



# Federal Consistency Information Manual

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## **OVERVIEW**

This information manual is intended to help federal agencies, applicants for federal permits or licenses, and applicants for federal financial assistance comply with the federal consistency requirements of Minnesota's Lake Superior Coastal Program (MLSCP).

Federal consistency requires that all federal actions which are reasonably likely to affect any land or water use or natural resources of Minnesota's Lake Superior coastal area must be consistent with the enforceable policies of MLSCP.

Federal consistency review in Minnesota is conducted through a networked program of state agencies. Under this approach, consistency review of a federal action is coordinated by MN DNR Waters, which serves as the state's lead coastal agency, pursuant to Section 306(d)(6) of the Coastal Zone Management Act of 1972 (CZMA). During review, each state agency confirms that the federal action affecting, or reasonably likely to affect, the Lake Superior coastal area is consistent with the enforceable program policies it administers. Federal consistency review is completed when all relevant state agency recommendations regarding the project's consistency have been provided by the MLSCP agencies to MN DNR Waters, which makes the state's final consistency determination. No federal consistency review is required if all necessary state permits are issued for a project.

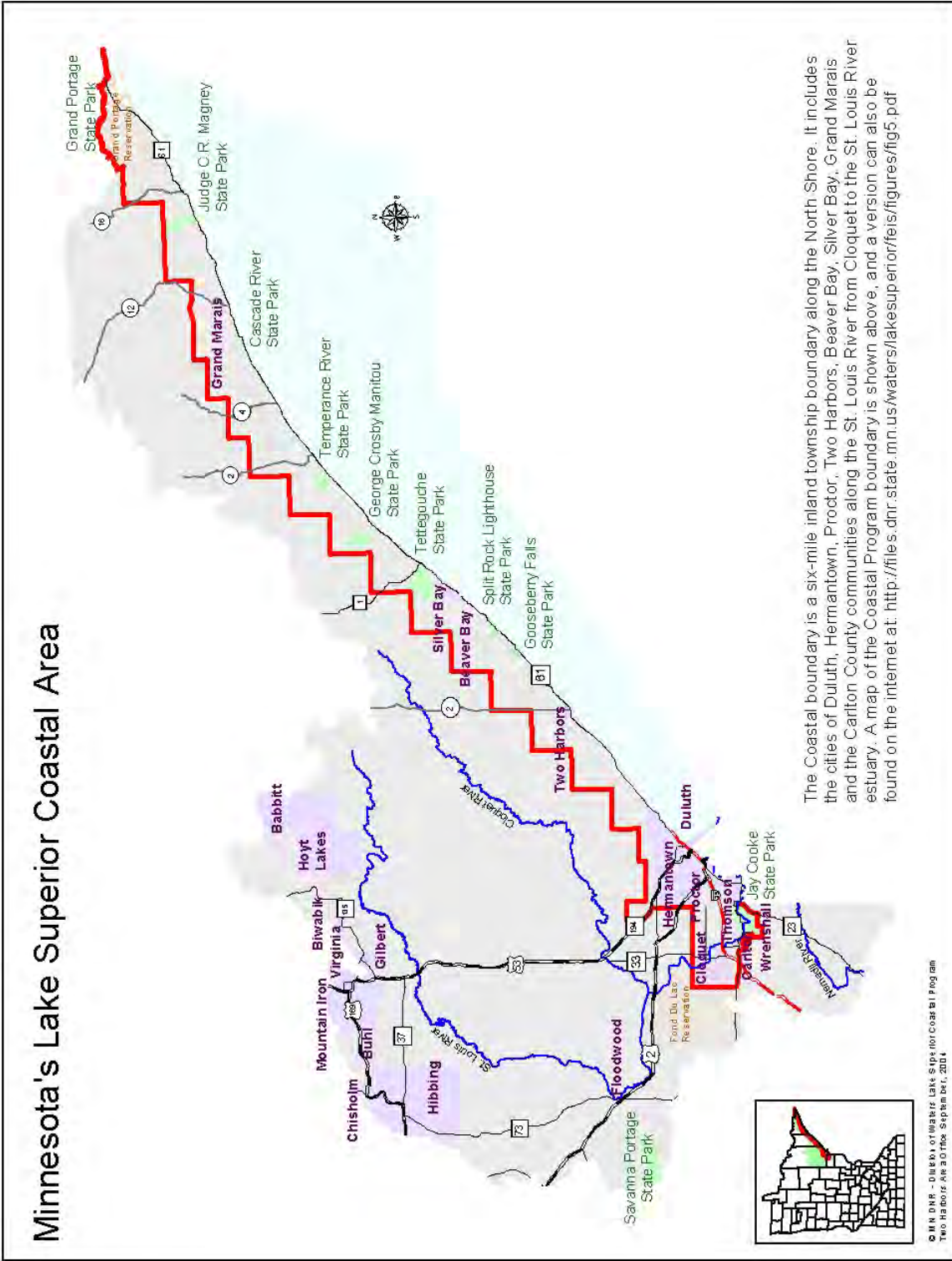
The state agencies responsible for enforceable policies and authorities are: DNR, PCA, MDA, MHD, BWSR, and EQB. The Coastal Program coordinates its consistency response with these networked state agencies to ensure that all applicable enforceable policies are considered.

At the federal level, NOAA, through its Office of Ocean and Coastal Resource Management (OCRM), oversees MLSCP's use of consistency, mediates consistency disputes and processes appeals to the Secretary of Commerce. NOAA's regulations implementing the federal consistency provision of the CZMA are contained in 15 CFR Part 930, and can be read at the following website: <http://coastalmanagement.noaa.gov/consistency/regulations.html>

### **FEDERAL ACTIONS SUBJECT TO REVIEW**

1. Federal Activities and Development Projects: projects conducted by, or on behalf of, a federal government agency.
2. Activities requiring federal license, permit or certification: projects conducted by an individual, group, corporation, local government agency or other entity that requires federal approval.
3. Activities receiving federal financial assistance: projects conducted by a state or local government agency or other related entity that receives federal funds.

# Minnesota's Lake Superior Coastal Area



The Coastal boundary is a six-mile inland township boundary along the North Shore. It includes the cities of Duluth, Hermantown, Proctor, Two Harbors, Beaver Bay, Silver Bay, Grand Marais and the Carlton County communities along the St. Louis River from Cloquet to the St. Louis River estuary. A map of the Coastal Program boundary is shown above, and a version can also be found on the internet at: <http://files.dnr.state.mn.us/waters/lakesuperior/feis/figures/fig5.pdf>

© M N DNR - QUERIES OF MINNAPLACE STATE FOR COASTAL PROGRAM  
TWO HARBORS AREA STUDY - SEPTEMBER, 2004

## **APPLICATION PROCEDURE**

There are no specific MLSCP application forms or fees for federal consistency review. Rather federal consistency review of a proposed federal action is initiated when the MLSCP receives either: (1) a consistency determination from a federal agency conducting an activity, (2) a copy of an application for a federal license or permit accompanied by a federal consistency certification, or (3) a copy of an application for federal financial assistance. The process is initiated when the appropriate information is received by:

Federal Consistency Review Coordinator  
MN Lake Superior Coastal Program  
1568 Highway 2  
Two Harbors, MN 55616  
Phone: (218) 834-1441  
Fax: (218) 834-6639

Specific application requirements and review timetables for the various federal actions subject to federal consistency review are described later in this manual.

## **REVIEW THRESHOLDS**

### **Environmental Review Threshold**

The MLSCP looks to established environmental review thresholds to determine when projects may significantly affect the coastal area. In most cases, federal activities and development projects that fall below the thresholds for mandatory environmental review (MN Rules 4410.4300 and 4410.4400) have been determined to have minimal effects on the resources of the coastal area and are not reviewed by the MLSCP. The program lists in detail three categories for activities that are: (1) exempt from review, (2) require a mandatory Environmental Assessment Worksheet (EAW) or (3) require a mandatory Environmental Impact Statement (EIS). For the purposes of Minnesota's Lake Superior Coastal Program, those activities listed as exempt will be considered approved for federal consistency, and are not subject to consistency review. Those activities that meet the mandatory EAW or EIS thresholds shall require a consistency determination by the federal agencies responsible. The mandatory categories (or thresholds) for activities that require a consistency determination and review are described in detail in Table 4.

In addition, consistency determinations are required (unless otherwise covered by an MOU or general determination) when it is determined that an activity will have reasonably foreseeable effects and the activity falls between the list of mandatory EAW categories and exemption categories, or is not listed in the Environmental Review Rules.

The Environmental Review Program is provided by the state as an administrative convenience, thus the Coastal Program is the ultimate decision maker as to whether a federal activity is subject to federal consistency review.

### **Listed and Unlisted Activities Threshold**

The list of federal actions that are subject to consistency review is described in Tables 1 – 3. Federal actions not included on this list will be monitored in cooperation with other local and state agencies. If an unlisted activity, in the opinion of the MLSCP, will have a reasonably foreseeable effect on the Lake Superior coastal area, then the appropriate federal agency will be notified that a federal consistency review is necessary. Upon request by the applicant, MLSCP will make a determination of its jurisdiction over specific activities.

## **INFORMATION REQUIREMENTS**

Information provided to the MLSCP for consistency review must include all information reasonably required by the state to determine the project's consistency with the enforceable policies of the MLSCP networked agencies. Information on federal activities and federal development projects must be received by the MLSCP at least 90 days prior to the start of the proposed federal action (15 CFR 930, Subpart C). Information on federally licensed or permitted activities must be received by the MLSCP at least 30 days prior to the start of the proposed activity.

## **ENFORCEABLE POLICIES COMPRISING MINNESOTA'S LAKE SUPERIOR COASTAL PROGRAM**

The complete list of management policies and authorities comprising the enforceable policies of MLSCP that federal actions are required to be consistent with can be found in Part V, Chapter 3 of the MLSCP Final Environmental Impact Statement (FEIS). The FEIS can be found on the internet at: <http://www.dnr.state.mn.us/waters/lakesuperior/feis/index.html>

For the purposes of the Minnesota Coastal Program, Minnesota's state statutes and rules are the authorities for state and federal agency consistency.

The Minnesota Statutes referenced in this document as well as other state statutes can be found in offices of state and local agencies, most public libraries, local courthouses, and numerous other public offices including the State Office of Revisor of Statutes, Seventh Floor, State Office Building, St. Paul, MN, 55155.

- Minnesota Statutes can also be found on the World Wide Web at: <http://www.revisor.leg.state.mn.us/stats>
- Minnesota Rules can be found at: <http://www.revisor.leg.state.mn.us/arule>

Part V, Chapter 3 of the MLSCP FEIS is a general introduction to the relevant laws, but the applicable statutes, rules, and case law decisions must be consulted for an authoritative statement of the applicable requirements. The summary of the laws in this chapter is not binding on any person or agency. Readers should obtain specific legal advice from their own lawyers to the extent necessary. The summary is not intended to be an exhaustive statement

of all relevant requirements of any of the reference laws or programs. Furthermore, the summary is not a complete listing of all the laws applicable to the coastal zone, only the laws that are identified as part of Minnesota's Coastal Program.



