

**Coastal and Estuarine Land Conservation Program
Final Program Guidelines – June 6, 2003**

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1. General Information

1.1 Authority and Purpose for the Program

The Department of Commerce, Justice, and State Appropriations Act of 2002 (Public Law 107-77), directed the Secretary of Commerce to establish a Coastal and Estuarine Land Conservation Program “for the purpose of protecting important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion from their natural or recreational state to other uses,” giving priority to lands which can be effectively managed and protected and that have significant ecological value. The law further directed the Secretary to issue guidelines for this program delineating the criteria for grant awards and to distribute funds in consultation with the States' Coastal Zone Managers' or Governors' designated representatives based on demonstrated need and ability to successfully leverage funds. Grants funded under this program shall require a 100 percent match from other sources. The authority for this program is codified at 16 U.S.C. 1456d.

The National Oceanic and Atmospheric Administration will work with the coastal states and territories through formal relationships established through its role in implementing the Coastal Zone Management Act of 1972, as amended (16 USC 1451 et seq.) (CZMA), to carry out this program. The CZMA highlights the importance of coastal and estuarine areas and contains policies related to the ecological, conservation, recreational, and aesthetic values of coastal areas.

1.2 Purpose of the Guidelines

These guidelines establish the eligibility, procedural, and programmatic requirements for participation in the Coastal and Estuarine Land Conservation Program (CELCP), authorized by the FY 2002 Appropriations Act. As required by the Act, these guidelines delineate the criteria for all financial assistance awards under the CELCP. These guidelines outline a three-stage process for competitive funding under the program: development of a state coastal and estuarine land conservation plan; a process for identifying and ranking qualified projects within the state and nominating them to a national competitive selection process annually; and a process for conducting peer review and selection of projects at the national level. State participation in this program is voluntary. Coastal states that choose to participate in the CELCP, including eligible project applicants, shall use the guidelines when developing state conservation plans, proposing or soliciting land acquisition projects, applying for funds, and carrying out selected projects under this program.

1.3 Definition of Terms

Appropriations Act or Act. The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002 (P.L. 107-77).

CELCP. The Coastal and Estuarine Land Conservation Program established by these guidelines pursuant to the Act.

Coastal and Estuarine Areas. Those areas within a coastal state that are: part of the state's coastal zone, as designated in the state's federally approved coastal management program under the CZMA or within the state's coastal watershed boundary as described in NOAA's Coastal Zone Boundary Review (October 1992). The coastal watershed boundary is defined: for estuarine drainage areas by the inland boundary of those 8-digit USGS hydrologic cataloguing units that contain the head of tide, and; for the Great Lakes region or those portions of watersheds along the marine coast that drain directly to marine waters by those cataloguing units that are located adjacent to the coast.

Coastal and Estuarine Land Conservation Plan or CELC Plan. A plan, to be developed by each coastal state in order to participate in the program, that provides an assessment of priority land conservation needs and clear guidance for nominating and selecting land conservation projects within the state.

Coastal State(s). As defined in section 304(4) of the Coastal Zone Management Act (16 USC section 1453(4)), "coastal state(s)" 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. The term also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

CZMA. The Coastal Zone Management Act of 1972, as amended (16 USC 1451 et seq.).

Land Acquisition. Acquisition of real property, or interests therein, by fee title, lease, easement, or any other method consistent with applicable State law or regulation.

NERR or Reserve. A National Estuarine Research Reserve designated pursuant to Section 315 of the CZMA.

NOAA. The National Oceanic and Atmospheric Administration, within the Department of Commerce.

OCRM. The Office of Ocean and Coastal Resource Management, within the NOAA National Ocean Service.

Project Areas. Discrete areas to be identified within a CELC Plan that describe the state's priority areas for conservation based on national and state criteria, representing the values to be protected through the program and areas threatened by conversion. Project areas may consist, for example, of: geographic areas or habitat types identified by a state coastal management plan as areas of concern; significant areas within other coastal,

estuarine, or watershed management plan(s) that may be priority areas for conservation; or areas that provide linkages or corridors among conservation areas within a geographical area.

Secretary. The Secretary of Commerce.

State lead agency. The agency or entity responsible for coordinating the establishment and implementation of the CELCP at the state level. The lead agency will be presumed to be the lead agency designated for implementing the state's coastal management program, as approved pursuant to the CZMA, unless otherwise designated by the Governor. If a state's coastal management program does not wish to assume the lead role, the Governor may designate as the lead agency another state agency with authority to plan, acquire or manage land for conservation purposes.

2. Eligibility Requirements

2.1 Who May Participate in the CELCP

Coastal states with approved coastal zone management plans or National Estuarine Research Reserves are eligible to participate in the CELCP. State participation is voluntary, and states may choose to participate by developing a Coastal and Estuarine Conservation Plan for approval by NOAA. The state lead agency will be responsible for coordinating the establishment and implementation of the CELCP at the state level.

