TEXAS REGISTER

IN THIS ISSUE

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Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 19 (1994) is cited as follows: 19 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Texas Administrative Code

The ***Texas Administrative Code*** (*TAC*) is the official compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*. West Publishing Company, the official publisher of the *TAC*, publishes on an annual basis

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The ***Official TAC*** also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the *TAC* or to inquire about WESTLAW access to the *TAC* call West: **1-800-328-9352.**

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; *TAC* stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 12, and October 11, 1994). In its second issue each month the ***Texas Register*** contains a cumulative ***Table of TAC Titles Affected*** for the preceding month. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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Open Meetings Sections

In Addition Sections

Texas Bond Review Board

Coastal Coordination Council

Texas Department of Commerce

Texas Education Agency

Texas Department of Health

Texas Department of Human Services

Texas Department of Insurance

Public Utility Commission of Texas

Texas Department of Transportation

(b) The provider must have a written policy statement that prohibits discrimination on the basis of marital status, parenthood, handicap, age, color, religion, sex, ethnicity, national origin, or contraceptive preference. This statement must be displayed in a public viewing area.

(c) (No change.)

(d) The provider must comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352); Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112); The Americans with Disabilities Act of 1990 (Public Law 101-336), including all amendments to each; and all regulations issued pursuant to these Acts.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448269 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Effective date: October 10, 1994

Proposal publication date: April 1, 1994

For further information, please call: (512) 458-7236

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part XVI. Coastal Coordination Council

Chapter 501. Council Procedures

• 31 TAC §§501.1-501.3

The Coastal Coordination Council (council) adopts the repeal of §§501. 1-501.3, concerning council procedures, without changes to the proposed text published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1894). These sections are repealed effective June 14, 1995, because the council is adopting new, completely revised sections in their place, which will become effective June 15, 1995. The substance of the sections repealed is contained in new §§501.1-501.4, §§505.10-505.74, and §§506.11-506.52.

No comments were received regarding the adoption of the repeal of §§501. 1-501.3.

The repeals are adopted under the authority of Texas Natural Resources Code, Chapter 33, Subchapter F (Coastal Coordination Act), §33.204(a), which provides the council with the authority to promulgate rules adopting the goals and policies of the Texas Coastal Management Program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448281 Garry Mauro
Chairman
Coastal Coordination Council

Effective date: June 15, 1994

Proposal publication date: March 18, 1994

For further information, please call: (512) 305-9129

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Chapter 501. Coastal Management Program

The Coastal Coordination Council (council) adopts new Chapter 501, §§501.1-501.4 and §§501.10-501.15, concerning the Texas Coastal Management Program (CMP) general provisions and goals and policies with changes to the proposed text as published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1895). All sections of this chapter are adopted with changes made in response to comments.

This chapter is adopted pursuant to the authority provided in the Texas Natural Resources Code, Chapter 33, Subchapters C and F, which respectively require the General Land Office (GLO) to develop the CMP and the council to promulgate CMP goals and policies.

This chapter describes the council's coordinated approach to managing coastal resources by establishing the CMP goals and policies based on council findings about coastal resources and their competing uses. The chapter is designed to ensure that agencies and subdivisions exercise their current authority within the framework of the CMP goals and policies to encourage better government management practices affecting coastal resources. The CMP goals and policies established in §§501.12-501.15 only apply to the agencies, municipalities, counties, activities and actions identified in this chapter and are the basis for council consistency review under Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies) and Chapter 506 of this title (relating to Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies). The CMP approaches its task of coastal resource management in a uniquely Texan way. Instead of relying on one centralized, Austin-based superagency, the legislature laid the basis for a networked CMP in which the most local level of government with jurisdiction in a given setting retains the lead. The council does not assume a "front line" role, but rather, coordinates all other agency actions to minimize waste, duplication and transaction costs in the public and private sectors.

Section 501.1 describes five facets of the council's purpose to protect the economic and environmental productivity of the Texas coast. The council will study, review and identify coastal issues and reconcile conflicting uses of coastal natural resource areas (CNRAs). By reviewing agencies' and subdivisions' most significant actions, the council will make coastal management more visible, accessible, coherent, consistent, and accountable to Texans. The council will coordinate the performance and programs of agencies and subdivisions as they impact CNRAs. Finally, the council will effectively "outsource" its functions by using the staff of existing agencies and GLO staff to effectuate the goals and policies of this chapter.

Section 501.2 identifies the resources, uses, and problems that occur along the Texas coast. This section contains the council's findings which form the basis of the CMP goals and policies. To effectively balance the competing uses of the Texas coast, the council identified the resources and uses of the Texas coast.

Section 501.3 defines the terms and abbreviations used throughout this chapter.

Section 501.4 describes the procedures for conducting general council business. This section discusses protocols and schedules for meetings, voting, and duties.

Section 501.10 sets out the structure within which agencies, municipalities, and counties identified in this chapter comply with the CMP goals and policies as required by the Coastal Coordination Act, the Texas Natural Resources Code, §33.205(a).

Section 501.11 describes the council's statutory and constitutional authority to coordinate management of CNRAs through the promulgation of uniform goals and policies and procedures for review of agency and certain local government actions. This section clearly states that it is the council's intent to preserve private property rights. Further, compliance with the CMP does not affect the statutory and regulatory authority of any agency or subdivision.

Sections 501.12-501.15 satisfy the legislative mandate of the Texas Natural Resources Code, Chapter 33, Subchapter F, §33.204(a), that the council promulgate rules adopting the CMP goals and policies. The goals contained in §501.12 set out the purposes of the CMP, which are to promote economic interests, protect private property, educate the public and preserve CNRAs.

The policies established in §501.14 and §501.15 address specific activities and natural resources along the coast. The council compiled existing laws and rules to establish these policies. The policies are the basis of council review under Chapters 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies and Chapter 506 of this title (relating to Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies).

From its outset, the CMP has responded to the real concerns of Texans: addressing erosion, protecting coastal natural resources and balancing environmental protection with economic development, among others. The council proposed the CMP as rules on March 18, 1994 (19 TexReg 1895). The council held seven public hearings, six of them in popula-

tion centers along the entire length of the Texas coast. The original period for public comment expired on May 2, 1994. Including both public testimony at hearings and written comments, nearly 200 commenters offered more than 1,000 comments on virtually every portion of the CMP during the initial comment period.

In addition to substantive comments, the council received numerous requests for additional time to review the CMP Numerous commenters also wished to review, before the council finally adopts the CMP as rules, revisions to the proposed rules. Ordinarily, members of the public who may be affected by a proposed rule, or have an interest in the rule, have little opportunity to review and comment on proposed staff revisions to a proposed rule before it becomes final But the council has consistently valued and incorporated public participation in developing the CMP. Rather than satisfying only the minimum standards of uniform practice and procedure for a state agency, in terms of public notice and comment required by state law, the council on June 28 voted to publish the CMP, with proposed revisions, in the *Texas Register* (19 TexReg 5195) This additional step was taken to ensure the widest possible opportunity for meaningful public review and comment before the council adopts the CMP

Accordingly, the comment summaries and responses are divided into two parts. "Part A" contains comment summaries and responses relating to the comments received during the 60-day comment period following the publication of the interim draft of Chapter 501 in the July 5, 1994, issue of the *Texas Register* (19 TexReg 5195). "Part B" contains comment summaries and responses relating to the comments received during the original comment period following the publication of Chapter 501 in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1895)

General comments were received regarding the "CMP Document," which was the subject of the "Notice of Availability" in the March 18, 1994, issue of the *Texas Register*. The CMP Document contains descriptions of the enforceable and nonenforceable portions of the CMP. The enforceable portions of the CMP are Chapters 501, 504, 505, and 506 which respectively contain: the CMP goals and policies; special area management planning; council procedures for state and local consistency with CMP goals and policies; and council procedures for federal consistency with the CMP goals and policies In addition to reflecting the council's balanced approach to the protection of the ecological and economic values of CNRAs, the CMP Document, prepared pursuant to the Texas Natural Resources Code, Chapter 33, Subchapters C and F, is intended to satisfy the federal requirements for approval under the Coastal Zone Management Act (CZMA), 16 United States Code Annotated, §1455(d). While portions of the CMP Document describe the provisions of Chapters 501, 504, 505, and 506, the chapters, not the CMP Document, are the council's enforceable policies; the chapter preambles, not the CMP Document, may be used to determine the intent of the chapters Based on comments received, the CMP Document was reviewed and revised to ensure internal consistency and resolve any perceived inconsistency with the chapters. To the extent that any conflicts are perceived when reviewing the CMP Document and Chapters 501, 504, 505 and 506, or while implementing the chapters, the chapters prevail

Editorial changes that do not alter the content of this chapter have been made to clarify meaning and to correct grammatical errors. In order to save space, similar comments and responses have been combined by section. General comments on the proposed chapter and comments on the preamble to the proposed chapter are combined at the end of the summary of comments.

Certain sections were revised based on comments received on the CMP proposed rules published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1895), and subsequently revised based on comments received on the interim draft of the CMP rules, published in the July 5, 1994, issue of the *Texas Register* (19 TexReg 5195). Paragraphs in "Part A" of this preamble which discuss such subsequent changes are *italicized* for the reader's convenience.

Part A.

Section 501 1

One commenter requested that §501.1(b)(2) be amended to provide that the council will annually review and revise, as necessary, the CMP goals and policies. This section ensures that the CMP goals and policies are effective and timely This paragraph has been amended, as suggested by the commenter, to reflect the council's intent to review and revise CMP goals and policies to provide an effective CMP.

Section 501 2

One commenter recommended that §501.2 include findings regarding the functions and economic values of manufacturing operations Section 501.2(b)(3) of this title includes industrial development and manufacturing as a coastal use The council findings contain broad descriptions of the value of and the activities occurring within the coastal areas, including the benefits and adverse effects resulting from those activities No change was made based on this comment.

One commenter requested that houseboats be included as "structures" in §501 2(b)(7) because of the potential adverse effects that houseboats may cause due to shading. An immobile vessel may or may not legally be a structure However, pursuant to §17.2 of this title (relating to Definitions for Administrative Penalty Hearing Procedures for Removal of Unauthorized Structures), any houseboat affixed to state-owned submerged land for 21 days or longer may be considered a structure for purposes of §501.2(b)(7). Therefore, houseboats, if stationary for more than 21 days, may be considered "structures" which require an easement or lease from the School Land Board (SLB). The SLB must comply with CMP leasing policies and the adverse effect of shading will be considered. No change was made based on this comment.

One commenter stated that §501 2(d) includes a presumption that all construction activities are adverse. Section 501.2 describes activities occurring in the coastal area and their positive and negative impacts on the environmental and economic quality of the coast. The council has provided findings regarding the types of activities and related impacts that occur within the coastal area. No change was made based on this comment.

Two commenters recommended that §501.2(d) be amended to provide that the uses described "may" have adverse effects. The word "may" was not added to the general language of §501.2(d) because each finding of adverse effects in the subsection is qualified by "may," and its addition would be redundant. No change was made based on these comments.

According to a commenter, the phrase "especially open water disposal" should be omitted from §501.2(d)(3) This commenter stated that this phrase only calls undue attention to a viable disposal option and is not needed due to the disposal policies in §501.14(j). The findings included in §501.2(a) -(d) constitute broad descriptions of the value of and the activities occurring within the coastal area, and the benefits and adverse effects resulting from those activities. These sections provide notice and certainty to the public concerning the types of activities and related impacts that occur within the coastal area. No change was made based on this comment.

A commenter requested that §501.2(d)(8) be amended to state that potential adverse effects of hunting and fishing are limited to means and methods of access. The council recognizes that the primary adverse effect on CNRAs from these activities is from hunters' and others' means and methods of access. However, the Texas Parks and Wildlife Department's (TPWD) rules on hunting, fishing, and other taking of wildlife do not govern means and methods of access. Since TPWD rules do not address this source of adverse effects on CNRAs, the council has determined that §501 2(d)(8) and §501.14(t) should be deleted from the CMP.

Section 501.3.

One commenter questioned whether the definition of "coastal conservation areas" in the Texas Natural Resources Code, §33.052(d), expands the scope of planning and management under the Texas Natural Resources Code, §33.052, beyond "coastal public lands." The definitions of "coastal conservation areas" in the Texas Natural Resources Code, §33.052(d), and CNRAs in the Texas Natural Resources Code, §33.203(1), are not limited to coastal public lands. Moreover, these rules are adopted under the Texas Natural Resources Code, Chapter 33, Subchapter F, §33.201 et seq, which directs the council to adopt goals and policies for the plan developed under the Texas Natural Resources Code, §33.052. No change was made based on this comment.

One commenter stated that the CMP uses the terms "coastal shore areas," "public beach," "critical dune areas," "critical erosion areas," and "gulf beaches" in a "counter-descriptive" fashion and should be clarified. Each term is given a precise definition under §501.3 and reflects or incorporates applicable

statutory definitions. "Coastal shore areas," defined in §501.3(b) (4) are designated as CNRAs to address erosion impacts to coastal shore areas. The definition of "public beach" in §501.3(a)(12) incorporates the definition in the Texas Natural Resources Code, §61.013(c), and identifies the boundary of the public beach. "Critical dune areas," as defined in §501. 3(b)(6), are those critical dune areas the commissioner of the GLO is required to identify pursuant to the Texas Natural Resources Code, §63.121, located within 1,000 feet of mean high tide of the Gulf of Mexico and contain dunes and dune complexes that are essential to the protection of public beaches, submerged land, and state-owned land. The definition of "critical erosion areas" in §501.3(b)(7) are those areas the commissioner of the GLO is required to designate pursuant to the Texas Natural Resources Code, §33. 601(b). The definition of "gulf beaches" in §501.3(b)(8) reflects the definition in the Texas Natural Resources Code, §61.013(c). No change was made based on this comment.

One commenter requested that §501.3 be amended to include definitions of "compensatory mitigation," "beneficial use of dredge material," "near shore sediment dumping," "surveying," and "erosion rate." "Compensatory mitigation" is described in §501.14(h)(1)(D) as a range and hierarchy of activities designed to replace critical areas that have been injured or destroyed. "Beneficial use of dredge material" is described by a non-exclusive series of examples in §501.14(j)(4)(B). Finally, the CMP does not use the terms "near shore sediment dumping," "surveying," or "erosion rate." Therefore, defining these terms is unnecessary. No change was made to §501.3 in response to this comment.

One commenter recommended adding a definition of "actions" to §501.3. "Actions" are specifically and exclusively listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program), §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program), and §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program). The suggested definition would be redundant. No change was made based on this comment.

Two commenters recommended clarifying that the term "harm" be substituted for the term "impair" in §501.3(a)(1)(D). In response to these comments and to make §501.3(a)(1)(D) more consistent with the terms used throughout §501.3(a)(1), subparagraph (D) has been amended by replacing the term "impair" with the term "harm."

One commenter requested that the definition of "avoid and otherwise minimize" in §501.3(a)(2) include the term "coastal conservation areas" as defined in the Texas Natural Resources Code, §33.052(d), and that the definition of "coastal area" in §501.3(a)(3) be amended to include "coastline" and "coastal conservation areas." The definition of "avoid and otherwise minimize" relates to reducing adverse impacts to CNRAs, because CNRAs are the resources addressed by the CMP goals. The definition of "coastal area" in §501.3(a)(3) includes the coastline and all CNRAs subject to the CMP goals and policies. No change was made based on this comment.

Two commenters recommended deletion of the phrase "avoid and minimize" because the last sentence of §501.3(a)(2) directs that adverse effects which "cannot be avoided must then be minimized to the greatest extent practicable," and because the definition is tied to the determination of practicability. The definition of "avoid and otherwise minimize" relates to reducing adverse effects to CNRAs. When adverse effects cannot be avoided, these effects must be minimized to the highest or greatest degree. No change was made based on this comment.

Two commenters requested that the word "greatest" be deleted from §§501. 3(a)(2), 501.14(f)(1)(C), and (2)(C). The phrase "to the greatest extent practicable" means to the highest degree or measure. When an applicant or agency proposes two practicable alternatives, this chapter generally requires the selection of the alternative which avoids or minimizes adverse effects to the highest degree. No change was made based on this comment.

One commenter requested that the definition of "coastal natural resource area" in §501.3(a)(5) be amended to include a reference to the Texas Natural Resources Code, §33.203(1). The Texas Natural Resources Code, §33.203, includes a listing of CNRAs and requires the designation of CNRAs. However, the statute describes CNRAs without specifically defining them. Section 501. 2(a) designates the CNRAs subject to the CMP, while §501.3(b) provides more specific definitions for designated CNRAs. No change was made based on this comment.

Regarding §501.3(a)(8), one commenter questioned the absence of coral reefs in the definition of "critical areas." The designated CNRAs in §501. 2(a) include oyster reefs and hard substrate reefs, rather than coral reefs because there are no coral reefs in Texas. Critical areas are the CMP equivalent of special aquatic sites referenced in regulations promulgated pursuant to 33 United States Code Annotated, §1344(b), and the Code of Federal Regulations, Title 40, Part 230 (federal §404(b)(1) guidelines). No change was made in response to this comment.

One commenter requested that the definition of "critical areas" in §501. 3(a)(8) be amended to include "beaches." "Beaches" are not included within the definition of "critical areas" because the critical areas policy in §501. 14(h) is designed to address adverse effects to aquatic sites. Also, the definition of "critical areas" is based on the definition of "special aquatic sites" in 33 United States Code Annotated, §1344(b), and the Code of Federal Regulations, Title 40, Part 230 (federal §404(b)(1) guidelines) which does not include beaches. Further, activities which may adversely affect public beaches are addressed in §501.14(k), which reflects Chapter 15, Subchapter A, of this title (relating to Management of the Beach/Dune System). No changes were made based on this comment.

According to one commenter, the inclusion of tidal sand and mud flats in the definition of "critical areas" in §501.3(a)(8) expands the area subject to special protection under the proposed regulations. This commenter stated that it is unclear whether these areas invariably offer the special ecological characteristics cited in the definition or need the level of protection afforded to critical areas. "Critical areas" are the CMP equivalent of "special aquatic sites" referenced in regulations promulgated pursuant to 33 United States Code Annotated, §1344(b), and the Code of Federal Regulations, Title 40, Part 230 (federal §404(b)(1) guidelines). Tidal sand and mud flats contribute significantly to the overall environmental health and vitality of the coastal ecosystem. No change was made based on this comment.

Regarding §501.3(a)(10), one commenter recommended striking the phrase "or the public enjoyment" because this phrase involves a community value assessment as opposed to an environmental assessment, and impairment of public enjoyment should not be a part of the definition of "pollutant." According to this commenter, it appears this comment was inadvertently applied to §501. 3(a)(1)(B) instead of §501.3(a)(10) in the interim draft preamble. "Public enjoyment" is included because it is a factor in existing law. In addition, "public enjoyment" is one recreational characteristic of CNRAs. In §501.2(a), the council specifically found that the recreational functions and values of CNRAs are essential to the economic and ecological vitality of the Texas coast. Pollutants may impact public enjoyment related to fishing, swimming, boating and other recreational functions which provide economic benefits for all citizens. Water quality regularly affects the ability of the public to use coastal waters for fishing, swimming and other public contact water sports. Thus, it is appropriate to consider public enjoyment as a relevant factor in determining the impact of a particular pollutant on water quality. No change was made based on this comment.

Fifteen commenters requested clarification of the definition of "practicable" in §501.3(a)(11). Many of them stated that the second sentence appeared to conflict with the first sentence and should be changed or deleted. A determination of practicability requires an analysis of the cost, technological, and logistical feasibility of an alternative in light of the project purpose. All of these factors must be analyzed in the decision-making process. The section has been amended in response to these comments to clarify the definition.

One commenter requested that the definition of "public beach" in §501.3(a) (12) be amended to reflect all provisions of the Texas Natural Resources Code, Chapter 61 (relating to Public Beaches), and suggested that the definition under the Texas Natural Resources Code, §61.013(c), would amount to a taking of private property. The definition of "public beach" in §501.3(a)(12) incorporates the definition of "public beach" in the Texas Natural Resources Code, §61.013(c), the scope of which is limited to beaches bordering on the Gulf of Mexico over which the public enjoys a common law right of access and use. Therefore, there is no need to

amend the definition to avoid a taking of private property. No change was made based on this comment.

Concerning §501.3(a)(13), one commenter recommended the definition of "secondary adverse effects" be limited to activities occurring within first-tier counties. The CMP is limited to activities impacting CNRAs within the CMP boundary. The only action subject to the CMP in second-tier counties is a permit or an amendment to a water right located within 200 stream miles of the coast for an appropriation of 5,000 acre-feet of water a year or more pursuant §505.11(a)(1) of this title (relating to Actions and Rules Subject to the Coastal Management Program). Additionally, application of the phrase "secondary adverse effects" is limited to effects on CNRAs. No change was made based on this comment.

One commenter requested deletion of the last sentence of §501.3(a)(14) to ensure that all components of a proposed development project be water-dependent to fit within the definition of "water dependent." The "all portion" test could preclude activities from being located in critical areas that can not be located elsewhere and still serve the project purpose. The "essential element" test in §501.3(a)(14) is closest to the purpose of the water-dependency requirement because a facility may only be located in a critical area if such location is essential to the project purpose. Therefore, no change was made in response to this comment.

Regarding §501.3(a)(14), one commenter expressed concern that a city's activities could be limited and recommended that "water-dependent use or facility" include those public entities located in CNRAs which are limited from pursuing activities outside those areas. The water dependency requirement is based on existing law and applies only to critical areas and submerged lands, not all CNRAs. Therefore, few city activities, if any, will be affected. No change was made based on this comment

One commenter requested that §501.3(b)(1) be amended by adding a citation to the Coastal Barrier Resource Act (CBRA), 16 United States Code Annotated, §3503(a). The citation to CBRA is given in §501.14(m)(1), the policy relating to development within CBRA units No change was made based on this comment.

Regarding §501.3(b)(2), one commenter expressed concern that the phrase "on public land," in the definition of "coastal historic places," extends federal authority to include city property on the National Register of Historic Places. Another commenter recommended amending the definition of "coastal historic areas" in §501 3(b)(2) to read "sites on the National Register of Historic Places within the coastal area" and further recommended that a reference to where the list may be found should be included Section 501 3(b)(2) has been amended to specifically refer to the statutory authority under which sites are listed on the National Register of Historic Places By relying on existing law, this change makes clear that the council does not intend to extend, or in any way change, federal authority to add sites to the national registry

One commenter requested a definition of the phrase "coastal in character" in §501.3(b)(2). Coastal historic areas are identified by the Texas Historical Commission or the Texas Antiquities Committee as sites coastal in character. The phrase "coastal in character" means sites which have a unique coastal nexus. Therefore, no change was made based on this comment.

One commenter was concerned that the phrase "high water mark" contained in the definition of "coastal shore areas" in §501.3(b)(4) could impact the delineation of the public beach under the Texas Natural Resources Code, Chapter 61. The definition of "coastal shore areas" in §501.3(b)(4) is a limited definition. It exclusively addresses erosion impacts to coastal shore areas that result from activities identified in §501.14. Therefore, this definition will not impact the delineation of the public beach under the Texas Natural Resources Code, Chapter 61. No change was made based on this comment.

A commenter recommended that §501.3(b)(4) be amended by adding "...CNRA is exclusively intended to address erosion impacts under the guidelines of the National Flood Insurance Act." According to this commenter, the definition does not give guidelines by which the impacts of erosion may be evaluated. Section 501.3(b)(4) is intended to address erosion impacts to coastal shore areas that result from activities identified in §501.14. No change was made based on this comment.

Three commenters recommended that the definition of "coastal wetlands" in §501.3(b)(5) be amended to reflect the Texas Natural Resources Conservation Commission (TNRCC) stream segments. The definition has been changed in response to these comments Another commenter stated that the determination and designation of wetlands in §501.3(b)(5) should be left to the sole discretion of the United States Army Corps of Engineers. The definition of wetlands is existing law. Agencies currently responsible for delineating wetlands will continue to do so pursuant to the implementation of the CMP. Three other commenters recommended excluding "isolated wetlands" seaward of the coastal wetlands boundary from the definition of wetlands subject to the CMP in §501 3(b)(5). No change was made to address isolated wetlands. The coastal wetlands definition establishes a simple, objective test for determining what wetlands are subject to the CMP. The council determined that cost and administrative difficulty preclude identifying coastal wetlands under the CMP on a case-by-case basis

One commenter requested the deletion of §501 3(b)(5)(B)(iv) because there is no riverine environment associated with the Victoria Barge Canal. The inclusion of the associated riverine environment of the Victoria Barge Canal comports with 30 TAC §307.10 (relating to TNRCC stream segments). No change was made based on this comment.

One commenter requested §501.3(b)(5)(C) be deleted so that the definitions comport with the Texas Natural Resources Code, Chapter 33, Subchapter C, §33 052, mandate to the SLB to create a management program to manage coastal public lands. The definition of "coastal conservation areas" in the Texas Natural Resources Code, §33.052(d), and the definition of CNRAs in the Texas Natural Resources Code, §33.203(1), are not limited to coastal public lands. Moreover, these rules are adopted under the Texas Natural Resources Code, Chapter 33, Subchapter F, §33.201 et seq, which directs the council to adopt goals and policies for the plan developed under the Texas Natural Resources Code, §33.052. No change was made based on this comment.

One commenter requested that the definition of "critical dune areas" in §501.3(b)(6) be deleted because it does not accurately reflect the definition in the Texas Natural Resources Code, §63.121. No change was made based on this comment because §501.3(b)(6) accurately reflects the Texas Natural Resources Code, §63.121.

One commenter requested that the definition of "critical erosion areas" in §501.3(b)(7) be amended to refer to the Texas Natural Resources Code, Chapter 33, Subchapter H. The definition of "critical erosion areas" in §501. 3(b)(7) is consistent with the Texas Natural Resources Code, §33.601(b), which requires the commissioner of the GLO to identify critical coastal erosion areas. Therefore, no change was made based on this comment.

Section 501.4

One commenter requested that §501 4(e) be amended to state the number of council members required for a majority in anticipation of the addition of two new voting members by the legislature. Because the membership of the council is likely to increase, §501.4(e) was revised to provide that a majority of the council members eligible to vote shall constitute a quorum.

Section 501.10.

One commenter requested that §501.10 be amended to include reference to coastal erosion projects under the Texas Natural Resources Code, §33.602 and §33.204. Section 501.10 describes the mandate in the Texas Natural Resources Code, §33.205(a), that state agencies and certain subdivisions comply with the CMP goals and policies. Section 501.10 is not intended to address the adoption of the CMP goals and policies or specific erosion projects. Therefore, no change was made to this section based on this comment.

Section 501.11.

One commenter requested that §501.11(c) be amended to identify the Coastal Coordination Act as the Texas Natural Resources Code, Chapter 33, Subchapter F. Section 501.11(c) provides that the council may only exercise power given to it under the Coastal Coordination Act. The Texas Natural Resources Code, §33.201, provides that the Texas Natural Resources Code, Chapter 33, Subchapter F, may be cited as the Coastal Coordination Act. No change was made based on this comment.

One commenter recommended that §501.11(d) should be stricken because it is

incorrect to imply that the council has any authority to prescribe the content of permits, rules, or ordinances; the council only has the authority to remand and reverse an action that is inconsistent with the CMP goals and policies. Section 501.11 ensures that the CMP goals and policies will not be applied in a manner which would prohibit any agency from exercising its statutory or constitutional authority, except to the extent required to comply with the Coastal Coordination Act. The council cannot require an agency or subdivision to take any action or adopt any rule which exceeds or conflicts with their statutory authority. In addition, the council cannot exceed its statutory authority or usurp the statutory authority of an agency or political subdivision. No change was made based on this comment.

One commenter requested that §501.11(e) be revised to eliminate any interpretation that the council can use the CMP to effect an unconstitutional "taking" of private property, or require a city or county to compensate the landowner for such a "taking." The intent of this section is to clearly state that the CMP cannot be used to unconstitutionally take private property. However, in response to this comment, §501.11(e) has been amended to delete the statement that agencies, municipalities, and counties be financially liable for a council determination.

Section 501.12

Regarding §501.12(3), a commenter recommended changing "to minimize loss of human life and property due to.." to "to minimize loss of human life and reasonably minimize loss of property due to.." and define "reasonably" as balancing economic with environmental concerns as one of the major stated CMP goals. Section 501.12(3) identifies minimizing loss of life and property as important CMP goals. Minimizing the loss of property is inextricably entwined with the protection of human life. The protective features of CNRAs include the flood protection function of wetlands and the storm protection function of dunes. These functions simultaneously protect human life and property. No change was made based on this comment.

One commenter expressed concern that the CMP did not address the public access easement provided for in Acts of the Republic of Texas, June 12, 1837, Volume 1, page 267. The CMP is designed and drafted to protect and maintain all public rights of access to and enjoyment of the beaches of Texas. The safeguards of the Open Beaches Act, the Texas Natural Resources Code, Chapter 61, are incorporated into the CMP policies under §501.14(k)(1)(D). No change was made based on this comment.

Section 501.13

Two commenters expressed concern that §501.13(1) would allow state agencies to request additional information from applicants at any time during the agencies' permitting processes. One commenter suggested that the paragraph be amended to require that agencies only require applicants to provide information that is "reasonably" necessary. Section 501.13(1) mandates that agency rules must require applicants to provide information "necessary" for the agency to make an informed consistency determination under §505.30 of this title (relating to Agency Consistency Determination). Existing permit application requirements should be sufficient to meet the requirement in §501.13(1). The specific agency procedures that determine when an agency may request additional information is a matter best left to the agencies. Section 501.13(1) is not intended to change these result in any specific changes to these agency procedures. However, it does give the council the ability to address the adequacy of information provided by applicants during council review of agency rules for consistency with the CMP. It does not provide the council with the authority to direct that a particular permit applicant provide additional information while that applicant's permit is under review by the permitting agency. No change was made based on this comment.

Regarding §501.13(2), one commenter stated that agencies did not address monitoring in their rules and would be unable to comply with this provision. The council is not aware of any limitation on agencies and subdivisions preventing them from establishing monitoring procedures in their rules or on a permit-by-permit basis. No change was made based on this comment.

One commenter recommended that §501.13(3) be amended to indicate that the grounds for granting variances from standards or requirements for the protection of CNRAs are extremely rare. Agencies and political subdivisions currently possess certain authority to grant variances. Section 501.13(3) merely requires agencies and subdivisions to identify the circumstances under which this authority may be exercised so that the public, the regulated community, and the council are aware of the circumstances under which variances are available. No change was made based on this comment.

One commenter recommended that §501.13(5) be revised to include construction of structures in critical areas so that cumulative and secondary adverse impacts resulting from such construction are addressed. Construction of structures in critical areas is covered by §501.14(h), which does require consideration of cumulative and secondary adverse effects from construction. No change was made based on this comment.

One commenter recommended that the provisions on cumulative and secondary impacts be moved from §501.13(5) to the dredging policies in §501.14(h)(1). The provision on cumulative and secondary impacts was moved from the administrative policy section and added to §501.14(h)(1). In addition, §501.14(j)(1) was amended for clarification and consistency.

Section 501.14

A commenter requested that §501.14(a) be amended to require the Public Utility Commission (PUC) to establish safe limits on voltage used in the transmission of electricity. The council has not found that high voltage adversely affects CNRAs and does not have the authority to dictate that agencies establish limits in their regulations. No change was made based on this comment.

A commenter recommended the deletion of the phrase "recreational uses of CNRAs" from §501.14(a)(1)(C) so that the subsection's siting requirements governing construction of electric generating facilities would only be applied where necessary to avoid adverse effects. Section 501.12(1) states that one of the CMP goals is to "protect, preserve, restore, and enhance the... functions and values of CNRAs." "Recreational use" is an important function and value of some CNRAs, for example, public beaches and coastal parks. Therefore, no change was made based on this comment.

One commenter requested a definition of "near" in §501.14(b)(1)(A) and asked what factors affect activities "near" a critical area (e.g., sound, sight and/or movement). Terms not defined in §501.3 have their ordinary meaning as provided in Texas Government Code, §312.002 et seq. In addition, these terms will be defined, where necessary, in agency rules subject to the CMP. No change was made based on this comment.

One commenter requested clarification on the size of buffer zones established under §501.14(b)(1)(A), and which agency would establish them. Another commenter requested the addition of a definition of "buffer zones" to §501.14(b)(1)(A). Section 501.14(b) applies to oil and gas exploration and production activities conducted under leases issued by the GLO and the SLB. Under §501.14(b), the GLO and the SLB will require buffer zones where practicable and necessary to avoid and otherwise minimize adverse effects on critical areas. The size of the buffer zones will vary depending on a number of factors (e.g., the magnitude of the proposed action, the resource area affected, and the likelihood of detrimental impacts). The size of the buffer zone will be addressed with greater specificity in GLO and SLB rules. No change was made based on this comment.

One commenter requested the deletion of §501.14(b)(3) because it implies that the GLO or the SLB have the authority to issue leases or easements and to require "plans of operation" on private submerged land. The commenter also requested the deletion of oil and gas lessees from the requirement of filing a plan of operation because such requirements are not based on current SLB and GLO policy. Finally, the commenter recommended replacing the phrase "other mineral" with "hard mineral" in §501.14(b)(3). In many instances the state retains ownership of the minerals under private submerged lands and, therefore, exploration and production of such mineral rights fall within the purview of the SLB or the GLO. The GLO and the SLB have the authority to require a plans of operation for oil, gas and mineral lessees. Proposals to require such plans pre-date the CMP and are intended to improve overall management of the agency's leasing program. Finally, because the term "other mineral" includes hard minerals, no change is necessary. Section 501.14(b)(3) was not modified in response to this comment.

A commenter questioned why "salinity" was "singled out" in §501.14(c)(2)(C) as opposed to the other compounds that may be contained in a discharge, and questioned

whether the Railroad Commission (RRC) is the only agency required to comply with §501.14(c) The effects of salinity are generally associated with oil and gas production, which is the subject matter of §501. 14(c)(2)(C). According to §501.14(c)(2)(C), the RRC will consider the effects of salinity from a proposed discharge and notify the TNRCC and TPWD upon receipt of the permit application. The RRC is responsible for complying with the policies under §501.14(c) when issuing permits subject to §501 14(c). Section 501 14(c)(2)(A) requires that all discharges meet surface water quality standards identified in §501.14(f), which include toxics and other compounds. No change was made based on this comment

Regarding §501.14(d)(1)(G), a commenter recommended that hazardous waste landfills be considered on a case-by-case basis. According to this commenter an alternative may be practical, economic, and feasible, but also more environmentally damaging than a landfill. Landfills are considered on a case-by-case basis during the TNRCC permitting process. No change was made based on this comment

One commenter recommended that the phrase "reasonably minimizes possible contamination of coastal waters" in §501.14(d)(1)(H) should be revised to read "minimizes pollution of coastal waters to the extent practicable." The language in §501 14(d)(1)(H) comports with existing TNRCC regulations No change was made based on this comment

A commenter requested the deletion of §501.14(d)(1)(I) because the CMP goals and policies should only address matters of consistency and it is beyond the scope of the council's authority to comment on issuance of a permit where matters of consistency are not involved. By definition, the CMP goals and policies only address matters of consistency. This provision clarifies that satisfaction of the policies under §501.14(d) does not entitle an applicant to a TNRCC permit and is based on existing TNRCC regulations. Therefore, no change was made based on this comment

One commenter stated that the use of the phrase "may adversely affect CNRAs" in §501 14(d)(1)(J) and (g)(4) sets an all but impossible standard for reviewing solid waste facilities, on-site disposal facilities and underground storage tanks The minimum requirement of §501 14(d)(1)((J) is compliance with the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901, et seq, and therefore, consideration of potential adverse effects on CNRAs will be evaluated in light of the siting requirements of the Solid Waste Disposal Act Similarly, §501 14(g)(4), now §501 14(g)(3), is implemented through current TNRCC rules and regulations promulgated pursuant to the Texas Water Code, Chapter 26, and Texas Health and Safety Code, Chapter 366 The phrase "may adversely affect" is applied within the context of existing law No change was made based on this comment

Section 501 14(e)(1) has been amended to more accurately reflect the pertinent provisions of the Oil Spill Prevention and Response Act, Texas Natural Resources Code, Chapter 60

A commenter stated that the CMP goals and policies on water quality standards in §501.14(f) expand existing water rights permitting procedures beyond CMP legislative authority by creating different standards of review for such permits. The commenter was particularly concerned about the water quality certification for federal permits. The CMP policies regarding water quality are based on current TNRCC surface water quality standards. Likewise, the CMP water rights policies in §501.14(r) incorporate existing law. Therefore, CMP does not cause expansion of permitting procedures beyond legislative authority. No change was made based on this comment.

Regarding §501.14(f)(2)(B), one commenter suggested that the phrase "unless necessary for important economic or social development" is subject to inconsistent agency interpretation and application. This conditional language, which is intended to provide for the consideration of economic and social impacts, reflect current TNRCC "antidegradation" policies. Inclusion of these policies in the CMP enables the council to reconcile existing inconsistent agency interpretations of these policies No change was made based on this comment

One commenter recommended that §501 14(f)(1)(A) be amended so that effluent limitations are based on pollutants and their presence in a specific water body, and the impact of the discharge into the water body. This commenter recommended that the refer to toxicity monitoring, not toxicity limits. To conform to existing law, §501 14(f)(1)(A) has been amended to require the examination of the concentration of pollutants in a given water body prior to setting effluent limits

Another commenter stated that the requirement contained in §501.14(f)(2) (C) providing that, to the greatest extent practicable, wastewater outfalls be located where they will not adversely affect critical areas is not reflective of current TNRCC regulations Another commenter recommended revising §501 3(a)(1)(G) by deleting "terrestrial and aquatic" because it appears to be contrary to current TNRCC practice which allows discharges in some wetlands for beneficial purposes. Existing law grants TNRCC the authority to regulate the location of outfalls to avoid discharges into sensitive areas In addition, §501 14(f)(2)(C) does not restrict beneficial discharges to wetlands, only those causing adverse effects The reference in §501 3(a)(1)(G) to "terrestrial and aquatic" life is drawn from existing law. No change was made based on these comments

One commenter recommended removing the word "coastal" from §501 14(f)(1) (B), stating that if the term "coastal" is included, then this subsection would apply to waters of the open Gulf of Mexico Section 501 14(f)(1)(B) has been amended by moving the word "coastal" so that it modifies "watersheds" and not "water " This comports with Texas Water Code, §26 0135(d)

Regarding §501 14(g), seven commenters suggested that the state already has a workable nonpoint source (NPS) plan developed by the Texas State Soil and Water Conservation Board (TSSWCB) Another commenter suggested that the CMP should recognize the lead role of TNRCC and TSSWCB and recommended that the CMP designate these agencies as eligible for federal NPS grant funds. The CMP recognizes the TSSWCB's lead role with respect to agricultural and silvicultural NPS pollution control. The NPS programs of the TSSWCB and the TNRCC in Texas Water Code, Chapter 26, Texas Health and Safety Code, Chapter 366, and Texas Agriculture Code, §201.026, are incorporated into the CMP without change. Federal funds that may be received to develop an NPS program would be allocated to TNRCC and TSSWCB. No changes were made based on this comment.

Regarding §501.14(g), six commenters were concerned that Texas may be required to adopt federal NPS pollution controls because current NPS programs may not meet the requirements for federal approval. Another commenter stated that the current NPS rules protect bays and estuaries and should be incorporated into the CMP One commenter requested that §501 14(g) include the requirements developed under 33 United States Code Annotated, §1455b(g), regarding coastal NPS programs. Another commenter recommended that adoption of the CMP be delayed until after the development of the NPS program to avoid loss of federal funding under 33 United States Code Annotated, §1329 Section 501.14(g) does not require the creation or implementation of any additional NPS regulatory measures not currently authorized by state law. The existing TNRCC and TSSWCB NPS programs should meet the federal requirements for NPS controls pursuant to 33 United States Code Annotated, §1455b, which apply after Texas receives federal aporoval of the CMP. The CZMA does not empower the federal government to force changes in a state's NPS. Section 501. 14(g)(3), now §501.14(g)(2), clearly states that the policy of §501 14 is to maintain a strictly voluntary agricultural NPS program However, if the federal government fails or refuses to approve Texas' existing NPS programs, Texas will decline to participate in the federal coastal management program even if the state stands to lose federal funds. Therefore, pursuant to the CMP policies, Texas will not have a mandatory agricultural NPS program No changes were made based on this comment.

One commenter recommended that §501 14(g)(2) acknowledge the cost involved in managing NPS pollution and only require subdivisions and agencies to manage NPS pollution to the extent practicable. Another commenter expressed strong concerns about the potential cost of NPS regulation on small municipalities and urged that the population threshold of 5,000 be increased to 100,000. At the September 16, 1994, council meeting, the member representing coastal local governments moved to delete the urban NPS policy in §501.14(g)(2). The motion was passed and §501.14(g)(2) was deleted accordingly.

Regarding §501 14(g)(1), one commenter recommended deleting the goal of prohibiting discharges of pollutants from nonpoint sources which degrade water quality or impair designated uses of coastal waters. Two

commenters requested that the §501.14(g)(2) urban NPS policy be revised to more closely match current TNRCC statutory authority. At the September 16, 1994, council meeting, the member representing coastal local governments moved to delete the urban NPS policy in §501.14(g)(2). The motion was passed and §501.14(g)(2) was deleted accordingly.

One commenter recommended that §501.14(g)(3), now §501.14(g)(2), be amended to reflect that the NPS programs are voluntary and provide that Texas will withdraw from the federal coastal management plan in the event that the NPS funding is threatened. To clarify that the TSSWCB NPS plans are voluntary, §501.14(g)(3), now §501 14(g)(2), was amended by inserting the word "voluntary," and the CMP will include a statement regarding withdrawal in the event that the NPS federal funding is threatened.

One commenter requested that minimum septic tank elevations be addressed under §501.14(g)(4), now §501.14(g)(3). Section 501.14(g)(4), now §501. 14(g)(3), states that TNRCC rules under Texas Health and Safety Code, Chapter 366, shall require that on-site sewage disposal systems be located and designed to prevent pollutant releases that may affect coastal waters. This comment would modify existing law. No change was made based on this comment

Two commenters suggested that the provisions in §501.14(h) appear to expand the scope of the Code of Federal Regulations, Title 40, Part 230, to include activities which would be permitted under the Rivers and Harbors Act of 1899, §10, 33 United States Code Annotated, §403. One commenter recommended that §501.14(h) be amended to apply only to dredging or the discharge of dredged fill material. Activities permitted under 33 United States Code Annotated, §403, also require authorizations from the GLO, the SLB, and the TNRCC. These agencies already apply the substance of the requirements of the Code of Federal Regulations, Title 40, Part 230, to these activities Therefore, the CMP does not expand the scope of the Code of Federal Regulations, Title 40, Part 230. No change was made based on this comment.

Regarding §501.14(h), one commenter recommended that the provisions concerning cumulative and secondary adverse effects be moved from §501 13(5) to §501 14(h)(1). Section 501 14(h)(1) and §501 13 have been amended as suggested so that all pertinent substantive policies appear in §501 14.

One commenter expressed concern over the consolidation of definitions from similar definitions in various resource agencies' regulations and policies. This commenter noted that the term "critical area" is used in §501 14(h) in place of the United States Army Corps of Engineers (COE) definition "special aquatic site". The commenter stated that this swapping of terms adds hard substrate reefs, oyster reefs, sand flats, and submerged aquatic vegetation (other than vegetative shallows) to the list of protected resources defined in the federal Clean Water Act §404(b)(1) guidelines, the Code of Federal Regulations, Title 40, Part 230. The critical areas policy is based on federal Clean Water Act §404(b)(1) guidelines, the Code of Federal Regulations, Title 40, Part 230. Section 501.14(h) has been drafted to provide the substantive requirements of the federal Clean Water Act §404(b)(1) guidelines, the Code of Federal Regulations, Title 40, Part 230, to protect the valuable aquatic resources found in Texas. No change was made based on this comment.

One commenter recommended amending §501.14(h)(1)(A) to clarify the policy on activities conducted under current nationwide permits, issued pursuant to 33 United States Code Annotated, §1344, and the policy on review and remand of nationwide permits issued or reissued after adoption of the CMP Only the agency issuing or reissuing nationwide permits after CMP implementation is required to comply with the CMP goals and policies. A permittee's actions pursuant to a current nationwide permit are not subject to council review because the permit will have been issued prior to federal approval of the CMP. Activities under a nationwide permit issued after federal approval of the CMP are not subject to council review if the nationwide permit is consistent with the CMP goals and policies. No change was made based on this comment.

Two commenters stated that the "no net loss of critical areas" policy contained in §501.14(h)(1)(A) was beyond the council's statutory authority. One of the commenters recommended that the section be deleted. This section contains the council's goal of no net loss of critical areas The policies in §501.14 are the means by which the goal may be achieved. The Texas Natural Resources Code, Chapter 33, Subchapter F, §33.204(a), charged the council with the duty to promulgate rules adopting policies. As waters of the state, critical areas are subject to TNRCC's current antidegradation policy, and the policies in §501.14(h) represent the specific application of the existing TNRCC antidegradation policy to critical areas. Second, to the extent that millions of acres of submerged lands in the Gulf belong to the state, the council, with the land commissioner as chairman, may certainly articulate that goal for state land management purposes No change was made based on these comments.

One commenter stated that either the definition of "practicable" should be changed or §501.14(h)(1)(B) should be changed by adding "cost-effective and" before "practicable." The definition of "practicable" in §501.3(a)(11) has been amended so that all factors, including costs, are considered in assessing whether an alternative is practicable. No change was made to §501 14(h)(1)(B) based on this comment

One commenter requested deletion of the requirement in §501 14(h)(1)(B) that the applicant prove "that no practicable alternative with less adverse effects is available." Another commenter suggested that §501 14(h)(1)(B)(i) be revised to recognize the legal limitations on political entities in presuming that an alternative action exists. Demonstrating that no practicable alternative with less adverse effects exists does not impose an unreasonable burden on the applicant, nor does it require political entities to exceed their legal limitations, as this demonstration is already required pursuant to the Code of Federal Regulations, Title 40, Part 230, §230.10(a)(3). Section 501.14(h)(1)(B)(i) provides that if an activity is not water-dependent, practicable alternatives are presumed to exist. No changes were made based on this comment.

Concerning §501.14(h)(1)(B)(iii), one commenter suggested that the evaluation of alternatives be limited to those alternatives which achieve the purpose of the applicant and recognize geographic-specific activities. The entire analysis of practicable alternatives under §501.14(h)(1)(B)(ii) is conducted "in light of the activity's overall purpose," because the definition of "practicable" in §501 3(a)(11) requires consideration of the project's purpose. Therefore, if the location is crucial to achieving the overall project purpose, the analysis of alternatives will include consideration of location. Because §501.14(h)(1)(B) already includes location as a factor in the analysis of alternatives with fewer adverse impacts, no change was made in response to this comment

One commenter stated that §501.14(h)(1)(C)(ii) should compare of the unavoidable adverse effects to the benefit of the project. Because §501 14(h) (1)(C)(ii) analyzes the project in light of its overall purpose, consideration of the benefit of the project is included in the analysis of alternatives with less adverse effects. No change was made based on this comment.

One commenter requested that the phrases, "unavoidable" and "avoided or minimized" be qualified by adding the phrase "to the greatest extent practicable." Regarding §501.14(h)(1)(C)(ii) and (iii) In response to this comment, and for consistency with §501.14(h)(1)(C)(i), this section has been amended to comport with the commenter's request

Concerning §501.14(h)(1)(D) and (E), one commenter disagreed with "instituting" any type of "mitigation system" because mitigation favors applicants with the resources to buy approval of their projects. Mitigation is compensatory in nature and allows projects to proceed Compensation is only required to replace lost critical areas' functions and values, using a one-to-one ratio. Therefore, the compensation is commensurate with the impacts. The mitigation policies balance economic development and resource protection and are consistent with the federal Clean Water Act §404(b)(1) guidelines, the Code of Federal Regulations, Title 40, Part 230. No changes were made based on this comment.

One commenter stated that §501.14(h)(1)(G)(i) is inconsistent with the Endangered Species Act, 16 United States Code Annotated, §1531 et seq, because an applicant could receive an incidental take permit which would allow habitat destruction. This commenter recommended that §501.14(h)(1)(G)(i) be modified to state that "the activity will result in a violation of the Endangered Species Act." The current language comports with the federal Clean Water Act, §404(b)(1) guidelines, the Code of Federal Regulations, Title 40, Part 230 Because

the change requested by the commenter would modify existing law, no change was made based on this comment.

Concerning §501 14(h)(1)(G)(v)(IV), a commenter requested the addition of a definition of the phrase "generally accepted aesthetic values." The phrase "aesthetic values" refers to one's sense of the beautiful. Beauty to one person may be the sight of a pristine wetland teeming with natural life, while to another it may be the sight of a modern hotel tower adjacent to the beach. Because of the wide variety of factors that may comprise "aesthetic values," the phrase is appropriately modified by "generally accepted." To define such a phrase more specifically would defeat the purpose of providing for those values that are "generally accepted." Furthermore, as used in this section, the phrase refers to only one factor, among many, that will be considered to determine whether significant degradation will occur if development is allowed in a critical area. It is particularly important to consider such values as Texas takes steps to enhance its appeal to tourists attracted by the natural features of the coast. Further, this phrase mirrors the language in the Code of Federal Regulations, Title 40, Part 230, §230.10(c)(4). Consistency between existing regulatory language and CMP language reduces confusion and duplication. No change was made based on this comment.

One commenter requested that §§501.14(h)(2), (i)(3), and (j)(9) be amended to require the TNRCC, the RRC, the GLO, and the SLB, respectively, to comply with the Texas Natural Resources Code, Chapters 61 and 63 (regarding Beaches/Dunes and Dunes), and Chapter 15, Subchapter A, of this title (relating to Management of the Beach/Dune System). Section 501.10(c) states that compliance with CMP goals and policies does not supersede or eliminate any legal duty to comply with other applicable statutory and regulatory regulations. The CMP does not abrogate the duty of the TNRCC, the RRC, the GLO, and the SLB to comply with other applicable laws. No change was made based on this comment.

One commenter cited §501.14(i)(1)(B) and (C) as an example of regulation consolidation because the requirements for "facilities for collection of waste, refuse, trash, and debris" on private marinas was derived from SLB regulations and are not applicable to marinas permitted under the Rivers and Harbors Act of 1899, §10, 33 United States Code Annotated, §403. The commenter also recommended revising §501.14(i)(1) by deleting "and private submerged land" because the GLO does not have the authority to "block" permits issued under §10, 33 United States Code Annotated, §403, on private submerged land if the permit does not include the pertinent GLO/SLB lease provisions. One commenter requested amending §501.14(i)(1)(C) by limiting the policy to those marinas with more than 20 berths. There is no mandate to provide a pump-out facility. However, each marina must provide an equal or better level of water quality protection. Therefore, small marinas that berth recreational boats without heads would not be required to provide pump-out facilities. The CMP is intended to ensure consistency among the various requirements applied to similar activities by the COE, the TNRCC, the RRC, and the other state and federal resource agencies. Each of these agencies possesses the authority to impose the policies in this chapter to the permits or authorizations they issue. The CMP merely ensures that permitting requirements are uniform and consistent. Private submerged land is included because the TNRCC and the RRC currently regulate these areas. No change was made based on this comment.

Regarding §501.14(i)(1)(N), one commenter objected to the preference for non-structural erosion response measures over structural measures and urged that the merits of proposed erosion response structures be evaluated on a case-by-case basis. This section merely states a preference for non-structural erosion response methods; it does not prohibit structural erosion response methods. No change was made based on this comment.

One commenter applauded the general incorporation of federal procedures for evaluating dredging and dredged material disposal in §501.14(j) because it gives state and federal agencies a common basis for evaluation and has a higher probability of establishing a state dredging standard compatible with the federal standard. The council appreciates the commenter's support. Changes were made to §501.14(j) in response to other comments.

One commenter stated that §501.14(j) adds a substantive state review beyond existing water rights permitting and beyond federal permitting, with different and more difficult standards. Section 501.14(j) applies to dredging and does not address appropriative water rights. No change was made based on this comment.

One commenter requested that §501.14(j)(1)(B) be amended to require that dredged material from COE projects be put to a beneficial use such as compensatory mitigation. Section 501.14(j)(4)(B) gives examples of beneficial uses of dredged material which include the type of activities mentioned by the commenter. The CMP does establish new state-level requirements for beneficial use of dredged material, but these requirements are within the scope of current federal permitting authority. No change was made based on this comment.

A commenter suggested that if the definition of "practicable" is not amended, then §501.14(j)(1)(C)(i) should be changed by adding the phrase "cost-effective and" before "practicable." Another commenter recommended replacing the term "feasible" in the last sentence of §501.14(j)(1)(D) with "practicable" because "practicable" has been defined and feasible has not. Because the definition of "practicable" has been amended to include cost considerations, no change was made based on the first comment. In response to the second comment, and to avoid further confusion, the last sentence of §501.14(j)(1)(D) has been deleted.

One commenter was concerned that §501.14(j)(1)(D), which provides the standard for the placement of dredge material in critical areas for projects of overriding public and national interest, may be less stringent than the Clean Water Act, 33 United States Code Annotated, §§1251-1387. Section 501.14(j)(1)(D) reflects the exception in the Clean Water Act, 33 United States Code Annotated, §1344(b)(2), and the Code of Federal Regulations, Title 33, Part 230, Subpart B, §230.10(a). Therefore, §501.14(j)(1)(D) is not less stringent than the Clean Water Act. No change was made based on this comment.

One commenter objected to the inclusion of the extensive advisory material in §501.14(j)(2)(A)(i)-(vii), and suggested that the "material" be placed in the preamble to the final rules or in guidance issued at a later date. One of the CMP goals is to make agency and subdivision decision-making more effective by providing comprehensive policies. Therefore, §501.14(j)(2)(A) identifies techniques that may be used to comply with the mandatory requirement to minimize adverse effects from dredging activities. No change was made based on this comment.

A commenter previously requested that the siting criteria found in §501.14(j)(2)(H) be moved to §501.15 to ensure that all CMP siting criteria are located in the same section and to clarify that the factors and considerations of §501.15 would be considered during the siting of dredging projects. This commenter recommended that the language in §501.14(j)(2)(H) be limited to non-major actions. Section 501.15 and §501.14(j)(2)(H) were changed based on this comment.

One commenter requested that the cumulative and secondary impact requirements in §501.13(5) be included as criteria in §501.14(j) instead. The commenter recommended that phrase "cumulative and secondary adverse effects of dredging and the disposal and placement of dredged material and" be inserted between "subsection," and "the unique characteristics." Because the policy in §501.13(5) only applies to dredging activities and critical areas, §501.13(5) has been moved to §501.14(j).

A commenter suggested that the phrase "but are not limited to:" be deleted from §501.14(j)(2)(A) to be consistent with §501.14(j)(2)(B) and (C), and also because that language is not found in the Code of Federal Regulations, Title 40, Part 230, Subpart H, on which the section is based. This section has been amended in response to this comment to conform with current law. This amendment also makes the CMP internally consistent regarding this issue.

According to one commenter, §501.14(j)(3) and (5) create new regulations and requirements for the beneficial use of dredged material and §501.14(j)(4) implies that dredged material from non-commercially navigable waterways must be used beneficially. This commenter recommended the deletion of the word "greatest" from §501.14(j)(4). None of these provisions create requirements beyond the scope of current state and federal permitting authority. Section 501.14(j)(3) simply states that the disposal or placement of dredged material in a confined site in accordance with an environmental assessment (EA) or environmental impact statement (EIS) is presumed to be consistent with the CMP. Section 501.14(j)(4) does not mandate the beneficial use of dredged material in all

cases. It addresses only commercially navigable waterways. There is no requirement for beneficial use of material from non-commercial waterways. No change was made based on this comment.

One commenter recommended that the language in §501.14(j)(3) be modified to provide that all sites, not just contained sites, that have been identified and actively used as described in either an EA or an EIS are presumed to comply with §501.14(j)(1). This section is a narrowly crafted exception to the application of §501.14(j)(1), which is designed to encourage environmentally and economically sound disposal methods. Because the monetary investment in the design and construction of existing contained disposal sites and the environmental impact of these sites has already occurred, contained sites are suitable for continued use. Furthermore, by facilitating continued disposal in existing confined sites, §501.14(j)(3) discourages use of more environmentally damaging disposal options. The requested change would exempt *all* existing disposal sites from the requirement of §501.14(j)(1) defeating the objectives of the policies. No change was made to §501.14(j)(1) based on this comment However, §501.14(j)(3) has been amended to clarify that the EA or EIS must have been issued prior to the effective date of this chapter. In addition, the council has determined that it would be appropriate to extend the presumption of consistency to all sites in areas where efforts are under way to cease open water disposal of dredged material. Section 506.28 of this title (relating to General Consistency Agreements) has been revised to extend the presumption of §501.14(j)(5) to all sites related to a federal development project that undergoes an interagency coordination group process and produces a long term plan for ceasing open water disposal. This provides both an incentive and administrative efficiency in that it ensures that current maintenance dredging practices can continue pending adoption of a plan to cease open water disposal for a federal navigation project.

One commenter requested that §501.14(j)(4)(A) be amended to identify beaches experiencing continued erosion attributable to COE navigation projects. Section 501.14(j)(4)(A) identifies factors to be considered when determining the appropriateness of a beneficial use project. Section 501.14(j)(4)(A) is sufficiently broad to encompass the commenter's concerns of continuing erosion due to COE projects. Further, the GLO will identify beaches experiencing continued erosion due to COE navigation projects pursuant to its duties under the Texas Natural Resources Code, Chapter 33, Subchapter H. No change was made based on this comment.

One commenter requested that the list of examples of the beneficial uses of dredged material under §501.14(j)(4)(B) be amended to include "projects designed to fill man-made holes created from mining operations that have become detrimental to future infrastructure." The list of beneficial uses of dredged material is not exclusive. It merely provides some general examples of beneficial uses of dredged material. Based on this comment, however, §501. 14(j)(4)(B) has been amended to include projects designed to remediate past adverse impacts on the coastal area.

One commenter requested that §501.14(j)(4)(B)(ii) be amended by inserting the word "dunes" immediately before the existing text. Under this clause, projects designed to create or enhance public beaches or recreational areas could include dune restoration projects. Amending the clause, as requested, would limit the policy to dune restoration projects only, contrary to the intended effect of this clause. Therefore, no change was made based on this comment.

One commenter requested that §501.14(j)(5) be amended to include stockpiling of dredged material, establishment of beach nourishment projects for flood control, and near-shore dumping of dredged material to address current sand budget deficiencies. The commenter's suggestions represent beneficial uses that are addressed generally in §501.14(j)(4). Section 501. 14(j)(5) addresses dredged material that cannot be beneficially used and, therefore, requires disposition. No change was made to §501.14(j)(5) based on this comment. However, §501.14(j)(4)(B) has been amended to include beneficial use projects of this type.

One commenter recommended that the options for disposal of dredged material having no beneficial use under §501.14(j)(5)(C) be ranked in order of preference so that open water disposal in areas of relatively low productivity or biological value is the last choice. The commenter also recommended that "low productivity" and "low biological value" be defined to exclude critical areas. Open water disposal in areas of high productivity or high biological value is the least preferred option under §501.14(j)(5). "Low productivity" and "low biological value" will be determined on a case-by-case basis. No change was made based on this comment.

Concerning §501 14(j)(7), one commenter stated that emergency dredging will allow the CMP goals and policies to be circumvented. Another commenter recommended deletion of the requirement for an "after-the-fact" consistency determination in the event of emergencies as provided in §501.14(j)(7)(C) because such determinations should examine how to avoid future emergencies. Section 501.14(j)(7) is based upon the federal regulations governing emergency dredging (Code of Federal Regulations, Title 33, Part 337, §337.7), and recognizes that emergency dredging operations may be required to protect human life and private property. Section 501.14(j)(7)(C) requires that 24-hour notice be provided to the council prior to the initiation of any emergency dredging activities and that all reasonable efforts be made to comply with the applicable CMP goals and policies in the performance of emergency dredging activities. Furthermore, §501.14(j)(7)(C) requires the preparation of a consistency determination after completion of the emergency dredging activities No change was made based on these comments

A commenter recommended that the last sentence of §501.14(j)(7)(C) be amended to require the submission of a consistency determination within 30 days after completion of emergency dredging activities. The 60-day period provided in §501.14(j)(7)(C) is a reasonable period of time, considering that the dredging activity has been completed, and further, the section does not prohibit the submission of a consistency determination within a shorter period of time. Therefore, no change was made based on this comment.

Because of the potential for a change in current GLO policies with respect to lease plans of operation, one commenter recommended revising §501.14(j)(9) by deleting "oil, gas, and other." Because oil and gas exploration and production may adversely affect critical areas, it would be inappropriate to exclude these activities from the CMP. No change was made based on this comment.

One commenter expressed concern over several issues related to the potential for taking of private property without compensation as a result of implementation of the policies contained in §501.14(k). The CMP is based solely on, and is limited by, existing statutory authority and specifically provides, in §501.11(e), that the CMP goals and policies shall not be used by the council to effect the taking of private property without adequate compensation No change was made based on this comment.

Concerning §501.14(k)(1)(B)(iii), one commenter recommended replacing the phrase "seaward of the dune protection line" with the phrase "Beach/Dune System." Section 501.14(k)(1)(B)(iii) provides that compensation for adverse effects shall be located seaward of the dune protection line and is consistent with Chapter 15, Subchapter A, of this title (relating to the Management of the Beach/Dune System) Thus, to preserve and effectuate existing law, no change was made based upon this comment

One commenter requested that §501 14(k)(1)(E) be revised to provide for the reconstruction of seawalls Two commenters recommended that §501 14(k)(1)(E) be amended to conform with §15.5(e) of this title (relating to Management of the Beach/Dune System), suggesting that this provision of the rules establishes new and different standards for the construction, repair, and maintenance of erosion response structures. One commenter suggested deleting the last two sentences of §501.14(k)(1)(E) regarding the construction, repair, and maintenance of erosion response structures because governmental entities may erect barriers to aid navigation and for other purposes authorized by law and/or the Texas Constitution. Section 501.14(k)(1) (E) specifically identifies the circumstances under which construction of erosion response structures is limited or prohibited, pursuant to existing state law Section 501.14(k)(1)(E) does not implement new or additional restrictions on construction of such structures, but merely restates current law (see §15.6(c) of this title, relating to Concurrent Dune Protection and Beachfront Construction Standards) The statutory or constitutional authority of governmental agencies, political subdivisions, or private property owners is neither broadened nor limited by CMP implementation However, §501 14(k)(1)(E) was changed to avoid possible inter-

pretations in conflict with current requirements.

Regarding §501.14(k)(1)(E), one commenter stated that the preference for non-structural erosion response measures is not appropriate because structural approaches may, at times, be more effective, more economical, and/or more beneficial to the environment. Section 501.14(k)(1)(E) establishes a preference for non-structural erosion response measures. However, structural response measures are allowed if they are consistent with state law, in which case, the structural approach may overcome the preference. No change was made based on this comment.

Regarding §501.14(k)(1)(E), a commenter requested the addition of a provision regarding the use of federal funds for erosion response projects. Section 501.14(k)(1)(E) identifies the types of preferred erosion response structures, but does not limit the source of funding for response projects. The entities responsible for building, maintaining or managing erosion response projects may pursue funding from any source that may be available, including sources identified in 33 United States Code Annotated, §426i, cited by the commenter. No change was made as a result of this comment.

One commenter recommended that §501.14(k)(2) provide that any local government which acts in accordance with an approved dune protection and beach access plan shall be presumed to be acting in accordance with the goals and policies of this subsection. Because this presumption is provided in §505. 68(b) of this title (relating to the Standard of Council Review for Local Government Actions), no change was made based on this comment.

One commenter asked who would benefit from the "rules, recommendations, standards, and guidelines for erosion avoidance and remediation and for prioritizing critical erosion areas" outlined in §501.14(l)(2). The rules would benefit Texans by reducing loss of private and public property from erosion and by maintaining beaches, recreational fishing, boating and birding for coastal citizens and tourists. No change was made based on this comment.

One commenter recommended revising §501.14(m) to apply only to infrastructure within the CBRA units, not infrastructure "supporting" development in CBRA units; otherwise, the policy will unnecessarily impact the infrastructure which serves Mustang Island and North Padre Island. Another commenter stated that §501.14(m) should be consistent with §501 14(a), (i), and (p) in describing terrestrial and aquatic wildlife Section 501 14(m) specifically addresses coastal barrier resource system units pursuant to 16 United States Code Annotated, §3503(a), which requires protection of "threatened or endangered terrestrial or aquatic wildlife when developing an infrastructure." Existing law allows the PUC and TxDOT to consider a broader range or adverse impacts on terrestrial and aquatic wildlife No change was made based on this commenter; however, pursuant to the first comment, §501 14(m)(1) was changed to clarify that the only impacts from infrastructure relevant to the CMP are those within the CBRA unit.

Regarding §501.14(m)(1), one commenter stated that Bolivar Peninsula, Galveston County, is within areas designated on maps dated October 29, 1990, under the CBRA, 16 United States Code Annotated, §3503(a), yet the CMP does not address impacts to future development of this area or the constitutional rights of property owners on Bolivar Peninsula. All areas, including Bolivar Peninsula, which are within the CBRA map boundaries are subject to and must comply with the policies of this paragraph. Under the CBRA, development in the identified areas is subject to restrictions on federal funding and subsidies. This paragraph is designed to provide consistency and uniformity between federal and state funding policies. All development in these areas must be consistent with CMP requirements, yet the manner, method, extent and types of development in each area are not addressed individually in the CMP. Instead, the CMP incorporates federal, state and local regulations regarding development. Similarly, the constitutional rights of property owners in specific geographical areas are not individually addressed in the CMP. Section 501.11(e) is included in the CMP to preserve all private property rights and protect against an unconstitutional taking. No change was made based on this comment.

One commenter suggested that flood control projects be included in §501. 14(m)(1)(A) as an example of publicly funded infrastructure. The policies in §501.14(m) are not intended to establish preferences for certain types of publicly funded infrastructure. Instead, they are intended to ensure that such development will avoid and otherwise minimize adverse effects on important coastal resources. However, flood control projects are addressed in §501. 14(s). No change was made in response to this comment.

One commenter recommended that the word "least" be deleted from §501.14(m) (1)(E) and (p)(1)(F), and that the definition of "practicable" be incorporated into these subparagraphs. These sections have been modified for clarification purposes. However, the term "least" has not been deleted.

A commenter recommended replacing "reduce" with "minimize" in §501.14(p) (1)(A) because the word "reduce" implies that no matter what level has been reached, further reduction in pollutant loads is possible. The suggested recommendation has been adopted.

According to one commenter, §501.14(p)(1)(A) appears to expand the current Environmental Protection Agency's National Pollution Discharge Elimination System (NPDES) provisions for pollution prevention. Another commenter expressed concerns that §501.14(p)(1)(A) would increase the cost of operating and maintaining the state's highway system by requiring continued filtration of sedimentation basins, and recommended that this subparagraph be amended to incorporate NPDES stormwater runoff guidelines. Section 501.14(p)(1) (A) does not mandate filtration of sedimentation basins or expand current NPDES requirements. No change was made based on this comment.

One commenter requested clarification as to whether §501.14(p)(1)(E) would diminish Texas Department of Transportation's (TxDOT's) use of the COE nationwide permits issued pursuant to the Clean Water Act §404, 33 United States Code Annotated, §1344. This provision will not diminish the COE's issuance of nationwide permits because the policy only applies to TxDOT, not the COE. Furthermore, because §501.14(p)(1)(E) does not specifically address dredged or fill material disposal pursuant to the Clean Water Act §404, 33 United States Code Annotated, §1344, it does not prohibit TxDOT's use of nationwide permits. No change was made based on this comment.

One commenter questioned the geographic scope of §501.14(p)(1)(F), and requested that this provision be limited to transportation projects and associated facilities located within CNRAs. Section 501.14(p)(1)(F) requires TxDOT to locate projects in a manner which minimizes adverse effects on CNRAs. Projects may adversely affect CNRAs even if they are not located in those CNRAs. Therefore, it would be inappropriate to exempt those activities from the CMP. No change was made based on this comment.

Regarding §501.14(p)(1)(G), one commenter suggested deleting the phrase "[w]here placement on Gulf beaches is not practicable," and adding "for dune reconstruction" after the term "critical dune areas." The commenter reasoned that it would be unwise to place beach quality sand in areas where tidal action would wash it away and that all coastal areas may benefit from the use of man-made dunes to reduce erosion. This subparagraph is intended to give priority to Gulf beaches which are most drastically affected by tides, human activities and other adverse impacts. This subparagraph recognizes that placement of sand along the Gulf coast is not always practicable. However, Gulf beaches receive priority and the use of beach quality sand is not limited to dune reconstruction projects. No changes were made in response to this comment.

One commenter requested clarification on the scope of the TxDOT activities covered under §501.14(p)(2), and recommended that this paragraph cite to Texas Civil Statutes, Articles 6663b and 6663c, and Texas Civil Statutes, Article 6674a, et seq, to include all public transportation projects. Section 501.14(p)(2) has been amended as suggested by this commenter.

Regarding §501.14(r) and §505.11(a)(1) of this title (relating to Actions and Rules Subject to the Coastal Management Program), one commenter requested clarification of the rationale for subjecting impoundments and diversions of state water outside the CMP boundary to the CMP goals and policies. A commenter questioned why the appropriation permits subject t the CMP inside the CMP boundary are different from those outside the CMP boundary. Another commenter agreed with the changes in the policies on instream flows. One commenter objected to the council's limited review of freshwater inflows to only coastal counties and recommended that the fresh water policy be strengthened. Sec-

tion 501.14(r) and §505.11(a)(1) of this title (relating to Actions and Rules Subject to the Coastal Management Program) restate the relevant provisions of the Texas Water Code, requiring TNRCC to consider the impacts on freshwater inflows from permits for withdrawals or impoundments within 200 river miles of the coast which may adversely affect coastal waters. The council has included the minimum number of permits necessary to protect the economic and environmental quality of CNRAs. No change was made based on these comments.

A commenter objected to the inclusion of water rights decisions outside the CMP boundary in §501.14(r)(1) and recommended that the council limit its review to permits within the CMP boundary for new appropriations of 5,000 acre-feet or more Council review is limited to those water rights decisions likely to cause significant adverse effects on coastal waters. No change was made to §501.14(r) based on this comment.

A commenter stated that the flood control and levee construction policy in §501.14(s) is not based on current regulations. The levee and flood control policy is based on the current policy of no net loss of coastal wetlands. No change was made based on this comment.

One commenter requested that §501.14(t) be amended so that biologically diverse population determinations be made by the TPWD and to clarify that negative impacts on CNRAs will be minimized. The commenter stated that adverse effects on CNRAs from hunting and fishing generally arise from the method by which hunters and fishers gain access to CNRAs. TPWD's rules on hunting and fishing and other taking of wildlife do not govern the means of access. Since TPWD's rules do not address this issue, the council has determined this provision should be deleted from the CMP.

Section 501.15

One commenter recommended amending §501.15 to include all significant projects. The major action policy in §501.15 applies to activities requiring an EIS under the National Environmental Policy Act (NEPA), 42 United States Code Annotated, §4321 et seq. This provides a clear test for applying the policy. Expanding §501.15 to an additional class of actions would apply significant new assessment requirements to activities not currently subject to NEPA. No change was made based on this comment.

One commenter stated that the major action policy in §501.15 establishes stringent criteria for all state actions on projects involving an EIS, establishes a substantive rather than procedural standard for permit evaluations, and elevates environmental concerns above cost and other important public policy considerations. Two commenters questioned the authority of the council to adopt this policy One commenter recommended deleting §501.15(b) because it is burdensome to state agencies and applicants and represents a transfer of federal jurisdiction to state agencies without proper authority. This commenter also recommended that the council limit its review to those agency actions that may adversely affect CNRAs, as provided in the Texas Natural Resources Code, §33 052(b). The council's authority to review agency actions that may adversely affect CNRAs is established in the Coastal Coordination Act, the Texas Natural Resources Code, Chapter 33, Subchapter F, §§33 201-33.208, and not §33.052(b). Therefore, §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program) provides an exclusive list of those state agency actions that the council has determined may adversely affect CNRAs With respect to §501.15(b), the council has determined that "major actions" pose the greatest risk of adverse effects on CNRAs. Section 501.15 merely requires that agencies coordinate and time their decisions on these actions with any equivalent federal action that is already subject to the alternatives analysis required under NEPA. NEPA provides a convenient, commonly understood definition of "major action" and requires federal agencies to perform an analysis of alternatives. Basing §501.15 on NEPA ensures that no additional administrative costs or burdens are imposed on state or local entities. Because §501 15 only applies where an EIS is already required of a federal agency, the federal agency bears all assessment costs. In effect, the state or local entity gets the benefit of the federal agency's assessment. No changes are made based on these comments.

