



PennFuture

July 30, 2020

Sent via Email

Dept. of Environmental Protection
Coastal Resource Management Program
Federal Consistency Coordinator
400 Market Street
P.O. Box 2063
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ecomment@pa.gov

**Re: Public Comments of PennFuture
Federal Consistency Determination Under the Coastal Zone Management Act
Erie Western Pennsylvania Port Authority - Port Access Area Development
50 Pa. Bull. 3670 (July 18, 2020).**

To Whom It May Concern:

Please accept these comments on behalf of Citizens for Pennsylvania's Future ("PennFuture") and its members regarding the Federal consistency determination of Erie Western Pennsylvania Port Authority's ("Applicant") proposed Port Access Area Development ("Project"). The proposed project seeks to develop a 37-acre tract of land located in the City of Erie between the Ore Dock Road and Port Access Road near the harbor entrance to Presque Isle Bay, Lake Erie. Applicant plans to fully impact the entire 37-acre project area, including 8 acres of wetlands, to construct additional port facilities. This Project is not consistent with the Department of Environmental Protection's ("DEP") policies for protecting Pennsylvania's coastal resources under the Coastal Resource Management Program ("CRMP"). For the reasons set forth herein, PennFuture respectfully requests that DEP issue an objection to Federal consistency for the Project.

PennFuture is an environmental non-profit organization dedicated to leading the transition to a clean energy economy in Pennsylvania and beyond. PennFuture strives to protect our air, water and land, and to empower citizens to build sustainable communities for future generations. PennFuture enforces environmental laws and advocates for the transformation of public policy, public opinion, and the marketplace to restore and protect the environment and safeguard public health. A significant focus of PennFuture's work relates to protecting and

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improving Pennsylvania’s water resources, including those water resources in and around the Erie region.

The Federal Coastal Zone Management Act of 1972 (“CZMA”) requires that “any required federal license or permit activity affecting any coastal use or resource is conducted in a manner consistent with approved management programs.”¹ The Project will require federal authorization from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act to fill wetlands; therefore, the Project must be reviewed for consistency with Pennsylvania’s approved coastal management program.² Pursuant to the CZMA, consistency review in Pennsylvania evaluates proposed projects for consistency with policies created and published by CRMP in the *CRMP Guidance Document*.³ This Project directly conflicts with CRMP policies. The Project would fill and pave 37 acres of currently undeveloped area along the Presque Isle Bay, impacting coastal resources by destroying wetlands and replacing them with impermeable paved or gravel surfaces. This elimination of greenspace along the downtown bayfront is contrary to CRMP’s mandate to protect Pennsylvania’s coastal resources.

1. The Project is Inconsistent with CRMP Policy to Preserve and Protect Wetlands.

Policy requires that CRMP protect wetlands within the coastal zone. CRMP recognizes the value of coastal wetlands, stating that “effective management and protection of the remaining wetlands is vital.”⁴ Accordingly, it is an enforceable policy under the CRMP “to preserve, protect, enhance and restore the remaining wetlands within the Commonwealth’s coastal areas . . .”⁵ Allowing the Project to destroy 8 acres of wetlands in a rare greenspace in the downtown bayfront region would run in direct contradiction to this policy. It is the duty of the CRMP to prevent the irreversible destruction of these wetlands and their surrounding greenspace. As noted in CRMP guidance, wetlands “provide natural flood control, improved water quality, flow stabilization, and environmental diversity.”⁶ Losing wetlands would further burden coastal resources by increasing runoff, lowering the water quality of Presque Isle Bay, threatening fish health and habitat, and crippling natural infrastructure remaining on the waterfront.

Applicant attempts to minimize the impact of the destruction of these wetlands by characterizing them as filled with invasive species and surrounded by existing industrial activities. However, CRMP’s policy to preserve, protect, enhance, and restore “the remaining

¹ 15 C.F.R. § 930.50 (2000).

² Pa. Dept. of Env’t Prot., *Coastal Resources Management Program (“CRMP”) Guidance Document*, 72 (May 3, 2008).

³ *Id.* at i.

⁴ *Id.* at 3.

⁵ *Id.* at 24.

