



U.S. Department
of Transportation

**Federal Highway
Administration**

Memorandum

Subject: Coastal Barrier Resources Act (CBRA)
(P.L. 97-348)

Date: JUN 18 1984

From: Director, Office of Environmental Policy
Washington, D.C. 20590

Reply to: HEV-20
Attn. of:

To: Regional Federal Highway Administrators
Regions 1, 3, 4, and 6, and
Direct Federal Program Administrator

This memorandum transmits a revised guidance package which implements the subject statute for the Federal-aid highway program. We suggest that one copy of this memorandum and attachment be placed in Section 12 of the Environmental Guidebook for reference until the next annual revision is distributed in December 1984.

The guidance transmitted by my April 19, memorandum failed to recognize that the final decision concerning CBRA consistency rests with the consulting Federal agency, in this case the Federal Highway Administration (FHWA) (43 CFR Subtitle A, Section III, Consultation). This has now been clarified.

Please direct any comments or questions to either Messrs. Charles DesJardins or Fred Bank at FTS 426-9173.

Ali F. Sevin

Attachment

GUIDELINES FOR IMPLEMENTING THE
COASTAL BARRIER RESOURCES ACT
PUBLIC LAW 97-348

ENVIRONMENTAL ANALYSIS DIVISION
OFFICE OF ENVIRONMENTAL POLICY
FEDERAL HIGHWAY ADMINISTRATION

JUNE 1984

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COASTAL BARRIER RESOURCES ACT

Coordination Guidelines for the Exception of Certain Federal-aid Highway Projects

Introduction

The following guidelines are for use by the Federal Highway Administration (FHWA) and the State highway agencies (SHA) in coordinating Federal-aid highway projects with the U.S. Fish and Wildlife Service (FWS) concerning the exception provisions of the Coastal Barrier Resources Act (CBRA).

Background

The CBRA was signed into law on October 18, 1982. The Act was passed by Congress to minimize the loss of human life, the wasteful expenditure of Federal revenues, and damage to the natural and other resources of coastal barrier systems along the Atlantic and Gulf coasts. Accordingly, the statute identifies coastal areas which will be protected by placing restrictions on the expenditure of Federal funds for developmental activities.

The CBRA designates a protected network of coastal barriers, termed the Coastal Barrier Resources Systems (CBRS). The Act designates 186 individual areas in 15 States along the Atlantic and Gulf coasts with provisions for periodically updating the designated barriers. Individual areas within the system, called units, are undeveloped coastal features such as barrier islands, tombolos (a sand or gravel bar that connects an island with the mainland or another island), bay barriers, and barrier spits. Frequently, a designated unit comprises only a portion of an otherwise developed barrier island. All units contain few man-made structures and show no significant alteration of the geomorphic and ecological processes common to barrier systems.

Congress directed the Department of the Interior (DOI) to prepare a series of maps depicting the boundaries of each CBRS unit. The maps have previously been furnished to pertinent Regional and Division Offices. The DOI has also provided maps to each affected county as well as each State coastal zone management agency. The FWS Regional and Ecological Services field offices will have current maps available. Addresses and phone numbers for the FWS offices mentioned above are attached.

The restrictions on Federal expenditures within barrier units are imposed by Section 5 of the CBRA. Section 5 prohibits new expenditures for highway projects occurring within the boundaries of a designated unit or for bridges and causeways leading directly to and extending into such units (see attached diagram). A new Federal expenditure is one which has no legally binding commitment for payment prior to October 18, 1982. Any projects for which a PS&E was approved before October 18, 1982 is not a new Federal expenditure and is exempted from Section 5 of the CBRA.

Exception Procedures Under Section 6 of CBRA

Section 6 of the CBRA, however, allows exceptions for certain actions after consultation with FWS. The repair, reconstruction, and replacement (but not expansion) of existing publicly owned roads that are essential links in a larger system or network may be excepted from the funding restrictions of the CBRA. This exception is stated at Section 6(a)(3) of the Act. Similar projects on roads not deemed essential links in a larger network may also be excepted, but only after the work is determined consistent with the purposes of the Act. Section 6(a)(6)(F) of the Act describes this exception process.

