisions, enterprises, and entities, Federal agencies will, upon request of such Tribal Government transmitted through the Office of Management and Budget, require that applications for assistance under programs covered by this Part from such Tribal departments, divisions, enterprises, and entities be subject to review by

such Tribal coordinating mechanism as though it were a State or areawide clearinghouse.

3. Clearinghouse functions. Clearinghouse functions include:

a. Evaluating the significance of proposed Federal or federally assisted projects to State, areawide, or local plans and programs.

b. Receiving and disseminating project notifications to appropriate State and multistate agencies in the case of the State clearinghouse and to appropriate local governments and agencies and regional organizations in the case of areawide clearinghouses; and providing liaison, as may be necessary, between such agencies or bodies and the applicant. In the case of units of general local government, notifications of all projects affecting his jurisdiction will, if requested, be sent to the chief executive of such unit by the areawide clearinghouse or to such central agency as he may designate for review and reference to appropriate agencies of such unit.

c. In the case of projects under programs covered by this Part located in the coastal zone, as defined in the Coastal Zone Management Act of 1972, assuring that the State agency, if other than the State clearinghouse, responsible for administration of the approved program for the management of the coastal zone, is given opportunity to review the project for its relationship to such program and its consistency therewith.

d. Assuring, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, that appropriate State, multistate, areawide, or local agencies which are authorized to develop and enforce environmental standards are informed of and are given opportunity to review and comment on the environmental significance of proposed projects for which Federal assistance is sought.

e. Providing public agencies charged with enforcing or furthering the objectives of State and local civil rights laws with opportunity to review and comment on the civil rights aspects of the project for which assistance is sought.

f. Providing, pursuant to Part II of these regulations, liaison between Federal agencies contemplating direct Federal development projects and the State or areawide agencies or local governments having plans or programs that might be affected by the proposed project.

g. In the case of a project for which Federal assistance is sought by a special purpose unit of local government, clearinghouses will assure that any unit of general local government having jurisdiction over the area in which the project is to be located has opportunity to confer, consult, and comment upon the project and the application.

h. Where areawide clearinghouse jurisdictions are contiguous, coordinative arrangements should be established between the clearinghouses in such areas to assure that projects in one area which may have an impact on the development of a contiguous area are jointly studied. Any comments and recommendations made by or through a clearinghouse in one area on a project in a contiguous area will accompany the application for assistance to that project.

4. Consultation and review.

a. State and areawide clearinghouses may have a period of 30 days after receipt of a project notification in which to inform State and multistate agencies and local or regional governments or agencies (including agencies referred to in subparagraphs c, d, and e, above) that may be affected by the proposed project and arrange, as may be necessary, to consult with the applicant thereon. The review may be completed in this period and comments may be submitted to the applicant.

b. If the review is not completed during this period, the clearinghouse may work with the applicant in the resolution of any problems raised by the proposed project during the period in which the application is being completed.

c. In cases where no project notification has been submitted and the clearinghouse receives only a completed application, it may have 60 days to review the completed application. If a completed application is submitted during the first 30 days after a notification has been submitted,

the clearinghouse may have 30 days plus the number of days remaining in the initial 30 day notification period to complete its review. In all other cases, the clearinghouse may have 30 days to review a completed application. Where clearinghouses have not completed their reviews during the 30 day notification period, they are strongly urged to give the applicant formal notice to that effect. Where reviews have been completed prior to completion of an application, an information copy will be supplied to the clearinghouse, upon request, when the application is submitted to the funding agency.

d. Written comments submitted to the areawide clearinghouse by other jurisdictions, agencies, or parties will be included as attachments to the comments of areawide clearinghouses, when they are at variance with the clearinghouse comments; and others from whom comments were solicited and received should be listed.

e. Under some programs, applicants - primarily non-governmental - are required to submit confidential information to the funding agency. Such information may relate to the applicant's financial status or structure (e.g., overall investment program or holdings); to personnel (e.g., personal histories of project officers) or may involve proprietary information (e.g., industrial processes, research ideas). Such confidential information need not be included with applications submitted to clearinghouses for review.

f. Applicants will include with the completed application as submitted to the Federal agency (or to the State agency in the case of projects for which the State, under certain programs, has final project approval):

(1) All comments and recommendations made by or through clearinghouses, along with a statement that such comments have been considered prior to submission of the application; or

(2) Where no comments have been received from a clearinghouse, a statement that the procedures outlined in this section have been followed and that no comments or recommendations have been received.

g. Applications for renewal or continuation grants or applications not submitted to or acted on by the funding

agency within one year after completion of clearinghouse review will be subject to re-review upon request of the clearinghouse.

5. Subject matter of comments and recommendations. Comments and recommendations made by or through clearinghouses with respect to any project are for the purpose of assuring maximum consistency of such project with State, areawide, and local comprehensive plans. They are also intended to assist the Federal agency (or State agency, in the case of projects for which the State under certain Federal grants has final project approval) administering such a program in determining whether the project is in accord with applicable Federal law, particularly those requiring consistency with State, areawide, or local plans. Comments or recommendations may include, but need not be limited to, information about:

a. The extent to which the project is consistent with or contributes to the fulfillment of comprehensive planning for the State, area, or locality.

b. The extent to which the proposed project:

(1) Duplicates, runs counter to, or needs to be coordinated with other projects or activities being carried out in or affecting the area; or

(2) Might be revised to increase its effectiveness or efficiency in relationship to other State, area, or local programs and projects.

c. The extent to which the project contributes to the achievement of State, areawide, and local objectives and priorities relating to natural and human resources and economic and community development as specified in section 401 of the Intergovernmental Cooperation Act of 1968, including;

(1) Appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes;

(2) Wise development and conservation of natural resources, including land, water, mineral, wildlife, and others;

(3) Balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other modes for the movement or people and goods;

(4) Adequate outdoor recreation and open space;

(5) Protection of areas of unique natural beauty, historical and scientific interest;

(6) Properly planned community facilities, including utilities for the supply of power, water, and communications, for the safe disposal of wastes, and for other purposes; and

(7) Concern for high standards of design.

d. As provided under section 102(2)(C) of the National Environmental Policy Act of 1969, the extent to which the project significantly affects the environment including consideration of:

(1) The environmental impact of the proposed project;

(2) Any adverse environmental effects which cannot be avoided should the proposed project be implemented;

(3) Alternatives to the proposed project;

(4) The relationship between local short term uses of man's environment and the maintenance and enhancement of long term productivity; and

(5) Any irreversible and irretrievable commitments of resources which would be involved in the proposed project or action, should it be implemented.

e. Effects on energy resource supply and demand.

f. The extent to which people or businesses will be displaced and the availability of relocation resources.

g. As provided under section 307(d) of the Coastal Zone Management Act of 1972, in the case of a project located in the coastal zone, the relationship of the project to the approved State program for the management of the coastal zone and its consistency therewith.

h. The extent to which the project contributes to more balanced patterns of settlement and delivery of services to all sectors of the area population, including minority groups.

i. In the case of a project for which assistance is being sought by a special purpose unit of local government, whether the unit of general local government having jurisdiction over the area in which the project is to be located has applied, or plans to apply, for assistance for the same or a similar type project. This information is necessary to enable the Federal (or State) agency to make the judgments required under section 402 of the Intergovernmental Cooperation Act of 1968.

6. Federal agency procedures. Federal agencies having programs covered under this Part will develop appropriate procedures for:

a. Informing potential applicants for assistance under such programs of the requirements of this Part (1) in program information materials, (2) in response to inquiries respecting application procedures, (3) in pre-application conferences, or (4) by other means which will assure earliest contact between applicant and clearinghouses.

b. Assuring that all applications for assistance under programs covered by this part have been submitted to appropriate clearinghouses for review prior to their submission to the funding agency. Applications that do not carry evidence that both areawide and State clearinghouses have been given an opportunity to review the application will be returned to the applicant with instructions to fulfill the requirements of this Part. Agencies will insure that all applications contain a State Application Identifier (SAI) number. (This is mandatory for use in notifying clearinghouses of action taken on the application.)

c. Notifying such clearinghouses within seven working days of any major action taken on such applications that have been reviewed by said clearinghouses. Major actions will include awards, rejections, returns for amendment, deferrals, or withdrawals. The standard multipurpose form, SF 424, promulgated by Federal Management Circular 74-7, will be used for this purpose, unless a waiver has been granted by OMB. (See Attachment E.)

d. Where a clearinghouse has recommended against approval of an application or approval only with specific and major substantive changes, and the funding agency approves the application substantially as submitted, the funding agency will provide the clearinghouse, along with the action notice, an explanation therefor.

e. Where a clearinghouse has recommended against approval of a project because it conflicts with or duplicates another Federal or federally assisted project, the funding agency will consult with the agency assisting the referenced projects prior to acting, if it plans to approve the application.

f. Assuring, in the case of an application submitted by a special purpose unit of local government, where accompanying comments indicate that the unit of general local government having jurisdiction over the area in which the project is to be located has submitted or plans to submit an application for assistance for the same or a similar type project, that appropriate considerations and preferences as specified in section 402 of the Intergovernmental Cooperation Act of 1968, are accorded the unit of general local government. Where such preference cannot be so accorded, the agency shall supply, in writing, to the unit of general local government and the Office of Management and Budget its reasons therefor.

7. Housing Programs. For housing programs of the Department of Housing and Urban Development, the Veterans Administration, and the Farmers Home Administration of the Department of Agriculture the following procedures will be followed, except as provided in subparagraph d below:

a. The appropriate HUD, VA, or USDA/FHA office will transmit to the appropriate State and areawide clearinghouses a copy of the initial application for project approval.

b. Clearinghouses will have 30 days from receipt to review the applications and to forward to the HUD, VA, or USDA/FHA office any comments which they may have, including observations concerning the consistency of the proposed project with State and areawide development plans, the extent to which the proposed project will provide housing opportunities for all segments of the community, and identification of major environmental concerns including impact

on energy resource supply and demand. Processing of applications in the HUD, VA, or USDA/FHA office will proceed concurrently with the clearinghouse review.

c. This procedure will include only applications involving new construction or substantial rehabilitation and will apply to applications for loans, loan guarantees, mortgage insurance, or other housing assistance:

(1) In Urbanized Areas, as defined by the U.S. Bureau of the Census (see Appendix A, 1970 Census of Population, Characteristics of the Population or Characteristics of Housing), to:

(a) Subdivisions having 25 or more lots.

(b) Multifamily projects having 50 or more dwelling units.

(c) Mobile home courts with 50 or more spaces.

(d) College housing provided under the debt service or direct loan programs for 200 or more students.

(2) In all other areas, to:

(a) Subdivisions having 10 or more lots.

(b) Multifamily projects having 25 or more dwelling units.

(c) Mobile home courts with 25 or more spaces.

(d) College housing provided under the debt service or direct loan programs for 100 or more students.

d. As an alternative to the above procedure, the developer may submit his application directly to the appropriate clearinghouses prior to submitting it to the Federal agency. In such cases, the application, when submitted to the Federal agency, will be accompanied by the comments of the clearinghouses.

e. Exemption: Applications for additional units in a subdivision substantially completed (i.e., with streets, water and sewer facilities, culverts, etc.) are exempted from this requirement when:

(1) The subdivision was approved and/or recorded by the appropriate unit of local government within three years of the application submittal; and

(2) In cases of subdivisions approved more than three years prior, the clearinghouses waive the requirement.

This exemption does not apply to applications for housing in an undeveloped subdivision or in proposed extensions of existing subdivisions.

8. Coverage, exceptions, and variations.

a. Generally, this Part of this Circular and the laws on which it is based are concerned with programs providing financial assistance to projects and activities which have an impact on State, areawide, and local development, including development of natural, economic, and human resources. This Part is concerned with achieving the most effective and efficient utilization of Federal assistance programs through coordination among and between Federal, multistate, State, areawide, and local plans and programs and the elimination of conflict, overlap, and duplication of projects and activities under such programs. Coverage under this Part includes, or will be extended from time to time as deemed necessary and practicable to include programs bearing upon these concerns and objectives.

b. Programs not considered appropriate to this Part are programs of the following types:

(1) Direct financial assistance to individuals or families for housing, welfare, health care services, education, training, economic improvement, and other direct assistance for individual and family enhancement.

(2) Incentive payments or insurance for private sector activities not involving real property development or land use and development.

(3) Agricultural crop supports or payments.

(4) Assistance to organizations and institutions for the provision of education or training not designed to meet the needs of specific individual States or localities.

(5) Research, not involving capital construction, which is national in scope or is not designed to meet the needs or to address problems of a particular State, area, or locality (except in the case of demonstration or pilot research programs where projects may have an impact on the community or area in which they are being conducted).

(6) Assistance to educational, medical, or similar service institutions or agencies for internal staff development or management improvement purposes.

(7) Assistance to educational institutions for activities that are part of a school's regular academic program and are not related to local programs of health, welfare, employment, or other social services.

(8) Assistance for construction involving only routine maintenance, repair, or minor construction which does not change the use or the scale or intensity of use of the structure or facility.

c. OMB will consider Federal agency requests for exemption of certain classes of projects or activities under programs otherwise covered which:

(1) Meet any of the above characteristics of programs inappropriate for coverage under this Part;

(2) Are of small scale or size or are highly localized as to impact; or

(3) Display other characteristics which might make review impractical.

d. OMB will consider Federal agency requests for procedural variations from normal review processes:

(1) On a temporary basis for programs with time constraints brought about because of start up requirements or other unusual circumstances beyond the control of the funding agency. (Note: Delay in fund availability is not normally an acceptable reason for a variation. When a delay is anticipated, applicants should be instructed to have their applications reviewed by clearinghouses in readiness for submission when funds become available).

(2) For programs where statutory or related procedural limitations make the normal review processes impracticable.

e. All requests from Federal agencies for exemptions or procedural variations should be addressed to the Associate Director for Management and Operations, Office of Management and Budget.

f. Individual clearinghouses may exempt certain types of projects from review for reasons indicated above or for other reasons appropriate to the State or area.

g. Applicants should be made aware that, in various States, State law requires review of applications for Federal assistance under various programs not covered by this Part. Implementation of such laws is enforced through State rules and regulations, and applicants are urged to ascertain the existence of such laws and to acquaint themselves with applicable State procedures.

9. Joint Funding. Applications for assistance to activities under the Joint Funding Simplification Act (P.L. 93-510) or any other joint funding authority, which involve activities funded under one or more of the programs covered under this Part, will be subject to the requirements of this Part.