2.2 Who May Submit a Project Application to the Competitive Process

Eligible coastal states that have submitted, and received approval of, a Coastal and Estuarine Land Conservation Plan, may submit proposals to NOAA for federal funding under this program, provided that appropriated funds are available for competitive awards. The state lead agency may solicit, and include in their application, project proposals from additional state agencies, or local governments as defined at 15 CFR 24.3, or entities eligible for assistance under section 306A(e) of the CZMA (16 USC 1455a(e)), provided that each has the authority to acquire and manage land for conservation purposes.

The state lead agency will be responsible for: soliciting projects that are consistent with priorities outlined in the state's plan, reviewing them for completeness, prioritizing them according to state criteria, and nominating projects to the national selection process. States are encouraged to submit proposals from multiple agencies as a consolidated package to NOAA. The state will also be responsible for ensuring that allocated funds are used for the purposes of and in a manner consistent with this program.

2.3 Qualifying Projects

To be eligible for funding under the CELCP, a project must:

- be located in a coastal or estuarine area included within a state's approved coastal and estuarine land conservation (CELC) plan and meet the national criteria described in section 3.1.b.;
- match federal CELCP funds with non-federal funds at a ratio of 1:1;
- be held in public ownership (fee simple or conservation easements) and provide conservation in perpetuity; and
- provide for access to the general public or other public benefit, as appropriate and consistent with resource protection.

2.4 Who May Receive Funds and Hold Title to Land

NOAA may make financial assistance awards to eligible coastal states, including the state's lead agency for implementing the CELCP, the state's coastal management program or its National Estuarine Research Reserve(s). The recipient may in turn allocate grants or make sub-awards to other state agencies, local governments as defined at 15 CFR 24.3, or entities eligible for assistance under section 306A(e) of the CZMA (16 USC 1455a(e)) to carry out approved projects. NOAA may, at its discretion and in consultation with the applicable coastal state, make grants directly to any of these eligible entities in order to expedite completion of an approved project. The recipient, or other appropriate public agency designated by the recipient, will hold title to the land, or interests in land, in perpetuity. NOAA will not make grants under the CELCP to non-governmental organizations unless otherwise directed by Congress.

2.5 Uses of CELCP Funds

The purpose of funding under the CELCP is to protect important coastal and estuarine areas with significant values or that are threatened by conversion, and that can be effectively managed. NOAA has outlined the following uses of CELCP funding that are consistent with these purposes, as well as some that are not considered to be consistent.

a. Eligible uses. CELCP funds may be used for the following purposes:

1. State Planning:

- Development of CELC plans to carry out this program. Each eligible state's lead agency may receive up to a total of \$50,000 for this purpose, which must be matched with non-federal funds at a ratio of 1:1 through cash and/or in-kind contributions.

2. Program Administration:

- Administration of the program, including such direct or indirect costs as salaries and benefits of staff directly involved in program planning, implementation, project review, etc., that shall not exceed 5 percent of the amount appropriated to the Secretary each year. If a state proposes indirect costs as part of an application, the total dollar amount of the proposed indirect costs must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency.

3. Acquisition Projects:

- Acquisition of properties or interests in properties from willing sellers, provided that the terms and conditions will ensure that the property will be administered for conservation in perpetuity, including direct expenses relating to the acquisition of lands and interests in lands acquired under the authority of the CELCP; and
- Certain initial costs for land stewardship, not to exceed 5 percent of the award and not to exceed 3 years or the duration of award period, to allow for signage, public safety, or other stewardship purposes.

b. Ineligible uses. The federal share of CELCP funds may not be used for the following purposes:

- Funding long-term operations, maintenance, and management of the land;
- Construction of buildings, boat launching facilities, docks or piers, shoreline armoring, or other facilities;
- Research;
- Acquisition of lands, or interests in lands, that completely restrict access to specific persons (e.g. non-residents of a community);
- Acquisition of lands, or interests in lands, to comply with mandatory or compensatory mitigation for recent or pending habitat losses resulting from the actions of agencies, organizations, companies or individuals;
- The sole or primary purpose of enforcing fish, wildlife, or other regulations, except when necessary for the accomplishment of approved project purposes; and
- Acquisition of land for active recreation, such as sports facilities, water parks, playgrounds, or similar uses.

Some of these purposes are allowable under the non-federal matching share. Refer to section 2.7(b), Source of Matching Funds, for additional information.

2.6 Ownership, Use and Long-term Stewardship

- a. The title of property or interests in property will be held in perpetuity by the grant recipient or other appropriate public agency designated by the recipient. As a condition of any grant award, NOAA will require that the recipient, or the designated public agency, register and furnish to NOAA a lien, covenant, or other appropriate notice of record to advise that the property has been acquired or improved in whole or in part with federal financial assistance funds (pursuant to 15 CFR 24.31) and assurances that the land will be held for conservation in perpetuity. The terms and conditions specified in conservation easements must also be consistent with the purposes of the CELCP.
- b. In general, lands acquired with CELCP funds will allow access to the general public. However, access may be limited or controlled in an equitable manner for resource protection, public safety, or for other reasonable cause. User fees should not be charged to access lands acquired through this program. However, if user fees are charged, they should comply with any applicable state standards for user fees. In such

cases, all income or other revenues derived from the fees shall be used for the maintenance or management of the property.