The FHWA has determined that all existing roads and highways on the Federal-aid system will usually meet the requirements of Section 6(a)(3), because they are, by the very nature in which they are designated, important links in a larger network. The Federal-aid system of Interstate, primary, secondary, and urban highways is an integrated network connecting major urban centers and providing access to major traffic generators. You should be aware that the FWS may disagree with the "essentiality" of a particular link based upon its interpretation of the CBRA. Federally funded projects on roads not on the Federal-aid system will be coordinated with FWS under the Section 6(a)(6)(F) conditions. Examples of projects in this area would be those eligible for Federal funding from sources such as, the Safer Off-System Roads Program (23 U.S.C. 219) and the Disaster Relief Act of 1974 (P.L. 93-288).

Whenever a SHA proposes the use of Federal funds for the replacement, repair, or reconstruction of an existing highway within a unit of the CBRS, the FWS must be contacted to initiate the consultation process. The SHA should request consultation in writing directly from the appropriate Regional Director of the FWS within the framework of existing project coordination procedures required by the National Environmental Policy Act.

The request should indicate whether an exception under Section 6(a)(3) or Section 6(a)(6)(F) is appropriate. Federal-aid system projects will usually fall under Section 6(a)(3). Other projects would normally be treated under Section 6(a)(6)(F).

On all Federal-aid projects subject to CBRA, the SHA (for projects constructed under Certification Acceptance) and the FHWA Division Administrator (for all other Federal-aid projects) shall not approve any PS&E until the FWS has responded to a consultation request by providing comments on the question of consistency with the CBRA.

Coordination Content and Timing for Projects to be Excepted Under Section 6

Coordination should occur at the earliest possible stage of project development. Advance informal consultation between the appropriate field office of FWS and the SHA is encouraged and should expedite the process. The SHA should provide the FWS with a description of the proposed work, identifying the specific project location by reference to the appropriate CBRS unit map. In those instances where an exception is being requested under Section 6(a)(3), it is recommended that the reasons why the particular link is considered "essential" be clearly presented. Similarly, the reasons

why a Section 6(a)(6)(F) project should be considered "consistent" would be set forth. The FWS may be requested to provide written comments concerning the proposed exception to the SHA within 30 calendar days, unless an emergency is involved. A copy of the request and the FWS comments should be forwarded to the appropriate FHWA Division contact for information. Any extension of this time period should be mutually agreeable to the FWS, FHWA, and the SHA.

Consultation Results

A reply letter providing technical information and comments on the question of essentiality and/or consistency of the proposed project as an exception under Section 6 will be prepared by the appropriate FWS Ecological Services field office and transmitted to its Regional Office for signature. The FWS response on Section 6(a)(3) exceptions (Federal-aid system projects) need only indicate concurrence that the project is a reconstruction, replacement, or repair activity. Under Section 6(a)(6)(F), the FWS will, in addition, provide its comments indicating whether or not it feels that the proposed project is "consistent with the purposes of the Act."

Should the consultation result in the FWS failing to agree that the project is a proper exception, the final determination will be made by the FHWA. The Division Administrator will forward a recommendation, including an analysis of the FWS comments together with a copy of the FWS comments, to the Regional Federal Highway Administrator for concurrence.

Documentation

If the proposed project is processed with an environmental impact statement (EIS), CBRA consultation to date should be summarized in the draft EIS and documented in the final EIS. If processed as either a Categorical Exclusion or Environmental Assessment/FONSI, the results should be indicated in the appropriate final document and/or project file.

Definitions

The following definitions are used solely for the purpose of these procedures and have no bearing on other programs of the FHWA.