10. Agency procedures and regulations.

a. Proposed agency procedures and regulations fo implementing the requirements of this Part will be publishe in the Federal Register as specified in paragraph 7 of th s Circular. Programs to which the procedures and regulatio s will apply will be cited by their numbers in the Catalog o Federal Domestic Assistance. Where such numbers have n t yet been assigned, programs will be referenced by Public L w and section or by U.S. Code citation. Subsequent amendments to such procedures and regulations will also be published pursuant to paragraph 7 of the Circular.

b. As a part of such proposed procedures and regulations published in the Federal Register, agencies may identify specific types of projects which they believe should be exempt from coverage under programs for which proposed procedures and regulations are being published. Such publication will constitute a formal request for

exemption to the Office of Management and Budget, to which it will respond in its review of the proposed procedures and regulations.

c. OMB will assist and cooperate with agencies in developing such procedures and regulations.

d. A copy of agency internal procedures for implementation of this Part, if not contained in the above procedures and regulations, will be sent to the Associate Director of the Office of Management and Budget for Management and Operations.

11. Reports and directories.

a. The Director of the Office of Management and Budget may require reports, from time to time, on the implementation of this Part.

b. The Office of Management and Budget will maintain and distribute to appropriate Federal agencies a directory of State and areawide clearinghouses.

c. The Office of Management and Budget will notify Federal Regional Councils, clearinghouses, and Federal agencies of any excepted categories of projects under covered programs.

PART II: DIRECT FEDERAL DEVELOPMENT

1. Purpose. The purpose of this Part is to:

a. Provide State and local government with information on projected Federal development sc as to facilitate coordination with State, areawide, and local plans and programs.

b. Provide Federal agencies with information on the relationship of proposed direct Federal development projects and activities to State, areawide, and local plans and programs; and to assure maximum feasible consistency of Federal developments with State, areawide, and local plans and programs.

c. Provide Federal agencies with information on the possible impact on the environment of proposed Federal development.

2. Coordination of direct Federal development projects with State, areawide, and local development.

a. Federal agencies having responsibility for the planning and construction of Federal buildings and installations or other Federal public works or development or for the acquisition, use, and disposal of Federal land and real property will establish procedures for:

(1) Consulting with Governors, State and areawid clearinghouses, and local elected officials at the earliest practicable stage in project or development planning on the relationship of any plan or project to the development plans and programs of the State, area, or locality in which the project is to be located. In the case of projects in the National Capital Region, such consultation should be undertaken in cooperation with the National Capital Planning Commission.

(2) Assuring that any such Federal plan or project is consistent or compatible with State, areawide, and local development plans and programs identified in the course of such consultations. Exceptions will be made only where there is clear justification. Explanation of any necessary inconsistency or incompatibility will be provided, in writing, to the appropriate clearinghouses.

(3) Providing State, areawide, and local agencies which are authorized to develop and enforce environmental standards with adequate opportunity to review such Federal plans and projects pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969. Any comments of such agencies will accompany the environmental impact statement submitted by the Federal agency.

(4) Providing, in the case of projects located in the coastal zone, the State agency responsible for administration of the approved program for the management of the coastal zone with opportunity to review the relationship of the proposed project to such program and its consistency therewith.

(5) Providing, through the appropriate clearinghouses, Health Systems Agencies and State Health Planning and Development Agencies designated pursuant to the National Health Planning and Resources Development Act of 1974 with adequate opportunity to review Federal projects for construction and/or equipment involving capital expenditures exceeding $200,000 for modernization, conversion, and expansion of Federal inpatient care facilities, which alter the bed capacity or modify the primary function of the facility, as well as plans for provision of major new medical care services. (Excluded are projects to renovate or install mechanical systems, air conditioning systems, or other similar internal system modifications.) The agencies are expected to evaluate proposed Federal projects for consistency with areawide and local health delivery plans and health supply-demand situations, as well as considering clearinghouse comments on such specific points as those listed in paragraph 5 of Part I. The comments of such agencies and any clearinghouse comments will accompany the plan and budget requests submitted by the Federal agency to the Office of Management and Budget or a certification that the agencies and clearinghouses had been provided a reasonable time to comment and had failed to do so.

3. Use of clearinghouses. The State and areawide planning and development clearinghouses established pursuant to Part I will be utilized to the greatest extent practicable to effectuate the requirements of this Part. Agencies are urged to establish early contact with clearinghouses to work out arrangements for carrying out the consultation and review required under this Part, including identification of types of projects considered appropriate for consultation

and review. Clearinghouses may utilize criteria set forth in paragraph 5 of Part I in evaluating direct Federal development projects.

4. Federal licenses and permits. Agencies responsible for granting Federal licenses and permits for development projects and activities which would have a significant impact on State, interstate, areawide, or local development plans or programs or on the environment are strongly urged to consult with State and areawide clearinghouses and to seek their evaluations of such impacts prior to granting such licenses or permits.

5. Agency procedures and regulations.

a. To the greatest extent possible, agencies engaged in direct Federal development activities will follow the general procedures outlined under Part I of Attachment A in affording State and areawide clearinghouses opportunities to review and comment on plans and developments.

b. Where legislative or executive constraints or related circumstances do not permit following such procedures, agency procedures and regulations will set forth for each program, at a minimum:

(1) The point in project planning at which clearinghouses will be contacted;

(2) The minimum time clearinghouses will be afforded to review the proposed project;

(3) The minimum information to be provided to the clearinghouses; and

(4) Procedures for notifying clearinghouses on actions taken on such project (implementation, timing, postponement, abandonment) and explaining actions taken contrary to clearinghouse recommendations.

c. The Office of Management and Budget will consider other procedures such as memoranda of agreement between Federal installations and clearinghouses for coordinating Federal and civilian planning, that are designed to achieve the objectives of this Part.

PART III: STATE PLANS

1. Purpose. The purpose of this Part is to provide Federal agencies with information about the relationship to State or areawide comprehensive planning of State plans which are required or form the basis for funding under various Federal programs.

2. State plans. To the extent not presently required by statute or administrative regulation, Federal agencies administering programs requiring by statute or regulation a State plan as a condition of assistance under such programs will require that the Governor, or his delegated agency, be given the opportunity to comment on the relationship of such State plan to comprehensive and other State plans and programs and to those of affected areawide or local jurisdictions. The Governor is urged to involve areawide clearinghouses in the review of State plans, particularly where such plans have specific applicability to or affect areawide or local plans and programs.

a. The Governor will be afforded a period of 45 days in which to make such comments, and any such comments will be transmitted with the plan.

b. A "State plan" under this Part is defined to include any required supporting planning reports or documentation that indicate the programs, projects, and activities for which Federal funds will be utilized. Such reports or documentation will also be submitted for review at the request of the Governor or the agency he has designated to perform review under this Part.

c. Programs requiring State plans are listed in Appendix II of the Catalog of Federal Domestic Assistance.

PART IV: COORDINATION OF PLANNING IN MULTIJURISDICTIONAL AREAS

1. Policies and objectives. The purposes of this Part are:

a. To encourage and facilitate State and local initiative and responsibility in developing organizational and procedural arrangements for coordinating comprehensive and functional planning activities.

b. To eliminate overlap, duplication, and competition in areawide planning activities assisted or required under Federal programs and to encourage the most effective use of State and local resources available for planning.

c. To minimize inconsistency among Federal administrative and approval requirements placed on areawide planning activities.

d. To encourage the States to exercise leadership in delineating and establishing a system of planning and development districts or regions in each State, which can provide a consistent geographic base for the planning and coordination of Federal, State, and local development programs.

e. To encourage Federal agencies administering programs assisting or requiring areawide planning to utilize agencies that have been designated to perform areawide comprehensive planning in planning and development districts or regions established pursuant to subparagraph d above (generally, areawide clearinghouses designated pursuant to Part I of Attachment A of this Circular) to carry out or coordinate planning under such programs. In the case of interstate metropolitan areas, agencies designated as metropolitan areawide clearinghouses should be utilized to the extent possible to carry out or coordinate Federally assisted or required areawide planning.

2. Common or consistent planning and development districts or regions.

a. Prior to the designation or redesignation (or approval thereof) of any planning and development district or region under any Federal program, Federal agency procedures will provide a period of 30 days for the

Governor(s) of the State(s) in which the district or region will be located to review the boundaries thereof and comment upon its relationship to planning and development districts or regions established by the State. Where the State has established such planning and development districts, the boundaries of areas designated under Federal programs will conform to them unless there is clear justification for not doing so.

b. Where the State has not established planning and development districts or regions which provide a basis for evaluation of the boundaries of the area proposed for designation, major units of general local government and the appropriate Federal Regional Council in such areas will also be consulted prior to designation of the area to assure consistency with districts established under inter-local agreement and under related Federal programs.

c. The Office of Management and Budget will be notified through the appropriate Federal Regional Council by Federal agencies of any proposed designation and will be informed of such designation when it is made, including such justifications as may be required under subparagraph a above.

3. Common and consistent planning bases and coordination of related activities in multijurisdictional areas. Each agency will develop procedures and requirements for applications for multijurisdictional planning and development assistance under appropriate programs to assure the fullest consistency and coordination with related planning and development being carried on by the areawide comprehensive planning agency or clearinghouse designated under Part I of this Circular in the multijurisdictional area.

Such procedures shall include provision for submission to the funding agency by any applicant for multijurisdictional planning assistance, if the applicant is other than an areawide comprehensive planning agency referred to in paragraph 1e of this Part, of a memorandum of agreement between the applicant and such areawide comprehensive planning agency covering the means by which their planning activities will be coordinated. The agreement will cover but need not be limited to the following matters:

a. Identification of relationships between the planning proposed by the applicant and that of the areawide agency and of similar or related activities that will require coordination;

b. The organizational and procedural arrangements for coordinating such activities, such as: overlapping board membership, procedures for joint reviews of projected activities and policies, information exchange, etc;

c. Cooperative arrangements for sharing planning resources (funds, personnel, facilities, and services);

d. Agreed upon base data, statistics, and projections (social, economic, demographic) on the basis of which planning in the area will proceed.

Where an applicant has been unable to effectuate such an agreement, he will submit a statement indicating the efforts he has made to secure agreement and the issues that have prevented it. In such case, the funding agency, in consultation with the Federal Regional Council and the State clearinghouse designated under Part I, will undertake, within a 30 day period after receipt of the application, resolution of the issues before approving the application, if it is otherwise in good order.

4. Joint funding. Where it will enhance the quality, comprehensive scope, and coordination of planning in multijurisdictional areas, Federal agencies will, to the extent practicable, provide for joint funding of planning activities being carried on therein.

5. Coordination of agency procedures and regulations. With respect to the steps called for in paragraphs 2 and 3 of this Part, departments and agencies will develop for relevant programs appropriate draft procedures and regulations which will be published in the Federal Register pursuant to paragraph 7 of this Circular. Copies of such drafts will be furnished to the Director of the Office of Management and Budget and to the heads of departments and agencies administering related programs. The Office, in consultation with the agencies, will review the draft procedures and regulations to assure the maximum obtainable consistency among them.

PART V: DEFINITIONS

Terms used in this Circular will have the following meanings:

1. Federal agency -- any department, agency, or instrumentality in the executive branch of the Government and any wholly owned Government corporation.

2. State - any of the several States of the United States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, but does not include the governments of the political subdivisions of the State.

3. Unit of general local government -- any city, county, town, parish, village, or other general purpose political subdivision of a State.

4. Special purpose unit of local government -- any special district, public purpose corporation, or other strictly limited purpose political subdivision of a State, but shall not include a school district.

5. Federal assistance, Federal financial assistance, Federal assistance programs, or federally assisted programs -- programs that provide assistance through grant or contractual arrangements. They include technical assistance programs, or programs providing assistance in the form of loans, loan guarantees, or insurance. The term does not include any annual payment by the United States to the District of Columbia authorized by article VI of the District of Columbia Revenue Act of 1947 (D.C. Code sec. 47-2501a and 47-2501b).

6. Funding agency. The Federal agency or, in the case of certain formula grant programs, the State agency which is responsible for final approval of applications for assistance.

7. Comprehensive planning, to the extent directly related to area needs or needs of a unit of general local government, including the following:

a. Preparation, as a guide for governmental policies and action, of general plans with respect to:

(1) Pattern and intensity of land use,

(2) Provision of public facilities (including transportation facilities) and other government services.

(3) Effective development and utilization of human and natural resources.

b. Preparation of long range physical and fiscal plans for such action.

c. Programming of capital improvements and other major expenditures, based on a determination of related urgency, together with definitive financing plans for such expenditures in the earlier years of the program.

d. Coordination of all related plans and activities of the State and local governments and agencies concerned.

e. Preparation of regulatory and administrative measures in support of the foregoing.

8. Metropolitan area -- a standard metropolitan statistical area as established by the Office of Management and Budget, subject, however, to such modifications and extensions as the Office of Management and Budget may determine to be appropriate for the purposes of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, and these Regulations.

9. Areawide -- Comprising, in metropolitan areas, the whole of contiguous urban and urbanizing areas; and in nonmetropolitan areas, contiguous counties or other multijurisdictional areas having common or related social, economic, or physical characteristics indicating a community of developmental interests; or, in either, the area included in a substate district designated pursuant to paragraph 1d, Part IV, Attachment A of this Circular.

10. Planning and development clearinghouse or clearinghouse includes:

a. "State clearinghouse" -- an agency of the State Government designated by the Governor or by State law to carry out the requirements of Part I of Attachment A of this Circular.

b. "Areawide clearinghouse" --

(1) In nonmetropolitan areas a comprehensive planning agency designated by the Governor (or Governors in the case of regions extending into more than one State) or by State law to carry out requirements of this Circular; or

(2) In metropolitan areas an areawide agency that has been recognized by the Office of Management and Budget as an appropriate agency to perform review functions under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, Title IV of the Intergovernmental Cooperation Act of 1968, and this Circular.

11. Multijurisdictional area -- any geographical area comprising, encompassing, or extending into more than one unit of general local government.

12. Planning and development district or region -- a multijurisdictional area that has been formally designated or recognized as an appropriate area for planning under State law or Federal program requirements.

13. Direct Federal development -- planning and construction of public works, physical facilities, and installations or land and real property development (including the acquisition, use, and disposal of real property) undertaken by or for the use of the Federal Government or any of its agencies; or the leasing of real property for Federal use where the use or intensity of use of such property will be substantially altered.