Regarding §501 15(b)(6), one commenter suggested that consideration be limited to those alternatives which are practicable and that the policy should recognize potential limitations based on location. The alternatives analysis under §501.15(b)(6) is intended to identify practicable alternatives, which can include an analysis of limitations on alternative locations. No change was made based on this comment.

One commenter recommended that §501.15(d) be deleted and that §501 14(j)(2)(H) be amended so that the cumulative and secondary siting impact provisions of the dredging policy and the major action policy are not duplicative Based on this comment §501.14(j)(2)(H) was amended and §501 15(d) was deleted In addition, §501.14(h)(4) was added to reconcile the cumulative and secondary impacts of the dredging policy and the major action policy, and to prevent duplication.

General Comments

A commenter expressed support for Chapter 501 which establishes the CMP goals and policies. The council has received many letters supporting for the proposed rules and the CMP No change was made based on this comment.

One commenter supported the CMP as a program that reduces toxic waste and results in cleaner water for Texas. The CMP is comprised of existing regulations, including existing regulations governing water quality and toxic discharges. This networked approach to the management of the valuable coastal resources balances environmental and economic concerns Citizen input and support in developing the CMP proved valuable to the creation of a balanced and comprehensive CMP that meets the environmental and economic interests of Texas citizens. No change was made based on this comment.

A commenter requested that the CMP goals and policies be revised to reflect existing statutes and rules. The CMP goals and policies do reflect existing statutes and rules. No change was made based on this comment.

One commenter asserted that the council's proposed rules will add a layer of review to many permitting decisions and, in many cases, will result in more stringent permit requirements, frustrating the stated goal of streamlining permitting procedures The council has established procedures in Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies) that limit actions reviewable by the council, provide an opportunity for early resolution of disagreements through preliminary review and ensure council review will occur within existing schedules and practices under agency regulations and the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, Chapter 2001 (Texas APA). No change was made based on this comment

One commenter questioned the council's authority to determine if an agency's actions are in conflict with the agency's enabling statutes and CMP goals and policies The council's authority to resolve conflicts between statutory requirements and their application within the CMP goals and policies is basic to the program Section 501.11(e) was modified to clarify both the process for resolving conflicting statutory interpretations and the intent of the council to neither prohibit an action that is within an agency's statutory authority nor to require any action that is in excess of, or in conflict with, the statutory authority of an agency In the event that the agency disagrees with the council interpretation and does not wish to follow the council's recommendations on remand, the Office of the Attorney General may resolve the conflicting statutory interpretations No additional change was made in response to this comment

A commenter recommended that all references to "food and fiber" production in Chapter 501 be changed to "agricultural production," thereby including horticulture within the scope of this chapter. Section 501 15(b)(5) was changed based on this comment

One commenter recommended that in Chapter 501, Subchapter B, the word "greatest" should be removed from the phrase "to the greatest extent practicable" wherever that phrase is used According to the commenter, the term "practicable" has been defined in Chapter 501; the term "greatest extent practicable," however, has not been defined. As used in this chapter, the phrase "to the greatest extent practicable" is intended to have the common vernacular meaning. to the highest degree of measure Where an applicant or agency proposes two alternatives, each practicable according to the definition, Chapter 501 generally requires the selection of the alternative which avoids or minimizes adverse effects to the highest or greatest degree No change was made based on this comment

A commenter stated that the CMP does not address mitigation of erosion and instead establishes restrictions that will preclude erosion response measures along the Texas coast. Numerous CMP policies require that the adverse effects of coastal erosion be addressed and mitigated. The definition of "adverse effects" in §501.3(a)(1) specifically includes alterations that cause shoreline erosion. The CMP policies governing development in critical areas (§501.14(h)), construction of waterfront facilities (§501.14(i)), dredging (§501 14(j)), construction in the beach/dune system (§501 14(k)), development in coastal hazard areas (§501.14(l)), and development on coastal barriers (§501 14(m)) all address erosion. Instead of precluding erosion response measures, these policies will encourage their appropriate use. No change in the rule was made based on this comment.

Four commenters referred to previously submitted comments on proposed Chapters 501, 504, 505, and 506 and the interim draft of the chapters and stated that the comments continue to apply to the interim draft CMP published on July 5, 1994. The council is reviewing all comments submitted throughout the two public review and comment periods. All previous responses to comments are being re-evaluated in this adoption of the final rule. One of these commenters was concerned that no substantive revisions of the chapters occurred as a result of his previous comments. Each comment received by the council is carefully considered and answered. Whether a comment results in a change is determined by considering the relevant statute and the impact of the proposed change on the substance and intent of the chapters. The CMP is designed to address Texas' coastal concerns and to balance economic viability and protection of natural resources. No changes were made based on these comments.

One commenter stated that the GLO has not adequately informed the public about the CMP and that the attorney general (AG) has not provided "educational instructions" about coastal management practices As the lead agency responsible for the development of the CMP, the GLO has involved the public in the CMP development process in numerous ways The CMP newsletter is mailed bimonthly to more than 4,500 Texans. The council established numerous task forces and focus groups consisting of members of the public Following the publication of the proposed CMP goals and policies in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1895), the council provided a 45-day public comment period and a subsequent 60-day public comment period. The council also held six public hearings along the Texas coast during April and May of 1994 At those hearings, GLO staff explained the CMP to the public, received public testimony, and answered questions As a result of these public comment periods and public meetings, the council has received and responded to more than 1,000 comments on the CMP. The GLO and the council have made a substantial effort to inform the public and encourage participation in the development of the CMP The AG is not required to provide additional educational instructions on coastal management practices. However, the Attorney General's Office has distributed a public participation fact sheet. No change was made based on this comment.

One commenter stated that the July 5, 1994, interim draft rules were difficult to review because deletions and additions were not noted. This commenter was dissatisfied that comments were not identified by the name of the commenter. The July 5, 1994, interim draft rules were submitted to the *Texas Register* pursuant to the requirements of the Texas Register *Form and Style Manual*, July, 1994 edition, page 81. This version of the CMP was provided to give the public a second opportunity to comment on the program and an opportunity to comment on the proposed revisions. Further, the Texas APA, Subchapter B, §2001.029(c), does not require commenter identification by comment, but does require a state agency to fully consider those comments submitted. No change was made based on this comment.

Ten commenters noted that one CMP goal purports to be the reduction of bureaucracy and expressed concern that the CMP adds to existing bureaucracy and/or creates an additional agency with expanded regulatory control which must review proposed projects. One of the commenters recommended striking all references to reduction of bureaucracy. The CMP rules are designed to provide both expeditious and limited review of agency actions. The CMP does not create additional agencies, governmental control or bureaucracy, but instead coordinates existing laws, regulations and agency actions into a unified process. No new permitting agency is created, as the council is comprised of representatives of existing state agencies, a local government representative and a coastal citizen. The council relies solely on staff of existing agencies for support. Under the CMP, existing state agencies continue to oversee, implement, and enforce their respective functions. Further, an amendment to §506.20(c) and (d) of this title (relating to Consistency Determinations for Federal Activities and Development Projects) minimizes the possibility of state and federal consistency review for the same activity. Since regulatory economy is a legitimate public policy goal worthy of expression in the CMP, no changes were made based on these comments

One commenter suggested that, following CMP adoption, an oversight committee be created to ensure sufficient justification for any new regulation. Under §§505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program), 505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program), and 506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program), the council's review jurisdiction is limited to determining whether specific existing governmental actions are consistent with CMP goals and policies. Section 501 11(b) provides that the council may not require any governmental entity to adopt any rule, take any action, or engage in any activity not within the constitutional or statutory authority of that entity. Finally, all agency rulemaking procedures must comply with the Texas APA, Subchapter B, §2001.033, which requires a reasoned justification for the rule. Thus, no changes were made based on this comment.

Three commenters stated that the benefits of the CMP seem very small compared to the additional cost and difficulties imposed on those seeking permits and the costs of a new permitting agency. One of these commenters also suggested that the CMP may stifle growth and development in Texas. Another of the commenters suggested that the CMP creates unfunded mandates. The taxpayer burden should not outweigh the benefits of the CMP, especially since the council has no independent budget or funding from the legislature. The council operates within the existing budgets and resources of the member agencies to fulfill its responsibilities and to implement the CMP. It is the council's mandate to coordinate agency actions related to management of coastal resources; such coordination should result in more expeditious governmental decision-making. Consistency in actions affecting CNRAs helps ensure rational and balanced growth. No changes were made as a result of these comments.

One commenter expressed concern that another layer of bureaucracy would be imposed on the oil and gas industry by implementing the CMP and the Oil Spill Prevention and Response Act (OSPRA), the Texas Natural Resources Code, Chapter 40, making it almost prohibitive to develop state school lands. OSPRA became effective in 1991. OSPRA requires an affected facility to have an approved oil spill response plan. This is similar to the federal requirement under the Oil Pollution Act (OPA) of 1990. The GLO accepts the federal response plan to satisfy state OSPRA requirements. Nothing in the CMP will add to OSPRA's existing requirements. Section 505 10(a)(3) of this title (relating to Purpose and Policy) states the council's intention to avoid the creation of an additional layer of bureaucracy. The council will rely on existing agency staff to implement the CMP. The CMP does not require new permits and is designed to coordinate existing laws and regulations; therefore, no additional burden is placed upon those conducting business with the agencies involved. The CMP ensures that specific governmental actions listed in §§505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program), 505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program), and 506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program), are consistent with CMP goals and policies. No change was made based on this comment.

Three commenters were concerned that the CMP would increase governmental regulations and create unfair economic burdens on agricultural production and coastal residents without increasing protection for Texas beaches. The CMP is a program that ensures consistency between existing law and CMP goals and policies. This chapter establishes uniform policies for management of coastal resources to minimize intergovernmental disputes and delays. The coordinated approach ensures that coastal environmental and eco-

nomic issues are addressed in a consistent and uniform manner to protect all coastal interests. The CMP enhances protection of Texas beaches, which are designated as a CNRA under §501.2(a), by ensuring that actions which may adversely affect beaches are consistent with CMP goals and policies. No changes were made in response to these comments.

According to a commenter, because the CMP continues to focus on dune protection and beachfront construction, the intracoastal waterway should serve as the inland boundary. As an alternative boundary for the coastal area within Brazoria County, the commenter suggested: a line beginning at FM2004 at the Galveston County line moving westward, following FM2004, to its intersection with CR227; CR227 to FM523; FM523 to CR690 (levee road); follow CR690 and the hurricane protection levee to SH36; SH36 to FM2611; FM2611 to the Matagorda County line. According to the commenter, this line includes the beachfront areas, bays, estuaries, and the Brazoria and San Bernard Wildlife Refuges, while excluding those highly developed industrial, commercial and residential areas protected by the hurricane levee system. The CMP boundary, which was the subject of public review and comment and of a hearing before the council, became effective on November 19, 1993. When adopting §501.2, the council found that CNRAs are located in more than just the limited geographical area suggested by the commenter. No change was made based on this comment.

Seven commenters were concerned that federal approval of the CMP will extend existing enforceable policies to new geographic areas or that the plan's authority will be expanded to inland areas. The CMP will not broaden or strengthen existing federal requirements or extend the CMP boundary. The CMP is narrowly drafted to apply only to certain enumerated activities identified in §§505.11 (relating to Actions and Rules Subject to the Coastal Management Program), 505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program), and 506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program), in certain listed areas identified in §501.2(a), having potential to cause adverse effects listed in §501.3(a). The CMP does not expand or modify existing regulations. Further, the CMP does not authorize or require an agency or governmental body to exceed its statutory or regulatory authority (§501.11(b)). Federal approval of the CMP will not result in an expansion of the scope of enforcement. The state's participation in the federal coastal zone management program is voluntary and the state cannot be compelled to adopt new regulations as a result of federal approval of the program. No changes were made in response to these comments.

Two commenters expressed concern about Liberty County's inclusion in the CMP and questioned whether the inclusion is based on the location of the Trinity River. The standard for inclusion in the CMP is the presence of tidewater shoreline. Thus, the presence of the Trinity River, a tidally influenced river, in Liberty County is the basis for including that county in the CMP. The CMP boundary was established by §503.1 of this title (relating to the CMP Boundary) which is not subject to review during this comment period. However, based on these and other similar comments, the council is carefully reviewing whether it is appropriate to include Liberty County in the CMP. No change was made based on this comment.

Three commenters were concerned about the extent of the area encompassed within the CMP boundary. The commenters suggested that the OSPRA line should be sufficient to preserve the coastline and the nearby environs that affect the coastline. One of the commenters was concerned that oil and gas operations outside the CMP boundary would be unnecessarily burdened by CMP rules and regulations. The CMP boundary designation is provided in §503.1 of this title (relating to the Coastal Management Plan Boundary) which became effective on November 19, 1993. The CMP covers only those actions listed in §§505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program), 505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program), and 506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program) that affect one of the designated CNRAs in §501.2(a). The CMP only applies outside the CMP boundary pursuant to §505.11(a)(1) of this title (relating to Actions and Rules Subject to the Coastal Management Program) and §506. 12(b) of this title (relating to Federal Actions Subject to the Coastal Management Program). Section 505.11(a)(1)(A) of this title (relating to Actions and Rules Subject to the Coastal Management Program) addresses water rights permit applications in areas within 200 stream miles of the coast proposing appropriations of 5,000 acre-feet or more per year. Section 506.12(b) of this title (relating to Federal Actions Subject to the Coastal Management Program) concerns federal actions which occur outside the CMP boundary, but are located within OCS waters or on excluded federal land within the coastal area, that may adversely affect CNRAs. Thus, the CMP only impacts oil and gas activities outside the CMP boundary that are already federally regulated No change was made based on these comments.

One commenter noted that the legislature authorized new programs to deal with coastal erosion, beach access, dune protection and wetlands conservation during the same legislative session that it created the council The commenter further stated that although these new programs are all included as parts of the comprehensive CMP under the umbrella authority of the council, the authorization for the new programs is clear and straightforward compared to the confusing, fragmented authorization for the CMP. The commenter called particular attention to the legislature's authorization for development of a state wetlands conservation plan in Texas Parks and Wildlife Code, §§14. 001-14.003, in comparison to the legislative authorization for the CMP. According to the commenter, the CMP incorporates a great deal more than wetlands conservation with a great deal less guidance from the legislature. Therefore, the commenter concluded that the CMP must be beyond the legislative grant of authority. The fact that one statute is more specific than another does not mean that the less specific one, solely by virtue of the lack of specificity, grants less authority to an implementing agency. The Texas Legislature passes hundreds of statutes each legislative session, each one varying in its specificity Such variety is common in the legislative process and lack of specificity alone is not a persuasive factor in determining legislative intent to grant a lesser increment of authority. No change was made based on this comment.

A commenter stated that the Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA), within the United States Department of Commerce, has stated that "there is significant ambiguity in Senate Bill 1053, Acts 1991, 72nd Legislature, Chapter 295, §37, regarding the standard of compliance for state agency and subdivision actions. ." The commenter recommended that the council clarify all ambiguities in the rule adoption preamble. OCRM is the subdivision of the United States Department of Commerce that is responsible for reviewing state coastal management plans for acceptance into the federal coastal management program. The council and the GLO have been working closely with OCRM throughout the development of the CMP. OCRM will make an independent determination relating to the adequacy of the Texas CMP and any statement by the council in this preamble will undoubtedly not change OCRM's opinions However, the council believes that Senate Bill 1053, Acts 1991, 72nd Legislature, Chapter 295, §37 provides adequate authority for the CMP to meet the federal requirements for state coastal management programs No change was made based on this comment.

One commenter noted that Texas Natural Resources Code, §33.052(f), specifically states that the CMP does not "add to or subtract from the duties and responsibilities" of state agencies other than the GLO and the SLB The commenter stated that this limitation is never directly addressed by the council in the proposed rules. The Texas Natural Resources Code, §33.052(f), addresses the development of a management program for coastal public land. The Texas Natural Resources Code, §§33.201-33.208, upon which the CMP is based, addresses "effective and efficient management of coastal natural resource areas " CNRAs, defined in the Texas Natural Resources Code, §33 203(1), include more than coastal public land Thus, the Texas Natural Resources Code, §33.052(f), is not the primary controlling statute for the development of the CMP No change was made based on this comment.

One commenter stated that the proposed CMP appears to exceed statutory authority and legislative intent For example, the council states in the preamble to the proposed rules that the definition of "coastal conservation areas" expands the scope of planning and management under Texas Natural Resources Code, §33 052, beyond "coastal public lands." This commenter further stated that if the legislature had intended to implement such an all-encompassing program, it would

have done so explicitly. The commenter's reference to the Texas Natural Resources Code, §33.052, is misplaced because the CMP is not also based upon the Texas Natural Resources Code, §§33.201-33. 208 which provide statutory authorization for the CMP rules. No change was made based on this comment.

A commenter referred to questions posed by Attorney General Dan Morales, who has stated that the "proper interpretations of the Coastal Coordination Act and other laws are open legal questions." The commenter referred to the following questions posed by the Attorney General. "May the CCC by rules restrict its review authority to a scope narrower than that of the Act itself? " "May this narrower CCC jurisdiction be exclusive or must it allow for exceptions in order to comply with the Act?" "Does the Act operate as a general grant of authority to state agencies and thus give them authority beyond their existing statutes?" "How must the new CCC process mesh with the existing requirements under the Texas Administrative Procedure and Texas Register Act (now the Texas Administrative Procedure Act)?" Since this comment relates to questions raised by the Attorney General, the council will await the Attorney General's response to these questions. However, the council has voluntarily limited its jurisdiction in the CMP. This appears to be within their authority and is the result of extensive public review and comment. Further, in §501.11, the council has stated its intention not to require any agency to engage in any action not within its statutory or constitutional authority. No change was made based on this comment.

A commenter stated that the March 18, 1994, preamble to the proposed CMP rules (19 TexReg 1894) contains many statements contrary to the legislative intent of the Coastal Coordination Act and to the public statements of council members. The commenter referred to statements in the preamble which may be used by the courts in interpreting the law in a broader, more expansive way than the council interprets it. The preamble to the March 18, 1994 proposed rules, like any rule preamble, is not enforceable law. Rather, the preamble is an explanation of the rule containing the statements required by the Texas APA, §2001.024. The final preamble, like the preambles in the proposed March 18, and interim draft July 5, 1994 versions of the CMP rules, is not enforceable law. However, regarding the council's intent, this preamble will be most relevant as it relates to the adopted rule. No change was made based on this comment.

A commenter stated that the CMP, as proposed, exceeds the legislative intent of Senate Bill 1053, Acts 1991, 72nd Legislature, Chapter 295, §37, to create a coordinating, not a regulatory, process. This commenter also stated that the CMP development process has raised numerous legal questions about the implementation of the Coastal Coordination Act, specifically whether the CMP rules are beyond the legal authority granted to the council. The commenter was concerned that the state could be subjected to numerous lawsuits if this version of the CMP is adopted. The commenter presumes that the CMP creates additional regulations. Since the council's review is limited to already authorized governmental actions, specifically listed in §§505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program), 505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program), and 506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program), it is not accurate to say that the CMP presumes to regulate, rather than coordinate. Further, the Texas Natural Resources Code, §33.205(a), states that all actions taken or authorized by state agencies and subdivisions that may adversely affect CNRAs must comply with the CMP goals and policies. To the extent that the commenter is referring to §505.30(a)(1) of this title (relating to Agency Consistency Determination) requiring state agencies to provide consistency determinations, such a requirement is squarely based on Senate Bill 1053, Acts 1991, 72nd Legislature, Chapter 295, §37. No change was made based on this comment.

One commenter stated that, as specifically noted in the original CMP proposed rule preamble, the CMP creates new law (in at least nine instances) which has not been subject to legislative action. The commenter did not specifically identify the nine areas which he believes represent new law. However, the rules, as proposed, are based on the authority granted to the council in the Texas Natural Resources Code, §§33.201-33.208. Most CMP provisions incorporate, reflect, or are based on or drawn from existing statutory or regulatory requirements with which state agencies and local governments are already required to comply. The CMP provides that currently authorized state agency and local government actions specifically listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) and §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program) may be reviewed by the council if they adversely affect a CNRA. The council has voluntarily narrowed its jurisdiction by limiting its review to listed actions and by providing for the adoption of state agency thresholds in §505.26 of this title (relating to Council Review and Approval of Thresholds for Referral). The council has not exercised its full grant of legislative authority. No change was made based on this comment.

One commenter objected to publication of the interim draft of Chapters 501, 504, 505, and 506 in the July 5, 1994, issue of the *Texas Register*. The commenter stated that such "disregard of established rulemaking procedures" may result in the council being subject to lawsuits (at the taxpayers' expense) , and would result in the public not being properly informed as to the full impact of the CMP. The Texas APA, Subchapter B, §§2001.021-2001.038, does not prohibit an interim republication of a proposed rule. Although use of such a procedure may be uncommon, it is not prohibited by law. The Texas APA, Subchapter A, §2001.001(1), expressly states that it provides "minimum standards of uniform practice and procedure for state agencies." The Texas APA certainly does not prevent an agency from doing more than the required minimum to solicit, analyze and act on public comment. This procedure has given all interested persons an opportunity to review proposed changes to the CMP and the council's initial response to public input. This effort to increase public input effectuates the council's intention to be responsive to all citizens in the development of the CMP. No change was made based on this comment.

One commenter expressed support for the "Dissenting Statement of Commissioner Barry Williamson regarding Coastal Management Program Rules," published in the July 5, 1994, issue of the *Texas Register* (19 TexReg 5269). Included in Railroad Commissioner Williamson's dissent were comments regarding "practicable," as defined in §501.3(a)(11). The definition of "practicable" has been changed to address the concerns raised by Railroad Commissioner Barry Williamson and other commenters.

According to one commenter, the CMP fails to meet the requirements of a coastal management plan and provides ambiguous terms. The Texas Natural Resources Code, §33.202(a)(1), states that the state's policy is to coordinate "the performance of agencies, subdivisions, and programs affecting coastal natural resource areas..." The CMP is a compilation of existing regulations which creates a coordinated approach to more effectively manage coastal natural resources. Further, pursuant to the Texas Natural Resources Code, §33.204(a), the council has adopted goals and policies to adequately manage such resources. The CMP meets the statutory requirements established in the Texas Natural Resources Code, §33.201, et seq. Most terms in the CMP are defined as provided in existing law. No change was made based on this comment.

One commenter believed that the CMP will expand federal rulemaking and enforcement powers. In addition, the commenter was concerned that submission of the CMP for federal approval could abrogate the state's capability to deal with coastal concerns. This commenter also suggested that further legislative review is required prior to implementation of the CMP. Contrary to this commenter's concerns, federal approval of the CMP does not result in greater federal control of the program or over state coastal resources. Rather, federal approval makes the State of Texas eligible to receive federal funds and enhances the state's power to review, and, in certain cases, veto federal actions. The Texas CMP must comply with federal requirements for approval of state coastal programs. Failure to secure federal approval would render Texas ineligible for federal funding and limit state power over federal actions. The CMP does not give the federal government any new power or authority over Texas coastal resources. Further, the June, 1995, effective date will allow the 74th Texas Legislature to review the CMP before it goes into effect. No change was made based on this comment.

One commenter was concerned that tidal gauges, as used by the GLO to monitor erosion and locate boundaries, were not addressed in the CMP. This commenter also

requested the name of a contact person to access data. Tidal gauges are not referenced within nor applicable to the CMP goals and policies. While useful to observe changes in the coastline and tidal influences, these devices are not expressly mandated by the CMP. Thus, a definition of tidal gauges is unnecessary. Persons interested in information related to tidal gauges may contact the GLO's Surveying Division. No change was made based on this comment.

One commenter stated that, because the CMP fails to incorporate all court decisions and all existing law into the plan, it fails to satisfy the Code of Federal Regulations, Title 15, Part 923, Subpart E, §923 41, which requires identification of a state's authority to implement a coastal management plan. The commenter further stated that it was unclear whether the CMP supersedes local laws which already protect local interests. The CMP satisfies the requirements of the Code of Federal Regulations, Title 15, §923 41, by compiling and coordinating all local and state authorities that will be used to implement the CMP. Further, §501 10(c) notes that compliance with CMP goals and policies does not supersede or eliminate any legal duty to comply with other applicable statutory and regulatory obligations. All relevant laws were considered in formulating the CMP, thus no change is made based on this comment.

One commenter suggested that the CMP, as now written, will have an adverse effect on oil and gas exploration along the Texas Gulf Coast. This commenter stated that the CMP will force many small companies to discontinue exploration activities along the Texas coast. In addition, this commenter was concerned that the CMP indirectly suggests that exploration activities on land are a threat to coastal waters. The CMP does not make any substantive changes to the regulations affecting oil and gas operations The CMP does not, by listing the activities subject to council review in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program), conclusively presume that such activities will be detrimental to the environment However, the council has found in §501.2 that oil and gas exploration and production may adversely affect CNRAs The actions related to oil and gas exploration and production subject to council review are actions under the jurisdiction of the GLO, the RRC, and the Minerals Management Service of the United States Department of the Interior. Thus, the agencies already responsible for managing oil and gas operations, and already attuned to the concerns of the domestic oil and gas producers, will be responsible for interpreting and implementing the CMP policies on a daily basis No change was made based on this comment.

A commenter recommended that the council modify the proposed CMP to exclude oil and gas operations inland from the current OSPRA line, which, according to this commenter, excludes exploration and production activities beyond 600 feet from the coastline from compliance with OSPRA's facility certification requirements According to this commenter, the amendment of the line would encourage oil and gas exploration along the coast, increase our tax base and preserve jobs. The OSPRA line approximately delineates the landward extent of tidally influenced waters. In order to protect the CNRAs designated by the council in §501.2, it is necessary that the CMP boundary extend further inland than just the extent of tidally influenced waters. The CMP boundary was adopted on November 19, 1993, after public review and comment and a hearing before the council. The CMP has been the subject of extensive public review and comment and is designed to balance economic and environmental concerns. No change was made based on this comment.

One commenter suggested that the RRC should continue to have full permitting authority inland from the OSPRA line. The CMP does not diminish the RRC's permitting authority on either side of the OSPRA line. No change was made based on this comment

Two commenters suggested that the council is not authorized to implement the CMP and that the CMP clearly shows that the council is a super administrative agency, ordering other state agencies to follow and adopt the rules of the CMP In addition, these commenters state that the council, through its rulemaking, is requiring the TNRCC to adopt and implement a state Clean Water Act, 33 United States Code, §1344, program to regulate dredging and dredge material disposal without statutory authorization. The council's authority to implement the CMP is based on the Texas Natural Resources Code, §33.201 et seq, which provide in part, for the council to promulgate rules adopting the CMP goals and policies. The Texas Natural Resources Code, §33. 205(a), specifically requires state agencies to comply with CMP goals and policies. The Texas Natural Resources Code, §33.206, specifically authorizes the council to review actions of state agencies to ensure compliance with CMP goals and policies. Finally, this same section specifically authorizes the council to remand such actions to state agencies The state agencies shall modify or amend the action to make it consistent with the CMP goals and policies, according to the Texas Natural Resources Code, §33.206(b). Thus, the council has the statutory authority to promulgate these CMP rules. The CMP does not require TNRCC to adopt or implement a Clean Water Act, 33 United States Code, §1344, permitting program. However, the CMP does provide, in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program), that TNRCC's certification of federal permits for dredging and filling activities must be consistent with CMP goals and policies. No changes were made based on these comments.

One commenter recommended the establishment of a moratorium on dam building pursuant to the CMP, or that the CMP provide that no Texas tax dollars will be spent on dam building. Existing state law does not prohibit new dam construction or expenditure of public funds for such projects. As a program designed to coordinate existing laws, it would be inappropriate for the council to include the suggested language Furthermore, the council is not authorized to impose such a moratorium. No change was made based on this comment

One commenter requested a moratorium be placed on inter-basin transfers of even one drop of water. The CMP does not change existing law. The council is not authorized to halt the inter-basin transfer of water No change was made based on this comment.

One commenter expressed appreciation for the extension of the CMP comment period and to GLO staff for gathering information for analysis. The GLO and the council appreciate this commenter's support

One commenter stated that consistency among local, county, state, and federal laws would not be accomplished through the CMP The commenter also stated that special interests prevail in the CMP. Local and federal government actions subject to the CMP are listed in §505 60 of this title (relating to Local Government Actions Subject to the Coastal Management Program) and §506 12 of this title (relating to Federal Actions Subject to the Coastal Management Program), respectively. Section 501.10 requires that listed governmental actions comply with CMP goals and policies, thereby ensuring local, state and federal consistency It is unclear what the commenter means by "special interests prevail in the CMP." However, the CMP provides extensive opportunity for public input, lessening the impact any particular group may have on consistency determinations. No changes were made based on these comments

Two commenters were concerned that additional water quality regulations may be imposed on agricultural land development which does not pose water quality problems The CMP provisions related to agricultural NPS pollution are strictly based on existing law. The CMP will not create new requirements related to water quality. Only those actions listed in §§505.11 of this title (relating to State Actions and Rules Subject to the Coastal Management Program), 505 60 of this title (relating to Local Government Actions Subject to the Coastal Management Program) and 506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program) are subject to council review Because the CMP does not impose new water quality regulations on agricultural land development, no change was made based on this comment.

Eight commenters requested that a representative from the Texas Department of Agriculture (TDA) be included as a council member. One of these commenters noted that the council does not have sufficient expertise in analyzing irrigation and agricultural procedures The council lacks authority to expand or modify its voting membership. However, the council now includes non-voting representatives from the TSSWCB and the Texas Water Development Board (TWDB). These members bring extensive expertise to the council on agricultural and irrigation issues. In addition, no actions taken by TDA are subject to the program The CMP provides for extensive public review, participation and comment These procedures ensure that all areas of public interest, including agricultural concerns, will be considered. No changes were made based on these comments

Three commenters were opposed to the interim draft rules and suggested that the interim draft was weaker than previous drafts. One of the commenters was concerned that the public's tax dollars would be used to fund the program and one commenter stated that a program must be sound, reasonable, and easily implemented to be successful. The fundamental emphasis of the CMP is to protect the economic and environmental vitality of the Texas coast, as stated in §501.12. In developing the CMP goals, equal emphasis has been placed on maintaining a healthy and sound economy and preserving the coast as an important natural resource. The current draft was developed with a significant amount of public input; the CMP provides balanced policies to protect CNRAs. Federal approval of the CMP will provide additional funds for state and local governments to enhance the coast's ecological and economic vitality. No change was made based on these comments.

One commenter requested that the additional fiscal analysis referred to in the preamble of the interim draft published in the July 5, 1994, issue of the *Texas Register* (19 TexReg 5195) be published for public comment prior to plan approval. The commenter was concerned that cost, if quantified, will be higher than the anticipated 10% of the federal grant funds. One commenter urged that it is imperative that the cost of the CMP include both the direct GLO administrative cost and the additional costs borne by the general public (increased permit preparation cost, increased construction cost, etc.). The fiscal analysis prepared by the council and published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1894) satisfies all legal requirements for rule adoption. However, prior to implementation, the council will provide an additional fiscal analysis on the CMP to further public understanding of the program.

Two commenters suggested that the CMP be revised to require agencies to develop a detailed cost/benefit analysis before implementing new regulations and eight commenters suggested the CMP lacks accurate information regarding fiscal impacts of the CMP on the state and the costs the program will impose on businesses and individuals. One commenter requested a report of financial impact and environmental benefit derived from the federal NPS pollution controls prior to CMP implementation. Another commenter stated that without an adequate cost/benefit analysis, it is impossible to determine the impact of the plan on state and local governments and on business. The Texas APA, Subchapter B, §2001.024, requires agencies to prepare a fiscal impact analysis before promulgating new rules or rule amendments. The fiscal analysis previously conducted and provided in the March 18, 1994, issue of the *Texas Register* (19 Tex Reg 1894) satisfies this requirement. The CMP cannot require agencies to conduct economic impact analyses. Prior to implementation, the council will provide an additional fiscal analysis on the CMP to increase public understanding and to promote cost-effective implementation. No change was made based on these comments

One commenter objected to joining the various state agencies under a common set of goals, subject to oversight by the council. As provided in the Texas Natural Resources Code, Chapter 33, the legislature directed that the CMP coordinate agencies responsible for the management of the coastal resources of Texas, rather than create one super-agency to regulate coastal activities. No change was made based on this comment.

A commenter questioned several statements contained in the CMP Public Comment Document identified in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1894), and several provisions of the City of Galveston's local dune protection and beach access ordinance, adopted pursuant to the Texas Natural Resources Code, Chapters 61 and 63. The CMP Public Comment Document does not constitute a rule of the council, imposes no duty or constraint on any entity under the CMP, and is not a part of Chapters 501, 504, 505 and 506 of this title. The GLO proposed a rule conditionally certifying the City of Galveston ordinance in the May 13, 1994, issue of the *Texas Register* (19 TexReg 3631). The ordinance was subject to a comment period while under consideration by the Galveston City Council, and during the public comment period when the GLO proposed the rule conditionally certifying the ordinance. In addition, the Office of the Attorney General, the GLO and the public may comment on dune protection permits and beachfront construction certificates during the local permitting process, pursuant to §15.3 of this title (relating to Administration.) The dune protection permits and beachfront construction certificates are also subject to the consistency review requirements of Chapter 505, Subchapter E, of this title (relating to Consistency and Council Review of Local Government Actions). No changes could be made in response to the comments directed to the CMP Public Comment Document or the Galveston city ordinance.

One commenter stated that the GLO is required to map areas for dune protection purposes, and cited §15.3 of this title (relating to Administration) as requiring and defining mapping methods. The commenter stated that mapping requirements are not stringent enough. The commenter was also concerned that Chapter 15 of this title (relating to Coastal Area Planning) was not addressed and coordinated with the CMP. The Texas Natural Resources Code, §63.011, and §15.3(f) of this title (relating to Administration) provides local governments with the authority to establish dune protection lines. The dune protection line is subject to GLO review and monitoring. The provisions of the CMP do not affect the location or mapping of dune protection lines. The dune protection line is important in that it defines areas subject to dune protection permitting, a listed CMP action in §505.11(2)(A)(x) of this title (relating to Actions and Rules Subject to the Coastal Management Program) and §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program) No change was made based on these comments.

Another commenter stated that the GLO uses several definitions of National Geodetic Vertical Datum (NGVD), none of which are used in the CMP, causing confusion. Since NGVD is not used in the CMP, no change was made based on this comment.

One commenter asked that Federal Emergency Management Agency (FEMA) rules applicable to Texas be defined. The CMP i snot intended to define existing federal rules. Therefore, no change was made based on this comment.

One commenter stated that CMP policies relating to windstorm and flood protection for coastal properties are inadequate. Authority for windstorm and flood protection for coastal properties lies with the Texas Catastrophe Property Insurance Association and is, therefore, not part of the CMP. No change was made based on this comment.

Numerous commenters supported the adoption of the CMP. Another commenter commended the progress that has been made to revise the CMP and to respond to comments. In the process of developing the CMP, the council has consistently worked with the public to ensure that the rule is a product of Texas citizens who work, live in, or have an interest in the coastal area. In soliciting public input, the council sought to develop a plan that would be supported by the public, as it implemented the Texas Natural Resources Code, Chapter 33, Subchapters C and F. No change was made based on these comments.

Thirteen commenters requested that implementation of the CMP be delayed to determine the impact of the CMP and allow the Texas Legislature to review and consider the benefits and costs of the CMP. Another commenter had the same concern but supported the effort to make various governmental agencies regulations consistent. One commenter requested that implementation of the CMP be delayed in order to allow for publication and review of specific NPS regulations, to study the relationship between state and the Environmental Protection Agency (EPA) requirements and to study the Best Available Technology pollution control requirements. Another commenter stated that the Texas Legislature should clearly define the scope and duties of the council and CMP before any plan is adopted. Another commenter recommended delay of implementation until federal funds are available to help offset the costs associated with administration of the CMP and anticipates that the RRC will receive federal funding through the GLO to cover such costs. The effective date of the CMP is June, 1995. The time before implementation provides the council with sufficient time to certify agency rules as consistent with the CMP goals and policies, provides agencies with sufficient time to develop thresholds, and gives the legislature the opportunity to review the CMP before it goes into effect. Although the CMP is composed of existing law and creates no new permits or regulatory programs, federal approval of the CMP will provide additional funding for state and local governments and enhance the ecological and economic vitality of the coast. No change was made based on these comments.

One commenter objected to establishment of land use restrictions that might be imposed in

counties near Galveston Bay and Corpus Christi Bay without the consent of the landowners. Seven commenters objected to the imposition of regulations without the consideration of affected landowners. Another commenter was concerned that interests opposed to development could use the CMP review process to cause delays in proposed development. The CMP compiles existing statutory and regulatory requirements into a single document providing uniform direction to agencies and subdivisions regulating the Texas coast. Because the CMP does not impose any land use restrictions on a landowner without the landowner's consent, no change was made based on these comments.

Three commenters objected to an increase in governmental regulations that do not offer greater protection of Texas beaches or that place unfair economic burdens on agricultural production. Another commenter requested that the council be aware of the disastrous consequences which restrictions on the proposed Permanent Saltwater Barrier Project would have on the lives of over 200,000 Southeast Texans and the importance of the continuing availability of an acceptable freshwater supply for the area. The economic vitality of the coastal area is dependent upon the quality and availability of coastal natural resources The CMP is designed to ensure that agencies and subdivisions make consistent decisions which are economically and environmentally sound, without imposing new or unfair burdens on agriculture. No change was made based on these comments

Two commenters expressed concern that the CMP "removes coastal property control from local governmental entities to the state " Another commenter stated that the CMP is fashioned so that "Austin-based agencies" can easily change a rule while private citizens or local governments are burdened with bureaucratic requirements. Only two local government actions are subject to the CMP: dune protection permits and beachfront construction certificates These apply only in extremely limited geographic areas and will affect very few individuals. No changes were made based on these comments

One commenter stated that the GLO usurps local authority guaranteed in the Texas Constitution because it makes the CMP rules a part of local laws The CMP does not create or impose any requirement which is beyond the existing legal authority of an agency or local government to implement THE CMP neither creates new permits nor changes rulemaking requirements. Only two specific local government actions are subject to consistency review Section 505 60 of this title (relating to Local Government Actions Subject To The Coastal Management Program) provides that local government dune protection permits and beachfront construction certificates must be consistent with the CMP goals and policies The impact on local government actions is very limited and local governments have great discretion in deciding how to adapt their actions to the CMP No change was made as a result of this comment.

Four commenters expressed concern that the CMP threatens private property rights. One commenter requested a general statement recognizing rights of private property owners. Another commenter requested a "takings impact analysis" before implementation of the CMP and stated that the CMP should provide for a takings fact-finding procedure at the permit application and hearing stage. Since no property rights are impaired by the CMP, no takings impact analysis is needed. Section 501.11(e) expressly ensures that the CMP will not be interpreted or applied in a manner which could result in a taking, damage, or destruction of individual property or property value without adequate compensation. The same commenter recommended that the CMP be revised to ensure that individual landowners be compensated for any undue economic hardship. First, it must be noted that until an agency action is final, which will be after the council has made a consistency determination, the takings issue is not ripe. To provide a forum to address takings issues in a state agency or in the council as suggested by a commenter, would be impractical since a useful analysis cannot occur until the government action is final. Second, the council and/or any administrative agency does not have the authority to make findings or determinations on "takings " The takings issue is a substantive property rights issue of constitutional dimension, which can be adjudicated only by a court of competent jurisdiction. Judicial branch resolution of inverse condemnation claims seems the most appropriate existing avenue for redress. To incorporate a "takings impact analysis" procedure into the CMP would conceivably violate the open courts doctrine The Texas Supreme Court has found, on several occasions, that administrative agencies lack jurisdiction to adjudicate contract or property rights (See *State v Rutherford Oil Corp.*, 852 S.W.2d 480 (Tex. 1993). No change was made based on these comments

One commenter was concerned that there is no review or consultative process for agency level permit denials, or for advisory or consultative rulings from the council. The council has no jurisdiction to review agency permit denials The council's only jurisdiction under the Texas Natural Resources Code, §33 205, is to review actions that may adversely effect CNRAs An activity cannot occur if the necessary permit is denied. CNRAs cannot be affected if the activity does not occur. Council advisory rulings on proposed agency actions can be obtained by an agency or applicant under §505 31 of this title (relating to Preliminary Review of Individual Agency Actions by the Coastal Coordination Council). No change was made based on this comment.

Part B

Section 501 1

Three commenters asked that §501.1(b)(1) be revised to comport with the Texas Natural Resources Code, §33 204, by clarifying that the council will *study and* review the principal coastal problems of state concern. Based on this comment, the subsection has been clarified

One commenter expressed concern that, although the council meets only four times a year and receives no compensation, there may be an increased cost to the Texas taxpayer. The commenter stated that implementation of the portion of the programs described in §501.1(b)(1)-(3) would increase state budgets as the council does not have the funding to perform these comprehensive duties. The paragraphs cited involve coordination of regulatory efforts of the agencies with jurisdiction over actions which may adversely affect CNRAs. Such agencies are identified in §501.14; the actions are identified in §§505. 11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program), 505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program) and 506 12 of this title (relating to Federal Actions Subject to the Coastal Management Program. The council is composed of representatives of existing agencies (as well as a local government elected official and a coastal citizen) who will use their agencies' existing budgets and resources to exercise their existing authority to implement the CMP, with no increased cost to Texans In addition, pursuant to the Texas Natural Resources Code, §33.204(d), council members may receive reimbursement from GLO funds for actual and necessary expenses No change was made based on this comment

Regarding §501 1(b)(2), one commenter requested that the phrase "coordinate the performance" be rephrased, as the commenter thought it was ambiguous. The phrase "coordinate the performance" is based on the Texas Natural Resources Code, §33.202(a)(1), and is included to ensure that the CMP will coordinate the way in which agencies manage the activities which adversely affect CNRAs. The CMP will require agencies and applicants to comply with the CMP policies when authorizing or undertaking activities. No change was made based on this comment.

One commenter wrote that it would be helpful if the assistance referred to in §501 1(c) were financial. Section 501.1(c) provides, in part, that the council "may on occasion require or receive assistance from additional agencies or subdivisions that have authority over or expertise relevant to a particular coastal problem that is before the council " The assistance referred to in §501.1(c) is legal and technical, as opposed to financial No change was made based on this comment, however, for purposes of clarification, the word "require" has been replaced with "request "

Concerning §501.1(d), one commenter questioned how the CMP will "help local governments improve their ability and develop additional capacity to manage coastal natural resource areas and human activities affecting those resources," particularly when the council's role (with respect to local governments) is supposed to be limited to FEMA requirements and dune permitting. As provided in §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program), the only local government actions subject to the CMP are dune protection permits and beachfront construction certificates. The council is comprised of representatives of state agencies, local governments and a coastal citizen Included in the council's responsibilities are coordination

of management of Texas' CNRAs; preparation of a biennial report to the legislature outlining the status of coastal problems, issues and programs; and aid in the development of responsible and achievable solutions. The council will work closely with local governments to improve management of the coast, and provide a broader forum for local input into the actions taken and authorized by state and federal agencies In addition, local governments will also be eligible for federal funds after federal approval of the CMP. No change was made based on this comment.

One commenter recommended adding language to Chapter 501 outlining the ability of the council to develop SAMPs as described in Chapter 504 of this title (relating to Special Area Management Planning) and §501.1(e). Strictly speaking, the council will not be "developing" SAMPs; that function is left to the "SAMP committee," as defined in §504.5(b) of this title (relating to Submission of a Workplan for Development of a Special Area Management Plan). Chapter 504 provides the entire process for the development and implementation of a SAMP. Because the SAMP provisions are adopted simultaneously with this chapter, and are contained in full in this part, no change was made based on this comment

Section 501 2.

One commenter was concerned that §501.2 might be interpreted to mean that economic values of the coast outweigh all others, and that ecological values should be given more emphasis and priority. Section 501.2 describes activities occurring in the coastal area and the positive and negative impacts of these activities on the environmental and economic quality of the coast. The economic vitality of the coastal area is dependent upon the quality and availability of the coastal natural resources, and neither is treated as superior. The CMP is designed to ensure that agencies and subdivisions make consistent decisions which are both economically and environmentally sound. No change was made based on this comment.

One commenter stated that any attempt by the council to include findings in the CMP, such as those in §501.2(a)-(d), would be under-inclusive, and the findings should be deleted since federal law does not require the council to make findings. The commenter noted, however, that federal submission requirements (contained in the Code of Federal Regulations, Title 15, §923 11) include a list of uses, and that the list of actions in §§505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) , 505 60 of this title (relating to Local Government Actions Subject to the Coastal Management Program) and 506 12 of this title (relating to Federal Actions Subject to the Coastal Management Program), would meet the requirement. The findings are included in response to public comment requesting a factual basis for the CMP, and the findings are not intended to replace the required list of uses The findings constitute broad descriptions of the value of and the activities occurring within the coastal area, and the benefits and adverse effects resulting from those activities. No change was made to this section based on this comment.

One commenter requested that the term "ecological" be added to §501.2(a). The term "biological," not "ecological," appears in the section; however, because "biology" generally refers to the science of living organisms and "ecology" generally refers to the interrelationships of organisms and their environment, the change suggested by this commenter was adopted.

Three commenters requested that oil and gas production, refining and marketing be specifically referenced in §501.2(a) as a significant economic resource of the Texas coast. Oil and gas production, refining and marketing are included under "minerals" in §501.2(a). A discussion of the specific economic characteristics of the coast is provided in §501.2(c)(1), and minerals, oil and gas are included. Based on this comment, §501.2(c)(1) has been amended.

Pertaining to §501.2(a), a commenter stated that the statutory significance of "public beaches" should not be extended to "gulf beaches." The definition of "gulf beaches," as provided in §501.3(b)(9), now §501.3(b)(8) , excludes beaches which are not "public beaches," as defined in the Texas Natural Resources Code, §61.013(c). Therefore, the statutory significance of "public beaches" has not been extended to "gulf beaches." No change was made based on this comment.

Regarding §501.2(b), one commenter stated that "operating federal facilities and conducting training exercises in support of National Defense" should be added. The change suggested in this comment was not adopted, as §501.2(b) already includes several types of "facilities," "other development, " and "public purpose development." In addition, §501.2(b) includes federal facilities and training exercises; therefore, no change was made based on this comment.

Concerning §501.2(b), one commenter questioned why private conservation and preservation efforts are not included in the discussion of uses of the coast. Although use of the coast for preservation and conservation is a concern of many citizens and the council, §501.2(b) is primarily focused on those uses which may adversely affect CNRAs because that is the basis of the council's jurisdiction, pursuant to the Texas Natural Resources Code, §33. 205(a). Because conservation and preservation efforts generally do not cause adverse effects, no change was made to this subsection.

One commenter stated that §501 2(b)(1) refers to residential development as one use of the coast without clarifying that much of the residential development is for second homes that do not have the kind of importance that essential, first-home shelters would. The reference to residential development in §501 2(b)(1) does not rank the importance or essentiality of types of listed "uses" of the coastal area. No change was made based on this comment.

One commenter requested that §501.2(c) be deleted because there are many public benefits associated with oil and gas exploration and production not mentioned in §501.2(c)(1). Based on this comment, §501.2(c)(1) was changed to better reflect the public benefits derived from oil and gas exploration and production, as well as mineral extraction.

One commenter requested that §501.2(c)(1) be amended to clarify that the state holds the publicly-owned coastal resources in trust for the public for a variety of purposes, not just as a means of funding public education. Based on this comment, the subsection was modified to reflect the change requested by the commenter.

Two commenters stated that §501.2 is generally an improvement over earlier informal drafts of the findings as the result of adding the word "may" at the beginning of each finding of adverse effects; however, the commenters recommended that §501.2(d)(1)-(8) be deleted due to their breadth and failure to be based upon "good science." In the alternative, the commenters requested that the general language of §501.2(d) be amended by clarifying that the adverse effects "may" include those listed. The council has determined that the activities listed in §501.2(d)(1)-(8) "may" cause adverse effects. However, only a few of the identified activities and their associated impacts will be fully subject to the CMP after the application of the other procedural and substantive limitations in the CMP. For example, to be fully subject to the CMP, an action must be listed on the exclusive list of actions (§§505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program), 505 60 of this title (relating to Local Government Actions Subject to the Coastal Management Program) and 506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program)), related to an activity covered by a CMP policy (§501.14), taken or authorized by a listed agency (§§505.60, 505.11, 506.12), sited within the CMP boundary, and determined to adversely affect a CNRA (§501 2(a)) The Texas Natural Resources Code, §33.205, requires that "...all actions taken or authorized by state agencies and subdivisions that *may* (emphasis added) adversely affect coastal natural resource areas.. must comply with the goals and policies of the coastal management program " To provide certainty and notice to the regulated community, the council has provided findings of the types of activities, and related impacts, that are within the CMP The word "may" was not added to the general language of §501.2(d) because each finding of adverse effects in the subsection is qualified by "may," indicating the list is illustrative, and its addition would be redundant No change was made based on these comments.

One commenter recommended that §501 2(d)(2) be revised to include immobile vessels, barges or houseboats because they have the same deleterious effects on the CNRAs as structures on pilings, which are included in §501. 2(d)(2) No change was made based on this comment because §501 2(d)(2) addresses "structures," and an immobile vessel may or may not legally be a "structure."

One commenter requested that §501.2(d)(8) be revised to emphasize "means or methods of access" as a cause of adverse effects associated with hunting and fishing Section 501.2(d)(8) pertains to any activity relating to

hunting, fishing, or taking of wildlife that may affect CNRAs, including methods of access to CNRAs. Based on this comment, the subsection has been amended.

One commenter requested that §501.2(e) be amended to describe the economic liabilities of coastal development. As examples, the commenter stated that the subsection could include National Flood Insurance Program subsidies and disaster relief costs that are borne by taxpayers to underwrite coastal development, and the great cost of providing maintenance dredging and navigation support for the Gulf Intracoastal Waterway, a large portion of which is not self-sustaining and is federally subsidized. Section 501.2(a)-(d) describes the uses of and the activities occurring within the coastal area and the potential adverse effects which may result from those uses and activities. Section 501.2(e) provides that these uses and activities require "special management." The commenter's suggested change is not consistent with the intent of §501.2(e); therefore, no change was made based on this comment.

Section 501.3.

Three commenters asked that a definition of the term "actions" be provided in §501.3. No changes were made based on this comments, as "actions" are specifically and exclusively listed and defined in §§505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program), 505. 60 of this title (relating to Local Government Actions Subject to the Coastal Management Program) and 506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program), and the suggested definition would be redundant.

One commenter requested that a definition of "activity" be included in §501.3. The only activities addressed in the CMP are those identified in §501.14; therefore, no change was made based on this comment.

A commenter requested addition of a definition of "local government" to §501.3 to clarify scope of council oversight of actions by port authorities. This request was not granted, as the Texas Natural Resources Code, §33.205(a) , requires that certain actions by state agencies and political subdivisions comply with the CMP goals and policies. The Texas Natural Resources Code, §33.203(3), defines "agency" or "subdivision" broadly, and includes local governments. It is true that the port authorities and navigation districts created under Texas Constitution, Article XVI, §59(b), are quasi-governmental political subdivisions that perform duties similar in nature to the duties of a state agency. However, in the CMP, port authorities are not "local governments" because §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program) is the only section related to "local governments" and only pertains to the counties and municipalities that administer dune protection and beach access plans pursuant to the Texas Natural Resources Code, Chapters 61 and 63. Therefore, port authorities are "political subdivisions," but they are not "local governments. " No change was made to §501.3 based on this comment. However, Chapter 504 of this title (relating to Special Area Management Planning) has been revised to specifically provide that port authorities may be a "nominating entity" for SAMPs.

Many commenters asked that a definition of "second-tier counties" be included in §501.3 because certain impacts outside the boundaries are subject to the CMP. Further, the commenters wanted clear identification of the counties subject to the CMP. No change was made to include second-tier counties because, except for certain water rights permitting actions, this chapter and Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies) have been revised so that only actions in "first-tier counties" are subject to this chapter.

Concerning §501.3, one commenter stated that interpretation of the terms "mitigation, rectification, compensation, adverse effects, and beneficial uses" would result in weakening of the CMP. The CMP is based on existing environmental programs which include these terms. Because agencies are currently interpreting and applying these terms in administering existing programs, no weakening will occur. No change was made to the section as a result of this comment.

Section 501.3 has been revised for clarification by adding subsection (d) which provides that terms not defined in the CMP rules will be assigned the meaning given in the appropriate statute or rule.

One commenter requested that §501.3(a) be amended to state that the applicant has the burden of proving that an action affecting CNRAs is consistent with the CMP goals and policies, and provides the highest level of protection, consistent with accomplishing the project. Agencies and political subdivisions, not applicants, have the responsibility of determining whether an action is consistent with the CMP goals and policies. The CMP goals and policies do not uniformly require the "highest level of protection," but are generally based on the standards of protection that comport with existing law. Only on projects which are "major actions," as identified in §501.15, does the CMP require the selection of an alternative having the least adverse effects on CNRAs. No change was made based on this comment.

A commenter suggested that §501.3(a)(1) be modified to provide that adverse effects "include" as opposed to "are" the listed effects. The word "are" is deliberately used in §501.3(a)(1) to clearly provide the *exclusive* list of adverse effects addressed in the CMP. Adoption of the commenter's suggestion would result in an open-ended list, resulting in less certainty for the public and the regulated community. This subsection was not changed.

Another commenter recommended that the words "public enjoyment" be stricken from §501.3(a)(1)(B). The commenter stated that these words involve a community value assessment as opposed to an EA. In §501.3(a)(1)(B), the phrase is used to refer to alterations that interfere with public use and enjoyment as determined by the legal rights of the public. No change was made based on this comment.

The definition of "coastal waters" in §501.3(a)(5), now §501.3(a)(6), has been amended to clarify that "waters under tidal influence" are "waters subject to tidal influence."

One commenter stated that a specific definition was given for "dune areas" and "critical erosion areas," but not "critical areas." The definition of "critical areas" is provided in §501.3(a)(7), now §501.3(a)(8). No change was made based on this comment.

Concerning §501.3(a)(8), now §501.3(a)(9), four commenters wrote that the definition of "cumulative adverse effects" should be consistent with both the federal guidelines developed under the Clean Water Act, 33 United States Code Annotated, §1344(b), and the Code of Federal Regulations, Title 33, Part 320 (federal §404(b)(1) guidelines). Another commenter asked that the definition of "cumulative adverse effects" be modified to clearly include "past effects." The CMP definition of "cumulative adverse effects" is based on the federal §404(b)(1) guidelines. The difference between the CMP and the federal §404(b)(1) guidelines is that the federal guidelines only apply to dredge and fill activities, and the CMP requires consideration of cumulative adverse effects for dredging and filling in critical areas (§501.13(5)) *and* for "major actions" (§501.15(b)(1)). Regarding "past effects," the definition of "cumulative adverse effects" does not include "past effects, " but was intended to include consideration of ongoing effects from all activities (e.g., the current condition of the resource). No changes were made based on these comments.

Three commenters strongly urged that the council make no changes to §501. 3(a)(10)-(13), now §501.3(a)(11)-(14). Some changes were made to improve this subsection based on other comments.

Two commenters suggested that the definition of "secondary adverse effects" in §501.3(a)(12), now §501.3(a)(13), is vague and should be revised to limit the time frames and distances of secondary effects. Section 501.3(a)(12), now §501.3(a)(13), was not changed as suggested because permitting agencies should consider all effects that can be anticipated, based on the best available data and information. One of the premises of the CMP is to ensure that the economic and environmental value of the Texas coast is maintained, if not enhanced, for future generations of Texans. Consideration of all future secondary adverse effects that can be anticipated will aid the state in providing future Texans with an economically and environmentally valuable coast. Based on this comment, however, the subsection was amended to clarify that the consideration of secondary adverse effects is limited to effects on CNRAs.

A commenter asked that the definition of "water dependent use or facility," provided in §501.3(a)(13), now §501.3(a)(14), be amended to clarify whether the lists of "water-dependent facilities and activities" are exclusive. Another commenter asked for the addition of offshore pipelines. Based on these comments, §501.3(a)(13), now §501.3(a)(14), has been amended by: clarifying that the list

is not exclusive (the words "include, but are not limited to" have been added); adding "offshore pipelines;" and clarifying the inclusion of various components of larger development projects.

Many commenters requested that the definition of "coastal barriers" provided in §501.3(b)(1) be limited to either washover areas on barrier islands, as provided in the Texas Natural Resources Code, §33.203(1) or the CBRA, 16 United States Code Annotated, §3503(a), units. Based on these comments, the designation of "coastal barriers" as a CNRA in §501.3(b)(1) has been limited to "undeveloped areas on barrier islands and peninsulas, or otherwise protected areas, as mapped by the United States Department of the Interior, Fish and Wildlife Service."

For purposes of clarification, §501 3(b)(2) has been modified to clarify that "coastal historic areas" also include those sites on the National Register of Historic Places on public land, and that the state archeological landmarks are those that are identified by the Texas Historical Commission or the Texas Antiquities Commission.

For purposes of clarification, "Texas Parks and Wildlife Department" has been replaced with "Texas Parks and Wildlife Commission" in §501.3(b)(3).

One commenter asked that the council strike the part of §501 3(b)(3) which provides that coastal parks, wildlife management areas, and preserves must be designated by the TPWD as being "coastal in character" to be considered a CNRA. The CMP is a *coastal* management program. Therefore, §501.3(b)(3) is necessarily and properly limited to areas which are coastal in character. No change was made to the subsection based on this comment.

Two commenters requested that §501.3(b)(4), designating "coastal public submerged lands" as a CNRA, be amended to exclude fee simple title 8225 lands, which include those coastal submerged lands patented to the ports All coastal submerged lands, as opposed to only state-owned submerged lands, have been designated as CNRAs, as their economic and environmental value to Texans is not dependent on ownership However, since the CMP does not affect the title or property interests of any kind, it will not affect title to or interests in title 8225 lands. Based on these comments, §501.3(b)(4) has been deleted, and "state submerged land" and "private submerged land" have been added to new §501.3(b)(11) and (13).

Three commenters supported §501 3(b)(4)-(16) as written, and strongly urged no changes be made to this subsection. Based on other comments received on these subsections, changes were made.

Two commenters recommended deletion of "coastal shore areas" from §501. 3(b)(5), now §501.3(b)(4), because special management standards are not identified for these broadly-defined areas, making their designation as a CNRA a source of confusion, rather than clarity. Although there are no environmental programs specifically applicable to shore areas, the economic and environmental importance of such areas requires consideration by agencies and subdivisions when determining whether to issue a permit for an activity which may adversely affect such areas. The CNRA designation of coastal shore areas is important because it indicates the council's recognition that the economic value of shore areas, for example, in tourist dollars, must be preserved using related management standards established under other environmental programs. Based on comments received, §501.3(b)(5), now §501. 3(b)(4), has been amended to clarify that the designation of coastal shore areas is intended to address the impacts of erosion.

For purposes of clarification, the definition of "coastal wetlands," provided in §501.3(b)(6), now §501.3(b)(5), has been revised to more specifically identify wetlands included in the CMP.

Concerning §501.3(b)(6), now §501.3(b)(5), two commenters requested that the CNRA designation of "coastal wetlands" be expanded to include all wetlands within the CMP boundary, or in the alternative, that "wetlands" also be designated as a CNRA. Conversely, another commenter stated that, to avoid the imposition of new regulations on wetlands, the CNRA designation of "coastal wetlands" should be reduced from one mile to 100 yards landward of cut banks, as described in §19 2(a)(20) of this title (relating to Definitions), pertaining to the facility designation line (OSPRA line) Regarding the first comment, §501.3(b)(6), now §501.3(b)(5), is necessarily and properly limited to wetlands which are coastal in character. Regarding the second comment, the coastal facility designation line is an appropriate CMP "coastal wetlands" boundary, with the addition of wetlands within one mile of mean high tide of rivers and streams landward of the boundary. For purposes of clarification, the term "cut banks" has been replaced with "mean high tide " The OSPRA line, with the addition of the one mile standard, includes those wetlands which are sufficiently coastal in character to be included in the CMP. The definition was revised to more precisely identify the meaning of "areas of extended tidal influence." By definition, not all wetlands within the first-tier counties are subject to the CMP. No change was made to the CNRA designation of "coastal wetlands" based on these comments.

A commenter requested deletion of the terms "discrete" and "contiguous" from the definitions of "hard substrate reefs" and "oyster reefs," respectively provided in §501.3(b)(10) and (11), now §501 3(b)(9) and (10), because the terms are antonyms and, when used together, inconsistent and confusing. The commenter also requested that the definition of "hard substrate reefs" be revised to clarify that scattered rock and other non-living formations are not included. The terms "discrete" and "contiguous," as used in §501 3(b)(10) and (11), now §501.3(b)(9) and (10), refer to distinct reefs which share a common boundary; scattered reefs and patches of scattered reefs are excluded. Rock outcrops and other non-living formations are specifically included in §501 3(b)(10), now §501.3(b)(9). Therefore, no change was made based on these comments

For purposes of consistency with the federal §404(b)(1) guidelines, §501.3(b)(14), now §501.3(b)(15), has been amended to clarify that "sand and mud flats" are subject to wind and water induced tides.

Section 501.4.

One commenter requested that §501.4(e) be stricken. This subsection has not been deleted, as it provides important information regarding council procedures and the number of council members needed to constitute a quorum.

Two commenters supported the provisions in §501.4(e) which require four affirmative votes by council members, and recommended that it be extended to apply to federal actions. To provide consistent procedural requirements for reviewing, remanding, or reversing on federal, state and local actions, §501. 4(e) has been amended as the commenter requested and to require an affirmative vote of the majority of all council members. However, this amendment does not include federal rule consistency certification, as federal rules are not eligible for such certification.

One commenter was concerned that the chairman of the council has unilateral authority to request council action or review without the agreement of any other council member. The Texas Natural Resources Code, §33 205(b), authorizes the chairman or any three council members to refer actions to the council for review. However, pursuant to §501.4(e), four council members must affirmatively vote to remand an action. Therefore, no change was made to this section in response to this comment.

Section 501.10.

Four commenters supported §501.10 as written, and strongly urged that it not be changed. Based on other comments received, §501.10 has been revised.

A commenter requested that §501.10 be amended to provide agencies with sufficient time to take corrective action prior to the council's referral of a matter to the attorney general for enforcement pursuant to §505.42 of this title (relating to Enforcement). It is assumed that this comment refers to an agency's schedule for correcting deficiencies in a permit remanded by the council. With respect to agencies, the council will exercise discretion in determining whether and when to initiate litigation against an agency. With respect to private entities, Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies) has been revised to limit the circumstances under which the council may initiate litigation against a private entity.

One commenter requested that §501.10(a) be amended by adding a statement that the goals and policies contained in §§501.12-501.15 are not enforceable. Another commenter requested that §501.10(a) be amended to specifically state that compliance with the siting provisions in §501.14 is required These sections constitute the CMP goals and policies with which agencies and subdivisions, or persons acting under agency or *subdivision* authorizations, must comply

when taking an action that may adversely affect a CNRA. Section 501.12 contains the CMP goals. The goals constitute broad statements of what the CMP is designed to accomplish. They are not intended to establish enforceable standards, but instead guidance in interpreting the policies in proposed §§501.13-501.15, which contain enforceable standards. The goals are only enforceable in conjunction with the standards in the policies. No change was made based on this comment.

One commenter requested deletion of the word "activities" from §501.10(b) to ensure that activities undertaken by individuals are excluded from the CMP. Conversely, another commenter was opposed to limiting the purview of the council's consistency review to the actions and authorizations of agencies, municipalities and counties. "Activities" are included in the CMP pursuant to §501.14; however, only the actions and authorizations of agencies and political subdivisions will be subject to council review. "Activities" has not been deleted, as the Texas Natural Resources Code, §33 205, requires that individuals comply with the CMP goals and policies which apply to "activities. " Permit violations will be enforced by agencies and political subdivisions, not the council, pursuant to existing enforcement policies and practices. No change was made based on these comments.

For purposes of clarification, §501 10(c) was added to state that compliance with the CMP goals and policies does not supersede or eliminate any legal duty to comply with other applicable statutory and regulatory requirements.

One commenter requested that §501.10 be revised to clearly indicate that private parties undertaking activities subject to the networked authorities must comply with the CMP policies and that failure to do so is a violation of the Coastal Coordination Act. Based on this comment, §505.42 of this title (relating to Enforcement) and §505.74 of this title (relating to Enforcement) have been amended to clarify that private parties must comply with the CMP goals and policies. Agencies, not the council, are responsible for ensuring such compliance.

Section 501.11.

Four commenters requested that §501 11 be stricken from Chapter 501. Section 501.11 is included in the CMP and has been clarified to ensure that the CMP goals and policies will not be applied in a manner which would prohibit any agency from exercising its statutory or constitutional authority, except as provided for in the Coastal Coordination Act (the Texas Natural Resources Code, Chapter 33, Subchapter F); the council will not require an agency or political subdivision to take any action or adopt any rule which exceeds or conflicts with their statutory authority; the council will not exceed its statutory authority or usurp the statutory authority of agencies or political subdivisions; the council will not prescribe the content of agency and political subdivision rules; and the council will not apply the CMP goals and policies in a manner which would result in the taking, damage or destruction of private property.

A couple of commenters requested that §501.11(a) be amended to require council deference to an agency's interpretation of its statutory authority and regulations. Another commenter stated that §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program) implied that an agency would be required to exceed its statutory and constitutional authority or the exercise thereof. Section 501.11(a) has been amended to ensure that the CMP goals and policies will not be applied in a manner that would prohibit the exercise by any agency, municipality or county of its constitutional or statutory authority, unless and except to the extent allowed under the Coastal Coordination Act (the Texas Natural Resources Code, Chapter 33, Subchapter F).

Many commenters requested that §501.11(b), now §501.11(e), include a clear statement providing that the CMP goals shall not be interpreted in a manner which would result in an unconstitutional taking of property. Three commenters stated that §501.11(b), now §501.11(e), contains gratuitous language because the United States Constitution prohibits takings. Based on these comments, §501.11(b) has been replaced by §501.11(e), which provides that: "the council shall not apply the goals and policies in this chapter in a manner which would result in the taking, damage, or destruction of property, without adequate compensation, by the council or by any agency, municipality, or county." This language paraphrases the Texas Constitution and reflects existing law.

Concerning §501.11(b), now §501.11(e), one commenter requested that no public compensation be given for the regulation of private property. The council interprets this as a request that public funds not be used to compensate a landowner for any taking, damage or destruction of private property resulting from the regulation, restriction or acquisition of such property. The CMP does not provide for, nor shall the council take, any action that would result in an unconstitutional taking of private property. Therefore, no change was necessary based on this comment.

Section 501.12.

One commenter was concerned that the scope of the CMP is too narrow because it appears to be restricted to the coast of Texas. In addition, the commenter stated that the Gulf ecosystem does not respect political borders, so the council must be given the mandate to look outside Texas' borders to fully comprehend proposed actions The CMP addresses the principal coastal problems of statewide concern. Impacts originating outside the CMP boundary are within the council's jurisdiction when those impacts originate within the Texas borders and result in adverse effects on CNRAs. However, the council has narrowly limited the specific actions outside the boundary that are subject to the CMP. The federal law on interstate consistency is still being developed. No change was made based on this comment

Three commenters requested deletion of §501.12(b), pertaining to sound management of coastal resources. The foundation of the CMP is based on a realistic perspective of past, current and foreseeable future uses. The economic vitality of the coast is inextricably linked to the protection of coastal natural resources. The CMP is designed to accommodate economic development while protecting important coastal natural resources. Section 501. 12(b) contains the council's goal to allow such uses to continue within the context of the CMP, and ensure that decisions to authorize or undertake such uses are economically and environmentally sound. No change was made based on this comment.

Concerning §501.12(b), one commenter suggested that this subsection be revised by replacing the word "compatible" with "continued." The goal provided in §501.12(b) is to ensure that development within the coastal area is compatible with the various human uses of the area, and protection of CNRAs. Because "compatible development" encompasses "continued development," no change was made based on this comment.

One commenter suggested that the language of §501.12(c) be changed to provide that loss of property will be "reasonably" minimized. Section 501.12(c) embodies the goal of minimizing loss of lives and property. The commenter requests that the council adopt a goal allowing "reasonable" minimization of loss of property due to the impairment and loss of protective features of CNRAs. The comments did not define "reasonable" as proposed in the context of §501.12(c); nor did the commenter explain how such minimization would otherwise be unreasonable. Because minimization of property loss due to depletion of protective coastal features is a legitimate goal of the CMP, no change was made based on this comment.

Two commenters stated that §501.12(e) implies that the coast can be protected by balancing coastal economic development, natural resource preservation, human life and property protection, and public access assurance. One of the commenters stated that these interests are not of equal rank or type and are not necessarily compatible or balanced, and compared the council's task as "trying to compare economic 'apples' and ecological 'oranges.'" To address these concerns, the commenter recommended that only economic development which is "appropriate and compatible" should be considered in the balance. Three other commenters requested that §501.12(e) be deleted. The use of the term "balance" in §501.12(e) does not mandate that the factors be treated equally. Rather, the term is used to achieve an overall balance of the benefits listed in the subsection. The CMP embodies a reasonable balance between economic development and resource protection No predetermined weight or measurement of the various benefits is provided. No change was made based on this comment.

Concerning §501.12(h), two commenters commended the council's goal of developing and maintaining maps for the coastal area and CNRAs. The commenters stated that these maps will provide certainty to the regulated community, and that the development of the maps should be timed to coincide with federal approval Another commenter requested that the maps be completed by December, 1995. Section 501.12(h) is intended

to make agency and subdivision decision-making more informed and reliable through the use of coordinated geographic information. These maps will be merely illustrative of CNRAs and will not amend the CNRA definition. The development of CNRA maps has begun and is ongoing. The rule has been amended to state that the council will provide an opportunity for public comment on the CNRA maps.

Two commenters asked that §501.12(j), be amended to include the goal of educating the public about the technology available for protecting CNRAs, in addition to educating the public about the principal problems of state concern. In response to this comment, the language of the subsection has been changed to read: "to educate the public about the principal coastal problems of state concern and technology available for the protection and improved management of coastal natural resource areas."

Section 501.13.

A few commenters supported the language of this section as written, and strongly urged that no changes be made to §501 13. Another commenter stated that the council does not have statutory authority to implement many of the administrative policies contained in the section. The administrative policies are implemented pursuant to the Texas Natural Resources Code, §33.205. Based on the other comments received on this section, changes were made.

A commenter requested that a defintion of "local government" be added to §501 13(1) The Texas Natural Resources Code, §33.205(a), requires certain state agency or subdivision actions to comply with CMP goals and policies. The Texas Natural Resources Code, §33.203(3), broadly defines "agency or subdivision," and the definition includes local governments. Regarding local governments, however, §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program) limits the application of the CMP to those counties and municipalities that administer dune protection and beach access plans pursuant to the authority granted by the Texas Natural Resources Code, Chapters 61 and 63 No change was made based on this comment

Another commenter wrote that §501.13(1), relating to the requirement that applicants submit the information necessary for agencies and subdivisions to make informed decisions, may be used to require substantially more data from permit applicants for all permits, including actions that are routine or even below thresholds. The commenter recommended the addition of language in the subsection or in the preamble which makes it clear that the intent of this provision is not to require the permit applicant to submit extensive new information as a result of the CMP. Section 501.13(1) requires agencies to obtain from applicants the information "necessary" to make an informed decision to ensure that agencies have adequate information to render accurate consistency determinations Existing permit application requirements should be sufficient to meet this requirement. However, the type or amount of information required by the agency is an appropriate subject for council review because the type or amount of information available to an agency effects how CNRAs are managed. In addition, the section gives applicants an opportunity to contribute any additional information which may be beneficial to agency consistency determinations. This subsection was not amended.