## **REVIEW PROCEDURES**

### **1. Federal Activities and Development Projects**

MLSCP and federal agencies shall follow the requirements of 15 CFR 930, Subpart C in reviewing federal activities affecting any coastal use or resource of the Lake Superior coastal area for consistency, to the maximum extent practicable, with the enforceable policies of MLSCP.

#### **Federal agency activity**

Federal agency activities are any function performed by, or on behalf of, a federal agency in the exercise of its statutory responsibilities, but does not include the granting of a federal license or permit.

#### **Federal development project**

Federal development project means a Federal agency activity involving the planning, construction, modification, or removal of public works, facilities or other structures, and includes the acquisition, use, or disposal of any coastal use or resource.

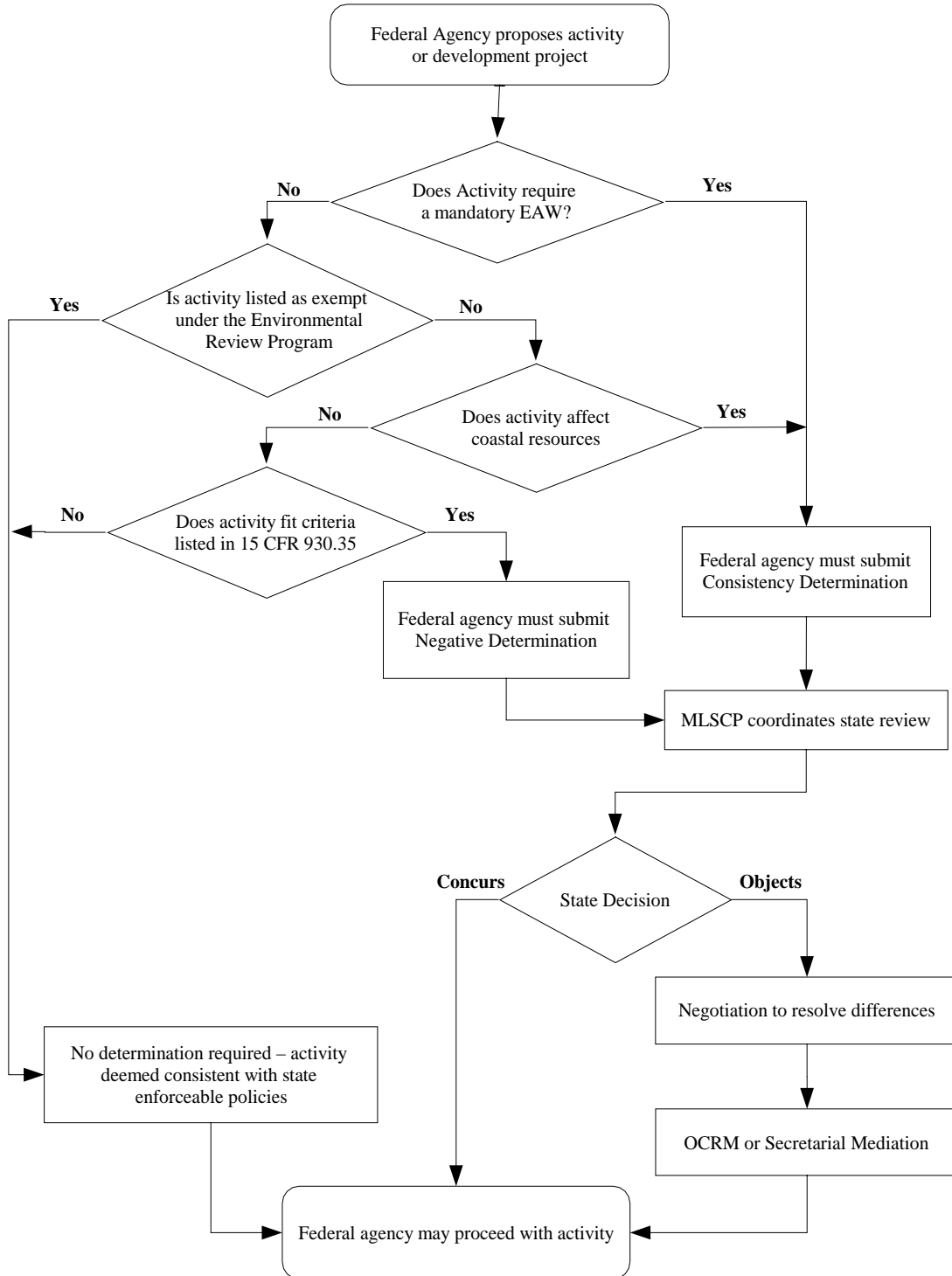
#### **Identifying Federal agency activities affecting any coastal use or resource**

Federal agencies are responsible for determining if their activities will affect any coastal use or resource of the Lake Superior coastal area by considering all reasonably foreseeable direct and indirect effects. If the federal agency determines that there will be no effect on any coastal use or resource, and a negative determination is not required per 15 CFR 930.35, then no coordination with MLSCP is necessary. If effects on any coastal use or resource are anticipated, then the federal agency must submit a consistency determination to MLSCP at least 90 days before final approval of the federal agency activity. A sample consistency determination letter is shown in Figure 1.

Federal activities not included on this list will be monitored in cooperation with other local and state agencies through review of the Federal Register, NEPA environmental impact statements, information provided by citizens and/or local units of government and other appropriate methods. MLSCP shall notify federal agencies of unlisted federal activities which MLSCP believes require a federal consistency determination due to a reasonably foreseeable effect on a land or water resource of the Lake Superior coastal area. Such notification shall occur as soon as is practical after receipt by MLSCP of notice of the unlisted federal activity. However, it does not eliminate federal agency responsibility for compliance with CZMA consistency requirements if the MLSCP fails to provide such notice.

Chart 1: Reviewing federal activities and development process

### Federal Activities and Development Projects



### **Negative determination**

If a federal agency determines that coastal effects are not reasonably foreseeable or believes that a consistency determination is not required for a listed activity under the Environmental Review Program, the agency shall submit a negative determination to MSLCP according to 15 CFR 930.35 at least 90 days before final approval of the activity. The notification shall briefly set forth the reasons for the negative determination. In the event of a serious disagreement regarding a negative determination, either the MLSCP or the federal agency may seek mediation services under 15 CFR 930, Subpart G.

### **Completeness Review**

Federal consistency determinations submitted to the MLSCP shall be reviewed for completeness upon receipt. A complete determination is one that includes all information as described in 15 CFR 930.39. In the event that an incomplete determination is received, MLSCP shall immediately notify the federal agency of all information necessary to complete the determination. MLSCP's 60 day review period shall begin on the date that a complete determination is received.

### **Public Participation**

Upon receipt of a complete federal consistency determination, notice of the proposed activity shall be published in the next available edition of the EQB Monitor, a local newspaper, or both. The notice shall: specify that the proposed activity is subject to federal consistency review, provide sufficient information to serve as a basis for comment, specify a source of additional information, and specify a contact for submitting comments to the MLSCP. Public comments shall be received for 15 days following publication.

### **Review Timeframe**

Consistency determinations and negative determinations shall be provided to MLSCP at least 90 days before final approval of the federal agency activity, unless otherwise agreed to by the federal agency and MLSCP. MLSCP shall inform the federal agency of its concurrence with or objection to the determination at the earliest practicable time following public and networked state agency participation in the review. MLSCP shall concur or object within 60 days of receipt of a complete determination, unless MLSCP requests an extension of 15 days or less within the 60 day review period. The federal agency may presume MLSCP concurrence if a letter of objection is not provided within 60 days of receipt of the federal agency's complete determination.

### **Concurrence**

MLSCP concurrence with a federal consistency determination shall be made as soon as possible after receipt of a complete determination, and no later than 60 days after receipt of a complete determination. If the MLSCP does not provide the federal agency/applicant with the state's federal consistency decision within 60 days, the federal activity is presumed to be consistent with the MLSCP. Even in the absence of a letter of concurrence, consistency shall be conclusively presumed if all necessary state

licenses, permits or certifications have been issued for a project, or if the project is listed as exempt under the Minnesota Environmental Review Program.

### **Objection**

The MLSCP may object to the federal agency's consistency determination if a proposed project is deemed not consistent with the enforceable policies of the MLSCP, if it is consistent but all necessary state licenses, permits or certifications have not been issued by the end of the review period, or if the federal agency failed to provide sufficient information to review the project. In the event of an objection, a letter of objection shall be provided to the federal agency and the Director of OCRM describing how the proposed activity is inconsistent with specific policies which includes:

1. Citation of the specific policy
2. A description of alternative measures that can be taken by the federal agency that would allow the activity to be performed consistently with the MLSCP.
3. If an objection is the result of a federal agency's failure to submit sufficient information for consistency review, a description of the required information and the necessity of such information.
4. Notification of the federal agency's right to Secretarial Mediation under 15 CFR 930, Subpart G.

### **Conflict Resolution**

In the event of a serious disagreement between a federal agency and the MLSCP regarding the consistency of a proposed federal activity, either party may request the Secretarial or OCRM mediation services provided for in 15 CFR 930, Subpart G.

## **2. Activities requiring federal license or permit**

MLSCP and project applicants shall follow the requirements of 15 CFR 930, Subpart D in reviewing activities affecting any coastal use or resource of the Lake Superior coastal area that require a federal license or permit for consistency with the enforceable policies of the MLSCP.

### **Identifying Federal License or Permit activities affecting any coastal use or resource**

Federal license or permit activities include any authorization, certification, approval or other form of permission that any federal agency is empowered to issue to an applicant. Federal license or permit activities include renewals of and major amendments to federal license and permit activities that are ongoing within or have an effect on the Minnesota coastal area. The list of federal licenses or permits that are likely to affect land and water uses or natural resources in the coastal area are listed in Table 2.