- c. The property shall be managed in a manner that is consistent with the purposes for which it was entered into the program and shall not convert to other uses. As a condition of the grant award, a strategy for long-term stewardship must be developed for each project that identifies the entity(ies) responsible for ongoing stewardship, including financial or staff support, and monitoring of conservation easements or ongoing activities to ensure that they are consistent with long-term conservation.

Activities that may be considered to be consistent with conservation purposes include: resource protection; restoration and enhancement, such as vegetative erosion control or restoration of natural water flow to the area; recreational activities, such as: hiking, hunting, and fishing; access for swimming, canoeing, kayaking; and research and educational activities. Construction of facilities on a minor scale, such as restrooms or boardwalks, to facilitate these activities and/or for the purpose of minimizing harm to coastal resources due to public access and recreation may be allowed depending on the proposed use of the property and the site environment.

Activities that are considered to be inconsistent include: active agricultural or aquaculture production; shoreline armoring or other hard erosion control structures; construction or expansion of roads, buildings or facilities except as noted above, or such facilities for active recreation as sports facilities, water parks, playgrounds, or similar uses.

- d. Non-governmental organizations, corporations, or individuals may participate in the acquisition and long-term stewardship of lands through this program, except as provided under sections 2.2 and 2.4 of these guidelines.
- e. Leasing or renting of the property or interest in property acquired through the CELCP to a third party is prohibited unless specifically authorized by NOAA. The recipient agrees that any authorized arrangement for leasing or renting property involved in the project must be: consistent with the authorized general and special purpose of the award; for adequate consideration; and consistent with applicable Department of Commerce requirements concerning, but not limited to, nondiscrimination and environmental compliance. All income or other revenues derived from an approved lease or rent arrangement shall be used to maintain or manage the property.
- f. Pre-existing uses on the property must be identified as part of the project application. NOAA will review such uses for potential impacts and to determine whether they are consistent with the purposes of the CELCP. Applicants may wish to consider protecting land that contains pre-existing uses through a conservation easement, rather than through fee simple acquisition. If a project is approved with pre-existing uses, such uses may not be expanded or converted to other uses without prior approval of NOAA.
- g. If the property or interest in the land acquired with CELCP funds is sold, exchanged, divested, or converted to other uses that are inconsistent with the purposes for which it was acquired without prior approval of NOAA, the recipient must return to NOAA

the full amount of the federal share of funds for re-distribution in the CELCP grant process. In some cases, at the recipient's request, NOAA may approve the disposition of the property and issue instructions to sell the property. In such cases, the correct value to be returned will be calculated by applying the federal share of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling expenses.

2.7. Cost-sharing requirements

a. **Matching requirement.** Federal funds awarded under this program shall be matched with funds from non-federal sources on a 1:1 basis. The coastal state is responsible for ensuring that the full amount of the matching requirement is provided, particularly when the non-federal share includes contributions from other agencies, groups or individuals. Notwithstanding any other provision herein, and in accordance with 48 U.S.C. 1469a(d), the Program shall waive the requirement for local matching funds for any project under \$200,000 (including in-kind contribution) to the governments of Insular Areas, defined as the jurisdictions of the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

b. **Source of matching funds.** The non-federal share of funding may be derived from state, local, non-governmental or private sources in the form of cash or the value of non-monetary or in-kind contributions, such as the value of donated lands or interests therein, or services such as on-site remediation, restoration, enhancement, or donated labor and supplies, provided that the in-kind contributions are necessary and reasonable to accomplish the objectives of the project. Such in-kind contributions must be identified in the project application, completed within the financial assistance award period, and documented as part of the completed project. Any land used as match must be located within the vicinity of the property being acquired, in the same project area identified in the state's plan, or be substantially related in terms of conservation values or objectives, and must meet the eligibility criteria, ownership and stewardship conditions described in sections 2.3 through 2.6. The value of land used as match must be documented with the grant application, and must reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition (<http://www.usdoj.gov/enrd/land-ack/>).

No funds or in-kind contributions from federal or non-federal sources, including the value of donated lands or services, that have been previously used to satisfy the matching requirements of this program or that have been or will be counted or used to satisfy another federal grant, can be counted toward the non-federal matching share. Unless otherwise provided by law, the value of property or interests in property that were acquired with federal funding may not be used as non-federal match.

See 15 CFR 24.24 Matching or Cost-Sharing (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) for determining the value of in-kind contributions.

c. **Banked match.** States may apply the value of land or in-kind services accrued up to 3 years prior to submission of the grant application toward the non-federal share of funding. Such "banked match" is subject to the same terms described under section 2.7.b. above.

3. State Coastal and Estuarine Land Conservation Plans

3.1 Development of CELC Plans

In order to qualify to receive funds under this program, a coastal state must develop and submit to NOAA for approval, a Coastal and Estuarine Land Conservation Plan that provides an assessment of priority conservation needs and clear guidance for nominating and selecting land conservation projects within the state. State plans will be developed and submitted by the state lead agency, in conjunction with: the state's coastal management program (if different from the lead agency); any NERRs in that state; any other state or federal agencies involved in coastal land acquisition, conservation, or management in the state; and other interested parties.

