



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Washington, D.C. 20230

OFFICE OF THE GENERAL COUNSEL

AUG 29 2007

Mr. Donald and Ms. Susan Williams  
2511 Lake Road  
Ransomville, NY 14131

Mr. George R. Stafford  
Deputy Secretary of State for Coastal Resources  
Department of State  
State of New York  
41 State Street  
Albany, NY 12231

Re: Dismissal of the Consistency Appeal of Donald Williams

Dear Mr. and Ms. Williams:

This appeal involves a proposal by Donald Williams to install approximately 51 feet of rip-rap along the shoreline of Mr. Williams' property, located along Lake Ontario in Porter, New York. In June 2006, Mr. Williams filed a permit application with the U.S. Army Corps of Engineers seeking authorization for the project. New York's Department of State has objected to the project as proposed and suggested an alternative acceptable to the State. Susan Williams, on behalf of Mr. Williams, has appealed this objection to the Secretary of Commerce (Secretary), pursuant to the Coastal Zone Management Act (CZMA). For reasons set forth below, I dismiss this appeal for good cause.<sup>1</sup>

The CZMA provides states with federally-approved coastal management programs the opportunity to review proposed projects requiring federal licenses or permits, if the project will affect the state's coastal zone. A timely objection by a state precludes federal agencies from issuing licenses or permits for the project, unless the Secretary overrides the objection. The Secretary may override a state's objection upon appeal if the Secretary determines the project is either consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security. 16 U.S.C. § 1456(c)(3)(A). A project is "consistent with the objectives of the CZMA," if: (a) the project furthers the national interest, as articulated by the findings and policies of the CZMA, in a significant or substantial manner; (b) the national interest furthered by the activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively; and (c) there is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the enforceable policies of the state's

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<sup>1</sup> The Under Secretary of Commerce for Oceans and Atmosphere has been delegated authority to dismiss CZMA appeals for "good cause." This authority has further been redelegated to the NOAA General Counsel. See Department Organization Order 10-15, Section 3.01(u); Delegation of Authority from the Under Secretary to the General Counsel and Redelegation to the Assistant General Counsel re. Section 307 of the Coastal Zone Management Act (Aug. 30, 2006).



coastal management program. 15 C.F.R. § 930.121.

Given the Secretary's basis for review, regulations implementing the CZMA specifically require that appellants identify a recognized basis for appeal within the notice of appeal. Specifically:

The appellant's notice of appeal shall include a statement explaining the appellant's basis for appeal of the State agency's objection under §§ 930.121 [objectives or purposes of the Act] and/or 930.122 [national security] of this title, including any procedural arguments pursuant to § 930.129(b). Bases for appeal (including procedural arguments) not identified in the appellant's notice of appeal shall not be considered by the Secretary.

15 C.F.R. § 930.125(b). This regulation is intended to help the Secretary decide appeals within new time constraints recently enacted by Congress, by requiring that appellants clarify from the outset each separate basis for appeal. 71 Fed. Reg. 75864 (Dec. 19, 2006). Appeals that are not based upon either recognized ground are subject to dismissal for good cause. 15 C.F.R. § 930.129(5).

In this instance, Mr. Williams has failed to base his appeal on a recognized ground. The stated basis of Mr. Williams' appeal is that: (a) if unable to undertake this project as proposed, his shoreline property will erode faster; and (b) New York's proposed alternative – which would move his house and septic system away from the top of the bluff and closer to the road – would cost approximately three times as much. Mr. Williams does not plainly or impliedly assert that the project is either consistent with the objectives of the CZMA or otherwise necessary in the interest of national security.

Because Mr. Williams has failed to base his appeal upon recognized grounds, I dismiss the appeal for good cause.

Sincerely,



Jane Luxton  
General Counsel

Cc: Mr. Mark Scalabrino  
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