

MEMORANDUM FOR: State, Commonwealth and Territory Coastal
Management Program Managers

FROM: Joseph A. Uravitch, A.I.C.P.
Chief, Coastal Programs Division

SUBJECT: Revised Section 306A Guidance

Attached is the Office of Ocean and Coastal Resource Management's (OCRM's) revised Coastal Zone Management Act (CZMA) section 306A guidance. This guidance incorporates some of the suggestions you provided on the draft guidance, which was sent to you in September 1998. This guidance takes effect immediately and must be used with your FY 1999 grant applications.

The guidance clarifies section 306A eligibility requirements; redefines the procedures for section 306A applications and approval by the Coastal Programs Division (CPD), and the National Oceanic and Atmospheric Administration's (NOAA's) Grants Management Division (GMD); and substantially reduces the amount of section 306A project information submitted to NOAA for grant actions. The guidance does not dramatically change existing section 306A eligibility requirements. This guidance supersedes all previous section 306A guidance. These changes should reduce federal, state and local government administrative time and paperwork; expedite federal approval and state pass-through to local governments and others; and allow the projects to begin earlier in the grant cycle.

If you have any questions on the guidance, please contact David W. Kaiser, CPD, at 301.713.3098, Extension 144, Fax: 301.713.4367 or Internet: david.kaiser@noaa.gov
Please contact your CPD Coastal Management Specialist when submitting applications and proposed section 306A projects.

Attachment

cc: Tony MacDonald, CSO
Evaluation Staff, OCRM
Estuarine Reserve Division, OCRM
Ed Sharp, DOC GC
Arlene Porter, NOAA GMD

Coastal Zone Management Act Section 306A Guidance

Coastal Programs Division

Office of Ocean and Coastal Resource Management
National Ocean Service
National Oceanic and Atmospheric Administration

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I. Introduction

This guidance is issued by the Coastal Programs Division (CPD), of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA). This guidance implements the Coastal Zone Management Act (CZMA) section 306A. States, Commonwealths and Territories (hereafter referred to as "states") with federally approved coastal management programs (CMPs) shall use this guidance when developing section 306A projects; negotiating section 306A projects with other state agencies, local governments, American Indian tribes and others; and when applying for federal approval of section 306A projects. The guidance describes CZMA section 306A eligibility requirements, allowable uses of section 306A funds, section 306A application requirements, and information that the state CMP shall retain in its files. This guidance supersedes all previous OCRM guidance regarding section 306A.

This guidance delegates to the state CMPs much of the section 306A documentation and record keeping responsibilities. In addition, the NOAA Grants Management Division (NOAA GMD) has delegated to CPD federal approval authority for section 306A projects. The new Section 306A Project Checklist (Appendix I) should provide sufficient information for CPD approval. These changes should reduce federal, state CMP and local government administrative time and paperwork; expedite federal approval and state pass-through to local governments and others; and allow the projects to begin earlier in the grant cycle.

The delegation of section 306A responsibilities requires that state CMPs ensure that section 306A projects meet the eligibility and use requirements contained in this guidance and that the section 306A records are adequately maintained. State documentation and records will be subject to review by OCRM during periodic CZMA section 312 evaluations and will be necessary for state and federal audits. Failure by a state CMP to adhere to section 306A requirements or maintain state CMP section 306A files may result in one or more of the following actions: removal of CPD's delegation of section 306A requirements to the particular state CMP; deobligation of improperly used section 306A funds; a finding that the state may not fund section 306A projects; or other financial sanctions as authorized by the CZMA.

This guidance is derived from CZMA section 306A; H.R. Rep. No. 1012, 96th Cong., 2d Sess., pp. 18-19, 44-46 (1980); Cong. Rec.

H 10113-H 10114 (Sep. 30, 1980); 15 C.F.R. part 24 (Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments); OMB Circular A-87 (cost principles); GAO/OGC 92-13 (Principles of Federal Appropriations Law), chapter 10 (grants and cooperative agreements); and OCRM's former section 306A guidance (May 1990).