Plans are intended to be fairly simple and concise, and may make use of work that has already been done in the state or region, such as regional, state or local watershed protection, restoration or land conservation plans. A state may incorporate existing plans, or portions thereof, by reference into a CELC plan. States are encouraged to consider conservation needs on a multi-state or regional scale, and to work with neighboring states where appropriate for the conservation of coastal and estuarine resources within the region. State plans must be developed through a public process, which would include a public scoping process and comment period. If a state CELC plan incorporates existing plans, or elements thereof, that were developed and vetted through a public review process, the state may choose to seek comment on whether those plans or elements should be incorporated into the CELC plan, rather than seeking comment on the substance of those plans or elements.

a. State CELC plans must include the following information:

- A map or description of the geographic extent of coastal and estuarine areas within the state, as defined for the purposes of the CELCP;
- A description of the types of lands or values to be protected through the program and the need for conservation through acquisition;
- Identification of "project areas" that represent the state's priority areas for conservation, including areas threatened by conversion, based on state and national criteria (listed below) for the program;
- A description of existing plans, or elements thereof, that are incorporated into this plan;
- A list of state or local agencies, or types of agencies, that are eligible to hold title to property acquired through the CELCP;
- A description of the state's process for reviewing and prioritizing qualified proposals for nomination to the national selection process. The vetting process should, at a minimum, involve representatives from the state's coastal zone management program, NERR(s), and any other agencies or entities that the state considers appropriate; and
- A description of public involvement and interagency coordination that occurred during the development of the plan.

b. State plans must address the following **national criteria** for projects and project areas as they relate to the purpose of the CELCP:

- Protects important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion from their natural or recreational state to other uses;
- Gives priority to lands which can be effectively managed and protected and that have significant ecological value;
- Directly advances the goals, objectives, or implementation of the state's coastal management plan or program, NERR management plans approved under the CZMA, national objectives of the CZMA, or a regional or state watershed protection plan involving coastal states with approved coastal management plans; and
- Is consistent with the state's approved coastal management program.

3.2 Approval of plans. The Assistant Administrator for Ocean Services and Coastal Zone Management or his/her designee, shall be the approving official for plans submitted to NOAA under this program. Upon approval of its plan, a state will be eligible to receive competitive funding under the CELCP.

3.3 Update of plans. States must update their CELC plans at least once every 5 years to reflect changes that have taken place within the state or region and submit the updated plans to OCRM.

4. Application, Review and Ranking Process

4.1 State Nomination and Selection Process

a. Solicitation of Projects.

Based on notification from NOAA of the availability of funding to implement this program in any given year, states with approved CELC plans may notify and solicit project applications from qualified entities. States may, at their discretion, focus their annual project solicitation toward specific priorities or areas identified in their approved CELC plan.

Based on the requirements of the state's solicitation for project applications, eligible applicants should submit proposals to the state's lead agency. A project proposal that includes several separate and distinct phases may be submitted in phases, but any succeeding phases must compete against other proposals in the year submitted.

b. State review and prioritization

i. Proposal acceptance. The state lead agency determines whether a proposal should be accepted for consideration on the basis that it is complete and eligible under the criteria identified in section 2. If the application is incomplete, the lead agency may provide an opportunity for applicants to submit any information that is missing.

ii. Proposal review and ranking. The state lead agency reviews and prioritizes project applications through the process described in its CELC plan. Projects should be ranked according to the degree to which it meets the state's CELC plan. A list of prioritized projects is then submitted to NOAA for consideration at the national level.

4.2. Information Required in Project Applications to NOAA

Applications submitted to NOAA for the national competitive process must contain the following:

a. A completed and signed Project Application Checklist (Appendix B). The checklist addresses some of the information requested in items b. through f., below. NOAA may modify this checklist as needed to effectively implement the project application and selection process;

b. Project Description. A statement that describes:

- The nature of the project, including acreage and types of habitats or land values to be protected, the legal rights to be acquired (i.e., fee title or easement), how the funds (federal and non-federal) will be used, and conversion threats to the property, as well as a description of these same characteristics for any property that will be used as a match;
- How the proposed project meets the state and national criteria and its expected benefits in terms of coastal and estuarine land conservation;
- Any pre-existing uses of the property, the nature of those uses, and whether those uses will continue after acquisition;
- Discrete benchmarks for completing the project within a specified time period. These benchmarks should indicate whether the project is "ready to go," has any deadlines associated with it, and whether the project is likely to be completed within the award period.
- The types of activities that would be allowed to take place on the land and a strategy for long-term stewardship, including support for long-term operations, such as maintenance or enforcement against illegal uses; and
- Whether this project has been submitted in application for other sources of federal funding, and if so, which federal program(s) and year(s).

c. Project Location. Two maps, as follows:

- A map of the state or coastal county showing the general location of the project;
- A map of the project site, which shows the location and extent of the proposed acquisition, and its relationship to significant natural features (slope, wetlands, dunes, floodplains, access points, etc.), as well as adjacent land uses.

d. Project Budget and Justification of Proposed Costs/Appraisal.