SECTION 204 OF THE DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT OF 1966 as amended (80 Stat. 1263, 82 Stat. 208)

"Sec. 204. (a) All applications made after June 30, 1967, for Federal loans or grants to assist in carrying out open-space land projects or for planning or construction of hospitals, airports, libraries, water supply and distribution facilities, sewage facilities and waste treatment works, highways, transportation facilities, law enforcement facilities, and water development and land conservation projects within any metropolitan area shall be submitted for review--

"(1) to any areawide agency which is designated to perform metropolitan or regional planning for the area within which the assistance is to be used, and which is, to the greatest practicable extent, composed of or responsible to the elected officials of a unit of areawide government or of the units of general local government within whose jurisdiction such agency is authorized to engage in such planning, and

"(2) if made by a special purpose unit of local government, to the unit or units of general local government with authority to operate in the area within which the project is to be located.

"(b)(1) Except as provided in paragraph (2) of this subsection, each application shall be accompanied (A) by the comments and recommendations with respect to the project involved by the areawide agency and governing bodies of the units of general local government to which the application has been submitted for review, and (B) by a statement by the applicant that such comments and recommendations have been considered prior to formal submission of the application. Such comments shall include information concerning the extent to which the project is consistent with comprehensive planning developed or in the process of development for the metropolitan area or the unit of general local government, as the case may be, and the extent to which such project contributes to the fulfillment of such planning. The comments and recommendations and the statement referred to in this paragraph shall, except in the case referred to in paragraph (2) of this subsection, be reviewed by the agency of the Federal Government to which such application is submitted

for the sole purpose of assisting it in determining whether the application is in accordance with the provisions of Federal law which govern the making of the loans or grants.

"(2) An application for a Federal loan or grant need not be accompanied by the comments and recommendations and the statements referred to in paragraph b(1) of this subsection, if the applicant certifies that a plan or description of the project, meeting the requirements of such rules and regulations as may be prescribed under subsection (c), or such application, has lain before an appropriate areawide agency or instrumentality or unit of general local government for a period of sixty days without comments or recommendations thereon being made by such agency or instrumentality.

"(3) The requirements of paragraphs (1) and (2) shall also apply to any amendment of the application which, in light of the purposes of this title, involves a major change in the project covered by the application prior to such amendment.

"(c) The Bureau of the Budget, or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this section."

TITLE IV OF THE INTERGOVERNMENTAL COOPERATION ACT OF 1968 (82 Stat. 1103)

"TITLE IV -- COORDINATED INTERGOVERNMENTAL POLICY AND ADMINISTRATION OF DEVELOPMENT ASSISTANCE PROGRAMS"

"DECLARATION OF DEVELOPMENT ASSISTANCE POLICY"

"Sec. 401. (a) The economic and social development of the Nation and the achievement of satisfactory levels of living depend upon the sound and orderly development of all areas, both urban and rural. Moreover, in a time of rapid urbanization, the sound and orderly development of urban communities depends to a large degree upon the social and economic health and the sound development of small communities and rural areas. The President shall, therefore, establish rules and regulations governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development, including programs providing Federal assistance to the States and localities, to the end that they shall most effectively serve these basic objectives. Such rules and regulations shall provide for full consideration of the concurrent achievement of the following specific objectives and, to the extent authorized by law, reasoned choices shall be made between such objectives when they conflict:

"(1) Appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes;

"(2) Wise development and conservation of natural resources, including land, water, minerals, wildlife, and others;

"(3) Balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other modes for the movement of people and goods;

"(4) Adequate outdoor recreation and open space;

"(5) Protection of areas of unique natural beauty, historical and scientific interest;

"(6) Properly planned community facilities, including utilities for the supply of power, water, and communications, for the safe disposal of wastes, and for other purposes; and

"(7) Concern for high standards of design.

"(b) All viewpoints -- national, regional, State and local -- shall, to the extent possible, be fully considered and taken into account in planning Federal or federally assisted development programs and projects. State and local government objectives, together with the objectives of regional organizations shall be considered and evaluated within a framework of national public objectives, as expressed in Federal law, and available projections of future national conditions and needs of regions, States, and localities shall be considered in plan formulation, evaluation, and review.

"(c) To the maximum extent possible, consistent with national objectives, all Federal aid for development purposes shall be consistent with and further the objectives of State, regional, and local comprehensive planning. Consideration shall be given to all developmental aspects of our total national community, including but not limited to housing, transportation, economic development, natural and human resources development, community facilities, and the general improvement of living environments.

"(d) Each Federal department and agency administering a development assistance program shall, to the maximum extent practicable, consult with and seek advice from all other significantly affected Federal departments and agencies in an effort to assure fully coordinated programs.

"(e) Insofar as possible, systematic planning required by individual Federal programs (such as highway construction, urban renewal, and open space) shall be coordinated with and, to the extent authorized by law, made part of comprehensive local and areawide development planning."

"FAVORING UNITS OF GENERAL LOCAL GOVERNMENT"

"Sec. 402. Where Federal law provides that both special-purpose units of local government and units of general local government are eligible to receive loans or grants-in-aid, heads of Federal departments and agencies shall, in the absence of substantial reasons to the contrary, make such loans or grants-in-aid to units of general local government rather than to special-purpose units of local government."

"RULES AND REGULATIONS"

"Sec. 403. The Bureau of the Budget, or such other agency as may be designated by the President, is hereby authorized to prescribe such rules and regulations as are deemed appropriate for the effective administration of this title."

SECTION 102 (2) (C) OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (83 Stat. 853)

"Sec. 102. The Congress authorizes and directs that, to the fullest extent possible; (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall--...

"(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--

"(i) the environmental impact of the proposed action.

"(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

"(iii) alternatives to the proposed action,

"(iv) the relationship between local short-term use of man's environment and the maintenance and enhancement of long-term productivity, and

"(v) any irreversible or irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

"Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, United States Code, and shall accompany the proposal through the existing agency review processes;...."

COVERAGE OF PROGRAMS UNDER ATTACHMENT A, Part I

1. Programs listed below are referenced several ways, due to transitional phases in program development, funding status, etc. Generally, citations are to programs as they are listed in the June, 1975 Catalog of Federal Domestic Assistance. For certain new legislation, Catalog citations have not yet been developed. In such cases, references are to Public Law number and section. When no funding is available for a program, it is not generally listed in the Catalog or this Attachment; but if funding becomes available for a program previously covered, it continues to be covered unless specifically exempted by OMB. The Catalog is issued annually and revised periodically during the year. Every effort will be made to keep Appendix I and Attachment D current. Reference should always be made to the one bearing the latest issue date. (However, the update to the 1975 Catalog will not reflect all the changes herein. Therefore, this list should be referenced until issuance of the 1976 Catalog.)

Asterisks indicate certain State formula grant programs requiring State plans which are also covered under Part III. When listed under Part I, reference is to applications for subgrants under the State allocation, not to the State's application for its allocation under the formula grant which is reviewable under Part III.

2. Heads of Federal departments and agencies may, with the concurrence of the Office of Management and Budget, exclude certain categories of projects or activities under listed programs from the requirements of Attachment A, Part I. (Also see Part I, paragraph 8.)

3. Covered programs

Department of Agriculture

10.405 Farm Labor Housing Loans and Grants

10.409 Irrigation, Drainage, and Other Soil and Water Conservation Loans (exception: Loans to grazing associations to develop additional pasturage and loans for purchase of equipment)

10.410 Low to Moderate Income Housing Loans

10.411 Rural Housing Site Loans

10.414 Resource Conservation and Development Loans

10.415 Rural Rental Housing Loans

10.418 Water and Waste Disposal Systems for Rural Communities

10.419 Watershed Protection and Flood Prevention Loans

10.420 Rural Self-Help Housing Technical Assistance

10.422 Business and Industrial Development Loans (Exception: Loans to rural small businesses having no significant impact outside community in which located.)

10.423 Community Facilities Loans

10.424 Industrial Development Grants

10.658 Cooperative Forest Insect and Disease Control

10.901 Resources Conservation and Development (Exception: Small projects costing under $7500 for erosion and sediment control and land stabilization and for rehabilitation and consolidation of existing irrigation systems.)

10.904 Watershed Protection and Flood Prevention

Department of Commerce

11.300 Economic Development-Grants and Loans for Public Works and Development Facilities

11.302 Economic Development-Support for Planning Organizations

11.303 Economic Development-Technical Assistance

11.304 Economic Development-Public Works Impact Projects (Procedural variation)

11.305 Economic Development-State and Local Economic Development Planning

11.306 Economic Development-District Operational Assistance

11.307 Economic Development-Special Economic Development and Adjustment Assistance Program

11.308 Grants to States for Supplemental and Basic Funding of Title I, II, and IV Activities (Basic grants only)

11.405 Anadromous and Great Lakes Fisheries Development

11.407 Commercial Fisheries Research and Development

11.418 Coastal Zone Management Program Development

11.419 Coastal Zone Management Program Administration

11.420 Coastal Zone Management - Estuarine Sanctuaries

Department of Defense

12.101 Beach Erosion Control Projects

12.106 Flood Control Projects

12.107 Navigation Projects

12.108 Snagging and Clearing for Flood Control

Department of Health, Education, and Welfare

13.210* Comprehensive Public Health Services-Formula Grants

13.211* Crippled Children's Services

13.217*	Family Planning Projects
13.224	Health Services Development-Project Grants.
13.232*	Maternal and Child Health Services
13.235	Drug Abuse Community Service Programs
13.237	Mental Health-Hospital Improvement Grants
13.240	Mental Health-Community Mental Health Centers
13.246	Migrant Health Grants
13.251	Alcohol-Community Service Programs
13.252	Alcohol Demonstration Programs
13.254	Drug Abuse Demonstration Programs
13.256	Office for Health Maintenance Organization (HMOS)
13.258*	National Health Service Corps
13.259	Mental Health-Children's Services
13.260	Family Planning Services-Training Grants
13.261	Family Health Centers
13.266	Childhood Lead-Based Paint Poisoning Control
13.267	Urban Rat Control
13.268	Disease Control-Project Grants
13.275	Drug Abuse Education Programs
13.284	Emergency Medical Services
13.286	Limitation on Federal Participation for Capital Expenditures
13.340	Health Professions Teaching Facilities-Construction Grants

13.369	Nursing School Construction - Loan Guarantees and Interest Subsidies
13.378	Health Professions Teaching Facilities-Loan Guarantees and Interest Subsidies
13.392	Cancer-Construction
13.400*	Adult Education-Grants to States
13.401	Adult Education-Special Projects
13.408*	Construction of Public Libraries
13.421	Educational Personnel Training Grants-Career Opportunities
13.427	Educationally Deprived Children-Handicapped
13.428*	Educationally Deprived Children-Local Educational Agencies
13.429*	Educationally Deprived Children-Migrants
13.433	Follow Through
13.464*	Library Services-Grants for Public Libraries
13.477	School Assistance in Federally Affected Areas-Construction
13.493*	Vocational Education-Basic Grants to States
13.494*	Vocational Education-Consumer and Homemaking
13.495*	Vocational Education-Cooperative Education
13.499*	Vocational Education-Special Needs
13.501*	Vocational Education - Work Study
13.502*	Vocational Education-Innovation
13.516	Supplementary Educational Centers and Services-Special Progams and Projects

13.519* Supplementary Educational Centers and Services, Guidance, Counseling, and Testing

13.520 Special Programs for Children with Specific Learning Disabilities

13.522 Environmental Education

13.543 Educational Opportunity Centers

13.570* Libraries and Learning Resources

13.600 Child Development-Head Start

13.612 Native American Programs

13.623 Runaway Youth

13.624* Rehabilitation Services and Facilities-Basic Support

13.626 Rehabilitation Services and Facilities-Special Projects

13.628 Child Development-Child Abuse and Neglect Prevention and Treatment

13.630* Developmental Disabilities-Basic Support

13.631 Developmental Disabilities-Special Projects

13.633* Special Programs for the Aging - State Agency Activities and Area Planning and Social Services Programs

13.634 Aging Programs Title III, Section 308, Model Projects

13.635* Special Programs for the Aging - Nutrition Program for the Elderly

16.636 Programs for the Aging - Research and Demonstration

16.637* Programs for the Aging - Training

P.L. 93-318: (Section 161) Construction of Academic Facilities

P.L. 93-641: (Section 1516) Planning Grants to Health Systems Agencies; (Section 1601 et seq., Title XVI Public Health Service Act) Assistance for modernization, construction or conversion of medical facilities. These programs will replace Catalog 13.206, 13.220, 13.249, and 13.253.