State CMPs should contact their CPD Coastal Management Specialist for any assistance needed to apply for section 306A funding.

II. Objectives and Allowable Uses of Section 306A Funds

A section 306A project shall meet one or more of the following objectives:

1. Preservation or restoration of specific areas that (a) are designated under a state's CMP as required by CZMA section 306(d)(9) because of their conservation, recreational, ecological, or esthetic values, or (b) contain one or more coastal resources of national significance, or for the purpose of restoring and enhancing shellfish production by the purchase and distribution of clutch [sic] material on publicly owned reef tracts. CZMA § 306A(b)(1);
2. Redevelopment of deteriorating and underutilized urban waterfronts and ports that are designated under section 306(d)(2)(C) in the state's management program as areas of particular concern. CZMA § 306A(b)(2);
3. Provision of access to public beaches and other coastal areas and to coastal waters in accordance with the planning process required under section 306(d)(2)(G). CZMA § 306A(b)(3); or
4. The development of a coordinated process among state agencies to regulate and issue permits for aquaculture facilities in the coastal zone. CZMA § 306A(b)(4) (added in 1996 for aquaculture planning and regulation processes. The section does not authorize the use of section 306A funds for the construction of aquaculture projects).

The use of section 306A funds is limited to:

1. The acquisition of fee simple or other interest in land, e.g., purchasing an easement for a public right-of-way to the beach or to purchase an ecologically important area to preserve as an area of particular concern.

CZMA § 306A(c) (2) (A);

2. Low-cost construction projects consistent with the purposes of CZMA § 306A, including but not limited to paths, walkways, fences, parks, and the rehabilitation of historic buildings and structures. CZMA § 306A(c) (2) (B);
3. The revitalization of deteriorating or underutilized urban waterfronts or ports for:
 - a. the rehabilitation or acquisition of piers for public use, including compatible commercial activity,
 - b. the establishment of shoreline stabilization measures including the installation or rehabilitation of bulkheads for the purpose of public safety or increased public access and use of urban waterfront areas; and
 - c. the removal or replacement of pilings where such action will provide increased recreational use of urban waterfront areas. CZMA § 306A(c) (2) (C);
4. Engineering designs, specifications, and other appropriate reports related to the above (including aquaculture processes). CZMA § 306A(c) (2) (D); and
5. Educational, interpretive, and other management costs (including aquaculture processes). CZMA § 306A(c) (2) (E).

III. Section 306A Project Eligibility

General Guidance

Section 306A provides state CMPs with federal funds to obtain on-the-ground results from state coastal management processes and enhance the overall effectiveness of state CMPs. Section 306A projects must be directly linked to a state CMP. A single state agency shall administer both CZMA sections 306 and 306A in order to plan activities and projects that complement each other and result in the overall improvement of a state's CMP.

Generally, states are eligible for section 306A funds if the state has a federally approved CMP and the state CMP is making satisfactory progress in activities designed to result in significant improvement in achieving the coastal management objectives specified in sections 303(2) (A) through (K). If CPD determines that a state CMP is not making satisfactory progress, CPD will use its discretion to terminate section 306A eligibility until the problems are remedied. A section 306A project shall also meet one of the section 306A objectives, and the funds will

be used for one of the section 306A allowable uses. These are all described in more detail in this guidance.

The amount of funds spent on any single section 306A project, and the amount spent on all section 306A projects from a particular CZMA section 306/306A grant, is negotiated with CPD. CPD approval depends on the requirements of this guidance and other state CMP program needs, e.g., state CMP section 306 implementation needs, CZMA section 312 evaluation necessary actions and recommendations, and CZMA section 309 and Coastal Nonpoint Pollution Control Program needs. Project costs for a single section 306A project in excess of \$100,000 may require additional justification and additional National Environmental Policy Act (NEPA) documentation. See section IV of this guidance for further discussion on NEPA. A state CMP shall not use more than 50 percent of its section 306/306A grant for section 306A low-cost construction projects. CZMA § 306A(c)(2)(B).

