

Policy Making & Federal Consistency at the Local Level

Oregon Coastal Management Program

Document Purpose: Provide local jurisdictions the tools needed to craft strong policies that can be used during federal consistency reviews as enforceable policies, as well as how to identify them in PAPA submissions so they can be incorporated into the Oregon Coastal Management Program.

Why Care About Federal Consistency?

[Federal Consistency](#) is an authority provided by the federal Coastal Zone Management Act (CZMA). This authority gives federally approved state Coastal Zone Management (CZM) Programs the ability to review federal activities for consistency with state and local policies. DLCD is the lead agency for Oregon's federally approved CZM program which is called Oregon Coastal Management Program (OCMP).

Oregon's federal consistency authority and the uniquely networked structure of the OCMP ([11 state agencies and 40 city and county jurisdictions](#)) require state and local interests to be considered in developing and reviewing federal activities within Oregon's coastal zone (Figure 1). These federal activities include [direct federal actions](#) and federally permitted/licensed projects.

The strongest policies within state and local laws that meet the federal criteria, known as [enforceable policies](#) (EPs), will be applied during federal consistency reviews of proposed federal activities (actions & permits/licenses).

Make Federal Consistency Work for Your Jurisdiction's Interests!

Crafting Enforceable Policies

Consider the criteria for crafting enforceable policies when drafting new or amending existing policies (see Table 1). Only policies that meet the federal EP criteria can be applied during federal consistency reviews of proposed federal activities. This is an important tool in the planning toolbox and one that is unique to coastal communities.

Identifying Local Enforceable Policies

Identify EPs within local Comprehensive Plans and Ordinances when submitting Post Acknowledgment Plan Amendments (PAPA). Once identified in the submission, DLCD can incorporate them into the Oregon Coastal Management Program for federal consistency reviews.

Implementation of Enforceable Policies

When DLCD receives a federal consistency application from a federal permit/license applicant or a federal agency proposing a direct action, staff leverages local analysis often through a completed Land Use Compatibility Statement (LUCS). Based on the details of the proposed project and the level of analysis already provided by the local jurisdiction, DLCD-OCMP may request additional input from local planners on critical content expertise associated with the identification and implementation of local EPs.



Figure 1: Oregon's Coastal Zone reaches from the crest of the coast range to 3nm out to sea.

Crafting Good Policy: Local Planning & Enforceable Policies

Local jurisdictions play a key role in policy making and implementation of Oregon’s Statewide Land Use Planning Goals and unique land use planning system. Every time a local jurisdiction within Oregon’s Coastal Zone undertakes policy development, there is an unparalleled opportunity to craft their policy language to be applicable to federal activities (e.g., direct federal actions and federally permitted/licensed activities) through [Oregon’s federal consistency authority](#).

Enforceable policies are simply strongly written policies. EPs are significant for their ability to be applied to federal activities. **Crafting enforceable policies does not take any additional work outside of the normal policy drafting process, yet can provide strengthened authority to local policies when applied to federal activities (actions, permits, licenses).** The key to developing enforceable policies is as straightforward as developing any strong and defensible policies.

Table 1: Criteria for Crafting Enforceable Policies (15 C.F.R §923.84(b))

Criteria	Description
✓ Must be enforceable under state law.	Local Comprehensive Plans and Zoning Ordinances are legally enforceable under ORS 196, so most policy-making done by local jurisdictions do not need to worry about this criterion.
✓ Must include mandatory language.	Utilize mandatory language (e.g., shall, must, will) to increase the strength of policies. Avoid discretionary language (e.g., should, may, can)
✓ Must contain a clear standard.	Policies should identify a clear standard that the applicant must reach to successfully comply with the policy.
X Cannot discriminate against a particular coastal user or federal agency.	Specifically isolating a particular coastal user or federal agency (e.g., NOAA, FEMA, HUD) as the subject of a policy can be viewed as discriminatory. Policies should be worded to apply to the subject activity rather than the entity proposing the activity.
X Cannot be preempted by federal law.	In general, NOAA’s Office for Coastal Management takes the lead on identifying subject matter that may be preempted by federal law. Some examples may include the siting of liquified natural gas facilities; regulation of aircraft in flight; and policies specific to marine mammals. Reach out to DLCD to ask about specific language.
X Cannot regulate federal agencies, lands, or waters.	Avoid policies that specifically set standards for federal agencies or are particular to federal property (land or water). Instead, stronger policies can be developed by focusing policy language about areas or resources of interest or potential activities.
X Cannot hinder the national interest objectives of the Coastal Zone Management Act.	In general, NOAA’s Office for Coastal Management takes the lead on identifying subject matter that may hinder the national interest (e.g., national security, energy supply, etc.). Reach out to DLCD to ask about specific language.
X Cannot incorporate other policies or requirements by reference	Policies that incorporate standards from other policies (incorporation by reference) cannot be enforceable policies, unless the referenced policies are also enforceable policies and undergo NOAA-OCM review and approval.