Two commenters were concerned that §501.13(3), which requires that agencies identify circumstances in which agencies have the authority to issue variances, showed an intent to place a "heavy hand" on agencies and applicants, substantially increasing the costs of applying for and executing permits. Another commenter was concerned that §501.13(3) provided a loophole for agencies, and requested that it be deleted. Yet another commenter supported the proposal in §501.13(3) and stated that it allowed agencies to issue variances under certain circumstances which should be based upon the environmental and economic factors of each particular project. Agencies and political subdivisions currently possess certain authority to grant variances. Section 501.13(3) merely requires agencies and subdivisions to identify the circumstances under which this authority may be exercised so that the public, the regulated community, and the council are aware of the circumstances under which variances are available Section 501.13(3) will not affect the cost of applying for permits or receiving variances because no substantive requirements are imposed on applicants pursuant to this subsection No change was made based on these comments.

One commenter requested that the policy contained in §501.13(4) be amended to be consistent with the CZMA, 16 United States Code Annotated, §1455(d)(8), and associated regulations by clarifying that uses of national and regional interest are preferred over other uses The Code of Federal Regulations, Title 15, §923.52, and the CZMA, 16 United States Code Annotated, §1455(d)(8), do not require preferential treatment of uses of national or regional interest. Rather, regional interests cannot be unreasonably restricted or excluded (CZMA, 16 United States Code Annotated, §1455(d)(12)), and the national interest must be adequately considered (Code of Federal Regulations, Title 15, §923.52(a) and (b)) Because the CMP adequately addresses these federal requirements, no change was made based on this comment

Three commenters stated that §501.13(5) did not adequately reflect the council's vote to require consideration of secondary and cumulative adverse effects only in the case of dredge and fill activities in critical areas. The commenter recommended that the subsection be revised accordingly, and revised to add practicability as the standard for avoidance and minimization of direct, as well as secondary and cumulative adverse impacts. Another commenter requested that §501 13(5) be deleted to prevent additional requirements to the federal §404(b)(1) guidelines by requiring the avoidance or minimization of cumulative adverse effects. This subsection has been revised to establish a general requirement that, where practicable, secondary and cumulative adverse effects from certain dredging and construction activities in critical areas be avoided and minimized. These requirements are consistent with the federal §404(b)(1) guidelines. Section 501.13(5) was amended to more clearly reflect the council's intent.

Section 501.14.

One commenter suggested that §501.14(a) be amended to clarify that the policies in §501.14(a) are supplemental to any further restrictions or requirements relating to public beach access and use rights, and that the amendment was necessary because this subsection refers to "Gulf beaches" which, as defined in §501.3(b)(9), now §501.3(b)(8), are beaches protected under the Open Beaches Act (the Texas Natural Resources Code, Chapter 61). To clarify that the CMP does not affect the public's right to use and have access to and from the public beach, the subsection was modified as requested.

One commenter was concerned that the requirements of §501.14(a), relating to the construction of electric generating and transmission facilities, would negatively impact cogeneration facilities by precluding construction of such facilities in areas adjacent to existing facilities, and requested that cogeneration units be specifically exempted from the CMP. The PUC does not require Certificates of Convenience and Necessity for such facilities, therefore construction of cogeneration facilities is not subject to this policy. However, as a general matter, the provisions of §501.14(a) require persons proposing construction to reasonably plan to the greatest extent practicable, for expansion and, where practicable, to cluster development (i.e., expansion of existing facilities and siting of new facilities near existing facilities). This subsection was not modified.

Concerning §501.14(a)(1)(A), one commenter asked that the requirements relating to electric generating and transmission facilities comport with the requirements of hazardous waste facilities in the 100-year floodplain, as provided in §501.14(d)(1)(A)(i)-(ii), now §501.14(d)(1)(A) and (B). The commenter was concerned that §501.14(a)(1)(A) would prohibit construction of electric generating and transmission facilities in the coastal zone and wastes generated in this highly industrialized area would have to be transported long distances for disposal. Section 501.14(a)(1)(A) requires that new electric generating and transmission facilities be sited at previously developed sites, where practicable, and located to avoid future expansion into certain identified areas, to the greatest extent practicable. Because these practicability standards address this commenter's concerns, no change was made based on this comment.

One commenter asked that §501.14(a)(1)(A) be revised to discourage use of once-through cooling systems for discharges into areas within the coastal zone such as estuaries, inlets or small coastal embayments. The commenter also asked that this subsection require that new electrical generation facilities shall utilize recirculating cooling systems to the greatest extent possible. Section 501.14(a)(1)(D) requires that facilities be located to have the least adverse effects practicable. In addition, discharges from generating

facilities must comply with §501.14(f), relating to discharge of municipal and industrial wastewater to coastal waters. Although the standards provided in §501.14(a) and (f) may be met by utilizing recirculating cooling systems, a preference for such systems has not been established in the CMP. This subsection was not changed based on this comment.

In §501.14(a)(1)(C), one commenter requested that "wildlife" be replaced with "areas" in requirements relating to selection of sites with the least adverse effects. Another commenter stated that the statutory authority cited in the CMP does not confer upon the PUC jurisdiction to consider the least adverse effects on aquatic fish and wildlife. Based on the first comment, the policy has been modified to clarify that, to the greatest extent practicable, sites selected must have the least adverse effects on recreational uses of CNRAs and *areas used for* spawning, nesting and seasonal migrations of terrestrial and aquatic fish and wildlife species. Regarding the second comment, as the commenter acknowledged, existing law allows the PUC to consider (when issuing a Certificate of Convenience and Necessity) the impact of the project on: recreation, park areas, aesthetic values and environmental integrity, which includes spawning, nesting and seasonal migrations of fish and wildlife species. Section 501.14(a) identifies the recreational and environmental values of CNRAs. No change was made based on the second comment.

Regarding §501.14(c)(2)(C), two commenters requested that toxicity, in addition to salinity, be considered by the RRC when deciding whether to issue a new permit for the discharge of produced waters. The commenter stated that produced water from oil and gas production facilities *may* (emphasis added) contain other toxic or harmful constituents in addition to salts, which harm living coastal resources. Another commenter requested that the TNRCC regulations be included in §501.14(c). No change was made based on these comments, as this subsection requires that all discharges comply with TNRCC's surface water quality standards (identified in §501.14(f)), including toxicity standards.

One commenter asked that §501.14(c) be changed to conform with state water quality standards, and specifically referenced the requirement that wastewater outfalls be located where they will not adversely affect critical areas. Section 501.14(c) establishes policies which are fully consistent with existing water quality protection law. The TNRCC has the authority to identify appropriate locations for wastewater discharge outfalls. Section 501.14(c) requires the TNRCC to fully consider the impact of the particular discharge on critical areas when permitting outfall locations. Section 501.14(c)(2)(B) has been amended to provide that practicability will be considered in determining outfall locations.

Concerning §501.14(d), five commenters stated that the council has no independent statutory authority to regulate the siting of solid waste facilities, and that the provisions in the proposed CMP policies relating to siting of solid waste facilities exceed the siting authority of the TNRCC, as provided in Texas Health and Safety Code, §§361.097-361.104.

Another commenter stated that hazardous waste facilities should not be allowed. A seventh commenter requested that §501.14(d) be expanded and strengthened. Issuance of permits for solid waste facilities is an action that may adversely affect a CNRA and is appropriately subject to the CMP. Section 501.14(d) is based on TNRCC regulations, and §501.14(d)(1)(A)(i), now §501.14(d)(1)(A), prohibits construction of new landfills within a 100-year floodplain which receive hazardous waste for a fee. Based on these comments, §501.14(d)(1)(A)(i), now §501.14(d)(1)(A), has been modified to comport with existing TNRCC regulations.

Concerning §501.14(d)(1)(A), one commenter asked that the definition of "areal" be clarified and that the CMP incorporate the TNRCC's definition of "new facility." Section 501.14(d)(1) has been modified to reflect TNRCC's current regulations. Definitions of these terms are determined according to §501.3(d).

One commenter suggested that the application of §501.14(d)(1)(A)(i), now §501.14(d)(1)(A), should be limited to only those hazardous waste landfills that receive a fee *from the general public*. Another commenter asked that landfills be considered on a case-by-case basis. Section 501.14(d)(1)(A)(i), now §501.14(d)(1)(A), is not limited to hazardous waste landfills used by the general public. This policy reflects current law which makes no such distinctions. Regarding the second comment, landfills are considered on a case-by-case basis during the permitting process. This subsection was not changed based on these comments.

Another commenter asked that §501.14(d)(1)(A)(i), now §501.14(d)(1)(A), be revised to provide that "a landfill at which hazardous waste is received for a fee shall not be located in the 100-year floodplain of the Texas coastal waters," since these areas are subject to tropical storms and hurricanes. Because of their potential impacts, §501.14(d)(1)(A)(i), now §501.14(d)(1)(A), prohibits the construction of commercial hazardous waste landfills in critical areas, critical dune areas, and 100-year floodplains of perennial streams. One-hundred year floodplains are those floodplains identified by the Federal Emergency Management Agency (after September, 1985), as zones A1-99, V0 or V1-30. No change was made because the Texas Health and Safety Code, §361.098, limits this requirement to perennial streams.

One commenter stated that the first and second sentences of §501.14(d)(1)(A)(ii), now §501.14(d)(1)(B), were not consistent, and that the first sentence should be deleted. Another commenter asked that the subsection be clarified with respect to the two sentences. The first sentence of §501.14(d)(1)(A)(ii), now §501.14(d)(1)(B), limits the siting of hazardous waste landfills in existing hazard areas to those areas with flood depths of less than three feet. The second sentence specifies certain requirements for the design, construction, operation and maintenance of a landfill operated within a special hazard area, including such landfills as described in sentence one. Because the sentences are consistent, no change was made based on these comments.

One commenter requested addition of the phrase "and if such alternative does not create other significant adverse environmental impacts" to §501.14(d)(1)(A)(vi), now §501.14(d)(1)(F). Because the commenter referred to a subsection that did not mention alternatives, it is assumed that the commenter meant to refer to §501.14(d)(1)(A)(vii), now §501.14(d)(1)(G). Incorporation of the language suggested by this commenter would not be consistent with TNRCC's regulations (§335.204 of this title (relating to Unsuitable Site Characteristics)). Therefore, this language was not added and this subsection was not changed. The intent of this policy is to reflect current law.

One commenter requested deletion of §501.14(d)(1)(A)(vii), now §501.14(d)(1)(G), because properly operated landfills do not constitute a hazard to the environment and are an essential part of a comprehensive statewide waste management program. Section 501.14(d)(1)(A)(vii), now §501.14(d)(1)(G), prohibits construction of new or areal expansion of existing hazardous waste landfills in certain CNRAs if there is a viable, reasonably available alternative. While it is true that proper operation of landfills is a critical element of prevention of environmental hazards, proper siting is equally critical. In addition, these policies are based on existing law. This subsection was not amended based on this comment.

One commenter requested that §501.14(d)(1)(B), now §501.14(d)(1)(J), be modified to require the prevention of pollution "where economically feasible." No change was made to this subsection, as there is no requirement for a particular quantitative level of prevention. The provision necessarily incorporates feasibility and other factors in the determination.

One commenter suggested that §501.14(e) be expanded to include prevention, response and remediation for discharges of hazardous substances, as well as oil, because unauthorized releases of hazardous substances represent a significant threat to Texas coastal waters. TNRCC handles prevention, response and remediation for discharges of hazardous substances. TNRCC's statutory authority to regulate hazardous substance spill prevention and response is not equivalent to the GLO's authority under the Texas Natural Resources Code, Chapter 40. Therefore, the amendment suggested by this commenter was not adopted. However, TNRCC's prevention, response and remediation of hazardous waste discharges is included in the CMP pursuant to §505.50(3) of this title (relating to Agency Consistency Determination)

A commenter noted that the proposed order of compensation for injury to natural resources, as provided in §501.14(e)(2), may conflict with recent amendments to the Texas Natural Resources Code, Chapter 40, relating to natural resource damage assessment. Section 501.14(e)(2) has been revised based on this comment.

One commenter requested that "full compensation" for injured natural resources be changed to "reasonable and rational compensation" in §501.14(e) (2). Based on this com-

ment, this subsection was amended to include the phrase "reasonable and rational procedures."

A commenter requested that the words, "with federal rules and," be deleted from §501.14(e)(2). The commenter noted that recent amendments to the Texas Natural Resources Code, Chapter 40, provide a statutory scheme for assessing injury to natural resources that is significantly different from the federal requirements. This change has been made, as the Texas Legislature has amended the Texas Natural Resources Code, Chapter 40, to provide for distinct state rules for assessing natural resource damages. To require that Texas rules be consistent with federal rules would be inconsistent with the clear language of the Texas Natural Resources Code, §40.107.

Concerning §501 14(f), one commenter expressed concern over coordination of land use practices with the United States Department of Agriculture. The CMP's policies on agricultural land use will be those contained in the TSSWCBs NPS pollution program The council will coordinate with the United States Department of Agriculture through the TSSWCB

One commenter recommended that the preamble state that undefined terms have the meaning provided in the applicable agency's regulations Section 501 14(f) incorporates current laws and programs enforced and/or administered by agencies and subdivisions. To the extent that this subsection refers to statutory or regulatory terms which are not defined in the CMP, such terms retain the meaning provided in the pertinent agency's or subdivision's regulations. This comment has resulted in the addition of §501.3(d), relating to undefined terms.

One commenter stated that the technical issues raised by the policies of §501.14(f) are more properly addressed through an agency's or subdivision's rulemaking procedures. Section 501.14(f) requires that TNRCC regulations comply with the policies of §501.14(f). Therefore, many of the technical issues addressed in §501.14(f) will be resolved in the TNRCC's rulemaking process. No change was made in response to this comment.

Regarding §501.14(f), one commenter noted that coastal communities can be and are at the end of the state's many rivers, and that such communities bear the brunt of regulations which seek to improve river and bay systems. The CMP does not subject such communities to any additional regulations, and these concerns are best addressed within specific permitting programs. No change was made to this subsection based on this comment.

A commenter stated that §501.14(f) did not properly address wastewater discharges. The CMP is a networked program based on existing laws and regulations, including water quality regulations. Through the agency rule evaluation process, the council determined that current TNRCC wastewater discharge regulations are fundamentally sound policies for protecting coastal water quality No change was made to the subsection based on this comment

Concerning §501.14(f), one commenter stated that all agricultural operations within the first-tier of coastal counties, and many within the second-tier, are required to have point-source wastewater discharge permits from the TNRCC or the EPA and that such permits are subject to review by the council. Only agricultural operations required to have a wastewater discharge permit under current law are subject to the CMP. Some of these permits may conceivably be reviewed by the council. However, the CMP does not impose any new or additional regulations on these discharges; rather, the CMP incorporates TNRCC's current regulations. Therefore, no change was made in response to this comment.

At the September 16, 1994, council meeting, the member representing the TNRCC moved to conform the language in §501.14(f)(1)(A) to language in current state law. The motion passed and §501.14(f)(1)(A) has been revised by substituting "propagation and protection of terrestrial and aquatic life" for "aquatic life habitat."

Concerning §501.14(f)(1)(B)-(D), one commenter strongly supported this subsection and requested that it not be changed. Based on other comments, this subsection was amended.

Section 501.14(f)(1)(B) has been amended to clarify that the biennial coastal water quality assessment is based on the Texas Water Code, §26. 0135(d).

Concerning §501.14(f)(1)(C), one commenter stated that although it may be desirable, it is unrealistic to expect that the TNRCC will logistically be able to establish the same expiration date for all wastewater discharge permits within a given watershed or region, even as qualified with the phrase "to the greatest extent practicable." Section 501.14(f)(1)(C) is based on current law. In addition, logistics are specifically taken into account within the definition of "practicable" in §501.3(a)(10). Furthermore, this provision reflects current requirements of the Texas Water Code. Therefore, no change was made based on this comment.

One commenter asked that "wetlands" be inserted in §501.14(f)(1)(E)(i) and (ii). Adverse effects to wetlands are addressed in §501.14(h), the critical areas policy. No change was made based on this comment.

One commenter requested that §501.14(f)(2)(A) be modified by adding specific language which would require consideration of human health, environmental impacts and "the cost to attain these discharges." The TNRCC must consider human health when establishing water quality standards. The TNRCC is charged with the duty of setting standards and promulgating regulations for water quality pursuant to the Texas Water Code, §26.023, et seq, and the Clean Water Act, 33 United States Code Annotated, §§1221-1387 Although the TNRCC is required to consider human health when establishing effluent standards, the commenter suggests an amendment that would create a potential conflict with the wording of current water quality protection law. Based on this comment, §501.14(f)(4) has been added to require the TNRCC to consult with the Department of Health when discharges may adversely affect oyster reefs.

One commenter stated that consideration of "important economic or social development" in §501.14(f)(2)(B) creates a loophole for non-compliant discharge permit holders. The commenter questioned how the council would determine what development was "necessary for important economic or social development," and suggested deletion of the phrase, as it is not defined. This clause provides the council with an appropriate amount of flexibility to consider social and economic needs as part of its decision-making process, and balances economic and ecological concerns pursuant to §501.12. Further, the terms of §501.14(f)(2)(B) incorporate current TNRCC regulations in 30 TAC, Chapter 307. Whether development is "necessary for important economic or social development" is a fact-based determination that will be made on a case-by-case basis. No change was made to the subsection in response to this comment.

A commenter stated that "significantly degrade," as used in §501.14(f)(2) (B), is vague and may be problematic when applied for restoration purposes. The TNRCC will make case-by-case determinations of "significant degradation" pursuant to the policies of this subsection. If council guidance is requested, the council will consult with the TNRCC, a council member agency, in making this determination. No change was made to the subsection as a result of this comment.

Three commenters stated that the prohibition on new wastewater discharges adversely affecting critical areas, contained in §501.14(f)(2)(C), was too stringent, and requested additional language, such as "to the greatest extent practicable," to provide flexibility. A fundamental concept of the CMP is to balance economic and ecological benefits of coastal resources. Therefore, based on these comments, the subsection has been amended to provide that "to the greatest extent practicable, new waste water outflows shall be located where they will not adversely affect critical areas."

Concerning §501.14(g), one commenter expressed concern over the effects of the CMP on the Trans-Texas Water Program, the Greater Houston Wastewater Program and the city's NPS abatement program. The Trans-Texas Water Program is not adversely affected because the CMP reflects only current law on water rights. The Houston Wastewater Program and NPS program are not adversely affected, as §501.14(g) does not expand or detract from the existing NPS pollution requirements in the Texas Water Code, Chapter 26, the Texas Health and Safety Code, Chapter 366, and the Texas Agriculture Code, Chapter 201. No change was made based on this comment.

Concerning §501.14(g), one commenter strongly supported this subsection and asked that no changes be made. Based on other comments, the subsection was changed

Three commenters requested that §501.14(g) be amended by adding specific language. One commenter recommended modifying §501.14(g)(1) by providing that NPS pollution

should not be allowed to cause "substantial" degradation, and two commenters recommended limiting §501.14(g) to NPS pollution which "significantly" impairs designated uses of coastal waters The qualifying language is more properly addressed in agency or subdivision regulations of NPS pollution because it sets a measurable scientific standard for evaluating the fate and effects of NPS pollutants Section 501.14(g) uses the permissive term, "should," which allows flexibility in the agency decision-making process and addresses one commenter's concern that §501 14(g) is actually a "zero discharge" policy

A commenter recommended limiting §501.14(g) to "proven, site-specific" NPS pollution. The language was not added, as the NPS pollution is generally defined as any source of water pollution that is outside the scope of the definition of "point source," as defined in the Clean Water Act, 33 United States Code Annotated, §1362(14). The suggested language is clearly within the scope of the Clean Water Act definition of "point source." Yet another commenter requested limiting §501 14(g) to NPS pollution "problems " "Nonpoint source pollution problems" is redundant Therefore, no change was made to this subsection based on these comments

One commenter stated that §501 14(g) fails to specifically address NPS pollution generally or as caused by agriculture or municipalities, thus leaving the burden of compliance on industries such as oil and gas Another commenter asked why the NPS component of the CMP was so limited The nonpoint component of the CMP is based on existing law, therefore, any limitations in the CMP are a reflection of the limitations in existing law Section 501 14(g) (2) has been deleted, in accordance with a motion passed at the September 16, 1994, council meeting Section 501 14(g)(3), now §501 14(g)(2), requires the TSSWCB to comply with the policies of this subsection when promulgating regulations The policies address NPS pollution from industry, agriculture and municipalities Therefore, no changes were made to this subsection

Three commenters were concerned that §501 14(g) does not properly address NPS pollution, and another commenter suggested that §501 14(g)(1) be modified by requiring that the NPS pollution program be "based on rational scientific data which establishes at its core a relationship between projected environmental protection and the cost to achieve that protection " One of the commenters stated that there is insufficient research data to determine the true effects of NPS pollution Another commenter requested that §501 14(g)(1) be amended to include Texas Agricultural Experiment Station and Texas Agricultural Extension Service educational and demonstration programs Section 501 14(g) addresses NPS pollution and consists of a compilation of existing laws and regulations provided in the Texas Water Code, Chapter 26, Texas Health and Safety Code, Chapter 366, Texas Agriculture Code, §201.026, and agency or subdivision regulations implementing the previously referenced laws Therefore, no changes were made because the policy reflects current law and the suggested language would vary from existing statutory requirements.

Two commenters expressed concern regarding the impact §501.14(g) would have on TSSWCB's NPS pollution program, and one commenter questioned how §501.14(g) would impact the federal 6217 program (CZMA, 16 United States Code Annotated, §1455(b)). Another commenter asked that the NPS program be distributed for public comment. One commenter stated that §501.14(g) disregards agricultural and municipal causes of NPS pollution, and other commenters were concerned that §501.14(g) will greatly impact agriculture Another commenter stated that TSSWCB and TNRCC NPS plan certifications should be reviewed by the council TNRCC's individual approvals for cities subject to its NPS rules will be reviewable by the council. TSSWCB's approval of each plan will not be subject to council review because the individual plans vary only slightly from producer to producer. They are basically uniform Based on these comments, §501.14(g) has been amended to more precisely reflect the existing statutory authority for the TSSWCB's voluntary NPS program, which provides that "in an area that the TSSWCB identifies as having or having the potential to develop agricultural or silvicultural NPS water quality problems or an area within the 'coastal zone' designated by the council, the TSSWCB shall establish a water quality management plan certification program that provides, through the local soil and water conservation district, for the development, supervision and monitoring of individual water quality management plans for agricultural and silvicultural lands. Each plan must be developed, maintained, and implemented under regulations and criteria adopted by the TSSWCB and comply with state water quality standards established by the TNRCC The TSSWCB shall certify plans that satisfy the TSSWCB regulations and criteria and comply with state water quality standards This policy is not intended, nor shall it be interpreted, to require the TSSWCB to establish nonvoluntary requirements for the development, maintenance, or implementation of individual water quality management plans " This amendment clarifies that §501.14(g) is limited to current legal requirements.

One commenter suggested that §501 14(g)(1) ignores the required development of the coastal NPS plan, the designation of the TNRCC and the TSSWCB as the lead state agencies on NPS planning and the fact that state law may not allow for compliance with the federal requirements for the coastal NPS plan. The commenter stated that the CMP should be revised to acknowledge the status of the TNRCC and TSSWCB, making them responsible for developing the coastal NPS plan, and making them eligible for any federal funds made available for its development Section 501 14(g)(1) contains a general statement to encourage agencies and subdivisions administering NPS programs, specifically TNRCC and TSSWCB, to coordinate development and implementation of a NPS pollution program Section 501 14(g)(2) has been deleted, pursuant to a motion passed at the September 16, 1994, council meeting, and §501.14(g)(3), now §501.14(g)(2), recognizes TSSWCB's lead role with respect to agriculture and silviculture NPS pollution control. The CMP policy does not require the creation or implementation of any additional NPS regulatory measures not authorized by state statute. To clarify this point, §501.14(g)(1) has been amended to reflect that the intent of the subsection is to encourage coordination among agencies with responsibilities for such programs, not to create new or detract from any existing program requirements.

Three commenters stated that the CMP should be revised to address agricultural concerns in a more realistic manner. One stated that NPS pollution is "misused" in agriculture, another stated that agricultural concerns should be addressed through a partnership between the government and landowners, emphasizing education and voluntary adoption of a NPS pollution plan. The third commenter asked what would happen if discharges from the agriculture industry were later found to adversely affect the Gulf coast. The CMP is based on existing regulatory programs. Section 501 14(g) addresses NPS pollution through incorporation of the TSSWCB's and TNRCC's existing programs, which will address these commenters' concerns. No change was made based on these comments

One commenter stated that pursuant to §501 14(g)(2), the TNRCC review of NPS water pollution abatement plans are declared exempt from council oversight if the plan is filed by a municipality with less than 5,000 inhabitants. Since many of the developments along the coast are unincorporated communities and/or have less than 5,000 people, council review of NPS controls could be severely limited by this threshold The commenter recommended that the threshold be eliminated or lowered to a more realistic level to allow effective council review. Another commenter recommended applying the policy only to communities with 100,000 inhabitants The council deleted §501.14(g)(2) due to the council's concern that because TNRCC has not yet developed rules on urban NPSs, the policy could leave the mistaken impression that the council intends to dictate the content of the TNRCC's NPS rules. The council intends for the CMP to ultimately have both an urban and agricultural NPS policy. However, the council elects to treat the TNRCC's rules the same as the TSSWCB's rules. Unlike the TNRCC, the TSSWCB has already adopted its rules Like the other CMP policies, the TSSWCB's NPS policy is an existing policy that the council can simply incorporate into the CMP Leaving the urban NPS policy out of the CMP for now leaves no doubt that the TNRCC will take the lead on writing the policies on urban NPSs, just as the TSSWCB has on agricultural NPSs. This is what the council intends. After the TNRCC rules are adopted, the council will incorporate them into the CMP and coordinate the TNRCC's urban NPS program with other programs

A commenter suggested that §501.14(g)(2) be amended to require the TNRCC to provide funding and technical assistance. Another commenter stated that funding must be pro-

vided if any provision in §501.14(g) imposed additional NPS pollution control requirements. At the September 16, 1994, council meeting, the member representing coastal local governments moved to delete the urban NPS policy in §501.14(g)(2). The motion passed and §501.14(g)(2) was deleted accordingly.

One commenter asked that the phrase "or potential pollution" be omitted from §501.14(g)(2) because almost anything has the potential to pollute the water. At the September 16, 1994, council meeting, the member representing coastal local governments moved to delete the urban NPS policy in §501.14(g) (2). The motion passed and §501.14(g)(2) was deleted accordingly.

Two commenters requested that §501.14(g)(3), now §501.14(g)(2), be modified to clarify that the council will defer to the TSSWCB in development and implementation of a NPS water pollution program. No change was made to this subsection based on this comment. TSSWCB adopted rules implementing its program in 1993. The only council involvement in agricultural and silvicultural NPS pollution is through future amendments to the TSSWCB program.

Two commenters recommended that the preamble to Chapter 501 contain a clear statement that §501.14(h), regarding development in critical areas, is intended to be consistent with current federal §404 regulatory standards and is not intended to change the substantive requirements of the federal §404(b)(1) guidelines. The commenters suggested that this could be achieved by incorporating into the preamble language similar to that found in the current Memorandum of Agreement (MOA) between the EPA and the United States Department of the Army, concerning the determination of mitigation under the federal §404(b)(1) guidelines. Section 501.14(h) reflects the substance of the federal §404(b)(1) guidelines. Therefore, §501.14(h) has been drafted to simply and succinctly provide the substantive requirements of the federal §404(b)(1) guidelines, as currently applied. The council intends no change from the substantive policies contained in the federal §404(b)(1) guidelines To ensure the greatest possible degree of consistency among the various agencies that administer the critical areas policy and the federal §404(b)(1) guidelines, the council will rely on several sources to interpret and implement the critical areas policy. These sources are those substantive provisions in: the Code of Federal Regulations, Title 40, Part 230, that were not repeated in the critical areas policy; the MOA between the EPA and the United States Department of the Army concerning the determination of mitigation under the federal §404(b)(1) guidelines dated February, 1990; prior United States Army Corps of Engineers regulatory guidance letters and permit elevation decisions; prior EPA §404(c) permit veto decisions; adoption preambles to the federal §404(b)(1) guidelines and subsequent amendments that have been made by the EPA; and other such secondary authorities relevant to interpretation of the substantive requirements of the federal §404(b)(1) guidelines. In interpreting and implementing the critical areas policy, the council intends to accept all such sources that are published prior to the effective date of the critical areas policy With regard to those sources that are published after the effective date of the critical areas policy, the council intends to determine on a case-by-case basis whether the council agrees with that source's interpretation of the §404(b)(1) guidelines The council intends to be an equal partner with federal agencies in interpreting and implementing these policies and does not intend to be automatically bound by a federal agency's interpretations of those policies after the effective date of the critical areas policy. No change was made based on these comments.

Two commenters stated that while the preamble to the proposed rules references various sections of the federal §404(b)(1) guidelines, neither the preamble nor the rule itself contain the silviculture exemption provided in federal §404(b)(f) guidelines. The commenters requested that the adoption preamble to Chapter 501 and §501.14(h) recognize that silviculture and the other activities described in the Code of Federal Regulations, Title 33, §323.4, are exempted from the critical areas policy. Section 501.14(h)(2) has been amended to exempt normal, established farming, silviculture and ranching activities from the critical areas policy. The exemption of these activities shall be interpreted and applied consistent with the Code of Federal Regulations, Title 33, §323.4.

Two commenters stated that the council lacks the authority to adopt or incorporate the federal §404(b)(1) guidelines. Another commenter suggested that the state could not implement federal §404 permitting requirements until the state receives federal delegation of such authority. This commenter also suggested that the CMP should not regulate wetlands through the federal §401 water quality certification process. Two commenters stated that the critical areas policy is even broader than the federal policy, which only applies to wetlands One commenter recommended that this section be deleted. The Texas Natural Resources Code, §33 204(a), requires the council to adopt the CMP goals and policies, such as the critical areas policy in §501.14(h), by rule The CMP goals and policies must address actions that may adversely affect CNRAs The critical areas policy is based largely on the federal §404(b)(1) guidelines, an existing and well-established process. Rather than establishing a policy that is new and untested, the council will apply the critical areas policy in a manner consistent with the application of the federal §404(b)(1) guidelines The council is not seeking delegation of the federal §404 permitting program, and the adoption of the critical areas policy is not dependent on federal delegation of the federal §404 permitting program Pursuant to §501 14(h)(2), the TNRCC and the RRC will apply the critical areas policy when issuing federal §401 water quality certifications. Because all critical areas qualify as waters of the state, it is appropriate that discharges requiring federal §401 certification comply with the critical areas policy The council has determined that there is no lack of authority. No change was made based on these comments

One commenter stated that wetland modification had not been properly addressed in §501.14(h). Another commenter stated that Texas must adopt revised water quality standards and procedures, as existing standards and procedures fail to provide adequate authority to protect all functions and values. Regarding the first comment, a modification of a wetland that requires a federal §404 permit, or any other action listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) or §506.12, of this title (relating to Federal Actions Subject to the Coastal Management Program) must be consistent with the critical areas policy. The CMP addresses wetland modification through the adoption of policies that reflect existing law. Regarding the second comment, TNRCC and RRC application of the CMP policies to Clean Water Act, 33 United States Code Annotated, §1341, certifications ensure adequate, consistent wetlands protection. In addition, the council reserves the right to fully apply the policies to a federal §404 permit. No change was made based on this comment.

One commenter recommended that §501.14(h) be amended to include more coastal preserves. By design, §501.14(h) applies to critical areas, not coastal preserves; however, the critical areas policy applies in any critical area located within the boundary of a coastal preserve. No change was made based on this comment.

Two commenters recommended that §501.14 be amended to include "habitat." Because the definition of "critical areas," provided in §501.3(a)(7), now §501.3(a)(8), includes "habitat," no change was made based on this comment

One commenter recommended modifying §501.14(h)(1)(A) to provide that the policies of the subsection will be applied consistently with the goal of achieving no net loss of critical area functions and values "where practical, but to balance this against social and economic needs." Section 501.14(h)(1)(A) has not been changed because this subparagraph references the *goal* of no net loss of critical areas. The policies in §501.14(h) are the means by which the goal may be achieved, and the *policies* provide for the consideration of social and economic needs.

Three commenters suggested that §501.14(h)(1)(B) requires applicants to prove a negative by requiring applicants to demonstrate that there is no practicable alternative with less adverse effects. The commenters suggested that this is an impossible task and recommended that the requirement be deleted. Demonstrating that no practicable alternative with less adverse effects exists is not impossible, as applicants are required to do this pursuant to the federal §404(b)(1) guidelines. No change was made based on this comment.

One commenter recommended that §501.14(h)(1)(B) be amended to provide that persons proposing development in critical areas demonstrate that "no practical economic alternative" with less adverse effects exists. The suggested change is unnecessary because §501.14(h)(1)(B) requires persons to demonstrate that no "practicable" alternative with less adverse effects exists, and the term

"practicable" includes economic considerations. See definition of "practicable" in §501.3(a)(10), now §501.3(a)(11). Therefore, no change was made based on this comment.

One commenter recommended amending §501.14(h)(1)(B)(i) to provide that only the immediate facilities and uses that are water-dependent may be located in critical areas and that any secondary facilities or related uses supporting water-dependent structures must be located outside critical areas Another commenter recommended deleting §501.14(h)(1)(B)(i), stating that it only allowed water-dependent development in critical areas. The policy creates a presumption, not a prohibition, against non-water-dependent uses and facilities. The recommended language would be inconsistent with current law No change was made based on these comments.

One commenter recommended deleting the second sentence of §501.14(h)(1)(B) (i), suggesting that the presumption that "practicable alternatives" with less adverse effects exist for non-water-dependent development excludes economic and social considerations. Another commenter suggested that such alternatives may pose more serious environmental concerns, and recommended amending §501 14(h)(1)(B)(i) to read, "if the activity is not water-dependent, practicable alternatives are presumed to exist, unless the applicant clearly demonstrates otherwise" Because §501.14(h)(1)(B)(i) requires the identification of "practicable" alternatives, social and economic considerations are included Section 501.14(h)(1)(B)(i) has been amended, as suggested by the second commenter, to be consistent with Code of Federal Regulations, Title 40, §230. 10(a)(3), which provides that the presumption exists unless the applicant clearly demonstrates otherwise

One commenter recommended changing the list of possible alternatives in §501 14(h)(1)(B)(iii) to include the consideration of economic feasibility The suggested change is unnecessary because the practicable alternatives analysis includes economic considerations, pursuant to the definition of "practicable" in §501.3(a)(10) No change was made based on this comment

One commenter recommended that §501.14(h)(1)(C) be amended to provide that compensatory mitigation "shall not be authorized and appropriate actions begun to legally acquire the area, if significant" The proposed change obligates the state to condemn or acquire property when a person proposing an activity cannot satisfy the requirements of the critical area policy in §501 14(h) The suggested language is inconsistent with current law. Also, the council has no authority to obligate the state to acquire property Therefore, no change was made based on this comment

One commenter requested deletion of §501.14(h)(1)(C), which provides the sequence for evaluating practicable alternatives Subparagraph (C) is based on existing law and guides applicants and permitting agencies on the proper and uniform evaluation of practicable alternatives required by subparagraph (B). Therefore, no change was made based on this comment.

One commenter stated that the reference to §501.14(h)(1)(C)(i) in the proposed preamble was incomplete, as the alternatives analysis includes subclauses (i)-(iii) of this subparagraph. The commenter also suggested that the reference to Code of Federal Regulations, Title 40, §230.75(d), was incomplete The commenter recommended that the subsection contain a general reference to Code of Federal Regulations, Title 40, §230.10(a), for the alternatives analysis, as well as a reference to Code of Federal Regulations, Title 40, §230.10(d), relating to the Clean Water Act exemption, 33 United States Code Annotated, §1344. The proposed preamble will not be republished and, thus, will not be amended However, these comments warrant an explanation The proposed preamble discussion of §501.14(h)(1)(C)(i) identified the alternatives analysis as a whole. The proposed preamble reference to Code of Federal Regulations, Title 40, §230.75(d), was correct because that section described "compensatory mitigation" The proposed preamble did reference Code of Federal Regulations, Title 40, §230.10(a). The critical areas policy will be applied consistently with the federal §404(b)(1) guidelines

One commenter stated that the mitigation requirements in §501 14(h)(1)(D) -(F) may constitute an unconstitutional "taking" of property, and that acquisitions by governmental entities or voluntary donations are viable alternatives to this problem The mitigation requirements in §501 14(h) are compensatory in nature and reflect the requirements of the federal §404(b)(1) guidelines Mitigation allows projects to proceed, but requires compensation for damage to critical areas, thus balancing economic development and resource protection. Section 501.11(b) provides that this and all CMP policies shall not be interpreted or applied in such a manner as to result in an unconstitutional acquisition or taking of property. No change was made based on this comment

One commenter suggested that the order of compensatory mitigation provided in §501 14(h)(1)(D) presented a potential conflict with natural resource damage assessments and the use of regional restoration plans The order of compensation in §501 14(h)(1)(D) for impacts to critical areas is based on the federal §404(b)(1) guidelines and not on the regulations governing natural resource damage assessments or the regional restoration plans. No conflicts in these processes have been identified. No change was made based on this comment

One commenter asked whether §501 14(h)(1)(D) requires compensation for all impacts to critical areas, regardless of the value of the areas impacted, and whether this policy requires the creation of low value wetlands to compensate for impacts to low value wetlands The critical areas policy does not classify wetlands or other critical areas Compensation is only required to replace lost critical area functions and values using a one-to-one ratio The ratio is functional, not areal Since low value wetlands have fewer functions and values than high value wetlands, less compensation is required Therefore, the required compensation is commensurate with the impacts However, §501 14(h)(1)(G)(v) and (v)(IV) were amended based on this and other comments received so that these provisions would more closely reflect how the federal §404(b)(1) guidelines are applied regarding mitigation

Two commenters requested the deletion of §501.14(h)(1)(D), relating to compensatory mitigation. Section 501.14(h)(1)(D) is based on existing law and establishes uniform policies for compensatory mitigation required by §501. 14(h)(1)(C). No changes were made based on these comments

One commenter requested the deletion of §501 14(h)(1)(E), relating to mitigation banking Section 501 14(h)(1)(E) appropriately recognizes the use of mitigation banks to meet the compensatory mitigation requirements in §501 14(h)(1)(C)(iii). Section 501.14(h)(1)(E) is consistent with current regulatory practice in Texas, as evidenced by the MOA signed by the COE, Galveston District and Texas state agencies No change was made based on these comments.

Two commenters requested that §501 14(h)(1)(E) be amended to clarify that the agency authorizing the development may not be the agency approving the mitigation bank Based on this comment, §501.14(h)(1)(E) has been amended to clarify that use of a mitigation bank is not acceptable based on a particular agency's approval of creation of the bank, rather, the agency authorizing the activity must approve the use of the mitigation bank as compensation for adverse effects to the critical area

One commenter stated that the mandatory one-to-one compensation ratio in §501 14(h)(1)(F) conflicts with the statement that "it is not required in individual cases where mitigation is not practicable or would result in only inconsequential environmental benefits" A second commenter stated that the one-to-one ratio was insufficient Another commenter recommended that the third sentence of §501 14(h)(1)(F) be deleted, stating that it creates a "loophole" that would allow extensive loss of critical areas The quoted language provides an exception to the no net loss policy where mitigation is not practicable or would result in only inconsequential environmental benefits The third sentence of §501.14(h)(1)(F) has not been deleted, as it reflects current practices under the federal §404(b)(1) guidelines and recognizes that no net loss is not achievable in all circumstances No change was made based on this comment.

One commenter recommended deletion of §501 14(h)(1)(F), relating to compensatory mitigation requirements Section 501 14(h)(1)(F) is based on existing law and establishes criteria for determining compensatory mitigation required by §501.14(h)(1)(C) This section reflects current law No change was made based on this comment

One commenter recommended that §501 14(h)(1)(F) be amended to require a mitigation ratio greater than one-to-one to avoid net habitat loss The commenter stated

that it is impossible to achieve true replacement of lost functions and values through the use of off-site mitigation, and requested that monitoring and bonds be required for compensatory mitigation. The one-to-one ratio established in §501.14(h)(1)(F) is based on functions and values, not on areal extent. Therefore, as provided in §501.14(h)(1)(F), replacement of *functions and values* on a one-to-one ratio may require restoration or replacement of the *physical area affected* on a ratio higher than one-to-one. The council will rely on the agencies to monitor and ensure compliance with the compensatory mitigation requirements. Section 501.13(2) of this chapter requires agencies to identify the monitoring programs established to ensure that activities such as mitigation are consistent with the CMP goals and policies. The critical areas policy in §501.14(h) does not impose bonding requirements in all cases because such a categorical requirement would be too onerous. No change was made based on this comment.

One commenter requested that the consideration of dilution and dispersion be deleted from §501.14(h)(1)(G)(iii), suggesting that the recognition of such dilution/dispersion zones amounts to a gift of state waters to permit holders. The commenter recommended, in the alternative, that §501.14(h) be amended to require bonding to ensure restoration of mixing zone sediments and compensation for the use of these waters. The federal Clean Water Act, 33 United States Code Annotated, §§1251-1387, and the Texas Water Code, Chapter 26, permit the discharge of wastewater into state waters and recognize the use of mixing zones. The critical areas policy in §501.14(h) reflects current practices for assessing impacts to water quality and, therefore, recognizes the use of mixing zones. The critical areas policy does not require permit holders to secure bonds because such a requirement would be too onerous and would exceed current law. No change was made based on this comment.

One commenter noted that the term "development," as used in §501.14(h)(1)(G), is undefined and recommended clarification that beneficial use projects are governed only by the policies in §501.14(j)(4). Beneficial uses of dredged material that involve discharge of material to waters of the United States must comply with the dredging policies in §501.14(j), which requires, by cross reference, compliance with the critical areas policy. The dredging and critical areas policies are based on the federal §404(b)(1) guidelines which contain no exception of the type suggested by the commenter for beneficial use projects. It is, therefore, inappropriate to add such an exception in the critical areas policy. However, it is important to realize that no such exception is needed to allow for legitimate beneficial use projects to occur. The CMP goals and policies are designed to prohibit only unacceptable adverse effects. A true beneficial use project produces an overall enhancement of the functions and values of CNRAs. Therefore, neither the dredging policy nor the critical areas policy prohibit projects that are truly beneficial. No change was made based on this comment.

One commenter requested that §501.14(h)(1)(G) be amended to include the exception provided in Code of Federal Regulations, Title 40, §230.10(c) (in reference to the Clean Water Act, 33 United States Code Annotated, §1344(b) (2)). Dredging and dredged material disposal and placement must comply with all applicable provisions of §501.14(j). Section 501.14(j) contains a provision in subparagraph (B) requiring such activities to comply with the critical areas policy in §501.14(h). Since compliance with the critical areas policy is required for dredging and dredged material disposal and placement, by virtue of the cross reference, the exception in §501.14(j)(1)(D) is an exception from certain provisions of the critical areas policy for dredging and dredged material disposal and placement activities that meet the requirements of subparagraph (D). Therefore, the exception recommended by the commenter does need to be added to §501.14(h). However, §501.14 has been revised to address the potential ambiguity identified by the commenter and clarify the scope of the exception.

One commenter suggested deleting §501.14(h)(1)(G)(v)(IV), relating to recreational, aesthetic and economic values, because the provision is unclear and vague. The provision mirrors Code of Federal Regulations, Title 40, §230.10(c)(4) of the federal §404(b)(1) guidelines. However, §501.14(h)(1)(G)(v) (IV) has been amended to clarify the requirements under the Texas Water Code, Chapter 26, the Texas Natural Resources Code, Chapter 33, and the federal §404(b)(1) guidelines. The policy has been revised to clarify that consideration of adverse effects is limited to adverse effects on a CNRA.

One commenter stated that "private coastal submerged lands" should be added to §501.14(i). Private submerged lands are now defined in §501.3(b)(11) and include all submerged lands other than those owned by a state agency or political subdivision. The requested change was made.

One commenter requested that all marinas be required to have facilities for collection of waste and trash, and that they be used *as provided in §501.14(i)* (emphasis added). This subsection was not changed, as §501.14(i)(1)(B) provides for waste collection facilities for marinas.

Regarding §501.14(i)(1)(A)-(L), one commenter strongly supported these subparagraphs and asked that no changes be made. Based on other comments received, these subparagraphs were amended.

One commenter objected to the inclusion of artificial reefs in §501.14(i)(1)(F) because such reefs are subject to §505.50(6) of this title (relating to General Plans), and are distinct in function from the wharves, fishing cabins and the other waterfront structures listed in this subsection. The commenter stated that the requirements of §501.14(i)(1)(F) and §501.14(i)(1)(L) that respectively limit artificial reefs to "the minimum size necessary to serve the public purpose," and require "assurances for restoration or facility removal" are inappropriate. Another commenter asked that fishing cabins be prohibited. Artificial reefs are properly included in §501.14(i) because, even though they may be distinct in function from the other structures, they can be similar in effect. Section 505.50(6) only covers TPWD's general artificial reef plan. Section 501.14(i) covers GLO and SLB permitting of artificial reefs, therefore §501.14(i)(1)(F) and §505.60(6) are not duplicative. Section 501.14(i)(1)(F) does not limit the issuance of permits for artificial reefs; rather, it limits their size to minimize interference with navigation, natural coastal processes and other adverse effects. This subsection was not amended to prohibit the construction of fishing cabins, as that activity is authorized by the Texas Natural Resources Code, §33.119, and is regularly authorized by the GLO and the SLB, provided CNRAs are not adversely affected. However, based on this comment, §501.14(i)(1)(L) was amended by deleting the requirement that assurances be given for restoration or facility removal, as this may be more of a financial issue than one of resource protection.

A commenter requested that a practicability standard be added to the last sentence of proposed §501.14(i)(1)(J) regarding expansion of waterfront facilities. The commenter stated that it may not be possible in all cases to avoid expansion of facilities into critical areas. Based on this comment, this subsection has been modified.

One commenter requested clarification of §501.14(i)(1)(K) to indicate which agency is responsible for determining which materials are "acceptable" for construction of the identified structures. This commenter also questioned whether there were any materials available which would not cause "any adverse effects." Section 501.14(i) applies to construction activities authorized by an agency. Therefore, the agency authorizing the construction will interpret and apply §501.14(i)(3) when issuing a consistency determination. The requirements in §501.14(i)(1)(K) apply "where practicable," as stated in this subsection. There is not an outright prohibition of the use of materials which may adversely affect coastal waters or critical areas. No change was made based on this comment.

One commenter asked that §501.14(i)(1)(M) be deleted and replaced with "non-water-dependent uses shall not be allowed." It is feasible to have uses within the boundary of the CMP that are not water-dependent. Therefore, it is not practicable to disallow these uses. Water dependent projects are given preference when construction is allowed on the waterfront and on coastal public submerged lands. This subsection was not changed.

One commenter asked that §501.14(i)(1)(N), pertaining to the prohibition of filling critical areas, be amended because it impacts the oil and gas industry. Another commenter was concerned that, as drafted, the scope of §501.14(i)(1)(N) was unclear and the subsection might be misconstrued to include commercially navigable waterways. A third commenter requested that "or public uses" be deleted from §501.14(i)(1)(N). Section 501.14(i)(1)(N) has been deleted and the remaining sections were renumbered accordingly. The specific policies regarding filling of critical areas are provided in §501.14(h).

Concerning §501.14(i)(1)(O)-(Q), now §501.14(N)(i)(1)-(P), one commenter strongly supported these subparagraphs and asked that they not be changed These subparagraphs were not changed. However, they were renumbered to reflect changes to other subsections.

One commenter suggested that under §501.14(i)(3), regarding GLO and SLB management authority, the laws establishing the Beach Park Boards of Trustees should be included. These laws were not included, as this subsection only relates to activities authorized pursuant to the Texas Natural Resources Code, Chapters 32, 33, and 51-53, and Texas Water Code, Chapter 61

Section 501.14(j)

Two commenters supported §501 14(j) because it does not make placement of dredged material prohibitively expensive Another commenter stated that the cost of maintenance dredging would significantly increase due to the CMP. Section 501.14 is based on the requirements contained in existing law and the CMP does not expand or detract from those requirements. No changes were made based on these comments

Regarding §501 14(j), one commenter asked for a long-term dredging plan Pursuant to the requirements in Chapter 506 of this title (relating to Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies), the COE and state agency staff are negotiating an MOA for phasing in dredging over a five-year period Moreover, a long-term dredging plan is called for by Texas Parks and Wildlife Code, §14 002(b)(8) No change was made based on this comment

Two commenters requested that §501 14(j) identify which portions of this subsection is intended to be consistent with the Clean Water Act, 33 United States Code Annotated, §1344, guidelines, and which portions are additional requirements Another commenter stated that the legislature did not intend for the CMP to establish new laws or regulations A fourth commenter questioned how the federal guidelines were being strengthened The dredging and dredged material disposal and placement policy in §501 14(j) simply and succinctly provides the substantive requirements of the federal §404(b)(1) guidelines, as currently applied The council intends no change from the substantive policies contained in the federal §404(b)(1) guidelines As stated in the response to similar comments on the critical areas policy, the council will exercise independent judgment in implementing and interpreting the dredging and dredged material disposal and placement policy and will rely on existing sources of secondary authority relevant to the federal §404(b)(1) guidelines to interpret the policy Those substantive provisions of §501.14(j) that are not based on the federal §404(b)(1) guidelines are §501.14(j)(3)-(8) Of those, §501 14(j)(5) calls for beneficial use of dredged material, which is mentioned in the federal §404(b)(1) guidelines, albeit in much less detail Also, §501.14(j)(7) is based on provisions in current COE regulations at Code of Federal Regulations, Title 33, Parts 335 and 337 In addition, the council, in consultation with local sponsors of dredging projects, the COE and the ports, included §501.14(j)(3)-(5), relating to the beneficial use of dredged materials, and §501.14(j)(6), relating to state title to submerged lands. No change was made to this subsection

One commenter stated that the statement in the March 18, 1994, preamble regarding the incorporation of the federal §404(b)(1) guidelines is misleading because it states that §501.15(j) was "based largely on" the federal §404 guidelines when it appears that the entire section is solely based on such guidelines The commenter also asked that language from the MOA between the EPA and the United States Department of the Army, concerning the determination of mitigation under the federal §404(b)(1) guidelines, be incorporated. The proposed preamble will not be republished and, therefore, no changes will be made to the proposed preamble. However, §501.14(j) is not intended to entirely restate the requirements of federal §404(b)(1). No change was made based on this comment

One commenter recommended that §501 14(j)(1) be amended to include language that will ensure the continued right of public access to the Gulf beaches pursuant to the Texas Open Beaches Act The commenter recommends the following language "The policies of this section are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public." The council has amended the subsection to include the suggested language

One commenter recommended that the phrase "after consideration of dilution and dispersion" be deleted from §501.14(j)(1)(A) According to this commenter, if the phrase is not deleted, the state should be compensated for private use of these waters Also, the permit holders should be required to hold bonds insuring eventual cleanup of mixing zone sediments Current law requires the TNRCC to consider dilution and dispersion of dredge material prior to assessment of a violation of applicable water quality standards, pursuant to the clean water standards in 30 TAC, Chapter 307 Section 501 14(j) (1)(A) has not been amended to require bonds for cleanup of mixing zone sediments because such a requirement would exceed existing law

Regarding §501 14(j)(1)(A)-(B), one commenter supported these subsections as written and asked that no changes be made Based on other comments, these subsections have been revised

One commenter was concerned with the cumulative effects of various activities in the coastal zone because of the impact to sea grasses Another commenter stated that CNRAs should not be polluted Section 501 14(j)(1)(B), (j)(2)(A) and §501 13(5) address the impacts of dredging and filling and take into account cumulative effects on these areas No change was made based on these comments

Concerning §501 14(j)(1)(B), several commenters stated that the COE should not have to mitigate and compensate in order to continue to place dredged material in an existing designated site Another commenter concurred, stating that §501.14(j)(1)(B) should not apply to existing designated sites. Also, one commenter stated that existing dredged material disposal sites have become valuable fish and wildlife habitat which indicates that dredged material placement is not as detrimental as some groups believe. The commenter noted that this subsection appears to require compensatory mitigation for existing designated placement sites The commenter requested that the only requirement be that the dredge material be placed with due care to ensure continued attraction of this valuable resource The requirement in §501 14(j) (1)(B) is based on federal §404(b)(1) guidelines and does not impose additional requirements In addition, §501 14(j)(3) provides that disposal of dredged material is presumed to be consistent with the CMP. No change was made to this subsection in response to these comments.

One commenter recommended that the phrase "dredging and disposal of dredge material shall not be authorized," as used in §501.14(j)(1)(C), be amended to read "shall be avoided" The requirements of §501.14(j)(1)(C) are explicitly based on the requirements of the federal §404(b)(1) guidelines regarding permitting dredging See the Code of Federal Regulations, Chapter 40, Part 230, Subpart B, §230 10 These guidelines and the CMP prohibit authorization of dredging and disposal of dredged material in certain circumstances No change was made to the subsection in response to this comment

Concerning §501 14(j)(1)(C)(i), one commenter questioned if "practicable" is also defined as economically achievable and, also, what "other significant adverse effects" could occur Another commenter asked that §501 14(j)(1)(C) (i) and §501 14(j)(1)(C)(ii) be deleted The term "practicable" includes consideration of cost, logistics and existing technology, as defined in §501 3(a)(10) The phrase "other significant adverse effect," as used in §501 14(j)(C)(i), refers to adverse impacts which are likely to result from a practicable alternative under consideration The subsection requires evaluation of the adverse effects likely to result from the alternatives No change was made in response to these comments

Two commenters were concerned about the impact that §501 14(j)(1)(D) may have on dredging One other commenter stated that §501 14(j)(1)(D) could be interpreted to require mitigation for maintenance dredging activities Another commenter questioned how dredging wetlands could ever be both environmentally and economically sound Other commenters stated that dredging was not beneficial and dredging wetlands was unnecessary One commenter stated that Texas must take a strong stand against the COE. One commenter stated that §501.14(j)(1)(D) was a loophole for state and federal agencies The effects of dredging are addressed in §501 14(h), the critical areas policy Mitigation may be required pursuant to §501 14(h) to avoid adverse effects on critical areas Section 501 14(j)(1)(D) is based on current law, specifically the exception in the Clean

Water Act, 33 United States Code Annotated, §1344. Based on the comments, the provision was revised to clarify its scope and meaning.

Several commenters requested that §501.14(j)(2) be stricken because the advisory material of this subsection is not appropriate for inclusion in enforceable sections. The commenter recommended that the information be disseminated through guidelines issued by the council. The purpose of the CMP is to make "all coastal management processes more visible, accessible, coherent, consistent and accountable to the people of Texas." See the Texas Natural Resources Code, §33 202(a)(2). Section 501 14(j)(2) provides guidance on techniques which may be used to satisfy the requirement in §501. 14(j)(1) to minimize impacts to certain coastal resources. The subsection has been modified to ensure that the subsection is interpreted as illustrative of different techniques that can be employed to minimize adverse effects The circumstances of each case will determine which techniques are appropriate.

Two commenters recommended deleting §501 14(j)(2), as proposed, because this subsection is inconsistent with Code of Federal Regulations, Title 40, Part 230, Subpart H. The commenters requested that the term "avoid" be deleted from the introductory sentence of §501 14(j)(2) because it is not a part of Code of Federal Regulations, Title 40, Part 230, Subpart H. The requirements of this subsection are based upon federal §404(b)(1) guidelines as methods that may be selected to minimize adverse effects from dredging and dredged materials. Based on this comment, a definition of "avoid and otherwise minimize" has been added to §501 3(a), and the phrase "avoid and minimize" has been replaced with "minimize."

Another commenter asked that the word "can" in §501.14(j)(2)(A)-(H) be replaced with "shall " Because the referenced subsections refer to permissible techniques that are not mandatory in all cases, but only in those cases where a particular technique is appropriate, the suggested change was not adopted

One commenter asked that §501 14(j)(2)(A)(i) be modified to include "avoid smothering of organisms " The proposed subsection currently contains language that requires "locating and confining discharges to minimize smothering of organisms " It is not possible to avoid smothering of organisms in the placement of all dredge material The subsection comports with existing law. Therefore, no change was made to this subsection

One commenter suggested that §501 14(j)(2)(A)(i) include language discussing the criteria and design selection of designated disposal sites. The criteria for site selection included in this subsection is in the following provisions. §§501 14(j)(2)(A)(v), (D)(vi), (F)(iii), (G)(iv), (j)(5)(A)-(C) and (j)(6) No change was made based on this comment.

One commenter requested that the phrase "adverse disruption of water inundation patterns," used in §501.14(j)(2)(A)(ii) be defined. The phrase "adverse disruption of water inundation patterns" includes such alterations as the rise and fall of water within an area due to groundwater level fluctuations, tidal amplitude fluctuations, rates of discharge of water within a floodplain and/or stream or tributary channel, and the cyclical drying of an inundated area. No change was made to this subsection in response to this comment, as a detailed definition would limit the flexibility of this provision

One commenter recommended that safety be taken into account under §501 14(j)(2)(A)(iv) Safety is one factor among many that may be included in the analysis under §501 14(j)(2)(A)(iv) No change was made to this subsection based on this comment.

Regarding §501.14(j)(2)(B), one commenter suggested that not all dredge material can be treated and used for beneficial use, and that these situations should be considered on a case-by-case basis. Another commenter expressed concern over the placement of dredged material Section 501 14(j)(4) does not require beneficial use of dredged material Beneficial use is required if the material is "suitable" Further, the use is approved only after consideration of the anticipated environmental costs and benefits, and the proximity of the beneficial use site to the dredge area No change was made to the subsection based on this comment

A commenter requested that the word "discharge" be changed to "disposal" in §501 14(j)(2)(B)(i) The term "discharge" is used to comport with the federal §404(b)(1) guidelines terminology. No change was made in response to this comment

One commenter stated that the requirement that turbidity be minimized while dredging, as required in §501 14(j)(2)(D), imposes an undue restriction on the dredging process This subsection does not unduly restrict dredging, but simply identifies the various techniques that may be used to avoid and otherwise minimize turbidity These requirements are found in Code of Federal Regulations, Title 40, Part 230, Subpart H, §230 73(f) No change was made in response to this comment

One commenter stated that during negotiations, it was agreed that the siting provisions currently located in §501.14(j)(2)(H) of the dredging section would be moved to §501.15, of this title (relating to Policy for Major Actions), to ensure that all of the CMP siting provisions are located in the same section and clarify that the factors and considerations of §501 15 would be considered when the siting of dredging projects are analyzed. The commenter requested that since this change was not made in the proposed subsection, it should be incorporated into the final rule Another commenter stated that the limitations used in §501.14(j)(2)(H) are arbitrary and seem to circumvent the federal §404(b)(1) process for analyzing and handling dredged material The commenter recommended that sequential project analyses and evaluation techniques be used, not arbitrary limitations Section 501 15 is limited to "major actions" and, due to the potential for adverse impacts to CNRAs that the disposal of dredged material may have, it is appropriate that the council have jurisdiction over such disposal in §501.14(j)(2) even where disposal does not rise to the level of a "major action." Regarding the second comment, these provisions, as revised, simply provide minimization techniques to avoid and reduce adverse effects. The listed techniques are derived from the secondary impact provisions of the federal §404(b)(1) guidelines. Based on this comment, §501.15 was revised to clarify the relationship between the alternatives analysis requirements in §501.15 and those in §501.14.

One commenter stated that the options listed in §501.14(j)(2)(H) are intended to operate as alternatives to avoid and otherwise minimize the adverse effects of dredging. The listed options are derived from the federal §404(b)(1) guidelines No change was made based on this comment.

One commenter expressed concern over §501.14(j)(3), stating that the section should be changed to include Eas or EISs. The commenter noted that additional review for any "modification in design, size, use or function," went beyond the criteria of only reviewing actions requiring an EA or an EIS. Section 501 14(j)(3) only applies to existing sites selected on the basis of an EA or EIS. All changes in the use of an existing site, which are not included in the applicable EA or EIS should be subject to consistency review because, even if the changes do not require an EA or an EIS, such changes may conflict with the policies of the CMP. No change was made to this subsection based on this comment

Concerning §501 14(j)(3)-(p), one commenter supported these subsections, as written, and asked that no changes be made. Based on other comments received, these subsections have been amended.

One commenter suggested that "suitable" as used §501 14(j)(4) be defined. The term "suitable" means appropriate to a given purpose or occasion Because this word is used in accordance with its vernacular meaning, no change was made to this subsection.

Five commenters suggested that placement of dredged material in existing confined sites be exempt from §501.14(j)(4). One commenter stated that this subsection is a positive addition reflecting the fact that most of these sites were adequately chosen in the beginning Even material destined for a confined site should be considered for beneficial use; Such uses of the material contribute to maintenance of a healthy coast and are preferable to confining the material in a disposal site No changes were made to this subsection

Concerning §501.14(j)(4)(A), one commenter asked that a new factor, the cost of the proposed beneficial use, be added to this subsection This subsection states that suitable dredge material "must be used beneficially to the greatest extent practicable " The term practicable includes cost considerations. In addition, the proximity of the beneficial use site to the dredge site must be considered. Thus, costs of transporting dredged material to the beneficial use site are included. No change was made to this subsection in response to this comment

It was suggested by one commenter that a fourth option be added to §501. 14(j)(5) to read "designated ocean disposal sites." The subsection provides no preference for designated ocean disposal sites, but §501 14(j)(5) does not prohibit dredge disposal in designated ocean disposal sites. Notwithstanding the above, §501.14(j)(5)(C) provides for disposal in "open water areas of relatively low productivity or low biological value." No change was made to this subsection based on these comments.

Concerning §501.14(j)(5), four commenters wrote that they were concerned with the cost of the placement of dredged material and that it not be expensive. Because §501.14(j) is not substantially different from the federal §404(b)(1) guidelines, no additional requirements are imposed. Therefore, no additional costs should be incurred in the implementation of this subsection. No change was made to this subsection based on this comment

Regarding §501.14(j)(5)(C), one commenter asked for a more specific use of "low biological value" and identification of the entity responsible for determining "low biological value," in §501.14(j)(5)(C). Because the CMP is a networked program, the agency that issues a permit pursuant to §501.14(j) (5)(C) would interpret "low biological value" on a case-by-case basis. Such agencies may include TxDOT, the GLO, and the COE. No change was made to this subsection in response to this comment.

Regarding §501.14(j)(6), one commenter asked that this subsection be deleted because an agreement between the affected public owner and the adjoining private owner could be reached every time a new disposal area was needed. Section 501.14(j)(6) is intended to ensure that the state does not inadvertently lose title to state submerged lands as a result of the placement of dredged material. An agreement is needed whenever and wherever the public entity may lose title to land. No change was made based on this comment.

One commenter noted that under §501.14(j)(7)(B) and (C), the provision for 24-hour notice "emergency" dredging in cases of "an immediate threat of significant loss of property" or when "an immediate and unforeseen significant economic hardship is likely" appears to be too elastic and should be eliminated. This provision is based on existing law (the Code of Federal Regulations, Title 33, Part 337, §337.7) and recognizes that immediate dredge operations may be required. However, consistency with the applicable CMP goals and policies is required after the emergency has passed No change was made to this subsection in response to this comment

Regarding §501 14(j)(7)(C), one commenter asked that this subsection be revised to reflect that the project sponsor "must" meet with council's designated representatives to ensure consideration and consistency as they apply to emergency dredging Another commenter requested that "emergency" be defined. Based on these comments, §501 14(j)(7)(C) has been amended to require the COE "to make all reasonable efforts" to meet with the council's designated representatives. In addition, the subsection has been amended to require the COE and the applicant to submit a consistency determination within 60 days after the emergency operation is complete. A definition of "emergency" was not added, as this term is defined in the CMP policy.

One commenter stated that §501.14(j)(8), requiring an "affirmative showing of no adverse impact on coastal water quality or terrestrial and aquatic wildlife habitat within any CNRA" in order to mine sand, shell, marl, gravel and mudshell is tantamount to a prohibition against mining. A permit may be issued upon a showing of no adverse effect. Therefore, it is not a prohibition. While the standard is high, it is not intended to prohibit the activity entirely. Therefore, no change was made based on this comment

Regarding §501 14(k)(1), one commenter suggested that, due to the relatively small area and the widely recognized storm surge buffer value of critical dune areas, construction in these areas should be prohibited. Section 501.14(k)(1)(A) is based on the GLO rules for management of the beach/dune system which prohibit construction in a critical dune area that results in the material weakening of dunes and material damage to dune vegetation. This subsection was not amended.

One commenter wrote that, concerning §501 14(k)(1)(C), if construction in critical areas and areas adjacent to the coast must be allowed, replacement of the lost dune volume and vegetative cover must be on a ratio greater than one-to-one because a higher ratio would impose a penalty for such destructive construction and provide a buffer for shortcomings in dune replacement efforts The language of §501 14(k)(1)(C) provides for "at least" a one-to-one ratio for lost dune volume and vegetative cover This provision sets a threshold for minimum replacement, but allows the use of a higher replacement ratio. This subsection was not modified.

One commenter suggested that the requirement of "enhancement" of beach access be deleted from §501.14(k)(1)(D) because it is unreasonable to ask a party who is attempting to construct a structure in the beach dune system to "enhance" beach access. No change was made based on this comment because neither the CMP nor the Open Beaches Act (the Texas Natural Resources Code, Chapter 61) and the regulations promulgated thereunder, require an individual to enhance beach access unless the individual is proposing construction which will adversely affect the public beach or public access Local governments, not individuals, are responsible for developing and implementing local beach access plans for the preservation and enhancement of public use of and access to and from the public beach No change was made to this subsection based on this comment

Regarding §501 14(k)(1)(D), one commenter recommended that the phrase "the ability of the public to exercise its rights of use of and access to and from public beaches shall be preserved and enhanced," be replaced with "preserve or enhance." No change was made based on this comment, as the Texas Natural Resources Code, §61.015(a), requires that plans provide for the preservation and enhancement of the public's use of and access to and from the public beaches.

For purposes of clarification, §501.14(k)(1)(E) has been amended by deleting "where appropriate," and specifically identifying the circumstances under which construction of erosion response structures is limited or prohibited, pursuant to state law.

One commenter stated that, in regard to §501.14(m), the authority cited in the CMP does not support such a broad assertion over coastal barriers. Section 501.14(m) establishes policies which generally govern development of new infrastructure within CBRA, 16 United States Code Annotated, §3501, et seq, units and otherwise protected areas designated under CBRA. Under the CBRA, development in these areas is subject to certain restrictions on federal funding and subsidies. Based on the same concern that development proceed carefully in these highly vulnerable areas, this policy is intended to provide greater consistency and uniformity between federal law and state policies on use of state funds for such development. The policy requires that TNRCC rules and the approval of publicly funded infrastructure projects, be consistent with the general development guidelines in this policy No change was made to this subsection based on this comment

Concerning §501 14(m)(1)(B), one commenter requested that only "reasonably foreseeable" expansion be included. The commenter stated that it is impossible to predict where development will occur at some time in the distant future and some reasonable limits on time should, therefore, be incorporated in this provision. This subsection requires forethought in construction planning to avoid future expansion into critical areas and Gulf beaches. Based on this comment, this subsection was amended to clarify that future expansion must be "reasonably foreseeable."

A commenter requested that §501 14(n) be amended to more accurately state that the TPWD is responsible for identifying those coastal parks, wildlife management areas and preserves which are included in the CMP. Because §501 3(b)(3), designating the coastal parks, wildlife management areas and preserves as CNRAs, adequately identifies TPWD as the agency responsible for identifying such areas, no change was made based on this comment.

One commenter stated that §501.14(o) limits the ability of the Texas Antiquities Committee to consider the public interest and appears to prevent development affecting a coastal historic area The commenter recommended that this subsection be modified to incorporate specific factors which must be considered by the committee in making its determination, while retaining the committee's ability to issue a permit for a needed public project located in an area impacting a historical site. Section 501.14(o) does not prohibit activities which would adversely affect, damage or impair designated historical sites. Consistent with existing law, the policy requires that alteration and disturbance of these sites

be avoided and otherwise minimized. The policy does not and is not intended to contravene the Texas Antiquities Committee's existing statutory authority to issue permits for the discovery, excavation, restoration, demolition, or study, at, in or on historical landmarks pursuant to the Texas Natural Resources Code, §191 054. Pursuant to §501.13(3), the Texas Antiquities Committee may identify the circumstances in which they have the authority to issue variances from the standards or requirements of §501 14(o) No change was made based on this comment

Regarding §501.14(p), one commenter requested that TxDOT and the GLO be required to review billboard placement along coastal roads and that such review be subject to council oversight. The commenter was concerned that the lack of consistent coastal regulation of signage on the Texas coast could be easily disturbed by unregulated signs. Sign placement is not an activity which may adversely affect CNRAs, justifying inclusion in the CMP However, where construction of signs would require a federal §404 permit or other action subject to the CMP, compliance with the applicable goals and policies is required. The placement of such signs is not included in the CMP by virtue of the exclusive list of actions in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program). Therefore, this subsection was not changed.

Two commenters stated that §501.14(p) should be clarified to ensure that the term "other transportation projects" does not include transportation of oil and gas by pipelines The commenters recommended that this phrase be modified to state "other transportation projects (except transportation of oil and gas by pipelines) " Two other commenters requested that "other transportation facilities" be deleted Private oil and gas pipelines are not "other transportation projects," and are not subject to §501 14(p) This policy could only apply to an oil and gas pipeline constructed by TxDOT No changes were made based on these comments

A commenter suggested that §501 14(p) be amended by adding "[C] onstruction of or improvement of roads and highways for the purpose of hurricane evacuation may encroach upon, over and through CNRAs and coastal wetlands when no other practical and safe route can be found for coastal residents to use in emergencies " Section 501 14(p)(1) does not prevent the construction of roads described in the commenter's suggested policy. Therefore, no change was necessary based on this comment

One commenter asked that "contaminated sediments" be added to §501.14(p) (1)(B) Since a direct release of contaminated sediments would adversely impact CNRAs, this subsection was amended to incorporate this term

Concerning §501 14(p)(1)(D), one commenter requested clarification of the application of this subsection to existing or authorized projects. Another commenter asked that the phrase "to the greatest extent practicable" be added to this subsection Based on this comment, the phrases "[W]here practicable" and "except where such construction is determined to be essential for evacuation in the case of a natural disaster" were added to this subsection.

Two commenters requested clarification of §501.14(p)(1)(F) because a noun was missing from the end of the sentence One commenter asked that the word "wildlife" be inserted after "aquatic " Based on this comment, this subsection was amended

Regarding §501 14(q), the commenter stated that because the council requires TNRCC air rules to comply with federal rules, this subsection should be deleted Air quality permits are intentionally *excluded* from the CMP The CZMA, 16 United States Code Annotated, §§1451-1464, requires that the CMP ensure compliance with the Clean Air Act, 42 United States Code Annotated, §§7401-7671q. Although TNRCC's air quality permits are not included in the §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) list of actions, the rules will be subject to the CMP. No change was made based on this comment.

A commenter requested that the health of domestic animals and/or livestock be addressed in §501 14(q) This commenter recommended adding the phrase "and domestic animals (livestock)" between "public" and "health " In accordance with the Clean Air Act, 42 United States Code Annotated, §§7401-7671q, §501.14(q) provides for air quality control in the coastal area to protect human health, safety and welfare. Therefore, no change was made based on this comment.

Based on many comments received on §501.14(r), the subsection has been modified by substituting the proposed freshwater inflow policy with the exact language of the Texas Water Code provisions guaranteeing inflows to bays and estuaries

One commenter asked that §501 14(r) be amended to require maximum water conservation and to prohibit expensive water projects The council's freshwater inflow policy has been modified to be an explicit restatement of existing law These statutes do not require maximum water conservation or prohibit expensive water projects

Two commenters stated that §501 14(r) allows the council to review new applications for, and most amendments to, water rights permits outside the CMP boundary, up to 200 stream miles from the coast One of the commenters also stated that the council should not review individual permits outside the CMP boundary With respect to the first comment, the exclusive list of actions outside the CMP boundary subject to the CMP (contained in §505 11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program)) was revised to include only those permits and permit amendments within 200 stream miles of the coast for an appropriation of 5,000 acre-feet of water per year or more, an increase of 5,000 acre-feet or more of water per year or an increase in the appropriate amount of the existing permit, and a change in use of 5,000 acre feet of water to a more consumptive use, respectively Based on these comments, §505.11(a)(1)(C) was changed In addition, §505 11(a)(2)(F) (ii)(I) and §505 11(a)(2)(F)(ii)(II) have been similarly revised to include water rights actions inside the CMP boundary, except that the amount of or increase of water appropriated must be 2,500 acre-feet of water per year.