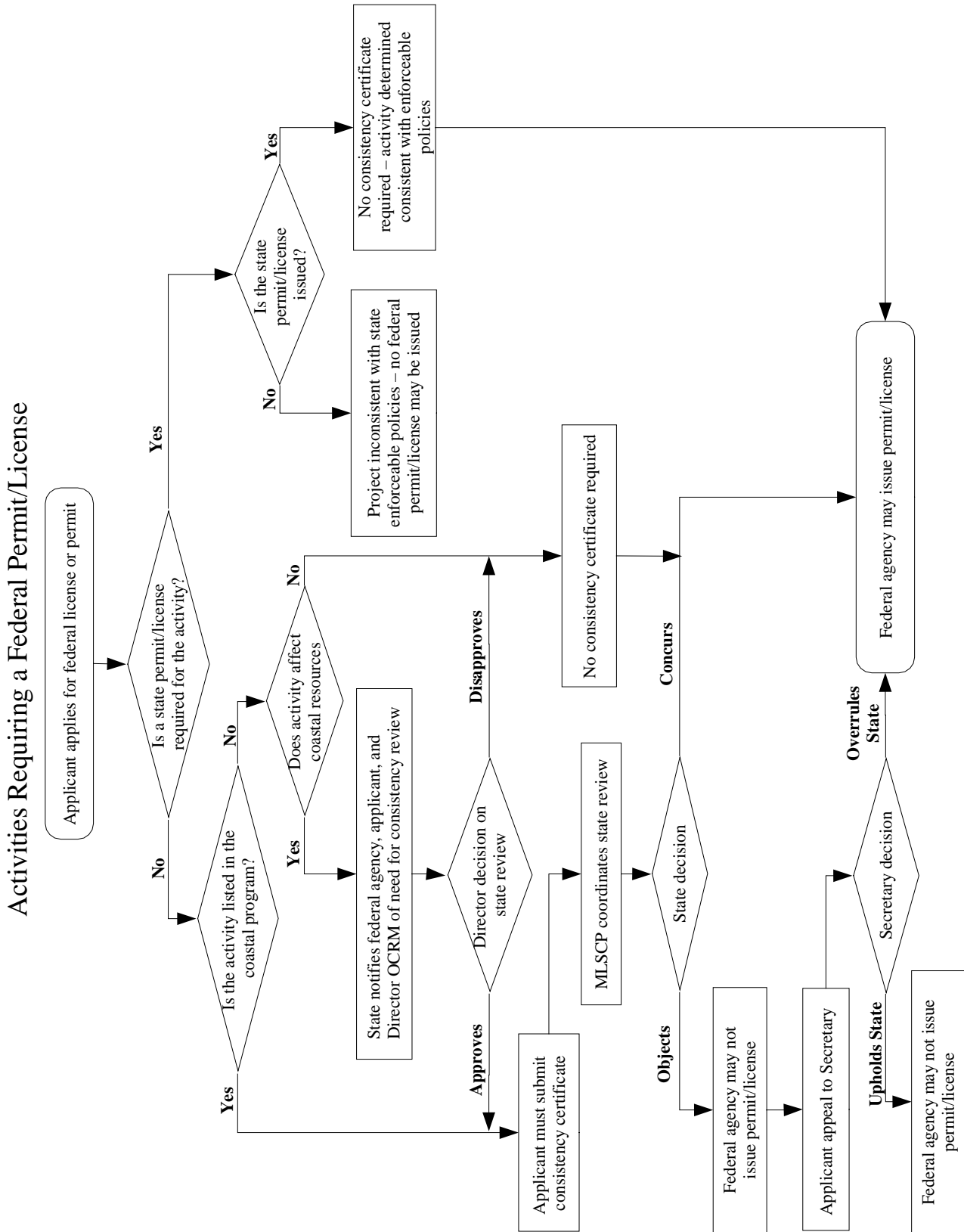
The Coastal Program may also review unlisted activities on a case-by-case basis, pursuant to NOAA regulations (15 CFR Part 930, Subpart D). MLSCP shall notify federal agencies and applicants and the Director of OCRM of unlisted projects which the MLSCP intends to review for consistency due to a reasonably foreseeable effect on a land or water resource of the Lake Superior coastal area. Such notification shall occur within 30 days of receipt by the MLSCP of notice of the unlisted federal activity. If the MLSCP fails to provide such notice, consistency may be presumed unless the MLSCP has not received notice of the federal license or permit application. If the Director of OCRM does not approve, the MLSCP may not review the project for consistency.

### **Consistency Certifications for Federal Permits**

In the cases where a state permit(s) or license(s) and a federal permit or license is required for the same activity, the issuance of the state permit(s) or license(s) will meet the requirement for federal consistency. In such cases, the procedures to obtain the state permit(s) or license(s), including notification and submittal of information on the activity need only be submitted to the appropriate permitting state agency(s). It is understood that when a state permitting agency issues a permit for an activity, it has been determined that the permit complies with the agency's enforceable policies and procedures and will be consistent with Minnesota's Lake Superior Coastal Program. This will eliminate duplication of process and result in more efficient and timely decision making.

In the cases where a state license or permit is not required for an activity that requires a federal license or permit and will have a reasonably foreseeable effect on a coastal use or resource, the applicant shall furnish to the federal permitting agency and the Coastal Program a certification statement specifying that the proposed activity complies with and will be conducted in a manner consistent with Minnesota's Lake Superior Coastal Program enforceable policies and authorities. The applicant shall also furnish the necessary data and information as described below.

Chart 2: The process for reviewing activities requiring federal licenses or permits



### **Information Requirements for Permit Applications**

The following information is required for review of permit and license certification:

- A detailed description of the proposed activity and its associated facilities which is adequate to permit an assessment of their consistency with the relevant enforceable policies and authorities of the Coastal Program.
- A brief assessment relating the probable effects of the proposal on the coastal area and its associated facilities to the relevant policies and authorities of the coastal management program.
- A brief set of findings, derived from the assessment, indicating that the proposed activity, its associated facilities, and effects, are all consistent with the relevant enforceable policies and authorities of the coastal management program.
- A copy of the federal application and all supporting information supplied to the federal agency.

In the majority of cases, information required by the federal permitting agency and provided to the appropriate permitting state agency(s) by public notice and through routine correspondence will usually serve the requirement to furnish the certification and supporting information to the Coastal Program.

### **Public Notice**

Public notices of direct federal activities and applications for federal permits and licenses are coordinated by the Coastal Program through the DNR Regional ***Environmental Review Log***. In addition, by Memorandum of Understanding between the Environmental Quality Board (EQB) and the DNR, copies of all applications and comments received by EQB for the Board's publication, the ***Monitor***, will be forwarded to the Coastal Program for use in determining consistency with the enforceable policies and authorities of the approved coastal program. The Coastal Program will coordinate the notice of application with the appropriate state agency(s). Thus, existing public notice and comment procedures will be used to ensure public participation in the consistency certification review. The appropriate state agency(s) in coordination with the Coastal Program will ensure that additional public participation is provided for, if necessary, including public hearings.

### **State Review**

Within a minimum of 30 days (or as required through existing state regulations) of receipt of the applicant's consistency certification, the Coastal Program will notify the applicant and the federal agency whether the state concurs with or objects to the consistency certification. Requests for additional information or data beyond that required will not extend the decision date of the review unless agreed to by the applicant and federal agency. If the applicant does not receive the response within 30 days, concurrence by the state shall be conclusively presumed.

If the Coastal Program objects to the applicant's consistency certification within 30 days (or as required through existing state regulations), or the appropriate permitting state agency(s) denies the permit, the objection or permit must describe:

- How the proposed activity is inconsistent with specific enforceable policies and authorities of Minnesota's Lake Superior Coastal Program and Alternative measures (if they exist), which, if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the enforceable policies and authorities of Minnesota's Lake Superior Coastal Program.
- The Coastal Program shall notify the applicant, federal agency, and the Director OCRM of the state's objection. The objection will include a statement informing the applicant of the right of appeal to the Secretary of Commerce pursuant to the procedures described in 15 C.F.R. Part 930, Subpart H.

Where possible, applicants may consolidate related federal license and permit activities affecting the coastal area for the state's review. The Coastal Program and appropriate permitting state agency(s) will review these consolidated applications as a group to minimize duplication of effort and avoid unnecessary delays. An objection to one or more of the license or permit activities submitted for consolidated review does not prevent the applicant from receiving those licenses or permits for activities found to be consistent with the enforceable policies and authorities of the approved Minnesota's Lake Superior Coastal Program.

The federal agency may not approve the federal license or permit unless the Coastal Program issues a concurrence or is conclusively presumed to concur, (or the appropriate permitting state agency issues a permit) or if on appeal by the applicant, the Secretary of Commerce overrides the state's objection finding, that the proposed activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security. An applicant's appeal to the Secretary of Commerce does not affect state permit requirements or denials.

The Coastal Program will request that a federal agency take appropriate remedial action in case of a federal license or permit activity that was:

- Determined to be consistent with the enforceable policies and authorities of Minnesota's Lake Superior Coastal Program but which the Coastal Program maintains is being conducted in a manner different from that originally proposed, or has coastal effects different from those originally envisioned, and is no longer consistent with the enforceable policies and authorities of Minnesota's Lake Superior Coastal Program, or
- Determined not to be an activity affecting the coastal area, but which the Coastal Program maintains is being conducted or has coastal effects substantially different from those originally envisioned, and therefore is not consistent with the enforceable policies and authorities of Minnesota's Lake Superior Coastal Program.



The request shall include supporting information and propose recommended action. A copy of the request shall also be provided to the applicant.

**Unlisted licenses and permits**

Certain federal licenses or permit activities not on the list or occurring outside the coastal area may be reviewed by the Coastal Program. If it is determined that any of these license or permit activities will have an effect on any land or water use or natural resource of the area within the coastal boundary, the Coastal Program will notify in writing and within 30 days of receipt of the notice of federal application, the respective agencies, applicants, and the Director, OCRM, of the intent of the Coastal Program to initiate state agency review.

The federal agency and the applicant have 15 days from receipt of notification from the Coastal Program to provide comments to the Director, OCRM. The Director, OCRM, will issue a decision and supporting comments within 30 days. If review by the state is disapproved by OCRM, the federal agency may approve the permit or license. If review is approved, the applicant shall amend the federal application by including a consistency certification and supporting documentation. Concurrence on the consistency certification will be conclusively presumed if an objection from the Coastal Program is not received within 30 days of the original federal notice or receipt of the applicant's certification and supporting information, whichever terminates last.

### **3. Activities receiving federal financial assistance**

MLSCP and federal agencies shall follow the requirements of 15 CFR 930, Subpart F in reviewing activities affecting any coastal use or resource of the Lake Superior coastal area that receive federal financial assistance for consistency, to the maximum extent practicable, with the enforceable policies of the MLSCP.

#### **Federal Assistance**

Federal assistance means financial assistance provided under a federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other forms of financial aid.

#### **Applicant agency**

An applicant agency is any unit of state or local government, or any related public entity such as a special purpose district which submits an application for federal assistance.

#### **Identifying activities affecting any coastal use or resource**

All applications by applicant agencies for federal assistance for projects affecting any coastal use or resource of Minnesota's coastal area must be consistent with the enforceable policies and authorities of Minnesota's Lake Superior Coastal Program. Federal assistance programs subject to the consistency requirement are listed in Table 3. The Coastal Program may also monitor applications for federal assistance for unlisted activities and activities in areas outside the coastal boundary but that affect the coastal area.