Congress declared that section 306A projects shall not be capital intensive, but instead be minor in scope, and that section 306A funds shall not be used to finance large-scale erosion-prevention structures. Consistent with this directive, it is OCRM's policy that section 306A funds shall not be used for beach renourishment or hard structure erosion control projects. Small scale shoreline stabilization structures are allowed for the redevelopment of deteriorating or underutilized urban waterfronts or ports to provide for increased public use and access. (An urban waterfront is an area that is densely populated and has historically been developed.) OCRM may approve vegetative erosion control activities or planning activities for a beach renourishment project or non-structural erosion control projects if the project is on public land and the state CMP can show a substantial public benefit (e.g., the structure protects public investment that cannot be feasibly or technically relocated, protection of a historic structure or other important coastal resources), these benefits substantially outweigh the costs, there is a reasonable expectation that the project will last for a reasonable amount of time, the project is minor in scope and not capital intensive, and meets other section 306A requirements.

Public Benefit

Public benefit requirements for section 306A projects are:

1. Section 306A funds shall only be used for projects on publicly owned or leased land, or land for which an easement is obtained.

2. Leases and easements should be in perpetuity. However, a lease or easement shall, at a minimum, be for the expected life of the project (a minimum of 20 years). The life of a project includes expected repairs to a facility. If a deed, lease or easement conveying property to a public entity for section 306A purposes contains a reversionary clause, CPD must approve the reversionary clause. If the property reverts and is no longer used for its original purpose, then the state CMP shall reimburse NOAA for the federal funds received for the project.
3. Section 306A funds are for public benefit and may not be used to improve private property or for other private enterprises (including non-profit property or enterprises).
4. Indirect benefits to commercial, private or non-profit activities derived from section 306A projects are allowed so long as the indirect commercial, private or non-profit activities do not interfere with the purpose of the project, the requirements of this guidance, and public use and benefits are not diminished.
5. If the land ceases to be available (or the project ceases to be used) for the intended use at any time during the life of the project, the state CMP shall reimburse the full amount of the federal cost of the project to NOAA.
6. A section 306A public access facility must be open to the general public. Facilities that restrict use to specific persons or residents of a community are not eligible for section 306A funding. Access may be limited or controlled in an equitable manner at certain times for safety or resource protection reasons or for other good and reasonable cause such as: to accommodate special events, educational outings (e.g., a school group), or for scientific research (e.g., archaeological excavation).
7. In general, user fees should not be charged to access section 306A projects. If user fees are desired the fee must be described and justified in the Section 306A Project Checklist submitted to CPD. All user fees, income or other revenues derived from a section 306A project shall revert to the maintenance or management of either the federally funded section 306A project or, if the section 306A project is part of a larger public project, the larger public project. If a state or local government proposes to charge a higher fee for non-state, non-county, or non-city residents, the

Section 306A Project Checklist submitted to CPD shall clearly demonstrate that the differential non-resident fee is based on the amount of project subsidization from the resident tax base. Moreover, non-resident fees shall be reasonable. OCRM may require additional information on the necessity or reasonableness of a fee and may deny the use of a user fee.

8. Section 306A funds shall not be allocated to a non-profit organization. A state CMP may allocate section 306A funds to local governments, area-wide agencies, regional agencies and interstate agencies, so long as the funds so allocated further the state's CMP. CZMA § 306A(e). Section 306A funds shall not be used to purchase property for a non-profit organization or to otherwise directly or primarily benefit the organization. The term "non-profit organization" includes land trusts, development corporations/quasi-governmental units and other non-public not-for-profit entities. A state CMP, or other public entity, may, if permissible under state or local contracting authorities, contract with a non-profit organization to perform some or all of the tasks for a particular section 306A project, providing that: the non-profit organization is identified in the Section 306A Project Checklist (section 7.g.) and the project meets all section 306A requirements including the other public benefit requirements discussed above. A non-profit organization cannot be identified in the grant as a sub-awardee.