According to one commenter, review of water rights permits should be limited to only new appropriations of 5,000 acre-feet or more, and amendments or renewals of permits not involving new appropriations should not be subject to council review Another commenter requested deletion or clarification of §501 14(r) Based on this and other comments, §501 14(r) was amended to restate the relevant provisions of the Texas Water Code regarding freshwater inflow and instream flows.

A general comment on impoundments and diversions of water under §501.14(r) stated that the CMP must balance the need to protect the bays with the need to provide water to communities and industries in the affected area and further, to recognize that most impoundments of large quantities of water occur upstream, outside coastal areas. Based on this and other comments, §501.14(r) was amended to restate the relevant provisions of the Texas Water Code regarding freshwater inflow and instream flows.

One commenter recommended that §501.14(r)(1)(A) be amended to comport with Texas Water Code, §11.147(a) Based on this and other comments, §501. 14(r) was amended to restate the relevant provisions of the Texas Water Code regarding freshwater inflow and instream flows

Regarding §501 14(r)(1)(C), a commenter stated that "stock raising" was excluded from and should be included in the list of beneficial "instream uses " Based on this and other comments, §501 14(r) was amended to restate the relevant provisions of the Texas Water Code regarding freshwater inflow and instream flows

Regarding §501 14(r)(1)(C), one commenter requested that the word "irrigation" be added before the word "navigation" because, according to the Wagstaff Act, irrigation has a higher preference among beneficial uses than the other uses listed in this subsection In accordance with this and other comments, §501 14(r) was amended to restate the relevant provisions of the Texas Water Code regarding freshwater inflow and instream flows

Concerning §501 14(r)(1)(D), one commenter requested the phrase substitution of "include permit conditions for the protection of" be substituted for the phrase "reserves from available unappropriated water," to clarify that the protection of bay and estuary inflows are to be accomplished by permit conditions The commenter recommended the amendment to clarify the permit conditions being discussed in the next sentence of the subsection The commenter suggested amending §501 14(r)(1)(D) to require the TNRCC to "include permit conditions for the protection of instream flows necessary for bays " Another commenter stated that the amount of available unappropriated water may not be sufficient to provide for future projects Based on

this and other comments, §501.14(r) was amended to restate the relevant provisions of the Texas Water Code regarding freshwater inflow and instream flows.

Regarding §501.14(r)(1)(F), one commenter stated that Trans-Texas criteria would prevent development of many projects with no demonstrable evidence that there will be a corresponding environmental gain. Another commenter believed that the use of Trans-Texas criteria was ill-advised. Based on this and other comments, §501.14(r) was amended to restate the relevant provisions of the Texas Water Code regarding freshwater inflow and instream flows.

Regarding §501.14(r)(1)(G), three commenters asked that this subsection be amended to comport with Texas Water Code, §16.195, and asked for the deletion of the phrase "included but not limited to insufficient flows for existing instream uses and beneficial inflows for the maintenance of bays and estuaries." Based on this and other comments, §501.14(r) was amended to restate the relevant provisions of the Texas Water Code regarding freshwater inflow and instream flows.

One commenter wrote that under §501.14(r)(1)(G), emergency releases for beneficial inflows for the maintenance of bays and estuaries should be allowed to supersede "contractual obligations of the TWDB." Another commenter stated that §501 14(r)(1)(G) added requirements which exceed TNRCC's existing statutory authority. Based on this and other comments, §501.14(r) was amended to restate the relevant provisions of the Texas Water Code regarding freshwater inflow and instream flows.

One commenter asked that §501.14(r)(1)(G) be changed to add agriculture as a proper use for release of unappropriated water. Since release of unappropriated water for agriculture is not provided in freshwater inflow laws, no changes were made based on this comment. However, based on other comments, §501.19(r) was amended to restate the relevant provisions of the Texas Water Code regarding freshwater inflow and instream flows.

Several commenters support §501.14(s) and urge that no changes be made to this section. Changes were made to improve the subsection.

A commenter requested that §501 14(s)(1) be revised by deleting the phrase "to the greatest extent practicable," in relation to draining of wetlands, and that no draining be allowed. Section 501.14(s)(1) does not include an outright prohibition on the draining of all wetlands. Such a provision would not be in accordance with existing law. Therefore, no change was made based on this comment.

Regarding §501.14(s)(1), one commenter wrote that the CMP should recognize that detention and retention proposals are preferable flood control measures and far superior to rectification options. The policy does not express a preference for any particular flood control option. Instead, the policy requires that flood control projects be designed to avoid impoundment and draining of coastal wetlands, a CNRA. Utilizing flood control prevention options, such as detention and retention ponds, may be one way to avoid damage to coastal wetlands. However, the council expresses no preference for this approach. No change was made based on this comment.

Concerning §501.14(s)(1), two commenters asked that the reference to mitigation for adverse effects to coastal wetlands be deleted. This language was not deleted, as mitigation for adverse effects to wetlands is required to implement a "no overall net loss" policy consistent with current law

One commenter requested correction of the citation to TNRCC's statutory authority in §501.14(s)(2). Based on this comment, and for purposes of clarification, this subsection was modified.

For purposes of clarification, the phrase "other taking of fish and wildlife" has been replaced with the phrase "the protection of fish and wildlife" in the heading of §501.14(t).

One commenter asked that §501.14(t) be amended to provide that the TPWD will determine whether fishing and hunting activities will allow for the maintenance and enhancement of wildlife and fishery populations, and that adverse effects on CNRAs be minimized This subsection was changed to reflect the changes requested.

Section 501.15.

Four commenters supported §501.15 and recommended that no changes be made. Another commenter supported the use of the terms "cost-effective" and "practical alternative" in §501.15. The March 18, 1994, preamble to the proposed rules contained a statement that the public interest factors contained in §501.15(b)(5) are especially relevant to the determination of cost-effectiveness. The statement was not intended to imply that those factors carried any greater weight than any other of the factors identified in §501. 15(b)(1)-(6). All factors identified in §501.15(b) are relevant to the determination of cost-effectiveness. No changes were made based on these comments.

Four commenters opposed the requirements of §501.15 because such requirements differ from the federal NEPA, 42 United States Code Annotated, §§4321-4370d in that §501.15(b) requires "agencies and subdivisions taking a major action authorizing an activity" to select "the cost-effective and practicable alternative with less adverse effects." The commenters also questioned whether the council had statutory authority to mandate such a selection of alternatives. The council has a duty and express statutory authority to adopt goals and policies, pursuant to the Coastal Coordination Act, the Texas Natural Resources Code, §33.204. The council has discretion to determine which policies serve the purpose of the Coastal Coordination Act. The council has determined that "major actions" pose the greatest risk of adverse effects on CNRAs Therefore, an enforceable state policy that parallels and relies on the alternatives analysis required under NEPA is appropriate as a policy for managing CNRAs. This policy will be enforceable against federal agencies under the CZMA, 16 United States Code Annotated, §1456, and will give Texas greater control over these highly significant federal decisions affecting the future of the coast. Section 501.15 is not intended to mirror the NEPA requirements. NEPA is one of the foundations of §501 15 because NEPA provides a definition of "major action" and requires an analysis of alternatives. Using NEPA as a foundation ensures that no additional administrative costs or burdens are imposed because §501.15 only applies where an EIS is required. Section 501.15 is a reasonable policy which balances the need for resource protection with the need for economic development. Section 501.15 ensures that these actions are conducted in a way that has the least adverse impact on CNRAs, taking cost into account Section 501.15 establishes a policy requiring that the practicable and cost-effective alternative with the least adverse effect is selected. This policy furthers the purpose of the Coastal Coordination Act because it makes management of CNRAs more effective and efficient. No changes were made based on these comments

One commenter questioned whether the state will have authority over federal actions if the CMP is accepted into the federal coastal zone management program. After the CMP receives federal approval, the pertinent federal agencies will have to determine whether the federal actions identified in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program) are consistent with the CMP goals and policies. The council will either concur with or object to the federal determination. In cases where the council objects to the determination, federal agencies may appeal the council's objection, as provided in Chapter 506 of this title (relating to Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies) and the Code of Federal Regulations, Title 15, Part 930, Subpart H.

One commenter stated that §501.15 should be deleted because it allows the council to veto the issuance of a permit for a major action. The consistency review procedures, provided in Chapters 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies) and Chapter 506 of this title (relating to Council Procedure for Federal Consistency with Coastal Management Program Goals and Policies) do not include the power to "veto" any agency action. The consistency review procedures for agency and subdivision actions provide for an administrative hearing process pursuant to §§505.35 of this title (relating to Council Procedures for Review of an Individual Agency Action), 505 36 of this title (relating to Standard of Council Review of an Individual Agency Action) and 506.27 of this title (relating to Council Hearing to Review Federal Activities and Development Projects). If the council finds that a state agency's or subdivision's action is inconsistent with the CMP goals and policies, the council may remand the action to the state agency or subdivision pursuant to §505 38(a) of this title (relating to Council

Action on Review of an Individual Agency Action). If the council determines that a federal action is inconsistent with the CMP goals and policies, the chairman of the council and the governor's office may request mediation pursuant to §506.27(e) of this title (relating to Council Hearing to Review Federal Activities and Development Projects). Therefore, the council does not have "veto" power over the individual agency that authorizes a federal activity or a federal agency's action. No change was made to the section in response to this comment.

One commenter asked that §501.15 be amended to allow the selection of an alternative "which accomplishes the project purpose." Section 501.3(a)(10) defines "practicable" as "capable of being done after taking into consideration existing technology, cost and logistics in light of the overall purpose of the activity." Therefore, no change was made to this section in response to this comment.

Several commenters suggested that the phrase "equitable socioeconomic distribution of environmental hazards," in §501.15(b)(5), be deleted because the council has no statutory authority to consider this factor in determining practicable alternatives with the least adverse effects. Another commenter suggested that the meaning of the phrase is unclear. The CZMA, 42 United States Code Annotated, §1452(2)(D) and §1452(2)(F), requires that state coastal management programs provide for "priority consideration being given to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation, and the location, to the maximum extent practicable, of new commercial and industrial developments in or adjacent to areas where such development already exists." Further, the CZMA requires assistance in the redevelopment of deteriorating urban waterfronts and ports, and sensitive preservation and restoration of historic, cultural, and esthetic coastal features." The consideration of the "equitable socioeconomic distribution of environmental hazards" is intended to partially address siting and redevelopment considerations as required by the CZMA. No changes were made to the section in response to these comments

One commenter characterized and objected to §501.15 as an unfunded mandate imposed on local governments. This section does not create an unfunded mandate on local governments or impose undue costs on local governments. Section 501.15 only applies if an EIS is already required for the proposed action. In preparing the EIS, the pertinent federal agency will necessarily analyze alternatives, including the environmental impact and practicability of the alternatives. Section 501.15 requires the selection of the alternative only if such alternative is "cost effective" and "practicable." Therefore, no change was made to this section in response to this comment.

Regarding §501.15, one commenter requested that the proposed preamble to Chapter 501 be amended to resolve the "conflict" between acknowledgement of the potential for increased costs to local governments and allowing local governments to draw on the resources of other agencies. The preamble to the proposed rules will not be republished. Therefore, no changes will be made to the preamble of the proposed rule. However, increased costs associated with a determination of a practicable alternative with the least adverse effects on CNRAs is not in conflict with §501.15(c), which allows local governments to draw on the resources of agencies in making such determinations.

One commenter recommended amending §501.15(a) to provide that no "EIS-type" requirement shall be instituted for agency actions unless otherwise required by NEPA. Section 501.15(a) defines a major action as an action requiring an EIS pursuant to NEPA. Therefore, by definition, §501.15 only applies to those actions which already require a federal agency to prepare an EIS under NEPA. No change was made to the subsection in response to this comment.

One commenter wrote that the proposed preamble to Chapter 501 was incorrect because the council never formally "directed" the GLO to submit the CMP to the federal NOAA for approval in June, 1994. The preambles to the proposed rule is not republished upon adoption of rules. However, clarification of this issue is merited. The commenter distinguishes "formal" and "informal" direction. For example, the former may be evidenced by a resolution, while the latter may be construed from council determinations and decisions regarding program development deadlines. The overwhelming majority of the council members wanted some finality in June, and clearly directed agency staffs as to the desired course of action. In addition, the legislature mandated that the CMP be developed over three years ago.

General Comments.

Many commenters stated that the CMP did not adequately address environmental and economic concerns. The most fundamental premise upon which the CMP is based is that the State of Texas can and must place equal emphasis on a productive environment and a healthy economy in managing the natural resources of the coast. This is because the two are related. A healthy, diverse economy depends on an environment that is biologically and economically productive. This premise is stated in the goals in §501.12.

Several commenters stated that the CMP was an Austin-based document which would result in the loss of local control of the coast. The CMP does not shift decision-making away from local entities. Rather, it enhances local decision-making. The CMP does not create new legal requirements designed by agencies in Austin. The CMP is best described as a compendium of existing statutes, rules and regulations. Therefore, it does not add new legal requirements that severely impact local governments over their objections. For local governments, only issuance of beachfront construction certificates and dune protection permits are subject to the CMP and, of those, few will be reviewable by the council. The CMP does not impose any new standards or procedures on local governments for issuance of these certificates or permits. Local governments have played an integral part in developing the CMP, helping shape the program as much as any other stakeholder. Finally, local governments have permanent representation on the council and, when any action is reviewed, the governor is required to appoint an additional local government official to participate as a non-voting council member.

The CMP enhances local control of coastal natural resource management through the SAMP process. A SAMP allows local entities, including political subdivisions, to develop a specialized management plan for local areas of special concern. Where they overlap, the custom-tailored SAMP replaces the CMP for that area. State and federal agency actions must comply with the locally-designed SAMP. Therefore, the CMP significantly strengthens local control.

Many commenters stated that the CMP contained unfunded mandates. As the preamble to the March 18, 1994, rule proposal stated, the CMP is based on existing statutory and regulatory requirements. Since the CMP establishes no requirements that either private or public permit applicants cannot satisfy within current funding restraints, it does not create unfunded mandates.

Several commenters expressed concern as to how the CMP would impact the implementation of the state's NPS program. The CMP simply incorporates the NPS pollution programs of the TSSWCB and the TNRCC that have already been mandated by the legislature in 1991 and 1987, respectively. The CMP does not impose any additional requirements. While it is true that the CZMA requires states with federally-approved coastal management programs to develop and implement coastal NPS pollution control programs, the council believes the TSSWCB and TNRCC programs will be sufficient to comply with this requirement.

Many commenters stated that the CMP was duplicative, as state agencies are already managing CNRAs. Agencies are doing a good job of managing coastal natural resources, given the basic institutional constraint of having a dozen or more agencies operating under complex and often conflicting statutory mandates. The council's legislative mandate, under the Coastal Coordination Act, is to improve agencies' performance by increasing interagency coordination. While current management by agencies is comprehensive, in that all activities are regulated, current management can be made more efficient and more effective if coordinated. That is the purpose of the CMP.

Many commenters were concerned about the council's ability to review and remand permits, and that such actions would delay permitting processes. In enacting the Coastal Coordination Act, the legislature expressly authorized the council to remand and ultimately reverse an agency or subdivision action that is inconsistent with the CMP. This power is necessary to perform the coordination function that is the council's primary mission. The council cannot be an effective coordinator unless it has some ability to ensure compliance with the CMP. However, it has been the council's directive throughout

development of the CMP that its review and remand powers be focused so that they will be exercised only in cases of major disputes over projects with significant impacts on CNRAs. The council also directed that the CMP consistency review process be designed to fit into current agency permitting processes and schedules. Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies), as modified, successfully complies with that directive by, among other things, expressly requiring that CMP consistency issues first be raised within the context of an agency's own permitting process. This process provides an opportunity for early resolution of disagreements through preliminary review of agencies' actions by staff of council members, and harmonizes council review schedules with existing practice under the Texas APA. In practice, therefore, few permit applicants, if any, will ever face delays in receiving permits because of the CMP.

Many commenters requested that the council postpone adoption and implementation of the CMP. The council voted to adopt the CMP on September 16, 1994; however, the CMP will not be implemented until June, 1995. This schedule is designed to allow the public time to review the changes to the council rules prior to final adoption. It also gives agencies an opportunity to adopt consistency review thresholds and obtain council certification that their rules are consistent with the CMP before the agencies' actions are ever subject to consistency review. Finally, it gives the legislature an opportunity to review the CMP before it is implemented.

Several commenters stated that the CMP consists of new laws and additional requirements. Development of the CMP began with a comprehensive examination of existing laws and regulations. The CMP does not impose or create any requirement which is beyond the existing legal authority of an agency or local government to implement. The CMP is a compendium of existing statutes, rules and regulations. The CMP does not create or add new legal requirements except in rare instances where the council, after full consultation with the affected parties, agreed that a refinement or clarification of existing rules was needed.

Many commenters were concerned that the provisions of the CMP are beyond the council's statutory authority. The CMP does not exceed the legal authority that the legislature has delegated either to the council or to any other agency. The CMP is basically cumulative of existing law. Where clarifications or refinements to existing law are made, the council and the parties affected by the change have carefully reviewed current legal authority to ensure the provision is within the statutory authority of an agency to implement

Some commenters stated that the CMP is a state-wide plan. The CMP is not a state-wide plan. Chapter 501 expressly limits its geographic scope to actions within the boundary, established in Chapter 503 of this title (relating to Coastal Management Program), with the exception of certain high-volume water rights actions within 200 stream-miles of the coast. The latter are included in the CMP because current Texas Water Code provisions recognize the potential impacts on the health of bays and estuaries from withdrawals and diversions of water within 200 river-miles of the coast. Several agencies have statutory mandates with respect to the health of bays and estuaries as it relates to freshwater inflows from rivers Therefore, the coordination provided by the council is especially appropriate on these issues.

Several commenters stated that the CMP should be reviewed by the legislature Implementation of the CMP will be delayed so that the legislature may review it before it is implemented. When the legislature created the Coastal Coordination Council in 1991, it gave the council broad authority which the council has narrowed substantially through rulemaking. The council has taken a conservative approach in implementing its responsibilities.

Many commenters stated that the scope of the CMP was too narrow. In enacting the Coastal Coordination Act, the legislature expressly authorized the council to review certain agency and subdivision actions for consistency with the CMP This authority is essential to enable the council to effectively perform its primary function of coordination The council's directive throughout development of the CMP has been that its review and remand powers should be commensurate with that function. The council believes that the CMP achieves that purpose.

Several commenters stated that the council was a super-agency and that the CMP represented an additional layer of bureaucracy The Coastal Coordination Act does not authorize the council to hire any staff. Rather, the council must rely on the staff of its existing member agencies. Furthermore, since the CMP creates no new permits and is designed to coordinate existing laws and regulations, no additional burden will be placed upon those conducting business with the agencies involved. Consequently, the CMP will not create a super-agency or an additional layer of bureaucracy In fact, one of the goals of the CMP is to streamline existing permitting procedures and make it easier, not harder, to obtain state and federal agency permission for actions

Many commenters were concerned about the fiscal implications of adopting the CMP As the preamble to the March 18, 1994, rule proposal stated, the CMP is based on existing statutory and regulatory requirements Since the CMP does not establish requirements that disregard cost, it does not impose unreasonable costs or have negative impacts on land values The fiscal analysis in the March 18, 1994, rule proposal satisfies all legal requirements for proposed rules. However, prior to adoption, the council will perform additional fiscal analyses on certain parts of the CMP to further public understanding of the program.

Some commenters were concerned that agricultural interests were not represented on the council. The governor has requested, and the council will recommend, that the chair of the TWDB and chair of the TSSWCB be added to the council immediately as non-voting members. The governor will seek legislation adding them as full voting members in the next legislative session.

Some commenters stated that the CMP was too long and confusing. The CMP is basically a compendium of existing law. These existing statutes, rules, and regulations are much longer and more complicated than the council rules. The council has compiled, summarized and simplified these laws as they apply to the coastal area. For the first time, agencies and permit applicants can refer to one coordinated program when doing business along the coast.

Many commenters stated that, without thresholds, it is hard to comment on the CMP. Accordingly, implementation of the CMP will be delayed until June of 1995 so that agencies have time to develop thresholds for council review, and the public has an opportunity to comment on them

The council received many letters of support for their proposed rules and for the CMP. Many expressed the view that a comprehensive CMP for Texas is long overdue and objected to any further delay in adoption and implementation of the program. Many others cited the open manner in which the council has developed the CMP and the council's willingness to refine the program in response to suggestions as a basis to move forward with adoption

Many commenters asked for clarification of the right to request that the council refer a matter for review The rules require that a person first participate in and raise CMP consistency issues during the line agency process in order to later request referral to the council. In cases below the agency-established thresholds, a state agency must object to the consistency determination to make the case eligible for council review.

Many commenters stated that the CMP was developed without sufficient public input. While it is true that each person potentially interested in the CMP may not have participated in the process to date, literally hundreds of Texans along the coast and representatives of every business, industry, agricultural, civic, conservation and environmental interest group with coastal interests have been involved in a myriad of consensus-building activities undertaken in the last five years. In addition, the council formed 15 special focus groups representing diverse interests along the coast to provide direct feedback on the program as it developed. These groups have been intimately involved in drafting the CMP rules. Finally, the GLO has published a CMP newsletter, with a circulation of more than 4,500, to keep the public informed on each step in the program development

Several commenters stated that there should be an opportunity for the public to have an ongoing review of the CMP. The CMP provides regular opportunities for the public to comment on and participate in the implementation of the program. The council will meet at least every three months, and interested parties can appear and testify on the CMP. The council will also prepare an annual report that will be widely distributed to the public for comment. The program will also be subject to

review by the legislature every session. Finally, the council intends to establish regional citizen advisory committees to provide direct and regular feedback to the council on implementation of the program.

Several commenters requested that the word "greatest" be deleted from the phrase "to the greatest extent practicable" wherever that phrase is used in Chapters 501, 504, 505, and 506. Other commenters reasoned that if the term "greatest extent practicable" is not synonymous with "practicable," the phrase should be defined by rule and published for public comment. As used in this chapter, the phrase "to the greatest extent practicable" is intended to have the common vernacular meaning, to the highest degree of measure Where an applicant or agency proposes two alternatives, each practicable according to the definition, Chapter 501 generally requires the selection of the alternative which avoids or minimizes adverse effects to the highest or greatest degree No change was made based on this comment.

Several other commenters noted that the phrase "maximum extent practicable" was interchanged with other phrases using the term practicable and recommended that consistent terminology be used throughout the rules. One commenter suggested that the phrase "to the greatest extent practicable" in §501.14(p) (1)(B) and elsewhere be deleted throughout the plan or defined to mean the same as "maximum extent practicable." The rules have been revised to use the term "to the greatest extent practicable" throughout. To avoid confusion, the phrase "to the maximum extent practicable" was not chosen as that phrase has special meaning in the CZMA, 16 United States Code Annotated, §§1451-1464, which would be inappropriate in Chapter 501.

Concerning §501.3(a)(10), two commenters stated that the proposed definition of "practicable" should be revised by deleting the last sentence to address situations where expenditures necessary to achieve environmental benefits are grossly disproportionate in comparison to the anticipated environmental benefits. As an alternative to deletion of the last sentence, the commenter suggested revising to require consideration of cost-effectiveness whenever practicability is a consideration. Another commenter stated that the factors should not be weighed "equally and objectively," but with more weight placed on one factor more than the other in certain instances. The definition of "practicability" appears in §501 3(a) (10) and is drawn directly from existing federal regulations Practicability requires an analysis of the cost and the technological and logistical feasibility of the alternative in light of the project purpose. The definition provides that all four factors be analyzed in decision-making. While the individual circumstances of each case may result in one factor being given more weight in the decision-making process, no factor can be analyzed independently of the others The language is intended to emphasize that determining what is practicable cannot done by analyzing one of the factors alone For example, the practicability of an alternative cannot be determined based solely on an analysis of whether or not the alternative serves the project purpose. It cannot be said that the alternative is not practicable for the sole reason that the project purpose is not fully and completely served. Technology, cost and logistics must be fully analyzed and weighed before practicability of the project can be determined. If the project is affordable and technologically and logistically feasible, it is practicable if it fundamentally and substantially serves the project purpose.

One commenter stated that the terms "practicable" and "cumulative impacts" are unacceptable as defined in the CMP. The terms defined in the CMP are based on existing law Therefore, no change was made in response to this comment.

In a general comment on this chapter, one commenter requested that the goals of the CMP should focus on coastal public land, not CNRAs, and that there is no indication of legislative intent to grant the GLO and the council the authority to oversee and regulate development and other activities for the entire Texas coastal area. The provisions of the Texas Natural Resources Code, §33.204, provide the council with the authority to designate CNRAs, promulgate the CMP goals and policies, and to review certain actions to ensure they are consistent with the goals and policies. The statute does not limit designation of CNRAs, adoption of goals and policies, or review of actions to only those affecting public land. No change was made based on this comment.

Groups and associations in opposition because they requested changes in, or otherwise expressed dissatisfaction with, the chapter were: American Shoreline, Inc.; The American Waterways Operators; Amoco Chemical Company; Barge Transport Company, Inc.; City of Baytown; Baytown Refinery; City of Brownsville; Calhoun County Navigation District; Champion International Corporation; Chevron U.S.A. Production Company; Centurion Consulting Group; Coastal Bend Environmental Coalition; Coastal Bend Sierra Club; Commercial Navigation and Dredging Focus Group; City of Corpus Christi; Corpus Christi Area Builders Association; Corpus Christi Board of Realtors; Corpus Christi City Council; Dan A. Hughes Company, Don Mafrige Real Estate; Exxon Company, U. S.A.; The Fordyce Company; Freese and Nichols, Inc.; Friendswood Development Company, Frontera Audubon Society; G&A Environmental, G&W Engineers; Galveston County Beach Park Board of Trustees; Greater Fort Bend Economic Development Council; Greater Houston Builders Association; City of Groves; Gulf Coast Rod, Reel and Gun Club; Gulf Coast Waste Disposal Authority; Gutierrez, Smouse, Wilmut and Associates; Harris County; Harris County Engineering Department; Harris County Flood Control District; Higman Barge Lines; Hoechst-Celanese Corporation; Hollywood Marine, Inc.; City of Houston; Houston-Galveston Area Council, Houston Lighting and Power Company; King Fisher Marine Services; Kocurek Farms; City of Lake Jackson; Last Days Chronicles; Lavaca-Navidad River Authority, City of Liberty; Lower Neches Valley Authority; Lundberg Operating Company, Maryland Marine, Inc.; Matagorda County Navigation District; Mitchell Energy and Development Corporation; Mobil Oil Corporation; National Marine, Inc.; National Marine Fisheries Service (Habitat Conservation Division) ; Natural Gas Pipeline Company of America; Newport Estates; Nueces County Coastal Management Committee; Nueces County Economic Development Focus Group; Oryx Energy; Pennzoil Company; Phillips Petroleum Company; Port of Brownsville; Port of Houston; Port of Houston Authority; Port Lavaca/Port Comfort; Real Estate and Economic Development Focus Group; Sabine Neches Channel Association; San Jacinto River Association; Shell Western E&P, Inc.; Southern Rolling Plains Cotton Growers Association; South Texas Cotton and Grain Association, Inc.; SpectraOne; Sportsmen Conservationists of Texas; Terrell County; Texaco, Inc.; Texas A&M University; Texas Agri-Women; Texas and Southwestern Cattle Raisers Association; Texas Association of Nurserymen; Texas Center for Policy Studies; Texas Chemical Council; City of Texas City; Texas Committee on Natural Resources; Texas Department of Agriculture; Texas Department of Transportation; Texas Ecologists; Texas Independent Producers and Royalty Owners Association (TIPRO); Texas Mid-Continent Oil & Gas Association (TMOGA); Texas Parks and Wildlife Department; Texas Ports Association; Texas Poultry Federation; Texas Railroad Commission; Texas Rice Improvement Association; Texas Sheep and Goat Raisers' Association; Texas Water Conservation Association; Texas Water Development Board; Texas Waterways Operators; Trans Texas Heritage Association; Trinity Improvement Association; TriTech Regional Council; United States Department of the Army (Corps of Engineers); United States Department of Commerce (National Oceanic and Atmospheric Association, Office of Ocean and Coastal Resource Management and National Marine Fisheries Service); United States Environmental Protection Agency (Region VI); United States Department of the Interior (Fish and Wildlife Service and Mineral Management Service); United States Department of the Navy; Union Carbide; Waste Management, Inc.

Groups and associations expressing support for the chapter were: Galveston Bay Foundation; Houston Audubon Society; and Southmost Soil and Water Conservation District

Groups and associations expressing general opposition to the CMP were: American Sheep Industry Association; Appraisal Institute; Arter, Hadden, Johnson & Bromberg; Brazoria County; Calhoun County Resource Watch; Cameron County Parks Advisory Board; Citgo Refining and Chemicals; Coastal States Management Corporation; Corpus Christi Board of Realtors; Corpus Christi Geological Society; R.C. Deal and Associates; Exxon Chemical Company; Fort Worth Audubon Society; Harris County Mayors and Council Association; Help Endangered Animals-Ridley Turtles; City of Lake Jackson; Lundberg Operating Company; Montgomery Central Appraisal District; Oryx Energy Company; Padre Island Business Association; People's Action Coalition; Port of Corpus Christi Authority; Reynolds Metals Company; Rio Grande Valley Sugar Growers,

Inc.; Society of Independent Professional Earth Scientists; South Texas Cotton and Grain Association, Inc., Southern Rolling Plains Cotton Growers Association, Inc.; Texans for Marta Greytok; Texas Agricultural Cooperative Council; Texas Association of Business; Texas Beneficial Use Coalition; Texas Cattle Feeders Association; Texas Chapter of the Wildlife Society, Texas Citrus Mutual; Texas Cotton Producers, Inc.; Texas Farm Bureau; Texas Historical Commission; Texas Independent Producers and Royalty Owners Association (TIPRO); Texas Municipal League; Texas Rice Improvement Association; Texas Sheep and Goat Raisers' Association; Texas and Southwestern Cattle Raisers Association; Trans Texas Heritage Association; Trinity Improvement Association, Tug Josephine, Incorporated; United States Department of Transportation (United States Coast Guard); Valero Energy Corporation, Valero Refining Company, Western Towing Company; The Woodlands Corporation.

Groups and associations expressing general support for the CMP were: Armand Bayou Nature Center; Bayou Preservation Association; Clean Water Action; Coastal Bend Bays Foundation, Inc.; ENSR Consulting and Engineering; East Matagorda Bay Foundation, Galveston Bay Conservation and Preservation Association; Galveston Bay National Estuary Program, Galveston County Beach Preservation Committee; Houston Mayor's Advisory Committee on the Environment, League of Women Voters, State of Louisiana, Lower Laguna Madre Foundation, National Audubon Society, Nueces County Commissioners Court, Outdoor Nature Club, City of Seabrook, Sierra Club, Sportsmen Conservationists of Texas, Texas Shrimp Association, Turner Collie and Braden, Inc., United States Department of the Interior (Fish and Wildlife Service)

The following groups and associations were neutral with regard to the adoption of this chapter Office of the Texas Attorney General, Fort Bend Economic Development Council; and Sargent Area Chamber of Commerce

The following groups and associations were neutral with regard to the adoption of the CMP: Arroyo Colorado Conservation Watch, Central Power and Light; Mueller Engineering Corporation, Texas State Soil and Water Conservation Board.

In addition to the many comments received during the comment period, a number of comments were received after the expiration of the comment period. While these comments have not been, for the most part, responded to individually unlike comments received earlier, concerns expressed in those comments have been addressed in responses to many earlier comments. GLO staff gratefully acknowledges the involvement of so many individuals, businesses, trade association, nongovernment organizations and public officials whose thoughtful comments we have read Chapters 501, 504, 505, and 506 have been extensively revised and improved in light of these comments, reflecting as they do a broad spectrum of economic, ecological, and other concerns held by Texans throughout the state. The commenters whose comments were received after the deadline are: Amoco Chemical Company; Galveston Chamber of Commerce, Lower Colorado River Authority, Maryland Marine, Inc.; The Honorable Bill Sims, State Senator; South Shore Harbour Development, Limited; United States Environmental Protection Agency (Region VI).

Subchapter A. General Provisions

• 31 TAC §§501.1-501.4

The new sections are adopted pursuant to the authority provided in the Texas Natural Resources Code, Chapter 33, Subchapter C, and Texas Natural Resources Code, Chapter 33, Subchapter F, §33 204(a), which requires the council to promulgate rules adopting the CMP goals and policies.

§501.1. Program for Special Management of Coastal Natural Resource Areas

(a) The purpose of the Texas Coastal Management Program (CMP) is to make more effective and efficient use of public funds and to more effectively and efficiently manage coastal natural resource areas (CNRAs) and the activities that may adversely affect them The program is based on goals and policies that set standards to guide the use and development of CNRAs, preserve and protect CNRAs, and improve government processes. The Coastal Coordination Council (council) will adopt rules promulgating the goals and policies The Coastal Coordination Act requires agency or subdivision actions to comply with these goals and policies.

(b) The council will exercise authority pursuant to the Coastal Coordination Act in the following ways

(1) The council will study and review the principal coastal problems of state concern This review will include examination of the current status and future trends of CNRAs, examination of conflicts between competing uses of CNRAs; and examination of policy issues with respect to local, state, or national interests and concerns related to CNRAs. The council will examine alternative regulatory and other management approaches to these problems, identify data collection and research needs, and foster public education and participation.

(2) The council will coordinate the performance of agencies, subdivisions, and programs by promulgating goals and policies to guide and serve as the basis for consistency review of agency and subdivision actions. Coordination requires that these goals and policies set standards for agencies' and subdivisions' regulation or other management of specific resources or activities. The council will examine the goals and policies in this chapter annually to review the effectiveness of the program and will propose revisions to the goals and policies, as necessary.

(3) The council will coordinate the measures required to resolve identified coastal problems and make coastal management processes more visible, accessible, coherent, consistent, and accountable by reviewing agency and subdivision actions for consistency with the goals and policies in this chapter. Actions subject to review include adoption of rules and individual actions pursuant to these rules. The council shall employ consistency review of agency and subdivision rules and policies as the primary technique for ensuring that agency and subdivision actions are consistent with the goals and policies in this chapter.

(c) As directed in the Coastal Coordination Act, the General Land Office (GLO) will assist the council in carrying out a program for coastal management, which shall be entitled the Texas CMP The council may on occasion request or receive assistance from additional agencies or subdivisions that have authority over or expertise relevant to a particular coastal problem that is before the council The council directs the GLO, in coordination with other agencies and subdivisions, to prepare an annual report reviewing the effectiveness of the program as required by subsection (b)(2) of this section.

(d) The Texas CMP will help local governments improve their ability and develop additional capacity to manage CNRAs and human activities affecting those resources

(e) The Texas CMP will provide a means of developing and implementing site-specific, local, or regional plans for improving management of CNRAs and the activities that may adversely affect them through the Special Area Management Planning process in Chapter 504 of this title (relating to Special Area Management Planning)

§501 2 Findings

(a) The council finds that the Texas coast comprises land and water features with significant economic, recreational, cultural, geological, and biological and ecological characteristics Economic characteristics include their functions and values as resources for commercial fisheries, tourism, commercial navigation, water supply, receiving waters for wastewater, revenue for public services, and production of food, fiber, and minerals Recreational characteristics include their functions and values as resources for hunting, hiking, birding, recreational fishing and navigation, and tourism. Cultural characteristics include their functions and values as resources for education, science, historical preservation, and aesthetics. Geological characteristics include their functions and values as resources for water purification; prevention of shoreline erosion; and protection of natural

resources, human life, and property from wind, waves, and storms. Biological and ecological characteristics include their functions and values as resources including terrestrial and aquatic wildlife habitat; travel corridors, escape routes, resting areas, and cover; food supply and feeding areas; and breeding, spawning, nesting, and nursery areas. The council finds that the continued existence of these functions and values is essential to the economic and ecological vitality of the coast and the health, safety, and welfare of its inhabitants. These important coastal land and water features constitute resources to be specially managed and held in trust for the current and future citizens of the state. Therefore, the following are designated as CNRAs: waters in the open Gulf of Mexico, waters under tidal influence, state submerged lands, private submerged lands, coastal wetlands, submerged aquatic vegetation, tidal sand and mud flats, oyster reefs, hard substrate reefs, coastal barriers, shore areas, Gulf beaches, critical dune areas, special hazard areas, critical erosion areas, coastal historic areas, and coastal parks, wildlife management areas, and preserves.

(b) The council finds that the coast is subject to the following uses:

(1) residential development, which includes siting, construction, and maintenance of single- and multiple-unit dwellings;

(2) commercial development, which includes siting, construction, and maintenance of warehouses, offices, retail stores, hotels, restaurants, marinas, and recreational facilities;

(3) industrial development, which includes siting, construction, operation, and maintenance of oil and gas exploration and development facilities, manufacturing and petrochemical plants, refineries, processing facilities, and ports;

(4) agricultural development, which includes farming, ranching, silviculture, and aquaculture,

(5) other development, which includes public buildings, parks, and other public purpose development;

(6) development of infrastructure, which includes the siting, construction, operation, and maintenance of roads, causeways and bridges, railroads, transmission and communication lines, water and sewer lines and pump stations, oil and gas transportation pipelines, and other linear facilities; airports; electric generating facilities; flood control structures, dams, and other water control structures; water, sewage, and wastewater treatment facilities; and solid waste facilities;

(7) waterfront construction, which includes erosion response projects and shoreline access structures. Erosion response projects include retaining walls, bulkheads, seawalls, rubble mounds, revetments, breakwaters, and groins. Shoreline access structures include piers, docks, wharves, boat ramps, and other structures. Other structures on state submerged land and private submerged land include artificial reefs and fishing cabins;

(8) dredging, which includes excavation and disposal or placement of material from navigation channels and basins for commercial shipping, recreational boating, and oil and gas exploration and production; excavation for water intake structures, wastewater outfalls, or other structures incidental to shoreline development; and sediment mining on submerged lands; and

(9) hunting, fishing, and other taking of terrestrial and aquatic wildlife.

(c) The council finds that continued use of the coast contributes to the maintenance and enhancement of the economic prosperity, culture, health, safety, welfare, and overall quality of life of all the citizens of the state. The public can benefit from continued use of the coast in the following ways.

(1) Residential development provides shelter for coastal inhabitants. Commercial development provides economic opportunity and a higher quality of life Industrial development generates significant economic benefits for the coastal area, the state, and the nation. Agriculture provides food and fiber. Mineral, oil and gas exploration, development and production, including transportation of crude oil by pipeline, aids in the protection of national economic and security interests by contributing to the domestic energy supply, provides feedstock for petrochemical products and fuel for industrial, residential, commercial, and transportation activities and fuel for manufacturing which provides products and goods for consumers. These types of development create employment opportunities, produce tax and other forms of revenue for public education and other purposes, and help sustain a diversified economic base Impoundment and diversion of water supports development and other uses of the coast

(2) Waterfront structures provide access to coastal waters, moorage, and other services for commercial and recreational navigation and provide economic and social benefits to coastal communities. Retaining walls, bulkheads, seawalls, rubble mounds, revetments, breakwaters, and groins protect shoreline development from wave action. Nonstructural methods of erosion response such as beach nourishment, sediment bypassing, dune restoration, nearshore sediment berms, and wetland creation attenuate wave energy and trap sediment or contribute to the local sediment budget. Beach nourishment is essential for recreation and the protection of development and CNRAs and may serve as a method of flood control. Dune restoration protects the public beach by supplying sediment to the eroded beach.

(3) Dredging and dredged material disposal and placement are necessary to coastal commerce, industry, and recreation because they are the primary means of providing navigational access to the coast, especially in the shallow bays and estuaries. Dredged channels may improve water circulation. Dredged materials can be used to enhance terrestrial and aquatic wildlife habitat, minimize shoreline erosion and flooding, and create recreational areas. Sedimentary mineral mining provides building materials and generates public revenues.

(4) Hunting and fishing are valuable to citizens of the state as both recreational and commercial activities. Both provide opportunities for quality outdoor recreational experiences and contribute to the economic prosperity of the citizens of the state.

(d) The council finds that these uses, individually and cumulatively, have adverse effects on CNRAs and are therefore subject to the goals and policies as provided in §501.10 of this title (relating to Goals and Policies). These adverse effects include the following.

(1) Construction may require land clearing, grading, slope stabilization, filling of coastal wetlands or submerged lands, increased impervious cover, or other alterations of CNRAs that may reduce water percolation and groundwater recharge, alter surface water flow and sedimentation patterns, exacerbate erosion and flood hazards, degrade water quality, degrade or destroy terrestrial and aquatic wildlife habitat, segment wildlife corridors, and otherwise adversely alter coastal ecosystem dynamics. Construction on barriers and shores and in hazard areas may increase risks of loss of life and property and become subject to frequent maintenance and repair because of its vulnerability to high-velocity wind, waves, and storms. Construction in dunes and on or near beach areas may disrupt beach/dune system dynamics, degrade or destroy vegetation so as to impair the dunes' effectiveness as storm and erosion buffers, and conflict with public uses of beaches. Development within historical sites and parks may degrade or destroy these culturally, educationally, and scientifically valuable recreation areas. Extraction of groundwater and oil and gas may cause or exacerbate subsidence. Disturbances from mining activities, burial and discharge of explosives, and tracks from seismic vehicles may impact sand/mud flats, coastal wetlands, and submerged aquatic vegetation

and may disturb terrestrial and aquatic wildlife migration, spawning, breeding, and nesting.

(2) Waterfront construction may cause or exacerbate erosion by altering hydrology, bathymetry, and littoral sediment transport and deposition systems. This may decrease or deplete the amount of sediment available to downdrift areas, including wetlands dependent on sediments and organic materials for survival. Resulting erosion may degrade water quality by increasing turbidity Unless properly designed, waterfront structures may be destroyed by wave action and litter submerged lands or adjacent shores. Shading from structures on pilings may destroy underlying submerged aquatic vegetation or coastal wetlands. Boat traffic to and from structures in shallow, vegetated areas of bays and estuaries may cause propwashing and scarring of coastal wetlands and submerged aquatic vegetation

(3) Dredging and dredged material disposal, especially open water disposal, may degrade or destroy tidal flats, submerged aquatic vegetation, coastal wetlands, oyster reefs, and aquatic organisms by direct removal, burial, and siltation, and by altering hydrology and sediment and nutrient supplies CNRAs may be adversely affected by disposal-site construction and by escape of dredged materials from contained sites Dredging may cause water quality problems such as turbidity, poor circulation, anoxia, salinity changes, and suspension or resuspension of contaminated sediments in the water column Altered hydrology and wakes from vessels navigating in improperly located or designed channels or basins may increase turbidity and shoreline erosion

(4) Residential, commercial, industrial, agricultural and other activities generate point and nonpoint source (NPS) water pollution. Point and NPS water pollution from municipal, industrial, agricultural, and other sources may adversely affect CNRAs Spills of oil and hazardous substances from shoreline facilities, offshore platforms, and collisions of vessels may also adversely affect CNRAs. Spills and effluent and stormwater discharge may degrade surface and groundwater quality by increasing toxicity, dissolved solids, bacteria, or temperature. They may lower oxygen levels, increase nutrients, affect the appearance, odor, and taste of waters, and degrade both the water column and sediments, where pollutants become available for bioaccumulation into the food web. Hazardous substance spills may have acute toxic effects on living resources Spills of oil may both increase pollutants and smother aquatic organisms Spill response and remediation may further degrade CNRAs Septic systems that are improperly located, designed, maintained, or constructed, and sanitary sewer bypasses and overflows into storm sewers during storms may contribute pathogens and other pollutants that make coastal waters unsafe for human contact and otherwise degrade coastal waters. Urban NPS pollution may contribute dirt, oil, grease, refuse, pesticides, herbicides, fertilizer, and fecal coliform to coastal waters. Agricultural and silvicultural NPS pollution may contribute crop residue, sediment, pesticides, herbicides, fertilizers, and fecal coliform to coastal waters.

(5) Residential, commercial, industrial, agricultural, and other activities generate solid waste. Improper treatment, storage, and disposal of solid waste may degrade water quality and have other adverse effects on CNRAs. Improper location, design, and construction may also adversely affect CNRAs

(6) Impoundment and diversion of water can affect instream flow and the timing and volume of freshwater inflow into coastal waters and may degrade water quality and adversely alter salinity regimes and the supply of sediments and nutrients. This may cause loss of aquatic species habitat or adequate spawning periods and adversely alter the character of CNRAs Reservoirs or impoundments may result in the inundation of areas of special geological, biological, or archeological importance or historic interest

(7) Residential, commercial, industrial and other activities emit pollutants to the air Deposition of air pollutants may degrade water quality and have harmful effects on CNRAs and living resources

(e) Because they may adversely affect CNRAs, the council finds that special management of these uses of the coast is necessary for continued balanced development of the coast.

§501.3. Definitions and Abbreviations

(a) The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Adverse effects or adversely affect-Effects that result in the physical destruction or detrimental alteration of a CNRA. Such detrimental alterations are

(A) construction in critical dune areas and coastal hazard areas that increase risks to human safety or the potential for damage to property or CNRAs from floods, hurricanes, or other storms,

(B) alterations that interfere with public use and enjoyment of, or access to and from, those CNRAs to which the public has a right of use, enjoyment, or access,

(C) alterations that damage or destroy coastal historic areas;

(D) alterations that harm the functions and values of CNRAs as habitat for terrestrial and aquatic wildlife;

(E) alterations that disrupt wildlife corridors or fish or bird migratory routes,

(F) discharges of pathogens, radioactive materials, dissolved minerals or solids, toxic substances, or suspended solids at levels harmful to humans or terrestrial or aquatic life or that significantly impair the aesthetic qualities of CNRAs,

(G) alterations of salinity regimes, nutrient supply, oxygen concentration, or temperature regimes in coastal waters that are harmful to terrestrial or aquatic life,

(H) alterations of hydrology, water flow, circulation patterns, water level, or surface drainage that are harmful to humans or terrestrial or aquatic life, impair the aesthetic qualities of CNRAs, or exacerbate erosion of shorelines or river deltas,

(I) alterations of littoral and sediment transport processes that reduce the supply of sediments available to those processes or would otherwise exacerbate erosion of shorelines or river deltas,

(J) alterations that increase losses of shore areas or other CNRAs from a rise in sea level with respect to the surface of the land, whether caused by actual sea-level rise or land surface subsidence, and

(K) emission of air pollutants at levels that are harmful to humans or terrestrial or aquatic life or that significantly impair the aesthetic qualities of CNRAs.

(2) Avoid and otherwise minimize-To avoid adverse effects to the greatest extent practicable Adverse effects that cannot be avoided must then be minimized to the greatest extent practicable.

(3) Coastal area-The area within the boundary established in §503.1 of this title (relating to Coastal Management Program Boundary).

(4) Coastal hazard areas-Special hazard areas and critical erosion areas

(5) Coastal natural resource area

(CNRA)–Any area designated in §501.2(a) of this title (relating to Findings) and defined in subsection (b) of this section that is located within the coastal area.

(6) Coastal waters–Waters in the open Gulf of Mexico and waters subject to tidal influence.

(7) Council–The Coastal Coordination Council.

(8) Critical areas–CNRAs possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values that contribute significantly to the general overall environmental health or vitality of the coastal ecosystem Critical areas are coastal wetlands, areas of submerged aquatic vegetation, tidal sand and mud flats, oyster reefs, and hard substrate reefs

(9) Cumulative adverse effects The collective adverse effects on CNRAs that, based on best available data and information, can be anticipated to result from present, proposed, and reasonably foreseeable activities

(10) Pollutant Any constituent that contaminates or alters the physical, thermal, chemical, or biological quality of any CNRA so as to be harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to the public health, safety, or welfare or that impairs the usefulness or the public enjoyment of CNRAs for any lawful purpose

(11) Practicable–Available and capable of being done after taking into consideration existing technology, cost, and logistics in light of the overall purpose of the activity While the individual circumstances of each case may result in one factor being given more weight, no one of these factors shall be analyzed independently in determining whether an alternative is practicable

(12) Public beach–Any public beach as defined in the Texas Natural Resources Code, §61 013(c)

(13) Secondary adverse effects–Adverse effects on CNRAs from an activity that, based on best available data and information, can be anticipated to occur at some later point in time or outside or beyond the site of the activity.

(14) Water-dependent use or facility–An activity or facility that must be located in coastal waters or on state submerged lands or private submerged lands or that must have direct access to coastal waters in order to serve its basic purpose and function Facilities that are water-dependent include, but are not limited to, public beach use and access facilities, boat slips, docks, breakwaters, marinas, wharves and other vessel loading or off-loading facilities, utility easements, boat ramps, navigation channels and basins, bridges and bridge approaches, revetments, shoreline protection structures, culverts, groins, saltwater barriers, navigational aids, mooring pilings, simple access channels, fish processing plants, boat construction and repair facilities, offshore pipelines and constructed wetlands below mean high water Activities that are water-dependent include, but are not limited to, marine recreation (fishing, swimming, boating, wildlife viewing), industrial uses dependent on marine transportation or requiring large volumes of water that cannot be obtained at inland sites, mariculture, exploration for and production of oil and gas under coastal waters or submerged lands, and certain meteorological and oceanographic activities. If a specific water-dependent work or project is an essential component of a larger development, that development is considered water-dependent

(b) The following words, terms, and phrases, when used in this chapter, shall have the following meanings, with respect to the CNRAs designated in §501 2(a) of this title (relating to Findings)

(1) Coastal barriers Undeveloped areas on barrier islands and peninsulas or otherwise protected areas, as mapped by the United States Department of the Interior, Fish and Wildlife Service (Coastal Barrier Resource System Units)

(2) Coastal historic areas Sites on the National Register of Historic Places, designated pursuant to 16 United States Code Annotated, §470a, and Code of Federal Regulations, Title 36, Chapter 1, Part 63, and state archaeological landmarks, as defined in the Texas Natural Resources Code, Chapter 191, Subchapter D, that are identified by the Texas Historical Commission or the Texas Antiquities Committee as being coastal in character

(3) Coastal parks, wildlife management areas, and preserves–Any land owned by the state that is subject to the Texas Parks and Wildlife Code, Chapter 26, by virtue of its designation and use as a park, recreation area, scientific area, wildlife refuge, or historic site and that is designated by the Texas Parks and Wildlife Commission as being coastal in character

(4) Coastal shore areas–All areas within 100 feet landward of the high water mark on state submerged land and private submerged land Designation of coastal shore areas as a CNRA is exclusively intended to address erosion impacts within coastal shore areas that result from activities under §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas)

(5) Coastal wetlands–Wetlands as defined in Texas Water Code, Chapter 11, Subchapter J, that

(A) lie seaward of the Coastal Facility Designation Line established in §19.2(a)(5)(D) of this title (relating to Oil Spill Prevention and Response) pursuant to the Oil Spill Prevention and Response Act of 1991; or

(B) lie within rivers and streams to the extent of tidal influence, as follows:

(i) Arroyo Colorado from Laguna Madre to 110 yards downstream of Cemetery Road south of the Port of Harlingen;

(ii) Nueces River to the Calallen Dam,

(iii) Guadalupe River and associated riverine environment including the Victoria Barge Canal to the Guadalupe-Blanco River Authority Salt Water Barrier at 0 4 miles downstream of the confluence with the San Antonio River,

(iv) Lavaca River to 5 3 miles downstream of US 59,

(v) Tres Palacios Creek to one mile upstream of confluence with Wilson Creek,

(vi) Colorado River to 1 3 miles downstream of the Missouri Pacific Railroad,

(vii) San Bernard River to two miles above the Highway 35 crossing,

(viii) Chocolate Bayou to 2 6 miles below Highway 35,

(ix) Clear Creek to 110 yards upstream of FM 528,

(x) Buffalo Bayou (Houston Ship Channel) to 440 yards upstream of Shepherd Drive in Harris County,

(xi) San Jacinto River to the Lake Houston dam;

(xii) Trinity River to Chambers County line,

(xiii) Cedar Bayou to 1 4 miles upstream of Interstate Highway 10;

(xiv) Neches River to seven miles upstream of Interstate Highway 10,

(xv) Sabine River to Morgan Bluff, or

(C) within one mile from the mean high tide line of those rivers and streams, except for the Trinity and Neches rivers On the Trinity River, the geographic scope includes wetlands between the mean high tide line on the western shoreline to FM Road 565 and FM Road 1409 and between the mean high tide line on the

eastern shoreline to FM Road 563. On the Neches River, the geographic scope includes wetlands within one mile from the mean high tide line on the western shoreline and between the mean high tide line on the eastern shoreline and FM Road 105.

(6) Critical dune areas-Protected sand dune complexes on the Gulf shoreline within 1,000 feet of mean high tide as designated by the commissioner of the GLO under the Texas Natural Resources Code, Chapter 63, Subchapter E, §63.121.

(7) Critical erosion areas-Areas designated by the commissioner of the GLO under the Texas Natural Resources Code, §33.601(b).

(8) Gulf beaches-Beaches bordering on the Gulf of Mexico that extend inland from the line of mean low tide to the natural line of vegetation bordering on the seaward shore of the Gulf of Mexico, or such larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial.

(9) Hard substrate reefs-Naturally occurring hard substrate formations, such as rock outcrops or serpulid worm reefs (living or dead), in intertidal or subtidal areas that are discrete and contiguous.

(10) Oyster reefs-Natural or artificial formations in intertidal or subtidal areas that are composed of oyster shell, live oysters, and other organisms that are discrete, contiguous, and clearly distinguishable from scattered oysters.

(11) Private submerged lands-Land underlying waters under tidal influence or waters of the open Gulf of Mexico that is owned by a person other than the state.

(12) Special hazard areas-Areas designated by the administrator of the Federal Insurance Administration under the National Flood Insurance Act, 42 United States Code Annotated, §4001 et seq, as having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30, VE, V, M, or E.

(13) State submerged lands-Land underlying waters under tidal influence or waters of the open Gulf of Mexico that is owned by the state.

(14) Submerged aquatic vegetation-Rooted aquatic vegetation growing in permanently inundated areas in estuarine and marine systems.

(15) Tidal sand and mud flats-Silt, clay, or sand substrates, unvegetated or vegetated by algal mats, that occur in the intertidal zone and that are regularly or intermittently exposed and flooded by wind and water induced tides.

(16) Waters of the open Gulf of Mexico-Waters in the state as defined in Texas Water Code, §26.001(5), that are part of the open waters of the Gulf of Mexico inside the territorial limits of the state.

(17) Waters under tidal influence-Water in the state as defined in Texas Water Code, §26.001(5), that is subject to tidal influence according to the Texas Natural Resource Conservation Commission's Stream Segment Maps, including coastal wetlands.

(c) The following abbreviations, when used in this chapter, shall have the following meanings.

(1) GLO-General Land Office;

(2) PUC-Public Utility Commission;

(3) RRC-Railroad Commission of Texas;

(4) SLB-School Land Board;

(5) THC-Texas Historical Commission;

(6) TNRCC-Texas Natural Resource Conservation Commission;

(7) TPWD-Texas Parks and Wildlife Department;

(8) TSSWCB-Texas State Soil and Water Conservation Board;

(9) TWDB-Texas Water Development Board; and

(10) TxDOT-Texas Department of Transportation.

(d) To the extent that reference is made to statutory or regulatory terms or phrases which are not defined in this chapter, such terms and phrases retain the meaning provided in the pertinent agency or political subdivision policies or regulations.

§501.4. General Procedures.

(a) The commissioner of the GLO chairs the council and conducts all meetings. The council may select a vice chair who shall serve in the chair's absence.

(b) The council shall meet at least four times a year, once in each calendar quarter. Council meetings shall be scheduled for the first Thursday of February, May, August, and November. The chair, at his or her discretion or at the request of any council member, may call special meetings by posting notice in accordance with the Texas Open Meetings Act, Texas Government Code, Title 5, Subtitle A, Chapter 551, and sending a copy to all council members.

(c) The chair shall appoint a council secretary. The secretary shall record the minutes of the meetings and perform other duties required by the council or this chapter.

(d) Council members may set items for the agenda by submitting them in writing to the secretary at least 14 days before a meeting. The secretary shall notify all council members of the agenda by certified or overnight mail, hand-delivery, or telefax at least 10 days before each meeting. The secretary shall notify the public of meetings as required by the Texas Open Meetings Act, Texas Government Code, Title 5, Subtitle A, Chapter 551.

(e) A majority of the council members eligible to vote shall constitute a quorum and must be present for council action. To protest, remand, or reverse a state, federal, or local action, certify agency rules or local government ordinances, or adopt council rules shall require an affirmative vote of a majority of all council members eligible to vote. For all other actions, the council may act if a majority of a quorum agrees to the action.

(f) Time periods in this chapter do not include the day of the act or event that activates the time period. If the last day of the time period is a Saturday, Sunday, or legal holiday, the time period is considered to end the next day subsequent that is not a Saturday, Sunday, or legal holiday.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448283 **Garry Mauro**
Chairman
Coastal Coordination Council

Effective date: June 15, 1994

Proposal publication date: March 18, 1994

For further information, please call: (512) 305-9129

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Subchapter B. Goals and Policies

• 31 TAC §§501.10-501.15

The new sections are adopted pursuant to the authority provided in the Texas Natural Resources Code, Chapter 33, Subchapter C, and Texas Natural Resources Code, Chapter 33, Subchapter F, §33.204(a), which requires the council to promulgate rules adopting the CMP goals and policies.

§501.10. Compliance with Goals and Policies.

(a) State agencies, municipalities, and counties identified in this subchapter shall comply with the goals and policies in §§501.12-501.15 of this title (relating to Goals, Administrative Policies, and Policies for Specific Activities and Coastal Natural Resource Areas) when taking an action listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) or §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program).

(b) The goals and policies in this subchapter apply only to those agencies, municipalities, counties, activities, and actions expressly identified in this subchapter.

(c) Compliance with the goals and policies of this subchapter does not supersede or eliminate any legal duty to comply with other applicable statutory and regulatory requirements.

§501.11. Statutory and Constitutional Limits.

(a) The Coastal Coordination Council (council) shall not apply the goals and policies in this chapter in a manner which would prohibit the exercise by any agency, municipality, or county of its constitutional or statutory authority, unless and except to the extent specifically provided by the Coastal Coordination Act.

(b) The council shall not require an agency, municipality, or county to adopt any rule, take any action, or engage in any activity not within the constitutional or statutory authority of the agency, municipality, or county.

(c) The council shall exercise only the authority granted or reserved to it under the Constitution and the Coastal Coordination Act and shall not exercise the constitutional or statutory authority granted or reserved to any other agency, municipality, or county, including adopting any rules, taking any actions, or engaging in any activities the responsibility for which is granted or reserved to any other agency, municipality, or county.

(d) The council shall not prescribe the content of any rule, permit, or ordinance proposed or adopted by any agency, municipality, or county, except to the extent specifically authorized by the Coastal Coordination Act.

(e) The council shall not apply the goals and policies in this chapter in a manner which would result in the taking, damage, or destruction of property, without adequate compensation, by the council.

§501.12. Goals. The goals of the Texas Coastal Management Program (CMP) are:

(1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs);

(2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal area;

(3) to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs;

(4) to ensure and enhance planned public access to and enjoyment of the coastal area in a manner that is compatible with private property rights and other uses of the coastal area;

(5) to balance the benefits from economic development and multiple human uses of the coastal area, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal area;

(6) to coordinate agency and subdivision decision-making affecting CNRAs by establishing clear, objective policies for the management of CNRAs;

(7) to make agency and subdivision decision-making affecting CNRAs efficient by identifying and addressing duplication and conflicts among local, state, and federal regulatory and other programs for the management of CNRAs;

(8) to make agency and subdivision decision-making affecting CNRAs more effective by employing the most comprehensive, accurate, and reliable information and scientific data available and by developing, distributing for public comment, and maintaining a coordinated, publicly accessible geographic information system of maps of the coastal area and CNRAs at the earliest possible date;

(9) to make coastal management processes visible, coherent, accessible, and accountable to the people of Texas by providing for public participation in the ongoing development and implementation of the Texas CMP; and

(10) to educate the public about the principal coastal problems of state concern and technology available for the protection and improved management of CNRAs.

§501.13. Administrative Policies. Agency and subdivision rules and ordinances subject to §501.10 of this title (relating to Compliance with Goals and Policies) shall:

(1) require applicants to provide information necessary for an agency or subdivision to make an informed decision on a proposed action listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) or §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program);

(2) identify the monitoring established to ensure that activities authorized by actions listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) or §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program) comply with all applicable requirements;

(3) identify circumstances in which agencies and subdivisions have the authority to issue variances from standards or requirements for the protection of CNRAs, including the grounds for granting variances; and

(4) take into account the national interest as defined the Texas CMP Document, Chapter 10.

§501.14. Policies for Specific Activities and Coastal Natural Resource Areas.

(a) Construction of Electric Generating and Transmission Facilities.

(1) Construction of electric generating facilities and electric transmission lines in the coastal area shall comply with the policies in this subsection.

(A) New electric generating facilities shall, where practicable, be located at previously developed sites. New electric generating facilities at undeveloped sites shall be located so that future expansion will avoid construction in critical areas, Gulf beaches, critical dunes, and washovers to the greatest extent practicable. To the extent applicable to the public beach, the policies in this subsection are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public.

(B) Facilities using once-through cooling systems shall be located and designed to have the least adverse effects practicable, including impingement or entrainment of estuarine organisms.

(C) Facilities shall be constructed at sites selected to have the least adverse effects practicable on recreational uses of CNRAs and on areas used for spawning, nesting, and seasonal migrations of terrestrial and aquatic fish and wildlife species.

(D) Electric transmission lines to or on Coastal Barrier Resource Sys-

tem Units and Otherwise Protected Areas designated on maps dated October 24, 1990, under the Coastal Barrier Resources Act, 16 United States Code Annotated, §3503, on coastal barriers shall:

(i) be located, where practicable, in existing rights-of-way or previously disturbed areas if necessary to avoid or minimize adverse effects; and

(ii) be located at sites at which future expansion shall avoid construction in critical areas, Gulf beaches, critical dunes, and washovers to the greatest extent practicable.

(2) The PUC shall comply with the policies in this subsection when issuing certificates of convenience and necessity and adopting rules under Texas Civil Statutes, Public Utility Regulatory Act, Article 1446c, governing construction of electric generating facilities, electric transmission lines, and associated facilities in the coastal area.

(b) Construction, Operation, and Maintenance of Oil and Gas Exploration and Production Facilities.

(1) Oil and gas exploration and production on state submerged lands and private submerged lands shall comply with the policies in this subsection.

(A) In or near critical areas, facilities shall be located and operated and geophysical and other operations shall be located and conducted in such a manner as to avoid and otherwise minimize adverse effects, including those from the disposal of solid waste and disturbance resulting from the operation of vessels and wheeled or tracked vehicles, whether on areas under lease, easement, or permit or on or across access routes thereto. Where practicable, buffer zones for critical areas shall be established and directional drilling or other methods to avoid disturbance, such as pooling or unitization, shall be employed.

(B) Lessees, easement holders, and permittees shall construct facilities in a manner that avoids impoundment or draining of coastal wetlands, if practicable, and shall mitigate any adverse effects on coastal wetlands impounded or drained in accordance with the sequencing requirements in this subsection.

(C) Upon completion or cessation of operations, lessees, easement holders, and permittees shall remove facilities and restore any significantly degraded areas to pre-project conditions as closely as practicable, unless facilities can be used for maintenance or enhancement of CNRAs or unless restoration activities would further degrade CNRAs.

(2) To the extent applicable to the public beach, the policies in this subsection are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public.

(3) The GLO and SLB shall comply with the policies in this subsection when approving oil, gas, and other mineral lease plans of operation and granting surface leases, easements, and permits and adopting rules under the Texas Natural Resources Code, Chapters 32, 33 and 51-53, governing oil and gas exploration and production on state submerged lands and private submerged lands.

(c) Discharge of Wastewater and Disposal of Waste from Oil and Gas Exploration and Production Activities.

(1) Disposal of oil and gas waste in the coastal area shall comply with the policies in this subsection.

(A) No new commercial oil and gas waste disposal pit shall be located in any CNRA.

(B) Oil and gas waste disposal pits shall be designed to prevent releases of pollutants that adversely affect coastal waters or critical areas.

(2) Discharge of oil and gas exploration and production wastewater in the coastal area shall comply with the following policies.

(A) All discharges shall comply with all provisions of surface water quality standards established by the TNRCC under subsection (f) of this section.

(B) To the greatest extent practicable, new wastewater outfalls shall be located where the discharge will not adversely affect critical areas. Existing wastewater outfalls that adversely affect critical areas shall be either discontinued or relocated so as not to adversely affect critical areas within two years of the effective date of this section.

(C) The RRC shall notify the TNRCC and the TPWD upon receipt of an application for a new permit to discharge produced waters to waters under tidal influence. In determining compliance with the policies in this subsection, the RRC shall consider the effects of salinity from the discharge.

(3) The RRC shall comply with the policies in this subsection when issuing permits and adopting rules under the Texas Natural Resources Code, Chapter 91, for oil and gas waste, and under Texas Water Code, Chapter 26, and the Texas Natural Resources Code, Chapter 91, for oil and gas wastewater discharges.

(d) Construction and Operation of Solid Waste Treatment, Storage, and Disposal Facilities.

(1) Construction and operation of solid waste facilities in the coastal area shall comply with the policies in this subsection. This subsection applies to both new facilities and areal expansion of existing facilities.

(A) A landfill at which hazardous waste is received for a fee shall not be located in a critical area, critical dune area, critical erosion area, or a 100-year floodplain of a perennial stream, delineated on a flood map adopted by the Federal Emergency Management Agency after September 1, 1985, as zone A1-99, VO, or V1-30. This provision shall not apply to any facility for which a notice of intent to file an application, or an application, has been filed with the TNRCC as of September 1, 1985.

(B) Except as provided in clauses (i) and (ii) of this subparagraph, a hazardous waste landfill shall not be located in a special hazard area existing before site development except in an area with a flood depth of less than three feet. Any hazardous waste landfill within a special hazard area must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(i) The areal expansion of a landfill in a special hazard area may be allowed if the applicant demonstrates that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(ii) A new commercial hazardous waste management facility landfill unit may not be located in a special hazard area, unless the applicant demonstrates that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(C) Hazardous waste storage or processing facilities, land treatment facilities, waste piles, and storage surface impoundments shall not be located in special hazard areas unless they are designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(D) Hazardous waste land treatment facilities, waste piles, storage surface impoundments, and landfills shall not be located within 1,000 feet of an area subject to active coastal shoreline erosion, if the area is protected by a barrier island or

peninsula, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water. On coastal shorelines which are subject to active shoreline erosion and which are unprotected by a barrier island or peninsula, a separation distance from the shoreline to the facility must be at least 5, 000 feet, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water.

(E) Hazardous waste storage or processing facilities, land treatment facilities, waste piles, storage surface impoundments, and landfills shall not be located in coastal wetlands, or in any CNRA that is the critical habitat of an endangered species of plant or animal unless the design, construction, and operation features of the facility will prevent adverse effects on the critical habitat of the endangered species.

(F) Hazardous waste land treatment facilities, waste piles, storage surface impoundments, and landfills shall not be located on coastal barriers.

(G) Hazardous waste landfills are prohibited if there is a practical, economic, and feasible alternative to such a landfill that is reasonably available to manage the types and classes of hazardous waste which might be disposed at the landfill.

(H) The TNRCC shall not issue a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste facility unless it finds that the proposed site, when evaluated in light of proposed design, construction, and operational features, reasonably minimizes possible contamination of coastal waters.

(I) Nothing in this subsection shall be construed to require issuance of a permit notwithstanding a finding that the proposed facility would satisfy the requirements of subparagraph (H) of this paragraph and notwithstanding the absence of site characteristics which would disqualify the site from permitting pursuant to subparagraphs (A)-(G) of this paragraph.

(J) New solid waste facilities and areal expansion of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §6901, et seq.

(2) The TNRCC shall comply with the policies in this subsection when issuing permits and adopting rules under Texas Health and Safety Code, Chapter 361.

(e) Prevention, Response and Remediation of Oil Spills.

(1) The GLO regulations governing prevention of, response to and remediation of coastal oil spills shall provide for measures to prevent coastal oil spills and to ensure adequate response and removal actions. The GLO regulations for certification of vessels and facilities that handle oil shall be designed to ensure that vessels and facilities are capable of prompt response and adequate removal of unauthorized discharges of oil. The GLO regulations adopted pursuant to the Oil Spill Prevention and Response Act (OSPRA), Texas Natural Resources Code, Chapter 40, shall be consistent with the State Coastal Discharge Contingency Plan adopted pursuant to OSPRA; and the National Contingency Plan adopted pursuant to the Federal Water Pollution Control Act, 33 United States Code Annotated, Chapter 26.

(2) Natural Resource Damage Assessment. GLO rules under OSPRA governing the assessment of damages to natural resources injured as the result of an unauthorized discharge of oil into coastal waters shall provide for reasonable and rational procedures for assessing damages and shall take into account the unique circumstances of the spill incident. The costs of assessing the damages shall not be disproportionate to the value of the injured resources. Plans for the restoration, rehabilitation, replacement or acquisition of equivalent resources shall provide for participation by the public and shall be designed to promote the restoration of the injured resources with all deliberate speed. The GLO rules shall be consistent with other state rules and policies and with the CMP goals and policies.

(f) Discharge of Municipal and Industrial Wastewater to Coastal Waters.

(1) TNRCC rules shall:

(A) comply with the requirements of the Clean Water Act, 33 United States Code Annotated, §1251, et seq, and implementing regulations at Code of Federal Regulations, Title 40, which include establishing surface water quality standards in order to protect designated uses of coastal waters, including the protection of uses for water supply, recreational purposes, and propagation and protection of terrestrial and aquatic life, and establishing water-quality-based effluent limits, including toxicity monitoring and specific toxicity or chemical limits as necessary to protect designated uses of coastal waters;

(B) provide for the assessment of water quality on a coastal watershed basis once every two years, as required by the Texas Water Code, §26.0135(d);

(C) to the greatest extent practicable, provide that all permits for the discharge of wastewater within a given watershed or region of a single watershed contain the same expiration date in order to evaluate the combined effects of permitted discharges on water quality within that watershed or region;

(D) identify and rank waters that are not attaining designated uses and establish total maximum daily pollutant loads in accordance with those rankings; and

(E) require that increases in pollutant loads to coastal waters shall not:

(i) impair designated uses of coastal waters; or

(ii) result in degradation of coastal waters that exceed fishable/swimmable quality except in cases where lowering coastal water quality is necessary for important economic or social development.

(2) Discharge of municipal and industrial wastewater in the coastal area shall comply with the following policies.

(A) Discharges shall comply with water-quality-based effluent limits.

(B) Discharges that increase pollutant loadings to coastal waters shall not impair designated uses of coastal waters and shall not significantly degrade coastal water quality unless necessary for important economic or social development.

(C) To the greatest extent practicable, new wastewater outfalls shall be located where they will not adversely affect critical areas.

(3) The TNRCC shall comply with the policies in this subsection when adopting rules and authorizing wastewater discharges under Texas Water Code, Chapter 26.

(4) The TNRCC shall consult with the Texas Department of Health when reviewing permit applications for wastewater discharges that may significantly adversely affect oyster reefs.

(g) Nonpoint Source (NPS) Water Pollution.

(1) State agencies and subdivi-

sions with authority to manage NPS pollution shall cooperate in the development and implementation of a coordinated program to reduce NPS pollution in order to restore and protect coastal waters.

(2) In an area that the TSSWCB identifies as having or having the potential to develop agricultural or silvicultural NPS water quality problems or an area within the "coastal zone" designated by the council, the TSSWCB shall establish a water quality management plan certification program that provides, through the local soil and water conservation district, for the development, supervision, and monitoring of voluntary individual water quality management plans for agricultural and silvicultural lands. Each plan must be developed, maintained, and implemented under rules and criteria adopted by the TSSWCB and comply with state water quality standards established by the TNRCC. The TSSWCB's rules shall certify a plan that satisfies the TSSWCB rules and criteria and complies with state water quality standards established by the TNRCC. This policy is not intended, nor shall it be interpreted, to require the TSSWCB to establish non-voluntary requirements for the development, maintenance, or implementation of individual water quality management plans."