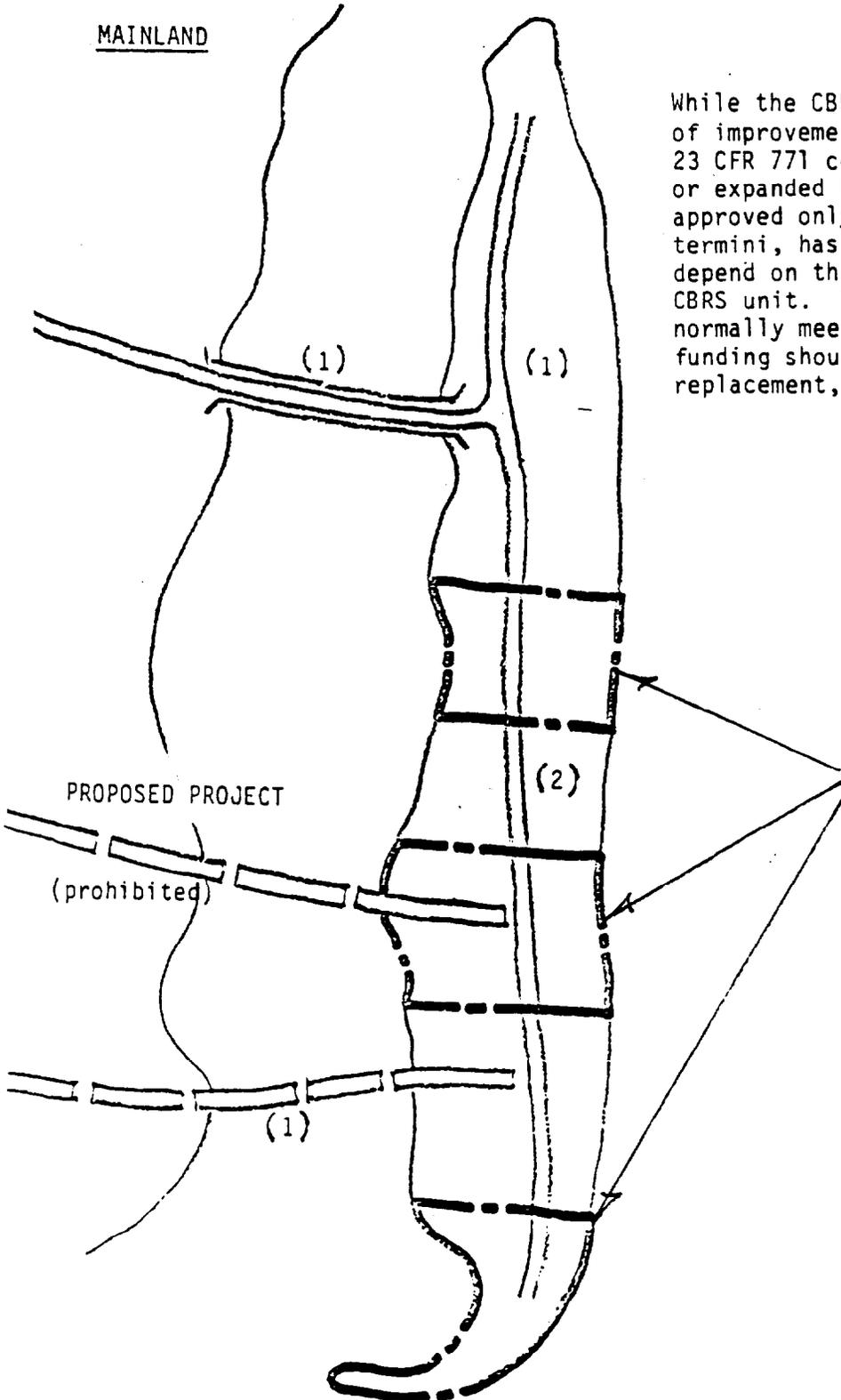
1. Reconstruction - The major work required to remove deficient or damaged highway features and to restore the structural integrity of the facility, as well as work necessary to correct major safety defects, with no projected increase in capacity.
2. Replacement - The total replacement of a structurally deficient or functional obsolete highway with a completely new facility of equivalent capacity.
3. Repair - The work required to correct damaged highway features to protect remaining facilities and restore original traffic flow.

EXAMPLE

EFFECT OF CBRA ON EXISTING AND PROPOSED HIGHWAYS

BARRIER

MAINLAND



While the CBRA does not restrict Federal funding of improvements to highways labeled (1) and (2), 23 CFR 771 could. The Federal funding of new or expanded highways labeled (1) should be approved only when the project connects logical termini, has independent utility, and does not depend on the expansion of any road within a CBRS unit. The highway labeled (2) would not normally meet these conditions and Federal funding should be limited to maintenance, replacement, reconstruction, or repair.

Designated CBRS units. Federal expenditures prohibited for new and expanded facilities.