A state CMP, or other public entity, may enter into a partnership with a non-profit organization to purchase property, for preservation purposes only, so long as the federal section 306A funds are allocated to the public entity and the public entity retains ownership (title) and control of the property. If a land trust is involved, the land trust may retain an interest in the property consistent with the purpose of preserving coastal uses or resources, e.g., a conservation easement, but not fee simple ownership.

IV. Other Federal Requirements

National Flood Insurance Program Requirements

Any coastal community listed by the Federal Insurance Administration (FIA) in its most current National Flood Insurance Program Community Status Book as being a community which is not participating in the Flood Insurance Program will not be eligible

for any section 306A projects which include the acquisition or construction of buildings in special flood hazard areas shown on an FIA map. State CMPs should so notify such non-participating communities. This does not preclude the community from proposing section 306A projects both in the flood plain or outside of it, that are not acquisition for construction or actual construction projects, e.g., acquisition of wetlands.

Coastal Barriers Resource Act Requirements

Projects proposed for funding under section 306A must conform to the requirements of the Coastal Barrier Resources Act (CBRA). CBRA requires that federal funds shall only be used for projects on undeveloped coastal barriers designated in the CBRA system if they are consistent with the three purposes of the Act--to minimize: 1) the loss of human life, 2) wasteful federal expenditures, and 3) damage to fish, wildlife and other natural resources. If a project is to be located in a designated undeveloped coastal barrier, OCRM is required to consult with the relevant regional office of the U.S. Fish and Wildlife Service (USFWS). The USFWS consultation process requires that OCRM provide the USFWS with up to 30 days to render an opinion that the project is consistent with CBRA. Thus, some delays in awarding the grant may be expected or some projects may be conditioned pending the results of the consultation process. Therefore, early coordination by the applicant with the USFWS is advisable. While OCRM has the authority to make the final determination if a project is consistent with the purposes of the CZMA and CBRA, the USFWS opinion will be given deference.

Endangered Species Act Requirements

A state CMP shall indicate whether it believes that a proposed section 306A project may adversely affect threatened or endangered species or critical habitat as defined by the Endangered Species Act (ESA). If a proposed section 306A project may have minor and temporary effects CPD will request that the state CMP informally consult with the relevant federal agency(ies) (either the USFWS or the National Marine Fisheries Service (NMFS)). If a proposed section 306A project may significantly affect threatened or endangered species or critical habitat, CPD will request that the state CMP withdraw the proposed project. If the state CMP still wants to proceed CPD will enter into ESA section 7 consultation with the USFWS or NMFS. However, CPD will not approve a proposed section 306A project that the USFWS or NMFS has determined will adversely and significantly affect threatened or endangered species or critical

habitat.

National Environmental Policy Act Requirements

Section 306A projects are, generally, categorical exclusions under NEPA. See OCRM, *Generic Environmental Assessment of the CZMA Section 306A Land Acquisition and Construction Projects* (Nov. 1989). This determination was based on the "small scale" nature of section 306A projects and that the environmental impacts from section 306A projects are minimal when performed separately or cumulatively. Small scale projects are defined as costing less than \$100,000. States are required to complete a categorical exclusion checklist for each section 306A project. The categorical exclusion checklist has been subsumed into the attached Section 306A Project Checklist (Appendix I).

Some section 306A projects may not be eligible for a categorical exclusion. Section 306A projects costing more than \$100,000 (in federal and matching funds) or that may significantly affect the environment (regardless of cost) must be reviewed to determine if an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required. CPD may, on a case-by-case basis, require a state CMP to submit additional information to determine if an EA or EIS is required.

In order to reduce the environmental impacts of section 306A projects, a state CMP shall ensure that best management practices that conform with its approved Coastal Nonpoint Pollution Control Program be used at section 306A project sites.

