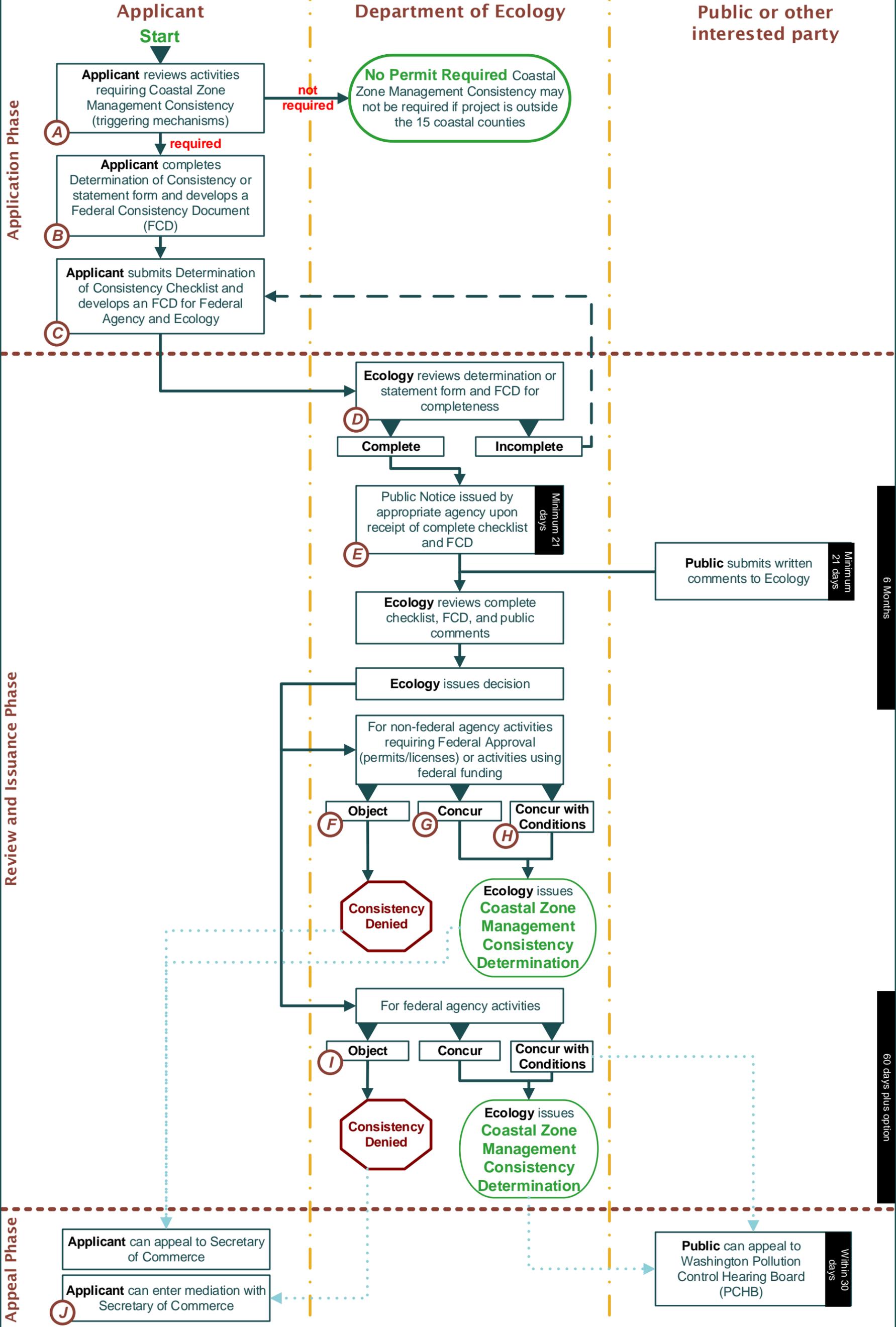


Coastal Zone Management (CZM) Federal Consistency



Legend: (A) = Hyperlink —> = Progression - -> = Revision > = Optional

Link A

A. Triggering Mechanisms for Coastal Zone Management Consistency

Actions in any of Washington's 15 coastal counties¹ that:

- are undertaken by a federal agency,
- require federal approval (permits/licenses), or
- use federal funding

Footnotes:

¹Washington's coastal zone includes the following 15 counties: Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom.

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Link B

B. Applicant completes Determination of Consistency checklist and develops Federal Consistency Document (FCD)

- Complete the Determination of Consistency with Washington's Coastal Zone Management Program checklists and submit all necessary information.