Department of Housing and Urban Development

14.001 Flood Insurance (Applications for community eligibility)

14.103 Interest Reduction Payments-Rental and Cooperative Housing for Lower Income Families

14.105 Interest Subsidy-Homes for Lower Income Families

14.112 Mortgage Insurance-Construction or Rehabilitiation of Condominium Projects

14.115 Mortgage Insurance-Development of Sales-Type Cooperative Projects

14.116 Mortgage Insurance-Group Practice Facilities

14.117 Mortgage Insurance-Homes

14.118 Mortgage Insurance-Homes for Certified Veterans

14.119 Mortgage Insurance-Homes for Disaster Victims

14.120 Mortgage Insurance-Homes for Low and Moderate Income Families

14.121 Mortgage Insurance-Homes in Outlying Areas

14.122 Mortgage Insurance-Homes in Urban Renewal Areas

14.124 Mortgage Insurance-Investor Sponsored Cooperative Housing

14.125 Mortgage Insurance-Land Development and New Communities

14.126 Mortgage Insurance-Management-Type Cooperative Projects

14.127 Mortgage Insurance-Mobile Home Parks

14.128 Mortgage Insurance-Hospitals

14.129 Mortgage Insurance-Nursing Homes and Related Care Facilities

14.134 Mortgage Insurance-Rental Housing

14.135 Mortgage Insurance-Rental Housing for Moderate Income Families

14.137 Mortgage Insurance-Rental Housing for Low and Moderate Income Families, Market Interest Rate

14.138 Mortgage Insurance-Rental Housing for the Elderly

14.139 Mortgage Insurance-Rental Housing in Urban Renewal Areas

14.141 Nonprofit Housing Sponsor Loans-Planning Projects for Low and Moderate Income Families

14.146 Public Housing-Acquisition (Turnkey and Conventional Production Methods) (New construction only)

14.149 Rent Supplements-Rental Housing for Lower Income Families

14.154 Mortgage Insurance-Experimental Rental Housing

14.156 Lower Income Housing Assistance Program

14.203 Comprehensive Planning Assistance

14.207 New Communities-Loan Guarantees

14.218 Community Development Block Grants-Entitlement Grants

14.219 Community Development Block Grants-Discretionary Grants

14.702 State Disaster Preparedness Grants

Department of the Interior

15.350 Coal Mine Health and Safety Grants

15.400* Outdoor Recreation-Acquisition, Development and Planning

15.501 Irrigation Distribution System Loans

15.503 Small Reclamation Projects

15.600 Anadromous Fish Conservation

15.605 Fish Restoration

15.611 Wildlife Restoration

15.904 Historic Preservation

Department of Justice

16.500 Law Enforcement Assistance-Comprehensive Planning Grants

16.501 Law Enforcement Assistance-Discretionary Grants

16.502* Law Enforcement Assistance-Improving and Strengthening Law Enforcement and Criminal Justice

16.515 Criminal Justice Systems Development

16.516 Law Enforcement Assistance - Juvenile Justice and Delinquency Prevention - Allocation to States

16.517 Law Enforcement Assistance Administration - JJPD Special Emphasis Prevention and Treatment

Department of Labor

17.211 Job Corps

17.226 Work Incentives Program (WIN)

17.230 Farm Workers (Procedural variation)

17.232* Comprehensive Employment and Training Programs

Department of Transportation

20.102 Airport Development Aid Program

20.103 Airport Planning Grant Program

20.205 Highway Research, Planning, and Construction

20.214 Highway Beautification-Control of Outdoor Advertising, Control of Junkyards, Landscaping and Scenic Enhancement

20.500 Urban Mass Transportation Capital Improvement Grants (Planning and construction only)

20.501 Urban Mass Transportation Capital Improvement Loans (Planning and construction only)

20.505 Urban Mass Transportation Technical Studies Grants (Planning and construction only)

20.506 Urban Mass Transportation Demonstration Grants

20.507 Urban Mass Transportation Capital and Operating Assistance Formula Grants

Appalachian Regional Commission

23.003 Appalachian Development Highway System

23.004 Appalachian Health Demonstration

23.005 Appalachian Housing Planning Loan Fund

23.008 Appalachian Local Access Roads

23.010 Appalachian Mine Area Restoration

23.011 Appalachian State Research, Technical Assistance, and Demonstration Projects

23.012 Appalachian Vocational Education Facilities and Operations

23.013 Appalachian Child Development

23.014 Appalachian Housing Site Development and Office State Improvement Grants

23.016 Appalachian Vocational Education and Technical Education Demonstration Grants

(NOTE: Except for 23.011, administration of these grants is not in the Commission but in the appropriate program agency -- e.g., 23.003 is handled by DOT. For 23.002, Appalachian Supplements to Federal Grants-in-aid, which can provide all or any portion of the Federal contribution under certain defined grant-in-aid programs, coverage under Part I is determined by the provisions applicable to the basic grant-in-aid program. For 28.003, 38.003, 48.003, 52.003, and 63.003 - Regional Commission Supplements to Federal Grants-in-aid - the same rule would apply.)

Coastal Plains Regional Commission

28.002 Coastal Plains Technical and Planning Assistance

(See note under Appalachian Regional Commission programs)

Four Corners Regional Commission

38.002 Four Corners Technical and Planning Assistance

(See note under Appalachian Regional Commission programs)

National Science Foundation

47.036 Intergovernmental Science

New England Regional Commission

48.002 New England Technical and Planning Assistance

(See note under Appalachian Regional Commission programs)

Community Services Administration

49.002 Community Action

49.010 Older Persons Opportunities and Services

49.011 Community Economic Development

Ozarks Regional Commission

52.002 Ozarks Technical and Planning Assistance

(See note under Appalachain Regional Commission programs)

Upper Great Lakes Regional Commission

63.002 Upper Great Lakes Technical and Planning Assistance

(See note under Appalachian Regional Commission programs)

Veterans Administration

64.005 Grants to States for Construction of State Nursing Home Care Facilities

64.017 Grants to States for Remodeling of State Home Hospital/Domiciliary Facilities

64.020 Assistance in the Establishment of New State Medical Schools

64.021 Grants to Affiliated Medical Schools-Assistance to Health Manpower Training Institutes

64.114 Veterans Housing-Guaranteed and Insured Loans (GI Home Loans)

Water Resources Council

65.001 Water Resources Planning

Environmental Protection Agency

66.001 Air Pollution Control Program Grants

66.005 Air Pollution Survey and Demonstration Grants

66.027 Solid Waste Planning Grants

66.028 Solid Waste Demonstration Grants

66.418 Construction Grants for Wastewater Treatment Works

66.419 Water Pollution Control-State and Interstate Program Grants

66.426 Water Pollution Control-Areawide Waste Treatment Management Planning Grants

66.432 Grants for State Public Water System Subdivision Programs

66.433 Grants for Underground Injection Control Programs

66.505 Water Pollution Control Demonstration Grants

66.506 Safe Drinking Water Research and Demonstration Grants (Demonstration only)

66.600 Environmental Protection-Consolidated Program Grants

66.602 Environmental Protection - Consolidated Special Purpose Grants.

Action

72.001 Foster Grandparents

72.002 Retired Senior Volunteer Program

72.008 The Senior Companion Program

Old West Regional Commission

75.002 Old West Technical and Planning Assistance

Pacific Northwest Regional Commission

76.002 Pacific Northwest Technical and Planning Assistance Regulations

FEDERAL ASSISTANCE

2. APPLICANT'S APPLICATION	a. NUMBER	3. STATE APPLICATION IDENTIFIER	a. NUMBER
	b. DATE Year month day 19		b. DATE ASSIGNED Year month day 19

1. TYPE OF ACTION (Mark appropriate box)
- ☐ PREAPPLICATION
- ☐ APPLICATION
- ☐ NOTIFICATION OF INTENT (Opt.)
- ☐ REPORT OF FEDERAL ACTION

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
- a. Applicant Name :
- b. Organization Unit :
- c. Street/P.O. Box :
- d. City : e. County :
- f. State : g. ZIP Code:
- h. Contact Person (Name & Telephone No.) :

5. FEDERAL EMPLOYER IDENTIFICATION NO.

6. PROGRAM (From Federal Catalog)
- a. NUMBER
- b. TITLE

7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT

8. TYPE OF APPLICANT/RECIPIENT
A-State; B-Interstate; C-Substate District; D-County; E-City; F-School District; G-Special Purpose District; H-Community Action Agency; I-Higher Educational Institution; J-Indian Tribe; K-Other (Specify):
Enter appropriate letter ☐

9. TYPE OF ASSISTANCE
A-Basic Grant; B-Supplemental Grant; C-Loan; D-Insurance; E-Other
Enter appropriate letter(s) ☐☐

10. AREA OF PROJECT IMPACT (Names of cities, counties, States etc.)

11. ESTIMATED NUMBER OF PERSONS BENEFITING

12. TYPE OF APPLICATION
A-New; B-Renewal; C-Revision; D-Continuation; E-Augmentation
Enter appropriate letter ☐

13. PROPOSED FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. TOTAL	$ .00

14. CONGRESSIONAL DISTRICTS OF:
- a. APPLICANT
- b. PROJECT

16. PROJECT START DATE Year month day 19

17. PROJECT DURATION Months

18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY ▶ Year month day 19

15. TYPE OF CHANGE (For 12c or 12e)
A-Increase Dollars; B-Decrease Dollars; C-Increase Duration; D-Decrease Duration; E-Cancellation; F-Other (Specify):
Enter appropriate letter(s) ☐☐☐

19. EXISTING FEDERAL IDENTIFICATION NUMBER

20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code)

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT ▶
a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

b. If required by OMB Circular A-95 this application was submitted, pursuant to instructions therein, to appropriate clearinghouses and all responses are attached:

	No response	Response attached
(1)	☐	☐
(2)	☐	☐
(3)	☐	☐

23. CERTIFYING REPRESENTATIVE
- a. TYPED NAME AND TITLE
- b. SIGNATURE
- c. DATE SIGNED Year month day 19

SECTION III—FEDERAL AGENCY ACTION

24. AGENCY NAME

25. APPLICATION RECEIVED Year month day 19

26. ORGANIZATIONAL UNIT

27. ADMINISTRATIVE OFFICE

28. FEDERAL APPLICATION IDENTIFICATION

29. ADDRESS

30. FEDERAL GRANT IDENTIFICATION

31. ACTION TAKEN
- ☐ a. AWARDED
- ☐ b. REJECTED
- ☐ c. RETURNED FOR AMENDMENT
- ☐ d. DEFERRED
- ☐ e. WITHDRAWN

32. FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. TOTAL	$ .00

33. ACTION DATE ▶ Year month day 19

34. STARTING DATE Year month day 19

35. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

36. ENDING DATE Year month day 19

37. REMARKS ADDED ☐ Yes ☐ No

38. FEDERAL AGENCY A-95 ACTION

a. In taking above action, any comments received from clearinghouses were considered. If agency response is due under provisions of Part 1, OMB Circular A-95, it has been or is being made.

b. FEDERAL AGENCY A-95 OFFICIAL (Name and telephone no.)

SECTION IV–REMARKS (Please reference the proper item number from Sections I, II, or III, if applicable.)

GENERAL INSTRUCTIONS

This is a multi-purpose standard form. First, it will be used by applicants as a required facesheet for pre-applications and applications submitted in accordance with Federal Management Circular 74-7. Second, it will be used by Federal agencies to report to Clearinghouses on major actions taken on applications reviewed by clearinghouses in accordance with OMB Circular A-95. Third, it will be used by Federal agencies to notify States of grants-in-aid awarded in accordance with Treasury Circular 1082. Fourth, it may be used, on an optional basis, as a notification of intent from applicants to clearinghouses, as an early initial notice that Federal assistance is to be applied for (clearinghouse procedures will govern).

APPLICANT PROCEDURES FOR SECTION I

Applicant will complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk "*", and use the remarks section on the back of the form. An explanation follows for each item.

Item

1. Mark appropriate box. Pre-application and application guidance is in FMC 74-7 and Federal agency program instructions. Notification of intent guidance is in Circular A-95 and procedures from clearinghouse. Applicant will not use "Report of Federal Action" box.

2a. Applicant's own control number, if desired.

2b. Date Section I is prepared.

3a. Number assigned by State clearinghouse, or if delegated by State, by areawide clearinghouse. All requests to Federal agencies *must* contain this identifier if the program is covered by Circular A-95 and required by applicable State/areawide clearinghouse procedures. If in doubt, consult your clearinghouse.

3b. Date applicant notified of clearinghouse identifier.

4a-4h. Legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of person who can provide further information about this request.

5. Employer identification number of applicant as assigned by Internal Revenue Service.

6a. Use Catalog of Federal Domestic Assistance number assigned to program under which assistance is requested. If more than one program (e.g., joint-funding) write "multiple" and explain in remarks. If unknown, cite Public Law or U.S. Code.

6b. Program title from Federal Catalog. Abbreviate if necessary.

Brief title and appropriate description of project. For notification of intent, continue in remarks section if necessary to convey proper description.

8. Mostly self-explanatory. "City" includes town, township or other municipality.

9. Check the type(s) of assistance requested. The definitions of the terms are:

A. Basic Grant. An original request for Federal funds. This would not include any contribution provided under a supplemental grant.

B. Supplemental Grant. A request to increase a basic grant in certain cases where the eligible applicant cannot supply the required matching share of the basic Federal program (e.g., grants awarded by the Appalachian Regional Commission to provide the applicant a matching share).

C. Loan. Self explanatory.

Item

D. Insurance. Self explanatory.

E. Other. Explain on remarks page.

10. Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If entire unit affected, list it rather than subunits.

11. Estimated number of persons directly benefiting from project.

12. Use appropriate code letter. Definitions are:

A. New. A submittal for the first time for a new project.

B. Renewal. An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year.

C. Revision. A modification to project nature or scope which may result in funding change (increase or decrease).

D. Continuation. An extension for an additional funding/budget period for a project the agency initially agreed to fund for a definite number of years.

E. Augmentation. A requirement for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged.

13. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of the change. For decreases enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in remarks. For multiple program funding, use totals and show program breakouts in remarks. Item definitions: 13a, amount requested from Federal Government; 13b, amount applicant will contribute, 13c, amount from State, if applicant is not a State; 13d, amount from local government, if applicant is not a local government; 13e, amount from any other sources, explain in remarks.

14a. Self explanatory.

14b. The district(s) where most of actual work will be accomplished. If city-wide or State-wide, covering several districts, write "city-wide" or "State-wide."

15. Complete only for revisions (item 12c), or augmentations (item 12e).

Item	
16.	Approximate date project expected to begin (usually associated with estimated date of availability of funding).
17.	Estimated number of months to complete project after Federal funds are available.
18.	Estimated date preapplication/application will be submitted to Federal agency if this project requires clearinghouse review. If review not required, this date would usually be same as date in item 2b.
19.	Existing Federal identification number if this is not a new request and directly relates to a previous Federal action. Otherwise write "NA".
20.	Indicate Federal agency to which this request is addressed. Street address not required, but do use ZIP.
21.	Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached.

APPLICANT PROCEDURES FOR SECTION II

Applicants will always complete items 23a, 23b, and 23c. If clearinghouse review is required, item 22b must be fully completed. An explanation follows for each item:

Item	
22b.	List clearinghouses to which submitted and show in appropriate blocks the status of their responses. For more than three clearinghouses, continue in remarks section. All written comments submitted by or through clearinghouses must be attached.
23a.	Name and title of authorized representative of legal applicant.
23b.	Self explanatory.
23c.	Self explanatory.
Note:	Applicant completes only Sections I and II. Section III is completed by Federal agencies.

FEDERAL AGENCY PROCEDURES FOR SECTION III

If applicant-supplied information in Sections I and II needs no updating or adjustment to fit the final Federal action, the Federal agency will complete Section III only. An explanation for each item follows:

Item	
24.	Executive department or independent agency having program administration responsibility.
25.	Self explanatory.
26.	Primary organizational unit below department level having direct program management responsibility.
27.	Office directly monitoring the program.
28.	Use to identify non-award actions where Federal grant identifier in item 30 is not applicable or will not suffice.
29.	Complete address of administering office shown in item 26.
30.	Use to identify award actions where different from Federal application identifier in item 28.
31.	Self explanatory. Use remarks section to amplify where appropriate.
32.	Amount to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in remarks. For multiple program funding, use totals and show program breakouts in remarks. Item definitions: 32a, amount awarded by Federal Government; 32b, amount applicant will contribute; 32c, amount from State, if applicant is not a State; 32d, amount from local government if applicant is not a local government; 32e, amount from any other sources, explain in remarks.
33.	Date action was taken on this request.
34.	Date funds will become available.
35.	Name and telephone no. of agency person who can provide more information regarding this assistance.
36.	Date after which funds will no longer be available.
37.	Check appropriate box as to whether Section IV of form contains Federal remarks and/or attachment of additional remarks.
38.	For use with A–95 action notices only. Name and telephone of person who can assure that appropriate A–95 action has been taken—If same as person shown in item 35, write "same". If not applicable, write "NA".