(3) TNRCC rules under Texas Health and Safety Code, Chapter 366, governing on-site sewage disposal systems, and TNRCC rules under Texas Water Code, Chapter 26, Subchapter I, governing underground storage tanks, shall require that on-site disposal systems and underground storage tanks be located, designed, operated, inspected, and maintained so as to prevent releases of pollutants that may adversely affect coastal waters.

(4) This policy shall not be interpreted or applied so as to require that either a National Pollution Discharge Elimination System (NPDES) permit for stormwater discharges issued under the Clean Water Act, §402(p), or an NPDES permit for a concentrated animal feeding operation, requiring no discharge up to and including a 25-year, 24-hour frequency storm, provide additional NPS pollution control measures in addition to those required in the permit.

(h) Development in Critical Areas.

(1) Dredging and construction of structures in, or the discharge of dredged or fill material into, critical areas shall comply with the policies in this subsection. In implementing this subsection, cumulative and secondary adverse effects of these activities will be considered.

(A) The policies in this subsection shall be applied in a manner consistent with the goal of achieving no net loss of critical area functions and values.

(B) Persons proposing development in critical areas shall demonstrate that no practicable alternative with fewer adverse effects is available.

(i) The person proposing the activity shall demonstrate that the activity is water-dependent. If the activity is not water-dependent, practicable alternatives with less adverse effects are presumed to exist, unless the person clearly demonstrates otherwise.

(ii) The analysis of alternatives shall be conducted in light of the activity's overall purpose.

(iii) Alternatives may include different operation or maintenance techniques or practices or a different location, design, configuration, or size.

(C) In evaluating practicable alternatives, the following sequence shall be applied:

(i) Adverse effects on critical areas shall be avoided to the greatest extent practicable.

(ii) Unavoidable adverse effects shall be minimized to the greatest extent practicable by limiting the degree or magnitude of the activity and its implementation.

(iii) Appropriate and practicable compensatory mitigation shall be required to the greatest extent practicable for all adverse effects that cannot be avoided or minimized.

(D) Compensatory mitigation includes restoring adversely affected critical areas or replacing adversely affected critical areas by creating new critical areas. Compensatory mitigation should be undertaken, when practicable, in areas adjacent or contiguous to the affected critical areas (on-site). If on-site compensatory mitigation is not practicable, compensatory mitigation should be undertaken in close physical proximity to the affected critical areas if practicable and in the same watershed if possible (off-site). Compensatory mitigation should also attempt to replace affected critical areas with critical areas with characteristics identical to or closely approximating those of the affected critical areas (in-kind). The preferred order of compensatory mitigation is:

(i) on-site, in-kind;

(ii) off-site, in-kind;

(iii) on-site, out-of-kind; and

(iv) off-site, out-of-kind.

(E) Mitigation banking is acceptable compensatory mitigation if use of the mitigation bank has been approved by the agency authorizing the development and mitigation credits are available for withdrawal. Preservation through acquisition for public ownership of unique critical areas or other ecologically important areas may be acceptable compensatory mitigation in exceptional circumstances. Examples of this include areas of high priority for preservation or restoration, areas whose functions and values are difficult to replicate, or areas not adequately protected by regulatory programs. Acquisition will normally be allowed only in conjunction with preferred forms of compensatory mitigation.

(F) In determining compensatory mitigation requirements, the impaired functions and values of the affected critical area shall be replaced on a one-to-one ratio. Replacement of functions and values on a one-to-one ratio may require restoration or replacement of the physical area affected on a ratio higher than one-to-one. While no net loss of critical area functions and values is the goal, it is not required in individual cases where mitigation is not practicable or would result in only inconsequential environmental benefits. It is also important to recognize that there are circumstances where the adverse effects of the activity are so significant that, even if alternatives are not available, the activity may not be permitted regardless of the compensatory mitigation proposed.

(G) Development in critical areas shall not be authorized if significant degradation of critical areas will occur. Significant degradation occurs if:

(i) the activity will jeopardize the continued existence of species listed as endangered or threatened, or will result in likelihood of the destruction or adverse modification of a habitat determined to be a critical habitat under the Endangered Species Act, 16 United States Code Annotated, §§1531-1544;

(ii) the activity will cause or contribute, after consideration of dilution and dispersion, to violation of any applicable surface water quality standards established under subsection (f) of this section;

(iii) the activity violates any applicable toxic effluent standard or prohibition established under subsection (f) of this section;

(iv) the activity violates any requirement imposed to protect a marine sanctuary designated under the Marine Protection, Research, and Sanctuaries Act

of 1972, 33 United States Code Annotated, Chapter 27; or

(v) taking into account the nature and degree of all identifiable adverse effects, including their persistence, permanence, areal extent, and the degree to which these effects will have been mitigated pursuant to subparagraphs (C) and (D) of this subsection, the activity will, individually or collectively, cause or contribute to significant adverse effects on:

(I) human health and welfare, including effects on water supplies, plankton, benthos, fish, shellfish, wildlife, and consumption of fish and wildlife;

(II) the life stages of aquatic life and other wildlife dependent on aquatic ecosystems, including the transfer, concentration, or spread of pollutants or their byproducts beyond the site, or their introduction into an ecosystem, through biological, physical, or chemical processes;

(III) ecosystem diversity, productivity, and stability, including loss of fish and wildlife habitat or loss of the capacity of a coastal wetland to assimilate nutrients, purify water, or reduce wave energy; or

(IV) generally accepted recreational, aesthetic or economic values of the critical area which are of exceptional character and importance.

(2) The TNRCC and the RRC shall comply with the policies in this subsection when issuing certifications and adopting rules under Texas Water Code, Chapter 26, and the Texas Natural Resources Code, Chapter 91, governing certification of compliance with surface water quality standards for federal actions and permits authorizing development affecting critical areas; provided that activities exempted from the requirement for a permit for the discharge of dredged or fill material, described in Code of Federal Regulations, Title 33, §323.4 and/or Code of Federal Regulations, Title 40, §232.3, including but not limited to normal farming, silviculture, and ranching activities, such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, shall not be considered activities for which a certification is required. The GLO and the SLB shall comply with the policies in this subsection when approving oil, gas, or other mineral lease plans of operation or granting surface leases, easements, and permits and adopting rules under the Texas Natural Resources Code, Chapters 32, 33 and 51-53, and Texas Water Code, Chapter 61, governing development affecting critical areas on state submerged lands and private submerged lands, and when issuing approvals and adopting rules under Texas Civil Statutes, Article 5421u, for mitigation banks operated by subdivisions of the state.

(3) Agencies required to comply with this subsection will coordinate with one another and with federal agencies when evaluating alternatives, determining appropriate and practicable mitigation, and assessing significant degradation. Those agencies' rules governing authorizations for development in critical areas shall require a demonstration that the requirements of paragraph (1)(A)-(G) of this subsection have been satisfied.

(4) For any dredging or construction of structures in, or discharge of dredged or fill material into, critical areas that is subject to the requirements of §501.15 of this title (relating to Policy for Major Actions), data and information on the practicability of alternatives need not be produced or evaluated to comply with this subsection if such data and information is produced and evaluated in compliance with §501.15(b)(6) of this title (relating to Policy for Major Actions).

(i) Construction of Waterfront Facilities and Other Structures on State Submerged Lands and Private Submerged Lands.

(1) Development on state submerged lands and private submerged lands shall comply with the policies in this subsection.

(A) Marinas shall be designed and, to the greatest extent practicable, sited so that tides and currents will aid in flushing of the site or renew its water regularly.

(B) Marinas designed for anchorage of private vessels shall provide facilities for the collection of waste, refuse, trash, and debris.

(C) Marinas with the capacity for long-term anchorage of more than ten vessels shall provide pump-out facilities for marine toilets, or other such measures or facilities that provide an equal or better level of water quality protection.

(D) Marinas, docks, piers, wharves and other structures shall be designed and, to the greatest extent practicable, sited to avoid and otherwise minimize adverse effects on critical areas from boat traffic to and from those structures.

(E) Construction of docks, piers, wharves, and other structures shall be preferred instead of authorizing dredging of channels or basins or filling of submerged lands to provide access to coastal waters if such construction is practicable, environmentally preferable, and will not interfere with commercial navigation.

(F) Piers, docks, wharves, bulkheads, jetties, groins, fishing cabins, and artificial reefs (including artificial reefs for compensatory mitigation) shall be limited to the minimum size necessary to serve the project purpose and shall be constructed in a manner that:

(i) does not significantly interfere with public navigation;

(ii) does not significantly interfere with the natural coastal processes which supply sediments to shore areas or otherwise exacerbate erosion of shore areas; and

(iii) avoids, where practicable, and minimizes shading of critical areas and other adverse effects.

(G) Facilities shall be located at sites or designed and constructed to the greatest extent practicable to avoid and otherwise minimize the potential for adverse effects from:

(i) construction and maintenance of other development associated with the facility;

(ii) direct release to coastal waters and critical areas of pollutants from oil or hazardous substance spills or stormwater runoff; and

(iii) deposition of airborne pollutants in coastal waters and critical areas.

(H) Where practicable, pipelines, transmission lines, cables, roads, causeways, and bridges shall be located in existing rights-of-way or previously disturbed areas if necessary to avoid or minimize adverse effects and if it does not result in unreasonable risks to human health, safety, and welfare.

(I) To the extent practicable, construction of facilities shall occur at sites and times selected to have the least adverse effects on recreational uses of CNRAs and on spawning or nesting seasons or seasonal migrations of terrestrial and aquatic wildlife.

(J) Facilities shall be located at sites which avoid the impoundment and draining of coastal wetlands. If impoundment or draining cannot be avoided, adverse effects to the impounded or drained wetlands shall be mitigated in accordance with

the sequencing requirements of subsection (h) of this section. To the greatest extent practicable, facilities shall be located at sites at which expansion will not result in development in critical areas.

(K) Where practicable, piers, docks, wharves, bulkheads, jetties, groins, fishing cabins, and artificial reefs shall be constructed with materials that will not cause any adverse effects on coastal waters or critical areas.

(L) Developed sites shall be returned as closely as practicable to pre-project conditions upon completion or cessation of operations by the removal of facilities and restoration of any significantly degraded areas, unless:

(i) the facilities can be used for public purposes or contribute to the maintenance or enhancement of coastal water quality, critical areas, beaches, state submerged lands, private submerged lands, or shore areas; or

(ii) restoration activities would further degrade CNRAs.

(M) Water-dependent uses and facilities shall receive preference over those uses and facilities that are not water-dependent.

(N) Nonstructural erosion response methods such as beach nourishment, sediment bypassing, nearshore sediment berms, and planting of vegetation shall be preferred instead of structural erosion response methods.

(O) Major residential and recreational waterfront facilities shall to the greatest extent practicable accommodate public access to coastal waters and preserve the public's ability to enjoy the natural aesthetic values of coastal submerged lands.

(P) Activities on state submerged land and private submerged land shall avoid and otherwise minimize any significant interference with the public's use of and access to such lands.

(2) To the extent applicable to the public beach, the policies in this subsection are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public.

(3) The GLO and the SLB, in governing development on state submerged lands, shall comply with the policies in this subsection when approving oil, gas, and other mineral lease plans of operation and granting surface leases, easements, and permits and adopting rules under the Texas Natural Resources Code, Chapters 32, 33 and 51-53, and Texas Water Code, Chapter 61.

(j) Dredging and Dredged Material Disposal and Placement.

(1) Dredging and the disposal and placement of dredged material shall avoid and otherwise minimize adverse effects to coastal waters, state submerged lands, private submerged lands, critical areas, coastal shore areas, and Gulf beaches to the greatest extent practicable. The policies of this subsection are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public. In implementing this subsection, cumulative and secondary adverse effects of dredging and the disposal and placement of dredged material and the unique characteristics of affected sites shall be considered.

(A) Dredging and dredged material disposal and placement shall not cause or contribute, after consideration of dilution and dispersion, to violation of any applicable surface water quality standards established under subsection (f) of this section.

(B) Except as otherwise provided in subparagraph (D) of this paragraph, adverse effects on critical areas from dredging and dredged material disposal or placement shall be avoided and otherwise minimized, and appropriate and practicable compensatory mitigation shall be required, in accordance with subsection (h) of this section.

(C) Except as provided in subparagraph (D) of this paragraph, dredging and the disposal and placement of dredged material shall not be authorized if:

(i) there is a practicable alternative that would have fewer adverse effects on coastal waters, state submerged lands, private submerged lands, critical areas, coastal shore areas, and Gulf beaches, so long as that alternative does not have other significant adverse effects;

(ii) all appropriate and practicable steps have not been taken to minimize adverse effects on coastal waters, state submerged lands, private submerged lands, critical areas, coastal shore areas, and Gulf beaches; or

(iii) significant degradation of critical areas under subsection (h)(1)(G)(v) of this section would result.

(D) A dredging or dredged material disposal or placement project that would be prohibited solely by application of subparagraph (C) of this paragraph may be allowed if it is determined to be of overriding importance to the public and national interest in light of economic impacts on navigation and maintenance of commercially navigable waterways.

(2) Adverse effects from dredging and dredged material disposal and placement shall be minimized as required in paragraph (1) of this subsection. Adverse effects can be minimized by employing the techniques in this paragraph where appropriate and practicable.

(A) Adverse effects from dredging and dredged material disposal and placement can be minimized by controlling the location and dimensions of the activity. Some of the ways to accomplish this include:

(i) locating and confining discharges to minimize smothering of organisms;

(ii) locating and designing projects to avoid adverse disruption of water inundation patterns, water circulation, erosion and accretion processes, and other hydrodynamic processes;

(iii) using existing or natural channels and basins instead of dredging new channels or basins, and discharging materials in areas that have been previously disturbed or used for disposal or placement of dredged material;

(iv) limiting the dimensions of channels, basins, and disposal and placement sites to the minimum reasonably required to serve the project purpose, including allowing for reasonable overdredging of channels and basins, and taking into account the need for capacity to accommodate future expansion without causing additional adverse effects;

(v) discharging materials at sites where the substrate is composed of material similar to that being discharged;

(vi) locating and designing discharges to minimize the extent of any plume and otherwise control dispersion of material; and

(vii) avoiding the impoundment or drainage of critical areas.

(B) Dredging and disposal and placement of material to be dredged shall comply with applicable standards for sediment toxicity. Adverse effects from constituents contained in materials discharged can be minimized by treatment of or limitations on the material itself. Some ways to accomplish this include:

(i) disposal or placement of dredged material in a manner that maintains physiochemical conditions at dis-

charge sites and limits or reduces the potency and availability of pollutants;

(ii) limiting the solid, liquid, and gaseous components of material discharged;

(iii) adding treatment substances to the discharged material; and

(iv) adding chemical flocculants to enhance the deposition of suspended particulates in confined disposal areas.

(C) Adverse effects from dredging and dredged material disposal or placement can be minimized through control of the materials discharged. Some ways of accomplishing this include:

(i) use of containment levees and sediment basins designed, constructed, and maintained to resist breaches, erosion, slumping, or leaching;

(ii) use of lined containment areas to reduce leaching where leaching of chemical constituents from the material is expected to be a problem;

(iii) capping in-place contaminated material or, selectively discharging the most contaminated material first and then capping it with the remaining material;

(iv) properly containing discharged material and maintaining discharge sites to prevent point and nonpoint pollution; and

(v) timing the discharge to minimize adverse effects from unusually high water flows, wind, wave, and tidal actions.

(D) Adverse effects from dredging and dredged material disposal or placement can be minimized by controlling the manner in which material is dispersed. Some ways of accomplishing this include:

(i) where environmentally desirable, distributing the material in a thin layer;

(ii) orienting material to minimize undesirable obstruction of the water current or circulation patterns;

(iii) using silt screens or other appropriate methods to confine suspended particulates or turbidity to a small area where settling or removal can occur;

(iv) using currents and circulation patterns to mix, disperse, dilute, or otherwise control the discharge;

(v) minimizing turbidity by using a diffuser system or releasing material near the bottom;

(vi) selecting sites or managing discharges to confine and minimize the release of suspended particulates and turbidity and maintain light penetration for organisms; and

(vii) setting limits on the amount of material to be discharged per unit of time or volume of receiving waters.

(E) Adverse effects from dredging and dredged material disposal or placement operations can be minimized by adapting technology to the needs of each site. Some ways of accomplishing this include:

(i) using appropriate equipment, machinery, and operating techniques for access to sites and transport of material, including those designed to reduce damage to critical areas;

(ii) having personnel on site adequately trained in avoidance and minimization techniques and requirements; and

(iii) designing temporary and permanent access roads and channel spanning structures using culverts, open channels, and diversions that will pass both low and high water flows, accommodate fluctuating water levels, and maintain circulation and faunal movement.

(F) Adverse effects on plant and animal populations from dredging and dredged material disposal or placement can be minimized by:

(i) avoiding changes in water current and circulation patterns that would interfere with the movement of animals;

(ii) selecting sites or managing discharges to prevent or avoid creating habitat conducive to the development of undesirable predators or species that have a competitive edge ecologically over indigenous plants or animals;

(iii) avoiding sites having unique habitat or other value, including habitat of endangered species;

(iv) using planning and construction practices to institute habitat development and restoration to produce a new or modified environmental state of higher ecological value by displacement of some or all of the existing environmental characteristics;

(v) using techniques that have been demonstrated to be effective in circumstances similar to those under consideration whenever possible and, when proposed development and restoration techniques have not yet advanced to the pilot demonstration stage, initiating their use on a small scale to allow corrective action if unanticipated adverse effects occur;

(vi) timing dredging and dredged material disposal or placement activities to avoid spawning or migration seasons and other biologically critical time periods; and

(vii) avoiding the destruction of remnant natural sites within areas already affected by development.

(G) Adverse effects on human use potential from dredging and dredged material disposal or placement can be minimized by:

(i) selecting sites and following procedures to prevent or minimize any potential damage to the aesthetically pleasing features of the site, particularly with respect to water quality;

(ii) selecting sites which are not valuable as natural aquatic areas;

(iii) timing dredging and dredged material disposal or placement activities to avoid the seasons or periods when human recreational activity associated with the site is most important; and

(iv) selecting sites that will not increase incompatible human activity or require frequent dredge or fill maintenance activity in remote fish and wildlife areas.

(H) Adverse effects from new channels and basins can be minimized by locating them at sites:

(i) that ensure adequate flushing and avoid stagnant pockets; or

(ii) that will create the fewest practicable adverse effects on CNRAs from additional infrastructure such as roads, bridges, causeways, piers, docks, wharves, transmission line crossings, and ancillary channels reasonably likely to be constructed as a result of the project; or

(iii) with the least practicable risk that increased vessel traffic could result in navigation hazards, spills, or other forms of contamination which could adversely affect CNRAs;

(iv) provided that, for any dredging of new channels or basins subject to the requirements of §501.15 of this title (relating to Policy for Major Actions), data and information on minimization of secondary adverse effects need not be produced or evaluated to comply with this subparagraph if such data and information is produced and evaluated in compliance with §501.15(b)(1) of this title (relating to Policy for Major Actions).

(3) Disposal or placement of dredged material in existing contained dredge disposal sites identified and actively used as described in an environmental assessment or environmental impact statement issued prior to the effective date of this chapter shall be presumed to comply with the requirements of paragraph (1) of this subsection unless modified in design, size, use, or function.

(4) All suitable dredged material from commercially navigable waterways is a potentially reusable resource and must be used beneficially to the greatest extent practicable. Other dredged material should be considered a potentially reusable resource to be used beneficially.

(A) Factors that shall be considered in determining whether a beneficial use project is appropriate include:

(i) the environmental gains and losses that will result;

(ii) the proximity of the beneficial use site to the dredge site; and

(iii) the quality of the dredged material and its suitability for beneficial use.

(B) Examples of the beneficial use of dredged material include, but are not limited to:

(i) projects designed to reduce or minimize erosion or provide shoreline protection;

(ii) projects designed to create or enhance public beaches or recreational areas;

(iii) projects designed to benefit the sediment budget or littoral system;

(iv) projects designed to improve or maintain terrestrial or aquatic wildlife habitat;

(v) projects designed to create new terrestrial or aquatic wildlife habitat, including the construction of marshlands, coastal wetlands, or other critical areas;

(vi) projects designed and demonstrated to benefit benthic communities or aquatic vegetation;

(vii) projects designed to create wildlife management areas, parks, airports, or other public facilities;

(viii) projects designed to cap landfills or other waste disposal areas;

(ix) projects designed to fill private property or upgrade agricultural land, if cost-effective public beneficial uses are not available; and

(x) projects designed to remediate past adverse impacts on the coastal area.

(5) If dredged material cannot be used beneficially as provided in paragraph (4) of this subsection, to avoid and otherwise minimize adverse effects as required in paragraph (1) of this subsection, preference will be given to the greatest extent practicable to disposal in:

(A) contained upland sites;

(B) other contained sites; and

(C) open water areas of relatively low productivity or low biological value.

(6) For new sites, dredged materials shall not be disposed of or placed directly on the boundaries of state submerged lands or at such location so as to slump or migrate across the boundaries of state submerged lands in the absence of an agreement between the affected public owner and the adjoining private owner or owners that defines the location of the boundary or boundaries affected by the deposition of the dredged material.

(7) Emergency dredging shall be allowed without a prior consistency determination as required in the applicable consistency rule when:

(A) there is an unacceptable hazard to life or navigation;

(B) there is an immediate threat of significant loss of property; or

(C) an immediate and unforeseen significant economic hardship is likely if corrective action is not taken within a time period less than the normal time needed under standard procedures. The council secretary shall be notified at least 24 hours prior to commencement of any emergency dredging operation by the agency or entity responding to the emergency. The notice shall include a statement demonstrating the need for emergency action. Prior to initiation of the dredging operations the project sponsor or permit-issuing agency shall, if possible, make all reasonable efforts to meet with council's designated representatives to ensure consideration of and consistency with applicable policies in this section. Compliance with all applicable policies in this section shall be required at the earliest possible date. The permit-issuing agency and the applicant shall submit a consistency determination within 60 days after the emergency operation is complete.

(8) Mining of sand, shell, marl, gravel, and mudshell on state submerged lands and private submerged lands is prohibited unless there is an affirmative showing of no significant impact on erosion within the coastal area and no significant adverse effect on coastal water quality or terrestrial and aquatic wildlife habitat within any CNRA.

(9) The GLO and the SLB shall comply with the policies in this subsection when approving oil, gas, and other mineral lease plans of operation and granting surface leases, easements, and permits and adopting rules under the Texas Natural Resources Code, Chapters 32, 33, and 51-53, and Texas Water Code, Chapter 61, for dredging and dredged material disposal and placement. TxDOT shall comply with the policies in this section when adopting rules and taking actions as local sponsor of the Gulf Intracoastal Waterway under Texas Civil Statutes, Article 5415e-2. The TNRCC and the RRC shall comply with the policies in this subsection when issuing certifications and adopting rules under Texas Water Code, Chapter 26, and the Texas Natural Resources Code, Chapter 91, governing certification of compliance with surface water quality standards for federal actions and permits authorizing dredging or the discharge or placement of dredged material. The TPWD shall comply with the policies in this subsection when adopting rules at Chapter 57 of this title (relating to Fisheries) governing dredging and dredged material disposal and placement. The TPWD shall comply with the policies in paragraph (8) of this subsection when adopting rules and issuing permits under Texas Parks and Wildlife Code, Chapter 86, governing the mining of sand, shell, marl, gravel, and mudshell.

(k) Construction in the Beach/Dune System.

(1) Construction in critical dune areas and adjacent to Gulf beaches shall comply with the policies in this subsection.

(A) Construction within a critical dune area that results in the material weakening of dunes and material damage to dune vegetation shall be prohibited.

(B) Construction within critical dune areas that does not materially weaken dunes or materially damage dune vegetation shall be sited, designed, constructed, maintained, and operated so that adverse "effects" (as defined in §15.2 of this title, relating to Coastal Area Planning) on the sediment budget and critical dune areas are avoided to the greatest extent practicable. For purposes of this subsection,

practicability shall be determined by considering the effectiveness, scientific feasibility, and commercial availability of the technology or technique. Cost of the technology or technique shall also be considered. Adverse effects (as defined in Chapter 15 of this title, relating to Coastal Area Planning) that cannot be avoided are:

(i) minimized by limiting the degree or magnitude of the activity and its implementation;

(ii) rectified by repairing, rehabilitating, or restoring the adversely affected dunes and dune vegetation; and

(iii) compensated for on-site or off-site by replacing the resources lost or damaged seaward of the dune protection line.

(C) Rectification and compensation for adverse effects that cannot be avoided or minimized shall provide at least a one-to-one replacement of the dune volume and vegetative cover, and preference shall be given to stabilization of blowouts and breaches and on-site compensation.

(D) The ability of the public, individually and collectively, to exercise its rights of use of and access to and from public beaches shall be preserved and enhanced.

(E) Non-structural erosion response methods such as beach nourishment, sediment bypassing, nearshore sediment berms, and planting of vegetation shall be preferred instead of structural erosion response methods. Local governments shall not authorize the construction of a new erosion response structure within the beach/dune system, except for a retaining wall located more than 200 feet landward of the line of vegetation. Local governments shall not authorize the enlargement, improvement, repair or maintenance of existing erosion response structures on the public beach. Local governments shall not authorize the repair or maintenance of existing erosion response structures within 200 feet landward of the line of vegetation except as provided in §15. 6(d) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards).

(2) The GLO shall comply with the policies in this subsection when certifying local government dune protection and beach access plans and adopting rules under the Texas Natural Resources Code, Chapters 61 and 63. Local governments required by the Texas Natural Resources Code, Chapters 61 and 63, and Chapter 15 of this title (relating to Coastal Area Planning) to adopt dune protection and beach access plans shall comply with the applicable policies in this subsection when issuing beachfront construction certificates and dune protection permits.

(l) Development in Coastal Hazard Areas.

(1) Local governments participating in the National Flood Insurance Program shall adopt ordinances or orders governing development in special hazard areas under Texas Water Code, Chapter 16, Subchapter I, and Texas Local Government Code, Chapter 240, Subchapter Z, that comply with construction standards in regulations at Code of Federal Regulations, Title 44, Parts 59-60, adopted pursuant to the National Flood Insurance Act, 42 United States Code Annotated, §4001, et seq.

(2) Pursuant to the standards and procedures under the Texas Natural Resources Code, Chapter 33, Subchapter H, the GLO shall adopt or issue rules, recommendations, standards, and guidelines for erosion avoidance and remediation and for prioritizing critical erosion areas.

(m) Development Within Coastal Barrier Resource System Units and Otherwise Protected Areas on Coastal Barriers.

(1) Development of new infrastructure or major repair of existing infrastructure within or supporting development within Coastal Barrier Resource System Units and Otherwise Protected Areas designated on maps dated October 24, 1990, under the Coastal Barrier Resources Act, 16 United States Code Annotated, §3503(a), shall comply with the policies in this subsection.

(A) Development of publicly funded infrastructure shall be authorized only if it is essential for public health, safety, and welfare, enhances public use, or is required by law.

(B) Infrastructure shall be located at sites at which reasonably foreseeable future expansion will not require development in critical areas, critical dunes, Gulf beaches, and washover areas within Coastal Barrier Resource System Units or Otherwise Protected Areas.

(C) Infrastructure shall be located at sites that to the greatest extent practicable avoid and otherwise minimize the potential for adverse effects on critical areas, critical dunes, Gulf beaches, and washover areas within Coastal Barrier Resource System Units or Otherwise Protected Areas from:

(i) construction and maintenance of roads, bridges, and causeways; and

(ii) direct release to coastal waters, critical areas, critical dunes, Gulf beaches, and washover areas within Coastal Barrier Resource System Units or Otherwise Protected Areas of oil, hazardous substances, or stormwater runoff.

(D) Where practicable, infrastructure shall be located in existing rights-of-way or previously disturbed areas to avoid or minimize adverse effects within Coastal Barrier Resource System Units or Otherwise Protected Areas.

(E) Development of infrastructure shall occur at sites and times selected to have the least adverse effects practicable within Coastal Barrier Resource System Units or Otherwise Protected Areas on critical areas, critical dunes, Gulf beaches, and washover areas and on spawning or nesting areas or seasonal migrations of commercial, recreational, threatened, or endangered terrestrial or aquatic wildlife.

(2) TNRCC rules and approvals for the creation of special districts and for infrastructure projects funded by issuance of bonds by water, sanitary sewer, and wastewater drainage districts under Texas Water Code, Chapter 50; water control and improvement districts under Texas Water Code, Chapter 50; municipal utility districts under Texas Water Code, Chapter 54; regional plan implementation agencies under Texas Water Code, Chapter 54; special utility districts under Texas Water Code, Chapter 65; stormwater control districts under Texas Water Code, Chapter 66; and all other general and special law districts subject to and within the jurisdiction of the TNRCC, shall comply with the policies in this subsection. TxDOT rules and approvals under Texas Civil Statutes, Article 6663 et seq, governing planning, design, construction, and maintenance of transportation projects, shall comply with the policies in this subsection.

(n) Development in Coastal Parks, Wildlife Management Areas, and Preserves. Agencies authorizing development in coastal parks and refuges shall comply with Texas Parks and Wildlife Code, Chapter 26.

(o) Alteration of Coastal Historic Areas.

(1) Development affecting a coastal historic area shall avoid and otherwise minimize alteration or disturbance of the site unless the site's excavation will promote historical, archaeological, educational, or scientific understanding.

(2) The THC shall comply with the policies in this subsection when adopting rules and issuing permits under the Texas Natural Resources Code, Chapter 191, governing alteration of coastal historic areas. The THC shall comply with the policies in this subsection when issuing reviews under the National Historic Preservation

Act, §106 (16 United States Code Annotated, §470f), and the regulations enacted pursuant thereto, Code of Federal Regulations, Title 36, Chapter 1, Part 63.

(p) Transportation Projects.

(1) Planning, design, construction, and maintenance of roads, highways, causeways, bridges, airports, and other transportation projects and associated facilities within the coastal area shall comply with the policies in this subsection.

(A) Pollution prevention procedures shall be incorporated into the design, construction, and maintenance of transportation projects to minimize pollutant loading to coastal waters from erosion and sedimentation, use of pesticides and herbicides for maintenance of rights-of-way, and other pollutants from stormwater runoff.

(B) Transportation projects shall be located at sites that to the greatest extent practicable avoid and otherwise minimize the potential for adverse effects from construction and maintenance of additional roads, bridges, causeways, and other development associated with the project; and direct release to CNRAs of pollutants from oil or hazardous substance spills, contaminated sediments or stormwater runoff.

(C) Where practicable, transportation projects shall be located in existing rights-of-way or previously disturbed areas if necessary to avoid or minimize adverse effects.

(D) Where practicable, transportation projects shall be located at sites at which future expansion will not require development in coastal wetlands except where such construction is determined to be essential for evacuation in the case of a natural disaster.

(E) Design, construction, and maintenance of transportation projects shall avoid the impoundment and draining of coastal wetlands. If impoundment or draining cannot be avoided, adverse effects to the impounded or drained wetlands shall be mitigated in accordance with the sequencing requirements of subsection (h) of this section.

(F) Construction of transportation projects shall occur at sites and times selected to have the least adverse effects practicable on recreational uses of CNRAs and on spawning or nesting seasons or seasonal migrations of terrestrial or aquatic species.

(G) Beach-quality sand from maintenance of roadways adjacent to Gulf beaches shall be beneficially used by placement on Gulf beaches where practicable. Where placement on Gulf beaches is not practicable, the material shall be placed in critical dune areas.

(2) TxDOT rules and project approvals under Texas Civil Statutes, Article 6663b and 6663c, and Texas Civil Statutes, Article 6674a et seq, governing transportation projects within the coastal area, shall comply with the policies in this subsection.

(q) Emission of Air Pollutants. TNRCC rules under Texas Health and Safety Code, Chapter 382, governing emissions of air pollutants, shall comply with regulations at Code of Federal Regulations, Title 40, adopted pursuant to the Clean Air Act, 42 United States Code Annotated, §7401, et seq, to protect and enhance air quality in the coastal area so as to protect CNRAs and promote the public health, safety, and welfare.

(r) Instream Flows and Freshwater Inflows to Waters Under Tidal Influence.

(1) Impoundments and diversion of state water within 200 stream miles of the coast, to commence from the mouth of the river thence inland, shall comply with the policies in this subsection.

(A) The TNRCC shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state. It is the public policy of the state to provide for the conservation and development of the state's natural resources, including:

(i) the control, storage, preservation, and distribution of the state's storm and floodwaters and the waters of its rivers and streams for irrigation, power, and other useful purposes;

(ii) the reclamation and irrigation of the state's arid, semiarid, and other land needing irrigation;

(iii) the reclamation and drainage of the state's overflowed land and other land needing drainage;

(iv) the conservation and development of its forest, water, and hydroelectric power;

(v) the navigation of the state's inland and coastal waters; and

(vi) the maintenance of a proper ecological environment of the bays and estuaries of Texas and the health of related living marine resources.

(B) In this subsection, "beneficial inflows" means a salinity, nutrient, and sediment loading regime adequate to maintain an ecologically sound environment in the receiving bay and estuary system that is necessary for the maintenance of productivity of economically important and ecologically characteristic sport or commercial fish and shellfish species and estuarine life upon which such fish and shellfish are dependent.

(C) In its consideration of an application for a permit to store, take, or divert water, the TNRCC shall assess the effects, if any, of the issuance of the permit on the bays and estuaries of Texas. For permits issued within an area that is 200 river miles of the coast, to commence from the mouth of the river thence inland, the TNRCC shall include in the permit, to the extent practicable when considering all public interests, those conditions considered necessary to maintain beneficial inflows to any affected bay and estuary system.

(D) For the purposes of making a determination under subparagraph (C) of this paragraph, the TNRCC shall consider among other factors:

(i) the need for periodic freshwater inflows to supply nutrients and modify salinity to preserve the sound environment of the bay or estuary, using any available information, including studies and plans specified in and other studies considered by the TNRCC to be reliable; together with existing circumstances, natural or otherwise, that might prevent the conditions imposed from producing benefits;

(ii) the ecology and productivity of the affected bay and estuary system;

(iii) the expected effects on the public welfare of not including in the permit some or all of the conditions considered necessary to maintain the beneficial inflows to the affected bay or estuary;

(iv) the quantity of water requested and the proposed use of water by the applicant, as well as the needs of those who would be served by the applicant;

(v) the expected effects on the public welfare of the failure to issue all or part of the permit being considered; and

(vi) for the purposes of this subsection, the declarations as to preferences for competing uses of water as found in Texas Water Code, §11.024 and §11.033, as well as the public policy statement in subparagraph (A) of this paragraph.

(E) In its consideration of an application to store, take, or divert water, the TNRCC shall consider the effect, if any,

of the issuance of the permit on existing instream uses and water quality of the stream or river to which the application applies. The TNRCC shall also consider the effect, if any, of the issuance of the permit on fish and wildlife habitats.

(F) On receipt of an application for a permit to store, take, or divert water, the TNRCC shall send a copy of the permit application and any subsequent amendments to the TPWD. In making a final decision on any application for a permit, the TNRCC, in addition to other information, evidence, and testimony presented, shall consider all information, evidence, or testimony presented by the TPWD and the TWDB.

(G) Permit conditions relating to beneficial inflows to affected bays and estuaries and instream uses may be suspended by the TNRCC if the TNRCC finds that an emergency exists and cannot practically be resolved in other ways. Before the TNRCC suspends a permit under this subparagraph, it must give written notice to the TPWD of the proposed suspension. The TNRCC shall give the TPWD an opportunity to submit comments on the proposed suspension within 72 hours from such time and the TNRCC shall consider those comments before issuing its order imposing the suspension.

(H) In its consideration of an application for a permit under this section, the TNRCC shall assess the effects, if any, of the issuance of the permit on water quality in coastal waters. In its consideration of an application for a permit to store, take, or divert water in excess of 5,000 acre feet per year, the commission shall assess the effects, if any, on the issuance of the permit on fish and wildlife habitats and may require the applicant to take reasonable actions to mitigate adverse effects on such habitat. In determining whether to require an applicant to mitigate adverse effects on a habitat, the TNRCC may consider any net benefit to habitat produced by the project. The TNRCC shall offset against any mitigation required by the United States Fish and Wildlife Service pursuant to Code of Federal Regulations,Title 33, §§320-330, any mitigation authorized by this section.

(I) Unappropriated water and other water of the state stored in any facility acquired by and under the control of the TWDB may be released without charge to relieve any emergency condition arising from drought, severe water shortage, or other calamity, if the TNRCC first determines the existence of the emergency and requests the TWDB to release the water.

(J) Five percent of the annual firm yield of water in any reservoir and associated works constructed with state financial participation within 200 river miles of the coast, to commence from the mouth of the river thence inland, is appropriated to the TPWD for use to make releases to bays and estuaries and for instream uses, and the TNRCC shall issue permits for this water to the TPWD under procedures adopted by the TNRCC. This subparagraph applies only to reservoirs and associated works on which construction begins on or after September 1, 1985. This subsection does not limit or repeal any other authority of or law relating to the TPWD or the TNRCC.

(K) The TWDB, in coordination with the TNRCC and TPWD, shall identify ways to assist in providing flows to meet instream needs, including protection of water quality, protection of terrestrial or aquatic wildlife habitat, and bay and estuary inflow needs, in the implementation of the Texas Water Bank, Texas Water Code, Chapter 15, Subchapter K. This may include, but not be limited to, the purchase by the TPWD and/or the TWDB of water rights deposited in the Texas Water Bank in order to provide for existing instream uses and beneficial inflows to bays and estuaries if funds are available and such purchase is not prohibited by law. The TNRCC shall facilitate the approval of any necessary permit amendments to achieve this purpose.

(L) An applicant for a new or amended water right permit shall submit a water conservation plan in accordance with 30 TAC §295.9 (relating to Conservation Plan). The TNRCC shall consider the information contained in the conservation plan in determining whether any feasible alternative to the proposed appropriation exists, whether the proposed amount to be appropriated as measured at the point of diversion is reasonable and necessary for the proposed use, the term and other conditions of the water right and to ensure that reasonable diligence will be used to avoid waste and achieve water conservation. Based upon its review, the TNRCC may deny or grant, in whole or in part, the requested appropriation.

(2) The TNRCC rules and authorizations under Texas Water Code, Chapter 11, governing review and action on applications for new permits or amendments proposing changes to existing permits for diversions or impoundments of state water within 200 stream miles of the coast, and TNRCC rules and approvals governing creation of districts and issuance of district bonds for levee and flood control projects within the coastal area, shall comply with the policies in this subsection.

(s) Levee and Flood Control Projects.

(1) Drainage, reclamation, channelization, levee construction or modification, or flood- or floodwater-control infrastructure projects shall be designed, constructed, and maintained to avoid the impoundment and draining of coastal wetlands to the greatest extent practicable. If impoundment or draining of coastal wetlands cannot be avoided, adverse effects to the wetlands shall be mitigated in accordance with the sequencing requirements in subsection (h) of this section.

(2) TNRCC rules and approvals for the levee construction, modification, drainage, reclamation, channelization, or flood- or floodwater-control projects, pursuant to the Texas Water Code, §16.236, shall comply with the policies in this subsection.

§501.15. Policy for Major Actions.

(a) For purposes of this section, "major action" means an individual agency or subdivision action authorizing an activity involving a federal action for which a federal environmental impact statement under the National Environmental Policy Act, 42 United States Code Annotated, §4321, et seq, is required.

(b) Agencies and subdivisions shall not take a major action authorizing an activity if there is a cost-effective and practicable alternative with less adverse effects. In determining the cost-effective and practicable alternative with the least adverse effects, agencies and subdivisions shall consider:

(1) the activity's adverse effects, including its cumulative and secondary adverse effects and their significance;

(2) adverse effects from any other activity that is an interdependent part of the activity under review, or that cannot or will not proceed unless the agency or subdivision authorizes or undertakes the activity under review;

(3) any irreversible and irretrievable commitment, severe adverse effects, or destruction of CNRAs that will result if the activity is authorized;

(4) the relationship between short-term activities affecting CNRAs and the long-term maintenance and enhancement of the functions of CNRAs as components of coastal ecosystems;

(5) the relationship between the relative public value of those functions and the relative public and private need for the activity, including economic needs, general environmental concerns, compatibility with existing and future land use, public safety, equitable socioeconomic distribution of environmental hazards, navigation needs, mineral and energy needs, agricultural

production, consideration of property ownership, the general needs and welfare of the people of Texas and the nation, and the goals in §501.12 of this title (relating to Goals); and

(6) the practicability of alternatives including no action, different operation or maintenance techniques or practices (including recycling and waste reduction practices), or a different location, design, configuration, or size of the project than proposed.

(c) If an agency's or subdivision's ability to consider any of the factors in subsection (b) of this section is limited (e.g., by legal restrictions or by lack of technical expertise), the agency or subdivision shall coordinate with any other agency or subdivision with management responsibility relevant to the activity under review to ensure that their actions do not infringe on or limit one another's ability to manage the activity. The agency or subdivision shall incorporate the recommendations of other agencies and subdivisions to the greatest extent practicable.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448282 Garry Mauro
Chairman
Coastal Coordination Council

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For further information, please call: (512) 305-9129

Chapter 504. Special Area Management Planning

• 31 TAC §§504.1-504.8

The Coastal Coordination Council (council) adopts new Chapter 504, §§504.1-504.8, concerning the establishment of procedural requirements for the development of Special Area Management Plans (SAMPs) for the Texas Coastal Management Program (CMP) with changes to the proposed text as published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1916). All sections are adopted with changes.

This chapter is adopted pursuant to the Texas Natural Resources Code, Chapter 33, Subchapters C and F (Coastal Coordination Act), which require the General Land Office (GLO) to develop the CMP and the council to promulgate CMP goals and policies.

This new chapter describes a process by which local communities can tailor the CMP to meet local needs. In effect, the SAMP process becomes the "home rule" component of the CMP. Under this chapter, the council establishes procedures for the nomination and designation of geographic areas of particular concern (GAPC) and the development of a SAMP for a specific area.

Special area management planning as established in this chapter is a voluntary component of the CMP. Special area management planning provides local communities with the opportunity to develop a management program to address coastal issues or problems particular to the local area. SAMPs are appropriate where the goals and policies adopted by the council can be enhanced to address local concerns. The SAMPs can be used to enhance protection of unique coastal resources or facilitate intensive use of areas suited to development. Basically, SAMPs allow, but never mandate, heightened management for discrete, limited areas without requiring it for the coast as a whole.

This chapter provides a planning process that yields a coordinated and cooperative approach to address complex and often far-reaching environmental and economic issues. While specific applications of special area management planning may vary, common goals of all plans will be to address environmental and economic issues through a multi-jurisdictional and integrated policy approach. SAMPs may be developed for a large area, such as Galveston Bay, or a smaller area, such as a ship channel.

Section 504.1 defines the terms relevant to special area management planning. The provisions for nominating a GAPC are contained in §504.2. Any nonprofit or public citizen group, local government, political subdivision, federal or state agency, or the governor may nominate an area for development of a SAMP. This section also describes the information that must be included in the nomination. Of particular importance is the discussion of the level of support for the nomination. Because this is a voluntary program that depends on local support, the council wants to ensure that there is local support before approving a SAMP. The procedures for determining the administrative completeness of the nomination are also included in this section.

Within 90 days of receipt of an administratively complete nomination, the council will complete a preliminary evaluation of the nomination. Section 504. 3 establishes the procedures that the staff will follow in developing a preliminary evaluation.

Section 504.4 and §504.8 establish expedited procedures for consideration of a national estuary program's Comprehensive Conservation Management Plan (CCMP) as a SAMP. These procedures are appropriate because most CCMPs are developed over four to five years with significant public input. Much of the work needed to support a SAMP application, therefore, will already have been completed by the time CCMP development is finished. The expedited procedures eliminate duplication of effort, both public and private, and recognize the extensive public process used to develop CCMPs.

Section 504.5 governs submission of a workplan for development of a SAMP. If the executive committee of the council approves a nomination under §504.3, the nominating entity or its designee begins a scoping process to identify and assign priority to information and issues associated with the proposed SAMP. Section 504.5 also requires the establishment of a SAMP committee to draft a workplan for the development of the SAMP, sets a schedule for the development of the workplan, and describes the information which must be included in the workplan. This section also requires that the executive committee review the workplan and determine if it should be accepted and a SAMP developed.

The requirements for developing the SAMP are included in §504.6. The SAMP must include a description of the biological, physical, economic, and cultural values and functions of the nominated area, funding strategies, appropriate management strategies and goals, specific enforceable and nonregulatory policies to accomplish the identified goals, the implementation strategy, and other administrative provisions. The executive committee is responsible for reviewing the proposed SAMP and will recommend that the council approve or reject the nomination.

Section 504.7 establishes the procedures for council evaluation and adoption of the SAMP. The SAMP committee may recommend that the council adopt the enforceable policies of the pertinent SAMP, through rulemaking, after providing public notice and the opportunity for public hearings.

From its outset, the CMP has responded to the real concerns of Texans: addressing erosion, protecting coastal natural resources and balancing environmental protection with economic development, among others. The council proposed the CMP as rules on March 18, 1994 (19 TexReg 1895). The council held seven public hearings, six of them in population centers along the entire length of the Texas coast. The period for public comment originally expired May 2, 1994. Including both public testimony at hearings and written comments, nearly 200 commenters offered more than 1,000 comments on virtually every portion of the CMP during the initial comment period.

In addition to substantive comments, the council received numerous requests for additional time to review the CMP. Numerous commenters also wished to review, before the council finally adopts the CMP as rules, revisions to the proposed rules. Ordinarily, members of the public who may be affected by a proposed rule, or have an interest in the rule, have little opportunity to review and comment on proposed staff revisions to a proposed rule before it becomes final. But the council has consistently valued and incorporated public participation in developing the CMP. Rather than satisfying only the minimum standards of uniform practice and procedure for a state agency in terms of public notice and comment, the council on June 28 voted to publish the CMP, with proposed revisions, in the *Texas Register* (19 TexReg 5195). This additional step was taken to ensure the widest possible opportunity for meaningful public review and comment before the council adopts the CMP.

Accordingly, the comment summaries and responses are divided into two parts. "Part A" contains comment summaries and responses relating to the comments received during the 60-day comment period following the publication of the interim draft of Chapter 504 in the July 5, 1994, issue of the *Texas Register* (19 TexReg 5195). "Part B" contains comment summaries and responses relating to the comments received during the original comment period following the publication of Chapter 504, in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1895).

General comments were received regarding the "CMP Document," which was the subject of the "Notice of Availability" in the March 18, 1994, issue of the *Texas Register*. The CMP Document contains descriptions of the enforceable and nonenforceable portions of the CMP. The enforceable portions of the CMP are Chapters 501, 504, 505, and 506 which respectively contain: the CMP goals and policies; special area management planning; council procedures for state and local consistency with CMP goals and policies; and council procedures for federal consistency with the CMP goals and policies. In addition to reflecting the council's balanced approach to the protection of the ecological and economic values of CNRAs, the CMP Document is prepared pursuant to the Texas Natural Re-

sources Code, Chapter 33, Subchapters C and F, and is intended to satisfy the federal requirements for approval under the Coastal Zone Management Act (CZMA), 16 United States Code Annotated, §1455(d). While portions of the CMP Document describe the provisions of Chapters 501, 504, 505, and 506, the chapters, not the CMP Document, are the council's enforceable policies; the chapter preambles, not the CMP Document, may be used to determine the intent of the chapters. Based on comments received, the CMP Document was reviewed and revised to ensure consistency and resolve any perceived inconsistency with the chapters. To the extent that any conflicts are perceived when reviewing the CMP Document and the chapters, or while implementing the chapters, the chapters prevail.

Editorial changes that do not alter the content of this chapter have been made to clarify meaning and to correct grammatical errors. In order to save space, similar comments and responses have been combined by section. General comments on the proposed chapter and comments on the preamble to the proposed chapter are combined at the end of the summary of comments.

Certain sections were revised based on comments received on the CMP proposed rules published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1895), and subsequently revised based on comments received on the interim draft of the CMP rules, published in the July 5, 1994, issue of the *Texas Register* (19 TexReg 5195). Paragraphs in "Part A" of this preamble which discuss such subsequent changes are *italicized* for the reader's convenience.

Part A.

Section 504.1.

Regarding §504.1(a)(1), two commenters stated the that definition of "affected parties" includes landowners adjacent to a GAPC. Section 504.2(d), in effect, defines "adjacent" as being "within 500 feet of the outward most boundary." Another commenter requested clarification of the meaning of "adjacent" in the definition of "affected parties" found in §504.1(a)(1). In response to these comments, §504.1(a)(1) has been amended by substituting a standard of 500 feet for "adjacent" for determining whether a person owning land near a GAPC is an affected party.

A commenter recommended that the definition of "affected parties" in §504. 1(a)(1) be revised to include "political subdivisions." For clarification, the definition of "affected parties" has been amended to include political subdivisions that have jurisdiction over the GAPCs, rather than just local governments of general jurisdiction.

Regarding §504.1(a)(5), commenter suggested that the citation to the United States Code Annotated in the definition of "National Estuary Plan" should be corrected to read §1330. The paragraph has been amended accordingly.

One commenter requested that the definition of "nominating entity" in §504.1(a)(6) be amended to require that non-governmental nominating entities must have an office located within the proposed GAPC or SAMP and to require that a majority of its membership must reside in and own land within the affected areas. Section 504.5(b)(5) requires that the membership of each non-governmental nominating entity include at least one landowner who owns land located within the boundaries of the GAPC. No authority to adopt or implement a SAMP is granted to the nominating entity; only the council has the authority to approve and adopt a SAMP. Meaningful participation by all affected parties, including nonresident landowners, is essential to the development of a SAMP that meets the needs and addresses the issues of all the parties. Section 504.2(d)(5) provides that landowners may opt out of a SAMP, and §504.5(d)(8) requires the consent of all landowners to include their property in the GAPC. No change was made based on this comment.

Section 504.2.

One commenter requested that the GAPC nomination process in §504.2 be clarified. A nomination must include a description of the type of SAMP, its boundary, management objectives, local support, potential conflicts, goals and objectives, and names and addresses of affected parties. Section 504.2(b)(5) has been amended to require that a majority of the landowners within the GAPC support the nomination of a GAPC area.

A commenter recommended that §504.2(a) be revised to delete environmental or industrial special interest groups from the list of entities that may nominate a SAMP. It was suggested that nominations should be accepted only from elected officials, accountable to the general public, who are charged with monitoring, regulating, and setting policies for the area. Another commenter requested that §504.2(b)(5) be amended to ensure that a nominated SAMP has the support of the municipalities and counties in the GAPC. Nomination of a SAMP by a non-profit or public citizens group is provided for in §504.2(a); however, §504.2(b)(5) has been amended to require that a nomination be supported by a majority of landowners and all municipalities and counties that have jurisdiction over any part of the nominated area. In addition, §504.5(b)(4) provides that a local official representing an area within the GAPC must be included in the SAMP committee. Therefore, regardless of who nominates the SAMP, a SAMP must be developed and implemented with the participation and support of local elected officials.

One commenter pointed out the possibility that more than one SAMP could be established for the same geographic area and expressed concern that the rules did not address this issue. Section 504.2(b)(2) and §504.5(d)(4) have been amended to require the identification of any areas included in an existing SAMP and to ensure that there are no conflicts in the goals and policies of the SAMPs covering all or part of the same areas.

Concerning §504.2(b)(5), one commenter noted that the "demonstration of the level of support for the nomination" of a GAPC is vague and gives no useful information about affected landowners' support or opposition. Another commenter requested that this paragraph be changed to require "resolutions in support of the proposed nomination from all counties and municipalities with jurisdiction over the nominated area." Another commenter stated that it is unclear whether the resolutions from counties and municipalities must be in support of the proposed GAPC and that the paragraph is vague because it does not address what might occur if a governing body within the GAPC refuses to adopt a resolution. Another commenter requested that this subsection, in addition to demonstrating a level of support for and opposition to a GAPC nomination, should require that a nomination by a nonprofit or public citizen group demonstrate that a majority of affected landowners in the GAPC support the nomination. Section 504.2(b)(5) has been amended to require that a majority of the affected landowners support the nomination as well as the counties and municipalities with jurisdiction over the nominated area support the nomination.

At the September 16, 1994, council meeting, the member representing the Railroad Commission moved to amend §504.2(b)(8) to include mineral and leasehold interest owners. The motion passed and the paragraph has been amended accordingly.

Three commenters requested clarification of the notice requirements in §504.2(d). Section 504.2(d) has been revised to identify the notice requirements and to require that such notice must be provided to all affected parties, including local governments and all landowners, regardless of place of residence.

One commenter suggested amending §504.2 to provide that GAPCs must meet the requirements of the Texas Natural Resources Code, Chapter 63, Chapter 15 of this title (relating to Coastal Area Planning), and applicable local municipal ordinances or orders of a Commissioners Court. Section 501.10(c) of this title (relating to Compliance with Goals and Policies) states that compliance with CMP goals and policies does not supersede or eliminate any legal duty to comply with other applicable statutory and regulatory requirements. The CMP is a compilation of existing state and federal regulations which does not abrogate any duty to comply with other applicable law; therefore, no change was made based on this comment.

Three commenters expressed concern about inclusion of private property in GAPCs and recommended that the deadline for opting out be extended. As a matter of policy, the council deferred to the private landowners in developing the SAMP process so that landowners would not be affected by a SAMP plan if they opted out of the GAPC. The council added §504.2(d)(5) and §504.5(d)(8) to ensure that no landowner's property rights would be affected without their consent. The purpose of the SAMP process is to protect coastal environmental and economic resources by providing flexibility to local communities.

Regarding §504.2(d)(5), one commenter suggested the addition of a requirement that all proposals for delineating a GAPC meet the requirements of the Texas Natural Resources Code, Chapter 63, thereby eliminating private

landowners' rights to opt out of GAPC proposals. To protect private property rights, the council has made a policy decision to allow property owners to opt out. No change was made based on this comment.

One commenter suggested that the word "its" in §504.2(d)(5) is a typographical error. The word "its" is appropriate and refers back to the owner, which may be a person, persons, a business, or other entity. No change was made based on this comment.

One commenter was concerned that §504.2(d)(5) appears to be inconsistent with proposed §504.5(d)(8) requiring landowner consent in writing to be included in a SAMP. Another commenter requested that the "opt in/opt out" provision be clarified. The council developed the SAMP program with deference to private property owners who might not wish to participate in a SAMP program. A landowner may opt out of a GAPC pursuant to §504.2(d)(5). A landowner must also give written consent to be included within the nominated GAPC as stated in §504.5(d)(8). In addition, to clarify this option, §504.7(b) has been modified to reflect that a SAMP will not be approved by the council if the boundaries include land whose owner either elected to opt out of the GAPC or did not consent to have the land included in the GAPC.

Section 504.3.

One commenter expressed concern that §504.3 concentrates too much discretion at the early screening stages of a proposed GAPC. The preliminary evaluation of the proposed GAPC ensures that the nomination contains all the required information and that it complies with the guidelines of the SAMP program. The preliminary evaluation is not a final determination. In addition, the proposed SAMP must be approved by the executive committee of the council and, ultimately, by the council, thus ensuring the viewpoints of all council members are considered in the SAMP decision. No change was made as a result of this comment.

One commenter stated that time period for the preliminary evaluation of a GAPC in §504.3 of this title (relating to Preliminary Evaluation of a Nominated Geographic Area of Particular Concern) should be extended to 90 days in order to allow more opportunity for public comment. Section 504.3 has been amended to lengthen the preliminary evaluation period to 90 days and allow for a 90-day extension period upon request by the GLO staff.

Section 504.4.

Regarding §504.4, which provides for automatic acceptance of the nomination of a National Estuary Program (NEP) as a SAMP, seven commenters questioned the effect of this subsection on local governments and private property. Another commenter supported §504.4. Section 504.4 does not provide for automatic council approval of a SAMP designated under the NEP. While §504.4 provides that the council will accept the nomination of an NEP, §504.8 requires compliance with §504.7(b)-(e). In addition, §504.4 has been changed in response to this comment. The automatic nomination provision is not triggered until the local NEP Policy Committee elects to take advantage of the benefits of SAMP approval. NEP Policy Committees include a balanced cross section of local interests, including local governments, local business, and local legislative representatives. Once the NEP Policy Committee initiates the SAMP process, the council must, prior to final approval, follow detailed public input procedures. This special procedure for NEP SAMPs takes into account that NEPs are the product of a four to five year development process which involves all stakeholders. Requiring NEPs to follow the standard SAMP nomination process would be duplicative and unnecessarily burdensome.

At the September 16, 1994, council meeting, the member representing the Texas Natural Resource Conservation Commission (TNRCC) moved to add an additional public notice and comment opportunity prior to a NEP plan becoming a SAMP. The motion passed and §504.4 was amended accordingly.

Section 504.5.

One commenter recommended that representatives of persons whose upstream activities are affected by a downstream SAMP be allowed on the SAMP committee and be allowed to opt out of a GAPC. No change was made because the goals and policies which are developed during the SAMP process apply only to those lands within the defined area of the GAPC and could have no impact on an upstream use that is outside the boundary.

One commenter requested that local governments be included in the SAMP scoping process in §504.5(a), even if they were not the nominating entity. Local governments are represented by the local elected official required to be a member of the SAMP committee pursuant to §504.5(b)(4). No change was made as a result of this comment.

Regarding §504.5(b), one commenter recommended changing "may" to "must" to ensure public participation of all parties affected. The concern of this commenter was addressed in response to other comments received on the March 18, 1994, issue of the *Texas Register* (19 TexReg 1894) proposed rules relating to SAMPs. Section 504.5(b) has been amended to provide that the SAMP committee *shall* include a balanced and representative cross section of the local community and lists a number of sectors that must be represented on the committee. Also added is a requirement for notification and invitation to all affected parties to participate in the formulation of the workplan for the proposed SAMP. No further change was made in response to this comment.

One commenter recommended that §504.5(b) be revised to require that at least a majority of the SAMP committee members, including the representative of local business or industry and representatives of the conservation organizations, reside within the GAPC boundary. Another commenter recommended that committee membership be restricted to residents of Texas to: ensure that local control will be maintained; and address local issues and to avoid placing coastal residents at risk of having mandated rules and regulations imposed upon them by outsiders. According to §504.5(b), the SAMP committee must include a balanced and representative cross section of the local community; however, limiting the committee membership to those residing within the GAPC would not allow the interests of all affected parties to be addressed. Furthermore, restricted membership as proposed by the commenter could exclude those with significant investments at stake in the GAPC. Finally, the nominating entity must extend committee membership to all affected parties and landowners within the nominated GAPC, thus ensuring adequate local control. No change was made based on this comment.

Regarding §504.5(b)(2), one commenter asked that this paragraph be revised by deleting "both" and "national or a local" because this provision represents twice as much representation as business, science, elected officials and landowners. The composition of the SAMP committee must include a representative cross section of the local community. To achieve balance among stakeholders, the SAMP committee includes two representatives with economic interests (a local business or industry representative and a local landowner who owns property in the GAPC), two conservation representatives, and two unaffiliated representatives (the scientist and the local government elected official). In response to this comment, the requirement that one conservation representative be affiliated with a national organization has been removed.

One commenter requested clarification regarding the qualifications of the scientist required to be a member of the SAMP committee under §504.5(b)(3). Section 504.5(b)(3) requires that the scientist be unaffiliated with any other listed committee member and possess expertise in coastal and marine issues. It is not appropriate to establish detailed rules for credentials, background, affiliations, or residence for the scientist in this chapter. The council puts a premium on flexibility and local control; therefore, these matters are best left to the nominating entity. No change was made based on this comment.

One commenter requested clarification regarding the requirement in §504. 5(b)(4) that a local elected official be a member of the SAMP committee. Local elected officials meet the requirements of §504.5(b)(4) if the jurisdiction of their office includes all or part of the area covered by the GAPC. No change was made based on this comment.

Regarding §504.5(b)(5), one commenter requested clarification regarding the qualifications of the landowner required to be a member of the SAMP committee. A qualified landowner owns real property located within the GAPC. No change was made based on this comment.

One commenter requested clarification of the phrase "in writing," as used in §504.5(b)(6). The phrase "in writing" is mentioned twice in §504.5(b)(6) . First, the invitation for membership on the SAMP committee shall be extended "in writing" to all affected parties and landowners within the nominated GAPC. Second, the nominating entity must notify the secretary of the executive committee of the council, "in writing," of the SAMP committee

participants. In addition, the written notice to the executive committee must be given as early as possible. In both contexts in which the phrase is used, it means written notification by mail and not a notice published in a newspaper. No change was made based on this comment.

One commenter requested clarification regarding use of the phrase "nominating committee" in §504.5(b)(6). This paragraph has been amended by substituting "nominating entity," for "nominating committee."

Section 504.6.

For purposes of clarification, §504.6(b) and §504.7(b) have been changed to reflect that the executive committee (in §504.6(b) and the council (in §504.7 have within their discretion the ability to reject the nomination of a GAPC which does not fulfill the other requirements of this chapter.

Section 504.7.

Two commenters asked that §504.7 be modified to allow a landowner to "opt out" at any time, either before or after adoption of a SAMP. No change was made pursuant to this comment, because of the administrative burden and uncertainty of developing a SAMP with a fluctuating boundary. If a SAMP is not working, landowners have the option of having the SAMP committee request that the SAMP be withdrawn.

One commenter suggested that it was unclear under §504.7 how a SAMP would be managed after council approval. According to this commenter, management must be by appropriate governmental agencies that are accountable to the public at large and not to any specific special interest group. After adoption of a SAMP, pursuant to §504.7(e), the enforceable SAMP policies are incorporated into the CMP. State agencies and political subdivisions would then be required to act consistently with these policies as provided in Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies). Because no staff members will be hired by the council, existing agencies will monitor permits and other regulatory aspects of their respective responsibilities relating to SAMPs. Section 504.6(a)(4) requires the designation of a lead agency to coordinate the SAMP monitoring activities of all involved entities including local, state or federal agencies. If the CMP receives federal approval, federal agencies would also be required to act consistently with the policies developed through the SAMP process. Special interest groups have the opportunity to participate and to serve on the planning committee, but will not be solely responsible for the management of a SAMP. No change was made based on this comment.

One commenter requested clarification of §504.7(b) regarding the procedures for adopting SAMPs other than those involving NEPs. Section 504.7(b) has been amended to provide that the council cannot approve a SAMP containing land for which the owner has opted out of the GAPC under §504.2(d)(5) or did not consent to the inclusion of the land under §504.5(d)(8).

One commenter requested that all SAMPs be available in city libraries, as well as county libraries. The council welcomes public support and participation in SAMP area programs. To this end, the council will make available all SAMPs for public use. Section 504.7(d) has been amended to reflect this request.

Concerning §504.7(h)(2)(D), one commenter stated that local government support should be a prerequisite for both the original SAMP applications and major amendments to the SAMP. Another commenter asked that the council require local government support as a prerequisite for major amendments to SAMPs. Because implementation of a SAMP requires support and, in some cases, monitoring and administration by a local government, §504.7(h)(2)(D) has been amended to include language which states that a resolution from a local government is required for council review of major amendments to the SAMPs.

Two commenters requested that §504.7(i)(1)(A) be changed to include that a request to withdraw approval of a SAMP should be considered by the council if such a request is made by the majority of SAMP committee members rather than requiring unanimous consent. In response to this comment, §504.7(i)(1) (A) has been amended to require the council to consider withdrawal of approval of a SAMP upon receipt of a request from a majority of the SAMP committee members rather than requiring a unanimous request from the committee. Based on comments received, §504.8 has been amended to clarify that draft CCMP policies must be enforceable and suitable for adoption as rules before the council will approve a CCMP as a SAMP.

General comments.

Two commenters expressed concern that this chapter would impose additional burdens on landowners and their ability to develop property and questioned whether any benefits would accrue to landowners that agree to participate in a SAMP. This chapter provides an opportunity for citizens groups and local governments to develop a plan to manage coastal resources. Before a SAMP is approved, property owners will be consulted in developing a plan as provided in §504.6, which requires an evaluation of all relevant factors in determining if an area should be adopted as a SAMP. A landowner will not be included in a SAMP unless consent is given pursuant to §504.5(d)(8). SAMPs will not impose any additional restriction on the use of property within the GAPC unless it is within existing statutory and regulatory authority. In addition, the landowners within the GAPC must have consented to the adoption and application of the policies. The rationale for the development of a SAMP, and the related consent of a property owner, is to achieve some goal or benefit for the GAPC that is permissible, but not necessarily available, under the CMP goals and policies. The council believes that the SAMP process provides valuable flexibility to local communities to develop a management plan which is unique to a specific area with assured predictability in its implementation. No change was made based on this comment.

Regarding this chapter, one commenter questioned the effectiveness of a SAMP where many landowners did not choose to participate and inquired about: the percentage of landowners needed to participate for a SAMP to be effective; what happens to those that do not participate; and enforceable policies of a SAMP and who they are enforceable against. As provided in §504.5(d)(3), the SAMP committee is required to develop the boundary for a proposed SAMP. Although no specific percentage of participation is required, if many landowners choose to "opt out," it may be prudent for the committee to redefine a SAMP which will have local support. Local support is also taken into consideration during council evaluation and adoption of the SAMP. For those landowners who "opt out" of a SAMP pursuant to §504.2(d)(5), their property remains subject to the applicable CMP goals and policies. For those property owners who choose to participate in the SAMP, the SAMP they have developed, which may allow more intense use or provide more resource protection than specifically provided in the CMP, will apply to their property upon adoption by the council. No change was made based on this comment.

Two commenters, while recognizing that some areas within the CMP boundary may require special management, requested clarification of the application of this chapter because the concept of voluntary GAPCs and SAMPs appeared to be unworkable. One of the commenters cited several areas of the coast as being in need of a SAMP program. The provisions of this chapter are not intended to be utilized to address general resource management problems. Pursuant to §504.5, the SAMP process is intended to provide the opportunity for local communities to develop plans for a specific or unique area nominated by citizens of that area for special management, whether for more intense use or for additional protection of the resources. During the development of the SAMP through the application of the requirements of §504.5, with the cooperation of landowners, it is possible to identify the area of particular concern, the nature of the concern, the qualities and values that need management, and the priority of uses in a manner that will protect both the ecological and economic vitality of CNRAs. No change was made based on this comment.

Part B.

Section 504.1.

One commenter requested addition of a definition of "coastal areas for intensive use" to §504.1. "Coastal areas for intensive use" is not a term of art and may include, for example, coastal areas of intensive use for high density or "clustered" development, as well as commercial or recreational harvesting of natural resources. Defining "coastal areas for intensive use" may have the unintended consequence of limiting this type of SAMP. Therefore, no change was made in response to this comment.

One commenter stated that the "guidelines" described in §504.1(a)(2) needed to be clarified and provided. The guidelines will be developed after adoption of this chapter, and

will be clarified during the guideline development process. No change was made based on this comment.

Regarding §504.1(a)(2) and "coastal areas for multiple use," one commenter stated that there must be a balance between the existing development and development projected for the future in an area containing important coastal natural resources. The commenter stated that a large amount of development in an area does not necessarily mean that a sensitive area should be sacrificed. The SAMP process does not prescribe the type of SAMP which may be developed; that decision is left to nominating entities. Therefore, the SAMP process does not contemplate the "sacrifice" of sensitive areas or place a preference on development. No change was made based on this comment.

One commenter asked that the phrase "program guidelines" be clarified in §504.1(a)(2). Section 504.1(a)(2) *defines* "approved program guidelines"; these guidelines will be developed to provide more specific criteria and standards necessary to develop SAMPs. Because the guidelines will be developed using a process specific to SAMPs, SAMPs cannot be approved prior to the establishment of guidelines. No change was made based on this comment.

One commenter requested that the definition of GAPC, provided in §504.1(a) (4), be amended to only include areas requiring preservation or restoration, to reflect the minimum federal requirements in the Code of Federal Regulations, Title 15, Part 923, Subpart C, §923.22. To provide the greatest protection to the ecological and economic resources of the Texas coast, this chapter provides a procedure for the designation of a variety of GAPCs, including GAPCs designated for the purpose of preservation or restoration. The Code of Federal Regulations, Title 15, Part 923, Subpart C, §923.22 (pertaining to designations of GAPCs for preservation and restoration) provides minimum federal requirements that states must follow to receive federal approval of a coastal management program. The CZMA, 16 United States Code Annotated, §1455a(b), and associated regulations provide that states may designate GAPCs for other purposes, such as waterfront redevelopment, ports, public access, and reasonable coastal-dependent economic growth. The definition of GAPCs, as provided in §504.1(a)(4), has been revised to clarify that a proposed GAPC must be the minimum size necessary to achieve the purpose of the GAPC nomination, and to better reflect the various purposes and requirements of GAPCs.

One commenter requested inclusion of "port authorities" in the definition of "nominating entities" in §504.1(a)(6), and two commenters requested the deletion of "nonprofit" or "public citizen group" from the definition, stating that such nominations involve improper delegation of traditional governmental functions. Regarding the first comment, port authorities and navigation districts created under the Texas Constitution, Article XVI, §59(b), are political subdivisions authorized to perform duties similar in nature to the duties of a state agency. Based on the quasi-governmental nature of port authorities and navigation districts, §504.1(a)(6) and §504.2(a) were amended to specifically include "political subdivisions." Regarding the second comment, nonprofit and public citizen groups have not been deleted from §504. 1(a)(6), as no unlawful delegation of authority is granted to the nominating entity pursuant to the SAMP nomination process. Only the council has the power to act on a SAMP nomination.

Another commenter stated that "nominating entity," as defined in §504.1(a) (6), should include individuals, and not be limited to specific groups. Another asked that private landowners be included as a "nominating entity." The CZMA, 16 United States Code Annotated, §1455(d)(14), requires state programs to provide for public participation in permitting processes, consistency determination, and other similar decisions. The council considers the designation of SAMPs to be the type of decision in which the public should participate. The rule provides guidance as recommended by the federal regulations regarding SAMPs, as provided in the Code of Federal Regulations, Title 15, Part 923, Subpart C, §923.21(b)(1)(ii). Based on this comment, and to provide guidance in accordance with the Code of Federal Regulations, Title 15, Part 923, Subpart C, §923.22(b)(ii), §504.1(a)(6) has been amended to require that the membership of each nongovernmental nominating entity must include at least one person owning land located within the boundaries of the GAPC.

One commenter asked that §504.1(b)(3), identifying the meaning of the acronym "CNRA," be revised to specifically provide for protection and restoration of such areas. Because §504.1(b)(3) does not address substantive considerations, no change was made based on this comment. However, it should be noted that SAMPs may be developed to provide for protection and restoration of CNRAs, as this chapter allows for the development of SAMPs for economic, as well as ecological purposes. Development of SAMPs, including choice of the type of GAPC, is within the discretion of the nominating entity and the SAMP committee, as respectively defined in §504.1(a)(6) and §504.5(b).

Section 504.2.

One commenter stated that the SAMP process may affect a local tax base by imposing additional restrictions. One commenter stated that the SAMP nomination process provided in §504.2 fails to provide any meaningful participation by affected parties or individuals opposed to the creation of a SAMP. The commenter stated that the council's ability to designate and/or accept a SAMP over the objections of persons most directly affected contravenes the notion of a voluntary program. Another commenter suggested that only a property owner or subdivision owning or encompassing the CNRA should be allowed to volunteer the property for inclusion in a SAMP. Two commenters questioned whether the SAMP process was "voluntary," and one commenter recommended adding policies that govern the nomination and management of private third-party property nominated or included in a SAMP. Meaningful participation by affected parties is essential to the development of a SAMP. As proposed, the chapter could be interpreted to allow a nominating entity to create a SAMP encompassing private property, without giving property owners and other affected parties personal notice or a meaningful opportunity to be heard. Many property owners along the Texas coast purchase property for a variety of uses, ranging from construction and use of vacation homes to construction and operation of industrial facilities. The SAMP program can be used to develop management plans individually suited for these various uses. To clarify what, if any, property may be eligible for inclusion in a SAMP, the definition of GAPCs, as provided in §504.1(a)(4), has been modified. Drawing on the current practice in the municipal zoning context, new §504.2(d) has been added to require that notice of a GAPC nomination be given to adjacent landowners within 500 feet from the outward-most boundary of a nominated GAPC and landowners within the nominated GAPC via first class mail. Section 504.2(b)(5) has been amended to require that the nomination include a demonstration of the level of support for and a description of the opposition to the SAMP, as well as any relevant resolutions passed by cities and counties with jurisdiction over the nominated area. In addition, §504.2(c) requires the nominating entity to publish notice of the nomination in a regional or local newspaper. Section 504.5 has been changed to require the participation of the local community members in the SAMP committee. Section 504.7(d) requires the executive committee of the council to hold public hearings in the city nearest to the nominated GAPC during the preliminary evaluation period identified in §504.3. Further, §504.1(a)(8) has been amended so that the definition of a SAMP no longer includes the word "voluntary." Further, a property owner will not be included in a SAMP if such property owner notifies the nominating entity of any objections to inclusion of the property pursuant to new §504. 2(d)(5). Finally, the written consent of the property owners within the GAPC is now required in §504.5(d)(8). The increased opportunity for public input gives the public adequate opportunity to address any effects on the tax base which may result from a SAMP.