The project budget must include a breakdown of the following costs, as applicable, by category -- salary, fringe benefits, travel, equipment, supplies, contractual, construction, other. (*Note:* Use of Standard Form 424A is suggested as it provides a model template for this information, and will be required in the grant application package for all projects

that are selected for funding.) The total budget must reflect the 1:1 match required by statute. For information on what may be counted as the non-federal matching share, refer to section 2.7. Applicants wishing approval of pre-award costs should include such a request in their application to NOAA and identify the costs, the time period in which they occurred, and a justification for their need as associated with the project. For information regarding pre-award costs, refer to section 5.1.b.

The negotiated price of the property, or interest in property, should be based on the fair market value determined by an independent appraisal conducted by a state-approved appraiser. Before funds can be disbursed to the grant recipient for purchase of a property, or interest in property, using CELCP funds, the applicant must obtain and submit the appraisal to NOAA (refer to section 4.4.b.) Independent appraisals must reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition, (<http://www.usdoj.gov/enrd/land-ack/>).

If an appraisal has been completed at the time of application and the applicant wishes to pursue the acquisition at a price above the appraised value, the applicant will need to demonstrate reasonable effort to negotiate at the appraised value and submit written justification for the higher price based on reasonableness, prudence, public interest, additional or updated appraisals, estimated condemnation/trial costs, and/or valuation.

If an appraisal is not available at the time the project application is submitted, the applicant may submit a good-faith estimate of the cost for the project based on market value or agreement with the willing seller. However, if the project is selected for funding, the amount of the grant cannot exceed the estimated cost in the project application. An appraisal will be required at the time the applicant submits a formal grant application to NOAA (refer to section 5.4). If the appraised value is higher than the estimated cost, the applicant will be required to make up the difference, and if that is not possible, the project may have to be withdrawn or terminated.

e. Certification of compliance with federal laws, regulations and policies. As part of the project application checklist (attached as Appendix B), the applicant must answer questions that will enable NOAA to determine whether a project may have an adverse impact and whether additional information may be required to satisfy the requirements of applicable federal laws, regulations, or policies. If an Environmental Assessment or Environmental Impact Statement has been prepared for the project, attach a copy with the application. States will be responsible for ensuring that any project applications submitted to NOAA are consistent with the state's approved coastal management program and any applicable NERR Management Plans. Refer to section 6.0, which describes the applicability of requirements under federal laws, regulations and policies.

f. Documentation of Willingness or Intent to Sell. The applicant must submit documentation that the current owner is a willing participant in a process of negotiation for possible sale of property, or interests in property, for conservation purposes and that the landowner has been advised of the applicability of Public Law 91-646, Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (refer to section 6.8). This documentation may be in the form of a letter of willingness or intent,

option letter, contract, or other similar form. If not submitted with the project application, it will be required with the grant application to NOAA.

4.3 National Ranking and Selection Process

NOAA will conduct a peer review process to prioritize and select among all projects nominated by states through their competitive process as follows:

a. Peer review and ranking process. A national peer review panel that consists of at least six members will review each project nominated by a state. Membership of the panel will be made up of at least one representative from each of the following: NOAA, another federal land conservation program, the state coastal resource management community, estuarine reserve community, and two from the non-governmental sector (i.e., industry, conservation community). Each member will rank projects according to the degree to which they meet national criteria and submit individual rankings to NOAA. No member may have a vested interest or stand to benefit from any of the proposed projects. Membership of the panel may be reconstituted annually, and NOAA may identify alternates in the event that substitutions are needed.

b. Ranking criteria. Projects will be reviewed and prioritized according to the degree to which they meet the national criteria described in section 3.1b. NOAA will establish weighting factors for these criteria, in consultation with the coastal states, and will provide these ranking criteria to the states with its notification of availability of funding. Within these criteria, NOAA may also consider the availability of support for long-term management and stewardship, and success in leveraging other sources of funding. All ranking factors will be described in the annual notification.

c. Selection of approved projects. The Assistant Administrator for Ocean Services and Coastal Zone Management or his/her designee will serve as the selecting official for projects, based on the national rankings as well as availability of funds. In selecting projects, NOAA may consider geographic distribution of projects, as well as other factors deemed necessary to select among similarly-ranked projects, as described in the annual notification. The selecting official may maintain and select from a contingency list, in the event that any approved projects fall through or are completed below the planned cost.

4.4 Grant Application to NOAA – Selected Projects

NOAA will notify each state of projects that have been selected through the competitive process. For each of these projects, the state must submit the following materials, which, when combined with the original project application, will complete the application for federal financial assistance. States are encouraged to consolidate multiple projects into one application, with each project as a separate task, particularly for projects that will be awarded to local governments. NOAA may, at its discretion and in consultation with the relevant coastal state, agree with the state to accept an application from, and make a grant directly to, an agency other than the lead agency in order to expedite the completion of an approved project that will be implemented by that other agency.

Grant application materials. The following materials must be submitted to NOAA, in order to complete the application for federal financial assistance:

a. Standard forms for federal financial assistance. These forms can be found at the NOAA Grants Management Web site (<http://www.rdc.noaa.gov/~grants/>) along with detailed application instructions.