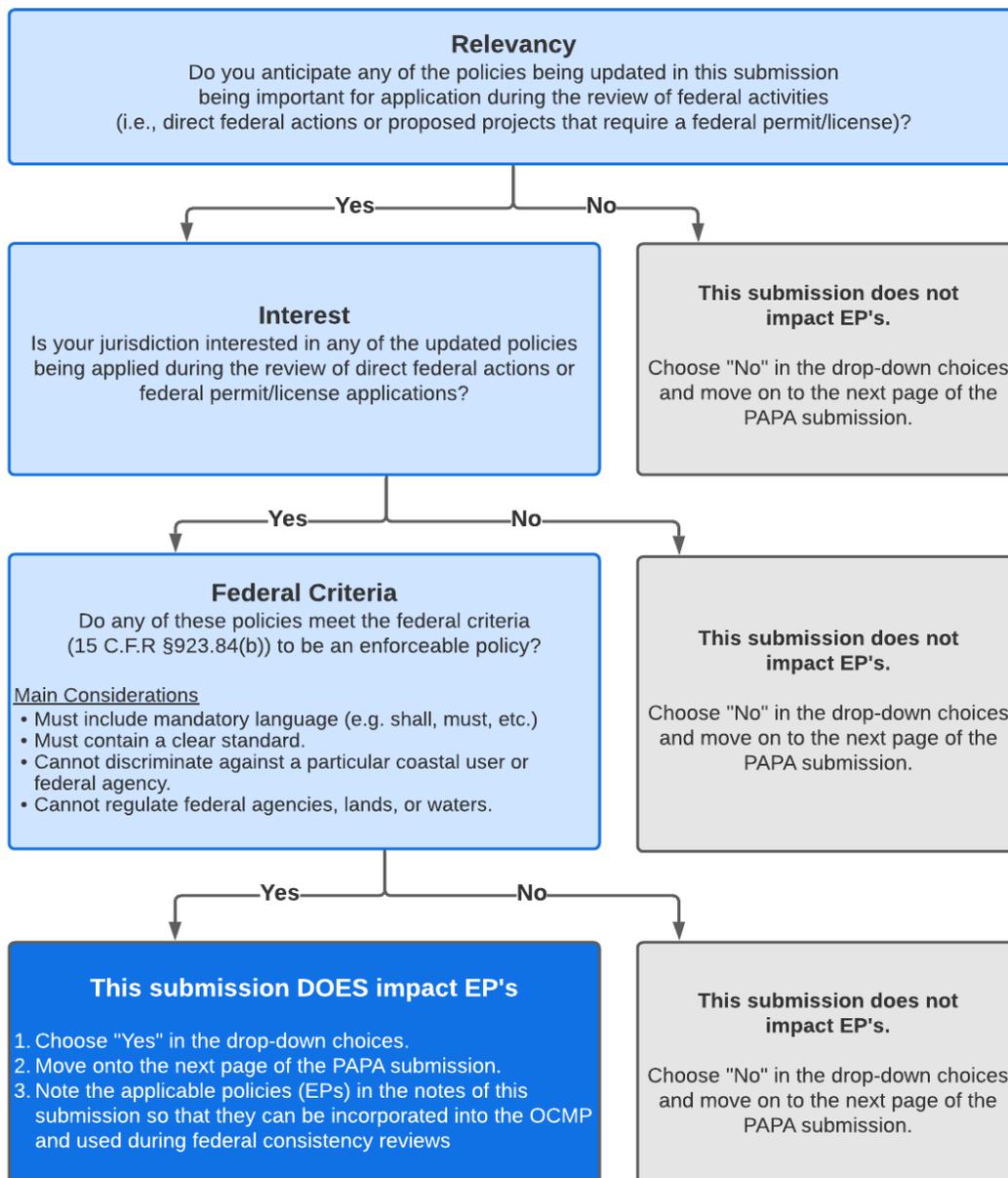
Federal Consistency and the PAPA Database

You reach this question in the Post-Acknowledgements Plan Amendments Database (PAPA Database) ...now what? This question aims to gather information on whether the submission includes changes, additions, or deletions of enforceable policies. The following flow chart includes a step-by-step process for determining how to answer this question:

* Does this amendment impact the Oregon Coastal Management Program (OCMP) and its enforceable policies as it relates to your jurisdiction's plans and codes? Yes No Unsure

If you answered "Yes" above, please list the proposed code and/or plan amendments that would alter your current OCMP enforceable policies. If the proposal includes one or more code or plan provisions meant to become new OCMP enforceable policies, please list these here as well.

For help or additional information on OCMP enforceable policies, please click here.



**Not quite sure?* Email coast.permits@dlcd.oregon.gov with your question and a DLCDC staff member can help determine if EPs are being impacted.

Helpful Hints for Enforceable Policies

- **Be Strategic:** Not all policies will be important for consideration when reviewing federal activities. Jurisdictions can strategically determine the standards they would like to be applied during federal consistency reviews. To be used as EPs, these select standards should be written with the federal criteria in mind! (see “Criteria for crafting Enforceable Policies” box below)
- **Note EPs in Plans:** Use an “(EP)” notation or something similar next to enforceable policies within the plan/ordinance. That way, as they are updated, you automatically know how the change is impacting an EP.

Additional Resources

- Become an EP master using [NOAA’s EP Training Module](#).
- Join the [Federal Consistency Email List](#) to get updates on projects currently under review.
- Learn more about the [Oregon Coastal Management Program \(OCMP\)](#).

Contact Us:

DLCDC staff are available to help! Contact coast.permits@dlcd.oregon.gov or your regional **representative** with questions and to learn more about how federal consistency can support your community’s interests!