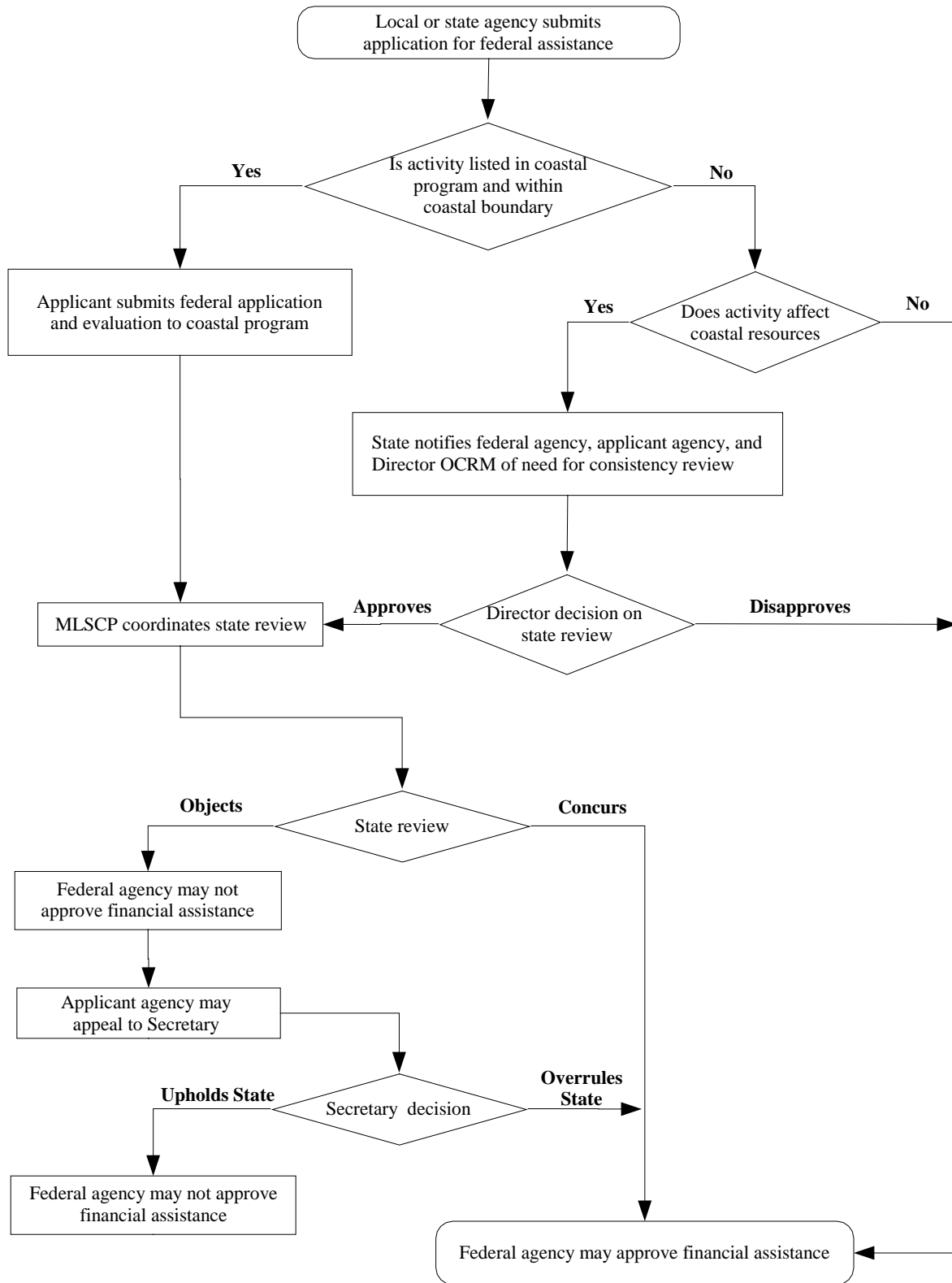
Projects applying for federal financial assistance not included on this list will be monitored in cooperation with other local and state agencies through review of the Federal Register, NEPA environmental impact statements, information provided by citizens and/or local units of government and other appropriate methods. MLSCP shall notify federal agencies, applicants and the Director of OCRM of unlisted projects which MLSCP intends to review for consistency due to a reasonably foreseeable effect on a land or water resource of the Lake Superior coastal area.

If the Coastal Program determines that an application for federal assistance for an activity or project outside of the coastal area is subject to the consistency requirement, the Coastal Program and appropriate state agency(s) will immediately notify the applicant agency, the federal agency, and the Director, OCRM. If the Director of OCRM does not approve, MLSCP may not review the project for consistency.

#### **Review**

The applicant agency shall submit an application for federal assistance to the MLSCP for consistency review. A brief evaluation, by the applicant agency, of the relationship of the proposed activity and any reasonably foreseeable coastal effects to the enforceable policies of the MLSCP shall be included with a copy of an application for federal assistance, as described in 15 CFR 930.39.

**Figure 3:** Federal Assistance to State and Local Governments



### **Public Participation**

Public participation in the review of projects applying for federal financial assistance is not required.

### **Review Timeframe**

The MLSCP shall inform the federal funding agency and the applicant agency whether or not the project is consistent with the enforceable policies of the MLSCP at the earliest practicable time following networked state agency participation in the review of the application.

### **Concurrence**

The MLSCP shall concur with or object to an application on the basis of the enforceable policies of the MLSCP.

### **Objection**

The MLSCP may object to an application if a proposed project is deemed not consistent with the enforceable policies of the MLSCP, or if information sufficient to conduct a review was not provided with the application. In the event of an objection, a letter of objection shall be provided to the federal funding agency, the applicant agency and the Director of OCRM describing how the proposed activity is inconsistent with specific policies which includes:

1. Citation of the specific policy
2. A description of alternative measures that can be taken by the applicant agency that would allow the activity to be performed consistently with the MLSCP.
3. If an objection is the result of an applicant agency's failure to submit sufficient information for consistency review, a description of the required information and the necessity of such information.
4. Notification of the federal agency's right to Secretarial Mediation under 15 CFR 930, Subpart G.

### **Conflict Resolution**

For conflicts or disputes arising from federal consistency decisions, the MLSCP shall employ the procedures established by federal regulations in 15 CFR 930.599.

## **Figure 1: Federal Consistency Determination Sample Outline**

This document serves as an example/outline for federal agencies to use when making a consistency determination to Minnesota's Lake Superior Coastal Program according to the Coastal Zone Management Act, sections 307(c)(1) and (2).

### **Model Federal Consistency Determination:**

This document details the analysis by which the [federal agency] has determined that [project title or description of action/activity] is consistent to the maximum extent practicable with the enforceable policies of Minnesota's *Lake Superior Coastal Program*. The information in this Consistency Determination is provided pursuant to 15 CFR section 930.39. This activity includes:

[Describe the federal agency action/activity or reference relevant pages of National Environmental Policy Act (NEPA) document, if appropriate].

The [federal agency] has determined that the [project title or description of action/activity] affects the land or water uses or natural resources of Minnesota's coastal area in the following manner:

[Provide analysis of effects or reference appropriate pages of NEPA document, if applicable].

The [federal agency] has evaluated the following relevant enforceable policies of *Minnesota's Lake Superior Coastal Program*:

[List and/or briefly describe the State's applicable enforceable policies, including any reasonably foreseeable effects on each enforceable policy].

Based on the following information, data, and analysis the [federal agency] finds that the [project] is consistent to the maximum extent practicable with the enforceable policies of *Minnesota's Lake Superior Coastal Program*. [Provide information, data, and analysis supporting the determination of consistency with the applicable enforceable policies].

By this determination that the [project] is consistent to the maximum extent practicable with the enforceable policies of *Minnesota's Lake Superior Coastal Program*, the State of Minnesota is notified that it has 60 days (plus any appropriate extension under 15 CFR 930.41 (b)) from receipt of this letter in which to concur with or object to the [federal agency's] consistency determination. Minnesota's concurrence will be presumed if its response is not received by the [federal agency] within 60 days from the State's receipt of this determination. The State's response shall be sent to: [Provide federal agency contact information].

## **Figure 2: Federal Consistency Certification Sample Outline**

This document serves as an example/outline for non-federal applicants to use when making a consistency certification to Minnesota's Lake Superior Coastal Program according to the Coastal Zone Management Act, sections 307(c)(3)(A) and 307(d).

### **Model Federal Consistency Certification:**

This document provides *Minnesota's Lake Superior Coastal Program* with the [name of applicant's] Consistency Certification and necessary data and information to certify that [Name of activity] is consistent with the enforceable policies of *Minnesota's Lake Superior Coastal Program*. The information in this Consistency Certification is provided pursuant to 15 CFR section 930, subp. D. This activity includes:

[Name of applicant] certifies that the proposed activity complies with the enforceable policies of *Minnesota's Lake Superior Coastal Program* (MLSCP) and will be conducted in a manner consistent with the MLSCP.

### **Necessary Data and Information:**

1. [Describe the federal license or permit activity, or federal financial assistance, and include relevant portions of the federal application. Provide materials which will facilitate evaluation of coastal effects].
2. [Provide additional information required by the State pursuant to 15 CFR section 930.58(a)(2). This will include a detailed description of the proposed activity and its associated facilities that is adequate to permit an assessment of their consistency with the relevant enforceable policies and authorities of the Coastal Program.
3. [Provide a brief assessment relating the probable effects of the proposal on the coastal area and its associated facilities to the relevant policies and authorities of the coastal management program.]
4. [Provide a brief set of findings, derived from the assessment, indicating that the proposed activity, its associated facilities, and effects, are all consistent with the relevant enforceable policies and authorities of the coastal management program.]
5. [A copy of the federal application and all supporting information supplied to the federal agency.]

Note: Contact should be made with the appropriate agencies administering the enforceable policies of the MLSCP for help in determining relevant enforceable policies.

By this certification that the [project] is consistent with the enforceable policies of *Minnesota's Lake Superior Coastal Program*, the State of Minnesota is notified that it has 6 months from receipt of this letter and accompanying information in which to concur with or object to [applicant's] consistency certification. Pursuant to 15 CFR 930.62(b), if Minnesota has not issued a decision within three months following commencement of State agency review, it shall notify [applicant] and the federal agency of the status of review and the basis for further delay. The State's response shall be sent to: [Provide federal agency contact information].

## **Table 1: Listed Federal Agency Activities**

### **Direct Federal Agency Activities**

If a direct federal activity is not addressed in an agreement with the state, and the activity meets or exceeds the “mandatory EAW categories”, a federal agency must provide DNR Waters and appropriate state agency(s) with a consistency determination for any activity affecting any land or water use or natural resources within Minnesota’s coastal boundary. The following list is provided to highlight those activities most likely to affect the coastal area.