- Application for Federal Assistance (Standard Form 424);
- Budget Information (Standard Form 424A);
- Statement of Assurances (Standard Form 424B);
- Certifications Regarding Debarment, Suspension, Drug-Free Workplace and Lobbying (CD-511)

b. Appraisal. If an appraisal was not previously submitted as part of the project application described in section 4.2, it must be submitted with the grant application. Refer to section 4.2 for guidelines regarding the appraisal.

c. Title Opinion for the land(s) that will be purchased. The opinion should identify the current owner from which the land will be purchased, and whether there are any easements or other encumbrances on the land to be acquired. If there are easements or encumbrances, the applicant's attorney should specify the nature of these and certify that they would not interfere with the purposes for which the land is being acquired. A sample title opinion can be found at Appendix C.

5. Acceptance and Use of Funds

5.1 Allowable costs

a. Cost principles. Allowable grant costs are limited to costs necessary and reasonable to achieve the approved objectives of the grant and be consistent with general cost principles for grants awarded by federal agencies, as contained in the Office of Management and Budget (OMB) Circular A-87 "Cost Principles for State, Local, and Indian Tribal Governments," which will be incorporated into the grant award. A copy of OMB Circular A-87 can be found at <http://www.whitehouse.gov/omb/grants/>.

b. Pre-award costs. If an applicant incurs costs before the effective date of the grant, they do so at their own risk. Pre-award costs cannot be reimbursed except as approved by NOAA, although they may be counted as match. When approved, pre-award costs may include such costs as those necessary for conducting: environmental assessments, including risk assessments; feasibility surveys; appraisals; title searches or opinions; or preparation of documents needed to satisfy federal legal requirements, such as the National Environmental Policy Act. In some cases, with prior approval from NOAA, the cost of the land acquisition (fee simple or easement) may be reimbursed as a pre-award cost if the acquisition occurred between the date the project was recommended for funding through the competitive selection process ("selected") and the date that the grant award was approved by NOAA.

5.2 Expenditure of funds

- a. Availability of funds. Once a grant agreement has been signed, a recipient may draw funds, as needed, toward completion of the project, in accordance with 15 CFR 24.21 Payment.
- b. Timetable for expenditure of funds. The standard financial assistance award period is 18 months, and may be extended an additional 18 months if circumstances warrant, but may not exceed 3 years. Awards may also be closed out early if the project is completed in less time.
- c. Unexpended funds. Any funds not expended within the grant period shall be de-obligated and revert to NOAA for redistribution through the CELCP process, including projects that fall through.
- d. Projects that exceed planned costs. All requests for additional federal funding for approved CELC projects must be submitted to the review process along with new grants.
- e. Funds from the CELCP may be supplemented with funding from other federal or non-federal sources, subject to any conditions that may apply to the expenditure of funds from such sources.
- f. Amending a proposal. Any amendments to a proposal or request to reallocate funding within a grant proposal must be approved by NOAA. In general, if negotiations on a selected project fall through, the applicant cannot substitute an alternate site.
- g. Performance reports. The state lead agency, and/or any other agency that received a financial assistance award directly from NOAA, is responsible for submitting to NOAA semi-annual reports documenting progress toward completion of each project, and a final report documenting completion of the projects and all terms and conditions of the award.

5.3 Conditions on use of funds

All CELCP financial assistance awards will contain the following special award conditions and/or other applicable requirements for the Department of Commerce described in the *Federal Register*, October 1, 2001 (66 FR 49917), as amended October 30, 2002 (67 FR 66109):

- In the event there are title discrepancies or encumbrances that NOAA deems interfere with the purpose for which these funds were granted, or if NOAA determines that the property is no longer used for the purpose for which it was acquired, the recipient shall reimburse NOAA or its successor agencies for the federal funds received for the project, subject to “use” and “disposition” instructions from NOAA or its successor agencies.
- Federal funds for this project will not be transferred to the recipient for the acquisition of land or interest(s) in land until the recipient has submitted the following to NOAA

for review and approval: a completed and signed project checklist; appraisals of land made by a qualified independent appraiser and performed in accordance with federal or state appraisal standards; evidence of title insurance or an opinion of title and a copy of the real estate contract for each parcel; and a map indicating the tract boundaries for the property or portion of property being acquired.

- Deeds for real property acquired with federal funds provided through this award shall contain substantially the following provision:

“This property has been acquired with funds from a federal financial assistance award. Title of the property conveyed by this deed shall vest in the [recipient of the award or other appropriate public agency designated by the recipient] subject to the condition that the property shall be managed for conservation purposes, consistent with the purposes for which it was entered into the CELCP, and shall not convert to other uses. In the event that the property is sold, exchanged, or converts to other uses, NOAA shall consult with the recipient before deciding to exercise any of the rights regarding disposition of the property and reimbursement of the Federal Government.”

- Upon completion of all real estate closings, the recipient shall submit to NOAA/OCRM copies of the closing documents.
- The recipient shall cause to be erected and maintained at the site of any project, a permanent sign or plaque, satisfactory to NOAA, that identifies the project and indicates that the project has been funded under the Coastal and Estuarine Land Conservation Program by NOAA, in conjunction with the coastal state and/or National Estuarine Research Reserve or other partner.