One commenter requested that §504.2 be amended to identify GAPCs on a generic and/or site-specific basis, and recommended that such amendments describe the nature of the concern for these areas, describe how the concerns are resolved and provide guidelines for priorities of uses in these areas. Regarding §504.2(b), one commenter stated that promoting the use of GAPCs conflicts with designating and specially managing these areas to protect their resources. The commenter stated that nominations of GAPCs should include a method of designating areas of preservation and restoration, and recommended adding the following areas of local concern to the CMP: Galveston Seawall and East Beach (dunes); San Luis Pass Flats (rookery); San Jacinto River; and Bermuda Beach subdivision on West Galveston and other subdivisions on Bolivar Peninsula. Another commenter supported the use of SAMPs for coastal areas for intensive use, and stated that the Houston Ship Channel may qualify as a GAPC. Based on these comments, the definition of GAPC, as pro-

vided in §504.1(a)(4), has been revised to more clearly identify the areas that may be subject to this chapter. The revised definition of GAPC is intended to provide notice to persons owning an interest in coastal property that such property is eligible for nomination for a SAMP. The commenters' suggestions regarding specific GAPCs and SAMPs were not incorporated, as specific GAPC nomination and SAMP adoption may only occur pursuant to the procedures relating to GAPC nominations and SAMP adoptions, respectively provided in §504.2 and §504.7. No change was made regarding the identification of GAPCs as the chapter already addresses this issue in §504.1(a)(4).

Concerning §504.2(a), one commenter expressed concern that citizens are not able to nominate GAPCs. While it is true that individual citizens cannot nominate GAPCs, citizen groups can, pursuant to §504.1(a)(6). Because an opportunity for meaningful citizen input is provided, no change was made based on this comment.

One commenter stated that §504.2(c) should require notice by mail in addition to publication in the *Texas Register*, and that there should also be a 30-day comment period. Based on this and other comments received regarding public notice and notice to affected property owners, §504.2(c) and §504.2(d), now §504.2(e), have been amended to clarify the required timing and content of public notice and response to notices of administratively incomplete nominations.

One commenter asked that §504.2(d), now §504.2(e), be incorporated into the state and federal consistency review process. Because state and federal consistency involves council review of agency and subdivision actions, and SAMPs may frequently be created by non-governmental entities, SAMPs are not subject to consistency review. However, based on this and other comments received, §504.6(a)(8) has been amended to clarify that SAMPs must be in compliance with the CMP goals and policies.

One commenter stated that §504.2(c) fails to provide sufficient opportunity for public comment and, therefore, support for a nominated SAMP cannot be properly evaluated during the preliminary evaluation of a SAMP nomination, as required by §504.3. To address these concerns, the commenter suggested amendments to §504.2(c) which would allow the GLO staff a period of at least 60 days, as opposed to 30 days, to adequately solicit, receive and consider public comment during the preliminary evaluation of a SAMP nomination. Based on these comments, §504.3 was amended to allow for an extension of the 30-day time period to 60 days. In addition, based on this comment, §504. 3 has been amended to clarify the nature of the GLO's recommendations to the executive committee of the council and the committee's role in approving or disapproving the recommendation, and §504.2(c) has been amended to require that nominating entities include a request for public comment, describe the GAPC, and give the address of the council secretary in the notice of acceptance of consideration of a SAMP nomination which is published in a regional or local newspaper. Section 504.2(d) has been added and requires the council secretary to give notice to owners of property within the GAPC and within 500 feet of the GAPC. (Previous §504.2(d) is now §504.2(e).) Also based on this comment, §504.5(a) and (b) have been amended to require identification of conflicts and recommendations to address the conflicts as part of the scoping process.

Section 504.3.

Regarding §504.3, one commenter asked for amendments which would require the GLO staff to determine whether NEPs can be nominated as SAMPs on a case-by-case basis. Another commenter expressed concern regarding the "exemption" of NEPs from the SAMP nomination process. Because §504.3 provides that nominations of NEPs are automatically accepted by the council, it is not necessary to require the GLO staff to make such a determination. The intent of §504.3 is to avoid state duplication of the rigorous federal NEP development process, which addresses many of the same concerns as the SAMP development process. No change was made based on this comment.

Section 504.4.

One commenter asked for the addition of "coastal preserves approved by the GLO" to §504.4, relating to automatic acceptance of the nomination of a NEP as a SAMP. Unlike coastal preserves, NEPs are required to develop a CCMP, which takes approximately five years to develop. Much of the information required for a SAMP nomination will have been gathered during the process of developing the CCMP. Coastal preserves do not require the same rigorous development process as NEPs. Coastal preserves may properly be nominated as a SAMP; however §504.4 was not amended to provide automatic acceptance of coastal preserves as a SAMP.

One commenter asked if there was a memorandum of agreement (MOA) between the GLO and the TNRCC on NEPs and the CMP, as provided for in §504.4. The commenter requested public review and comment regarding this issue. Section 504.4 provides for the automatic acceptance of the nomination of a NEP as a SAMP. Provisions relating to an MOA are not included; however, MOAs could be developed on an as-needed basis, and the parties to the MOA would not necessarily be the GLO and TNRCC. No change was made based on this comment.

Section 504.5.

One commenter asked that §504.5 be amended to provide for an expedited SAMP approval process for areas which are relatively small and in which a majority of the affected parties are in agreement as to the SAMP. The suggested process would allow development of a SAMP without the detailed workplan required by §504.6, and the scoping process required in §504.5(a) would be used to write the SAMP. The commenter also suggested that the executive committee of the council should approve a SAMP through the expedited approval process. The SAMP committee is required to submit a workplan no later than six months after the date of approval of the nomination by the executive committee of the council; therefore, the SAMP committee may expedite the process by submitting the workplan sooner. The scoping process consists of the preliminary phase of information gathering for the workplan, and may be used to develop the workplan. Pursuant to §504.7, only the council can approve a SAMP; therefore, the suggestion that §504.5 be amended to allow the executive committee of the council to approve a SAMP was not incorporated. However, §504.7(f) was added to allow the council to preview the SAMP upon the nominating entities written request.

One commenter stated that the language in §504.5(b) should be changed to require the participation of affected parties in the SAMP committee. The council will not compel participation in a SAMP committee; however, based on this comment, §504.5(b) has been revised to require that a nominating entity must invite the participation of affected parties, other interested parties and persons or groups with scientific expertise. The nominating entity must provide to the secretary of the executive committee of the council notice of the participants of the SAMP committee. In addition, §504.5(d)(3) has been amended to require that the workplan include a delineation of the boundaries of the property within the GAPC that is not included in the SAMP (pursuant to the landowner's request).

One commenter stated that the council should review the SAMPs to avoid wasting time on plans that will not be approved by the council. The council meets quarterly, and to require preliminary review of SAMPs by the council might result in undue delay of the SAMP process. The executive committee of the council is comprised of representatives of council members and is required to conduct a review of the SAMP prior to submission to the council in §504.7. However, the council will review a proposed SAMP upon the request of the SAMP committee pursuant to §504.7(f).

Section 504.6.

Many commenters asked that no changes be made to §504.6(a)(1)-(7). Based on other comments received on this subsection, changes were made.

One commenter asked that §504.6(b) and §504.7(a) be amended to require that the executive committee of the council set a specific schedule for revisions and the review of the revised plan by the executive committee of the council, and to include a time limit of no more than three months to accomplish these tasks. Based on this and other comments received, this chapter now includes §504.7(g)-(i), relating to amendments to SAMPs and withdrawal of council approval of SAMPs.

One commenter suggested that one of the required elements of the SAMP should be "a discussion of current state, regional and local plans and/or regulations which may impact the development of the SAMP." The suggestion to include a discussion of current state, regional and local regulations which may impact the development of the SAMP would better define the legal parameters of the SAMP; however, requiring a discussion of current state, regional and local plans is not practical because the nominating entity may not have access to all plans. Based on this

comment, §504.6(a)(9) has been added to require a description of current land management plans relevant to the SAMP.

As requested by one commenter, and to be consistent with the language of §504.7(a), §504.6(a)(8) has been amended to require inclusion of a discussion of the SAMP's proposed *compliance* with the CMP goals and policies.

Section 504.7.

Regarding §504.7(d), one commenter stated that it is as important to solicit public input from citizens residing throughout the state as it is to solicit input from coastal citizens because the coast belongs to all Texans. The commenter asked that the entire SAMP be subject to public review and comment. All Texans will have an opportunity to review and comment on a SAMP, because a SAMP's enforceable policies will be published as proposed rules in the *Texas Register*, and SAMPs will be published in their entirety in the "In Addition" section of the *Texas Register*. The commenter also stated that the SAMP program is not fully thought out. Regarding this statement, this chapter provides the minimum elements of the SAMP program. More specific information will be provided through the approved SAMP program guidelines identified in §504.1(a)(2) and through each SAMP. The public will have the opportunity to review and comment on the guidelines and individual SAMPs. No changes were made based on these comments.

One commenter requested that §504.7 be amended to provide standards for council approval and withdrawal of a SAMP nomination. Another commenter asked who would coordinate the SAMPs. The standards for approval of a SAMP are provided in §501.12 (relating to Goals). The council has the authority to review the proposed SAMP for consistency with the CMP goals and policies, and thereby coordinate the SAMP. Therefore, there is no need to impose additional standards on the council for reviewing SAMPs. However, §504.7(a) was amended to clarify the schedule for approval. Based on this and other comments, §504. 7(g)-(i) have been added to provide procedures for withdrawal or amendment of a SAMP.

One commenter recommended that a seven member vote for approval of a SAMP should be required or, at a minimum, four votes. Based on this comment, §504. 7(e) now requires the vote of at least four council members to adopt a SAMP, and §504.7(b) now requires the vote of at least four council members to approve a SAMP.

One commenter requested that §504.7(e) be amended to allow the council to adopt new enforceable policies for only those portions of the SAMP which are enforceable. Section 504.7(e) refers to the council's ability to incorporate the *enforceable* policies of a SAMP into the CMP. Therefore, such policies will not be "new," as they are incorporated from the SAMP, and only enforceable policies can be adopted. However, §504.7(e) was amended to clarify that only the enforceable policies of a SAMP will be incorporated into the CMP.

Section 504.8

Concerning §504.8, one commenter asked for clarification of the schedule for the various steps that must be taken to adopt a NEP CCMP as a SAMP. Section 504.8 requires that such adoption must occur pursuant to §504.7(b) -(e). The schedule is dependent upon factors such as the timing of the submission of the CCMP to the council relative to the next regularly scheduled council meeting, publication of the enforceable policies as proposed rules in the *Texas Register*, publication of the SAMP in its entirety in the "In Addition" section of the *Texas Register*, and the schedule for public hearings and comment on the proposed SAMP. The length of time needed to complete these tasks may vary from NEP to NEP. No change was requested by this commenter, and no change was made to §504.8 based on this comment.

One commenter strongly supported §504.8 as written and asked that this section not be changed. Section 504.8 was not changed.

General Comments.

Regarding this chapter, one commenter asked what regulatory authority SAMPs would have. Another commenter was concerned SAMPs would supersede the CMP. SAMPs are a voluntary part of the CMP and, therefore, may not supersede the CMP. The SAMP will not have any separate regulatory authority. No change was made to the chapter in response to this comment.

Regarding this chapter, one commenter asked that the protection of the coast be the main focus of this chapter, rather than economics. The CMP embodies a balanced and reasonable approach to management of coastal resources, and the CMP's primary focus is on the economic *and* ecological value of the coast. However, in this chapter the focus of the various SAMPs is within the discretion of the pertinent nominating entities and the SAMP committees; this chapter does not mandate a preference. Therefore, no change was made based on this comment.

Two commenters were pleased to see that high intensity use is recognized as a basis for developing a SAMP. Three commenters generally supported the SAMP program and hoped that Galveston Bay and the Laguna Madre/Rio Grande would soon be included in the SAMP program. This commenter recommended that the specific reference to high intensity use SAMPs should also be provided in other sections. Another commenter concurred and recommended that §501.12 of this title (relating to Goals) and §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas) be modified to clarify that the CMP goals and policies that apply within a SAMP are a function of the SAMP's specific use designation. The SAMP process established in this chapter recognizes that SAMPs may have policies which are unique to the property within the GAPC; however, the determination as to the applicability of specific CMP goals and policies to a particular SAMP will be made pursuant to the development of a SAMP workplan and the council adoption of a SAMP. No change was made based on these comments.

Regarding this chapter, one commenter inquired as to which entity would be responsible for developing the approved program guidelines. The guidelines will be developed by the council, aided by state agency staff.

One commenter stated that this chapter will not require consistency of local government projects. The commenter asked why the CMP should allow increased local management of the coast. Local governments provide the frontline protection of the economic and environmental benefits of the coast, and have a direct and continuing interest in protecting those benefits. However, this chapter balances increased local management of the coast with state and federal oversight. Under §504.1(a)(5), many entities will have a greater degree of involvement in managing the coast through the SAMP process, which provides a system for individualized management of areas, based on the specific requirements and uses of those areas. No change was made based on this comment.

One commenter suggested that SAMPs should be managed by a governmental entity with accountability to the public. The council will oversee the management of all SAMPs after council adoption of a SAMP. The council is the governmental entity responsible for managing SAMPs, and the council is accountable to the public. However, §504.6(a)(4) has been revised to require identification of the entity responsible for coordinating and tracking the SAMP. This revision does not affect the council's authority because the entity identified pursuant to the amendment to §504.6(a)(4) will be responsible for the SAMP on an administrative, as opposed to managerial, level. In addition, §504.7(j) has been added to provide the public with information and clarify the role of the council after a SAMP has been approved. Section 504.7(j) requires that every four years the GLO will provide the council with a report on existing approved SAMPs as part of the GLO's biennial report to the legislature in alternating biennia.

Another commenter expressed general approval of this chapter and encouraged the council to create a TNRCC office on the mainland of Galveston County, designated as the Central Office for Galveston Bay, to manage SAMPs in Galveston Bay. The creation of a TNRCC office remains within the TNRCC's discretion; therefore, no change was made based on this comment.

Groups and associations in opposition because they requested changes in, or otherwise expressed dissatisfaction with, the chapter were: City of Baytown; Baytown Refinery; City of Corpus Christi; The Fordyce Company; Friendswood Development Company; Galveston County Beach Park Board of Trustees; Greater Houston Builders Association; Gulf Coast Waste Disposal Authority; Harris County; Harris County Engineering Department; Harris County Flood Control District; Hollywood Marine, Inc.; Houston-Galveston Area Council; Houston Lighting and Power Company; National Marine Fisheries Service (Habitat Conservation Division); Nueces County Coastal Management Committee; Nueces County Economic Development Focus Group; Oryx Energy; Port of Brownsville; Society of Independent Professional Earth Scientists; San Jacinto River Association; South Texas Cotton and Grain

Association, Inc.; Texas and Southwestern Cattle Raisers Association; City of Texas City; Texas Chemical Council; Texas Department of Agriculture; Texas Ports Association; Texas Railroad Commission; Texas Water Conservation Association; United States Department of Commerce (National Oceanic and Atmospheric Administration); United States Environmental Protection Agency (Region VI).

Groups and associations expressing support for the chapter were: Galveston Bay Foundation; Galveston Bay National Estuary Program; Houston Audubon Society; Texas Chemical Council.

Groups and associations expressing general support or opposition to the CMP are listed under Chapter 501 of this title (relating to Coastal Management Program).

The new sections are adopted pursuant to the authority provided in the Texas Natural Resources Code, Chapter 33, Subchapter C, and the Texas Natural Resources Code, Chapter 33, Subchapter F (Coastal Coordination Act), which require the GLO to develop the CMP and the council to promulgate the CMP goals and policies, and the Texas Government Code, Chapter 2001, Subchapter A, which requires the council to adopt rules of practice setting forth the nature and requirements of all formal and informal procedures.

§504.1. Definitions.

(a) The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affected parties-Persons owning land in or within 500 feet of the outward most boundary of a geographic area of particular concern and those federal, state, and political subdivisions with jurisdiction over the geographic area of particular concern.

(2) Approved program guidelines-Special area management planning guidelines that describe program standards and criteria for nomination of a geographic area of particular concern, the evaluation and approval of workplans, and contents of special area management plans as required by this chapter. Guidelines shall be approved by the council.

(3) Council-The Coastal Coordination Council.

(4) Geographic area of particular concern-An area within the coastal management boundary (as identified in §503.1 of this title (relating to Coastal Management Program Boundary)) which is designated by the council as requiring special area management planning due to the area's ecological, geological, physical, scientific, recreational, aesthetic, historical or cultural values; or the area's potential for significant economic benefits, such as ports, harbors, and waterfront areas. Geographic areas of particular concern shall be at least the minimum size necessary to achieve the purpose of the geographic areas of particular concern nomination.

(5) National Estuary Program-A program established for nationally significant estuaries designated under the Clean Water Act, §320, 33 United States Code Annotated, §1330, in order to convene a management conference whose primary objective is to develop a Comprehensive Conservation and Management Plan to protect an estuary's water quality and natural resources.

(6) Nominating entity-The governor or any nonprofit or public citizen group, local government, political subdivision or federal or state agency that submits a nomination of a geographic area of particular concern for consideration by the council, provided, however, any nominating entity comprised solely of a nonprofit or public citizen group must have at least one member who owns land located within the boundaries of the geographic area of particular concern nominated as a special area management plan.

(7) Scoping process-The organization of a special area management planning committee that identifies and assigns priority to information and issues to be addressed by the proposed special area management plan.

(8) Special Area Management Plan-A plan that includes in words, maps, or illustrations a detailed and comprehensive statement of policies providing for protection of coastal natural resource areas, other relevant coastal resources, and relevant economic growth and a statement of the mechanisms for timely implementation of the policies in a specific geographic area within the coastal area boundary.

(b) The following abbreviations, when used in this chapter, shall have the following meanings.

(1) CCMP-Comprehensive Conservation and Management Plan.

(2) CMP-Texas Coastal Management Program.

(3) CNRAs-Coastal natural resource areas, as defined in §501.3(a)(5) of this title (relating to Definitions and Abbreviations).

(4) GAPC-Geographic area of particular concern.

(5) GLO-General Land Office.

(6) NEP-National Estuary Program.

(7) SAMP-Special area management plan.

§504.2. Nomination of a Geographic Area of Particular Concern.

(a) Nominating Entity. Any nonprofit or public citizen group, local government, political subdivision, federal or state agency, or the governor may nominate a GAPC for consideration by the council. Nominations shall be submitted on a standard form to the GLO staff. Nomination forms are available upon request from the GLO staff.

(b) Standard Nomination. The nominating entity shall demonstrate that the proposed GAPC meets the approved program guidelines and shall include the following information relevant to the specific area:

(1) the type of GAPC as defined in the approved program guidelines;

(2) a delineation of the boundaries of the nominated GAPC, including identification of any geographic areas within the boundary that are already included in another SAMP;

(3) a description of the CNRAs and other significant resource(s), if any, within the nominated GAPC by location and size, and an identification of the entities having jurisdiction, ownership, management, trusteeship, and/or control over the specified natural resource(s);

(4) a discussion of the current management of the nominated GAPC;

(5) a demonstration of support for the nomination by a majority of landowners within the GAPC and from all counties and municipalities with jurisdiction over the nominated area;

(6) a discussion of potential and/or existing conflicts and/or issues affecting the nominated GAPC that warrant a SAMP;

(7) a description of the possible special area management goals and objectives that would apply to the nominated GAPC;

(8) names and addresses of affected parties, including affected local governments and mineral and leasehold interest owners; and

(9) a discussion of coordination with existing state or regional studies and/or programs occurring within the nominated GAPC that may provide sources of information or funds.

(c) Determination of Administratively Complete Nomination. Upon receipt of a nomination, the GLO staff will, within 15 working days, determine if the nomination form is administratively complete. After the GLO staff determines that a nomination form is administratively complete, notification of preliminary evaluation

according to §504.3 of this title (relating to Preliminary Evaluation of a Nominated Geographic Area of Particular Concern) will be sent to the nominating entity. The GLO staff shall also publish the acceptance of the nomination in the *Texas Register* "In Addition Section" and notify the public that comments on the nomination will be received during the 60-day period following publication of the notice of acceptance of the nomination. Upon receipt of the notification, the nominating entity shall publish in a regional or local newspaper (with the largest circulation in the pertinent county), at the earliest possible publication date, notice of the nomination for designating a GAPC at least two times during the preliminary review period. Such notice shall describe the GAPC, notify the public of the opportunity to comment on the proposed SAMP during the 60-day period following publication of the notice of acceptance, and include the address of the council secretary.

(d) The nominating entity shall provide or cause to be provided notice to all affected parties by United States Postal Service, first class mail, adequate postage prepaid, on or before the expiration of 15 days following the nominating entity's receipt of notice of an administratively complete nomination. Such notice shall include:

(1) a description of the boundaries of the nominated GAPC, using commonly known landmarks, such as roads, streets, and highways (if such landmarks cannot be used, a legal description may be required);

(2) identification of the type of GAPC proposed;

(3) a list of the names and addresses of members of the nominating entity, including a designated contact to receive more information, unless such information is protected from disclosure by law, in which case the name and address of the entity, not its members, shall be identified;

(4) citations of the laws authorizing the nomination of the area as a GAPC; and

(5) a statement that any landowner or mineral and leasehold interest owner may opt out of the GAPC by sending a certified letter requesting that its property not be included in the GAPC boundary, and that such letter be mailed to the nominating entity within 90 days after publication of the notice of an administratively complete nomination in the *Texas Register* pursuant to subsection (c) of this section. A mineral or leasehold interest owner may elect to opt out of a SAMP and bar the enforcement of any SAMP policies which restrict development of the mineral estate.

(e) Determination of Administratively Incomplete Nomination. If the nomination form is not deemed complete, then the nominating entity will be notified in writing of those sections not found to be complete, and the nominating entity must then complete the form in accordance with the GLO's request within 30 days and prior to taking any action.

§504.3. Preliminary Evaluation of a Nominated Geographic Area of Particular Concern. GLO staff will complete a preliminary evaluation of the nominated GAPC within 90 days after receipt of an administratively complete nomination form. During the preliminary evaluation period, GLO staff will determine whether the nominated GAPC complies with the approved program guidelines. The GLO staff may request from the executive committee of the council an extension to conduct the preliminary evaluation. The executive committee of the council may grant the request for an extension not to exceed 90 days. Upon completion of the preliminary evaluation, the GLO staff shall make its recommendation to the executive committee of the council. The GLO staff shall recommend to the executive committee of the council that the nomination either be rejected, in which case specific objections will be provided, or be accepted. The executive committee of the council shall either approve or disapprove of the GLO staff recommendation. The executive committee of the council shall inform the nominating entity of its reasons for disapproval of a nomination.

§504.4. National Estuary Program. In lieu of using the procedures for nomination of a GAPC in §504.2 of this title (relating to Nomination of a Geographic Area of Particular Concern) and §504.3 of this title (relating to Preliminary Evaluation of a Geographic Area of Particular Concern) and development of a SAMP in §504.5 of this title (relating to Submission of a Workplan for Development of a Special Area Management Plan) and §504.6 of this title (relating to Detailed Plan Development), a NEP Policy Committee may elect to nominate an area for which a CCMP has been developed under the NEP by submitting it to the council with a request that the enforceable policies of the CCMP be incorporated into the CMP rules as a SAMP for that area. Upon submission of the CCMP, the nomination shall be deemed accepted and the council shall consider adopting the CCMP as provided in §504.8 of this title (relating to Council Adoption of a Comprehensive Conservation and Management Plan). The council shall issue public notice of the receipt of the CCMP and shall provide an opportunity for the public to submit comments to the council prior to considering adoption of the CCMP under §504.8 of this title (relating to Council Adoption of a Comprehensive Conservation and Management Plan).

§504.5. Submission of a Workplan for Development of a Special Area Management Plan.

(a) Scoping Process. Upon receipt of approval from the executive committee of the council to develop a workplan, the nominating entity, or its designee, will begin the scoping process. Scoping is the process of identifying and assigning priority to information, conflicts, and issues associated with the proposed SAMP and making recommendations to resolve identified conflicts and issues as outlined in the approved program guidelines.

(b) SAMP Committee. The SAMP committee's primary objective is to draft a workplan for the development of a SAMP, including recommendations to resolve identified conflicts and issues. The SAMP committee will be established by the nominating entity and shall include a balanced and representative cross-section of the local community. The SAMP committee shall notify the secretary of the executive committee of the council in writing of all SAMP committee members and their affiliations. The committee shall be chaired by a member of the nominating entity and include at a minimum:

(1) a representative of local business or industry located within the GAPC;

(2) two representatives from environmental or conservation organizations organized for the preservation or enhancement of natural resources in the area;

(3) a scientist unaffiliated with any other member listed in this subsection with expertise in coastal and marine issues;

(4) a local elected official with jurisdiction over the GAPC; and

(5) a property owner who owns property inside the GAPC.

(6) In all events the nominating entity shall invite, in writing, all affected parties and landowners within the nominated GAPC to participate as SAMP committee members. The nominating entity will conduct meetings with the affected parties to discuss the scoping for the SAMP. The nominating entity must notify the secretary of the executive committee of the council in writing of all SAMP committee participants and their affiliations as early as practicable, but in no event later than 10 days prior to the first SAMP committee meeting.

(c) Schedule for Development of a Workplan. The SAMP committee must present a workplan to the executive committee of the council requesting its endorsement within six months of the date of approval of the GAPC nomination by the executive committee of the council. If the SAMP

committee has not produced a workplan within six months, then the nomination will be withdrawn from consideration by the executive committee of the council. The executive committee of the council may consider requests for extensions of time. Criteria for a SAMP committee to receive an extension of time include a showing of due diligence in preparation of a plan to date and a showing of cause for the extension in accordance with approved SAMP program guidelines.

(d) Minimum Criteria for Development of a Workplan. The workplan shall meet the approved SAMP program guidelines and shall at a minimum include the following information:

(1) the type of GAPC, as defined in the approved SAMP program guidelines, and a description of how the site meets the approved SAMP program guidelines;

(2) a list of persons on the SAMP committee;

(3) delineation of the boundaries, (including the delineation of properties within the boundaries of the SAMP which will not be included in the SAMP because the owners have elected not to participate), an inventory of CNRAs and, if appropriate, other resources in the GAPC;

(4) a discussion of the priority issues and conflicts within the GAPC to be addressed in the development of the SAMP, including a means of ensuring the SAMP goals and policies will not conflict with those of any other SAMP covering all or part of the same GAPC;

(5) a list of potential goals and/or objectives of the SAMP;

(6) a discussion of existing information and data that will be used in the development of the SAMP;

(7) a description of the support resources (e.g., technical, administrative, etcetera) that are necessary to develop the SAMP;

(8) the written consent of all landowners to have their property included within the nominated GAPC, unless the landowner has elected to opt out;

(9) a schedule for developing the SAMP; and

(10) an estimate of the entire cost of developing the SAMP and any known and potential sources of funding for development of the SAMP.

(e) Evaluation of the Workplan. A workplan must be approved by the executive committee of the council before development of a SAMP may occur. The executive committee of the council shall review the workplan to determine if it complies with the approved SAMP program guidelines. The executive committee of the council may ask the SAMP committee to revise the workplan as necessary or may approve the workplan without revision. The executive committee of the council must issue its recommendation within 60 days of receiving the workplan for review. If the workplan is approved by the executive committee of the council, then development of the SAMP may begin in accordance with the approved workplan.

§504.6. Detailed Plan Development.

(a) Elements of the SAMP. The SAMP shall meet the approved program guidelines and shall include, at a minimum, the following information:

(1) a discussion of the biological, physical, economic, and/or cultural values of the GAPC;

(2) appropriate management strategies and goals to address the priority issues of the SAMP;

(3) specific enforceable policies and/or nonregulatory policies that implement the goals of the SAMP;

(4) implementation strategy, including the identification of the entity designated to lead in coordinating and tracking the SAMP, and the commitment of local, state, or federal agencies and the actions necessary to implement the SAMP;

(5) funding strategies;

(6) records of SAMP committee meetings and public participation at those meetings;

(7) a description of the potential economic effects of SAMP adoption;

(8) a discussion of the SAMP's compliance with the CMP goals and policies; and

(9) a description of any comprehensive land or resource management plans relevant to the SAMP which have been proposed or adopted by a government entity and any relevant laws and regulations applicable to the proposed SAMP policies.

(b) Evaluation of the Proposed SAMP by the Executive Committee of the Council. The SAMP shall be submitted to the executive committee of the council for its review and approval. The executive committee of the council shall have 60 days to review and comment on the proposed SAMP. The executive committee of the council may recommend that the proposed SAMP be revised and modified to meet the approved program guidelines. The executive committee of the council shall forward the proposed SAMP to the council with a recommendation that the proposed SAMP be either approved or rejected for the council evaluation according to §504.7 of this title (relating to Council Evaluation, Adoption, Amendment, and Withdrawal of the Special Area Management Plan).

§504.7. Council Evaluation, Adoption, Amendment, and Withdrawal of the Special Area Management Plan.

(a) Evaluation of the Proposed SAMP by the Council. The council shall review the proposed SAMP within 90 days of the date that the proposed SAMP was forwarded to the council by the executive committee of the council according to §504.6(b) of this title (relating to Detailed Plan Development). The council may request that the SAMP committee revise the proposed SAMP to comply with the CMP goals and policies and the approved SAMP program guidelines. The proposed SAMP must be modified pursuant to the council's specifications before further action may be taken.

(b) Action on the Proposed SAMP by the Council. The council shall take action to approve or reject the proposed SAMP by vote of a majority of the council members eligible to vote. If the council votes to reject the proposed SAMP, specific objections shall be provided. If the council votes to approve the SAMP, the council may propose rules for those provisions of the SAMP that are enforceable policies within Chapter 501 of this title (relating to the Coastal Management Program). The council shall not approve a SAMP whose boundaries include land whose owner either elected to opt out of the GAPC under §504.2(d)(5) of this title (relating to Nomination of a Geographic Area of Particular Concern) or did not consent to have the land included in the GAPC under §504.5(d)(8) of this title (relating to Submission of a Workplan for Development of a Special Area Management Plan).

(c) Publication of Enforceable Policies. The council will publish the enforceable policies of the SAMP as proposed rules in the *Texas Register* prior to adoption by the council. The council will publish the proposed SAMP in its entirety for adoption as an amendment to the CMP as a miscellaneous document in the *Texas Register*.

(d) Public Hearings on the Proposed SAMP. Prior to council adoption of the SAMP, public hearings shall be held by representatives of the council at a location accessible to all Texans in the city closest to the GAPC, and notice of such hearings shall be provided in accordance with the Open Meetings Act, Texas Government Code, Title 5, Subtitle A, Chapter 551. Copies of the site description and any proposed rule shall be made available for public review at the public library in each affected county, city and at the GLO in Austin.

(e) Council Adoption of the SAMP. After consideration of all comments received in response to *Texas Register* publications and the public hearings, the council may adopt the SAMP as an amendment to the CMP, provided at least four council members vote to adopt the SAMP. The council may adopt by rule only the enforceable policies of the SAMP as an amendment to §501.12 of this title (relating to Goals) and §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas). Once the enforceable policies of the SAMP are adopted by the council, then those portions of the SAMP are enforceable, subject to the CMP.

(f) Notwithstanding any other provisions of this subsection, the council may preview a SAMP upon the written request of the nominating entity. The nominating entity shall follow the procedures in §§505.50-505.53 of this title (relating to Council Advisory Opinions on General Plans).

(g) Minor Amendment of a SAMP. This subsection only applies to SAMPs approved by the council.

(1) Identification of Minor Amendments to a SAMP. The amendments identified in this paragraph are considered minor amendments that do not require council review:

(A) editorial changes;

(B) amendments to the nonenforceable policies of the SAMP;

(C) amendments to a public outreach strategy provided in a SAMP insofar as they increase, rather than reduce, public participation in a SAMP;

(D) amendments to the funding strategies of a SAMP.

(2) Notification of Minor Amendments. The entity required to be identified, pursuant to §504.6(a)(4) of this title (relating to Detailed Plan Development), as the lead in coordinating and tracking the implementation of the SAMP will notify the GLO staff and the executive committee of the council of any minor amendments to the SAMP.

(h) Major Amendment of a SAMP. This subsection only applies to SAMPs approved by the council.

(1) Identification of Major Amendments. The amendments identified in this paragraph are considered major amendments that require council review:

(A) amendments to the GAPC boundaries;

(B) amendments to the enforceable policies of the SAMP;

(C) amendments to any memoranda of agreement adopted by federal agencies and state agencies and political subdivisions in reliance on the development and continued existence of the SAMP;

(D) amendments to the implementation strategy of the SAMP;

(E) amendments to the definition of a GAPC's natural resources;

(F) amendments to the management strategies of the SAMP.

(2) Council Review of Major Amendments. Before the council may approve a major amendment to the SAMP, the entity required to be identified, pursuant to §504.6(a)(4) of this title (relating to Detailed Plan Development), as the lead in coordinating and tracking the implementation of the SAMP must submit a written request to the council secretary for council review of the major SAMP amendments at the next regularly scheduled council meeting. The following items must be provided with the written request:

(A) an executive summary of the current SAMP;

(B) a description of reason(s) for the major amendment;

(C) a description of the proposed major amendment; and

(D) resolutions in support of the proposed major amendment from all counties and municipalities with jurisdiction over the SAMP area.

(3) The council shall review any proposed major amendment of a SAMP to determine whether such amendment is consistent with the council's initial evaluation and approval of the SAMP, pursuant to this section. If the council determines that a proposed amendment is not consistent with the council's initial approval of the SAMP, the council shall use the procedure established in subsection (i) of this section to withdraw approval of the SAMP.

(i) Withdrawal of Council Approval of a SAMP.

(1) The council shall consider withdrawing approval of a SAMP if:

(A) a request to withdraw such approval is submitted by either a majority of members of the SAMP committee as identified by §504.5(d)(2) of this title (relating to Submission of a Workplan for Development of a Special Area Management Plan) or persons owning a majority of the area within the boundaries of the SAMP; or

(B) the council determines that a major amendment is inconsistent with the council's initial evaluation and approval of the SAMP pursuant to subsection (h) of this section.

(2) Prior to submission of a request for withdrawal of SAMP approval, the SAMP committee shall consult with all appropriate federal, state and local government entities and other persons identified as affected parties under §504.2(b)(8) of this title (relating to Nomination of a Geographic Area of Particular Concern). The SAMP committee shall also hold no fewer than two public meetings to inform the public of the proposal for withdrawal and solicit public comment. Along with the request for withdrawal, the SAMP committee shall include a summary of public comments received, a statement summarizing the support for and opposition to the withdrawal, and the resolutions addressing the proposed withdrawal from all counties and municipalities with jurisdiction over the GAPC.

(3) If the council has adopted rules incorporating the enforceable policies of the SAMP, withdrawal of the SAMP approval shall only be effective upon repeal or amendment of the provisions adopting the SAMP policies. The council shall hold at least one public hearing within the boundaries of the GAPC to solicit public comment prior to the repeal or amendment of these provisions. In all cases, a majority of all council members must affirmatively vote to withdraw approval of a SAMP.

(j) Council Evaluation of Approved SAMP. The GLO will prepare and provide the council with a report on existing approved SAMPs at least every four years, in conjunction with the preparation of the GLO's biennial report to the legislature in alternating biennia, as required pursuant to the Texas Natural Resources Code, §33.052(g).

§504.8. Council Adoption of a Comprehensive Conservation and Management Plan. If a NEP Policy Committee has nominated an area as a GAPC under §504.4 of this title (relating to National Estuary Program), upon approval of the CCMP under the Clean Water Act, §320(f), 33 United States Code Annotated, §1330(f), the council shall consider adoption of the enforceable policies of the CCMP as a SAMP for

the area covered. If the council finds that the CCMP contains draft enforceable policies in a form suitable to be proposed and adopted as rules, the council shall consider adopting those policies pursuant to §504.7(c)-(e) of this title (relating to Council Evaluation, Adoption, Amendment, and Withdrawal of the Special Area Management Plan). If the council finds that the draft enforceable policies contained in the CCMP are not in a form suitable to be proposed and adopted as rules, the council shall defer consideration of those policies pursuant to §504.7(a)-(e) of this title (relating to Council Evaluation, Adoption, Amendment, and Withdrawal of the Special Area Management Plan) until the entity or entities responsible for implementing the CCMP have drafted and submitted suitable enforceable policies.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448284 Garry Mauro
Chairman
Coastal Coordination Council

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For further information, please call: (512) 305-9129

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Chapter 505. Council Procedures for State Consistency with Coastal Program Goals and Policies

The Coastal Coordination Council (council) adopts new Chapter 505, §§505.10 and 505.11, 505.20-505.26, 505.30-505.42, 505.50-505.53, and 505. 60-505.74, concerning council procedures for state consistency with the Texas Coastal Management Program (CMP) goals and policies, with changes to the proposed text published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1920). All sections are adopted with changes.

This chapter is adopted pursuant to the Texas Natural Resources Code, Chapter 33, Subchapters C and F (Coastal Coordination Act), which require the General Land Office (GLO) to develop the CMP and the council to promulgate CMP goals and policies.

This chapter describes the council's procedures for ensuring that state actions, local government actions, and general plans subject to the CMP will be consistent with the CMP goals and policies. The chapter is designed to keep the number of actions referred to the council for review at a manageable level based on the time, staff, budget, and other resources available to the council and to ensure that council review is reserved for those actions most likely to adversely affect the ecological and economic vitality of coastal natural resource areas (CNRAs) The consistency review process rests on two basic assumptions: that the level of government closest to the action should take the lead role in assessing the action's coastal impacts and that public funds should be spent where the greatest benefit to CNRAs is likely to result. The only actions subject to council review pursuant to this chapter are those specifically listed in §505.11 and §505 60. These listed actions are subject to council review only if they adversely affect a CNRA designated in §501.2(a) of this title (relating to Findings). Section 505.11(d) helps to avoid bureaucratic delay and expedites the consistency review process by allowing an applicant, project sponsor, or other entity undertaking a project to request a coordinated consistency determination when more than one agency has jurisdiction over the proposed action

Section 505.20 effectuates the council's intent to achieve consistency through individual agency rules and provides the procedure for council certification of agency rules governing actions which may adversely affect CNRAs. Pursuant to §505.11(c), after council certification of an agency's rules, an action to renew, amend or modify an existing permit, certificate, lease, easement or approval is not subject to council review if the action complies with the certified rules. Under §505.21, the certified rules are incorporated into the CMP goals and policies. Section 505.30 requires an agency to make a consistency determination or a determination that the action listed in §505.11 will not have adverse effects on a CNRA. Pursuant to §505.31, the council may, upon request, make a preliminary determination of the consistency of any individual agency action to assist relevant parties in structuring the proposed action to ensure compliance with the CMP goals and policies

Most significantly, §505.26 allows an agency whose actions are listed in §505.11 to adopt thresholds for the referral of actions to the council. Once an agency's rules are certified and its thresholds are approved, then pursuant to §505 32, any action that does not exceed the approved thresholds is reviewable only if it: adversely affects a critical area, a critical dune area, a coastal park, wildlife management area or preserve, or a Gulf beach; was the subject of a formal hearing before the agency; another state agency participated in the hearing; and the other state agency contested the agency's consistency determination. An individual agency action that exceeds the approved thresholds is reviewable when the agency actually authorized an action or took an action; the consistency issue was raised during the time the agency was considering the action; a request for referral was submitted; and no formal hearing was available before the agency; or a formal hearing or alternative dispute resolution process in the agency was used These prerequisites must be met for an action to be reviewed by the council. In addition, the rule requires the council chairman or at least three other council members to accept the referral for consistency review before the council has jurisdiction to review the action Sections 505 34-505.36 provide the procedural requirements for council review of an individual agency action.

Minor procedural defects will not defeat the council's jurisdiction to review an individual agency action according to §505.34(e). This allows the council to expeditiously review individual agency actions even though certain ministerial requirements are not strictly complied with in the request for referral. The council must determine whether the proposed action is consistent with the CMP goals and policies within 70 days of the date the agency took the action

Section 505 37 prohibits any person from conducting activities which may irreparably damage or alter a CNRA pending council review of the action The council may affirm or remand the agency's determination pursuant to §505 38 Once the council remands the action to the agency, the action must be modified or amended If the agency does not follow the council's recommendation, the agency must notify the council of the reason for its decision not to comply with the recommendation Section 505.40 identifies the council's authority after remand of an action to an agency It requires the chairman or three other council members to agree to review an agency's action on remand. The council is authorized to reverse the agency action and such reversal voids the action The council's remedy after voiding an individual agency action is legal action against the agency which authorized the action Section 505.42 specifically prohibits the council from requesting the attorney general to pursue legal action against any individual for failure to comply with the CMP goals and policies. In contrast to this limited power of the council, §505 41 allows any aggrieved person to appeal a reversal by the council

Section 505.50 lists certain general plans governing state agency actions A state agency may request the council to issue an advisory opinion on the consistency of a general plan by following the procedures in §505 51. An agency may also request the council's participation in the development of a general plan pursuant to §505 52. The council's opinion on any general plan is only advisory, not binding; however, such an opinion is designed to notify the public and the governmental entities operating under the plan that actions taken pursuant to the plan are likely to be consistent with the CMP goals and policies.

Only two local government actions are subject to council review. Section 505 60 provides that the issuance of dune protection permits and of beachfront construction certificates must be consistent with CMP goals and policies The potential for council review of these actions is limited by the thresholds set in §505.61, which defines the types of dune protection permits and beachfront construction certificates which may be subject to council consistency review. Permits and certificates below the thresholds, if issued in accordance with §15 4 and §15 5 of this title (relating to Dune Protection Standards and Beachfront Construction Standards) are deemed to be consistent with CMP goals and policies according to §505 62 This section preserves local government autonomy in the

issuance of most permits and certificates. The remainder of Subchapter E of this chapter provides for preliminary consistency review of local government actions related to dune protection and beachfront construction and describes the procedures for referral to the council and the council's review procedures.

From its outset, the CMP has responded to the real concerns of Texans: addressing erosion, protecting coastal natural resources and balancing environmental protection with economic development, among others. The council proposed the CMP as rules in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1920). The council held seven public hearings, six of them in population centers along the entire length of the Texas coast. The period for the original public comment expired May 2, 1994. Including both public testimony at hearings and written comments, nearly 200 commenters offered over 1,000 comments on virtually every portion of the CMP.

In addition to substantive comments, the council received numerous requests for additional time to review the CMP. Numerous commenters also wished to review, before the council finally adopts the CMP as rules, revisions to the proposed rules. Ordinarily, members of the public who may be affected by a proposed rule, or have an interest in the rule, have little opportunity to review and comment on proposed staff revisions to a proposed rule before it becomes final. But the council has consistently valued and incorporated public participation in developing the CMP. Rather than satisfying only the minimum standards of uniform practice and procedure for a state agency in terms of public notice and comment, the council on June 28 voted to publish the CMP, with proposed revisions, in the July 5, 1994, issue of the *Texas Register* (19 TexReg 5237). This additional step was taken to ensure the widest possible opportunity for meaningful public review and comment before the council adopts the CMP.

Accordingly, the comment summaries and responses are divided into two parts. "Part A" contains comment summaries and responses relating to the comments received during the 60-day comment period following the publication of the interim draft of Chapter 505 in the July 5, 1994, issue of the *Texas Register* (19 TexReg 5237). "Part B" contains comment summaries and responses relating to the comments received during the original comment period following the publication of Chapter 505, in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1920).

General comments were received regarding the "CMP Document," which was the subject of the "Notice of Availability" in the March 18, 1994, issue of the *Texas Register*. The CMP Document contains descriptions of the enforceable and nonenforceable portions of the CMP. The enforceable portions of the CMP are Chapters 501, 504, 505, and 506 which respectively contain: the CMP goals and policies; special area management planning; council procedures for state and local consistency with CMP goals and policies; and council procedures for federal consistency with the CMP goals and policies. In addition to reflecting the council's balanced approach to the protection of the ecological and economic values of CNRAs, the CMP Document, prepared pursuant to Texas Natural Resources Code, Chapter 33, Subchapters C and F, is intended to satisfy the federal requirements for approval under the Coastal Zone Management Act (CZMA), 16 United States Code Annotated, §1455(d). While portions of the CMP Document describe the provisions of Chapters 501, 504, 505, and 506, the chapters, not the CMP Document, are the council's enforceable policies; the chapter preambles, not the CMP Document, may be used to determine the intent of the chapters. Based on comments received, the CMP Document was reviewed and revised to ensure consistency and resolve any perceived inconsistency with the chapters. To the extent that any conflicts are perceived when reviewing the CMP Document and the chapters, or while implementing the chapters, the chapters prevail.

Editorial changes that do not alter the content of this chapter have been made to clarify meaning and to correct grammatical errors. To save space, similar comments and responses have been combined by section. General comments on the proposed chapter and comments on the preamble to the proposed chapter are combined at the end of the summary of comments.

Certain sections were revised based on comments received on the CMP proposed rules published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1895), and subsequently revised based on comments received on the interim draft of the CMP rules, published in the July 5, 1994, issue of the *Texas Register* (19 TexReg 5195). Paragraphs in "Part A" of this preamble which discuss such subsequent changes are *italicized* for the reader's convenience.

Part A.

Section 505.11.

One commenter noted that regarding §505.11, the council proposes to review agency rules in addition to agency decisions for consistency with the CMP. This commenter stated, however, that the legislature only authorized the council to review final agency "actions." The commenter specifically referred to the Texas Natural Resources Code, §33.205(a), which distinguishes between "rules and policies applicable in coastal areas" and "actions subject to the requirements of the Texas Natural Resources Code, §33.205(a)." This commenter also stated that mandatory rule review should be eliminated. Another commenter questioned why Public Utility Commission (PUC) certificates of convenience and necessity (CCN) are subject to the CMP. The Texas Natural Resources Code, §33.205(a), provides that state agencies "[i]n developing rules and policies applicable in coastal areas" shall take into account the CMP goals and policies. The council intends that consistency be achieved primarily through individual agency rules as stated in §505.10(b). The council is not requiring agencies to submit their rules for certification under §505.20. However, the agency's benefit in seeking such certification is the approval of thresholds for review of agency actions subject to the CMP (§505.21). Section 505.22 is also designed to allow agencies to limit the council's authority to review its actions. According to the Texas Natural Resources Code, §33.205(a), any agency actions, including PUC CCN's, that may adversely affect CNRAs must comply with the CMP goals and policies. Therefore, since all of the actions subject to the CMP listed in §505.11 are necessarily taken pursuant to specific agency rules, there is no conflict between the language of the Texas Natural Resources Code, §33.205(a), and the CMP. No change was made based on these comments.

One commenter noted that §505.11(a) provides for consistency review of certain actions outside the CMP boundary and stated that there should be no review of actions outside the boundary. The same commenter also stated that making the allocation of water rights subject to CMP goals and policies is too restrictive. To protect the ecological and environmental vitality of CNRAs, certain actions occurring outside the CMP boundary must be eligible for consistency review. Natural resources, such as hydrocarbons and water, may not be confined along political or legal boundaries. Extraction in one area may cause drainage in another. Allocation of water rights in §505.11 is the sole action outside the CMP boundary which is subject to the CMP. The allocation of water rights outside the CMP boundary affects fresh water inflows to coastal bays and estuaries. Freshwater inflows directly impact the salinity of the water in these bays and estuaries, thereby impacting recreational and commercial fishing. The council has found, in §501.2 of this title (relating to Findings), that fishing is valuable to the state as both a recreational and commercial activity, with both creating significant economic benefits for Texas. Thus, to protect this valuable economic and recreational activity, the council has prescribed a limited review of water rights allocations outside the CMP boundary. Since the protection of fishing is beneficial to all citizens of Texas, no change was made based on this comment.

One commenter requested that §505.11(a)(1)(B)(i) be amended by adding "in the appropriation" after "increase." The commenter also requested that §505.11(a)(1)(B)(iii) be amended by adding "in whole or in part" after "Trans-Texas Water Program as approved," and adding "or their designated representatives" after "three members of the council." These changes serve to clarify the intent of the provision and were made in response to this comment. Regarding §505.11(a)(1)(B), the word "or" was added after clause (i) and before clause (ii) of this subsection for additional clarification. Finally, §505.11(a)(1)(B)(iii) was renumbered for clarity, and is now §505.11(a)(1) (C)(i).

One commenter expressed concern that §505.11(a)(2)(D), as currently worded, could subject the same project to several consistency reviews. The commenter requested that the terms "transportation project planning" and "operation" be deleted from the list of actions subject to council review. The commenter further stated that transportation project operation is not an action subject to Texas Department of Transportation (TxDOT) authorization, but instead, results from con-

struction and maintenance actions. The CMP is a negotiated compilation of existing federal, state, and local law. Those actions determined to have adverse impacts on CNRAs were listed in §505.11 according to agency terminology and classification of activities. The CMP is not intended to subject an activity to repeated council review. Instead, the CMP encourages prompt agency consideration of CMP goals and policies to avoid inconsistency with the rules. The provision in question was intentionally written broad so that council review could occur at the appropriate stage of the project. In any event, council review of the project will only occur once, assuming the review occurs at a stage where there is sufficient information on the project to determine its consistency. No change was made based on these comments.

One commenter requested that the term "transportation project operation" be defined in §505.11(a)(2)(D). According to this commenter, a mistaken interpretation of "transportation project operation" may result in the following actions being subject to the CMP: setting speed limits, size and weight permitting, road closure, and non-maintenance related work on highway right-of-ways (i.e. monitoring wells) and the operation of the Baytown-LaPorte Tunnel. CMP terms and definitions are provided in §501.3 of this title (relating to Definitions and Abbreviations). Section 501.3(d) states that statutory or regulatory terms or phrases which are not defined in Chapter 501 of this title (relating to Coastal Management Program) shall retain the meaning provided in the pertinent agency or political subdivision policies or regulations. The CMP seeks to preserve agency autonomy. Therefore, definitions and classifications of activities within an agency's regulatory authority are left to the pertinent agencies' discretion. No change was made based on this comment.

Two commenters requested that §505.11(a)(2)(F)(i) be amended to limit the impact of the CMP on concentrated animal feeding operations (CAFOs) by referencing critical areas and coastal waters, rather than CNRAs. The clause has been revised in accordance with these comments. This change balances the goal of preserving existing opportunities for development of new CAFOs with the statutory mandate of protecting sensitive coastal resources.

One commenter was opposed to the language in §505.11(c)(1) which authorizes council review of major permit modifications for wastewater discharge permits related to CAFOs. The commenter opposed any language which impacts a CAFO and stated that this section will allow council review of major modifications for existing CAFO permits. The section has been changed pursuant to other comments. Revised §505.11(c)(1) now provides that an action to renew, amend, or modify an existing wastewater discharge permit is not considered an action subject to the CMP if the action would not result in increased pollutant loads or would not result in the relocation of an outfall into a critical area. Also, pursuant to another comment, §505.11(a)(2)(F)(i), affecting permits for new CAFOs, has been amended to limit the scope of CMP applicability. These changes further restrict those actions subject to the CMP and should diminish impacts to CAFOs.

One commenter requested that §505.11(c)(1) be modified to expand the category of wastewater discharge permit modifications which are not considered actions subject to the CMP. This section was revised to more specifically reference those wastewater discharge permit modifications most likely to adversely affect a CNRA. The new language states that a wastewater discharge permit modification is not subject to the CMP unless it results in an increase of pollutant loading to coastal waters or in the relocation of an outfall into a critical area.

One commenter noted that §505.11(c)(1) incorrectly references §505.11(a) (1)(i). The section was amended to strike the incorrect reference.

One commenter recommended that §505.11(c)(1), concerning National Pollution Discharge Elimination (NPDES) permit amendments, be revised to allow council review only when the amendment will result in a "significant increase in pollutant loadings to the receiving waters of the state." Based on another comment, this section was revised to more accurately reflect the adverse impacts on CNRAs.

A commenter recommended that the reference to §505.11(a)(2)(C)(i) be deleted from §505.11(c)(1) because the phrase "major permit modification" is derived from the Texas Natural Resource Conservation Commission (TNRCC) regulations and cannot be applied to Railroad Commission (RRC) activities. The language of §505.11(c)(1) has been modified based on this comment.

One commenter suggested that §505.11(c)(3) be revised to specifically exclude from the CMP those permit amendments or modifications which would result in no additional adverse effects. Section 501.1(a) of this title (relating to Program for Special Management of Coastal Natural Resource Areas) states that the CMP is designed to more effectively manage CNRAs and those activities which cause an adverse impact on CNRAs. The CMP is not intended to affect actions which do not adversely impact CNRAs. A permit amendment or modification having no adverse effect on CNRAs is not subject to the CMP, as provided in §505.30(a)(2). However, it is necessary to consider impacts from those actions that do adversely affect CNRAs. Because §505.30(a)(2) makes it unnecessary to include the requested language in §505.11(c)(3), no change was made based upon this comment.

Regarding §505.11(c)(3), one commenter requested that the entire paragraph be deleted because it is overly broad and could result in virtually every renewal, amendment or modification being subject to council review. The section cited by this commenter provides that a state action to renew, amend or modify an existing permit, certificate, lease, easement, approval or other form of authorization is not an action subject to the CMP if such action only extends the period of authorization. Where the renewal, amendment or modification of a permit or other authorizing action substantively changes the original action, it is appropriate that such change be subject to council review. Otherwise, any substantive changes to existing permits or authorizations could occur without analyzing whether they adversely affect a CNRA and would defeat the purpose of the program. Moreover, §505.11(c)(1) was revised to specifically exclude certain specific renewals and modifications in response to other comments. Therefore, no change is made to paragraph (3) of this subsection based on this comment.

According to one commenter, §505.11(d)(5) should be stricken. In the alternative, everything following the word "order" should be stricken because the exclusive list of actions subject to the CMP does not include enforcement orders. Additionally, the commenter asserted that enforcement matters are beyond the purview of the CMP and there is no process by which an enforcement order may be brought before the council for review. Enforcement orders issued by an agency are not within the exclusive list of agency actions subject to council review. However, actions taken or authorized pursuant to an agency enforcement order may be listed in §505.11 and, therefore, within the council's jurisdiction. Section 505.11(d)(5) exempts from council review those listed actions which were authorized by an agency prior to the effective date of the CMP. No change was made based on this comment.

At the September 16, 1994, council meeting, the member representing coastal local governments moved to delete the urban nonpoint source policy in §501. 14(g)(2) of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas). The motion passed. Municipal water pollution abatement programs in §505.11(a)(2)(F)(vii) have been deleted to conform to the list of actions to revised §501.14(g) of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas).

Section 505.20.

Regarding §505.20, one commenter sought clarification regarding consistency review of maintenance activities. This commenter interpreted a prior council response to suggest that an agency may issue a general consistency determination for a certain type of activity as part of the agency's approval policy for such activity. Further, the commenter requested that agencies which do not have an approval or authorization mechanism for a certain activity be exempt from council review. Pursuant to §505.20, an agency may limit council review by submitting to the council its rules governing or authorizing certain actions. Once the agency rules are certified as consistent, they are incorporated into the CMP goals and policies pursuant to §505.21. Thereafter, any threshold for referral approved by the council is operative and limits council review, pursuant to §505.32. An activity not subject to the CMP and not listed in agency rules is necessarily outside the purview of the CMP. No changes were made based on these comments.

One commenter requested that §505.20 be amended to require notice to affected persons regarding an agency's proposed rule changes and to require that the council consider an agency request for rule certification

only if three council members agree to the agency request, pursuant to the Texas Natural Resources Code, §33.205(b). The notice requirement suggested by the commenter is unnecessary because §505.20(b) currently requires the council secretary to publish notice of the agency request and to seek public comment on the request. Furthermore, the Texas Administrative Procedures Act, Texas Government Code, Title 10, Subtitle A, Chapter 2001 (Texas APA), Subchapter B, §2001.023 and §2001.029, requires state agencies to provide public notice and opportunity to comment on any proposed rule changes prior to adoption. Regarding the commenter's second comment, the council reviews agency rules upon request of the relevant agency; therefore, the more formal procedures for reviewing, remanding, and reversing individual state agency actions, pursuant to the Texas Natural Resources Code, §33.205(b), are not applicable. Thus, §505.20 does not require that the chairman or three other council members submit the rules for review, as is the case for review of individual state agency actions pursuant to the Texas Natural Resources Code, §33.205(b). No change was made based on this comment.

Section 505.21.

One commenter recommended that §505.21 and §505.23(d) be revised to ensure an opportunity for public comment when an agency changes rules which are incorporated into the CMP. Section 505.21 provides that upon certification of an agency's existing rules, the rules are incorporated into the CMP goals and policies. Section 505.23(d) provides that an agency's new rules or amendments are incorporated into the CMP goals and policies upon council certification of the new rules or amendments. The existing procedures for agency rule amendments require public review and comment. The CMP provides adequate opportunity for public review of existing or new rules which will be incorporated into the CMP. Therefore, no change was made based on this comment.

One commenter noted that the attorney general (AG), through the statements of two assistant attorneys general, has opined that thresholds as described in §505.21 and §505.26, will not withstand legal scrutiny and will be struck down. Further, this commenter recommended that the council add language to the CMP stating that if the thresholds are found invalid, then all activities related to council review of state and local government actions would be suspended. Anticipatory language is not appropriate for the CMP. The possibility that some court may for some reason hold some or any part of the rule invalid is not a good basis for inserting language into the rule. This is particularly unwise when the language may be too broad or too narrow to address an unknown future occurrence. Moreover, should a court render a decision affecting the legality of some portion of the CMP, the court will, or can be requested to, rule on the legal status of the remaining portions of the CMP rules. Therefore, any anticipatory rule change would likely be mooted by judicial review. No change was made based on this comment.

Section 505.24.

Regarding §505.24(b)(3), one commenter noted that there appears to be a conflict between this paragraph and the Texas APA. The CMP Task Force on the Texas APA, appointed by the council, has proposed amending several sections relating to council review of agency actions. This chapter contains the Task Force's work product. Sections 505.34(d), 505.35(e), and 505.40(d), respectively, are amended to require the council to act within 70 days. Changes made as a result of the Task Force's recommendations address the issue posed by this commenter. No change was made based on this comment

Section 505.26.

One commenter recommended that §505.26 be revised to allow adoption of thresholds according to the procedures set out in §505.22. The procedures for council review and certification of new rules and rule amendments (pursuant to §505.22) and the procedures for threshold approval (pursuant to §505.26) are very similar. Section 505.26 does not preclude coordination of an agency rulemaking covered by §505.22 with council approval of thresholds under §505.26, especially if the agency rulemaking is a negotiated rulemaking. The council intends to provide coherent and easily accessible procedures. Therefore, the procedures for new rules, rule amendments and thresholds are individually listed. No changes were made as a result of this comment.

Section 505.30.

A commenter recommended that §§505.30-505.42 be revised to contain the exact language of the Texas Natural Resources Code, §33.054 and §33.055(a). These sections of the Texas Natural Resources Code do not address the substance of Subchapter C of this chapter, but rather address the development of the CMP. Subchapter C of this chapter governs procedures for council consistency review of individual state agency actions. Further, Subchapter C of this chapter implements the authority granted by the Coastal Coordination Act, Texas Natural Resources Code, §§33.201-33.208. No change was made based on this comment.

One commenter recommended that §505.30 be deleted because it exceeds the council's statutory authority. Pursuant to the Texas Natural Resources Code, §33.205(a), all actions taken or authorized by state agencies within the CMP boundary that may adversely affect CNRAs must comply with CMP goals and policies. The language in §505.30 is an appropriate implementation of the statutory requirement that agency actions must comply with CMP goals and policies. No change was made based on this comment.

Another commenter recommended that the reference to CMP goals and policies in §505.30(a)(1) should refer instead to the Texas Natural Resources Code, Chapters 61 and 63, as well as to Chapter 15 of this title (relating to Coastal Area Planning). The Texas Natural Resources Code, §33.206, provides for council remand or reversal only if an agency action is inconsistent with CMP goals and policies. Subchapter C of this chapter comports with the statutory language. While the CMP incorporates the GLO rules for management of the beach/dune system, promulgated pursuant to the Texas Natural Resources Code, Chapters 61 and 63, the CMP addresses other activities which fall outside the scope of these rules. To amend the CMP as suggested would, therefore, mislead the public. No change was made based on this comment.

A commenter recommended that §505.30(c) be clarified to indicate that an agency is not required to publish notice of receipt of an application or request for agency action. This commenter recommended that the word "publishing" be replaced with "required to publish." Section 505.30(c) does not mandate that an agency publish notice of receipt of applications or requests for agency action. Publication may be necessary due to other statutory or regulatory requirements. No change was made based on this comment.

Section 505.31.

Regarding §505.31, one commenter suggested that the council should be bound by a preliminary consistency determination. Other commenters suggested that an agency or applicant which participates in the preliminary review process by given some advantage over a party relying solely on the formal process, such as a presumption of consistency after a time certain. Similarly, another commenter recommended that §505.31 be amended to generally provide a presumption of consistency after 60 days, if the authorizing agency does not object in writing. Preliminary review is designed to assist an agency or applicant in analyzing a proposed action for consistency with CMP goals and policies. Pursuant to §505.31, the preliminary review is conducted by a consistency review group (CRG). Recommendations by this group cannot bind the council since the council is not legally authorized to delegate its responsibility for determining consistency to others. Moreover, any preliminary review by the council would be based on a preliminary statement by an agency as to what action it intended to take. Since the preliminary statement does not bind the agency, the preliminary review should not bind the council. No change was made based on this comment.

One commenter recommended that §505.31(c) be amended to require that the CRG provide for local input and public notice. Two commenters suggested that the preliminary review process schedule be limited to prevent delay in the issuance of permits. The council established the CRG, comprised of a representative appointed by each council member, to provide agencies, local governments, applicants, and the public with an effective means of receiving council guidance before an agency takes or authorizes an action. The establishment of the CRG and the preliminary review process does not modify or limit public participation procedures, nor delay existing permitting time frames. Section 505.31(b) already requires the council secretary to publish notice of those requests for preliminary review which are to be considered by the CRG, thereby ensuring public notification. No change was made based on this comment.

Section 505.32.

Three commenters objected to council review of agency actions below approved thresholds, pursuant to §505.32(a)(4)(C). One of these commenters stated that actions below properly developed and approved thresholds will not pose significant threats to CNRAs and should not be subject to review. Another of the commenters suggested that §505.32(a)(4)(C) diminishes the CMP policy statement contained in §505.23 and conflicts with council intent to limit actions subject to review. Two of these commenters suggested that the section be deleted. Another commenter suggested that a higher threshold (pursuant to §505.11(a)(2)(F)(ii)(I)) is appropriate for new water rights for municipal use because such use is given priority under the Texas Water Code. It is the council's intent to limit its scope of review and promote agency autonomy. Only in rare instances will an action below approved thresholds be subject to council review. Section 505.32(a)(4)(C) provides very stringent procedural requirements which must be satisfied to refer below-threshold actions. Council review of such actions is limited to those which adversely affect critical areas, critical dune areas, coastal parks, wildlife management areas or preserves, or Gulf beaches. Further, the action must have been the subject of a formal agency hearing in which another state agency participated as a party and contested the consistency of the proposed action. Thus, council review, pursuant to §505.32(a)(4)(C), will occur only if agencies differ regarding the consistency of an action with potential to adversely impact a highly sensitive area. To effectively coordinate coastal management, promote congruous agency actions, and prevent adverse impacts on vulnerable CNRAs, no changes were made based on these comments.

Regarding §505.32(a)(4)(C), outstanding natural resource waters (ONRWs) were deleted from the list of below-threshold actions potentially reviewable by the council. The TNRCC will be developing a state alternative to federal ONRW designations. Upon completion of the state alternative, the council intends to incorporate relevant and appropriate provisions into the CMP.

One commenter expressed support for the recommendations of the CMP Task Force on the Texas APA regarding §§505 32(c), 505 33(a), 505.34(d), 505.35(e) , 505 38(b), and 505.40(b) and (d). At the June 28, 1994, council meeting, the Task Force was established to review CMP procedures and to make recommendations for changes needed to harmonize CMP procedures with APA procedures. Each council member appointed representatives to the Task Force. Pursuant to the CMP Task Force recommendations, changes to these sections have been made The council appreciates this commenter's support. Section 505 66(d) was also amended to be consistent with the revisions recommended by the CMP Task Force

Section 505.33.

One commenter recommended revising §505.33(a) by replacing "[A]ny person may..." to "[A]ny person with standing may..." to better reflect the meaning of standing as assigned to it by administrative case law. Another commenter suggested that notice of a request for referral be sent via overnight delivery to the agency and applicant. Section 505.33(a) provides that a council member, a party, or other person who participated in a formal adjudicative hearing on an action or a person who filed written comments with the agency before action was taken may file a request for referral. This list of eligible persons are those who have standing to request council review, as identified in the CMP. The additional phrase "with standing" being redundant. Further, §505.33 requires that requests for referral include a certificate of service indicating that notice has been hand-delivered or mailed certified to the agency and/or applicant. Thus, no changes were made based on these comments.

One commenter noted that §505.33 and §505.34 create problematic issues related to agency retention of jurisdiction of a matter referred to the council. The CMP Task Force on the Texas APA, created by the council to study procedural issues in the CMP rules, has recommended several modifications to the procedures in Subchapter C of this chapter. Therefore, since changes were made which address the issues raised by this commenter, no further change was made based on this comment.

Section 505.35.

The council directed the CMP Task Force on the Texas APA to review the schedule in §505.35 and §505.67. The CMP Task Force recommended that the schedules in these sections be revised from 90 days to 70 days This revision has been made and the council must issue a consistency determination within 70 days of the date the state agency or local government took or authorized the action.

One commenter requested that §505.35(c)(6) be deleted. Another commenter stated that council review should not "solicit new information" and that written or oral arguments should only be accepted from those who testified before the agency. This paragraph is directly derived from the Texas Natural Resources Code, §33.204(c), which states that the council shall receive and consider the oral and written testimony of any person regarding CMP goals and policies when reviewing agency actions Since the legislature clearly intended to allow for broad participation in the consistency review process, no change was made based on these comments.

One commenter recommended that the last sentence of §505 35(e) should be amended to read "70 days of the date " This recommended change has been made The council appreciates this commenter's careful reading of the chapter.

One commenter recommended that §505.35(e) be amended to comport with the schedule for council review established in the Texas Natural Resources Code, §33.205, while another recommended that the council chairman be allowed to extend the deadline for council review, but only in limited circumstances and after consultation with other council members. To harmonize council review and the Texas APA provisions governing judicial review of state agency actions, the council has adopted shorter schedules for completion of its review of agency actions CMP schedules have been tailored to require the council to complete its review before the expiration of the 90-day period provided for state agencies to rule on motions for rehearing Thus, §505.35(e) now requires the council to complete its review within 70 days of the date the agency took or authorized the action under review. No changes were made based on these comments.

Regarding §505.35(e) and §505.40(d), one commenter stated that the schedules in these provisions conflict. Section 505.35(e) contains the schedule for council review of an individual agency action, while §505.40 contains the schedule for council review of an agency action after remand. Thus, since the sections refer to different procedures, they do not conflict. No change was made based on this comment.

Section 505 36

One commenter asked for clarification on the implementation of §505 36(b) (1) and recommended that an agency's determination of consistency be afforded a rebuttable presumption and that the agency not be required to provide documentation. Further, the commenter recommended that the council defer to an agency's interpretation of the relevant statute. Section 505.36(b)(1) provides that the agency is entitled to a presumption if their consistency determination is documented by the underlying record. This qualification is not burdensome and the benefit of having the presumption should outweigh any difficulty in knowing precisely what documentation is required. Since agencies are required to make consistency determinations, it is reasonable to require documentation. The agency's interpretation of its enabling statute and consistency determination will be presumed valid. However, the council is required to make an independent interpretation regarding consistency. No change was made based on this comment.

Section 505 37.

One commenter questioned the council's ability to enforce the provision in §505.37 which provides that no action shall be undertaken while the matter is pending council review Further, this commenter noted that when an agency makes a final decision, it may still be subject to council review Pursuant to the CMP Task Force on the Texas APA, the council will conduct a more expedited review and therefore will issue its determination within 70 days of agency action, rather than 90 days The agency action will not be considered final pursuant to Texas APA, Subchapter F, and will remain within the agency's jurisdiction. Therefore, in most cases, no activities will have been authorized by an agency until the council has conducted its consistency review No change was made based on this comment

Section 505.40.

One commenter stated that the preamble discussion regarding §505.40(e), now §505 40(f), created the perception that the CMP allows the council to supersede any action of an agency This commenter also

stated that it is unclear how an agency, with rules certified as consistent under the CMP, can be deemed to have taken an action inconsistent with the CMP. The commenter stated that such a determination of inconsistency would require an extremely diverse technical staff. Another commenter suggested that agency actions after remand be presumed consistent if such actions substantially comply with the council's recommendations. The Texas Natural Resources Code, §33.205(a), mandates that agencies and political subdivisions comply with CMP goals and policies when undertaking certain actions. If an action is found inconsistent, the council can remand the action to the agency, pursuant to §505.38, with specific recommendations for modifying the action to make it consistent with CMP goals and policies. Council authority to review and remand actions is clearly provided in the Texas Natural Resources Code, §33.205 and §33.206. In §505.10(a)(2), the council expressed its intent to limit the number of actions it may review and has included mechanisms in this chapter to ensure that only significant actions may be referred to the council for review. These voluntary and rational policy-based limitations, coupled with the opportunities for preliminary review in §505.31, the standards for council review in §505.36, and the provisions in §505.40 give agencies and applicants the opportunity to minimize council review, and the authority to make their own consistency determinations. An agency's rules, certified as consistent pursuant to §505.20 and §505.22, are incorporated into the CMP goals and policies pursuant to §505.21 and §505.23. The fact that rules are certified does not mean that every agency action taken pursuant to those rules is consistent with CMP goals and policies. Agency rules are often general in nature and are therefore subject to interpretation in light of the facts of an individual case. If an agency action is alleged to be inconsistent with the CMP goals and policies, council review is limited to the items listed in §505.35(c) and, contrary to one commenter's concerns, inconsistencies must be identified in council findings and recommendations. In reviewing the agency's record and consistency determination, the council can rely on staff of council member agencies, information provided by the person requesting referral, pursuant to §505.33(a)(5), and the CRG established under §505. 31(c). Thus, the council will have access to a broad range of expertise without incurring additional taxpayer expense. No changes were made based on these comments.

Section 505.42.

One commenter requested that the language regarding lawsuits against individuals in §505.42(b) and §505.74(b) be amended to prohibit the council from taking any action to bring or cause to be brought a legal enforcement action against a private individual or entity. The council is authorized, pursuant to the Texas Natural Resources Code, §33.208, to bring an enforcement proceeding against any individual who violates the CMP. However, §505.42(b) and §505.74(b) reflect the council's intent to limit its enforcement authority. No change was necessary based on this comment.

Section 505.60.