#### ***Department of Agriculture, Forest Service***

- Harvest of timber, reforestation, road and trail building and maintenance, fish and wildlife enhancement, shoreline erosion control/bank stabilization, construction and operation of campgrounds and wilderness access points, construction and maintenance of water access sites, exchange and acquisition of federal land, design and construction of administrative site, and site cleanup under RCRA or CERCLA.

#### ***Department of Defense, Army Corps of Engineers***

- Dredging, channel improvement, breakwaters, other navigational works, erosion control structures, beach replenishment, dams or flood control works, ice management practices and activities and other projects with the potential to impact coastal lands and waters.
- Land acquisition or disposal for spoil disposal or other purposes.
- Habitat creation (islands, marshes, etc. created by dredge material).
- Selection of disposal sites for dredged material from federal harbors and navigation channels.

#### ***Department of Defense, Air Force, Army, and Navy***

- Location, design, and acquisition of new or expanded defense installations (active or reserve status including associated housing, transportation or other facilities).
- Plans, procedures and facilities for handling storage use zones.
- Establishment of impact, compatibility or restricted use zones.
- Disposal of defense property.

#### ***Department of Energy***

- Prohibition orders.

***Department of Interior, Bureau of Indian Affairs***

- Indian trust (reservation) land acquisitions (25 C.F.R. 151)
- Development of trust lands
- Realty actions: leases, rights of way
- Environmental review in compliance with tribal/federal mandates
- Inventorying, monitoring and protection of trust resources  
(Includes adjudicated ceded territory resources in 1854 Authority)
- Forest management and sales
- Fish, wildlife & wild rice habitat management/restoration
- Integrated Resource Management Plans (IRMPs)
- Solid and hazardous waste compliance (dump caps, USTs, etc.)
- Natural Resources Damage Assessments (CERCLA, CWA, OPA 90)

***Department of Interior, Fish and Wildlife Service***

- Management of Natural Wildlife Refuges; land acquisition.

***Department of Interior, National Park Service***

- National Park Service unit management; land acquisitions.
- Location, design, and acquisition of new or expanded facilities.

***Department of Justice, U.S. Marshals Service***

- Disposition of property acquired by the Marshals Service.

***Department of Transportation, Coast Guard***

- Location and design, construction, or enlargement of Coast Guard stations, bases, and lighthouses.
- Location, placement, or removal of navigation devices which are not part of the routine operations under the Aids to Navigation Program (ATON).
- Expansion, abandonment, designation of anchorages, lighting areas or shipping lanes and ice management practices Ice Breaking and activities.
- Oil and hazardous material pollution response planning and response activities

***Department of Transportation, Federal Aviation Administration***

- Location and design, construction, maintenance, and demolition of federal aids to air navigation.

***Department of Transportation, Amtrak, Conrail***

- Expansions, curtailments, new construction, upgrades or abandonments of railroad facilities or services, in or affecting the state's coastal area.

***Department of Transportation, Federal Highway Administration***

- Highway construction.

***Department of Transportation, Maritime Administration***

- Port planning



***Environmental Protection Agency***

- Activities conducted under the Resource Conservation and Recovery Act (RCRA) of 1976.
- Activities conducted under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980.

***Federal Energy Regulatory Commission***

- Construction to develop new supplies or to reinforce existing transportation systems

***General Services Administration***

- Acquisition, location and design of proposed federal government property or buildings, whether leased or owned by the federal government.
- Disposition of federal surplus lands and structures.

***Nuclear Regulatory Commission***

- The siting, construction and operation of nuclear generating stations, fuel storage, and processing centers pursuant to the Atomic Energy Act of 1954, Title II of the Energy Reorganization Act of 1974.

## **Table 2: Listed Federal Permit, License and Approval Activities**

### ***Department of Agriculture, Forest Service***

- Road/trail access across federal land to nonfederal land to provide access to nonfederal land or to allow development of state, county or township roads and highways (36 C.F.R. 251.110).
- Minerals or energy development (includes mineral exploration, mine development and operation, gravel extraction and quarry stone extraction) (36 C.F.R. 228).
- Recreational uses (shoreline resorts, shoreline homes) (36 C.F.R. 251.50).
- Special events (36 C.F.R. 251.50).
- Utility corridors (power line and pipelines across federal land) (36 C.F.R. 251.50).
- Protection of archeological resources (36 C.F.R. 296).

### ***Department of Defense, Army Corps of Engineers***

- Construction of dams, dikes, or ditches across navigable waters, or obstruction or alteration of navigable waters required under Sections 9 and 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401, 403).
- Establishment of harbor lines pursuant to Section 11 of the Rivers and Harbors Act of 1899 (33 U.S.C. 404, 405).
- Occupation of seawall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the U.S. pursuant to Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408).
- Approval of plans for improvement made at private expense under USACE supervision pursuant to the Rivers and Harbors Act of 1902 (33 U.S.C. 565).
- Disposal of dredged or fill material into the waters of the U.S. pursuant to the Clean Water Act, Section 404 (33 U.S.C. 1344).
- All actions for which permits are required pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

### ***Department of Interior, Bureau of Indian Affairs***

- Archaeological Resources Protection Act Permits for trust lands (25 C.F.R. 262).

### ***Department of Interior, Fish and Wildlife Service***

- Fish and Wildlife coordination (17 U.S.C. 661-667).
- Endangered species permits pursuant to the Endangered Species Act (16 U.S.C. 153 (a)).

### ***Department of Transportation, Coast Guard***

- Construction or modification of bridges, causeways, or pipelines over navigable waters pursuant to 49 U.S.C. 1455.
- Hazardous substances and materials (33 U.S.C. 419).
- Marine event permits (46 U.S.C. 454, 33 C.F.R. 100.15).

### ***Department of Transportation, Federal Aviation Administration***

- Permits and licenses for construction, operation, or alteration of airports (F.A.R. Part 157).

### ***Environmental Protection Agency***

- NPDES permits and other permits for federal installations, sludge runoff and aquaculture permits and all other permits pursuant to §401, 402, 403, 405, and 318 of the federal Water Pollution Control Act of 1972 (33 U.S.C. 1341, 1342, 1343, and 1328).
- Permits pursuant to the Resource Conservation and Recovery Act (RCRA) of 1976.
- Permits pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980.
- Permits pursuant to the underground injection control program under Section 1424 of the Safe Water Drinking Water Act (42 U.S.C. 300 h-c).
- Permits pursuant to the Clean Air Act of 1976 (42 U.S.C. 1857).

### ***Federal Energy Regulatory Commission***

- Licenses, renewals, or amendments to licenses for nonfederal hydroelectric projects and primary transmission lines under Section 3(11), 4(e), and 15 of the federal Power Act (16 U.S.C. 796 (11), 797 (11), and (808)).
- Orders for interconnection of electric transmission facilities under Section 202 (b) of the federal Power Act (15 U.S.C. 824 a (b)).
- Certificates for the construction and operation of interstate natural gas pipeline facilities, including both pipelines and terminal facilities under §7 (c) of the Natural Gas Act (15 U.S.C. 717 f (c)).
- Permission and approval for the abandonment of natural gas pipeline facilities under §7 (b) of the Natural Gas Act (15 U.S.C. 717 f (b)).
- Regulation of gas pipelines, and licensing of import and export of natural gas pursuant to the Natural Gas Act (15 U.S.C. 717) and the Energy Reorganization Act of 1974.
- Exemptions from prohibition orders (15 U.S.C. 791).

### ***Nuclear Regulatory Commission***

- Licensing and determination of the siting, construction and operation of nuclear generating stations, fuel storage, and processing centers pursuant to the Atomic Energy Act of 1954, Title II of the Energy Reorganization Act of 1974 and the National Environmental Policy Act of 1974.

### ***Surface Transportation Board***

- Authority to abandon railway lines (to the extent that the abandonment involves removal of trackage and disposition of right-of-way); authority to construct railroads; authority to construct coal slurry pipelines (49 U.S.C. 10901 @ seq.).

### **Table 3: Listed Federal Financial Assistance Activities**

(NOTE: Numbers refer to the Catalog of Federal Domestic Assistance Programs.)

#### ***Department of Agriculture***

10.025	Plant and Animal Disease and Pest Control
10.405	Farm Labor Housing Loans and Grants
10.411	Rural Housing Site Loans
10.414	Resource Conservation and Development Loans
10.415	Rural Rental Housing Loans
10.418	Water and Waste Disposal Systems for Rural Communities
10.419	Watershed Protection and Flood Prevention Loans
10.420	Rural Self-Help Housing Technical Assistance
10.422	Business and Industrial Loans
10.423	Community Facilities Loans
10.424	Industrial Development Grants
10.433	Rural Housing Preservation Grants
10.760	Water and Waste Disposal Systems Loans and Grants
10.762	Solid Waste Management Grants
10.763	Emergency Community Water Assistance Grants
10.764	Resource Conservation and Development Loans
10.765	Watershed Protection and Flood Prevention Loans
10.766	Community Facilities Loans
10.767	Intermediary Relending Program
10.768	Business and Industrial Loans
10.769	Rural Business Enterprise Grant Program
10.850	Rural Electrification Loans and Guarantees
10.851	Rural Telephone Loans and Guarantees
10.852	Rural Telephone Bank Loans
10.854	Rural Economic Development Loan and Grant Program
10.901	Resource Conservation and Development
10.904	Watershed Protection and Flood Prevention
10.906	River Basin Surveys and Investigations

***Department of Commerce***

- 11.300 Economic Development - Grants and Loans for Public Works and Development Facilities
- 11.302 Economic Development - Support for Planning Organizations
- 11.303 Economic Development - Technical Assistance
- 11.304 Economic Development - Public Works Impact Projects
- 11.305 Economic Development - State and Urban Area Economic Development Planning
- 11.307 Special Economic Development and Adjustment Assistance, Sudden and Severe Economic Dislocation (SSED) and Long-Term Deterioration (LTED)
- 11.405 Anadromous and Great Lakes Fisheries Conservation
- 11.407 Interjurisdictional Fisheries Act of 1986
- 11.417 Sea Grant Support
- 11.419 Coastal Zone Management Program Administration
- 11.420 Coastal Zone Management Estuarine Research Reserves
- 11.427 Fisheries Development and Utilization Research/Development Grants/Coop Agreements
- 11.550 Public Telecommunications Facilities - Construction and Planning

***Department of Defense***

- 12.101 Beach Erosion Control Projects
- 12.104 Flood Plain Management Services
- 12.105 Protection of Essential Highways, Highway Bridge Approaches, and Public Works
- 12.106 Flood Control Projects
- 12.107 Navigation Projects
- 12.108 Snagging and Clearing for Flood Control
- 12.109 Protection, Clearing and Straightening Channels
- 12.110 Planning Assistance to States
- 12.610 Joint Military/Community Comprehensive Land Use Plans

