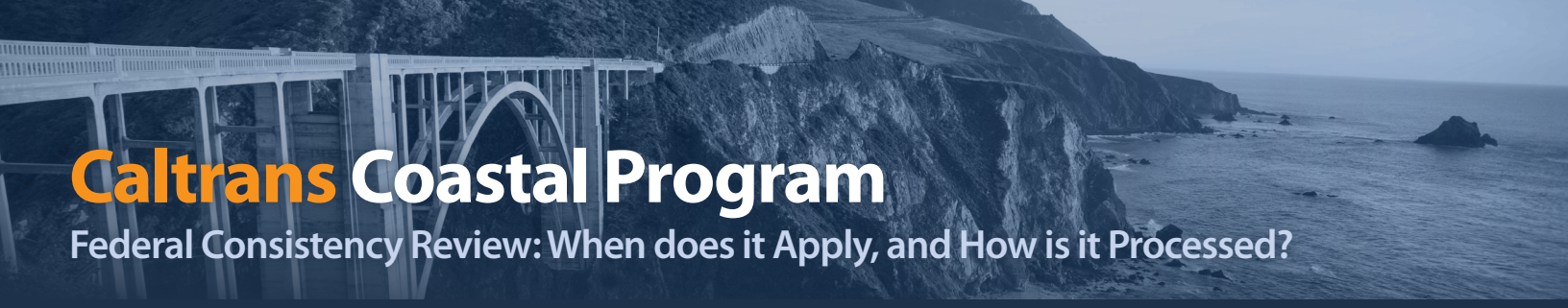


Caltrans Coastal Program

Federal Consistency Review: When does it Apply, and How is it Processed?

FACT SHEET NO. 6 | UPDATED FEBRUARY 2017

Caltrans projects may be subject to a federal consistency certification issued by the California Coastal Commission (Commission) if they are located in the coastal zone, receive federal funding, or require federal approvals. **In other words, if your project triggers NEPA you may be subject to federal consistency review.** Understanding the need and process for federal consistency review can be complicated. This fact sheet provides a background on federal consistency, when it applies to Caltrans projects, and how the Commission processes it.

Federal Consistency Basics

The Commission's Federal Consistency Unit (FCU) implements the federal Coastal Zone Management Act (CZMA) of 1972 for activities that are undertaken, funded, or permitted by federal agencies or occur on federal lands. Such activities, whether or not they occur inside or outside of the coastal zone, are subject to the CZMA federal consistency provisions if they have the potential to affect resources in the coastal zone.

The Commission is the designated coastal zone management agency that implements the federal consistency provisions for all coastal areas in California outside the San Francisco Bay, per the California Coastal Management Plan (CCMP). The enforceable policies of the CCMP are contained in Chapter 3 of the California Coastal Act of 1976. Documents are reviewed for consistency with these policies and may refer to certified Local Coastal Program (LCP) policies as guidance for determining consistency.

Federal Consistency Review Processes

There are two types of review processes used to implement federal consistency provisions of the CZMA:

A **Consistency Determination** is for federal agency activities and development projects. Caltrans projects rarely, if ever, qualify for a consistency determination. This would only occur in situations where a federal agency is carrying out the project.

A **Consistency Certification** is for federal permits and licenses, and/or federal support, e.g., funding, to state and local agencies. Because most Caltrans projects receive federal funding or require other federal approvals they are likely subject to a consistency certification.

Projects with federal funding or activities that may affect land or water uses or natural resources need either a **federal consistency certification** or a **"no effects" determination**.

The review period, legal test, and dispute resolution mechanism for federal consistency certification is as follows:

- **Review period**: The consistency certification review period is up to six months. Applicants may extend ("stay") the time period.
- **Legal Test**: The enforceable policy is Chapter 3 of the Coastal Act. Federally permitted projects must be "consistent" with the CCMP. In the San Francisco Bay, the Bay Conservation and Development Commission (BCDC) uses its federally-approved Management Program for the San Francisco Bay Segment of the California coastal zone to exercise its federal consistency authority under the CZMA.
- **Dispute Resolution Mechanism**: A Commission objection to a consistency certification may be appealed (only by the applicant) to the Secretary of Commerce. A Commission concurrence cannot be appealed.

Other Considerations for Federal Consistency Reviews

- If Caltrans projects are located on federal land, contact the Commission District office to determine appropriate Coastal Development Permit (CDP) jurisdiction and applicability of federal consistency review.
- Even if your project is located partially or wholly outside of the coastal zone, the Commission has the authority to review the whole project (even those components located outside of the coastal zone) under federal consistency review due to the potential for impacts on coastal resources.
- Example: If a U.S. Army Corps of Engineers permit is needed, assume the FCU will review the entire project for impacts to coastal resources.