Federal Agency Procedures—special considerations

A. *Treasury Circular 1082 compliance.* Federal agency will assure proper completion of Sections I and III. If Section I is being completed by Federal agency, all applicable items must be filled in. Addresses of State Information Reception Agencies (SCIRA's) are provided by Treasury Department to each agency. This form replaces SF 240, which will no longer be used.

B. *OMB Circular A–95 compliance.* Federal agency will assure proper completion of Sections I, II, and III. This form is required for notifying all reviewing clearinghouses of major actions on all programs reviewed under A–95. Addresses of State and areawide clearinghouses are provided by OMB to each agency. Substantive differences between applicant's request and/or clearinghouse recommendations, and the project as finally awarded will be explained in A–95 notifications to clearinghouses.

C. *Special note.* In most, but not all States, the A–95 State clearinghouse and the (TC 1082) SCIRA are the same office. In such cases, the A–95 *award* notice to the State clearinghouse will fulfill the TC 1082 award notice requirement to the State SCIRA. Duplicate notification should be avoided.

[illegible]

APPENDIX C

MEMORANDUM OF UNDERSTANDING
BETWEEN
INTERGOVERNMENTAL RELATIONS DIVISION, STATE OF OREGON
AREAWIDE A-95 CLEARINGHOUSES, STATE OF OREGON, *
AND BUREAU OF RECLAMATION, U.S. DEPARTMENT OF
THE INTERIOR

Intergovernmental Relations Division, Oregon's State Clearinghouse, and Bureau of Reclamation, U.S. Department of the Interior, wish to establish procedures for coordinating plans and programs at federal, state and local government levels.

The notification and review process described in OMB Circular A-95 implements intergovernmental cooperation in the design and operation of federal projects and activities. A-95, Part II, directs federal agencies to consult with the Governor, state and area-wide clearinghouses and local elected officials to assure that federal programs and projects are consistent with local, regional and state plans.

The Circular requires notification of state and areawide A-95 clearinghouses at the earliest feasible stage in project or development planning.

The following procedures are to be employed:

A. The Bureau of Reclamation, U.S. Department of the Interior, agrees to inform state and appropriate area-wide clearinghouses of projects in the categories listed below. These projects have potentially significant impact on state, area-wide or local plans or programs or on the physical environment:

1) Construction, public works or development;
2) Land acquisitions, disposals, right-of-way, exchanges, land uses;
3) Land use planning;
4) Environmental impact statements;
5) "Significant" licenses and permits.

Specifically, these programs will be submitted for review by A-95 clearinghouses: All Federal Reclamation Projects (catalogue of Federal Domestic Assistance number 15.504) initiated under provisions of the Flood Control Act of 1944 and Senate Document 97.

B. Notification procedures will include:

1) Notification of clearinghouses at the earliest feasible point in project planning. Specifically:

- A notice of initiation of investigation at the time each new investigation begins;

* As signed in attachments

- Annual status statements while investigations are in progress;

- All published reports and environmental impact statements.

2) Minimum information provided clearinghouse will include:

- Identity of applicant;

- Description of proposed planning or development activity by purpose, size, cost and impact on state or local government plans or programs;

- Geographic location of project, including map if appropriate;

- Anticipated time frame for implementation.

3) Clearinghouses will have a minimum of 30 days for initial review and comment and an additional 30 days to address questions or concerns raised in initial review.

4) The Bureau of Reclamation, U.S. Department of the Interior, will notify clearinghouses within seven (7) days of actions taken on reviewed proposals, such as implementation, abandonment or postponement.

C. A-95 Clearinghouses in Oregon will do the following:

1) Coordinate state agency and areawide reviews of Bureau of Reclamation, U.S. Department of the Interior, proposals. Comments will focus upon the relationship of these proposals to state, local or area-wide plans and programs and on environmental impact.

2) Notify Bureau of Reclamation, U.S. Department of the Interior, of initial state agency and local government comments on proposals within 30 days.

3) Assist in resolving conflicts identified through state and areawide review.

Direct contacts between Bureau of Reclamation, U.S. Department of the Interior, and other state or local agencies are in no way limited by this agreement. Such contacts are encouraged to promote more effective communication and coordination.

This memorandum will become effective upon November 1, 1976. It will be reviewed annually to evaluate the need for modifications. If all parties agree to no change, resignature will not be necessary.

Intergovernmental Relations Division

William H. Young
Administrator

APPENDIX D

A-95/CZM PROPOSAL: INFORMAL COMMENTS FROM STATE AGENCIES

Division of State Lands:

- Concern about maintaining present review of federal permits (Corps, Coast Guard?);
- Perceive DSL role as coordinator for natural resource agencies. Use of DSL authority (ownership and regulatory) to issue state position on Corps permits;
- Feels present contacts with other agencies in permit review essential to their work;
- Local government plans and other state agency concerns part of DSL decision-making process;
- Feels DSL review is adequate and decisions broadly based;
- Must take goals and guidelines into account when making decisions;
- Expects LCDC to make consistency determination, DSL will simply forward it;
- Revise flow chart in proposal to adequately show IRD/LCDC respective roles;
- Concerned about IRD's role in decision-making and "Executive Department power grab;"
- Some sensitivity to our "broad management" concerns.

Water Resources:

- Unwise to establish independent CZM review process;
- A-95 appropriate system to include CZM review, but concerned about quality of agencies' comments;
- Don't believe state permit agencies can adequately make consistency decision;
- LCDC should make decision on consistency.

Fish and Wildlife:

- Concern about expansion of Executive Department power ("big permit giver");
- Feels decisions should rest within agencies having "technical expertise", and not be responsive to "political and local interests;"
- Pleased with DSL's review of Corps permits. Present state Agency reviews would have to be expanded to include consistency determination;
- Need to define consistency;
- Need to inventory and enumerate federal actions in the coastal zone;
- Need to determine where state agencies already affect federal decision-making;

- Use of A-95 more burdensome to applicants (requires contact of federal or state permit agencies plus state and areawide clearinghouses). Under DSL system applicant only notifies federal agencies;
- How will conditions be attached to CZM decision?
- It would be interesting to review past federal actions in coastal zone;
- "Excluded federal lands" decision could be a problem. 36% of coastal zone is federal.

Department of Geology and Mineral Industries:

- Prefers use of single comprehensive review system;
- No state counterpart for Forest Service mining permits;
- GMI issues permits on BLM and by agreement;
- Will A-95 create any timing problems?

Department of Economic Development:

- Proposal represents an opportunity to express economic development concerns not available under existing state agency reviews of federal permits;
- Interested in threshholds for review of projects.

Department of Transportation: (Planning Section, Highway Division)

- Feels A-95 provides better system for relecting transportation concerns. ODOT not included on DSL review list;
- Coast Guard bridge permits very complex--mesh with many other regulatory authorities.

Aeronautics (ODOT):

- General support; Prefers use of A-95, (with LCDC making decision) to reliance on state permit systems.

Parks (ODOT):

- Conducts many required reviews (SHPO) which they receive through a variety of contacts (5,000 per year!);
- Confusion about internal review responsibilities and procedures;
- Responds only to first notice received on project. Would prefer central contact point for coordination of reviews in state;
- Concerned about potential for "missing" an important project;
- Could Parks be written into memoranda with BLM and Forest Service for timber sales?

Department of Energy:

- Prefers use of A-95;
- Poor communication with LCDC;

- What about OCS activities?
- Aren't energy facilities unique in some respects? They do require more than one federal permit. All state agencies and local governments bound by DOE decision.
- General support. Does not comprehend review systems very well

Soil and Water Conservation Commission:

- Feel too many duplicative reviews already. General support.

Forestry:

- No informal comments.

Budget and Management:

- General support from Chuck Crump;
- Would like copy of flow chart.

LCDC:

- Only real criterion for review is to minimize delay (Ross);
- See IRD proposal as extention of one-stop permit system (Brauner);
- In long run, state also needs system to tie local comprehensive plans to all land use decisions (Brauner);
- DSL and DEQ permits are 95% of total volume (Ross);
- Brauner also worked for Land Board;
- Questions sequence of applications for state and federal permits (Brauner);
- Don't wait to make CZM decisions;
- Change cover letter;
- Suggests specific wording and format changes (Alabaster).

INFORMAL COMMENTS FROM FEDERAL AGENCIES

Department of Interior:

- We refuse many applications. Why review them unnecessarily? (BLM);
- Oregon will need separate memoranda with our OCS office in L.A. (BLM);
- Review of federal permits is important to some non-regulatory federal agencies, too (Fish and Wildlife);
- Must have threshholds, not just categories of permits (Solicitor);
- Can't substitute state decision-making for federal (Solicitor);
- 2-step permit process for oil and gas drilling includes coordination with other federal agencies (BLM);
- Receptive to using memoranda for establishing CZM process.

Department of Transportation:

- States can't veto federal actions! (Coast Guard);
- Need better picture of existing federal actions in coastal zone;
- Like idea of consolidating reviews (FAA);
- Maybe NEPA would work as well as A-95 (FAA);
- How will A-95 time frames work when unresolved conflicts in coastal zone?
- A-95 time frames well suited for CZM review (Hal Alabaster);
- Will time frames make every permit review last 6 months? (John Spence);
- Proposal should outline administrative remedies for each participant (Spence);
- Not clear if state makes decision in 307 (d) (Spence);
- Proposal should mention State Clearinghouse also handles NEPA reviews;
- Will LCDC sign memoranda, or will they require separate treaties? (Lorin, Nielson);
- We don't like memoranda (Coast Guard);
- "Significant" licenses and permits definition still confusing (Spence);
- Use more legalistic language in text of proposal (Spence and FAA);
- "Significant" permits should be negotiated between state and federal agencies.

Federal Highway Administration:

- What information will LCDC require to make CZM decision?
- We need to start consolidating federal hearings. 404, Coast Guard permits, NEPA all require hearings;
- FHWA has direct contact with ODOT on most projects, has an office in Salem;

- What about eliminating duplication with SHPO and endangered species review?
- Interested in A-95 training--maybe video tape;
- Also interested in memoranda process to whittle down paperwork;
- Does CEQ's "lead agency concept" apply here?
- What about federal "activities" not covered by A-95?

US Forest Service:

- Prefers "single system" approach using memorandum;
- Federal agencies are confused by differences between Oregon and Washington CMP's;
- LCDC left impression they were using A-95;
- USFS confused by LCDC proposal;
- Feels permits are covered sufficiently in draft memorandum; don't need another "significant" list.

Army Corps of Engineers:

- Can live with different processes for federal development and federal permits;
- There are several types of important approvals not called "permits". Maybe they should be included;
- Problems in cases where federal agencies are applicants for federal permits;
- Corps public notice doesn't provide a project summary, but information on application is sketchier;
- Feels A-95 personnel change too rapidly;
- Confusing to Corps if their staff must decide what needs to be reviewed by state;
- "We don't have any insignificant permits". Should use same process for all;
- Interested in memoranda;
- Sec. 404 will probably be delegated to states and EPA;
- Like present system--but will do "Whatever the Governor wants".

National Marine Fisheries Service:

- Agrees that few agencies see the whole system;
- Fears executive authority in regulatory matters;
- Would like to use an existing process. Present system adequately reflects their regulatory concerns;
- Would like to know more about present permit volume;
- Interested in alternative between IRD and LCDC proposal, but gave no specifics;
- Would like to see a chart pointing out differences in two proposals;
- Will IRD make CZM decision?

- Does A-95 provide adequate information?
- Will use of A-95 lead to more meetings?

MISCELLANEOUS COMMENTS

State of Washington (DOE):

- Still confused about "federal activities". Why hasn't IRD included them?
- Haven't really implemented provisions yet. Worried about it becoming too cumbersome;
- Grant programs for review are being listed, but this is difficult;
- Finally forced to write internal DOE document about how consistency will be handled;
- Haven't eliminated duplicate public notice yet.

1000 Friends of Oregon (Dick Benner):

- LCDC needs to spell out interim procedures;
- State not yet organized to implement management program.

AIP (Maradel Gale):

- Local governments are unable to reflect the national interest.

WETA (Dave Tegart):

- Section 307 doesn't really provide any new handles on federal agencies.

INFORMAL COMMENTS FROM LOCAL GOVERNMENTS

AOC/LOC:

- General support (AOC);
- Local governments should make CZM decision (LOC);
- Need threshholds on Corps permits (LOC);
- LCDC shouldn't have ability to veto local decision;
- What about interim before comp plans are adopted/approved?
- Don't like possible extension of permit review over entire state (LOC):
- LCDC hasn't done a good job identifying permits (LOC);
- Local governments are applicants for federal permits, too, so don't want to be held up;
- Need a better description of consistency and the CMP in the proposal;
- Proposal should point out benefits to different levels of government for CZM review;

- Need a chart showing roles of each participant;
- Don't depend too heavily upon county coordinators, LCDC doesn't (LOC);
- Maybe LCDC shouldn't have any review capacity in interim either (LOC);
- Would like LCDC to use authority to override state agencies? (LOC);
- Let's look at long-range prospects for federal consistency (LOC);
- Zoning already gives local governments sufficient authority over federal permits for private developments;
- CZM decision may generate political heat for local governments, clearinghouses.