***Department of Housing and Urban Development***

- 14.170 Congregate Housing Services Program
- 14.174 Housing Development Grants (HoDAG)
- 14.218 Community Development Block Grants/Entitlement Grants
- 14.219 Community Development Block Grants/Small Cities Grants

***Department of the Interior***

- 15.600 Anadromous Fish Conservation
- 15.605 Sport Fish Restoration
- 15.611 Wildlife Restoration
- 15.612 Endangered Species Conservation
- 15.614 North American Wetlands Conservation
- 15.616 Clean Vessel Act
- 15.904 Historic Preservation Fund Grants-In-Aid
- 15.910 National Natural Landmarks Program
- 15.916 Outdoor Recreation - Acquisition, Development and Planning

***Department of Transportation***

- 20.005 Boating Safety Financial Assistance
- 20.106 Airport Improvement Program
- 20.205 Highway Planning and Construction (Including Intermodal Surface Transportation Efficiency Act Programs)
- 20.219 Symms National Recreation Trails Fund Act - Grants for Motorized and Non-motorized Trails
- 20.308 Local Rail Service Assistance Program
- 20.500 Urban Mass Transportation Capital Improvement Grants
- 20.509 Public Transportation for Nonurbanized Areas
- 20.801 Development and Promotion of Ports and Intermodal Transportation
- 20.998 Transportation Improvement Program

***General Services Administration***

- 39.002 Disposal of Federal Surplus Real Property

***National Foundation of the Arts and the Humanities***

- 45.007 Promotion of the Arts - State Programs
- 45.023 Promotion of the Arts - Local Programs

***Department of Veteran Affairs***

- 64.005 Grants to States for Construction of State Home Facilities

***Environmental Protection Agency***

- 66.001 Air Pollution Control Program Support
- 66.419 Water Pollution Control - State and Interstate Program Support
- 66.432 State Public Water System Supervision
- 66.433 State Underground Water Source Protection
- 66.435 Water Pollution Control - Lake Restoration Cooperative Agreements
- 66.438 Construction Management Assistance
- 66.454 Water Quality Management Planning
- 66.456 National Estuary Program
- 66.458 Capitalization Grants for State Revolving Funds
- 66.500 Environmental Protection - Consolidated Research
- 66.501 Air Pollution Control Research
- 66.502 Pesticides Control Research
- 66.504 Solid Waste Disposal Research
- 66.505 Water Pollution Control - Research, Development, and Demonstration
- 66.506 Safe Drinking Water Research and Demonstration
- 66.507 Toxic Substances Research
- 66.600 Environmental Protection Consolidated Grants - Program Support
- 66.700 Pesticides Enforcement Program
- 66.701 Toxic Substances Compliance Monitoring Cooperative Agreements
- 66.702 Asbestos Hazards Abatement (Schools) Assistance
- 66.801 Hazardous Waste Management State Program Support
- 66.802 Hazardous Substance Response Trust Fund
- 66.804 State Underground Storage Tanks Program
- 66.805 Underground Storage Tank Trust Fund
- 66.807 Superfund Innovative Technology Evaluation Program (SITE)

66.808 Hazardous Waste; Integrated Training and Technical Assistance - Interstate

***Department of Energy***

81.041 State Energy Conservation

81.049 Basic Energy Sciences, High Energy or Nuclear Physics, Magnetic Fusion Energy, Health and Environmental Research, Program Analysis and Field Operations Management

***Federal Emergency Management Agency***

83.503 Civil Defense - State and Local Emergency Management Assistance

83.513 State and Local Warning and Communication Systems

83.516 Disaster Assistance

**Table 4: MANDATORY EAW CATEGORIES**

The following is a list of the exemption and mandatory EAW categories from the Minnesota Environmental Review Program, Minnesota Rules parts 4410.4300 (<http://www.revisor.leg.state.mn.us/arule/4410/4300.html>) and 4410.4600 (<http://www.revisor.leg.state.mn.us/arule/4410/4600.html>). The function of the Environmental Review Program is to avoid and minimize damage to Minnesota's environmental resources caused by public and private actions. The program requires certain proposed projects to undergo special review procedures prior to obtaining approvals and permits otherwise needed. This list will be used, to the extent it is practicable, by the federal agencies to determine which federal activities required consistency determinations or certifications. Those federal activities that fall at or below the exemption categories will be deemed approved. Those federal activities that meet or exceed the mandatory EAW thresholds require a consistency determination to be submitted to the Coastal Program and will undergo a consistency review. Those federal activities that are not listed in the EAW thresholds, but which have coastal effects also require a consistency determination and will be reviewed by the Coastal Program. Review of any activity that meets or exceeds the mandatory EAW categories will follow the procedures outlined on under **Responsible Governmental Unit-RGU**.

<b>NUCLEAR FUELS AND NUCLEAR WASTE</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<b>None</b>	<p><b>Subpart 2</b></p> <p>A. For construction or expansion of a facility for the storage of high level nuclear waste, the EQB shall be the RGU.</p> <p>B. For construction or expansion of a facility for the storage of low level nuclear waste for one year or longer, the MDH shall be the RGU.</p> <p>C. For expansion of a high level nuclear waste disposal site, the EQB shall be the RGU.</p> <p>D. For expansion of a low level nuclear waste disposal site, the MDH shall be the RGU.</p> <p>E. For expansion of an away-from-reactor facility for temporary storage of spent nuclear fuel, the EQB shall be the RGU.</p> <p>F. For construction or expansion of an on-site pool for temporary storage of spent nuclear fuel, the EQB shall be the RGU.</p>



<b>ELECTRIC GENERATING FACILITIES</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<b>Subpart 3</b> Construction of an electric generating plant or combination of plants at a single site with a combined capacity of less than five megawatts.	<b>Subpart 3</b> For construction of an electric power generating plant and associated facilities designed for or capable of operating at a capacity of 25 megawatts or more, the EQB shall be the RGU.

<b>PETROLEUM REFINERIES</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<b>None</b>	<b>Subpart 4</b> For expansion of an existing petroleum refinery facility that increases its capacity by 10,000 or more barrels per day, the PCA shall be the RGU.

<b>FUEL CONVERSION FACILITIES</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<b>None</b>	<b>Subpart 5</b> A. For construction of a facility for the conversion of coal, peat, or biomass sources to gaseous, liquid or solid fuels if that facility has the capacity to utilize 25,000 dry tons or more per year of input, the PCA shall be the RGU. B. For construction or expansion of a facility for the production of alcohol fuels which would have or would increase its capacity by 5,000,000 or more gallons per year of alcohol produced, the PCA shall be the RGU.

<b>TRANSMISSION LINES</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<b>Subpart 5</b> Construction of a transmission line with a nominal capacity of 69 kilovolts or less.	<b>Subpart 6</b> For construction of a transmission line at a new location with a nominal capacity of 70 kilovolts or more with 20 or more miles of its length in Minnesota, the EQB shall be the RGU.

<b>PIPELINES</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<b>None</b>	<p><b>Subpart 7</b></p> <p>A. For routing of a pipeline, greater than six inches in diameter and having more than 0.75 miles of its length in Minnesota, used for the transportation of coal, crude petroleum fuels or oil or their derivatives, the EQB shall be the RGU.</p> <p>B. For the construction of a pipeline for distribution of natural or synthetic gas under a license, permit, right, or franchise that has been granted by the municipality under authority of Minnesota Statutes, Section 216B.36, designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than: (1) five miles if the pipeline will occupy streets, highways and other public property; or (2) 0.75 miles if the pipeline will occupy private property; the EQB or the municipality is the RGU.</p> <p>C. For construction of a pipeline to transport natural or synthetic gas subject to regulation under the federal Natural Gas Act, the United States, title 15, Section 717, et. seq., designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than: (1) five miles if the pipeline will be constructed and operated within an existing right-of-way; or (2) 0.75 miles if construction or operation will require new temporary or permanent right-of-way; the EQB is the RGU. This item shall not apply to the extent that the application is expressly preempted by federal law, or under specific circumstances when an actual conflict exists with applicable federal law.</p> <p>D. For construction of a pipeline to convey natural or synthetic gas that is not subject to regulation under the federal Natural Gas Act, United States Code, title 15, Section 717, et. seq.; or to a license, permit, right, or franchise that has been granted by a municipality under authority of Minnesota Statutes, Section 216B.36; designed to operate at pressures in excess of 275 pounds per square inch (gauge) with a length greater than 0,75 miles, the EQB is the RGU.</p>

<b>TRANSFER FACILITIES</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<p><b>Subpart 6</b> Construction of a facility designed for or capable of transferring less than 30 tons of coal per hour or with an annual throughput of less than 50,000 tons of coal from one mode of transportation to a similar or different mode of transportation, or the expansion of an existing facility by these respective amounts.</p>	<p><b>Subpart 8</b> A. For construction of a facility designed for or capable of transferring 300 tons or more of coal per hour or with an annual throughput of 500,000 tons of coal from one mode of transportation to a similar or different mode of transportation; or the expansion of an existing facility by these respective amounts, the PCA shall be the RGU. B. For construction of a new facility or the expansion by 50 percent or more of an existing facility for the bulk transfer of hazardous materials with the capacity of 10,000 or more gallons per transfer, if the facility is located in a shoreland area, delineated flood plain, a state or federally designated wild and scenic rivers district, Minnesota River Project Riverbend area, or the Mississippi headwaters area, the PCA shall be the RGU.</p>

<b>TRANSFER FACILITIES</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<p><b>Subpart 6</b> Construction of a facility designed for or capable of transferring less than 30 tons of coal per hour or with an annual throughput of less than 50,000 tons of coal from one mode of transportation to a similar or different mode of transportation, or the expansion of an existing facility by these respective amounts.</p>	<p><b>Subpart 8</b> A. For construction of a facility designed for or capable of transferring 300 tons or more of coal per hour or with an annual throughput of 500,000 tons of coal from one mode of transportation to a similar or different mode of transportation; or the expansion of an existing facility by these respective amounts, the PCA shall be the RGU. B. For construction of a new facility or the expansion by 50 percent or more of an existing facility for the bulk transfer of hazardous materials with the capacity of 10,000 or more gallons per transfer, if the facility is located in a shoreland area, delineated flood plain, a state or federally designated wild and scenic rivers district, Minnesota River Project Riverbend area, or the Mississippi headwaters area, the PCA shall be the RGU.</p>