5.4 Information the Recipient Must Retain on File

A grant recipient is expected to retain the following information for at least 3 years after a grant has been closed by NOAA at the end of the award period:

- A copy of the grant application, including project proposal, submitted to NOAA;
- Site location maps;
- Title opinion or certification;
- Appraisal;
- State Historic Preservation Officer’s clearance; and
- Copies of any notices or determinations that pertain to compliance or consistency with federal requirements.

6. Applicability of Other Federal Requirements

The approval of plans under this program and award of financial assistance are federal activities subject to authorities such as the National Environmental Policy Act, Endangered Species Act, and the federal consistency provisions of the CZMA. Before awarding funds, NOAA is responsible for ensuring that projects comply with these and other relevant authorities. A checklist, provided as part of the project application, will be

used to determine whether additional information may be required to satisfy these requirements for any project.

6.1 National Flood Insurance Program (NFIP). The NFIP prohibits the use of funds for acquisition or construction of buildings in special flood hazard areas in communities that are not participating in the Flood Insurance Program, as identified in the NFIP's Community Status Book. Construction of buildings is not an eligible use of CELCP funds. A community is not precluded from proposing projects within the floodplain for conservation purposes.

6.2 Coastal Barriers Resource Act (CoBRA). In order to receive federal funds, all proposed projects located on undeveloped coastal barriers designated in the CoBRA system must be consistent with the purposes of minimizing: the loss of human life; wasteful federal expenditures; and damage to fish, wildlife, and other natural resources. For projects in these areas, the Office of Coastal and Resource Management (OCRM) must consult with the regional office of the U.S. Fish and Wildlife Service (USFWS) and allow 30 days for them to determine whether the project is consistent with CoBRA. Because OCRM defers to their opinion in these cases, some projects or grant awards may be conditioned pending the results of the consultation process. Early coordination by the applicant with the USFWS is advisable.

6.3 Endangered Species Act. An applicant shall indicate whether it believes that a proposed project may affect threatened or endangered species or critical habitat as defined by the Endangered Species Act (ESA), and shall state the basis for its conclusion. If a proposed project may have minor and temporary effects, OCRM will informally consult with the relevant federal agency – either the USFWS or NOAA's National Marine Fisheries Service (NMFS). If a proposed project may significantly affect threatened or endangered species or critical habitat, OCRM will consult with the applicant regarding further steps that may need to be taken. If the applicant still wants to proceed, OCRM will enter into formal consultation with the USFWS or NMFS, pursuant to section 7 of the ESA. OCRM will not approve a proposed project that the USFWS or NMFS has determined will adversely and significantly affect threatened or endangered species or critical habitat.

6.4 National Environmental Policy Act (NEPA). These guidelines are administrative and financial in nature, and therefore are considered a categorical exclusion under NEPA. Subsequent actions concerning the approval of CELC plans, or acquisition, restoration, or enhancement of properties may require further analysis on a programmatic or case-by-case basis to determine compliance with NEPA. As part of the application for each project, applicants must complete an environmental compliance checklist that will be used to determine whether additional information or an Environmental Assessment or Environmental Impact Statement is needed.

6.5 Magnuson-Stevens Fishery Conservation and Management Act. The Magnuson-Stevens Act requires that federal agencies consult with NMFS regarding any action authorized, funded, or undertaken that may adversely affect essential fish habitat (EFH) for federally managed fish. Consultation is generally initiated when a federal agency notifies NMFS of an action that may adversely affect EFH, and provides NMFS with an assessment of the action. In response, NMFS provides Conservation Recommendations

to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. Federal agencies must provide a detailed response in writing to NMFS that includes proposed measures for avoiding, mitigating, or offsetting the impact of the proposed activity on EFH. If the federal agency chooses not to adopt NMFS' EFH Conservation Recommendations, it must provide an explanation. EFH consultation and coordination should be consolidated, where appropriate, with interagency consultation, coordination, and environmental review procedures required by other statutes. Consultation procedures are outlined at 50 CFR 600.920.

6.6 National Historic Preservation Act. Under the provisions of Section 106 of the National Historic Preservation Act of 1966, the Secretary of the Interior has compiled a national register of sites and buildings of significant importance to America's history. Before submitting an application, the applicant must determine whether land acquisitions or other grant-supported activities will affect a property listed on the national register. If so, the applicant must obtain clearance from the appropriate State Historic Preservation Office before submitting the application.

6.7 Americans with Disabilities Act (ADA). As a general rule, no qualified individual with a disability shall be subject to discrimination or be excluded from participation or benefits of the services, programs, or activities of a public entity. The ADA does not address issues of handicapped accessibility for outdoor recreation projects and public access projects that are needed to reduce harm to natural resources. Each project shall be handicapped accessible to the extent that conditions allow. Any construction associated with projects that provide for recreation, using funds other than CELCP, shall be handicapped accessible unless the construction of a handicapped accessible structure would damage coastal resources. Requirements for handicapped accessibility for the ADA are based on 42 U.S.C. §§ 12101 *et. seq.*, and the U.S. Architectural and Transportation Barriers Compliance Board.