The following *enforceable policies*¹ should be complied with:

- Shoreline Management Act, including local government shoreline master programs
- State & Federal Water Quality Requirements
- State & Federal Air Quality Requirements
- State Environmental Policy Act
- The Ocean Resource Management Act
- The Energy Facility Site Evaluation Council

Link: [Ecology's Federal Consistency Procedures](#)

- Develop a Federal Consistency Document (FCD)², which includes the following:
 - A written description of your project, including site plans, maps, diagrams, technical data as well as general location (county/city), and proximity to waterbody (name). NOTE: a Joint Aquatic Resources Permit Application (JARPA) can be used to supply this information.

Reference: <http://www.epermitting.wa.gov>

- Analysis of project consistency³ with the enforceable policies of the Coastal Zone Management Program. Example: If your project is located within Shoreline Management Act (SMA) jurisdiction, and a SMA permit is required, include a copy of your local shoreline permit as well as an analysis of consistency with the applicable enforceable policies of the Shoreline Management Act and the local Shoreline Master Program. The applicant must demonstrate consistency with all applicable enforceable policies. If your project is consistent, your analysis should conclude with a "statement of consistency". (see following bullet)
- A statement of consistency. (*15CFR Section 930.58(a), 930.39(b)*) See checklist for statements of consistency that can be used in lieu of a formal letter.
 - Federal Agencies must certify that the project is consistent to the "maximum extent practicable" with the enforceable policies. (Determination)
 - Federal Licenses/ Permits or Federal Assistance statement certifying that the project complies with the enforceable policies of Washington's approved coastal zone management program and will be conducted in a manner consistent with the program. (Certification)
- Federal agencies copy of local government SMA consistency letter, if already obtained (WAC 173-27-060(a))
- Copies of any public notices or hearings held

Footnotes:

¹Enforceable policies are state policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a state exerts control over private and public land and water uses and natural resources in the coastal zone, and which are incorporated in a management program as approved by the Office of Coastal and Resource Management (OCRM) either as part of program approval or as a program change. Washington's enforceable policies are contained in the Shoreline Management Act, State Environmental Policy Act, Clean Water Act, Clean Air Act, Energy Facility Site Evaluation Council, and the Ocean Resource Management Act.

²A federal consistency document is the paperwork the Federal agency or an applicant submits to Ecology for action.

³Compliance is evaluated through a process call consistency. Proposed activities will comply with and will be conducted in a manner consistent with the State's approved management program.

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Link C

C. Federal Consistency Document submittal to Washington State Department of Ecology (Ecology)

For Federal Actions

Submit Federal Consistency Document (FCD)¹ for federal agency actions to Ecology 401 Regional Staff for all projects requiring a Water Quality Certification. All other projects submit to Ecology Federal Consistency Coordinator at Headquarters. Applicant should contact Ecology no later than 90 days prior to the start of the proposed activity.

For Federal funding Actions

Submit FCD for federal funding actions to Ecology Coastal Zone Management Program headquarters staff. In addition, FCD must include a summary of the purpose for which the federal assistance will be used. The summary shall include the federal funding agency and the location where any physical improvements will be constructed. Applicant should contact Ecology at the earliest practicable time in the planning of the activity.

For Federal Approval Actions

Submit FCD for federal approval (permits/licenses including Federal Energy Regulatory Commission (FERC)) to Ecology 401 Regional Staff. Applicant should contact Ecology at the earliest practicable time in the planning of the activity.

Footnotes:

¹A federal consistency document is the paperwork the Federal agency or an applicant submits to Ecology for action.

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Link E

E. Ecology issues public notice

Regional Coordinator will distribute a public notice (when required) and consider local government views on the proposed project. (CZM and WAC 173-27-060) Ecology will circulate within 30 days after Federal Consistency Document (FCD) is submitted.

For activities requiring federal approval

Public notices will be given using the following methods:

1. For Section 404 permits, Section 10 permits and Section 404 Nationwide Permits that require notice for the Corps, the Corps attaches a CZM certification notice to the Corps public notice. The Corps circulates this public notice.
2. For Section 404 Nationwide Permits that require individual CZM concurrence where the application is made to Ecology, the Regional Contact circulates a public notice.
3. For Coast Guard permits, the Coast Guard attaches a CZM concurrence Notice to the Coast Guard public notice. The Coast Guard circulates this public notice.
4. For CZM Certifications for other permits, Ecology is required to circulate the public notice. However, the applicant has the option to circulate the public notice before submittal to Ecology in order to cut down on response time from Ecology. If the applicant does a public notice, and Ecology receives no comments, Ecology can review and act rather than wait for the 21 day period to expire. If applicant decides to circulate the public notice they must comply with the following requirements:
 - The public notice shall include a summary of the proposed activity.
 - The public notice shall include the location of the proposed activity sufficient so that a layperson may locate the activity. For example, the notice could include the street address and quarter section, section, township, and range in which the activity would be located.
 - The public notice shall say that the consistency certification and accompanying public information may be inspected at the appropriate Ecology office. The notice shall include the physical address of the Ecology office. The notice shall also give the name and address of the person or position that interested persons may contact for more information on the consistency certification. Ecology will supply this information at the applicant's request.
 - The public notice shall request that comments be submitted to Ecology and shall include a comment deadline. The deadline shall be no earlier than twenty-one days from the date of the publication. The notice shall include the address of the Ecology office that is to receive the public comments. The public notice shall be published at least once in the newspaper of general circulation in the immediate area that is likely to be affected by the proposed activity.
 - A copy of the public notice shall be sent to any affected local government, state agencies, Indian tribes, and federal agencies. Ecology may require the applicant to include certain agencies, organizations, or individuals.
 - The public notice shall be published and mailed no later than 30 days after certification and all necessary data and information is submitted.