Coastal Cogs:

- New flow chart doesn't reflect changes in proposal;
- County coordinators important;
- Any tools developed for CZM must be as flexible as A-95 (L-COG);
- Permit list is very imcomplete (L-COG);
- "Our narrative is better than yours" (L-COG);
- IRD language is misleading re: inclusion of significant permits as direct development (L-COG);
- Don't agree there is a need to specify certain grants for CZM review. Nearly every program might lead to development (L-COG);
- Areawide clearinghouses should help draft criteria for comparison of proposals (L-COG);
- Intergovernmental Cooperation Act misidentified in CZMA (L-COG);
- A-95 supercedes and precedes federal consistency provisions;
- Disagree with proposal re: NPDES permits. COGs are already reviewing these (L-COG);
- LCDC is screwing up internal A-95 review. IRD needs to hold conference to resolve;
- LCDC should describe appeals procedures;
- CZM review might collapse from its own weight;
- Would like a classification system for different levels of consistency based upon magnitude of impact on land and water uses;
- Would like to distinguish grant programs affecting land and water uses;
- Must demonstrate benefits to locals (CCCOG);
- Need to assess costs of local participation;
- Proposal needs better description of relationship to NEPA (CCCOG);
- Need to identify interim procedures and criteria for LCDC staff review (CCCOG);
- Need to clearly identify what consistency means at local level (CCCOG);

- Reread "J. Alfred Prufrock" (CCCOG);
- Proposal should have appendix relating CZMA and Intergovernmental Cooperation Act; (L-COG)
- Need to update proposal with recent developments; (L-COG)
- Point out confusion about "applications from local governments", etc.; (L-COG)
- Proposal is state-oriented, often neglects areawide role; (L-COG);
- This project has provided good opportunity to revise our A-95 processes (CTIC and URCOG);
- Afraid some local officials may prefer state agencies to LCDC decision (URCOG);
- System must work for big and small projects--Brown & Root as well as boat moorage;
- Interest in setting threshholds for permit review (CTIC);
- LCDC shouldn't decide consistency until final application is reviewed (L-COG);
- Still need good inventory of federal permits;
- System should include CZM comments other than yes/no;
- Proposal should recommend funding for CZM review;
- Paper flow with LCDC needs to be straightened out;
- System must encompass differences among areawides.

WRITTEN COMMENTS FROM STATE AGENCIES

DEQ:

- Consistency should be handled with a minimum of paperwork and delay;
- DEQ does not have the expertise in land use planning or knowledge of local land use plans to determine overall consistency of federal permits, so local planning agencies or LCDC should decide;
- Suggests a process for CZM decision-making (Suggested time frames conflict somewhat with A-95);
- Presents criteria for its own internal review;
- Any conflicts should be resolved through A-95 conferences;
- Public hearings for major actions should be held by LCDC;
- Federal permits delegated to state agencies should be circulated by those agencies through their amended public notice processes (eg. NPDES);
- Suggests criteria for CZM decision-making in these cases;
- Direct development and federal assistance should be handled through A-95.

Aeronautics:

- General support;
- A-95 has worked well for us in the past;
- CZM review should be coordinated by a single agency;
- Proposal will enhance the already existing system.

Forestry:

- General support for using established A-95 procedures;
- Don't know of any missing permits.

Agriculture:

- Confused, discusses NEPA and permit systems;
- Occasionally must respond on same project to different sources.

Geology & Mineral Industries:

- General support;
- Comments on wording used on P. 1 of proposal.

Energy:

- General support;
- CZM decision must consider unique provisions of energy facilities citing certification--it binds all other state and local agencies;
- List several federal approvals which LCDC may want to add to the list;
- Will consult directly with LCDC to assure CZM consistency of energy facilities.

LCDC:

- Proposal does not reflect that it is an alternative;
- Proposal should discuss nature of changes made in successive drafts.
- Proposal might lead to conflicting decisions from different state agencies;
- LCDC doesn't want to make CZM decision;
- Proposal is unclear how IRD can integrate various review requirements;
- Reviews of federal permits might not be able to be combined under IRD proposal if applicant chooses to seek permits at different times;
- Existing state agency reviews can assess projects "as a whole";
- Proposals "conclusions" section alleges many points that can't be proved.

WRITTEN COMMENTS FROM FEDERAL AGENCIES

Forest Service:

- Support proposal, have recommended it to LCDC;
- Proposal eliminates need to establish duplicate coordinative systems;
- Suggest specific wording changes on pp. 3,5,8,10,11.

Federal Power Commission:

- FPC is neither construction nor granting agency, so it's not subject to A-95;
- Various federal statutes require FPC coordination with states. This is done directly with certain state agencies;
- Suggest specific wording changes on attached list of federal permits/licenses.

Fish and Wildlife Service, DOI:

- General support. Memorandum will provide better coordination;
- Would like to be notified of future changes in proposal.

EDA:

- Very supportive of combining CZM review with A-95.

Department of Transportation:

- General support;
- Must have system that prevents contradictory recommendations from state to federal agencies;
- Suggest specific wording changes on pp. 2,3,5,6,8,10,12.

Federal Highway Administration (DOT):

- Strong support. Believe A-95 is especially well suited to serve as focal point for review;
- Proposal provides for adequate retention of control by LCDC;
- LCDC's proposal already uses A-95 for 2 categories of review. Why not make the system uniform?
- Clearinghouse work load will increase. However, there will be an opportunity to combine reviews of permits and federal assistance for highway projects;
- Permit information will exceed information for federal aid, but A-95 system is flexible enough to provide it;
- IRD should encourage similar elimination of duplication and paperwork statewide.

FAA (DOT):

- General support;
- It appears proposal might extend A-95 six months in some cases;
- Close relationship between NEPA and CZM should be investigated. EIS review might suffice for CZM decision;
- Worried that local government might veto federal action if it finds inconsistency;
- Don't believe state can modify CMP without approval of federal agencies;
- FAA doesn't license airports. Suggest change in permit list;
- Doesn't believe FAA needs memorandum with state.

Coast Guard (DOT):

- Not a granting agency, so will not discuss grant review;
- State could attach CZM decision to Section 401 water quality certification already received by Corps, so A-95 notification would be unnecessarily duplicative;
- Determination of consistancy is made by Coast Guard, not the state;
- Doesn't like memoranda, feels they are contrary to intent of CZMA.

BLM (DOI):

- General support;
- Believes proposal avoids duplication of effort and confusion in review;
- Information needed for CZM decision should be same listed in memorandum;
- Also suggests specific wording changes on pp. 3,5,6,8,13 and addenda;
- Contact BLM office in L. A. to discuss OCS impacts.

WRITTEN COMMENTS FROM OTHER STATES

Florida (CMA):

- Considering a similar approach;
- Not presently reviewing permits and licenses;
- Suggests possibility of using FRC as forum to resolve potential conflicts in coastal zone.

Ohio (CMA?):

- Generally supports avoiding duplication;
- Why should LCDC review proposal twice (steps 4 and 8), could be done at step 8 alone?

Washington (Clearinghouse):

- Washington's system is different, but A-95 will be utilized;
- Would like to exchange Clearinghouse Weekly Bulletins on a regular basis.
- Service already provided to MCEDD and CRAG.

Mississippi (Clearinghouse):

- Various federal programs requiring reviews create duplication with A-95;
- Have used memoranda with state and federal agencies to prevent it;
- Would like to hear more about One-Stop Permit System;
- Adoption of CMP here is probably two years away.

California (CMA):

- Not enough time to comment;
- Sent copy of their legislation.

MISCELLANEOUS WRITTEN COMMENTS

Marc Hershman (Institute for Marine Studies, University of Washington):

- Sec. 307 (c) (1) and (2) need more attention. Federal agencies determine consistency in these cases. How would IRD handle it?
- 307 regulations may eventually require some modification of proposal;
- Concerned about effectiveness of A-95 because "it occurs so late". LCDC needs

mechanisam to evaluate larger projects at earlier date (before permits are requested);

- Good luck! Watch out for Ted LaRoe;
- Suggests specific word changes and makes other comments in margin of proposal.

AIP (Maradel Gale):

- General support;
- What is result of "excluded federal lands" decision--appears to be no way state can be involved in many activities now?
- Some controls over forest practices needed, even if they aren't "permits".
- 38% of coastal zone is federal;
- State must review important federal activities on federal land.

Bill Williamson (School of Law, University of Washington):

- "Washington's CMP has recognized A-95 as the primary means of achieving federal consistency with the state management program by identifying the potential impacts of federal or federally assisted programs which may affect the state's coastal zone" (p. 24);
- A-95 insufficient tool for CZM veto power (p. 26);
- A-95 a weak mechanism to resolve conflicts, has inadequate conflict resolution procedures. (pp. 26-27).
- These and other comments are included in the text of a study done by Williamson related to the Trident project in the Puget Sound. The study also contains an extensive bibliography which might be useful in drafting our final report and publicity articles.

WRITTEN COMMENTS FROM LOCAL GOVERNMENTS:

AOC/LOC:

- COG's will assume regulatory functions under IRD proposal. This appears to be potentially controversial action, and might not be acceptable to local officials;
- How will COG's be funded to pay for additional work?
- Proposal makes little distinction between permits and grants in the review process. Is this practical, considering vast differences between types of individuals and organizations applying for permits and grants?
- What are benefits of consistency program in light of "exluded federal lands" decision?
- Will consistency provisions give the federal government review and approval powers that they do not presently enjoy over state and local actions? For example, would it not be possible for the federal government to decide a nuclear power plant will be placed in the coastal zone over state and local objections if in "national interest"?

- It would be helpful if IRD would list specific types of permits included (for example, rip-rap, fill, dredge, etc.) and discuss criteria for determining what is "significant" and subject to review. Also could use common terminology to aid local officals and citizens;
- Once cities and counties have plans in compliance, will there be changes in CZM review system?

APPENDIX E

OREGON PROJECT NOTIFICATION AND REVIEW SYSTEM

STATE OF OREGON

PROJECT NOTIFICATION & REVIEW SYSTEM

What it is -- How it works

INTRODUCTION

The Project Notification and Review System (PNRS) implements a Federal Executive Order which requires applicants for Federal grants-in-aid to advise appropriate regional and state clearinghouses of their intended action. The comments generated in the review process are attached to the formal application and forwarded to the funding agency for its information and guidance. The PNRS is thus often viewed with heavy "approval/disapproval" overtones. It is in reality a process of communication which, if used correctly by the applicant, can result in a better designed, more highly beneficial product. The system is a "sounding board" of ideas and policies rather than a board of inquiry which dictates a decision. In essence, it is an "early warning system" from which the opportunity for a meaningful exchange of ideas or concepts is presented. The emphasis is on early, and if it is to work effectively, it is imperative that the prospective recipient of Federal assistance incorporate the A-95 process into his on-going planning cycle.

Purpose

From a philosophical standpoint, while the primary purpose of the PNRS is to coordinate plans and programs, it should be remembered that the purpose of the Federal programs is to help the applicant in the solution of a problem. Therefore, the PNRS emphasis should be on helping the applicant to develop the best possible project to achieve his objectives in a manner that will not do violence to the plans and programs of other jurisdictions and agencies.

To work effectively, clearinghouses must have comprehensive planning capabilities or direct access to such capabilities in order to identify the compatibility of proposed projects to statewide or areawide plans. In addition, it can well happen that a project which is not incon-

sistent with state or areawide comprehensive planning may be in conflict with the plans or programs of a particular state or local agency. Thus, when an applicant sends a notification to the State Clearinghouse, the Clearinghouse will not only examine the project from the standpoint of statewide comprehensive planning, but will also forward a copy of the notification to any state agencies having plans or programs that might be potentially affected. The purpose of this is to ascertain their interest in the project from an agency standpoint and the possibility of participating in follow-up conferences with the applicant. (The regional or metropolitan clearinghouse to which the applicant also sends the notification will, similarly, contact specific local governments and agencies which might be affected.)

Procedures

The potential applicant (state or local agency, or other) seeking assistance under the Federal grant-in-aid program[1] should notify both the state and the regional clearinghouses of his intent to do so. For some programs, Federal agencies have developed what are, in effect, pre-application forms that could also serve as project notifications. However, OMB has told Federal agencies that Federal forms are to be considered optional as project notification forms. Therefore, the State Clearinghouse requires the exclusive use of Form PNRS-1 by the applicant in compliance with A-95.

The notification should include a brief summary description of the proposed project. Supporting information such as small maps, digests of economic, environmental or engineering studies should be included when available so that the reviewing agencies can make the review process a useful one. Certainly the amount and detail of information provided at the Project Notification stage will - because of the great diversity of programs covered - tend to be highly variable. For some types of projects many months may be required to develop the proposal and it may be that information initially provided at the notification stage may be quite sparce and sketchy. A one or two sentence description, however, will not suffice for review purposes and the applicant should make an attempt to provide a meaningful synopsis of the project.

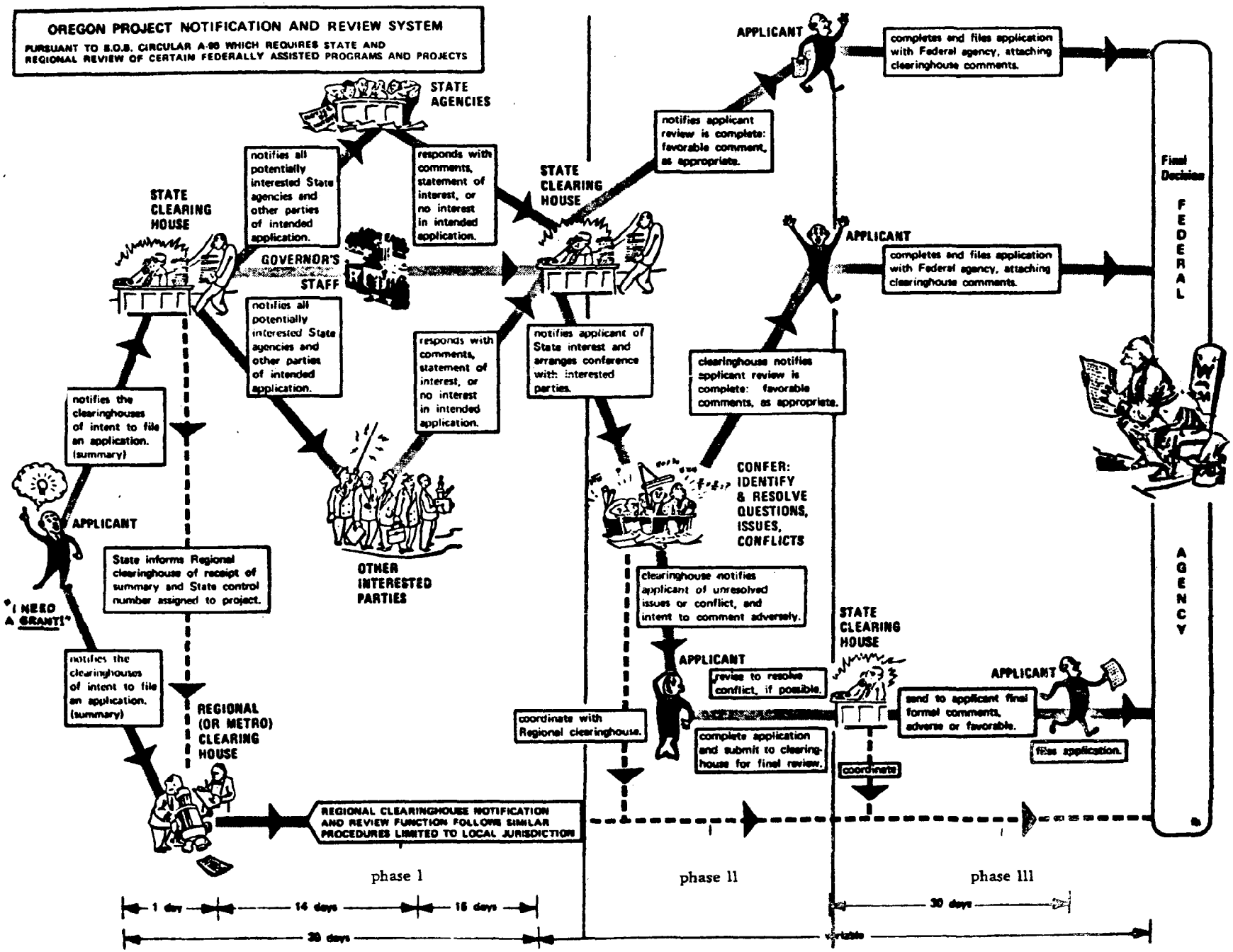
---

[1] Local applicants should refer to OMB Circular A-95, Appendix D to determine whether or not a pre-application review of their project is required.