<b>UNDERGROUND STORAGE</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
None	<p><b>Subpart 9</b></p> <p>A. For expansion of an underground storage facility for gases or liquids that requires a permit, pursuant to Minnesota Statutes, Section 1031.681, subdivision 1, paragraph (a), the DNR shall be the RGU.</p> <p>B. For expansion of an underground storage facility for gases or liquids using naturally occurring rock materials, that requires a permit pursuant to Minnesota Statutes, Section 1031.681, subdivision 1, paragraph (b), the DNR shall be the RGU.</p>

<b>STORAGE FACILITIES</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<p><b>Subpart 7</b></p> <p>Construction of a facility designed for or capable of storing less than 750 tons of coal or more, with an annual throughput of less than 12,500 tons of coal, or the expansion of an existing facility by these respective amounts.</p>	<p><b>Subpart 10</b></p> <p>A. For construction of a facility designed for or capable of storing more than 7,500 tons of coal or with an annual throughput of more than 125,000 tons of coal; or the expansion of an existing facility by these respective amounts, the PCA shall be the RGU.</p> <p>B. For construction of a facility on a single site designed for or capable of storing 1,000,000 gallons or more of hazardous materials, the PCA shall be the RGU.</p> <p>C. For construction of a facility designed for or capable of storing on a single site 100,000 gallons or more of liquefied natural gas synthetic gas, or anhydrous ammonia, the PCA shall be the RGU.</p>

<b>METALLIC MINERAL MINING AND PROCESSING</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<p><b>Subpart 8</b></p> <p>A. General mine site evaluation activities that do not result in a permanent alteration of the environment, including mapping, aerial surveying, visual inspection, geologic field reconnaissance, geophysical studies, and surveying, but excluding exploratory borings.</p> <p>B. Expansion of metallic mineral plant processing facilities that are capable of increasing production by less than ten percent per year, provided the increase is less than 100,000 tons per year in the case of facilities for processing natural iron ore or taconite.</p> <p>C. Scram mining operations.</p>	<p><b>Subpart 11</b></p> <p>A. For mineral deposit evaluation of metallic mineral deposits other than natural iron ore and taconite, the DNR shall be the RGU.</p> <p>B. For expansion of a stockpile, tailings basin, or mine by 320 or more acres, the DNR shall be the RGU.</p> <p>C. For expansion of a metallic mineral plant processing facility that is capable of increasing production by 25 percent per year or more, provided that increase is in excess of 1,000,000 tons per year in the case of facilities for processing natural iron ore or taconite, the DNR shall be the RGU.</p>

<b>NONMETALLIC MINERAL MINING</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<b>None</b>	<p><b>Subpart 12</b></p> <p>A. For development of a facility for the extraction or mining of peat which will result in the excavation of 160 or more acres of land during its existence, the DNR shall be the RGU.</p> <p>B. For development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat which will excavate 40 or more acres of land to a mean depth of ten feet or more during its existence the local government unit shall be the RGU.</p>

<b>PAPER OR PULP PROCESSING MILLS</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<p><b>Subpart 9</b></p> <p>Expansion of an existing paper or pulp processing facility that will increase its production capacity by less than 10 percent.</p>	<p><b>Subpart 13</b></p> <p>For expansion of an existing paper or pulp processing facility that will increase its production capacity by 50 percent or more, the PCA shall be the RGU.</p>

<b>INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL FACILITIES</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<p><b>Subpart 10</b></p> <p>A. Construction of a new or expansion of an existing warehousing, light industrial, commercial, or institutional facility of less than the following thresholds, expressed as gross floor space, if no part of the development is within a shoreland area, delineated flood plain, state or federal designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area:</p> <p>(1) third or fourth class city or unincorporated area, 50,000 square feet  (2) second class city, 75,000 square feet  (3) first class city, 100,000 square feet.</p> <p>B. Construction of a warehousing, light industrial, commercial, or institutional facility with less than 4,000 square feet of gross floor space, and with associated parking facilities designed for 20 vehicles or less.</p>	<p><b>Subpart 14</b></p> <p>A. For construction of a new or expansion of an existing warehousing or light industrial facility equal to or in excess of the following thresholds, expressed as gross floor space, the local governmental unit shall be the RGU.</p> <p>(1) unincorporated area, 150,000;  (2) third of fourth class city, 300,000;  (3) second class city, 450,000;  (4) first class city, 600,000.</p> <p>B. For construction of a new or expansion of an existing industrial, commercial, or institutional facility, other than a warehousing or light industrial facility, equal to or in excess of the following thresholds, expressed as gross floor space, the local governmental units shall be the RGU. (1) unincorporated area, 100,000 square feet; (2) third or fourth class city, 200,000 square feet; (3) second class city, 300,000 square feet; (4) first class city, 400,000 square feet.</p> <p>C. This subpart applies to any industrial, commercial, or institutional project which includes multiple components in subparts listed in Minnesota Rule 4410.4300, for more than two or more of the components, regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the entire project must be compared to the thresholds specified in items A and B to determine the need for an EAW. If the project meets or exceeds the thresholds specified in any other subpart as well as that of item A or B, the RGU must be determined as provided in part 4410.0500, subpart 1.</p> <p>D. This subpart does not apply to projects for which there is a single mandatory category specified in Minnesota Rules 4410.4300 regardless of whether the project in question meets or exceeds any threshold specified in those subparts. In those cases, the need for an EAW must be determined by comparison of the project to the threshold specified in the applicable subpart, and the RGU must be the governmental unit assigned by that subpart.</p>

<b>AIR POLLUTION</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<p><b>Subpart 10, Item C</b> Construction of a new parking facility for less than 100 vehicles if the facility is not located in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.</p>	<p><b>Subpart 15</b> A. For construction of a stationary source facility that generates 100 tons or more per year or modification of a stationary source facility that increases generation by 100 tons of more per year of any single air pollutant after installation of air pollution control equipment, the PCA shall be the RGU. B. For construction of a new parking facility for 2,000 or more vehicles, the PCA shall be the RGU, except that this category does not apply to any parking facility which is part of a project reviewed pursuant to part 4410.4300, subpart 14, 19, 32, or 34, or part 4410.4400, subpart 11, 14, 21, or 22.</p>

<b>HAZARDOUS WASTE</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<p><b>None</b></p>	<p><b>Subpart 16</b> A. For construction or expansion of a hazardous waste disposal facility, the PCA shall be the RGU. B. For construction of a hazardous waste processing facility with a capacity of 1,000 or more kilograms per month, the PCA shall be the RGU. C. For expansion of a hazardous waste processing facility that increase its capacity by ten percent or more, the PCA shall be the RGU. D. For construction or expansion of a facility that sells hazardous waste storage services to generators other than the owner and operator of the facility or construction of a facility at which a generator's own hazardous wastes will be stored for a time period in excess of 90 days, if the facility is located in a water-related land use management district, or in an area characterized by soluble bedrock, the PCA shall be the RGU.</p>

<b>SOLID WASTE</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<b>None</b>	<p><b>Subpart 17</b></p> <p>A. For construction of a mixed municipal solid waste disposal facility for up to 100,000 cubic yards of waste fill per year, the PCA is the RGU.</p> <p>B. For expansion by 25 percent or more of previous capacity of a mixed municipal solid waste disposal facility for up to 100,000 cubic yards of waste fill per year, the PCA is the RGU.</p> <p>C. For construction or expansion of a mixed municipal solid waste transfer station for 300,000 or more cubic yards per year, the PCA is the RGU.</p> <p>D. For construction or expansion of a mixed municipal solid waste energy recovery facility or incinerator, or the utilization of an existing facility for the combustion of mixed municipal solid waste or refuse-derived fuel, with a capacity of 30 or more tons per day of input, the PCA is the RGU.</p> <p>E. For construction or expansion of a mixed municipal solid waste compost facility or a refuse-derived fuel production facility with a capacity of 50 or more tons per day of input, the PCA is the RGU.</p> <p>F. For expansion by at least ten percent but less than 25 percent of previous capacity of a mixed municipal solid waste disposal facility for 100,000 cubic yards or more of waste fill per year, the PCA is the RGU.</p> <p>G. For construction or expansion of a mixed municipal solid waste energy recovery facility ash landfill receiving ash from an incinerator that burns refuse-derived fuel or mixed municipal solid waste, the PCA is the RGU.</p>



<b>WASTEWATER SYSTEMS</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<p><b>Subpart 11</b>  Construction of a new wastewater treatment facility with a capacity of less than 5,000 gallons per day average wet weather flow or the expansion of an existing wastewater treatment facility by less than 5,000 gallons per day average wet weather flow or the expansion of a sewage collection system by less than 5,000 gallons per day design daily average flow or a sewer line of 1,000 feet or less and eight-inch diameter or less.</p>	<p><b>Subpart 18</b>  A. For expansion, modification, or replacement of a municipal sewage collection system resulting in an increase in design average daily flow of any part of that system by 1,000,000 gallons per day or more, the PCA shall be the RGU.  B. For expansion or reconstruction of an existing municipal or domestic wastewater treatment facility which results in an increase by 50 percent or more and by at least 50,000 gallons per day of its average wet weather design flow capacity of 50,000 gallons per day or more, the PCA shall be the RGU.  C. For expansion or reconstruction of an existing industrial process wastewater treatment facility which increases its design flow capacity by 50 percent or more and by at least 200,000 gallons per day or more, or construction of a new industrial process wastewater treatment facility with a design flow capacity of 200,000 gallons per day or more, 5,000,000 gallons per month or more, or 20,000,000 gallons per year or more, the PCA shall be the RGU. This category does not apply to industrial process wastewater treatment facilities that discharge to a publicly-owned treatment works or to a tailings basin reviewed pursuant to subpart 11, item B.</p>

<b>RESIDENTIAL DEVELOPMENT</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<p><b>Subpart 12</b></p> <p>A. Construction of a sewered residential development, no part of which is within a shoreland area, delineated flood plain state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, of:</p> <ol style="list-style-type: none"> <li>1) less than ten units in an unincorporated area,</li> <li>2) less than 20 units in a third or fourth class city,</li> <li>3) less than 40 units in a second class city, or</li> <li>4) less than 80 units in a first class city.</li> </ol> <p>B. Construction of a single residence or multiple residence with four dwelling units of less and accessory appurtenant structures and utilities.</p>	<p><b>Subpart 19</b></p> <p>A. 50 or more unattached or 75 or more attached units in an unsewered unincorporated area or 100 unattached units or 150 attached units in a sewered unincorporated area;</p> <p>B. 100 unattached units or 150 attached units in a city that does not meet the conditions of item D;</p> <p>C. 100 unattached units or 150 attached units in a city meeting the conditions of item D if the project is not consistent with the adopted comprehensive plan; or</p> <p>D. 250 unattached units or 375 attached units in a city within the seven-county Twin Cities metropolitan area that has adopted a comprehensive plan under Minnesota Statutes, Section 473.859, or in a city not located within the seven-county Twin Cities metropolitan area that has filed with the EQB chair a certification that it has adopted a comprehensive plan containing the following elements:</p> <ol style="list-style-type: none"> <li>1) a land use plan designating the existing and proposed location, intensity, and extent of use of land and water for residential, industrial, agricultural, and other public and private purposes;</li> <li>2) a transportation plan describing, designating, and scheduling the location, extent, function, and capacity of existing and proposed local public and private transportation facilities and services;</li> <li>3) a sewage collection system policy plan describing, designating, and scheduling the areas to be served by the public system, the existing and planning capacities of the public system, and the standards and conditions under which the installation of private sewage treatment systems will be permitted;</li> <li>4) a capital improvements plan for public facilities; and</li> <li>5) an implementation plan describing public programs, fiscal devices, and other actions to be undertaken to implement the comprehensive plan, and a description of official controls addressing the matters of zoning, subdivision, private sewage systems, and a schedule for the implementation of those controls. The EQB chair may specify the form to be used for making a certification under this item.</li> </ol>