⁶ *Id.* at 23.

wetlands” in Pennsylvania’s coastal areas does not make such a distinction. Additionally, one acre of the proposed wetland impacts is an existing constructed wetland mitigation area. These wetlands are a reminder of coastal resources already lost along Presque Isle Bay and should have been restored, enhanced, and maintained to act as effective mitigation. Applicant cannot use its own surrounding development and poor management of its existing wetlands and remaining greenspaces to justify the additional destruction of wetlands.

While CRMP should not allow any wetland destruction, any mitigation must be completed within the coastal zone. Applicant proposes wetland mitigation offsite and does not specify whether the proposed mitigation would be within the coastal zone. Under CRMP Policy 4, “[a]ny wetland which is impacted in a coastal zone area will be replaced and/or mitigated within the coastal zone area in a manner consistent with the regulations of the department.”⁷ Any proposed mitigation must be carried out consistent with this policy in protection of Pennsylvania’s coastal resources and should be within the coastal zone area.

2. CRMP Needs More Information to Determine Consistency

CRMP should withhold review for Federal consistency until it receives Applicant’s Joint Permit application to DEP and the U.S. Army Corps of Engineers.⁸ Under CRMP policy:

Persons or agencies required to obtain federal licenses or permits . . . requiring consistency review shall submit a copy of the license or permit application to the CRMP along with the necessary data and information required by 15 CFR 930.58, and indicate that the proposed activity complies with and will be conducted in a manner consistent with the enforceable policies of the CRMP.⁹

Applicant indicates they have not yet applied for a Joint Permit. Without the technical information contained in the Joint Permit application, CRMP cannot make an informed decision on the cumulative impacts the Project will have on the state’s coastal resources. For example, Policy 3.1: Fisheries Management, requires CRMP to “Support Fish Life” and “ensure that . . . coastal waters shall not contain substances . . . in concentration or amounts sufficient to be inimical or harmful of the water uses to be protected.”¹⁰ The submitted application does not provide enough information for such assurances. Likewise, Policy 9:2: Intergovernmental Cooperation on Water Quality requires CRMP to engage in the protection and improvement of water quality by incorporating the Clean Water Act by reference.¹¹ The submitted application

⁷ *Id.* at 24.

⁸ Applicant indicates that it will apply for a Water and Obstruction and Encroachment Permit (Joint Permit).

⁹ *CRMP Guidance Document* at 77.

¹⁰ *Id.* at 21.

¹¹ *Id.* at 34.



requests authorization to destroy wetlands, but does not provide data about the stormwater management needed to replace the vital role wetlands play in the storage of stormwater. Without the data of a Joint Permit application, CRMP cannot adequately determine Federal consistency.

3. Past Permitting is Not Appropriate Justification for Present Consistency

Finally, Applicant points to historical authorization by the Corps and DEP twenty years ago as justification for finding Federal consistency today.¹² This reasoning is contrary to the CZMA. Under 15 C.F.R. § 930.51, only active applications may be considered; reapplying results in a new consistency review.¹³ CRMP must judge the needs of Pennsylvania's coastal resources today against the proposed Project. Applicant's vague references to past agency actions should not influence the evaluation of the current Project's consistency with Pennsylvania's coastal zone policies.

* * *

In conclusion, CRMP must issue an objection to Federal consistency because the Project proposes actions that directly contradict CRMP policies. The destruction of wetlands is against CRMP policy. Determining consistency without access to a Joint Permit application is against CRMP policy. Wetland mitigation outside the coastal zone is against CRMP policy, and the destruction of a previously designated wetland mitigation site has negative implications for CRMP's efforts to protect coastal resources.

Thank you for this opportunity to comment on the consistency determination for Applicant's proposed Port Area Access Development. PennFuture looks forward to working with DEP to ensure that coastal resources are protected.

Should you have any questions, please do not hesitate to contact me at the email address below or Angela Kilbert, Staff Attorney at kilbert@pennfuture.org or 412-760-8495.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Megan E. Rulli".

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¹² Applicant failed to include the reasons the historical project was abandoned.

¹³ 15 C.F.R § 930.51(f) (2006).