Americans with Disabilities Act -- Handicapped Accessibility Requirements

Handicapped access requirements for section 306A projects are based on the requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 *et. seq.* (Pub. L. No. 101-336), and the U.S. Architectural and Transportation Barriers Compliance Board (Board). As a general rule, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. ADA § 202. However, the ADA does not address handicapped accessibility issues for outdoor recreation projects and public access projects that are needed to reduce harm to natural resources. The following guidance is based on OCRM's previous section 306A handicapped accessibility requirements. These requirements may change if the Board

publishes a rule on handicapped accessibility to outdoor areas.

Section 306A public access projects shall be handicapped accessible unless the construction of a handicapped accessible structure would damage coastal resources or resource damage would occur in the absence of the section 306A project. In these instances the section 306A project shall be handicapped accessible to the extent that conditions allow. A state may not use increased cost as a reason to not construct a handicapped accessible section 306A project. A project is not eligible for section 306A funds unless it meets this criteria.

The section 306A handicapped accessible requirement applies to federally funded construction projects and any state funded construction projects used to match the section 306/306A awards. Also, any federally funded construction improvements to an existing public access project shall be handicapped accessible regardless of the source of funds used to construct the original project.

Department of Commerce Environmental Justice Strategy

Consistent with the President's Executive Order on Environmental Justice (Feb. 11, 1994) and the Department of Commerce's Environmental Justice Strategy, state CMPs shall ensure that their section 306A projects will not have disproportionately high and adverse human health or environmental effects on minority or low income populations.

V. Application Procedures

Application Method

A state CMP shall submit one application for a combined section 306/306A grant. The section 306/306A grant application should include all required section 306A information (i.e., a completed and signed Section 306A Project Checklist, title opinions and other required information). If this is not possible, the section 306/306A grant application shall identify the portion of the grant that will be used for section 306A projects. In the latter case, the state CMP shall submit the required section 306A information within the first 120 days of the grant period. Submission at one time of section 306A project information for all section 306A projects results in an expedited and more efficient approval process. Submission of all section 306A project information with the section 306/306A grant application

further speeds the section 306A project approval process.

Section 306A projects should be completed within the grant period. If a project will take longer to complete, it should be submitted in phases. Approval of a project for one grant does not guarantee that federal funds will be available for future phases or projects. Thus, each proposed section 306A project shall be a functional, stand alone project.

Section 306A Project Approval Steps

This guidance and the attached Section 306A Project Checklist are intended to expedite NOAA's approval of section 306A projects. The section 306A Project Approval Steps are:

1. State CMP submits section 306/306A application.
 - a. State includes, if possible, completed section 306A checklists, title opinions and any other information that may be required.
 - b. If projects are not finalized by the time of the final grant application, state CMPs identify in the section 306/306A grant application an amount of federal funds to be used for section 306A projects and, if possible, the name and type of section 306A projects proposed.
2. Where the state CMP submits all section 306A information with the final section 306/306A grant application, CPD, the Department of Commerce's Office of General Counsel (OGC) and the NOAA GMD review the section 306/306A grant application. If the section 306A information is complete and approved, the state may begin the approved section 306A projects on the grant start date.
3. If the section 306A information was not complete in the approved section 306/306A application or award, the state CMP shall submit, within 120 days of the award date, the Section 306A Project Checklists, title opinions and any other required information for CPD approval.
4. When CPD receives the section 306A project information CPD will send the title opinion to OGC to review and approve. This is an OGC review and not a NOAA GMD "grant action." If OGC determines that the title opinion is adequate, CPD will continue to process the checklist. If OGC determines that the title opinion is inadequate, CPD will stay its review of the project

until the state CMP remedies the inadequate title. Once the title opinion is cleared by OGC, CPD will either approve or deny the project or request additional information. If CPD approves, CPD will send the checklist to the state and NOAA GMD with CPD's approval signature (see first page of checklist). Once the state CMP receives a Section 306A Project Checklist with CPD's approval, the applicable special award condition is satisfied, federal funds are released, the section 306A funds may be allocated to the project proponent and work may commence.