The Clearinghouses have 30 days in which to complete their initial review of the application project (Phase I). If during Phase I issues or conflicts surface, or additional information is required, the applicant will be notified by the Clearinghouse that the notice has been placed in Phase II. (Theoretically, Phase II could begin one day after it is received by the Clearinghouse. Although this would be highly impractical, the point to remember is that Phase I is 30 days or less, while Phase II is an indefinite period of time.) During this period and subsequently, the Clearinghouse will arrange conferences, or other communication, in order to resolve the problems identified. At the same time, the applicant should begin the process of preparing his final application although this may not be practical in every case. If and when the problem is resolved, the Clearinghouse will prepare a letter of confirmation, concluding the review process. If necessary, the Clearinghouse may have an additional 30 days in which to review the formal application and file comments to accompany the application (Phase III). Thus, when the final application is received by the Federal agency, either all issues will have been resolved, or at least clearly identified. The Clearinghouse response will then be used by the federal agency in making its decision concerning the grant.

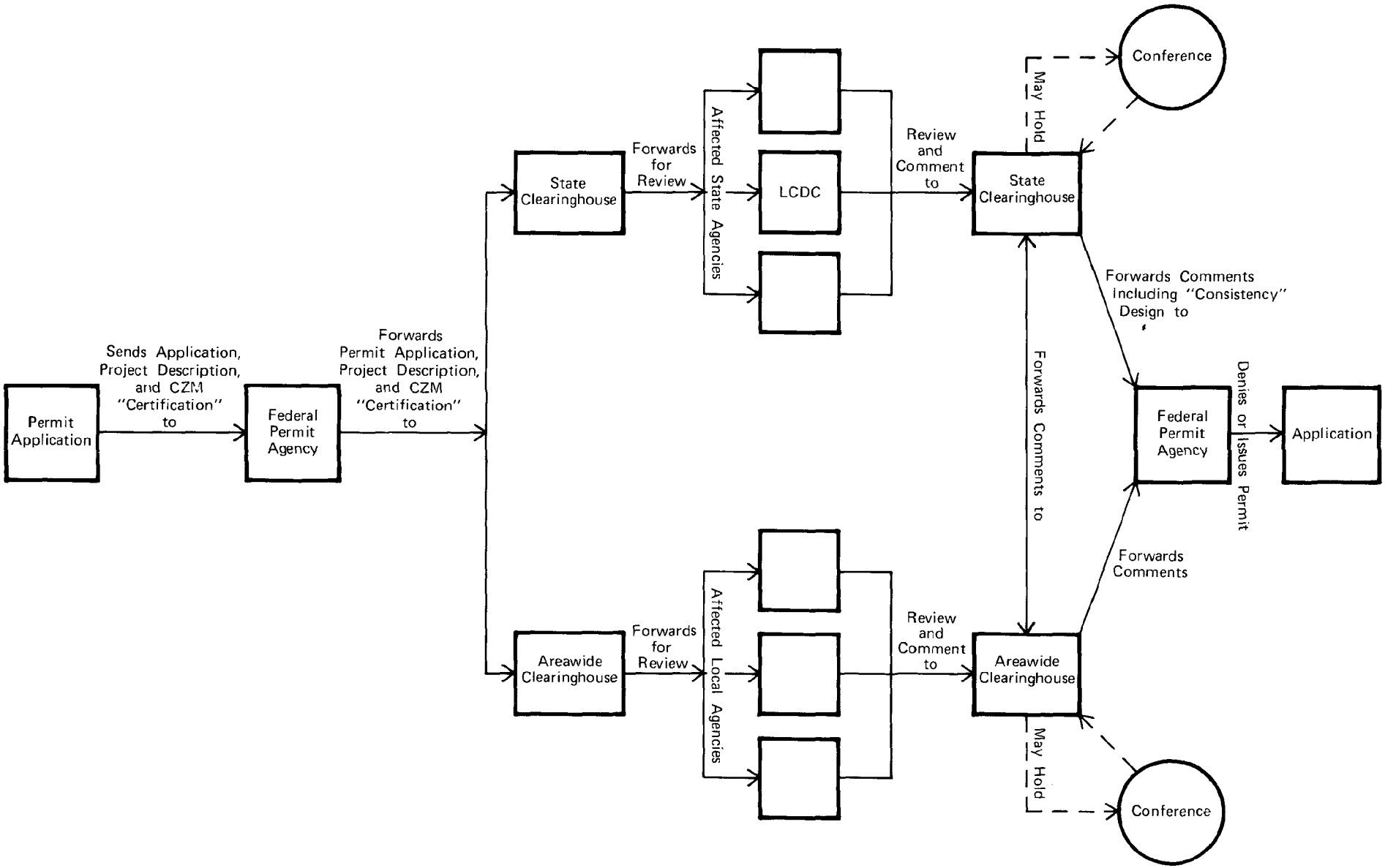
Summary

The Project Notification and Review System should be considered to be a part of the planning process - an early warning device. The important thing is that the Clearinghouse is put on notice. Even if the initial information is lacking in complete detail, it should still be submitted since the Clearinghouse can serve the applicant best if it is informed at the earliest possible time. As additional information and detail becomes available, it can then be submitted to supplement the review. This permits the Clearinghouse to steer the applicant away from conflicts or toward new opportunities as he refines the project for which he seeks Federal Aid. In every instance, of course, the Clearinghouse will want to expedite the review as quickly as possible so that the applicant will not be unnecessarily delayed in his request for Federal Aid.


OREGON PROJECT NOTIFICATION AND REVIEW SYSTEM
PURSUANT TO B.O.B. CIRCULAR A-95 WHICH REQUIRES STATE AND REGIONAL REVIEW OF CERTAIN FEDERALLY ASSISTED PROGRAMS AND PROJECTS
STATE AGENCIES
STATE CLEARING HOUSE
notifies all potentially interested State agencies and other parties of intended application.
responds with comments, statement of interest, or no interest in intended application.
GOVERNOR'S STAFF
notifies all potentially interested State agencies and other parties of intended application.
responds with comments, statement of interest, or no interest in intended application.
notifies the clearinghouses of intent to file an application. (summary)
APPLICANT
"I NEED A GRANT!"
State informs Regional clearinghouse of receipt of summary and State control number assigned to project.
notifies the clearinghouses of intent to file an application. (summary)
REGIONAL (OR METRO) CLEARING HOUSE
OTHER INTERESTED PARTIES
REGIONAL CLEARINGHOUSE NOTIFICATION AND REVIEW FUNCTION FOLLOWS SIMILAR PROCEDURES LIMITED TO LOCAL JURISDICTION
STATE CLEARING HOUSE
notifies applicant of State interest and arranges conference with interested parties.
APPLICANT
notifies applicant review is complete: favorable comment, as appropriate.
clearinghouse notifies applicant review is complete: favorable comments, as appropriate.
CONFER: IDENTIFY & RESOLVE QUESTIONS, ISSUES, CONFLICTS
clearinghouse notifies applicant of unresolved issues or conflict, and intent to comment adversely.
APPLICANT
revise to resolve conflict, if possible.
complete application and submit to clearinghouse for final review.
coordinate with Regional clearinghouse.
STATE CLEARING HOUSE
coordinate
APPLICANT
send to applicant final formal comments, adverse or favorable.
files application.
APPLICANT
completes and files application with Federal agency, attaching clearinghouse comments.
APPLICANT
completes and files application with Federal agency, attaching clearinghouse comments.
Final Decision
FEDERAL AGENCY
phase I
phase II
phase III
1 day
14 days
15 days
30 days
30 days
variable

APPENDIX E (Figure 2)

Proposed Process for Review of Federal Permit Applications



APPENDIX F

Copies of individual coastal clearinghouse reports may be obtained from the State of Oregon, Executive Department, Intergovernmental Relations Division.

APPENDIX G

ROBERT W. STRAUB
GOVERNOR

Department of Land Conservation and Development

1175 COURT STREET N.E., SALEM, OREGON 97310 PHONE (503) 378-4926

M E M O R A N D U M

June 9, 1977

TO: Land Conservation and Development Commission

FROM: Anne Squier

SUBJECT: REPORT AND RECOMMENDATION OF TASK FORCE ON FEDERAL CONSISTENCY AND STATE FEDERAL COORDINATION

This Task Force held a fifth and final meeting on June 8th. Attached is our report and recommendation to the Commission. The recommendations and recommended process do not have the unanimous support of the Task Force. The Task Force recognizes and regrets that its report is coming to you without lead time.

1. The Task Force decided that Oregon should proceed to implement a consistency process as soon as possible without tailoring to any "draft" federal regulations since these may well change.

2. The Task Force urges that a clear explanation of the consistency process and its goals, together with suggested alternatives of procedures which could be used for the local review, be drafted and presented to local jurisdictions prior to implementation. There also remains state agency to federal agency one on one discussion of details of processing and communication.

3. The Task Force urges close monitoring of the implementation of the process, with fine tuning where necessary. The Task Force members indicated willingness to be called upon for further work, review of the process, etc.

4. Attached to the recommended process is:

   a. a list of permit and licenses subject to the consistency review and of the "counterpart state agencies";

   b. a list of Task Force members;

   c. a copy of the cover memo which was circulated with the draft document;

   d. a staff summary of the comments received in response to that draft circulation.

The Process

The basic process recommended utilizes the lead state agency concept. That agency provides public notice.

Two discussions are made:

1. Local determination of compliance with statewide goals and with an acknowledged plan if there is one.

2. State agency permit decisions.

If either of these decisions is negative, federal consistency would be denied since this would be communicated to the federal agency by the lead state agency.

This process largely utilizes existing state agency review processing and would not require the creation of significant new review and notification procedures.

Policy Questions

A. Appeals

Much discussion and comment in the draft centered on what can be appealed, to whom, by whom. The recommendation is that the appeal of the local decisions (by applicant or individual) be to the existing appeal routes such as the county commissions or the circuit court. Appeal of state agency permit decisions would be through that agency's normal appeals route. Jurisdictions would, of course, have an additional appeal route throught ORS 197.300.

B. The recommendation asks that a negative finding be presumed if local government does not act. Rationale for a negative presumption rather than a positive presumption is that, if inaction brings a positive presumption, there will be less incentive for local government to carry through the review. Alternatives discussed was whether inaction by the coordinating body should trigger a decision by some state body (LCDC, lead state agency).

Unresolved Issue

One issue remained a sticking point throughout our discussions. That is, what is the nature of a state permit agency's responsibility with regard to comments about goals not directly related to their area of authority? What is the extent of an agency's responsibility to balance those comments and make a decision on overall compliance of the proposed action before issuing a permit?

The draft we dealt with, and circulated for review, did define that responsibility.

Strong disagreement remained on the Task Force as to that responsibility.

It was the Task Force's decision that it was not appropriate for this Task Force to resolve such an issue. Therefore, the change of the draft which described that responsibility was in effect deleted by a Task Force vote. The change is submitted to you for your information on a constrasting color for identification.

It was also the Task Force's recommendation that if a state permit agency does have responsibility to balance conflicting goal comments, that state agency should have the right to defer these decisions to DLCD. The motion to the effect is reflected in the italic changes on the constrasting color page.

It is the Task Force's hope that this unresolved issue will be dealt with in an appropriate forum as soon as possible.

The Task Force should be commended for its patience and thoughtfulness in dealing with a very complex set of problems.

AS:lj

PROCESS FOR DETERMINING CONSISTENCY OF FEDERAL LICENSES AND PERMITS

1. All involved parties (Federal agency, State agency, IRD, local government) will adopt procedures insuring early and uniform notification of applicants and potential applicants, that their project will be subject to consistency review. As part of this, applicants shall be informed that they will be required to certify that the application and proposed activity is consistent with the Oregon Coastal Management Program. The four elements of the program that proposed licenses and permits must be consistent with are:

   1) Acknowledged* local plans (where they exist);
   2) Statewide Planning Goals and Guidelines; and
   3) Appropriate state statutes#,
   4) Local Plans which have not been acknowledged to be in compliance, unless a conflict with the Goals is identified during the consistency review.

   The applicant will also be responsible to provide all information necessary for reviewers to make the con-

* Acknowledged local plans are plans which have been acknowledged by LCDC as in compliance with Goals and Guidelines,

\# Statutes listed in Table II, revised, final Oregon Coastal Management Program.

sistency determination. The applicant should meet with state and local officials to determine what information is desirable. Although the applicant will determine what information to submit in support of his application, one basis for a state determination of inconsistency is the failure to receive sufficient information.

Applications will be reviewed for consistency of:

1) The specific action the permit would allow;
2) The use or uses associated with that action;
3) The effects of the action; and,
4) The effects of the use.

Applicants will be strongly encouraged to confer with State agencies and local government prior to submission of the application to the federal agency, so that conflicts or problems can be identified and resolved in advance of the application.