For more information on Federal Consistency Review, visit: *www.coastal.ca.gov/fedcd/fedcndx.html*

The Caltrans Coastal Program trains, educates, and coordinates with Caltrans staff working on projects in the California coastal zone that must comply with the California Coastal Act. The Coastal Program serves as a link between Districts and the Coastal Commission. To learn more about the Coastal Program, *visit www.dot.ca.gov/env/coastal*.

Caltrans

When is Federal Consistency Triggered?

Project Qualifies for a Categorical Exclusion (CE) under NEPA?

YES

Federal Consistency Certification (FCC) likely not needed.

Caveats:

FCC may be needed if the CDP is processed at the local level only, and no original Commission jurisdiction occurs within the project footprint.

Does the CE look at Coastal Act Chapter 3 policy considerations? If not, recommend creating a policy consistency table.

NO

Assume FCC needed. See below.

Project Requires a Local Agency CDP?

YES

Forward to the FCU to determine if a waiver is appropriate.

Caveats:

Provide information to the FCU as early as feasible to determine applicability. A waiver will not be issued, however, until after the final, local decision-maker hearing is held and the appeal period has closed.

NO

Assume FCC needed. See below.

Project Requires a Commission CDP and/or Environmental Impact Statement (EIS)?

YES

Early coordination with your local Commission office and the FCU is recommended.

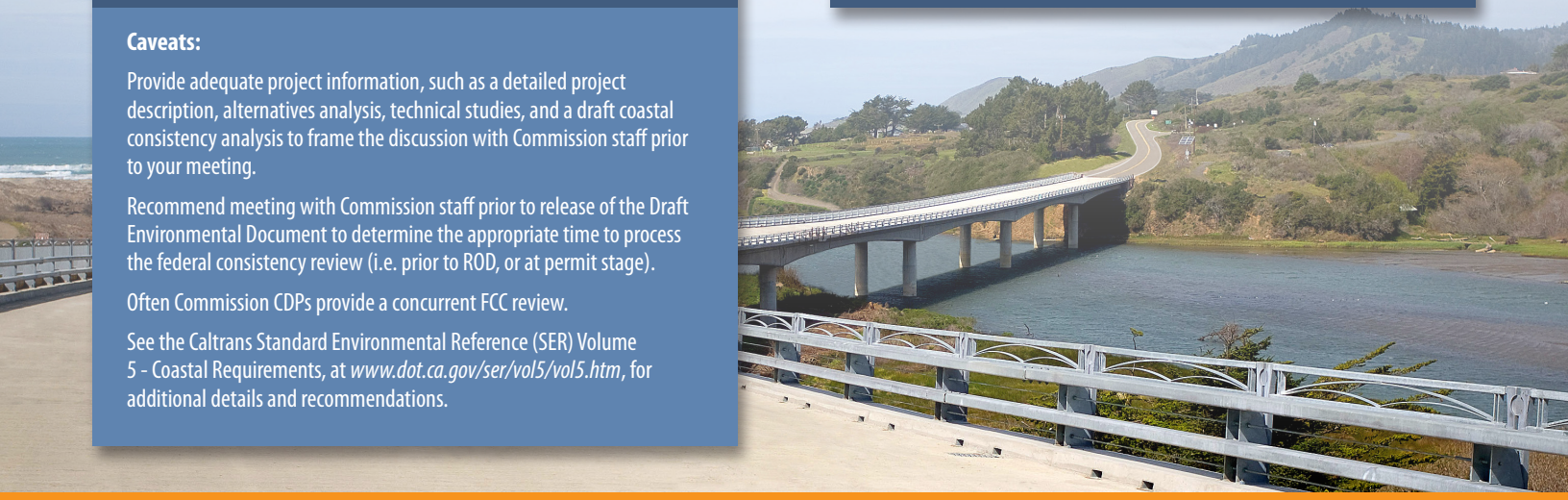
Caveats:

Provide adequate project information, such as a detailed project description, alternatives analysis, technical studies, and a draft coastal consistency analysis to frame the discussion with Commission staff prior to your meeting.

Recommend meeting with Commission staff prior to release of the Draft Environmental Document to determine the appropriate time to process the federal consistency review (i.e. prior to ROD, or at permit stage).

Often Commission CDPs provide a concurrent FCC review.

See the Caltrans Standard Environmental Reference (SER) Volume 5 - Coastal Requirements, at *www.dot.ca.gov/ser/vol5/vol5.htm*, for additional details and recommendations.

NO

See earlier decision stages to determine applicability.