One commenter suggested that the potential for council review of local government actions under §505.60 would render meaningless the comments submitted by the GLO or the AG to a local government on a proposed dune protection permit or beachfront construction certificate pursuant to the Texas Natural Resources Code, Chapters 61 and 63. The commenter also stated that the preliminary review process would unnecessarily delay the permitting process. Comments by the GLO or the AG, pursuant to the requirements of the Texas Natural Resources Code, Chapters 61 and 63, are authorized regardless of whether the action is subsequently referred to the council. Council review of any action under the CMP does not render previous governmental comments or reviews meaningless. The GLO and the AG will be reviewing proposed permits to ensure compliance with applicable statutory and regulatory requirements of the Texas Natural Resources Code, Chapters 61 and 63. Council review is limited to determining whether a proposed permit is consistent with CMP goals and policies. Preliminary review provided in §505.63 will not result in delays in the permitting process because preliminary reviews must be conducted during the normal schedule for issuing permits or certificates. Preliminary review is intended to identify and resolve potential consistency problems prior to final local government action and should make later formal council review unlikely. No change was made based on this comment.

Section 505.61.

Regarding §505.61(1), one commenter recommended that council review of construction activities be limited to those activities conducted seaward of dune protection lines (established pursuant to the Texas Natural Resources Code, §63.012) rather than activities within the first 200 feet landward of the line of vegetation. The thresholds established in §505.61(1) are intended to apply to beachfront construction certificates, as well as dune protection permits. Local governments are authorized to and have established dune protection lines at differing distances from vegetation lines. Such lines are generally established without regard to beachfront construction certificates. Therefore, the thresholds established in §505.61 provide a uniform and consistent method for limiting council review of local government actions along the coast. Finally, regardless of thresholds, dune protection permits and beachfront construction certificates must be issued in compliance with applicable CMP goals and policies. No change was made based on this comment.

One commenter requested that the phrase "construction or repair" be added to §505.61(3) so that thresholds limiting council review will apply to existing erosion response structures as well as to construction of new structures. The provisions of §505.61(3) are derived from §15.7 of this title (relating to Local Government Management of the Public Beach). The council has significantly limited its review authority through thresholds. Further limitation on council jurisdiction would frustrate the CMP goal and policies. Therefore, no change was made based on these comments.

General Comments.

A commenter supported the council's intent to implement rules that reduce the number of individual actions subject to formal review. The commenter stated that council certification of agency rules will greatly reduce the burden on affected parties and individuals. In addition, the commenter supported thresholds for referral, presumptions for agency consistency determinations, and statements regarding burdens of proof. Full support was also expressed for CMP schedules and lists of actions and rules subject to the CMP. The council appreciates this commenter's support. No changes were made based upon these comments.

Two commenters requested delay of CMP adoption until relevant agencies have adopted thresholds. One of the commenters also stated that until the thresholds are adopted it is impossible to truly measure the fiscal impact of the CMP. The council is not requiring state agencies to adopt thresholds. The CMP implementation will not occur until June, 1995, giving agencies adequate opportunity to voluntarily adopt thresholds pursuant to §505.26. The relevant state agencies may limit the jurisdiction of the council by adopting thresholds, but it is within an agency's discretion to do so. If this change were made, the failure of only one agency to adopt thresholds could indefinitely postpone adoption of the CMP. No change was made based on these comments.

One commenter was concerned that proposed procedures for referring consistency determinations are overly restrictive, cumbersome, confusing and difficult to enforce. The CMP is designed to limit council review to those activities listed in §§505.11, 505.60, and 506.12 which may adversely affect a CNRA. While the procedural requirements of this chapter and Chapter 506 may appear cumbersome, §505.34(e) and §505.66(e) provide that the council has discretion to accept referrals that do not satisfy all ministerial requirements. The CMP is a consensus document which acknowledges agency and local government autonomy. The CMP seeks to minimize council review, not as an end in itself, but the CMP is designed to provide that the level of government closest to the activity in question should first determine whether or not the activity will have adverse effects on CNRAs. Through these rules, and in keeping with the legislature's will, the council has made itself the agency of last, not first, resort. The council referral procedures are listed in §505. 32 and §505.64. The CMP diminishes the potential for bureaucratic delay by allowing individuals and governmental entities to request a preliminary review of actions during the permitting process. Chapter 506 of this title (relating to Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies) is based on existing federal law. The CMP is designed to use existing regulations whenever possible, thereby promoting uniformity in the application of the law. No changes were made based on this comment.

Part B.

Section 505.10.

One commenter stated that Chapter 505 should be amended to allow the council to review a state agency's failure to issue a permit. The Texas Natural Resources Code, §33.205(a), states, in pertinent part, "[a]ll actions taken ... must comply with the goals and policies of the coastal management plan." The council's jurisdiction is based on actions, not failure to take action; if an agency fails to issue a permit, there is no "action." No change was made as a result of this comment.

One commenter supported Chapter 505, Subchapter A, in its entirety, and recommended that no changes be made. No change was made based on this comment; however, based on other comments received on this subchapter, changes were made to improve the subchapter.

One commenter strongly supported this chapter and Chapter 506 in their entirety as written and asked that no changes be made. No changes were made based on this comment; however, changes were made based on other comments to improve the chapters.

Four commenters recommended deleting §505.10 in its entirety and three of the commenters requested that no changes be made to the remaining sections of the chapter. Section 505.10 was not deleted as it describes the purpose and policy of Chapter 505, as well as the council's intent in adopting the chapter.

Regarding §505.10, one commenter asked for more regulations regarding agency rules. Agency rules are addressed in Chapter 505, Subchapter B; therefore, no change was made based on this comment.

Section 505.11.

Regarding §505.11, one commenter requested clarification as to the council's influence on local government platting of infrastructure, such as streets and other facilities. Another commenter requested exclusion of municipal zoning ordinances from the exclusive list of actions in §505.11(a) (2). Another commenter objected to §505.11 on the grounds that too few local actions are included, and requested a consistency determination for such actions. Pursuant to Chapter 505, Subchapter E, the only local government actions which are included in the CMP are dune protection permits issued pursuant to the Texas Natural Resources Code, Chapter 63, and beachfront construction certificates issued pursuant to the Texas Natural Resources Code, Chapter 61. Therefore, local government platting will not be directly affected, and municipal zoning ordinances unrelated to dunes or public beaches are not included. No change was made based on this comment.

Another commenter asked whether local elected officials would be consulted or selected when the council is contemplating new regulations for a particular area, pursuant to §505.11. The council is not contemplating proposing new regulations pursuant to §505.11. However, prior to adoption of any new CMP regulations, including special area management plans (SAMPs), the council will provide an adequate opportunity for public notice and comment, including hearings, as provided in the Texas Natural Resources Code, §33.055(b). No change was made based on this comment.

One commenter questioned why permits for above-ground storage tanks and stormwater runoff are not included in §505.11. Section 505.11 provides the exclusive list of state agency actions and rules that may adversely affect a CNRA, and that therefore must be consistent with the CMP. Above-ground storage tanks and stormwater runoff are not included in the list of state actions, because the CMP addresses the impacts of these activities by incorporating the TNRCC rules governing these activities, pursuant to §501.14(g) of this title (relating to Nonpoint Source Water Pollution). No change was made based on this comment

One commenter suggested that representatives from affected industries should participate in the review process. Industries applying for permits listed in §505.11(a) will be able to participate in the review process. Agencies will make initial consistency determinations as part of their existing permitting processes, and applicants may participate. Applicants may also initiate and participate in the preliminary review process established in §505.31. No change was made based on this comment.

Concerning §505.11(a), one commenter requested exclusion of the Trans-Texas Water Program (T-TWP) because it is an integrated process for addressing environmental, coastal protection and economic concerns associated with the management of water resources. Based on this comment, new §505.11(a) (1)(B)(iii) provides that actions taken to implement the T-TWP are not subject to the CMP if: a majority of the members of the T-TWP Policy Management Committee vote to approve the T-TWP and find that the T-TWP is consistent with the CMP goals and policies; the T-TWP Policy Management Committee includes at least three members of the council; and a majority of the council members on the T-TWP Policy Management Committee find the T-TWP consistent with the CMP goals and policies.

One commenter was concerned that §505.11(a) exempted piers smaller than 2, 500 square feet, and another commenter questioned why larger piers were exempt from the subsection. Pursuant to §505.11(a)(2)(A)(v), the registration of piers less than 2,500 square feet is included in the exclusive list of state agency actions that must be consistent with the CMP. Pursuant to §505.11(a) (2)(A)(vi), GLO coastal easements are also included in the list (a coastal easement is required for piers larger than 2,500 square feet). No change was made based on this comment.

Regarding §505.11(a)(1)(A), several commenters stated that wastewater discharge permits outside the CMP boundary, as defined in §503.1, should not be subject to council review because existing agency procedures address impacts to CNRAs caused by wastewater discharges from projects located outside the CMP boundary. Based on these comments, §505.11(a) has been amended to delete the permits for wastewater discharges outside the boundary which are included in the CMP.

Several commenters stated that §505.11(a)(1)(B) and (C), now §505.11(a) (1)(A) and (B), should be amended to delete water appropriation rights outside the boundary and, absent the deletion, several commenters recommended various mechanisms for limiting the scope of reviewable water rights permits in §505. 11(a)(1)(B), now §505.11(a)(1)(A), and water rights permit amendments in §505.11(a)(1)(C)(i)-(iv), now §505.11(a)(1)(B)(i)-(iv). Conversely, another commenter stated that all water rights appropriation permits should be included in the CMP No change was made to §505 11(a)(1)(B), now §505.11(a) (1)(A); however, based on these comments, §505.11(a)(1)(C)(i) and (ii), now §505.11(a)(1)(B)(i) and (ii), have been amended, and §505.11(a)(1)(C)(iii) and (iv) have been deleted to include only the absolute minimum water rights appropriations permits and permit amendments necessary to protect CNRAs.

One commenter requested deletion of the PUC issuance of a CCN from §505. 11(a)(2)(B) because not all electric generating facilities and electric transmission lines require a PUC CCN. Inclusion of the PUC issuance of a CNN provides the best avenue for application of the CMP goals and policies to such activities because the PUC can address a broad range of potential impacts caused by the project not covered by other existing agency permits or regulatory approvals. No change was made in response to this comment.

One commenter asked whether §505.11(a)(2)(B), relating to PUC CCNs, included nuclear facilities and other energy facilities. Section 505.11(a)(2) (B) limits council review of PUC actions to the issuance of CCNs for the construction of electric generating facilities and electric transmission lines. Nuclear generating facilities may be electric generating facilities and would therefore be subject to the CMP. In addition, Chapter 506 of this title (relating to Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies) provides the requirements relating to consistency of federal actions subject to the CMP; pursuant to §506.12(a)(2) (F) of this title (relating to Federal Actions Subject to the Coastal Management Plan), Nuclear Regulatory Commission licenses are a listed federal action which must be consistent with the CMP. No change was made as a result of this comment.

One commenter requested that §505.11(a)(2)(D)(i) be modified by incorporating specific language from Texas Civil Statutes, Article 5415e-2, to better reflect the TxDOT's role regarding the Gulf Intracoastal Waterway (GIWW) . The language suggested by the commenter has been added to §505.11(a)(2)(D) (i).

Concerning §505.11(a)(2)(D)(i), four commenters expressed concern regarding the viability of the GIWW, and one of the commenters stated that the GIWW must be kept open and maintained. Two other commenters were opposed to the GIWW, and one requested relocation of the GIWW, be-

cause it should have been constructed in the "lake path" and it was constructed in a manner which caused wetlands loss due to diversions and reduction of water supply. The CMP will not affect the viability of the GIWW, except to ensure that it is maintained in a manner which will protect its economic and environmental value. The CMP policies affecting the GIWW are based on existing law applicable to GIWW activities. The CMP does not authorize the council or any other agency to relocate or close the GIWW. No changes were made based on these comments.

One commenter stated that §505.11(a)(2)(E)(i) should be amended to include phased survey permits, in addition to permits authorizing the destruction, alteration or taking of state archeological landmarks. A phased survey permit does not authorize site excavation; rather, it allows a cursory inspection of an area as a prelude to a more involved excavation. Such cursory inspections do not adversely affect CNRAs, therefore, §505.11(a)(2)(E) was not amended to add phased survey permits.

One commenter requested that §505.11(a)(2)(F) be amended to clarify and properly cite the TNRCC's statutory authority to approve levee improvements or other flood control projects. Based on this comment, §505.11(a)(2)(F)(v) has been amended.

Concerning §505.11(a)(2)(F)(i), several commenters stated that the inclusion of permits for discharges from CAFOs should be limited to permits for new facilities within one mile of a CNRA. Other commenters requested exclusion of CAFOs. Given the locations and limited number of CAFOs seaward of the CMP boundary, §505.11(a)(2)(F)(i) has been amended to include only those new CAFOs located within one mile of a CNRA.

Concerning §505.11(a)(2)(F)(ii), several commenters stated that TNRCC permits for water rights appropriations inside the boundary should be limited, and some suggested various means of establishing such limitations. In addition, several commenters stated that such permits should be grandfathered into the CMP. Section 505.11(a)(2)(F)(ii) only applies to new permits or amendments to existing permits. This subsection was amended to be limited to permits appropriating 2,500 acre feet of water per year. Also, §505.11(d)(4) and (5) were added to clarify that the council shall not review actions listed in §505.11 if an application for such action was filed prior to the effective date of Chapter 505, Subchapter A, or such actions are taken pursuant to an enforcement order issued prior to the effective date of Chapter 505, Subchapter A.

Regarding §505.11(b), one commenter inquired as to the schedule for certification of state agency rules. There are two processes for council certification of state agency rules. The first, described in §505.20, provides for certification of rules adopted prior to the effective date of Chapter 505. The second, described in §505.22, provides for certification of new rules and rule amendments adopted after the effective date of Chapter 505. The first process is voluntary. State agencies are not required to have existing rules certified; however, the incentive to do so is that a state agency's thresholds become effective only after council certification of its rules. (Pursuant to §505.21, thresholds limit the council's ability to review the actions of state agencies.) The second process is mandatory; however, it is only required if and when a state agency adopts rules or rule amendments after the effective date of Chapter 505. An exact schedule for rule certification cannot be provided, as the two processes for rule certification are dependent on actions of the various state agencies, the timing of which cannot be predicted. No change was made in response to this comment.

Several commenters stated that the council should limit the review of agency actions in §505.11(c) to cases where an agency fails to submit its rules for a council consistency determination, and suggested various mechanisms to implement such limitations. Suggestions ranged from exemptions of certain types of actions to merely clarifying the meaning of certain words. Until the council certifies a state agency's rules as consistent with the CMP goals and policies, the actions and rules identified in §505.11(a)-(c) and §505.60 are statutorily within the council's consistency review purview. Section 505.11(c) was not amended as requested, because the council may not necessarily find all rules submitted by agencies as consistent, and even after agency rules are certified as consistent, there may be limited situations where it is necessary for the council to review actions authorized by those rules.

Concerning §505.11(c), two commenters stated that the CMP goals and policies will not be furthered by the exclusion of renewals, amendments or modifications of certificates, leases, easements, approvals, or other forms of state agency authorizations. The commenters stated that all such actions should be made fully consistent with the CMP. Section 505.11(c) only excludes such authorizations if the council has certified the pertinent state agency's rules as consistent with the CMP or the authorization consists of a minor amendment or an extension of time. Council certification of state agency rules will generally ensure that renewals, amendments, and other actions taken pursuant to those rules will be consistent. Routine amendments or extensions of time will not adversely affect CNRAs. Therefore, no change was made based on this comment.

Regarding §505.11(c)(1), which excludes permits "if the action is not a major permit modification as defined in the applicable rules of the Railroad Commission," one commenter stated that the RRC does not define "major permit modification." The commenter requested that §505.11(c)(1) be amended to ensure that no additional requirements are imposed on actions authorized by RRC regulations based on the use of that term. In response to this comment, the reference to the RRC has been deleted from §505.11(c)(1); however, the RRC may propose a definition of "major permit modification" as part of the rule certification process.

One commenter requested deletion of the term "project sponsor" from §505. 11(d)(2), as it is not defined. The term "project sponsor" refers to entities such as the TxDOT in its capacity as the nonfederal local sponsor in the Gulf Intracoastal Waterway Act, Texas Civil Statutes, Articles 5415e-2, §2 and §4. Section 505.11(d)(2) imposes no requirements. In fact, it allows "an applicant, project sponsor, or other entity" to request a coordinated council consistency determination, or designation of a lead agency, in circumstances where a project involves more than one listed action. Deletion of the term "project sponsor" would result in TxDOT being unable to request a coordinated consistency review or the designation of a lead agency. Therefore no change was made based on this comment.

Section 505.20.

To comport with §505.11(b), §§505.20(a), 505.22 and 505.25 have been amended to provide that agencies may seek council review and certification of rules identified in §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas), in addition to the rules identified in §505.11.

One commenter requested that §505.20 be amended to allow public interest groups to request council review of agency rules. Section 505.20 provides a voluntary process that agencies may use to obtain council certification of existing rules. If the section were amended to allow anyone other than an agency to request council review of agency rules, the process would not be voluntary. In addition, §505.20 requires agencies requesting rule certification to provide the council with a reasoned justification explaining how the rules are consistent with the CMP goals and policies. Because the justification will involve some analysis and preparation on the part of agencies, the process should only be initiated by agencies. No change was made based on this comment.

Regarding §505.20, a commenter asked whether the state agency rule certification process could be used to certify federal agency rules. Chapter 505, Subchapter B, containing §505.20, only applies to state agency rules governing actions listed in §505.11(a) or identified in §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas); §505.20 does not apply to federal rules. No change was requested by this commenter, and no change was made.

One commenter asked whether all permitting agencies will have their rules certified pursuant to §505.20 (and §505.11(b)) by February, 1995. Another commenter supported the CMP and requested that there be an opportunity for agencies to have rules certified and thresholds approved prior to implementation of the CMP. Section 505.20 and §505.26 respectively provide voluntary processes by which agencies may obtain council certification of existing rules, thereby limiting the council's authority to review individual agency actions. While state agencies have expressed interest in these processes, an exact schedule for completion of rule certification and threshold approval cannot be provided, as participation in these processes is completely up to the various state agencies. Regarding the second comment, Chapter 505, Subchapter C, governing council review

of individual agency actions, will not be effective until June, 1995, to provide agencies with sufficient time to complete the rule certification and threshold approval process. No change was made based on this comment, because it would be inappropriate to make program implementation contingent on these two voluntary processes.

One commenter requested clarification of §505.20(c), relating to the council's authority to issue interim certification of state agency rules. Section 505.20(c) requires the council to determine the consistency of existing rules within 120 days of receipt of a request for rule certification. The provision for interim certification in §505.20(c) has been deleted in response to this comment, because the effect of interim certification was unclear.

Six commenters requested deletion of §505.20(e), concerning council revocation of agency rule certification, because the subsection appears to violate the intent of the Coastal Coordination Act, Texas Natural Resources Code, Chapter 33, Subchapter F, §33.202(a), that the council be a coordinating entity. Another commenter requested improvement of the standards and procedures for revocation of rule certification. The rule certification process was established to limit council consistency review to those actions with significant impacts. The council has voluntarily limited its jurisdiction over activities authorized under certified rules; if an agency fails to implement or enforce the provisions in the rules, or if the agency fails to comply with the CMP goals and policies when implementing the rules, it is appropriate that the council has the authority to remove the limitation on its authority. The rule certification process is linked to thresholds, another voluntary limitation the council has imposed on its jurisdiction over activities. (After an agency's rules are certified by the council, any thresholds established by the agency, and approved by the council, limit the council's ability to review individual actions.) Therefore, it is entirely appropriate that the council maintain the right to reevaluate the self-imposed limitations on its jurisdiction that result from rule certification. No change was made based on this comment; however, §505.20(e) has been amended to clarify the procedures the council will use when considering revocation of rule certification.

Section 505.22.

Five commenters questioned the council's authority to review agency rules, and argued that agency rule adoption is not an agency "action" subject to council review because "actions" and "rules" are distinguished in the Texas Natural Resources Code, §33.205(a). This commenter requested that §505.22 and §505.23 be deleted and that new rules and rule amendments be covered by the voluntary process established in §505.20 and §505.21. The Texas Natural Resources Code, §33.205(a), addresses both actions and rules, without indicating legislative intent to exclude agency rules from the requirement to comply with the CMP goals and policies. Because agency rules establish the framework for agency authorization of activities which may adversely affect a CNRA, it makes sense to ensure that the framework is consistent with the CMP goals and policies. The mandatory certification process for rules and rule amendments, as provided in §505.22, was developed to limit the actions that may be reviewed by the council to those with significant impacts. In addition, because many agencies authorize activities by rule (e.g., general permits and exemptions), the council would have no jurisdiction over those activities if the commenter's suggestion was adopted (Such actions do not involve individual agency authorizations Finally, the council has agreed to limit the exercise of enforcement authority to agencies, excluding individuals from §505.42 and §505.74.) No change was made based on this comment.

One commenter recommended that §505.22 be amended to require the council to provide an opportunity for public comment prior to issuing an agency rule consistency determination. Another commenter recommended additional language to ensure greater public notice. Based on the first comment, §505.20(b) has been amended to require the council secretary to publish a Notice of Availability in the *Texas Register* of the request for council review of agency rules and all supporting information, accompanied by a request for public comment. In addition, pursuant to the Open Meetings Act, Texas Government Code, Title 5, Subtitle A, Chapter 551, the public will be notified of the location and schedule of the council meeting at which such rules are considered, and the public may submit testimony regarding the certification. Changes were made based on this comment. Based on the second comment, §505.22(a) has been amended to require that agencies proposing new rules or rule amendments (subject to the CMP) include in the preamble a reasoned statement that such rules or rule amendments are consistent with the CMP goals and policies. Subsection 505.22(b) has been amended to conform with the revisions to §505.22(a). Also in response to the second comment, §505.30(c) has been amended to require that when agencies publish notice of receipt of an application or request for agency action, the notice must include a statement that the application or requested action is subject to the CMP and must be consistent with the CMP goals and policies.

One commenter recommended that §505.22(e) be amended to clarify the ramifications of a conditional certification, and another opposed the concept of conditional certification. Section 505.22(d) and (e) provide the council with the flexibility to respectively certify only a portion of an agency's rules, or issue conditional certification of agency rules. As proposed, the §505.22 certification process only applies to proposed rules. Based on this comment, §505.23(c) has been added to allow agencies to request council certification that the rule, as adopted, is consistent with the CMP goals and policies.

Section 505.23.

One commenter recommended that §505.23(a)(2), relating to the requirement that agencies amend or adopt rules "substantially in accordance with council recommendations" to effectuate thresholds, be amended to require that agencies include in each rule adoption and amendment preamble a statement that the rules are adopted or amended "substantially in accordance with" the council's recommendations, and to provide that the statement would be a final determination of the issue of "substantial accordance" with the council's recommendations. While agencies should make this determination as part of the rulemaking process, only the council has the authority to make a final determination as to whether the rule adoption or amendment is "substantially in accordance" with council recommendations. Because §505.23(a)(2) provides that the operation of thresholds is contingent upon an agency adopting or amending its rules substantially in accordance with council recommendations, and, as proposed, the subsection did not provide a process for a final determination of the issue of substantial accordance, §505.23(c) has been added to allow agencies to request a final determination from the council.

One commenter recommended that §505.23(b)(1), requiring that agencies amend or adopt rules in substantial compliance with the council's recommendations (for example, when the council conditionally certifies an agencies rules and provides recommendations to address inconsistencies), be amended to limit the substantial accordance requirement to substantive changes that are inconsistent with the CMP goals and policies. Based on this comment, §505.23(b)(1) has been amended to conform with §505.23(a)(1), which is limited to "substantive changes regarding consistency with the goals and policies" of the CMP.

One commenter questioned whether §505.24(b)(3), providing that agency decisions to issue a permit identified in §505.11(a) are not final and appealable until after the council's jurisdiction has lapsed, requires agencies to issue contingent or conditional permits, and recommended deleting this paragraph to avoid permits being "consigned to a circular bureaucratic hell." The provisions of §505.24(b) are permissive, not mandatory; therefore, agencies are not required to issue contingent or conditional permits. In addition, the 30-day period in which an agency action may be referred to the council and the period for filing a motion for rehearing at the agency begin simultaneously. No change was made based on this comment.

Section 505.26.

Regarding §505.26, a commenter requested amendments that would suspend the council's authority to review state agency and local government actions under Chapter 505, Subchapters C and E, if the thresholds are determined to be inconsistent with or unauthorized by the Texas Natural Resources Code, Chapter 33. The commenter also suggested that the CMP is unintelligible without the thresholds. Subchapters C and E of this chapter are effective regardless of whether agencies avail themselves of the voluntary process allowing the establishment of thresholds. Council approval of thresholds is an appropriate exercise of the council's discretionary authority to determine which actions are properly subject to council review. Even if screening mechanisms such as thresholds

are deemed improper, the council's authority to review agency and local government actions are not affected No change was made based on this comment

Twelve commenters noted the difficulty in commenting fully on the subchapters before the agencies develop thresholds. To establish effective thresholds, agencies must first be on notice as to the scope and content of the CMP, as adopted However, §505.26 has been amended to require the council to provide an opportunity for public notice and comment on thresholds In addition, the effective date of Chapter 505, Subchapters C and E, is June, 1995, to provide agencies with the opportunity to establish, and the council to review and approve, thresholds prior to implementation of the CMP. No change was made as a result of this comment.

Regarding §505 26, five commenters opposed the concept of thresholds. One requested that §505 26 be revised to allow the council to review actions below the thresholds, when appropriate, three viewed thresholds as a mechanism to exempt a wide variety of actions from the CMP; and one noted that it seemed presumptuous to declare generic categories as significant or insignificant Six commenters supported the use of thresholds to reduce the number of actions potentially subject to council review. Six commenters stated that, to comply with §505 10(a), relating to the purpose and policy of Chapter 505, very high thresholds should be established and applied to any action subject to council review, another commenter stated that any action above the thresholds should be automatically reviewed by the council Regardless of thresholds, listed actions must comply with the CMP goals and policies ("Listed actions" are the actions identified in §§505 11, 505.60, and 506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program).) Thresholds are a screening mechanism which may be voluntarily established by agencies to focus council attention on actions causing the most significant impacts on CNRAs Thresholds alone do not exempt actions from council review, as the council may review actions below thresholds in limited circumstances (see §505.32(a)(4)). It is anticipated that agencies will establish thresholds high enough to place most agency actions below the thresholds. No change was made based on this comment

One commenter requested that §505.26, relating to council review and approval of thresholds, be revised by requiring adoption of thresholds by rule and by deleting the provision allowing adoption of thresholds by "other enforceable means." The commenter also requested that §505.26 be amended to provide that council review of such rules will occur after adoption, pursuant to the procedures in §505.22, relating to council certification of agency rules. The commenter was concerned that §505.26, requiring agencies to obtain council approval of thresholds prior to rule proposal, might foreclose public input, as agencies would hesitate to revise the proposed rule in a manner which might affect council approval The commenter requested that, at a minimum, §505.26(d) be revised to provide that agencies "may" adopt approved thresholds by rule and noted that §505.26(d) is inconsistent with §505.21 because the latter subsection only limits the council's authority pursuant to thresholds adopted by rule, not by "other enforceable means." Based on this comment, §505.26(d) has been amended by deleting the requirement that agencies adopt the thresholds by rule, and providing that agencies "should" make the thresholds "readily available" to the public. In addition, §505. 21(a) and (b) were amended by deleting the reference to adoption of thresholds by rule

One commenter stated that all agency actions apparently will be subject to council review until agencies adopt rules governing thresholds for council review, and that council review of agency-developed thresholds was excessive. Agencies have until June, 1995, (the effective date of Chapter 505, Subchapter C), to adopt thresholds, after that date, the actions listed in §505.11 will be potentially subject to council review only if the various state agencies have not adopted and the council has not approved thresholds for those actions. The council can limit its authority under the Texas Natural Resources Code, Chapter 33; state agencies may only do so pursuant to council approval. No change has been made based on this comment.

Five commenters stated that the council has not identified the criteria by which agencies' thresholds will be evaluated and approved pursuant to §505. 26. The council will consider several factors in evaluating thresholds, including: the council's resources; the frequency of regular council meetings; impacts to CNRAs; the number of actions which would rise above or fall below the thresholds in any given year; and thresholds approved by other agencies. The council has indicated that it would prefer that thresholds limit council review to only those actions with the most significant impacts on the coast. No change was made based on this comment

Four commenters recommended that the council publish the agencies' proposed thresholds to provide the opportunity for public comment prior to council approval. Based on these comments, §505.26(b) has been amended to require that the council secretary publish in the *Texas Register* a notice of availability of the proposed thresholds and associated documents, and a request for public comment.

A commenter insisted that agencies adopt thresholds by rule prior to CMP implementation, and recommended that the thresholds be incorporated into the §505.11 list of actions to bar council review of actions below thresholds. As provided in §505 21, thresholds limit the council's authority to review individual actions only after the council certifies the agency's rules and approves the thresholds. The requirement that agencies adopt thresholds by rule after council approval has been deleted from §505.26(d), which now provides that agencies "should" make the thresholds "readily available to the public." However, agencies are not prevented from submitting to the council existing rules (pursuant to §505.20) or proposed rules and rule amendments (pursuant to §505.22) simultaneously with proposed thresholds (pursuant to §505 26). However, it is not appropriate to include the list of thresholds in the §505.11 exclusive list of state agency actions, as thresholds do not completely bar council review

One commenter requested that Chapter 505, Subchapter B, provide that agency rules certified by the council must be incorporated into the CMP goals and policies. Section 505.21 and §505.23 have been amended, as suggested by this commenter. Incorporating agency rules into the CMP goals and policies will enhance the CMP by providing greater specificity to the goals and policies, thereby ensuring greater uniformity in the application of the CMP goals and policies

Section 505.30.

Regarding Chapter 505, Subchapter C, one commenter stated that the council was not comprised of a sufficient number of local government representatives. The membership of the council is governed by the Texas Natural Resources Code, §33.203(2), which provides that one local government representative shall be appointed to the council by the governor In addition, the Texas Natural Resources Code, §33.204(b), provides that the governor will designate a local elected official from a county directly affected by a matter under review as a non-voting participant on the council. No change was made based on this comment.

One commenter requested deletion of §505.30 on the grounds that the council lacks the authority to require agencies to prepare consistency determinations. Another commenter stated that only the council is authorized to issue consistency determinations. Pursuant to the Texas Natural Resources Code, §33.204(a), the council is required to promulgate rules adopting the CMP goals and policies and, as required by the Texas Natural Resources Code, §33.205(a), all actions taken or authorized by state agencies must comply with the CMP goals and policies. The requirement that agencies prepare consistency determinations during the permitting process is designed to fulfill the statutory mandate that actions comply with the CMP goals and policies. In addition, the agency determination will further the CMP policies in §505.10(a)(1) and (2), relating to identifying, addressing, and resolving consistency issues at the earliest possible point in the agency permit process, and ensuring adequate consistency review at the agency level. However, only the council has the authority to review, remand, and reverse a consistency determination. In addition, it should be noted that §505.30 was developed in response to state agencies' requests, and none of the state agencies required to prepare the consistency determinations have objected to the requirement. No change was made based on this comment.

One commenter objected to §505.30 on the grounds that it requires agencies to certify that an action is consistent with the CMP goals and policies and that the action will not adversely affect a CNRA. The commenter's concerns arise from a misreading of the requirements in §505.30. This section requires either a consistency determination or a determination of no adverse impact, not both. No change was made based on this comment.

Two commenters expressed interest in a process that would include consistency review within the state agencies' permitting process. Pursuant to §505.30, agencies are required to assess their proposed actions for consistency with CMP goals and policies and prepare consistency determinations. Agencies and applicants may also request preliminary council review, pursuant to §505.31. No change was made based on this comment.

One commenter noted that not all agencies approve all projects as individual actions, and recommended that §505.30 be revised to allow a general consistency determination, or to provide that consistency determinations are only required for projects requiring environmental documentation and individual review. Section 505.30 requires agencies to prepare either a consistency determination or a determination of no adverse effect when authorizing actions listed in §505.11(a). If an agency approves or authorizes more than one activity at once, the agency must include in the approval or authorization of the activities either a consistency determination or a determination of no adverse effect for each activity. Alternatively, the agency may provide a statement that the consistency determination applies to all the activities included in the approval or authorization. No change was made based on this comment.

Six commenters recommended that §505.30 be amended to provide for a presumption of consistency at the agency level, if an agency does not identify consistency issues within 60 days of receipt of the application. In addition, these commenters recommended requiring that agencies request any additional information necessary to determine consistency within 15 days of filing of the application. Another commenter recommended a similar change to §505.30 to ensure that agencies identify consistency issues within a reasonable time period after filing of an application and suggested that 60 to 90 days is a sufficient time period to thoroughly review an application. Because the permit processing schedules of state agencies vary, requiring all agencies to identify consistency issues within a uniform time frame may impede permitting processes. However, an applicant may request preliminary review, as provided in revised §505.31, for expeditious identification of consistency issues. No change was made based on this comment.

One commenter requested that any notice of agency actions subject to the CMP include a statement that the agency action is subject to the CMP and must be consistent with the CMP goals and policies. Section 505.30(c) has been amended as suggested by the commenter. This requirement is based on agencies' existing public notice processes and will not create burdensome new notice requirements.

Section 505.31

Regarding Chapter 505, Subchapter C, one commenter stated that applicants should be given the opportunity to request council review of proposed actions. Based on this and other comments, §505.31, relating to preliminary review of individual agency actions, has been revised to allow applicants to request preliminary review prior to a final decision by the pertinent state agency. This revision allows applicants to address any consistency issues at the earliest possible time in the permitting process.

One commenter recommended that the GLO assign a person to an office to be established by the TNRCC in the Galveston Bay area to assist with the preliminary review process established in §505.31. The council cannot require that the TNRCC establish an office in the Galveston Bay area, as the decision to do so is solely within the TNRCC's discretion. However, the Galveston Bay National Estuary Program may eventually be incorporated into the CMP through the Special Area Management Planning Program. No change was made based on this comment.

Three commenters requested that §505.31(a) be amended to expand the "persons" eligible to request preliminary review to include the council, other individuals, and applicants. Four commenters recommended that §505.31(a) be amended to provide that agencies may request preliminary review only with the consent of the applicant. Another commenter supported agency initiation of preliminary review. Section 505.31 has been amended to allow applicants to request preliminary review, but not to require an applicant's consent for agencies to initiate the preliminary review process. Pursuant to §505.30, agencies are required to provide consistency determinations as part of their permitting processes. Council assistance, requested through the preliminary review process, may be necessary for an agency to provide and accurately explain its consistency determination. This subsection has not been amended to require that applicants must consent to an agency request for preliminary review, as the overriding policy concern is to obtain an accurate consistency determination at the earliest possible point in the permitting process. This subsection has not been amended to allow the council to require that agencies use the preliminary review process, because agencies are in the best position to determine their need for council assistance in evaluating a proposed activity.

Regarding Chapter 505, Subchapter C, one commenter recommended the addition of a mechanism to conduct consistency reviews early in the permitting process, and that applicants be required to identify all permits associated with a project. Agencies are required to conduct the initial consistency review as part of their permitting processes (§505.30), and they may seek preliminary council review, pursuant to §505.31. Under revised §505.31, applicants may request preliminary review, and such requests must include a description of all other actions (permits) associated with the pertinent action.

Five commenters requested that §505.31(c)(2) be amended to require completion of preliminary reviews within 15 days, and two other commenters recommended a 30-day deadline. Pursuant to §505.31(d), an agency and the council may negotiate a memorandum of agreement on the procedure and schedule for preliminary review. In response to this comment, §505.31(c)(2) has been amended to require that the CRG respond to a request for preliminary review within 45 days, recognizing that the quality of the response will depend on the quality of the information made available to the CRG.

One commenter recommended that §505.31 be revised to bind the council to preliminary review determinations. Binding preliminary consistency review could only be achieved if formally undertaken by the council, because the council cannot completely delegate its authority to conduct reviews and determine consistency. The preliminary review process does not involve formal council action; rather, it involves the CRG, which is comprised of representatives of council members. While the CRG recommendations do not legally bind the council members, the council will rely heavily on these recommendations. No change was made based on this comment.

A commenter stated that the public notice provision in proposed §505.31(b) "may be perceived as preferential." At a minimum, public notice provided pursuant to §505.31(b) will be provided in conformance with standard council procedure, and in accordance with the Open Meetings Act, Texas Government Code, Title 5, Subtitle A, Chapter 551, not preferentially. No change was made based on this comment.

Section 505.32.

Three commenters recommended that §505.32(1), now §505.32(a)(1), be amended to include permit denials within the scope of actions subject to council review. The Texas Natural Resources Code, §33.205(a), provides, in pertinent part, "[a]ll actions taken ... must comply with the goals and policies of the coastal management plan." The council's jurisdiction is based on actions, not failure to take action; if an agency fails to issue a permit to an applicant, there is no "action." No change was made based on this comment.

Eight commenters requested that §505.32(3) be revised to modify the number of council members necessary to refer an action to the council for review. The Texas Natural Resources Code, §33.205(b), specifically provides that the council shall review any action submitted by the chairman or three council members, therefore, no change was made based on this comment. Section 505.32(3) has been deleted, and the section renumbered, because the section establishes the prerequisites for referral of an action to the council. The process for referral previously provided in §505.32(3) is now provided in §505.34(c).

Concerning §505.32(4), now §505.32(a)(4), a commenter requested clarification as to whether the activities below thresholds will be subject to an "additional review." It is assumed that the commenter was referring to the consistency review process as the "additional review." Pursuant to §505.32, thresholds limit, as opposed to prohibit, the council from conducting consistency reviews of actions below the thresholds. There may be limited situations where council consistency review of an individual action below a threshold is warranted, therefore, no change was made based on this comment.

Five commenters generally objected to §505.32, and stated that the section was too

restrictive in limiting the council's ability to conduct consistency reviews of individual actions otherwise subject to the CMP. One commenter expressed opposition to any change that makes council review dependent on a council member agency first having contested an agency action as a party in a contested case proceeding before the agency. The restrictions on council review of actions have been established to provide certainty to the regulated community and to ensure predictable administration of the CMP However, the limitations in §505 32 do not exempt the actions listed in §505.11 from the CMP, as such actions must nevertheless be consistent with the CMP goals and policies The success of the CMP will depend in large measure on agencies ensuring that their actions are consistent with the CMP goals and policies Pursuant to §505.30, agencies are required to provide the initial consistency determination as part of the permitting process In addition, §505 32, now §505.32(a), has been amended by adding paragraph (2) to require that consistency issues must be raised at the agency level as a prerequisite to council review. Therefore, as a general matter, all consistency issues will be identified and fully addressed at the agency level and will not arise for the first time at the council level. To preserve the right to request referral of an action to the council, persons concerned about a particular agency action must participate in the agency's consideration of a permit While §505.32 may seem overly restrictive, the overriding policy of such restrictions is to allow agencies to address consistency issues prior to council review No change was made based on these comments

Twenty commenters recommended that proposed §505 32 be amended in accordance with the recommendation of the contested case task force, which was established to determine the best method of addressing general dissatisfaction expressed by state agencies regarding §505.32(4)(C), now §505.32(a)(4)(B) Five commenters supported the task force recommendation, but expressed a preference for deleting §505 32(4)(B), now §505 32(a)(4)(C), entirely One commenter who supported the task force recommendation also suggested an additional change that would require that an action below the thresholds may only be submitted to the council by the chairman and at least two other council members or four other council members Another commenter urged that the council not review any actions below the thresholds Section 505 32(4), now §505 32(a)(4), was amended as suggested by the contested case task force. Under §505 32(4), now §505 32(a)(4), where there is no opportunity to formally contest an agency action above the thresholds, §505 32(a)(4)(A), provides that the council may review the action Section 505 32(4)(B) requires that if there is an opportunity to contest an agency consistency determination, the determination must be contested Section 505.32(a)(4)(C) provides that the action must affect specific CNRAs, and that the consistency determination must have been contested by another state agency These modifications to §505.32(4), now §505 32(a)(4), ensure that state agencies and applicants have the opportunity to address all consistency issues at the agency level prior to council review. No change was made to the number of council members required to refer an action, as the Texas Natural Resources Code, §33.205, specifically provides that the council shall review any action submitted by the chairman or three other council members.

One commenter recommended limiting §505 32(4)(A), now §505.32(a)(4)(A), to situations where no formal hearing before the agency is available to contest an agency consistency determination. The amendments to §505.32(4), now §505 32(a)(4), provide that if no opportunity exists at the agency level to formally contest an action above the thresholds, formally contesting the action will not be required. Where no opportunity exists at the agency level to formally contest an action below the thresholds, the action is not subject to council review.

One commenter stated that, even with approved thresholds, "any action, no matter how inconsequential," could be brought before the council for review if it had been protested at the agency level. The council may only review actions listed in §505.11. In theory, the commenter is essentially correct in stating that after an action has been protested the thresholds become inoperative. Historically, however, only a fraction of the listed agency actions have been formally protested; therefore, in practice, the thresholds will limit the actions subject to council review in the vast majority of cases. Furthermore, the addition of §505.32(a)(4)(C) not only requires that an action below established thresholds be contested to be eligible for council review (and if there is no opportunity to contest actions below the thresholds, council review is barred), but also that the action affect particular CNRAs and be contested by another state agency. No change was made based on this comment.

Three commenters raised several issues about the lack of clear guidance on the relationship between the agency action, council review, judicial review under the Texas APA. When an agency decides to grant a permit, it will be clear if the action satisfies the requirements of §505.32(1), (2), and (4), now §505.32(a)(1), (3), and (4). Where these requirements have not been satisfied, the action is not subject to council review. In cases where the action is not subject to council review, judicial review under the Texas APA will proceed as usual. Based on these comments, §505 32(b) and (c) were added

Section 505 33

Nine commenters objected to allowing "any person" to file a request for referral under §505.33(a) and suggested amending the subsection to include a "standing" requirement One commenter recommended deleting §505 33(a), and another expressed concern regarding the review process being "used by the public to satisfy hidden agendas in the name of the environment." Section 505. 33(a) was amended to require persons, other than council members, to have participated in the permit process before the agency prior to filing a request for referral

One commenter stated that §505.33, which provides that any person may file a request for referral, implies that persons other than council members can refer actions to the council, contrary to §505.34(f). Section 505.34(c) and the Texas Natural Resources Code, §33.205, clearly provide that only council members may place an action on the council's review agenda. Section 505.34(f) clarifies that the referral request process is not to be construed as entitling anyone other than council members to council review of an action While the rule establishes a process for filing requests for council review, it is solely within the council's discretion to grant a request No change was made based on this comment.

Regarding §505.33(a), five commenters requested extension of the 10-day deadline for filing requests for referral. One commenter requested 30 days; another asked for ten "working days." The Texas Natural Resources Code, §33. 205(c), requires the council to refer an action no later than 30 days after the agency action becomes final. Section 505.33(a) requires that requests for referral be filed within ten days of the agency action, and §505.33(b) requires that any replies be filed within 20 days of agency action. These deadlines are necessary to ensure that council members have sufficient time to consider the merits of a request for referral before expiration of the 30-day period for referring agency actions. No change was made based on this comment.

Regarding, §505.34(c), one commenter misread the subsection, and thought it provided that the council could review and remand any permit on the "order" of the chairman. The chairman does not have the power to order the remand of any permit. Under the Texas Natural Resources Code, §33.205(b), the chairman may submit an agency action for council review; however, pursuant to §505. 38(d), remanding a permit requires the vote of four council members. No change was made based on this comment.

One commenter stated that §505.34(e) was inappropriate, and requested that the subsection be amended to require compliance with the standards for submission to ensure a level playing field. Section 505.34(e) allows the council to accept a procedurally flawed request for referral, but the request must nevertheless be substantively accurate. The Texas Natural Resources Code, §33.205(b), requires the council to review any action subject to the CMP that the chairman or three other council members submit for review. For example, the request may lack the required statement (§505.33(a)(3)) that the action is subject to council referral, but the action must in fact be subject to such referral. While the council has provided a formal process whereby persons may request council review of an action, the council does not intend for this process to divert the council's attention from the substantive issues of consistency after an action has been referred for council review. A "level playing field" is ensured through the substantive requirements for referral to the council. Therefore, no change was made based on this comment.

Concerning §505.34(f), one commenter rec-

ommended amendments obligating the council to review all actions identified in a properly filed request for referral to ensure effective enforcement of the CMP goals and policies. The Texas Natural Resources Code, §33.205, requires only that the council review actions that the chairman or three other council members submit for council review. The statute does not require council members to submit actions for review. Each council member will evaluate the merits of a referral request and independently determine whether it merits council review. This does not mean that the CMP is unenforceable. The council is not the sole venue for objecting to an agency action on consistency grounds. Interested parties, in addition to requesting council review, can present their case to the appropriate agency and, if necessary, to the courts. No change was made based on this comment.

Section 505.35.

One commenter recommended §505 35 be amended to inform agencies and applicants that, while council review is pending, no activities should be conducted that would irreparably damage a CNRA. New §505.35(b) provides that the notice to the agency and applicant must include a statement that, pending council review, no person may conduct activities authorized by the agency action that would irreparably alter or damage a CNRA identified in the applicable policy, except as otherwise provided by the Texas APA, §2001.054.

One commenter recommended deleting the last part of §505.35(b)(6), now §505.35(c)(6), which allows the council to consider the written or oral arguments of any person regarding any additional information provided by an agency pursuant to §505.35(b)(5), now §505.35(c)(5). The commenter stated that the Texas Natural Resources Code, Chapter 33, does not allow council consideration of such information. The Texas Natural Resources Code, §33. 204(c), requires the council to receive and consider the oral or written testimony of any person regarding the CMP goals and policies when conducting consistency reviews. Due process considerations require that interested persons be given an opportunity to respond to any additional information submitted by the agency, pursuant to §505.35(b)(5), now §505.35(c)(5), as such information will be related to the CMP goals and policies. Therefore, no change was made based on this comment.

One commenter requested that §505 35(d), now §505.35(e), be amended to deem an action consistent with the CMP if the council fails to act on a referral within 90 days. Another commenter stated that the council should have six months to act on a referral. The council's failure to consider and act on an action within the time allowed is not given the same weight as a formal council decision affirming the consistency of an action; however, in either case the proposed action may proceed. Therefore, no change was necessary to address this comment. The Texas Natural Resources Code, §33 205(c) requires the council to consider and act on a referral within 90 days; therefore, the suggested amendment of extending the schedule to six months was not adopted. Section 505.35(d), now §505.35(e), has been amended, however, to better coincide with the schedules under the Texas APA

One commenter requested that §505.35(d), now §505.35(e), be amended to provide that the 90-day deadline for council review and issuance of consistency determinations begin on the date of agency action, as opposed to the date of referral to the council. Based on this and other comments, §505. 35(d), now §505.35(e), has been amended.

Section 505.35(a) and §505.67(a) did not contain a provision that notice of a hearing to review an individual agency or local government action be sent to the person requesting the referral For clarification, subsection (a)(3), providing for council notice to the person filing the request for referral, was added to both §505.35(a) and §505.67(a).

Section 505.36.

One commenter recommended amending §505.36(b)(1) by deleting the requirement that the person filing the request for referral must demonstrate that the agency action is inconsistent with the CMP goals and policies; the commenter stated that the standards for sufficiency of the demonstration were unclear. An agency's record of decision that contains evidence of agency consideration of the action in light of the CMP goals and policies constitutes a sufficient demonstration for the purposes of §505.36(b)(1) For actions above the thresholds, some additional information must exist in the agency's record, as required by §505.30(b). For actions below thresholds, consistency determinations must be contested at the agency to be eligible for council review (§505.32(4)(C), now §505.32(a)(4)(C)); therefore, evidence supporting the determination of the contested action would necessarily appear in the agency record No change was made based on this comment.

One commenter asked whether the effect of §505.36(b)(2) is dependent on providing the demonstration required in §505.36(b)(1). Section 505 36(b)(1) -(3), are all contingent on the agency's rules having been certified by the council under Chapter 505, Subchapter B; §505.36(b)(1)-(3) are not dependent on one another. No change was made based on this comment.

One commenter suggested amending §505 36 to require the council, when conducting consistency reviews, to defer to an agency's interpretation of its enabling statutes Following rule certification, the council will presume that the agency's consistency determination is valid, including the agency's interpretation of its enabling statute No change was made based on this comment

Section 505 37

With respect to §505.37, one commenter asked how agencies will know whether an action is subject to council review Agencies will know whether an action is subject to council review by reviewing §505.32, which provides the necessary information to determine whether the council may review an action, such as whether the action is listed, whether the action is above or below the thresholds for referral, and whether the action was contested No change was made based on this comment

Regarding §505 37, relating to the ability to undertake activities pending council review of an individual agency action, a commenter inquired as to whether agencies will be required to issue contingent or conditional permits There is no provision in §505 37 or elsewhere in the CMP which requires agencies to issue contingent or conditional permits No change was made based on this comment

Section 505 38

Two commenters questioned the statutory authority of the council to remand agency permits, as provided in §505.38, and one commenter stated that the council must have the authority to "veto" a permit, or else there is no reason to have a CMP. The Texas Natural Resources Code, §33.206(b), provides that if the council determines that an action is inconsistent with the CMP goals and policies, it "shall remand" the action and may ultimately reverse it No change was made based on this comment, as §505.38 is based on statutory language.

One commenter objected to §505.38(d), now §505.38(c), which requires a vote of no less than four council members to protest, remand, or reverse an action, and recommended instead a majority of a quorum Another commenter supported the four vote requirement. Section 505 38(d), now §505.38(c), is consistent with §501.4(e) of this title (relating to General Procedures), which requires the affirmative vote of no less than four council members to protest, remand, or reverse an action. A quorum, rather than a majority of a quorum, should be required for decisions of such importance. The number of council member votes to protest, remand or reverse an action was amended to require a majority of all council members In addition, §505.38(d), now §505 38(c), has been amended to delete the term "protest" (as a protested action is a remanded action), and to require the same number of votes for a decision to affirm an agency action

Section 505.40

Two commenters stated that the requirements in §505 40 were overly burdensome, one commenter requested that the section be amended to provide that council review on remand is automatic if an agency fails to respond to council recommendations, and the other suggested that council referral of an agency action on remand should not be subject to the same lengthy procedures as initial referral The Texas Natural Resources Code, §33 206(c), provides that the council should refer actions on remand in accordance with the same provisions for referral of actions in the first instance Section 505 40 streamlines the process for referring agency actions on remand by shortening the statutory referral deadline from 30 days to 15 days and the deadline for the council to act on the referral from 90 days to 60 days Furthermore, there is no requirement that a request for referral be filed prior to the council referring an agency action on remand. No changes were made based on these comments

One commenter recommended deleting the first sentence of §505.40(e), now §505.40(f), which provides that the council's decision to reverse an action renders the action void, and stated that if the meaning of "void" is the same as "reversed," "void" is superfluous language. The words "void" and "reversed" are not synonymous; a reversal causes an action to be void. No change was made based on this comment.

One commenter recommended amendments to §505.40(e), now §505.40(f), to clarify that only those activities the council has determined to be inconsistent with the CMP goals and policies must cease. Section 505.40(d), now §505.40(e), provides that an agency action on remand is reversed if the council determines that the action is inconsistent with the CMP goals and policies. Upon reversal, the agency action is no longer valid; therefore, all activities authorized by the action must cease. No change was made based on this comment.

One commenter requested that §505.40(e), now §505.40(f), be amended by adding language clarifying that under the Texas APA, §2001.054, a timely filed application for the renewal of a permit extends the effective date of the permit beyond the original term until: the agency has issued a final determination on the application; the expiration of the time period for seeking judicial review of the agency order; or a date established by court order, whichever is later. This commenter also recommended the inclusion of procedures for reversal of an action that parallel the remand procedures. Section 505.40(e), now §505.40(f), was amended to provide that, upon remand, the actions authorized must cease, except as otherwise provided by the Texas APA, §2001.054. In addition, §505.40(d), now §505.40(e), was amended to require a written decision identifying the council's reasons for reversing the action. Section 505.40(c) was added to require public notice and identify the evidence which may be considered by the council at a hearing to review an action on remand. These new provisions parallel those for council review of an agency action in the first instance.

Section 505.41.

One commenter objected to §505.41, relating to judicial review. Section 505.41 and §505.73 contain the provisions for judicial review of council decisions, and reflect the Texas Natural Resources Code, §33.207, which establishes the right of aggrieved persons to judicial review. No change was made based on this comment.

Section 505.42.

One commenter recommended that §505.42 be amended to provide that the council lacks the authority to bring enforcement actions against private parties. Four commenters recommended that §505.42 be amended to clearly provide that agencies, not the council, will enforce permit terms and conditions. One commenter requested that §505.42 clearly provide for enforcement against private parties for violations of the CMP. Pursuant to Texas Natural Resources Code, §33.205(a), all actions taken or authorized by state agencies that may adversely affect CNRAs must comply with the CMP goals and policies; therefore, any activity not in accordance with the terms of an agency permit or other action that implements the CMP goals and policies is a violation of the CMP. However, the council has chosen to limit its direct enforcement authority to agency actions and authorizations. In response to these comments, §505.42 and §505.74 have been amended to clarify that agencies, not the council, will enforce permit terms and conditions.

Section 505.50.

One commenter stated that §505.50, relating to the plans subject to advisory opinions, should be expanded to include other planning documents that may be approved by state agencies. The §505.50 list of general plans that may be submitted to the council for a non-binding advisory opinion as to consistency is an illustrative, not exclusive, list. Therefore, no change was made as a result of this comment.

Section 505.51.

One commenter stated that an advisory opinion issued by the council on general plans should only refer to inconsistencies. Section 505.51(e) requires that the council's non-binding advisory opinions indicate whether actions taken pursuant to the plan are "likely to be consistent or inconsistent with the [CMP] goals and policies." No change was made in response to this comment.

Section 505.60.

One commenter stated that local governments actions should be subject to council review under the same criteria as state agencies, rather than exempting so many local government actions. Two commenters suggested that the list of local government actions in §505.60 should be expanded, one specifically requested that the list include "septic systems and building density as those issues affect coastal nonpoint source pollution." One commenter expressed support for, and another expressed concern about, council review of local government dune protection and beach access plans. Pursuant to §505.60, only two local government actions are included in the CMP: dune protection permits and beachfront construction certificates. As a general matter, local governments, state agencies, and federal agencies have jurisdiction over many of the same activities affecting CNRAs. The CMP is designed to focus on activities, and to avoid duplicative review of the same activities. Therefore, the local government actions included in the CMP are those which cannot be otherwise included in the lists of state and federal actions. In addition, when the local government undertakes, as opposed to authorizes, an activity listed in §505.11(a), the local government's application for the state permit will be subject to the same review process as any other listed action. Chapter 505, Subchapter E, is modeled on Chapter 505, Subchapter C, governing council review of individual state agency actions, and has been revised to reflect editorial changes in Chapter 505, Subchapter C. The impacts of coastal nonpoint source pollution are addressed in §501.14(g) of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas). No change was made based on these comments.

One commenter requested that the preamble clarify that the term "local government" includes navigation districts and port authorities. The CMP relies primarily on state agencies (listed in §505.11(a) or identified in §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas), to implement the CMP goals and policies. Only two local government actions are subject to the program, dune protection permits and beachfront construction certificates; only those subdivisions of the state that issue dune protection permits or beachfront construction certificates are subject to the CMP. Navigation districts and port authorities do not issue these permits or certificates, or any other permits subject to the CMP. Therefore, no change was made based on this comment.

One commenter suggested amending §505.60 to allow the council to review a local government decision to deny a permit. The Texas Natural Resources Code, §33.205(a), provides, in pertinent part, "[a]ll actions taken ... must comply with the goals and policies of the coastal management plan." The council's jurisdiction is based on actions, not failure to take action; if an agency fails to issue a permit to an applicant, there is no "action." No change was made to this section based on this comment.

Section 505.61.

One commenter supported the thresholds for council review of dune protection permits and beachfront construction certificates, as provided in §505.61. Three other commenters stated that the thresholds were too high and requested that the thresholds be lowered or deleted. These commenters recommended that the threshold in §505.61(1) be deleted or amended to comport with the GLO definition of "large-scale construction," as provided in §15.2 of this title (relating to Definitions) (i.e. activities causing greater than 5,000 square feet of disturbance of dunes and vegetation). One commenter requested that §505.61(2) be amended to establish the threshold at 500 cubic yards, as opposed to 7,500 cubic yards, of dune material. Two commenters requested that the thresholds in §505.61 be lowered, and one of the commenters stated that the threshold in §505.61(2) was surprisingly high and did not relate the volume of disturbance to the areal size of the development and requested that this be rectified. The thresholds established in §505.61 do not exempt actions below the thresholds from the requirement to comply with the CMP goals and policies; instead, the thresholds focus the council's attention in conducting formal reviews to those actions with the most significant adverse effects. No change was made based on these comments.

Section 505.63.

Section 505.63(a) has been amended by deleting the reference to a local government's ability to request council preliminary review when the local government is the applicant (for actions listed in §505.11(a)). This reference was deleted because it merely repeated the provisions of §505.31, which provides that

any applicant may request council preliminary review.

Section 505.64.

One commenter suggested amending §505.64(3) to allow the chairman or two council members to refer an action. The Texas Natural Resources Code, §33. 205(b), specifically provides that the council shall review any action that the chairman or three council members submit for review; therefore, no change was made based on this comment. However, §505.64(3) has been deleted, and the section renumbered, because the section is intended to establish the prerequisites for referral of an action to the council. The process for referral previously described in §505.64(3) is now provided in 505.66(c).

Section 505.65.

Based on comments received, §505.65(a) was modified to more precisely reflect the local government process.

Section 505.68.

One commenter stated that §505.68(b) "should be more people friendly." Following GLO certification of a local government's dune protection and beach access plan, §505.68(b) provides that the council shall presume that a local government's consistency determination regarding a particular activity is valid, and the person filing the request for referral has the burden of proving that the local government action is invalid. Section 505.68(b) is essentially identical to the provision in Chapter 505, Subchapter C, which provides that, after council certification of a state agency's rules, the state agency's consistency determination is presumed valid The presumption is rebuttable, and persons may successfully challenge the determination if the facts and circumstances do not support the local government's consistency determination. No change was made to this subsection based on this comment

Section 505 70.

Based on comments received, §505 70(c) was amended to require the affirmative votes of the majority of all council members to affirm, remand, or reverse an action

Subsection 505.70(d) was added to clarify that the council will not require a local government to undertake an action which is beyond its authority

Section 505 72.

One commenter suggested amending proposed §505.72 to provide that the council's only remedy after the council determines that a local government action is inconsistent with the CMP goals and policies is to appeal the local governments' decision to a district court in the county of the local government. Section 505.72(d) provides that after a council determination that a local government action on remand is inconsistent with the CMP goals and policies, the local government action is reversed. This provision is consistent with the Texas Natural Resources Code, §33 206(c), which provides that the only basis for reversal of a local government action is that it is inconsistent with the CMP goals and policies No change has been made to this section based on this comment, however, "agency" has been changed to "local government" to comport with the substance of the chapter. Also, §505 72 has been changed to reflect the changes made in §505.40, governing council review of state agency actions on remand.

Section 505.72 was amended for clarity and to comport with revisions to Chapter 505, Subchapter E. These amendments consist of: revising §505.72(b) to comport with amendments to §505.40(b); moving the text of §505.72(c) and (d) to §505.72(e); adding text to §505.72(c), which parallels §505. 40(c) and §505.40(d), now §505.40(e); adding text to §505.72(d), which parallels §505.35(e); and renumbering §505.72(e), now §505.72(f).

Section 505.72(e) was amended by adding language to clarify that a council decision to affirm or reverse a local government action must be in writing. It was further amended, for consistency with §505.70(a), stating that a council decision to reverse a local government action must include council findings and recommendations.

Section 505.73.

One commenter suggested revising §505.73 to provide that a person or the council could appeal a decision of the district court to a higher court. This suggested change is unnecessary because the CMP does not expand or detract from a person's right and the council's right to appeal district court decisions, as otherwise provided by law.

Section 505.74.

One commenter suggested striking §505.74. Section 505.74 is based on the Texas Natural Resources Code, §33.208, which establishes the council's enforcement authority. Pursuant to the Texas Natural Resources Code, §33. 205(a), all actions taken or authorized by political subdivisions must comply with the CMP goals and policies. For public notice purposes, the rules reflect this authority. Therefore, no change has been made based on this comment.

Regarding §505 74, one commenter suggested limiting the venue for enforcement actions to a district court in the county in which the violation occurs. The Texas Natural Resources Code, §33.208, allows the AG, at the request of the council, to file suit to enforce the CMP in a district court of Travis County or in the county in which the violation occurs No change was made based on this comment. Another commenter stated that the portions of the preamble to proposed Chapter 505 indicating that the CMP will apply to individuals and that the council will enforce the CMP directly against individuals is inaccurate. This comment refers to language contained in the preamble to the proposed rules, which is not republished upon adoption of the rules; however, clarification of this issue is merited Pursuant to the Texas Natural Resources Code, §33 205(a), "[a]ll actions taken by state agencies and subdivisions .. must comply with the goals and policies of the coastal management plan;" therefore, any activity not in accordance with the terms of a local government permit or certificate that implements the CMP goals and policies is a violation of the CMP However, the council has chosen to limit its direct enforcement authority to agency and local government actions and authorizations In response to this comment, §505 74 has been amended to clarify that local governments, not the council, will enforce the terms and conditions of permits and certificates

General Comments

Many commenters stated that the council's authority to review individual agency actions is burdensome, or tantamount to another separate permitting process that is likely to increase regulatory lag and unpredictability, development costs and opportunities for frivolous reviews. The CMP is a networked program, designed to rely primarily on state and federal agencies and, to a lesser extent, local governments to implement the CMP's goals and policies. The council is not a permitting agency. The Texas Natural Resources Code, §33.205(b), requires the council to review state agency and local government actions subject to the program, if the chairman or three other council members submit them for council review. Subchapter C describes how and under what circumstances the council will review individual agency actions However, consistency will be achieved primarily through the council's review and certification of agency rules, as provided in Chapter 505, Subchapter B. Section 505.10 describes the council's approach to the consistency review process established in this chapter, which is designed to identify, address, and resolve consistency issues within the agencies' existing permitting processes No change was made based on these comments

One commenter recommended that the GLO review agency regulations and include this review, as well as recommendations to the council, into the CMP. Two commenters stated that the GLO had already spent considerable time and effort reviewing other agencies' policies to ensure consistency with the council's "goals and intentions " The GLO, assisted by other state agencies, conducted an assessment of the agencies' existing statutory and regulatory policies to determine if the policies sufficiently addressed impacts to CNRAs. This analysis is the basis for the design of the CMP goals and policies No change was made based on this comment

Groups and associations in opposition because of requested changes in, or otherwise expressed dissatisfaction with, the chapter were: The American Waterways Operators, Amoco Chemical Company; City of Baytown, Baytown Refinery, Bonus Crop Fertilizer, Inc , City of Brownsville, Champion International Corporation; Chevron U S A Production Company; Coastal Bend Sierra Club, Colorado County Water Council; City of Corpus Christi; Corpus Christi Chamber of Commerce; Corpus Christi City Council, Corpus Christi Geological Society, Exxon Chemical Company; Exxon Company, U S A , The Fordyce Company; Fort Bend Economic Development Council; Freese and Nichols, Inc , G&W Engineers, City of Groves, Gulf Coast Waste Disposal Authority, Harris County, Harris County Engineering Department, Harris County Flood Control District, Higman Barge Lines; Hoechst-Celanese Corporation,

City of Houston; Houston-Galveston Area Council; Houston Lighting and Power Company; Lower Colorado River Authority; Maryland Marine, Inc.; Matagorda County Navigation District; Mitchell Energy and Development Corporation; Mobil Oil Corporation; Natural Gas Pipeline Company of America; Nueces County Coastal Management Committee; Nueces County Economic Development Focus Group; Organization for the Preservation of an Unblemished Shoreline; Pennzoil Company; Phillips Petroleum Company; Port of Brownsville; Port of Houston Authority; Port Lavaca/Port Comfort; Real Estate and Economic Development Focus Group; Reynolds Metals Company; Society of Independent Professional Earth Scientists; Shell Western E&P, Inc.; SpectraOne; Texaco, Inc.; Texas A&M University; Texas Cattle Feeders Association; Texas Center for Policy Studies; Texas Chemical Council; Texas Committee on Natural Resources; Texas Department of Agriculture; Texas Department of Transportation; Texas Ecologists; Texas Farm Bureau; Texas Independent Producers and Royalty Owners Association (TIPRO); Texas Mid-Continent Oil and Gas Association (TMOGA) ; Texas Municipal League; Texas Parks and Wildlife Department; Texas Poultry Federation; Texas Railroad Commission; Texas and Southwestern Cattle Raisers Association; Texas Water Conservation Association; Texas Water Development Board; United States Department of Commerce (National Oceanic and Atmospheric Administration); United States Department of the Interior (Fish and Wildlife Service and Minerals Management Service); United States Department of the Navy; Union Carbide; Valero Refining Company; Waste Management, Inc.

Groups and associations expressing support for the chapter were: Galveston Bay Foundation; Houston Mayor's Advisory Committee on the Environment; and Southmost Soil and Water Conservation District.

The following groups and associations were neutral with regard to the adoption of this chapter: Central Power and Light; National Marine Fisheries Service (Habitat Conservation Division); and United States Department of the Army (Corps of Engineers).

Groups and associations expressing general support or opposition to the CMP are listed under Chapter 501 of this title (relating to Coastal Management Program).

Subchapter A. Purpose and Policy and State Agency Actions Subject to the Coastal Management Program

- **31 TAC §505.10, §505.11**

The new sections are adopted under the Texas Natural Resources Code, §33.204(a), which provides the council with the authority to promulgate rules adopting the CMP goals and policies and pursuant to the Texas APA, Subchapter A, §2001.004, which requires the council to adopt rules of practice setting forth the nature and requirements of all formal and informal procedures.

§505.10. Purpose and Policy.

(a) The purpose of this chapter is to ensure that state actions, local government actions and general plans subject to the Texas Coastal Management Program (CMP) are consistent with the CMP goals and policies. It is the intent of the Coastal Coordination Council (council) that the consistency process will:

(1) adequately identify, address, and resolve consistency issues to the maximum extent practicable prior to final agency action;

(2) minimize the number of actions referred to the council for review or study by ensuring adequate review at the agency level and by referring to the council only those actions that present unique or significant consistency issues;

(3) avoid the creation of an additional layer of bureaucracy;

(4) avoid subjecting to regulation actions not currently subject to regulation; and

(5) provide procedural safeguards to ensure proper notice, opportunity for hearing, and fairness in decision-making.

(b) Accordingly, it is the intent of the council that consistency be achieved primarily through individual agency rules that will reflect the CMP goals and policies.

§505.11. Actions and Rules Subject to the Coastal Management Program.

(a) For purposes of this chapter and Chapter 501 of this title (relating to Coastal Management Program), the following is an exclusive list of actions taken or authorized by a state agency that may adversely affect a coastal natural resource area (CNRA), including discharges and withdrawals that may significantly affect water quality in state waters subject to tidal influence, and that therefore must be consistent with the CMP goals and policies:

(1) for actions outside the boundary: Texas Natural Resource Conservation Commission (TNRCC):

(A) Permit-an application for a new water right located within 200 stream miles of the coast and proposing an appropriation of 5,000 acre-feet of water per year or more.

(B) Permit amendment-an application to amend a water right located within 200 stream miles of the coast and requesting:

(i) an increase in the appropriation of 5,000 acre-feet or more of water per year; or

(ii) a change in the purpose of the use to a more consumptive use of 5,000 acre feet or more of water per year;

(C) an action under subparagraphs (A) and (B) of this paragraph or paragraph (2)(F)(ii) of this subsection shall not be considered an action subject to the CMP if it is an action taken to implement the Trans-Texas Water Program as approved in whole or in part, and found to be consistent with the goals and policies of Chapter 501 of this title (relating to Coastal Management Program), by the Trans-Texas Water Program Policy Management Committee, provided that the committee includes as voting members at least three members of the council or their designated representatives and a majority of those council members vote to approve and find that it is consistent with the goals and policies of Chapter 501 of this title (relating to Coastal Management Program).

(2) for actions inside the boundary:

(A) General Land Office (GLO), School Land Board, Boards for Lease of State-Owned Lands:

(i) Mineral lease plan of operations-plan of operations for mineral and oil and gas exploration and production;

(ii) Permit-geophysical and geochemical exploration for oil, gas, and other minerals on state-owned lands (upland and submerged);

(iii) Miscellaneous easement-construction of pipelines, transmission lines, roads, and other linear facilities on state-owned lands (upland and submerged);

(iv) Surface lease-construction of commercial facilities, artificial reefs, and other non-waterfront structures on state-owned lands (upland and submerged);

(v) Structure registration-construction of piers under 2,500 square feet in area on state-owned submerged land;

(vi) Coastal easement-dredging of basins and channels on state-owned submerged land; construction of piers, docks, marinas, bulkheads, seawalls, and other waterfront structures on state-owned submerged land;

(vii) Coastal leases-construction of public recreational facilities on state-owned submerged land by local governments. Establishment of preserves,

refuges, or research areas on state-owned submerged land;

(viii) Cabin permit-construction or use of fishing cabins on state-owned submerged land;

(ix) Navigation district leases-channel dredging or construction of port facilities on state-owned submerged land by navigation districts;

(x) certification of local government plans for dune protection permits and beachfront construction certificates;

(xi) Approval of wetland mitigation banks-establishment and maintenance of a mitigation bank by state agencies or political subdivisions (Texas Civil Statutes, Article 5421(u)).

(B) Public Utility Commission (PUC): Certificate of convenience and necessity-construction of electric generating facilities and electric transmission lines.

(C) Railroad Commission of Texas (RRC):

(i) Permit-discharge of wastewater from oil and gas exploration and production activities;

(ii) Permit-disposal or storage of oil and gas wastes in a pit;

(iii) certification of federal permits for dredging and filling activities associated with oil and gas exploration, production, or pipeline construction;

(D) Texas Department of Transportation (TxDOT):

(i) Approval-Gulf Intracoastal Waterway: acquisition of rights-of-way for dredged material disposal sites and channel expansion, relocation or alteration;

(ii) Approval-transportation project planning, construction, operation, and maintenance;

(E) Texas Historical Commission (THC)/Texas Antiquities Committee:

(i) Permit-destruction, alteration, or taking of state archaeological landmarks;

(ii) Review/Consultation-state review of federal undertakings affecting historic sites (National Historic Preservation Act, 16 United States Code Annotated, §470f);

(F) Texas Natural Resource Conservation Commission (TNRCC):

(i) Permit-point-source wastewater discharges for municipal and industrial sources, and for new concentrated animal feeding operations within one mile of a critical area or coastal waters; (ii) Permit-review and action on an application for:

(I) a new water right proposing an appropriation of 2,500 acre feet of water or more per year; or

(II) an amendment to an existing water right requesting an increase in appropriation of 2,500 acre feet of water per year or more, or a change in purpose of use to a more consumptive use of 2,500 acre feet of water or more per year;

(iii) Permit-treatment, storage, and disposal of solid waste: municipal, industrial, nonhazardous, or hazardous;

(iv) creation of special purpose districts or approval of bonds for infrastructure on coastal barriers;

(v) approval of levee improvements or other flood control projects (Texas Water Code, §16.236, 30 TAC Chapter 301);

(vi) certification of federal permits for dredging and filling activities;

(vii) declaration of an emergency and request for an emergency release of water (Texas Water Code, §16.195);

(G) Texas Parks and Wildlife Department (TPWD):

(i) Permit/lease-transplanting or harvesting oysters;

(ii) Permit-taking, transporting, or possessing threatened or endangered species;

(iii) Permit-disturbance of marl, sand, shell, or gravel on state-owned lands;

(iv) approval of development in state parks, wildlife management areas and preserves.

(b) An agency's promulgation of rules governing or authorizing actions listed in subsection (a) of this section or as identified in §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resources Areas) constitutes an action subject to the CMP as provided in Subchapter B of this chapter (relating to Council Certification of State Agency Rules and Approval of Thresholds for Referral).

(c) An action to renew, amend, or modify an existing permit, certificate, lease, easement, approval or other form of authorization shall not be considered an action subject to the CMP if the action is taken pursuant to rules that the council has certified as consistent with the applicable policies in §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas) and:

(1) for wastewater discharge permits under subsection (a)(2)(C)(i) and (F)(i) of this section, if the action is not a major permit modification that would increase pollutant loads to coastal waters or would result in relocation of an outfall to a critical area;

(2) for solid, hazardous, or nonhazardous waste permits under subsection (a)(2)(F)(iii) of this section, if the action is not a Class III modification as defined in TNRCC rules; or

(3) for any other state action, if the action only extends the time period of the existing authorization without authorizing new or additional work or activities or is not otherwise directly relevant to the policies in §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas).