5. OCRM monitors the delegation of section 306A documentation to the states and the section 306A projects through CPD oversight and CZMA section 312 reviews.

6. Any reprogramming of funds between sections 306 and 306A will require NOAA GMD approval. Section 306A Project Checklists for section 306A projects using funds reprogrammed from section 306 will be processed by NOAA GMD as a grant action.

Budget Information and State Match Requirements

The section 306A construction and acquisition project totals shall be entered under "construction" in Section B of the section 306/306A grant application's Standard Form 424A.

A state CMP may use any eligible state or local funds and/or in-kind services to match both the sections 306 and 306A portions of its grant. A state CMP is required to match its section 306/306A grant on a 1 to 1 basis (except for newly approved states, see below). A state CMP is not required to match federal section 306A funds with matching funds or services from section 306A projects. All that is required is that the entire section 306/306A grant is matched on a 1 to 1 basis and the match is from eligible sources. Requirements for eligible matching funds or services are contained in the Uniform Administrative Requirements

for Grants and Cooperative Agreements to State and Local Governments. See 15 C.F.R. part 24.

Additional Match Requirements for State CMPs Approved After 1990

[NOTE: This section is subject to change if a statutory change is made to section 306A to address the match discrepancy]

CZMA section **306** funds awarded to states whose programs were approved after 1990 are to be matched in a federal to state ratio

of 4 to 1 for the first fiscal year, 2.3 to 1 for the second fiscal year, 1.5 to 1 for the third fiscal year, and 1 to 1 for each year thereafter. CZMA § 306(a)(2). Section **306A** funds, however, must be matched 1 to 1, since there is not currently a "phase-in" for section 306A match. See CZMA § 306A(d)(1).

Thus, state CMPs approved after 1990 must show the appropriate match for section 306 funds (4 to 1, 2.3 to 1, 1.5 to 1, or 1 to 1) and a 1 to 1 match for section 306A funds (but the match can still come from eligible non-section 306A sources).

An example of how a recently approved state CMP's first section 306/306A award would be matched is (section 306 match of 4 to 1 and section 306A match of 1 to 1):

Total Federal Award (306/306A combined): \$1,000,000

| | |
|-----------------------------|-----------------------------|
| <u>306</u> (4 to 1 ratio) | <u>306A</u> (1 to 1 ratio) |
| \$800,000 federal | \$200,000 federal |
| \$200,000 state/local match | \$200,000 state/local match |
| from 306 or 306A sources | from 306 or 306A sources |

Total match: \$400,000 (2.5 to 1 ratio)

For state CMPs approved after 1990 the grant application shall show separate matching funds for section 306 and section 306A. The state's internal record keeping should also show separate matching funds for each section. After CPD reviews the state's final section 306/306A grant application, CPD will verify the final combined section 306/306A matching ratio. (In the example above, the final combined ratio is 2.5 to 1.) The final ratio will depend on the amount of federal funds a state chooses to expend on section 306A projects. NOAA must agree to the final combined match ratio to eliminate the need for a state CMP to submit separate Financial Status Reports on section 306 and section 306A funds. Any reprogramming of funds between section 306 and section 306A would require a state CMP to recalculate the combined section 306/306A match ratio and submit it to NOAA for approval. A Special Award Condition will be added to these grants explaining this requirement.

VI. Information Required in Application to NOAA

A State CMP, proposing section 306A projects, shall include a section 306A section in its combined section 306/306A grant application. The application shall list the proposed section 306A projects by name and federal funds for each project or, if

individual projects are not identified in the grant application, show the amount of federal funds to be allocated for section 306A projects. As discussed above, state CMPs approved after 1990 must also show a 1 to 1 match for the section 306A projects.