6.8 Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970. This Act, Public Law 91-646, as amended, (42 U.S.C. 4601 *et. seq.*) requires certain assurances for projects conducted by a state agency or its agent that involve the acquisition and/or modernization of real property or cause the displacement of persons, businesses, or farm operations. Because CELCP only supports acquisition of property or interests in property from willing sellers, it is not anticipated that this program will result in any displacements. In cases of displacement, P.L. 91-646 requires that applicants ensure that fair and reasonable relocation payments and advisory services will be provided to any displaced persons and that safe, decent, and sanitary replacement dwellings will be available to such persons within a reasonable period of time prior to displacement. The state agency must be guided by the real property acquisition policies of the Act, and the property owners must be paid or reimbursed for necessary expenses as specified in the Act. The Act provides for an exemption to the appraisal, review and certification rules for "voluntary transactions" that meet the conditions specified at 49 C.F.R. §24.101(a)(1), including written notification to the owner that the agency will not acquire the property in the event negotiations fail to result in an amicable agreement. Department of Commerce regulations implementing the Act can be found at 15 CFR Part 11.

6.9 Environmental Justice. Consistent with the President's Executive Order on Environmental Justice (Feb. 11, 1994) and the Department of Commerce's Environmental Justice Strategy, applicants shall ensure that their CELCP projects will not have disproportionately high and adverse human health or environmental effects on minority or low income populations.

6.10 Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements. The Department of Commerce has published in the *Federal Register*, October 1, 2001 (66 FR 49917), as amended October 30, 2002 (67 FR66109), a set of requirements that are applicable to all federal financial assistance awards issued by the Department. These will be addressed as Special Award Conditions on financial assistance awards.

7. Classification

7.1 Administrative Procedure Act/Regulatory Flexibility Act.

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, and contracts (5 USC 553 (a) (2)). Because notice and opportunity for comment are not required pursuant to 5 USC 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 USC 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Opinion

7.2 Executive Order 12866.

These draft guidelines do not constitute a "significant regulatory action" as defined by Executive Order 12866 because: (1) they will not have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) they will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) they will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and (4) they will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

7.3 Paperwork Reduction Act.

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), and which have been approved by OMB. The use of Standard Forms 424, 424A, 424B, and SF-LLL have been approved by OMB under the respective control numbers 0348-0043, 0348-0044, 0348-0040, and 0348-0046. The information to be collected under these guidelines through conservation plans, the

project application, checklist, and grant application materials has been approved by OMB under control number 0648-0459.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

APPENDIX A

Policies of the Coastal Zone Management Act Relating to Coastal and Estuarine Land Conservation.

Related to ecological and conservation values, the CZMA declares it national policy to:

- Protect fish and wildlife and their habitat in the coastal zone;
- Protect estuaries to provide opportunities for long-term research, education, interpretation, and stewardship;
- Manage development to maintain and improve coastal water quality to protect and enhance natural resources and existing uses of those waters;

Related to recreational, historical, and aesthetic values, the CZMA declares it national policy to:

- Maintain and enhance environmentally sound public access to the coasts for recreation purposes;
- Protect barrier islands within the coastal zone to provide protection against storm surge, wave damage and flooding, and maintain sand supplies and protect important recreational areas;
- Give priority consideration for coast dependent uses, including recreation; and
- Assist in the sensitive preservation and restoration of historic, cultural, and esthetic coastal features.

APPENDIX B –

OMB Control # 0648-0459

Project Application Checklist

(Note: NOAA may modify this checklist as needed, and consistent with the Paperwork Reduction Act, to effectively implement the project application and selection process.)

The project applicant must complete and sign this Project Checklist and submit it to the National Oceanic and Atmospheric Administration, along with the other required application materials, in order to receive approval of a project.

Applicant and Project Information

1. State: _____ Award Number: [provided by NOAA] _____
2. Project Title: _____
3. Project Location (Approximate): (City, County, Major Intersections)
4. Project Applicant (Must be a public entity at the state or local level): _____
5. Total Cost: \$ _____
- | | |
|---|----------|
| CELCP Federal share (requested amount): | \$ _____ |
| State/Local Match Contributions: | \$ _____ |
| Other Federal \$: | \$ _____ |
| Other Non-Federal \$: | \$ _____ |

I ATTEST TO THE FOLLOWING: (1) THE STATEMENTS MADE AND OTHER INFORMATION PROVIDED IN THIS CHECKLIST ARE, TO THE BEST OF MY KNOWLEDGE, TRUE AND ACCURATE; (2) THE RECIPIENT HAS ON FILE THE DOCUMENTS IDENTIFIED IN THIS CHECKLIST; AND (3) I UNDERSTAND THE CONSEQUENCES OF NON-COMPLIANCE WITH THE SPECIAL AWARD CONDITIONS THAT WILL BE PLACED ON THIS GRANT.

Signature of Applicant Date

Name of Signatory (please print or type): _____
Title: _____
Address: _____

Phone Number: _____