2. Each Federal agency should require, as part of its license or permit application, evidence that applicant has contacted affected local governments, the county coordinating body, and the state permit agency, to ascertain what information will be necessary to enable adequate review of the permit and project.

3. The Federal agency will inform the counterpart state agency of the permit application, or require certification that the state agency has been notified by the applicant, in order to avoid a presumption of certification in the absence of notification.

4. The federal permit applicant will apply for the state permit and also provide a copy of the federal permit application, supporting material, and all information necessary to determine consistency, to the counterpart state agency (called hereafter the lead state agency). Where there is no counterpart state license or permit the applicant will apply to the state agency designated to coordinate state review of the federal permit. If the applicant does not choose to apply for the state permit, the state may deny consistency. A single, lead state agency has been identified for each type of federal license or permit that the state wishes to certify.* This agency will serve as the official contact with the Federal agency, except if the consistency determination is appealed to the Secretary of Commerce, when LCDC will represent the state.

5. The six month time period for the consistency review will not begin until the state has received a copy of the application and necessary supporting information from the applicant. Despite the six month time period

*See list attached.

provided in the Federal Coastal Zone Management Act, in ordinary circumstances most permits will be processed and consistency determined within 60 to 90 days following receipt of the application. Amendments to or new plans for an OCS lease application that was previously denied will be reviewed by the state for consistency within 3 months as required by the Coastal Zone Management Act. In the event an EIS will be necessary, the applicant may defer, at his option, submission of the application to the state, so that the state may utilize information developed during the EIS in making its determination. In this event, the six month time limit will not begin until the application is actually submitted to the state. If the state agency or affected local government wishes to utilize information contained in the EIS as a basis for assisting in its determination, it may:

A) request the applicant to waive the six month time limit, or

B) deny the permit until such time as an EIS is completed and the project can again be reviewed.

6. The lead state agency will ensure that public notice is provided to the interested public, affected local governments county coordinating body, county coordinator, COG, special districts and state and federal agencies. State agencies will review their notificaiton procedures to insure that all interested parties receive notice and have

the opportunity for comment. By agreement between the lead state agency and the federal agency, and if distribution of the federal notice is sufficient, the state may utilize the federal notice as the means for providing public notification of the application.

The notice will indicate:

A) The nature and location of the project;

B) Projected impacts identified by the applicant;

C) A statement that the proposal will be reviewed for consistency with the Coastal Management Program including compliance with acknowledged local comprehensive plans, statewide planning goals and selected state agency statutes.

D) Affected unit(s) of local government;

E) The designated county coordinating body;

F) Date comments are due;

G) Time and date of any public hearings, if known;

H) A statement that information on the local review process can be obtained by contacting the county coordinating body or the affected local government.

I) List of Agencies and units of governments notified of permit.

7. The lead state agency will also provide a copy of the permit application and relevant supporting information to:

- affected local governments
- the county coordinating body
- others upon request

8. Affected local governments will review the application within the time limits established by each agency unless additional time is required, not to exceed a total local review period of 60 days. Local governments will establish their own procedures for processing these applications within the guidelines established here including opportunities for appeal. These procedures will provide for opportunities for public comment, and may require public notice. In addition to opportunities for general public comment, opportunities should be provided for review of and comment on the application and information by the appropriate citizen and other advisory groups. State agencies and the public should review the proposed action against the Goal requirements and make comments and recommendations to the affected local government and/or county coordinating body.

   A) AFTER COMPLIANCE

      If local government has a comprehensive plan acknowledged as in compliance with the Statewide Planning Goals, the review at the local level will primarily address whether the proposed activity is consistent with the local comprehensive plan, and implementing ordinances, and secondarily the Statewide Goals.
      If local government indicates that the proposed activity is not consistent, the project will be found inconsistent with the Oregon Coastal Management Program. In this circumstance, neither the

state permit nor the federal permit may be issued.* The local government must provide the reasons why the application is inconsistent, and what modifications, if any, could be made to make the project consistent.

A finding by local government that the action is in compliance with the acknowledged local plans and Statewide Goals does not bind the state agency to issue the state permit or to concur that the federal application is consistent with the Oregon Coastal Management Program; the local finding does provide the definitive basis for judging compliance with the acknowledged local plan.

Within its authority to implement any conditions, local government may provide conditional approval, and may confer with the lead state agency, LCDC and applicant to negotiate changes or modifications.

B) BEFORE COMPLIANCE

If local government does not have an acknowledged comprehensive plan, the review will primarily address consistency with the Goals and secondarily, projected plans or non-acknowledged plans,

* The Federal permit may be issued if the Secretary of Commerce overturns the consistency determination. This will not affect the state agency permit, however.

unless a conflict with the Goals is identified in this process. Because full coordination will have not yet occured, in the absence of an acknowledged plan, the local review and decision should involve a more rigorous review and comment by the public and state agencies. If conflicts or potential conflicts with the Goals, facilities, or plans are identified during this local review, the local government should confer with the lead state agency, other state agencies with responsibilities for the resource or facility affected by the pertinent Goal requirement, LCDC, the applicant and other interested parties to discuss the potential inconsistency. If as a result of these discussions, documentation is provided that the proposed application would be inconsistent with one or more Goals, the lead state agency should find that the project is inconsistent with the Oregon Coastal Management Program. This would prevent the federal permit from being issued (unless the Secretary of Commerce overrides the decision). The local government must indicate why the application is inconsistent and what modifications, if any, could be made to make the project consistent.

As in the case of an acknowledged plan, a finding by local government that the action is in compliance

with the local plans and Statewide Goals does not bind the state agency to issue its permit or to concur that the federal application is consistent with the Oregon Coastal Management Program.

C) APPEAL

Applicants and citizens may appeal the local consistency determination through appeals and procedures established at the local level. A consistency finding by local government may be appealed to LCDC by state agencies or affected local governments as specified in ORS 197.300. Applicants and citizens may not appeal the local consistency finding to LCDC.

9. In the event that the proposed activity transcends the boundaries between jurisdictions, or affects other jurisdictions, the county coordinating body will coordinate the review and provide a single response for all units of local government. This body will ensure that: a) the notice is provided to all affected or potentially affected units of government, b) a forum is provided for resolving conflicts between local governments, and that c) a single response is provided to the lead state agency.

Local governments may appeal the county coordinating body's response to LCDC on the grounds that it is:

1) inconsistent with the Goals, or

2) improper (as specified in ORS 197.300)

The County Coordinating Body will transmit copies of its decision to the affected cities and special districts at the same time that it notifies the lead state agency.

10. Where only a single jurisdiction is affected by an application, that jurisdiction's response will constitute the local consistency decision. If there is only one affected local government and it does not make a determination by the end of the state permit review period, then both the lead state agency and the county coordinating body will contact the city and encourage it to make the consistency decision. If, following this effort, the city chooses not to make a consistency decision, then the county coordinating body will review the permit and make the local consistency decision. If no local determination, from either the city or county coordinating body, is forthcoming, a negative finding will be presumed.

11. Simultaneous with the local review, the lead state agency will conduct a review of the application, providing (as indicated above) opportunity for review and comment to state and federal agencies, the public, and other interested parties. The state review will address compliance with:

1) applicable state statutes,
2) goals directly related to or affected by the agency's statutory responsibility.

The proposed activity will be presumed to be in compliance with other goal requirements (i.e. public facilities and services, areas of natural disasters and hazards, etc.) unless other reviewers raise compliance with these Goals as an issue. In general, once a plan is acknowledged, such issues will be few. However, prior to acknowledgment, other state agencies and the public should scrutinize applications for compliance with Goals relevant to their responsibilities.

If potential conflicts are identified, the lead state agency will convene conflicting or affected reviewers, the applicant, LCDC, and the affected local government(s), and attempt to resolve the issues through negotiations. *The lead state agency may ask DLCD to determine compliance with the Goals if the conflicts cannot be resolved through these negotiations.*

The lead state agency will provide a public hearing, if, according to the comments, controversy, or potential conflict, it feels one is necessary and appropriate.

~~*If the conflicts cannot be resolved,*~~ the agency will, ~~*according to its best judgment,*~~ make a finding of consistency and issue or deny the state permit, if one exists (except that it cannot find the proposed activity consistent ~~*or issue a permit*~~ if an affected local jurisdiction has an acknowledged plan and has found that the proposed activity is not consistent with the plan.)

12. The action by the lead state agency (i.e. granting or denying the permit if one is required or its recommendation if no parallel state permit is involved) will provide the basis for the consistency determination. If the action is found inconsistent, the state agency must provide the reasons why the application is inconsistent and what modification, if any, could be made to make the project consistent. The state agency's decision can be appealed to LCDC on the grounds that the permit action by the state agency is inconsistent with the Goals.

If the state permit is awarded, the proposed activity and federal permit will be deemed consistent with the Oregon Coastal Management Program. If the permit is denied, the federal permit will be deemed inconsistent. In this manner, a negative finding - i.e. a finding of inconsistency - by either the affected local government or the lead agency will result in (1) a denial of the state permit or finding that the proposed activity is inconsistent, and (2) a denial of consistency to the federal agency. In this event, the federal agency may not issue the federal permit unless the applicant files an appeal to the Secretary of Commerce. However, an override by the Secretary of Commerce will not reverse the state permits and/or local decision.

Finding a proposed permit or license consistent with the local plan, statewide goals, or state statute only commits local government or the state agency to approval of the project and its impacts at the level of detail they are described in the permit application. The determination of consistency relates just to the permit at hand and does not mean that all subsequent permits will necessarily be issued or approved. Both state agencies and local governments are encouraged to inform applicants of other regulations that they will be required to conform with. The consistency determination will indicate that "This determination of consistency is limited to the application for (permit type), and does not obligate the state or local government to issue other permits related to this project. The issuance of other permits, such as air and water discharge or building permits, is contingent upon meeting the legal requirements of these permits and licenses."

13. The lead state agency will convey the result to the federal agency and the applicant by certified mail.

ETL:tw
April 15, 1977

LIST OF FEDERAL PERMITS TO BE REVIEWED FOR CONSISTENCY WITH THE OCMP

Federal License or Permit	Responsible State Agency	Counterpart State Permit or Review	Approximate No. of permits annually in Coastal Zone	Is public Notice Available*	Opportunity for public hearing?	Average time to process state review
EPA: Permits & Licenses required by Section 402 & 405 of FWPCA and ammendments	DEQ	National Pollution Elimination System (NPDES)		1,2,3	Yes	90 days
Reclassification of areas under Prevention of significant deterioration.	DEQ	Air quality waste discharge	?	?	?	?
Army Corps of Engineers						
Dredge and fill: Section 10&11, RHA.	DSL	Fill and Removal or Structures Review.	200	1,2,3	Yes	35 days
Ocean Dumping	DEQ	Ocean dumping not presently permitted in Oregon	0			
Dredge Proposal, Section 404, FWPCA	DSL	Fill and Removal				
Nuclear Regulatory Commission						
Nuclear power plants--siting and operation	EFSC (DOE)	Site certificate	less than 1	1,2,3	required	Several steps at least 2 yrs.
Department of Interior--BLM						
Permits and Licenses for off-shore drilling and minery on public lands	DOGMI	Exploratory Drilling Permit	less than 1	2,3	?	

DEQ - Department of Environmental Quality
DSL - Division of State Lands
DOE - Department of Energy
EFSC - Energy Facility Siting Council
DOGMI - Department of Geology and Mineral Industries
PUC - Public Utility Commissioner

Federal License or Permit	Responsible State Agency	Counterpart State Permit or Review	Approximate No. of permits annually in Coastal Zone	Is public Notice Available*	Opportunity for public Hearing	Average time to process state review
	DOGMI	Field Development Permits	less than 1	1,2,3	required	
USGS						
Plans for the exploration, development and production from areas leased under OCS lands Act (43 USC 1331 et seg.)	OCS Task Force**					
Department of Transportation						
Bridge permit (33 USC 401, et seg.)	DSL	Structure Review				
Deep-Water Ports (33 CFR 148 et seg.)	DSL	Structure Review				
Federal Power Commission						
Permits and licenses required for siting power plants and transmission lines	DOE	Site certificate	less than 1	1,2,3	Yes	
Permits and licenses for interstate pipelines	DOE	Site certificate	less than 1	1,2,3	Yes	
Licenses for construction and operation of hydroelectric plants	WRD	Dam Construction Permit	0	1,2,3	Yes	30 days to 1 yr.
Permits for construction and operation of facilities needed to import or export natural gas	PUC (DOE?)	Review				

Present notice is sent to: 1=General public; 2=state agencies; 3=affected local government

* Present scope or public notice may not be sufficiently broad to reach all affected parties. Responsible state agency and LCDC will jointly review. If additional notification is desirable, costs will be borne by CZM 306 funds.

** Oregon is now reassessing its capability to respond to OCS actions. Until a firm policy is established, review will be by state OCS Task Force, including representatives from DOGMI, DSL, DFW, and DOE.

LCDC TASK FORCE ON

FEDERAL CONSISTENCY AND STATE/FEDERAL COORDINATION

Bette Blaser
County Planning Commission
Tillamook County Courthouse
Tillamook, OR 97141
Phone: 842-5511

Mike Burton
Assistant Director
Intergovernmental Relations Department
240 Cottage S.E.
Salem, OR 97310
Phone: 378-3732

Sandra Dietrich, Director
CCCOG
P. O. Box 647
North Bend, OR 97459
Phone: 756-2563

Oz Granger, Director
Lincoln County Planning Department
Lincoln County Courthouse
Newport, OR 97365
Phone: 265-5341

Stan Hamilton
Department of State Lands
1445 State Street
Salem, OR 97310
Phone: 378-3805

Jack Lesch, Director
CITC
P.O.Box 488
Cannon Beach, OR 97710
Phone: 436-1156

Janet McLennan
Room 160, State Capitol
Salem, OR 97310
Phone: 378-3109

Jim Richards
City Councilman
City Hall
Bay City, OR 97107
Phone: 842-5511

Ann Squire
5647 S.E. 38th
Portland, OR 97202
Phone: 771-1998

Jack Waldie
County Commissioner
P. O. Box 746
Gold Beach, OR 97444
Phone: 247-7011

Peter Watt
County Coordinator
Lincoln County Courthouse
Newport, OR 97365
Phone: 265-5341

Chuck Walters
811 N.E. Oregon Street
P. O. Box 4332
Portland, OR 97308
Phone: 234-3361 EX 4092 or 4311

Bill Young, Director
1234 S.W. Morrison
Portland, OR 97205
Phone: 229-5395

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