The only other information required, unless otherwise notified by CPD, is a completed and signed Section 306A Project Checklist, title information for each proposed section 306A project and other information required by the checklist. The Section 306A Project Checklist shall be signed by the state CMP's Program Manager. See Attachment I (Section 306A Project Checklist).

VII. Information the State Must Retain on File

The information retained by the state will vary depending on the type of section 306A project. The state CMP shall retain this information for at least three years after the grant has been closed-out by NOAA. CPD reserves the right to require submission of any or all of the information listed below for a project if the complexity of the project or other reasons indicates a need to review the project in more detail. The state CMP shall retain in its files the following information:

1. A copy of the completed and CPD approved Section 306A Project Checklist.
2. Site location map.
3. Site plan.
4. Title opinion or certification.
5. Appraisal.
6. State Historic Preservation Officer's clearance.
7. Floodplains/Wetlands notice.
8. Copies of required state and federal permits.

Each of these items are described below:

1. Section 306A Project Checklist. The checklist provides (1) the necessary section 306A information for CPD review and approval, and (2) state certification that the state has in its files the necessary information, the information meets the section 306A requirements as set forth in the CZMA and this guidance, that the state CMP attests to the truth of the information, and that the state CMP understands the consequences of noncompliance with the checklist and this guidance. See Appendix I.

2. Site location map. The site location map shows the exact location of the section 306A project.

3. Site plan. The site plan is a detailed drawing of the proposed construction project (or other physical alteration or acquisition) on the project site showing the relationship of the project to other facilities and significant natural features (slope, access points, wetlands, dunes, floodplains, etc.). The site plan shall also show how structures will be handicapped accessible.

4. Title opinion or certification. A title opinion, certification (or affidavit), or title insurance showing **public ownership or control** is required for any section 306A construction project (or other physical alteration), land acquisition project, or any other type of section 306A project which has a physical relationship to land, water or submerged lands. The title document must be signed by a state or local government official attesting that the property is in public ownership or control consistent with this section 306A guidance. It is in the state's or local government's interest to ensure that a public entity has clear title to property proposed for section 306A projects. See Appendix II for examples of a title

opinion and certification. See also section VIII of this guidance regarding special award conditions.

5. Appraisal. Before purchasing a piece of property with section 306A funds, a state CMP shall obtain an independent appraisal by a state approved appraiser to determine fair market value. State CMPs shall adhere to the following steps in negotiating acquisition price (adapted from 49 C.F.R. part 24.102):

- a. Secure independent property appraisal.
- b. Present appraisal to land owner and negotiate price based on appraisal. Property owner shall be given a reasonable opportunity to consider the offer and present material which the owner believes to be relevant to determining the property's value.
- c. If the property owner will not sell for the appraised price or lower, and the state wishes to pursue the acquisition, a second independent appraisal shall be done, or the original appraisal updated to account for changed circumstances, e.g., extensive time passage, natural disaster.
- d. If, after negotiations and a second or revised first appraisal, the purchase price still exceeds the appraised value, the state may be allowed to pay more than the appraised value (with federal section 306A

funds) if the state demonstrates reasonable efforts to negotiate at the appraised value and if the state provides CPD with a written justification for the higher price, based on reasonableness, prudence, public interest, appraisals, estimated condemnation/trial costs, and/or valuation supports a settlement.

6. State Historic Preservation Officer's (SHPO's) clearance.

SHPO clearance is required before work can commence on all section 306A construction projects and before land can be purchased for all section 306A acquisition projects. However, SHPO clearance is not required for CPD approval. The state CMP Program Manager must certify, in the Section 306A Project Checklist, that the state CMP is seeking SHPO clearance and that work will not begin and land will not be purchased until SHPO clearance is received by the state CMP. The State CMP should

resolve any National Historic Preservation Act section 106 issues with the SHPO.

7. Floodplains/Wetlands notice. Any state or federal notices regarding a section 306A project on impacts to floodplains or wetlands shall be retained by the state.