A copy of the affidavit of publication and an affidavit attesting to the fact the notice was mailed with a copy of the notice and the names and addresses of the persons and organizations to which the notice was mailed shall be provided to Ecology no later than fifteen days after the notice was published.

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Link F

F. Ecology issues decisions for activities requiring Federal approval or using Federal funding

For activities requiring Federal approval:

If Ecology determines that the proposed project is inconsistent with the CZM enforceable policies, Ecology will issue an objection. If Ecology objects, Ecology will send the applicant, the federal agency, and the Director of Office of Ocean and Coastal Resource Management (OCRM) a copy of its decision. Ecology's response will describe:

1. How the proposed activity is inconsistent with specific enforceable policies of the CZM
2. Any existing alternative measures which, if adopted by the applicant, would allow the activity to proceed in a manner consistent with the CZM. If the objection is based upon a finding that the applicant failed to supply sufficient information required, Ecology will describe the nature of the information requested and the necessity of having such information to determine whether the activity is consistent with the CZM. The response shall also include a statement informing the applicant of his or her right to appeal the objection to the Secretary of Commerce.

For activities using Federal funding:

Ecology will object to the proposed activity if it is not consistent with the CZM and enforceable policies. If Ecology objects to the proposed project, Ecology will send the applicant agency, the federal agency, and the Director of the Office of Ocean and Coastal Resource Management (OCRM) a copy of its response objecting to the proposed activity. Ecology's response will describe:

1. How the proposed activity is inconsistent with specific enforceable policies of the CZM
2. Any alternative measures which, if adopted by the applicant, would allow the activity to proceed in a manner consistent to with the CZM. The response shall also include a statement informing the applicant agency of the agency's right to appeal the objection to the Secretary of Commerce.

If the objection is based upon a finding that the applicant failed to supply information requested in writing by Ecology, Ecology will describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the CZM.

The federal agency shall not approve the assistance application if Ecology objects. The federal agency should not delay processing the application while waiting for Ecology's concurrence or objection. If Ecology does not respond within the 6- months, Ecology's concurrence is presumed. If on appeal the Secretary of Commerce overrides Ecology's decision, the federal agency can approve the assistance. Federal agencies are not required to approve application with which the state has concurred.

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Link G

G. Ecology concurs with application

For activities requiring federal approval:

Certification is consistent.

For activities that use federal funding:

If Ecology determines the grant application is consistent with the CZM, Ecology will concur with the proposed application. Ecology does not provide written concurrence unless specifically requested by federal funding agencies. However, where the activity requires a State permit or approval required by an enforceable policy of CZM, Ecology will not concur unless the permit or exemption is approved and the applicant complies with the Washington State Environmental Policy Act (SEPA).

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Link H

H. Ecology concurs with application, with conditions

Ecology can negotiate with the applicant to develop modifications to the project that, if incorporated, will make the proposal consistent and the project may proceed. Ecology should also coordinate with the federal licensing or permitting agency to determine if the conditions meet federal requirements. If the conditions cannot be met, Ecology will object to certification.

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Link I

I. Ecology objects to application for Federal Agency activities

If Ecology objects to the federal agency's consistency determination, Ecology will accompany its response to the federal agency with the reasons for its objection and supporting information. Ecology will describe:

1. How the proposed activity is inconsistent with specific enforceable policies of the CZM.
2. Any existing alternative measures which, if adopted by the federal agency, would allow the activity to proceed in a manner consistent to the maximum extent practicable with the CZM. If the disagreement is based upon a finding that the federal agency failed to supply sufficient Information, Ecology will describe the nature of the information and how it contributes to the decision-making process. Ecology is required to send the Director of the Office of Ocean and Coastal Resource Management (OCRM) a copy of its objection.

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Link J

J. Applicant can enter mediation

In the event of a disagreement between Ecology and a Federal agency regarding the consistency of a proposed Federal activity either party may request that the Secretary of Commerce or Office of Ocean and Coastal Resource Management (OCRM) mediate the dispute.

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