<b>CAMPGROUNDS AND RV PARKS</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<b>None</b>	<p><b>Subpart 20</b></p> <p>For construction of a seasonal or permanent recreational development, accessible by vehicle, consisting of 50 or more sites, or the expansion of such a facility by 50 or more sites, the local government unit shall be the RGU.</p>

<b>AIRPORT PROJECTS</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<p><b>Subpart 13</b></p> <p>A. Runway, taxiway, apron, or leading ramp construction or repair work including reconstruction, resurfacing, marking, grooving, fillets, and jet blast facilities, except where the project will create environmental impacts off airport property.</p> <p>B. Installation or upgrading of airfield lighting systems, including beacons and electrical distribution systems.</p> <p>C. Construction or expansion of passenger handling or parking facilities, including pedestrian walkway facilities.</p> <p>D. Grading or removal of obstructions and erosion control projects on airport property, except where the projects will create environmental impacts off airport property.</p>	<p><b>Subpart 21</b></p> <p>A. For construction of a paved, new airport runway, the DOT, local governmental unit, or the Metropolitan Airports Commission shall be the RGU.</p> <p>B. For construction of a runway extension that would upgrade an existing runway to permit usage by aircraft over 12,500 pounds that are at least three decibels louder than aircraft currently using the runway, the DOT, local government unit, or the Metropolitan Airports Commission shall be the RGU. The RGU shall be selected according to part 4410.0500, subpart 5.</p>

<b>HIGHWAY PROJECTS</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<p><b>Subpart 14</b></p> <p>A. Highway safety improvement projects.</p> <p>B. Installation of traffic control devices, individual noise barriers, bus shelters and bays, loading zones, and access and egress lanes for transit and paratransit vehicles.</p> <p>C. Modernization of an existing roadway or bridge by resurfacing, restoration, or rehabilitation that may involve the acquisition of minimal amounts of right-of-way.</p> <p>D. Roadway landscaping, construction of bicycle and pedestrian lanes, paths, and facilities within existing right-of-way.</p> <p>E. Any stream diversion or channelization within the right-of-way of an existing public roadway associated with bridge or culvert replacement.</p> <p>F. Reconstruction or modification of an existing bridge structure on essentially the same alignment or location that may involve the acquisition or minimal amounts of right-of-way.</p>	<p><b>Subpart 22</b></p> <p>A. For construction of a road on a new location over one mile in length that will function as a collector roadway, the DOT or local government unit shall be the RGU.</p> <p>B. For construction of additional travel lanes on an existing road for a length of one or more miles, the DOT or local government unit shall be the RGU.</p> <p>C. For the addition of one or more new interchanges to a completed limited access highway, the DOT or local government unit shall be the RGU.</p>

<b>BARGE FLEETING</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<p><b>None</b></p>	<p><b>Subpart 23</b></p> <p>For construction of a new or expansion of an existing barge fleeting facility, the DOT or port authority shall be the RGU.</p>

<b>WATER APPROPRIATION AND IMPOUNDMENTS</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<p><b>Subpart 15</b></p> <p>A new or additional permanent impoundment of water creating a water surface of less than ten acres.</p>	<p><b>Subpart 24</b></p> <p>A. For a new appropriation for commercial or industrial purposes of either surface water or ground water averaging 30,000,000 gallons per month; or a new appropriation of either ground water or surface water for irrigation of 540 acres or more in one continuous parcel from one source of water, the DNR shall be the RGU.</p> <p>B. For a new permanent impoundment of water creating additional water surface of 160 or more acres or for an additional permanent impoundment of water creating additional water surface of 160 or more acres, the DNR shall be the RGU.</p> <p>C. For construction of a dam with an upstream drainage area of 50 square miles or more, the DNR shall be the RGU.</p>

<b>MARINAS</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<p><b>Subpart 16</b> Construction of private residential docks for use by four or less boats and utilizing less than 1,500 square feet of water surface.</p>	<p><b>Subpart 25</b> For construction or expansion of a marina or harbor that results in a 20,000 or more square foot total or a 20,000 or more square foot increase of water surface area used temporarily or permanently for docks, docking, or maneuvering of watercraft, the local government unit shall be the RGU.</p>

<b>STREAMS AND DITCHES</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<p><b>Subpart 17</b> Routine maintenance or repair of a drainage ditch within the limits of its original construction flow capacity, performed within 20 years of construction of major repair.</p>	<p><b>Subpart 26</b> For a diversion, realignment, or channelization of any designated trout stream, or affecting greater than 500 feet of natural watercourse with a total drainage area of ten or more square miles unless exempted by part 4100.4600, subpart 14, item E, or 17, the local government unit shall be the RGU.</p>

<b>WETLANDS AND PUBLIC WATERS</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<p><b>None</b></p>	<p><b>Subpart 27</b> A. For projects that will change or diminish the course, current, or cross-section of one acre or more of any public waters or public waters wetland except for those to be drained without a permit pursuant to Minnesota Statutes, chapter 103G, the local government unit shall be the RGU. B. For projects that will change or diminish the course, current, or cross-section of 40 percent or more or five or more acres of types 3 through 8 wetland of 2.5 acres or more, excluding protected wetlands, if any part of the wetland is within a shoreland area, delineated flood plain, a state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, the local government unit shall be the RGU.</p>

<b>FORESTRY</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<p><b>Subpart 18</b>  A. Harvesting of timber for maintenance purposes.  B. Public and private forest management practices, other than clear cutting or the application of pesticides, that involve less than 20 acres of land.</p>	<p><b>Subpart 28</b>  A. For harvesting of timber for commercial purposes on public lands within a state park, historical area, wilderness area, scientific and natural area, wild and scenic rivers district, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or critical area that does not have an approved plan under Minnesota Statutes, Section 86A.09 or 116G.07, the DNR shall be the RGU.  B. For a clear cutting of 80 or more contiguous acres of forest, any part of which is located within a shoreland area and within 100 feet of the ordinary high water level of the lake or river, the DNR shall be the RGU.</p>

<b>ANIMAL FEEDLOTS</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<p><b>Subpart 19</b>  Construction of an animal feedlot facility of less than 100 animal units or the expansion of an existing facility by less than 100 animal units no part of either of which is located within a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.</p>	<p><b>Subpart 29</b>  For the construction of an animal feedlot facility with a capacity of 1,000 animal units or more or the expansion of an existing facility by 1,000 animal units or more or construction of a total confinement animal feedlot facility of 2,000 animal units or more or the expansion of an animal feedlot facility by 2,000 animal units or more if the expansion is a total confinement facility, the PCA shall be the RGU.</p>

<b>NATURAL AREAS</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<p><b>None</b></p>	<p><b>Subpart 30</b>  For projects resulting in the permanent, physical encroachment on lands within a national park, state park, wilderness area, state lands and waters within the boundaries of the Boundary Waters Canoe Area, scientific and natural area, or state trail corridor when the encroachment is inconsistent with laws applicable to or the management plan prepared for the recreational unit, the DNR or local government unit shall be the RGU.</p>

<b>HISTORICAL PLACES</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<b>None</b>	<p><b>Subpart 31</b></p> <p>For the destruction, in whole or part, or the moving of a property that is listed on the National Register of Historic Places or State Register of Historic Places, the permitting state agency or local unit of government shall be the RGU, except this does not apply to projects reviewed under Section 106 of the National Historic Preservation Act of 1966, United States Code, title 16, Section 470, or the federal policy on lands, wildlife and waterfowl refuges, and historic sites pursuant to United States Code, title 49, Section 303.</p>

<b>MIXED RESIDENTIAL AND INDUSTRIAL-COMMERCIAL PROJECTS</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<b>None</b>	<p><b>Subpart 32</b></p> <p>If a project includes both residential and industrial-commercial components, the project must have an EAW prepared if the sum of the quotient obtained by dividing the number of residential units by the applicable residential threshold of subpart 19, plus the quotient obtained by dividing the amount of industrial-commercial gross floor space by the amount of industrial-commercial threshold of subpart 14, equals or exceeds one. The local government unit is the RGU.</p>

<b>COMMUNICATIONS TOWERS</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<b>None</b>	<p><b>Subpart 33</b></p> <p>For construction of a communications tower equal to or in excess of 500 feet in height, or 300 feet in height within 1,000 feet of any public water or public waters wetland and within two miles of the Mississippi, Minnesota, Red, or St. Croix rivers, or Lake Superior, the local governmental unit is the RGU.</p>

<b>SPORTS OR ENTERTAINMENT FACILITIES</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<b>None</b>	<p><b>Subpart 34</b></p> <p>For construction of a new sports or entertainment facility designed for or expected to accommodate a peak attendance of 5,000 or more persons, or the expansion of an existing sports or entertainment facility by this amount, the local governmental unit is the RGU.</p>

<b>RELEASE OF GENETICALLY ENGINEERED ORGANISMS</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<b>None</b>	<p><b>Subpart 35</b></p> <p>For the release of a genetically engineered organism that requires a release permit from the EQB under chapter 4420, the EQB is the RGU. For all other releases of genetically engineered organisms, the RGU is the permitting state agency. This subpart does not apply to the direct medical application of genetically engineered organisms to humans or animals.</p>

<b>LAND USE CONVERSION, INCLUDING GOLF COURSES</b>	
<b>Exemption Categories</b>	<b>Mandatory EAW</b>
<b>None</b>	<p><b>Subpart 36</b></p> <p>A. For golf courses, residential development where the lot size is less than five acres, and other projects resulting in the permanent conversion of 80 or more acres of agricultural, native prairie, forest, or naturally vegetated land, the local government unit shall be the RGU, except than this subpart does not apply to agricultural land inside the boundary of the Metropolitan Urban Service established by the Metropolitan Council.</p> <p>B. For projects resulting in the conversion of 640 or more acres of forest or naturally vegetated land to a different open space land use, the local government unit shall be the RGU.</p>