8. Copies of required permits. The state CMP shall place in the file for a section 306A project copies of any required local, state, tribal and federal permits. Required local, state, tribal and federal permits must be obtained before work can commence on all section 306A construction projects and before land can be purchased for all section 306A acquisition projects. However, the state CMP is not required to have the permits in hand for CPD approval. The state CMP Program Manager must certify, in the Section 306A Project Checklist, that the state CMP (or other public entity) is seeking the required local, state and federal permits and that work will not begin and land will not be purchased until the permits have been issued and received by the state CMP.

VIII. Special Award Conditions

All NOAA section 306/306A grants will contain the following special award conditions regarding section 306A projects:

In the event there are title discrepancies or encumbrances that NOAA deems interfere with the purpose for which the 306A funds were granted, or if NOAA determines that project

or property is no longer used for its original purpose, the Recipient shall reimburse NOAA for the Federal funds received for the project.

Federal funds are not permitted to be expended on any section 306A awards until NOAA/OCRM reviews and approves the projects in conformance with OCRM's section 306A Guidance. Specifically, no federal funds may be expended and no work may commence on a section 306A project until the state has submitted to CPD a complete and signed Section 306A Project Checklist (and any other required information) for each section 306A project and CPD approves. If, for any reason,

a section 306A project ceases to be used as approved by NOAA, the state shall reimburse to NOAA the federal share.

The recipient shall cause to be erected at the site of any construction project, and maintained during the construction, signs satisfactory to NOAA/OCRM that identify the project and indicate that the project is being funded under the Coastal Zone Management Act, by NOAA's Office of Ocean and Coastal Resource Management, in conjunction with the State Coastal Management Program. The recipient shall also maintain a permanent plaque or sign at the project site with the same information.

OMB Control # 0648-0119, expires 11/30/2004. OCRM requires this information in order to adequately assess the eligibility of proposed CZMA section 306A projects. Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to John King, Chief, Coastal Programs Division, OCRM, 1305 East-West Hwy., 11th Floor, Silver Spring, Maryland 20910. This reporting is required under and is authorized under 16 U.S.C. § 1455a. Information submitted will be treated as public records. Notwithstanding any other provision of the 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 requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Appendix I

Section 306A Project Checklist

Appendix II

Title Opinion and Certification Examples

TITLE OPINION (EXAMPLE)

April 1990
Date

RE: Inlet Park Boardwalk
Project Name on Section 306A Checklist

I hereby certify that I am a member in good standing of the bar of Maryland (state) and have been requested to determine record ownership for the parcel(s) of property on which the above-referenced project will be constructed, Inlet Boardwalk - along North Jetty at Ocean City Inlet (name and brief description of land). After thoroughly examining the public land records or other appropriate records in accordance with the laws of Maryland (state), I hereby certify that record title to the parcel is held by U.S. Army Corps of Engineers/United States of America in (check one) fee simple absolute other (specify) _____

I have determined that there are (check one) no easements or other encumbrances on the property easements or other encumbrances on the property (list below or attach a list.

Other Comments: Easement to Town of Ocean City for construction of Boardwalk.

/S/
Signature
Guy R. Ayres III
Name
5200 B Coastal Highway
Ocean City, MD 21842
Address

XXXXXXX
Bar number (must include)
(XXX) XXX-XXXX
Telephone number

SUGGESTED AFFIDAVIT OR CERTIFICATION FORM

I solemnly affirm upon personal knowledge that the following statements are true:

I _____ being first and duly sworn state that:
(print name of official)

1. Official must state what his/her title is and what authority he/she has to say that the property is publicly owned.

2. Official must state that the property is owned or leased by the state or local government (in accordance with OCRM's CZMA Section 306A Guidance, February 1999) and there are no encumbrances on the property that interfere with the proposed section 306A project.

Signed _____
(name of official)

Subscribed and affirmed before me this _____ day of _____
(month), _____ (year).

Notary Public

My Commission expires:

Note: This form should be revised in accordance with state law.