(d) Whenever more than one state agency is involved in issuing a consistency determination for a single project, consideration should be given to the preparation of one consistency determination for all state agencies involved.

(1) Where multiple state consistency determinations are required, state agencies should consider coordinated preparation of the consistency determinations or designation of a lead agency for development of a single consistency determination. In the case where a single consistency determination will be prepared, such determination must be completed before final action is taken on any permit or authorization listed in subsection (a) of this section and required for the project. The single consistency determination must indicate whether each of the proposed actions listed in subsection (a) of this section and required for the project is consistent with the CMP goals and policies and must include information on each proposed action sufficient to support the consistency determination.

(2) An applicant, project sponsor, or other entity undertaking a project which requires more than one action listed in subsection (a) of this section may request in writing from the council either coordinated preparation of the consistency determinations or designation of a lead agency for development of a single consistency determination.

(3) To avoid duplication and time delays, it is the intent of the council, whenever possible, to provide for coordi-

nated consistency determinations where multiple determinations are required. The council may direct the Consistency Review Group (as identified in §505.31(c) of this title (relating to Preliminary Review of Individual Agency Actions by the Coastal Coordination Council)) to respond to the request and facilitate coordinated consistency determinations or preparation of a single determination by a lead agency, under guidance issued by the council.

(4) The council shall not review actions listed in this subsection if an application for such action was filed prior to the effective date of this subchapter.

(5) The council shall not review actions listed in this subsection if such actions are taken pursuant to an enforcement order issued prior to the effective date of this subchapter.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448285 Garry Mauro
Chairman
Coastal Coordination Council

Effective date: June 15, 1994

Proposal publication date: March 18, 1994

For further information, please call: (512) 305-9129

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Subchapter B. Council Certification of State Agency Rules and Approval of Thresholds for Referral

• 31 TAC §§505.20-505.26

The new sections are adopted under the Texas Natural Resources Code, §33.204(a), which provides the council with the authority to promulgate rules adopting the CMP goals and policies and pursuant to the Texas APA, Subchapter A, §2001.004, which requires the council to adopt rules of practice setting forth the nature and requirements of all formal and informal procedures.

§505.20. Council Review and Certification of Existing Agency Rules.

(a) An agency may seek Coastal Coordination Council (council) review and certification of rules governing or authorizing actions listed in §505. 11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program) or identified in §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas) by filing a Request for Council Review with the council secretary. The request shall include a copy of the rules for which the agency seeks council certification and a reasoned justification explaining how the rules are consistent with the Texas Coastal Management Program (CMP) goals and policies.

(b) The council secretary shall distribute copies of the Request for Council Review, including all supporting information, to all council members and shall place the request on the agenda for the next regularly scheduled council meeting. Prior to the council meeting, the council secretary shall publish in the *Texas Register* a notice of availability and a request for public comment on the Request for Council Review.

(c) The council shall determine whether the rules are consistent with the CMP goals and policies within 120 days of the receipt of the request.

(1) If the council determines that the rules are consistent with the CMP goals and policies, the council shall issue a written statement certifying the rules as consistent with the CMP goals and policies.

(2) If the council determines that the rules are not consistent with the CMP goals and policies, the council shall issue a written statement explaining the reasons for its decision and providing recommendations for appropriate rule amendments.

(d) Council review and certification of rule amendments proposed in response to council recommendations are governed by §505.22 of this title (relating to Council Review and Certification of Proposed New Rules and Rule Amendments).

(e) The council may, upon a finding that an agency has failed to implement, enforce, or adhere to the CMP goals and policies, issue to the agency a Notice of Program Deficiency. The notice shall set forth the specific findings of deficiency, the basis for such findings, and include recommendations to correct the deficiencies within a reasonable period established in the notice. If the agency fails to correct the deficiencies as provided in the notice and within the time allowed, the council may, after notice and opportunity for public comment, revoke certification of an agency's rules.

§505.21. Effect of Council Certification of Existing Agency Rules. Upon the council's certification of an agency's rules pursuant to §505.20 of this title (relating to Council Review and Certification of Existing Agency Rules), the agency's rules are incorporated into the CMP goals and policies, and any threshold for referral approved by the council pursuant to §505.26 of this title (relating to Council Review and Approval of Thresholds for Referral) relating to actions under those rules shall become operative and limit the council's authority to review individual actions of the agency, as provided in §505.32(a)(4) of this title (relating to requirements for Referral of an Individual Agency Action).

§505.22. Council Review and Certification of Proposed New Rules and Rule Amendments.

(a) After the effective date of this subchapter, when an agency files proposed new rules or rule amendments governing or authorizing actions listed in §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program) or identified in §501. 14 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas) with the *Texas Register*, the agency shall submit a copy of the proposed new rules or rule amendments to the council secretary, along with a reasoned justification explaining how the proposed new rules or rule amendments are consistent with the CMP goals and policies. The agency shall also include in the preamble to the proposed new rules or rule amendments a reasoned statement that the proposed new rules or rule amendments are consistent with the CMP goals and policies.

(b) The council secretary shall distribute copies of the proposed new rules or rule amendments, along with the reasoned justification, to all council members and shall place the proposed new rules or rule amendments on the agenda for the next regularly scheduled council meeting.

(c) Council members should comment on the consistency of the proposed new rules or rule amendments during the public comment period provided by the agency. The agency shall consider any comments submitted by the council prior to final adoption of the new rules or rule amendments.

(d) No later than 45 days after an agency's proposed new rules or rule amendments are published in the *Texas Register*, the council shall issue a reasoned determination that the proposed new rules or rule amendments, in whole or in part, are consistent or inconsistent with the CMP goals and policies.

(e) The council may issue a conditional determination that new rules or rule amendments, in whole or in part, are consistent or inconsistent with the CMP goals and policies.

(f) Agencies may request, and the council may provide, expedited council consideration of the consistency of new rules or rule amendments.

§505.23. Effect of Council Certification of Proposed New Rules and Rule Amendments.

(a) A threshold for referral, approved by the council pursuant to §505.26 of this title (relating to Council Review and Approval of Thresholds for Referral), shall become operative and limit the council's authority to review individual actions of the agency as provided in §505.32(a)(4) of this title (relating to Requirements for Referral of an Individual Agency Action) only if:

(1) the council has certified the agency's proposed new rules or rule amendments and the agency makes no substantive changes regarding consistency with the CMP goals and policies when adopting them; or

(2) the agency changes and adopts the new rules or rule amendments substantially in accordance with the recommendations of the council.

(b) A threshold for referral, approved by the council pursuant to §505.26 of this title (relating to Council Review and Approval of Thresholds for Referral), shall not become operative and shall not limit the council's authority to review individual actions of the agency as provided in §505.32(a)(4) of this title (relating to Requirements for Referral of an Individual Agency Action) if:

(1) the agency makes substantive changes regarding consistency with the CMP goals and policies when adopting the new rules or rule amendments; or

(2) the agency does not change and adopt the new rules or rule amendments substantially in accordance with the recommendations of the council.

(c) Following adoption, an agency may request council review and certification of its new rules or rule amendments pursuant to §505.20 of this title (relating to Council Review and Certification of Existing Agency Rules).

(d) Upon the council's certification of an agency's rules pursuant to this section, the agency's rules are incorporated into the CMP goals and policies.

§505.24. Basis for Council Certification of Agency Rules.

(a) To determine that an agency's rules are consistent with the CMP goals and policies, the council must find that the agency's rules incorporate or otherwise require the agency to comply with all applicable CMP goals and policies.

(b) For public notice purposes, the council recommends that agencies amend their rules governing those actions listed in §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program) to:

(1) identify those actions that are subject to the CMP;

(2) require the preparation of a consistency determination in accordance with §505.30 of this title (relating to Agency Consistency Determination) when the agency decides to take or authorize an action listed in §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program); and

(3) provide that an agency's decision to take or authorize an action listed in §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program) and subject to council review should not be considered final and appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, Chapter 2001, §2001.171, until the council's jurisdiction over that action has lapsed.

§505.25. Preliminary Council Review of Draft Rules or Rule Amendments.

(a) Prior to an agency's filing proposed new rules or rule amendments with the *Texas Register*, an agency may seek preliminary council review of draft rules or rule amendments governing actions listed in §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program) or relating to rules identified in §501.14 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas) by filing a Request for Preliminary Council Review with the council secretary. The request shall include a copy of the draft rules or rule amendments and a written request for specific guidance on the consistency of the draft rules or rule amendments with the CMP goals and policies.

(b) The council secretary shall distribute copies of the request, including all supporting information, to all council members.

(c) Within 45 days of receipt of an agency's request, council members should individually review and submit written comments on the agency's draft rules or rule amendments to the council secretary, who shall forward copies of the comments to the agency.

(d) Agencies may request, and the council may provide, expedited preliminary council review of draft rules or rule amendments.

§505.26. Council Review and Approval of Thresholds for Referral.

(a) A state agency may propose thresholds for referral by submitting them to the council secretary along with a reasoned justification supporting the thresholds.

(b) The council secretary shall distribute copies of the proposed thresholds for referral, along with the reasoned justification, to all council members and shall place the item on the agenda for the next regularly scheduled council meeting. Prior to the council meeting, the council secretary shall publish in the *Texas Register* a notice of availability and a request for public comment on the proposed thresholds for referral.

(c) After consideration, the council shall issue a written statement either approving or disapproving the agency's proposed thresholds for referral. If the council disapproves an agency's thresholds for referral, the council shall include in its written statement the reasons for its decision and recommendations for appropriate thresholds for referral.

(d) After the council has approved an agency's thresholds for referral, agencies should make them readily available to the public.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448286 **Garry Mauro**
Chairman
Coastal Coordination Council

Effective date: June 15, 1994

Proposal publication date: March 18, 1994

For further information, please call: (512) 305-9129

Subchapter C. Consistency and Council Review of Individual State Agency Actions

• 31 TAC §§505.30-505.42

The new sections are adopted under the Texas Natural Resources Code, §33.204(a), which provides the council with the authority to promulgate rules adopting the CMP goals and policies and pursuant to the Texas APA, Subchapter A, §2001.004, which requires the council to adopt rules of practice setting forth the nature and requirements of all formal and informal procedures.

§505.30. Agency Consistency Determination.

(a) An agency shall include in a permit or other document approving or authorizing an action listed in §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program), either a consistency determination or a determination of no adverse effect as follows:

(1) Consistency Determination. The (State Agency Name) has reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies, in accordance with the regulations of the Coastal Coordination Council (council), and has determined that the action is consistent with the applicable CMP goals and policies applicable to the action.

(2) Determination of No Adverse Effect. The (State Agency Name) has reviewed this action for consistency with the CMP goals and policies, in accordance with the regulations of the council, and has found that the action will not adversely affect the coastal natural resource area (CNRA) identified in the applicable policies.

(b) For actions that exceed the thresholds for referral, the agency shall provide a written explanation supporting the determination made under subsection (a) of this section. The explanation shall describe the basis for the agency's determination, include a description of the action and its probable impacts on CNRAs, identify the CMP goals and policies applied to the action, and explain how the action is consistent with the applicable goals and policies or why the action does not adversely affect any CNRAs.

(c) When publishing notice of receipt of an application or request for agency action, the agency shall include a statement that the application or requested action is subject to the CMP and must be consistent with the CMP goals and policies. The agency shall include the council secretary on any public notice list maintained by the agency for actions subject to the CMP. Upon issuance of a permit, approval, or authorization of an action listed on §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program), the agency shall provide to the council secretary a one-page notice that an action subject to the CMP has been taken or authorized.

(d) Agencies shall maintain a record of all actions taken or authorized that are subject to the CMP and provide such record to the council on a quarterly basis.

§505.31. Preliminary Review of Individual Agency Actions by the Coastal Coordination Council.

(a) An agency or applicant may request preliminary consistency review of any action listed in §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program) prior to the agency's final action.

(b) A request for preliminary consistency review shall be submitted in writing to the council secretary, the chair of the Consistency Review Group (as identified in subsection (c) of this section), and the agency or applicant. Upon receipt of a request for preliminary consistency review, the council secretary shall publish notice of the request in a manner that will inform interested agencies and the affected public. An applicant's request for preliminary consistency review shall identify all other local, state, and federal permits or authorizations, subject to the program, associated with the application.

(c) The council shall create a Consistency Review Group. Each council member shall appoint one person to the Consistency Review Group, which shall be chaired by the representative of the council chairman.

(1) The chair of the Consistency Review Group shall convene the group as directed by the council or as necessary to respond to a request for preliminary consistency review.

(2) Within 45 days of receipt of a request for preliminary consistency review, or within the schedule established in the appropriate memorandum of agreement (MOA) concluded under subsection (d) of this section, the Consistency Review Group shall:

(A) identify all goals and policies that apply to the action for which preliminary consistency review has been requested;

(B) identify any consistency issues to be resolved by the agency;

(C) issue written recommendations for the resolution of consistency issues identified in subparagraph (B) of this paragraph; and

(D) if requested by the agency or applicant, prepare a recommended consistency determination.

(d) If requested by an agency, the council shall expeditiously negotiate a MOA establishing the procedures and schedule for preliminary consistency review pursuant to this section.

§505.32. Requirements for Referral of an Individual Agency Action.

(a) An action of an agency listed in §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program) may be referred to the council for review to determine consistency with the CMP goals and policies only if:

(1) the agency has taken or authorized the action for which referral is sought;

(2) consistency issues were raised by the agency, a party or an interested person during agency consideration of the action;

(3) a request for referral has been submitted to the council in accordance with §505.33 of this title (relating to Filing of Request for Referral and Reply); and

(4) the action:

(A) exceeds the thresholds for referral adopted pursuant to §505.26 of this title (relating to Council Review and Approval of Thresholds for Referral) and no formal hearing was available before the agency to contest the consistency determination;

(B) exceeds the thresholds for referral adopted pursuant to §505.26 of this title (relating to Council Review and Approval of Thresholds for Referral) and was subject to a formal hearing before the agency or, in lieu of a formal hearing, if the agency and all parties to the proceeding concur, to an alternative dispute resolution (ADR) process, and the agency's consistency determination was contested in the hearing or ADR process. The agency and all parties may elect to choose an ADR process arranged through the agency, if any, or the council; or

(C) does not exceed the thresholds for referral adopted pursuant to §505.26 of this title (relating to Council Review and Approval of Thresholds for Referral) and adversely affects a critical area, a critical dune area, a coastal park, wildlife management area, or preserve, or a Gulf beach and was the subject of a formal hearing before the agency in which another state agency participated as a party and contested the agency's consistency determination during the hearing.

(b) For purposes of this subchapter, an agency has taken or authorized an action and the action becomes final for purposes of referral to the council:

(1) if the action is the subject of a formal adjudicative hearing and the agency has notified all parties or their attorneys of record of the final decision or order as provided in the Texas Government Code, Title 10, Subtitle A, Chapter 2001 (Texas APA);

(2) for actions not subject to a formal adjudicative hearing, when the agency has publicly issued its approval and only ministerial steps remain to be taken before the applicant is vested with the legal authority to proceed with the activity authorized; or

(3) as provided in the terms of the MOA entered under §505.31(d) of this title (relating to Preliminary Review of Individual Agency Actions by the Coastal Coordination Council).

(c) For actions subject to subsection (a)(4) of this section, a party filing a request for referral with the council under §505.33 of this title (relating to Filing of Request for Referral and Reply) shall timely file a motion for rehearing with the agency as provided in the Texas APA. The motion for rehearing must state the claimed inconsistencies of the action as grounds for the rehearing.

§505.33. Filing of Request for Referral and Reply.

(a) To seek council review of an action meeting the requirements of §505.32 of this title (relating to Requirements for Referral of an Individual Agency Action), a council member, a party to a formal adjudicative hearing, a person who participated as allowed by agency rules in a formal adjudicative hearing in a capacity other than as a witness, or where a formal adjudicative hearing was not available before the agency, or a person who filed written comments with the agency before the action was taken, may file a Request for Referral of an agency action listed in §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program) with the council secretary. The request must be filed no later than ten days after the agency has taken or authorized the action for which consistency review is sought. The Request for Referral shall include:

(1) the names, addresses, and signatures of all persons joining in the request;

(2) a certificate of service indicating that copies of the request have been provided by hand delivery or certified mail to:

(A) the agency taking or authorizing the action for which review is sought;

(B) the applicant, if any, before the agency; and

(C) if the action was the subject of a formal adjudicative hearing, all persons who were named as parties to the proceeding or their representatives;

(3) a description of the action for which review is sought indicating the date of the agency decision and a copy of the order, permit, or other official agency decision document;

(4) a statement demonstrating, by reference to the requirements of §505.32(a) and (e)(1) and (3) of this title (relating to Requirements for Referral of an Individual Agency Action), that the action is subject to referral; and

(5) a clear and concise statement of the claimed inconsistencies with the CMP goals and policies, including specific reference to the applicable goals and policies and to the applicable facts in the agency's decision record.

(b) The agency taking or authorizing the action for which referral is sought and the applicant for such action may file a Reply to the Request for Referral with the council secretary. The reply must be filed with the council secretary no later than 20 days after the agency has taken or authorized the final action for which referral is sought. The reply shall include.

(1) the names, addresses, and signatures of the persons filing the reply;

(2) a certificate of service indicating that copies of the reply have been provided by personal delivery or certified service to:

(A) the person or persons who filed the Request for Referral;

(B) the applicant, if any, before the agency; and

(C) if the action was the subject of a formal adjudicative hearing, all persons who were named as parties to the proceeding or their representatives;

(3) a clear and concise statement explaining why the action is consistent with the CMP goals and policies, including specific reference to the applicable goals and policies and to the applicable facts in the agency's decision record.

§505.34. Referral of an Individual Agency Action to the Council for Consistency Review.

(a) Upon receipt of a timely Request for Referral which satisfies the requirements of §505.33(a) of this title (relating to Filing of Request for Referral and Reply), the council secretary shall provide, by facsimile transmission or overnight courier, a copy to each council member. Upon receipt of a timely Reply to a Request for Referral, the council secretary shall distribute it to the council in the same manner.

(b) Council members shall consider the Request for Referral and the Reply to the Request for Referral, if any

(c) To accept a Request for Referral, the chairman or at least three other council members must submit the action to the council secretary in writing no later than 30 days after the agency has taken or authorized the action for which referral has been requested.

(d) The council secretary will place the action on the agenda of the earliest council meeting at which consideration of the action is reasonably practicable. If no regularly scheduled meeting will allow the council to act on the referral within 70 days of the date the agency took or authorized the action, the council secretary shall notify the chairman, who shall schedule a special meeting to consider the action and any other appropriate matters. Agencies may request, and the council may provide, expedited council consideration of the actions placed on the agenda.

(e) The adequacy or inadequacy of a Request for Referral or Reply shall not be a reviewable issue before the council. The council may, in its discretion, accept a deficient Request for Referral or Reply.

(f) No right to council review is created by this chapter.

§505.35. Council Procedures for Review of an Individual Agency Action.

(a) The council secretary shall, by certified mail or hand delivery, provide notice of the hearing at which the council will review an action to:

(1) the agency taking or authorizing the action under review;

(2) the applicant, if any, before the agency;

(3) the person(s) filing the Request for Referral;

(4) if the action was the subject of a formal adjudicative hearing before the agency, all persons who were named as parties to the proceeding or their representatives; and

(5) the governor, for the purpose of designating a local elected official to the council pursuant to the Texas Natural Resources Code, §33. 204(b).

(b) The notice to the applicant and the agency shall include a statement that no person may conduct activities authorized by the agency action that would irreparably alter or damage the CNRA identified in the applicable policy, except as otherwise provided by the Texas APA, §2001.054.

(c) In conducting reviews, the council shall consider only:

(1) the record before the agency taking or authorizing the action under review;

(2) the agency's consistency determination,

(3) applicable laws and rules;

(4) the CMP;

(5) any additional information provided by the agency relating to the determination made pursuant to §505. 30(1)(a) or (2) of this title (relating to Agency Consistency Determination); and

(6) the written and oral argument of any person regarding the CMP goals and policies or the additional information provided by the agency.

(d) If the agency did not hold a hearing, make a record, or make findings, the council may hold a hearing and make findings necessary for a complete and thorough review.

(e) The council shall review and determine whether an action is consistent with the CMP goals and policies no later than 70 days after the agency took or authorized the action. Failure by the council to make this determination within 70 days of the date the agency took or authorized the action precludes the council from remanding action.

§505.36. Standard of Council Review for an Individual Agency Action.

(a) The only basis on which the council may remand a decision of an agency is that the action is inconsistent with the CMP goals and policies.

(b) Following council certification of an agency's rules as consistent with the CMP goals and policies pursuant to Subchapter B of this chapter:

(1) the council shall presume that the agency's consistency determination is valid, if such determination is documented by the underlying agency record;

(2) the burden shall be on the person filing the request for referral to demonstrate that the agency action is inconsistent with the CMP goals and policies; and

(3) any thresholds for referral approved by the council pursuant to §505.26 of this title (relating to Council Review and Approval of Thresholds for Referral) shall become operative and limit the council's authority to review individual actions of an agency as provided in §505.32(a)(4) of this title (relating to Requirements for Referral of an Individual Agency Action).

§505.37. Activities Pending Council Review of an Individual Agency Action. Pending council review of an individual agency action, no person may conduct activities authorized by the agency action that would irreparably alter or damage the CNRA identified in the applicable policy, except as otherwise provided by the Texas APA, §2001.054.

§505.38. Council Action on Review of an Individual Agency Action.

(a) The council may affirm an agency's consistency determination or remand the matter to the agency. The affirmation or remand must be in writing. The remand must include:

(1) specific findings stating why the action is inconsistent with the CMP goals and policies; and

(2) recommendations on how to modify the action to make it consistent.

(b) The council may recommend that an agency undertake only such actions as are within the authority of the agency. The council may provide in its remand that the agency action will be automatically reversed without further council action if the agency does not reconsider its action in light of the council's recommendations within 90 days after taking or authorizing the action.

(c) The council shall take action only when a quorum exists. To affirm, remand, or reverse an action requires an affirmative vote of the majority of all council members.

§505.39. Agency Action on Remand.

(a) On remand, the agency shall modify or amend the action to make it consistent with the CMP goals and policies.

(b) If the agency decides not to amend or modify its action as recommended by the council, the agency shall notify the council of that decision in writing immediately. The notification shall contain the reasons for the agency's decision.

§505.40. Council Review of an Agency Action on Remand.

(a) To review an action on remand, the chairman or at least three other council members must submit the action to the council secretary in writing no later than 15 days after the agency has taken or authorized the action on remand.

(b) The council secretary will place the action on remand on the agenda of the earliest council meeting at which consideration of the item is reasonably practicable. If no regularly scheduled council meeting will allow the council to act on the agency action on remand within 70 days of the date the agency took or authorized the action on remand, the council secretary shall notify the chairman, who shall schedule a special meeting to consider the action and any other appropriate matters.

(c) The council secretary shall provide notice of the hearing at which the council will review the action in accordance with §505.35(a) of this title (relating to Council Procedures for Review of Individual Agency Actions). The council shall consider only those items listed in §505.35(c) of this title (relating to Council Procedures for Review of Individual Agency Actions).

(d) The council shall determine whether an action is consistent with the CMP goals and policies no later than 70 days after the agency took or authorized the action on remand. Failure by the council to make this determination within 70 days of the date the agency took or authorized the action precludes the council from reversing the action.

(e) If the council determines that the agency action on remand is consistent with the CMP goals and policies, the action is affirmed. If the council determines that the agency action on remand is inconsistent with the CMP goals and policies, the action is reversed. The only basis on which the council may reverse an action is that the action is inconsistent with the CMP goals and policies. The council decision to affirm or reverse an agency action must be in writing. A decision to reverse an agency action shall include findings and recommendations in accordance with §505.38(a) of this title (relating to Council Action on Review of an Individual Agency Action).

(f) The council's decision to reverse an action renders the action void. The specific activities initially authorized by the agency and subsequently reversed by the council shall cease, except as otherwise provided by the Texas APA, §2001.054.

§505.41. Judicial Review. A person aggrieved by a final action of the council may appeal to a district court under the Texas APA, §2001.171

§505.42. Enforcement.

(a) The attorney general, at the request of the council, shall file in a district court of Travis County, or in the county in which the violation occurs, a suit to enforce the Coastal Coordination Act or the rules adopted pursuant thereto.

(b) The council shall not request that the attorney general pursue legal action against any individual for any violation of, or failure to comply with, this chapter, Chapter 501 of this title (relating to Coastal Management Program), Chapter 504 of this title (relating to Special Area Management Planning), or Chapter 506 of this title (relating to Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448287 Garry Mauro
Chairman
Coastal Coordination Council

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For further information, please call: (512) 305-9129

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Subchapter D. Council Advisory Opinions on General Plans

• 31 TAC §§505.50-505.53

The new sections are adopted under the Texas Natural Resources Code, §33.204(a), which provides the council with the authority to promulgate rules adopting the CMP goals and policies and pursuant to the Texas APA, Subchapter A, §2001.004, which requires the council to adopt rules of practice setting forth the nature and requirements of all formal and informal procedures.

§505.50. General Plans. General plans include any comprehensive statement in words, maps, illustrations, or other media issued by a state agency or political subdivision that recommends, proposes, evaluates, or formulates policies or future courses of action involving activities affecting coastal natural resource areas. For purposes of this section, general plans include, but are not limited to, the following:

(1) State Emergency Management Plan (Texas Government Code, §418.042) ;

(2) State Coastal Discharge Contingency Plan (Texas Natural Resources Code, §40.053);

(3) State Oil and Hazardous Substance Spill Contingency Plan (Texas Water Code, Chapter 26);

(4) State-Owned Coastal Wetlands Conservation Plan (Texas Parks and Wildlife Code, §14.002(a));

(5) State Water Quality Management Plan (Texas Water Code, §26.012);

(6) Artificial Reef Plan (Texas Parks and Wildlife Code, §89.021);

(7) State Water Plan (Texas Water Code, §16.051);

(8) Long-Range Dredging and Disposal Plan (Texas Parks and Wildlife Code, §14.002(b)(8)); and

(9) Regional Solid Waste Management Plans (Texas Health and Safety Code, §363.062).

§505.51. Request for a Non-binding Advisory Opinion and Council Action.

(a) An agency or political subdivision may request a non-binding advisory opinion on the consistency of a general plan described or listed in §505.50 of this title (relating to General Plans).

(b) A request for an advisory opinion shall be submitted in writing to the council secretary. The council secretary shall forward copies of the request to all council members. At the request of any council member, the council shall consider the general plan at the first reasonable opportunity.

(c) Prior to council issuance of an advisory opinion, the chairman of the council may direct the Consistency Review Group, as identified in §505.31(c) of this title (relating to Preliminary Review of Individual Agency Actions by the Coastal Coordination Council), to review the general plan and make a recommendation to the council regarding the consistency of the plan.

(d) The council may, after considering the general plan, issue an advisory opinion on the consistency of the general plan. The council shall issue the advisory opinion within 60 days of receiving the request from the agency or political subdivision.

(e) The advisory opinion shall indicate whether actions taken pursuant to the plan are likely to be consistent or inconsistent with the Texas Coastal Management Program (CMP) goals and policies. The advisory opinion shall also:

(1) identify all goals and policies that apply to the general plan;

(2) identify any consistency issues of concern to the council;

(3) identify portions or provisions of the plan that are likely to lead to future inconsistent actions; and

(4) include recommendations for the resolution of consistency issues identified in paragraphs (2) and (3) of this subsection.

(f) The council may, on its own motion, issue a non-binding advisory opinion on a general plan.

§505.52. Request for Council Participation in the Development of General Plans.

(a) An agency or subdivision may request council participation in the development of a plan by submitting a written request to the council secretary. The council shall participate in the plan development according to the schedule of the agency developing the plan.

(b) The council may direct the Consistency Review Group, or a subcommittee of the group, to participate in the development of the plan and make regular reports to the council.

(c) Following development of the plan, the council may issue an advisory opinion as to whether the plan will lead to future inconsistent actions only if the council determines that:

(1) actions implementing the policy directions or courses of action recommended, proposed, evaluated, or established in the plan are likely to lead to actions inconsistent with the CMP goals and policies; and

(2) the plan does not adequately address alternatives for resolving the potential inconsistency of those actions.

(d) At the request of an agency or subdivision, the council may enter into a memorandum of agreement establishing the manner of council participation in plan development, the criteria to be used in evaluating the plan, criteria to determine the adequacy of alternatives for resolving potential inconsistencies in the plan with the CMP goals and policies, and such other matters as are deemed appropriate by the parties to the agreement.

§505.53. Purpose and Effect of an Advisory Opinion.

(a) The purpose of the advisory opinion is to notify the public and the agency or subdivision adopting or approving the plan whether actions taken pursuant to the plan are likely to be consistent with the CMP goals and policies.

(b) The advisory opinion does not ensure that any action taken pursuant to the general plan will or will not be consistent with the CMP goals and policies.

(c) The council's issuance of an advisory opinion does not obviate the requirement that state agencies and political subdivisions prepare consistency determinations in accordance with the requirements of this chapter or preclude council review of those actions.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448288 Garry Mauro
Chairman
Coastal Coordination Council

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For further information, please call: (512) 305-9129

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Subchapter E. Consistency and Council Review of Local Government Actions

• **31 TAC §§505.60-505.74**

The new sections are adopted under the Texas Natural Resources Code, §33 204(a), which provides the council with the authority to promulgate rules adopting the CMP goals and policies and pursuant to the Texas APA, Subchapter A, §2001 004, which requires the council to adopt rules of practice setting forth the nature and requirements of all formal and informal procedures

§505 60 Local Government Actions Subject to the Coastal Management Program For purposes of this chapter and Chapter 501 of this title (relating to Coastal Management Program), the following is an exclusive list of actions taken or authorized by a local government that may adversely affect a coastal natural resource area and that therefore must be consistent with the Texas Coastal Management Program (CMP) goals and policies:

(1) Dune protection permits issued pursuant to the Texas Natural Resources Code, Chapter 63;

(2) Beachfront construction certificates issued pursuant to the Texas Natural Resources Code, Chapter 61, Subchapter B

§505 61 Thresholds for Referral For purposes of limiting the Coastal Coordination Council's (council's) authority to review individual local government actions as provided in §505 64 of this title (relating to Requirements for Referral of Local Government Actions), the council hereby adopts the following thresholds for referral for those actions listed in §505 60 of this title (relating to Local Government Actions Subject to the Coastal Management Program)

(1) any construction activity located within the first 200 feet landward of the line of vegetation and which results in the disturbance of more than 7,000 square feet of dunes or dune vegetation,

(2) any construction activity which results in disturbance of more than 7,500 cubic yards of dunes,

(3) any coastal shore protection project undertaken pursuant to Chapter 15 of this title (relating to Coastal Area Planning) or within 200 feet landward of the line of vegetation affecting more than 500 linear feet of Gulf beach, or

(4) a certificate or permit which results in a non-temporary closure, relocation, or reduction in existing beach access or access designated in an approved local plan

§505.62. Local Government Consistency Determinations.

(a) Prior to the issuance of a permit or a certificate identified in §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program), a local government shall determine that the permit or certificate is consistent with the CMP goals and policies.

(1) For dune protection permits, the local government determination made pursuant to §15.4 of this title (relating to Dune Protection Standards) that the proposed activity will not materially weaken any dune, or materially damage any dune vegetation, or reduce the effectiveness of any dune as a means of protection against erosion and high wind and water, shall constitute a determination that such permit is consistent with CMP goals and policies.

(2) For beachfront construction certificates, the local government determination made pursuant to §15.5 of this title (relating to Beachfront Construction Standards) that the proposed activity is consistent with the beach access portion of its approved dune protection and beach access plan and does not interfere with, or otherwise restrict, the public's right to use and have access to and from the public beach shall constitute a determination that such permit is consistent with CMP goals and policies

(b) For actions that exceed the thresholds for referral established in §505 61 of this title (relating to Thresholds for Referral), the record developed by the local government under §15 3(u)(1) of this title (relating to Administration) shall constitute the record necessary to support the consistency determinations required in subsection (a) of this section.

§505 63. Preliminary Review of a Local Government Action by the Coastal Coordination Council.

(a) Prior to final action, a local government may request preliminary consistency review for any action listed in §505 60 of this title (relating to Local Government Actions Subject to the Coastal Management Program)

(b) A request for preliminary consistency review shall be submitted in writing to the council secretary, the chair of the Consistency Review Group (as identified in §505 31(c) of this title (relating to Preliminary Review of Individual Agency Actions by the Coastal Coordination Council)), and the applicant. Upon receipt of a request for preliminary consistency review, the council secretary shall publish notice of the request in a place and manner that will inform interested agencies and the affected public.

(c) The Consistency Review Group shall convene and respond to a request for preliminary consistency review in accordance with the pertinent provisions of §505.31 of this title (relating to Preliminary Review of Individual Agency Actions by the Coastal Coordination Council).

(d) If requested by a local government, the council shall expeditiously negotiate a Memorandum of Agreement (MOA) establishing the procedures and schedule by which a local government may request and obtain a preliminary consistency review pursuant to this section.

§505.64. Requirements for Referral of Local Government Actions. A local government action listed in §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program) may be referred to the council for review to determine consistency with the CMP goals and policies only when.

(1) the local government has taken or authorized the action for which referral is sought;

(2) a request for referral has been submitted to the council in accordance with §505.65 of this title (relating to Filing of Request for Referral and Reply); and

(3) the action exceeds the thresholds for referral established in §505.61 of this title (relating to Thresholds for Referral).

§505.65. Filing of Request for Referral and Reply.

(a) To seek council review of an action identified in §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program), a council member or any person who participated in the local government permit and/or certificate process may file a Request for Referral of the action with the council secretary.

(1) The Request for Referral shall.

(A) contain the names, addresses, and signatures of all persons joining in the request;

(B) contain a certificate of service indicating that copies of the request have been provided by personal delivery or certified service to:

(i) the local government taking or authorizing the action for which review is sought; and

(ii) the applicant, if other than the local government;

(C) describe the action for which review is sought, indicate the date of the local government decision, and include a copy of the order, permit, or other official local government decision document;

(D) demonstrate, by reference to the requirements of §505.64(1) and (3) of this title (relating to Requirement for Referral of Local Government Actions), that the action is one subject to referral; and

(E) include a clear and concise statement of the claimed inconsistencies with the CMP goals and policies, including specific reference to the applicable goals and policies and to the applicable facts in the local government's decision record.

(2) The Request for Referral must be filed with the council secretary no later than ten days after the local government has taken or authorized the action for which referral is sought.

(b) The local government taking or authorizing the action for which referral is sought may file a Reply to the Request for Referral with the council secretary.

(1) If filed, the Reply to a Request for Referral shall:

(A) contain the names, addresses, and signatures of all persons filing the reply;

(B) contain a certificate of service indicating that copies of the reply have been provided by personal delivery or certified service to:

(i) the person or persons who filed the Request for Referral; and

(ii) the applicant, if other than the local government; and

(C) include a clear and concise statement explaining why the action is consistent with the CMP goals and policies, including specific references to the applicable goals and policies and to the applicable facts in the local government's decision record.

(2) The Reply to the Request for Referral must be filed with the council secretary no later than 20 days after the local government has taken or authorized the final action for which referral is sought.

§505.66. Referral of Local Government Actions to the Council for Consistency Review.

(a) Upon receipt of a Request for Referral which on its face meets the requirements of §505.65 of this title (relating to Filing of Request for Referral and Reply), the council secretary shall provide, by facsimile transmission or overnight courier, a copy to each council member.

(b) Council members shall consider the Request for Referral and the Reply to the Request for Referral, if any.

(c) To accept a Request for Referral, the chairman or at least three other council members must submit the action to the council secretary in writing no later than 30 days after the local government has taken or authorized the action for which referral has been requested.

(d) The council secretary shall add the action to the agenda of the earliest council meeting. If no regularly scheduled council meeting will allow the council to act on the referral within 70 days after the local government has taken or authorized the action, the council secretary shall notify the chairman, who shall schedule a special meeting to consider the action and any other appropriate matters.

(e) The adequacy or inadequacy of a Request for Referral or Reply shall not be a reviewable issue before the council. The council may, at its discretion, accept a deficient Request for Referral or Reply.

(f) No right to council review is created by this chapter.

§505.67. Council Procedures for Review of Local Government Actions.

(a) The council secretary shall, by certified mail or hand delivery, provide notice of any hearing at which the council will review an action to:

(1) the local government taking or authorizing the action;

(2) the applicant, if other than the local government;

(3) the person(s) filing the Request for Referral; and

(4) the governor, for the purpose of designating a local elected official to the council pursuant to the Texas Natural Resources Code, §33.204(b).

(b) In conducting reviews, the council shall consider only:

(1) the record of the local government taking or authorizing the action under review;

(2) the local government's consistency determination;

(3) applicable laws and rules;

(4) the CMP;

(5) any additional information provided by the local government relating to its consistency determination; and

(6) the written and oral argument of any person regarding the CMP goals and policies or the additional information provided by the local government.

(c) If the local government did not hold a hearing, make a record, or make findings, the council may hold a hearing and make findings necessary for a complete and thorough review.

(d) The council shall determine whether an action is consistent with the CMP goals and policies no later than 70 days after the local government has taken or authorized the action. Failure by the council to make this determination within 70 days after the local government has taken or authorized the action precludes the council from remanding or reversing the action.

§505.68. Standard of Council Review for Local Government Actions.

(a) The only basis on which the council may remand a decision of a local government is that the action is inconsistent with the CMP goals and policies.

(b) Following the General Land Office's certification of a local government's dune protection and beach access plan under §15.3(o) of this title (relating to Administration) as consistent with the CMP goals and policies:

(1) the council shall presume that the local government's consistency determination is valid, if such determination is documented by the underlying record; and

(2) the burden shall be on the person filing the Request for Referral to demonstrate that the local government action is inconsistent with the CMP goals and policies.

§505.69. Activities Pending Council Review. Pending council review of a local government action which is referred to the council, no person may conduct activities authorized by the local government action that would irreparably alter or damage critical dunes or dune vegetation or interfere with or restrict the public's right to use and have access to and from the public beach.

§505.70. Council Action on Review of Local Government Action.

(a) The council may affirm the local government's consistency determination or remand the matter to the local government. The affirmation or remand must be in writing. The remand shall include:

(1) specific findings stating why the action is inconsistent with the CMP goals and policies; and

(2) recommendations on how to modify the action to make it consistent.

(b) The council may not remand a local government action unless it determines that the action is inconsistent with the CMP goals and policies.

(c) The council shall take action only when a quorum exists. To affirm, remand, or reverse an action requires an affirmative vote of a majority of all council members.

(d) The council may recommend that a local government undertake only such actions as are within the authority of the local government. The council may provide in its remand that the local government action will be automatically reversed without further council action if the local government does not reconsider its action in light of the council's recommendations within 90 days after taking or authorizing the action.

§505.71. Local Government Action on Remand.

(a) The local government shall modify or amend the action on remand to make it consistent with the CMP goals and policies.

(b) If the local government decides not to amend or modify its action as recommended by the council, the local government shall notify the council of that decision in writing immediately. The notification shall contain the reasons for the local government's decision.

§505.72. Council Review of Local Government Action on Remand.

(a) To review an action on remand, the chairman or at least three other council members must submit the action to the council secretary in writing no later than 15 days after the local government has taken or authorized the action on remand.

(b) The council secretary will place the local government action on remand on the agenda of the earliest council meeting at which consideration of the item is reasonably practicable. If no regularly scheduled council meeting will allow the council to act on the local government action on remand within 70 days of the date the local government took or authorized the action on remand, the council secretary shall notify the chairman, who shall schedule a special meeting to consider the action and any other appropriate matters.

(c) The council secretary shall provide notice of the hearing at which the council will review the action in accordance with §505.67(a) of this title (relating to Council Procedures for Review of Local Government Actions). The council shall consider only those items listed in §505.67(b) of this title (relating to Council Procedures for Review of Local Government Actions).

(d) The council shall determine whether an action is consistent with the CMP goals and policies no later than 70 days after the local government took or authorized the action on remand. Failure by the council to make this determination within 70 days of the date the local government took or authorized the action precludes the council from reversing the action.

(e) If the council determines that the local government action on remand is consistent with the CMP goals and policies, the action is affirmed. If the council determines that the local government action on remand is inconsistent with the CMP goals and policies, the action is reversed. The only basis on which the council may reverse an action is that the action is inconsistent with the CMP goals and policies. The council decision to affirm or reverse a local government action must be in writing. A decision to reverse a local government action shall include findings and recommendations in accordance with §505.70(a) of this title (relating to Council Action on Review of Local Government Action).

(f) The council's decision to reverse an action renders the action void. The specific activities authorized by the local government action reversed by the council shall cease.

§505.73. Judicial Review. A person aggrieved by a final action of the council may appeal to a district court under the Texas Government Code, Title 10, Subtitle A, Chapter 2001 (Texas APA), §2001.171.

§505.74. Enforcement.

(a) The attorney general, at the request of the council, shall file in a district court of Travis County, or in the county in which the violation occurs, a suit to enforce the Coastal Coordination Act or the rules adopted pursuant thereto.

(b) The council shall not request that the attorney general pursue legal action against any individual for any violation of, or failure to comply with, this chapter, Chapter 501 of this title (relating to Coastal Management Program), Chapter 504 of this title (relating to Special Area Management Planning), or Chapter 506 of this title (relating to Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448289 Garry Mauro
Chairman
Coastal Coordination Council

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For further information, please call: (512) 305-9129

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Chapter 506 Council Procedures for Federal Consistency with Coastal Program Goals and Policies

- **31 TAC §§506.11, 506.12, 506.20-506.28, 506.30-506.35, 506.40-506.44, 506.50-506.52**

The Coastal Coordination Council (council) adopts new Chapter 506, §§506.11, 506.12, 506.20-506.28, 506.30-506.35, 506.40-506.44, and 506. 50-506.52, concerning council procedures to ensure that actions taken or authorized by federal agencies are consistent with the goals and policies of the Texas Coastal Management Program (CMP), with changes to the proposed text as published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1932).

Sections 506.11, 506.12, 506.24, 506.25, 506.27, 506.30, 506.32, 506.33, 506.41, and 506 50 are adopted with changes to the proposed text. Sections 506. 20-506.23, 506.26, 506.28, 506.31, 506.34, 506.35, 506.40, 506.42-506.44, 506. 51, and 506.52 are adopted without changes to the proposed language. The complete text of Chapter 506 is republished for the convenience of the reader.

This chapter is adopted pursuant to the Texas Natural Resources Code, Chapter 33, Subchapters C and F (Coastal Coordination Act), which require the General Land Office (GLO) to develop the CMP and the council to promulgate CMP goals and policies.

This chapter lists the federal actions which may be reviewed by the council to determine consistency, requires applicants and federal agencies to make consistency certifications and determinations, and identifies information necessary for the state to evaluate the certifications and determinations. This chapter provides the parameters of the council's jurisdiction and its procedures for reviewing federal actions which may adversely affect the coastal natural resource areas (CNRAs) designated in §501.2.(a) of this title (relating to Findings). This chapter applies only to the listed federal actions in §506.12. Actions affecting CNRAs both within and outside the CMP boundary may be subject to the requirements of the CMP, including review by the council. Section 506.12(a) lists the federal

actions within the CMP boundary which may adversely affect a CNRA. Section 506.12(b) lists the federal actions outside the CMP boundary. Actions outside the boundary are those that occur on excluded federal land or the Outer Continental Shelf (OCS).

Where a federal development project is conducted in phases, §506.23 permits a single consistency determination for the entire project. Current ongoing federal activities must conform with CMP goals and policies once the CMP is approved by the federal government. Section 506.24(a) requires federal agencies to provide consistency determinations for ongoing activities to the council within 120 days of federal CMP approval. Significantly, in §506.24(c) , the council announces its intention not to require a consistency determination for ongoing dredging of navigational channels.

Procedures for public notice are contained in §§506.25, 506.32, and 506. 41. These and other procedures are found in three separate sections because, pursuant to existing federal regulations, different types of federal actions are subject to different schedules for consistency review. Similarly, procedures for referral of actions to the council are contained in §§506.26, 506.33 and 506.42, while procedures for council review are contained in §§506.27, 506.34 and 506.43 The adopted procedures generally correspond with federal requirements in the Code of Federal Regulations, Title 15, Part 930, but ensure that the review process is more accessible to Texas residents. The procedures describe how federal agencies must comply with state rules, and are also designed to minimize delay

Council review of federal actions may be limited through use of a general consistency determination, described in §506.28. This section provides for the formation of an interagency coordination group to review federal development projects. The council may issue a general consistency determination if the review group has developed a general consistency agreement. This provision ensures that certain activities and planned development will not be subjected to duplicative council review. Section 506. 35 eliminates the need for consistency review of every potential minor impact to CNRAs by allowing general concurrences. The council may use general concurrences for repetitive actions which cumulatively may impact a CNRA.

Review of federal actions to ensure consistency with CMP goals and policies allows Texas to gain some control over the federal activities that shape and determine the destiny of its vital CNRAs. The rule also describes notice procedures and establishes the schedule for council review of federal actions to determine consistency with CMP goals and policies.

From its outset, the CMP has responded to the real concerns of Texans. addressing erosion, protecting coastal natural resources and balancing environmental protection with economic development, among others The council proposed the CMP as rules on March 18, 1994 (19 TexReg 1895) The council held seven public hearings, six of them in population centers along the entire length of the Texas coast. The period for public comment originally expired May 2, 1994. Including both public testimony at hearings and written comments, nearly 200 commenters offered over 1,000 comments on virtually every portion of the CMP.

In addition to substantive comments, the council received numerous requests for additional time to review the CMP. Numerous commenters also wished to review, before the council finally adopts the CMP as rules, revisions to the proposed rules. Ordinarily, members of the public who may be affected by a proposed rule, or have an interest in the rule, have little opportunity to review and comment on proposed staff revisions to a proposed rule before it becomes final. But the council has consistently valued and incorporated public participation in developing the CMP. Rather than satisfying only the minimum requirement for public notice and comment required by state law, the council on June 28 voted to publish the CMP, with proposed revisions, in the *Texas Register* (19 TexReg 5257). This additional step was taken to ensure the widest possible opportunity for meaningful public review and comment before the council adopts the CMP.

Accordingly, the comment summaries and responses are divided into two parts. "Part A" contains comment summaries and responses relating to the comments received during the 60-day comment period following the publication of the interim draft of Chapter 506 in the July 5, 1994, issue of the *Texas Register* (19 TexReg 5257). "Part B" contains comments received during the original comment period following the publication of Chapter 506, in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1932).

General comments were received regarding the "CMP Document," which was the subject of the "Notice of Availability" in the March 18, 1994, issue of the *Texas Register*. The CMP Document contains descriptions of the enforceable and nonenforceable portions of the CMP. The enforceable portions of the CMP are Chapters 501, 504, 505, and 506 which respectively contain: the CMP goals and policies; special area management planning; council procedures for state and local consistency with CMP goals and policies; and council procedures for federal consistency with the CMP goals and policies. In addition to reflecting the council's balanced approach to the protection of the ecological and economic values of CNRAs, the CMP Document is prepared pursuant to the Texas Natural Resources Code, Chapter 33, Subchapter C, §33. 052, and is intended to satisfy the federal requirements for approval under the Coastal Zone Management Act (CZMA), 16 United States Code Annotated, §1455(d). While portions of the CMP Document describe the provisions of Chapters 501, 504, 505, and 506, the chapters, not the CMP Document, are the council's enforceable policies; the chapter preambles, not the CMP Document, may be used to determine the intent of the chapters. Based on comments received, the CMP Document was reviewed and revised to ensure consistency and resolve any perceived inconsistency with the chapters. To the extent that any conflicts are perceived when reviewing the CMP Document and the chapters, or while implementing the chapters, the chapters prevail.

Editorial changes that do not alter the content of this chapter have been made to clarify meaning and to correct grammatical errors. To save space, similar comments and responses have been combined by section. General comments on the proposed chapter and comments on the preamble to the proposed chapter are combined at the end of the summary of comments.

Certain sections were revised based on comments received on the CMP proposed rules published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1895), and subsequently revised based on comments received on the interim draft of the CMP rules, published in the July 5, 1994, issue of the *Texas Register* (19 TexReg 5195). Paragraphs in "Part A" of this preamble which discuss such subsequent changes are *italicized* for the reader's convenience.

Part A.

Section 506.12.

One commenter requested that the list of federal actions in §506.12 be narrowed to identify only those federal actions which may be subject to the CMP goals and policies under Chapter 501 of this title (relating to Coastal Management Program). Section 506.12 identifies the federal actions which may adversely affect CNRAs and therefore may be subject to the policies established in Chapter 501 of this title (relating to Coastal Management Program). All federal actions identified in §506.12 must comply with CMP goals and policies to the extent those actions are governed by the policies. No change was made based on this comment.

One commenter recommended amending §506.12(a)(1)(C) to add United States Army Corps of Engineers (COE) projects under 33 United States Code Annotated, §426i and §426j. Pursuant to 33 United States Code Annotated, §426i, the COE approves projects for the prevention or mitigation of damages to shore areas attributable to federal navigation projects. Pursuant to 33 United States Code Annotated, §426j, the COE approves projects for the placement on state beaches of beach-quality sand dredged from federal navigation projects. Since these federal projects may adversely affect CNRAs, it is appropriate to ensure that such projects comply with CMP goals and policies. Section 506.12(a) (1)(C) has been amended as suggested by the commenter.

One commenter recommended amending §506.12(a)(1)(F) by adding "that adversely affect CNRAs" after "development projects." The recommended change would render §506 12(a) redundant because it lists federal actions within the CMP boundary that "may adversely affect" CNRAs. No change was made based on this comment.

Regarding §506.12(a), a commenter expressed concern that the rules establish an overlapping consistency review process for actions that are subject to both state and federal permits. A second commenter recommended that §506.12(a)(2)(A)(i) be revised to exempt federal permit consistency review of a National Pollution Discharge Elimination System (NPDES) permit where a state permit

has been reviewed for consistency or where a state permit for the same activity is below a threshold established to limit council review. It is not the council's intent to subject permit applicants to dual (state and federal) consistency reviews for equivalent actions. Therefore, pursuant to this and other comments, §506.12(c) and (d) have been revised to address the issue of state and federal consistency review of the same activity.

One commenter recommended deletion of §506.12(a)(3)(B) and (b)(4)(B) because the COE provides no "federal assistance" as defined in §506.11. The commenter stated that the COE does not provide grants, loans, subsidies, or any other form of financial assistance to state and local governments for water resource projects. A second commenter recommended deletion of §506. 12(a)(3)(A)-(C) because the rules subject federal funding decisions to consistency review even though permits issued for the funded projects will also be subject to review. The §506.11 definition of "federal assistance" requires some form of "financial aid" to be provided. Since no financial aid is provided by the COE, no federal assistance is provided and §506.12(a)(3) (B) and (b)(4)(B) are rendered inapplicable. However, financial aid for the listed projects in §506.12(a)(3)(A) and (C), and therefore, federal assistance, is provided by the United States Environmental Protection Agency and Department of Transportation. Additionally, under certain circumstances these projects may not require additional permits after funding. Under this scenario, the federal project consistency review of the funding decision may be the only opportunity for the council to ensure consistency with CMP goals and policies. Based on this and other comments, §506.12(a)(3)(B) and (b)(4) (B) have been deleted.

One commenter stated that §506.12(b) is "not strictly compatible" with the COE environmental policy guidance. According to the commenter, for federal actions beyond the three mile limit, or otherwise outside the geographic boundaries of the coastal zone, federal compliance with the CMP is "voluntary." Additionally, the commenter "reserves its legal rights regarding any case where a state unreasonably asserts" that ocean disposal of dredged material outside the geographic boundaries of the coastal zone would be inconsistent with the state's CMP. The commenter made no requests for amendment to the proposed rule and no changes were made based on this comment.

One commenter requested that state thresholds be applied to consistency review of federal actions. The council recognizes that many activities are governed by parallel state and federal regulations, permits and authorizations. The CMP is designed to compile existing law into a uniform and consistent program. Therefore, §506.12(c) and (d) have been modified so that CMP procedures for review are consistently applied to both state and federal actions. Unlike Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies), Chapter 506 does not provide for thresholds. An activity which falls below approved state thresholds for referral is less likely to be reviewed by the council. However, the same activity, conducted pursuant to a federal permit, license or authorization could be reviewable under Chapter 506. To provide uniform review processes and further effectuate the council's intent to limit review to significant actions affecting CNRAs, §506.12(c) and (d) have been rewritten to apply Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies) procedures when an activity requires equivalent federal and state permits or licenses.

One commenter requested clarification of §506.12(d), which provides the procedure and schedule for applicants to request that the council designate either the state or federal permit, but not both, as subject to consistency review when equivalent state and federal permits are required. The schedule by which state and federal agencies consider permit applications and decide whether to issue permits varies; therefore, a uniform schedule for council designation of "the consistency permit" would not easily mesh with the existing processes of the state and federal agencies. However, pursuant to another comment, §506.12(d) has been revised to address the issue of state and federal consistency review of the same activity. No further change was made based on this comment.

One commenter recommended amending §506.13(a) and (d) and adding new subsection (e). No §506.13 exists in Chapter 506, as proposed or as revised. No change could be made based on this comment.

Section 506.20.

Concerning §506.20, one commenter suggested that "generic" actions or projects should receive a CMP consistency determination to simplify permitting. Chapter 506 includes mechanisms to coordinate, streamline, and provide uniformity for agency actions and permitting processes. The Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.32, requires federal agencies to comply with a state's federally approved coastal management program and to prepare consistency determinations. Pursuant to §506.28 and §506.35, the council can determine that a category of actions is consistent, thus eliminating permit-by-permit consideration. No change was made based on this comment.

Section 506.24.

One commenter recommended that §506.24 be amended to require that federal consistency determinations comply with the provisions of 33 United States Code Annotated, §426i and §426j, relating to the COE beach mitigation projects, as this would allow federal funds to be spent on Texas projects. Section 506. 24 is derived from the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.38. Upon federal approval of the CMP, Texas will be eligible to receive federal funds for implementation of the program and for coastal projects. Since the present rule already achieves the commenter's goal, no change was made based on this comment.

Section 506.25.

One commenter requested that §§506.25, 506.28, 506.32, and 506.41 be revised to provide notice in newspapers of each county affected by the matter under review, similar to the notice provisions in the Texas Natural Resources Code, §33.204(c). Although notice of the sort requested by this commenter is not provided, the public will have more than adequate notice and opportunity to participate in the process. Sections 506.25, 506.32, and 506.41 require that public notice be provided in the *Texas Register*. In addition, the chairman may extend the public comment period or schedule a public hearing. The CMP also provides for public input during the general consistency agreement process, pursuant to §506.11 and §506.28. Therefore, no change was made based on these comments.

Sections 506.27.

Regarding the establishment of procedures for federal agencies to submit additional information when the council disagrees with a consistency determination on the grounds of insufficient information, one commenter recommended amending §§506.27(d)(3), 506.34(d)(3), 506.43(d)(3), and 506. 52(c)(3), by adding the following: "and (ii) at such time as the information requested is received, the council shall consider such information in the manner described under this section." The council derives its authority from the Texas Natural Resources Code, Chapter 33, Subchapters C and F. If the council disagrees with a federal consistency determination on the basis of failure to submit sufficient information, the federal agency may submit the requested information and may request that the council reconsider its decision. The additional procedural requirements requested by this commenter are unnecessary. No change was made based on this comment.

Section 506.30.

Regarding §506.30(b), one commenter states that the requirement that information be submitted to the council is "unreasonable." The commenter suggested that only an administratively complete NPDES permit application should be required. An administratively complete NPDES application would not contain any information about the permit's consistency with CMP goals and policies. The information requested in §506.30 is necessary to determine if a listed action will adversely affect CNRAs and to ensure consistency with CMP goals and policies. The proponent of the project is best able to provide this information. No change was made based on this comment.

Section 506.33.

One commenter requested that the council exempt federal licenses and permits which receive preliminary consistency approval from possible referral to the council pursuant to §506.33. Preliminary consistency review only applies to state and local actions pursuant to §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program) and §505.31(a) of this title (relating to Preliminary Review of Individual Agency Actions by the Coastal Coordination Council). Federal law dictates the procedures for state review of federal actions. A federal action must be identified in §506.12(a) or (b) and must adversely affect a CNRA before it can be referred to the council.

The council, through procedures in §506.26 and §506.35, limits the number of federal action reviews. No change was necessary based on this comment.

One commenter recommended revising §506.33(a) and §506.42(a) by adding "listed under §506.12 that exceeds the applicable threshold and" after "permit" to provide the public notice of which federal activities are subject to consistency review. Since the only federal actions potentially subject to consistency review are already fully identified in §506.12(a) or §506.12(b) , no change was made based on this comment.

Three commenters objected to the chairman's authority to refer items for review pursuant to §§506.26(a), 506.33(a), 506.42(a), and 506.51(a). One of the commenters recommended an amendment to require a vote of three committee members to review these federal activities. The commenter stated that he understood that this would require a legislative change. The second commenter asked that §§506.26(a), 506.33(a), 506.42(a), and 506.51(a) be revised to provide that three council members or the chairman may refer a federal activity or development project for full council review. The third commenter stated that §§506.33(a), 506.42(a), and 506.51(a) should be revised to require council review of federal activities or development projects upon referral by anyone, rather than limiting this authority to the chairman. The council derives its authority from the Texas Natural Resources Code, Chapter 33, Subchapters C and F. The Texas Natural Resources Code, §33.206(d), provides for council review of federal actions submitted by the chairman. The statute provides that only the chairman may refer a federal action to the council for review. No changes were made based on these comments.

One commenter questioned whether §506.33(a) requires review of individual requests for authorization under COE nationwide permits. The commenter also asked whether current Regional General Permits and Nationwide General Permits will be reviewed before they are considered for modification or extension. The commenter stated that there is no mechanism for individual review under nationwide permits since most actions do not require advance notification by the permittee. A second commenter recommended that §506.33(c) be revised to exempt from council review Nationwide General and Regional General COE §404 permits, and similar routine federal actions. The first commenter's basic understanding relating to individual review of nationwide permits is correct. The council does not intend to review individual requests for authorization under future COE nationwide permits that are consistent with the CMP. Neither will current Regional General Permits and Nationwide General Permits be reviewed under the proposed CMP until those permits are considered for modification or extension No changes were made based on these comments.

Section 506.34.

A commenter suggested that the 180 day schedule provided in §506 34(a) is too long and is inconsistent with §506.32 and §506.33. The commenter recommended a 90 day schedule for new permits and a 180 day schedule for permit amendments or renewals if the Texas Administrative Procedure Act, Government Code, Title 10, Chapter 2001 (Texas APA), Subchapter C, §2001 054, applies or there is a comparable federal rule that applies A second commenter, stated that the schedules in §506.33(e) and §506.34(a) may delay review of permit applications. This commenter recommended the development of a general concurrence to allow for prompt review of projects with minor impacts. This commenter also requested limiting deadline extensions The schedules in §506.33 and §506 34 are derived from the Code of Federal Regulations, Title 15, Part 930, Subpart D, §930.63 and §930 64 The schedule in §506 33(d) is actually shorter than the schedule in the federal rules because it provides for a presumption of concurrence within 90 days, while the federal rules do not provide for such a presumption until after 180 days. The schedule relates back to the filing of the consistency certification, which must be filed at the same time the applicant files the application with the federal agency. Section 506 34 is not inconsistent with §506 32 and §506.33 because §506.34 provides the maximum time allowable for council review of a federal license or permit. Section 506.32 discusses publication of notice of the availability of the consistency certification. The 30 day time period in §506 32 ensures that the chairman will have adequate time to review public comments within the 90 day time period for referring such matters to the council. Section 506.33 provides that the chairman's failure to refer the permit or license within 90 days results in a conclusive presumption that the action is consistent. Section 506.33(c) allows the council at least 90 days to review the referral The 180 day period in §506.34 presumes that the chairman and the council both have taken their full 90 days to refer and review the permit or license. Section 506.35 provides for council development of general concurrences No changes were made based on these comments.

Sections 506.50-506 52.

One commenter recommended deleting the provisions of §§506.50-506.52, relating to review of federal assistance projects. The commenter stated that in all situations of concern, the project will be covered by at least one state or federal permit. In the alternative, this commenter recommended that pursuant to the Code of Federal Regulations, Title 15, Part 930, Subpart F, §930.95(a), §506 51(a) should be amended to limit consistency review of applications for federal assistance to those listed in §506 12(a)(3) Under certain circumstances, these projects may not require additional permits. The federal project consistency review of federal assistance decisions may be the council's only opportunity to ensure consistency with CMP goals and policies. Therefore, to further effectuate the council's intent to protect the ecological and economic vitality of CNRAs, no change was made based on this comment

General Comments

A commenter recommended that Chapter 506 should set thresholds for federal actions similar to the thresholds for state actions discussed in Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies). This commenter recommended that the council direct the GLO staff to propose, within 90 days of final adoption of the CMP rules, thresholds for all federal actions for which there are no parallel state actions. State agencies may establish thresholds for referral of their actions to the council. As a product of state law, thresholds are inappropriate in the federal consistency process However, general consistency agreements and general concurrences (pursuant to §506 22 and §506.35, respectively) may be used to limit council review of individual federal agency actions. Further, to provide uniform review processes and further effectuate the council's intent to limit review to significant actions affecting CNRAs, §506.12(c) and (d) have been rewritten to apply Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies) procedures when an activity requires equivalent federal and state permits or licenses. No additional change was made based on this comment.

One commenter expressed concern about the lack of local participation in federal activities, and stated that the council was heavily weighted with Austin bureaucrats. The Texas legislature established the council's composition Pursuant to the Texas Natural Resources Code, §33 203(2), the council consists of representatives of existing agencies, a local government elected official and a coastal citizen. In addition, a third local representative from the area in which the activity will occur will be added to the council for all reviews under the Texas Natural Resources Code, §33.205. The council's composition fosters coordination among state agencies and balances the interests of agency officials and those of local governments and private citizens. Federal approval of the CMP will allow Texas citizens, through their representatives on the council, to review federal actions for consistency with the CMP goals and policies. No change was made based upon this comment.

One commenter was concerned that proposed procedures for referring consistency determinations are overly restrictive, cumbersome, confusing and difficult to enforce. The CMP is designed to limit council review to those activities which significantly and adversely affect a CNRA as listed in §505. 11 and §505.60 of this title (relating to Actions and Rules Subject to the Coastal Management Program and Local Government Actions Subject to the Coastal Management Program), and §506.12. While the procedural requirements of Chapters 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies) and 506 may appear cumbersome, §505.34(e) of this title (relating to Referral of an Individual Agency Action to the Council for Consistency Review) and §505. 66(e) of this title (relating to Referral of Local Government Actions to the Council for Consistency Review) provide that the council

has discretion to accept referrals that do not satisfy all ministerial requirements. The CMP is a consensus document which acknowledges agency and local government autonomy and seeks to minimize council review by enhancing review opportunities at the local level. The council referral procedures are listed in §505.32 of this title (relating to Requirements for Referral of an Individual Agency Action) and §505.62 of this title (relating to Local Government Consistency Determinations). The CMP diminishes the potential for bureaucratic delay by allowing individuals and governmental entities to request a preliminary review of actions during the permitting process. Chapter 506 is based on existing federal law. The CMP is designed to utilize existing regulations whenever possible, thereby promoting uniformity in the application of the law. No changes were made based on this comment.

Part B.

Section 506.11.

Reference to, and the definition of, "coastal zone" has been deleted from Chapter 506. A definition of "coastal area" has been added in §506.11, which follows the definition in the Texas Natural Resources Code, §33.004(5). The reference to "coastal zone" in §506.12(a) has been replaced with "CMP boundary," as these terms cover the same geographic area. The difference between the geographic areas covered under the definitions of "coastal area" and "CMP boundary" is that the former includes the entire area within the coastal counties, while the latter specifically excludes federal lands located within the coastal counties.

Regarding the definition of "second-tier counties," as provided in §506. 11, one commenter stated that Polk and San Jacinto counties should not be classified as second-tier counties, and asked whether the official list of second-tier counties is the list provided in the CMP document or the list in §506.11. Section 506.12(b) was amended by deleting the activities occurring in second-tier counties from the list of federal actions. (See the discussion of this revision in the response to comments on §506.12(b).) Therefore, the definition of "second-tier counties" in §506.11 has been deleted.

One commenter supported the definition of "interagency coordination group" in §506.11. No change was made based on this comment.

One commenter was opposed to the definition of "consistent to the maximum extent practicable," as provided in §506.11, and stated that federal agencies are required to comply completely, as opposed to the "maximum extent practicable." The definition of this phrase is based on the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.32. Federal activities, including federal development projects, are required to be consistent with the CMP to the "maximum extent practicable." No change was made based on this comment.

Section 506.12.

One commenter requested that §506.12 be amended to include only those federal actions which may be subject to the CMP policies in Chapter 501 of this title (relating to Coastal Management Program). Section 506.12 identifies the federal actions which may adversely affect CNRAs; all of the federal actions listed in §506.12 may implicate the policies established in Chapter 501 of this title (relating to Coastal Management Program). Therefore, all federal actions identified in §506.12 must comply with the CMP goals and policies. No change was made based on this comment.

Many comments were received regarding the list of federal actions in §506 12. Seven commenters recommended various mechanisms for limiting the list; two requested that the list be expanded. One commenter expressed general support for the list, and requested that the council not limit its review authority any further because important issues must reach the council to resolve policy. Another commenter also stated that it is often difficult to obtain federal compliance for actions not specifically listed, and recommended that the list of actions be as inclusive as possible, noting that seeking review of unlisted federal actions has often proven bureaucratic and time consuming. The Code of Federal Regulations, Title 15, Part 930, requires federal agencies to comply with a state's federally approved coastal management program and prepare consistency determinations on actions affecting CNRAs, regardless of whether their actions have been listed by the state. Therefore, the list of federal actions in §506.12 remains open-ended. However, the council will continue working with the federal agencies to identify actions for which a general concurrence or general agreement may be appropriate, thereby narrowing the number of individual federal actions subject to council review. The list of federal actions was developed with the aid and support of the federal agencies participating in a Federal Agency Task Force (FATF), created to aid in the CMP development process. The FATF did not indicate that the list was too broad. However, §506.12(b) was revised to include only those actions occurring within outer continental shelf (OCS) waters or on excluded federal land within the coastal area. The revisions were made to eliminate any duplication of activities on the state list of actions in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) and the federal actions listed in §506.12(b). Based on these comments, subsection (b) has been amended by deleting §506.12(b)(1)(A)(i)-(iv), and combining §506. 12(b)(1) and (b)(1)(B). Section 506.12(b)(2)(D) and (D)(i) have also been combined. Section 506.12(b)(2)(D)(ii) and (iii) and (E)(i)-(iii) have been deleted. The list of actions within the CMP boundary remains as proposed

One commenter stated that the CMP does not adequately address activities in coastal hazard areas In response to this comment, §506.12(a)(1)(D) has been amended to include under the actions of the Federal Emergency Management Agency the approval or suspension of community eligibility to sell flood insurance.

Three commenters supported changes to earlier, informal draft versions of Chapter 506, reflected in §506.12(c) and (d), which eliminate duplication of the potential for council consistency reviews on National Pollution Discharge Elimination System (NPDES) permits (33 United States Code Annotated, §1342) and similar federal/state permits. No change was made based on this comment.

One commenter stated that the terms "minor" and "small," as used in §506. 12(a)(1)(A) and (C)(i) and (iii), are unclear. The terms "small" and "minor" are statutory terms defined in the federal statutes cited in §506.12(a)(1)(A) and (C)(i) and (iii). No change was made based on this comment.

One commenter requested that §506.12(a)(1)(F) be amended to mention excluded federal lands, even as a cross reference Section 506.12(a) lists the federal activities, development projects, licenses, and permits within the CMP boundary that may adversely affect CNRAs. The CMP boundary, as defined in §503.1 of this title (relating to Coastal Management Program Boundary), specifically excludes federal lands. Therefore, this subparagraph does not include any federal actions located on federal lands. However, §506.12(b)(1) includes federal activities on federal lands. No change was made based on this comment.

Two commenters stated that §506.12(a)(2)(A)(v), identifying the Environmental Protection Agency's (EPA's) pesticide registration requirements as a federal action included within the CMP, impacted the practices of the agriculture industry which had not been properly addressed in the CMP. Because the registration of pesticides is not site specific (e.g., the registration applies throughout Texas, regardless of the application site(s)), and any adverse effects resulting from pesticide application is covered by §501.14(g) of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas), §506.12(a)(2)(A)(v) has been deleted.

One commenter requested deletion of §506.12(a)(2)(F), which identifies certain Nuclear Regulatory Commission (NRC) licenses as federal actions which may adversely affect CNRAs, because the council has not adopted enforceable policies applicable to such actions. There is no CMP policy which specifically pertains to such NRC actions; however, those actions will have to be undertaken in compliance with the CMP goals and policies which are applicable (e.g., a NRC license issued for an activity located in a critical area must be consistent with the critical areas policy, provided in §501.14(h) of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas)). No change was made based on this comment.

One commenter asked whether all Texas Department of Transportation projects receiving federal funding will be subject to the consistency review process. Pursuant to §506.12(a)(3)(C), only federally funded highway projects requiring preparation of an environmental impact statement (EIS) or an environmental assessment (EA), pursuant to the National Environmental Policy Act (NEPA), 42 United States Code Annotated, §§4321-4370d, will be subject to consistency review. No change was made based on this comment.

One commenter requested that §506.12(b), relating to federal actions included in the CMP, be amended to distinguish federal actions occurring in the second-tier counties from federal actions occurring in OCS waters. Section 506.12(b) has been amended to include only those federal actions within OCS waters or on excluded federal lands within the coastal area. Therefore, the commenter's requested revision was not included.

One commenter requested identification of impacts to farms and ranches resulting from §506.12(b)(1) and (2), which identifies the federal activities, development projects, licenses and permits occurring outside the CMP boundary which are included in the CMP. Because §506.12(b) does not list any activities landward of the CMP boundary, farms and ranches should not be impacted by the provisions in §506.12(b)(1) and (2). No change was made in response to this comment.

One commenter stated that §506.12(b)(1)(B), which provides that activities occurring "within federal lands excluded from the CMP boundary but which affect coastal natural resource areas" are included in the CMP, appears to include all federal lands located in Texas, and recommended that §506. 12(b)(1)(B) should be limited to the CMP area. Pursuant to revisions of §506. 12(b), the council has limited its jurisdiction over federal actions occurring outside the CMP boundary to federal actions occurring within OCS waters or on excluded federal land located within the coastal area. The coastal area is comprised of those counties included in the CMP boundary. Federal lands within the coastal area are expressly excluded from the boundaries of the CMP. However, federal law specifically authorizes the inclusion of federal actions occurring outside the CMP boundary. The CZMA, 16 United States Code Annotated, §1456(c)(1)(A), provides that each "federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable" with the enforceable CMP goals and policies. In addition, CZMA, 16 United States Code Annotated §1456(c)(1) (C), requires federal agencies to prepare consistency determinations for federal activities occurring on federal lands outside the coastal area that affect CNRAs.

Concerning §506.12(c), five commenters stated that the Texas Natural Resource Conservation Commission (TNRCC) wastewater discharge permit thresholds should apply to EPA NPDES permits to ensure that EPA and TNRCC permits authorizing the same actions are subject to the same procedural limitations for council consistency review. A commenter asked how the council would handle review of NPDES permits. Another commenter requested specific thresholds for industrial and municipal discharges (excluding stormwater discharges), and yet another commenter recommended that the council waive its jurisdiction over all NPDES permits. Regarding the first comment, §506.12(c) provides that federal consistency certification requirements are waived for those NPDES permits authorizing discharges requiring equivalent TNRCC permits. Regarding the second comment, it is within the TNRCC's discretion to adopt appropriate thresholds for consistency review; therefore, any suggestions regarding specific thresholds should be directly addressed to the TNRCC. Section 506.12(c) has not been amended to exclude all NPDES permits from the federal consistency certification requirements because such permits authorize discharges which may adversely affect CNRAs, and are therefore properly included in the CMP, pursuant to the Texas Natural Resources Code, §33.205(a) . No changes were made based on these comments.

One commenter requested that §506.12(d) be amended to waive the council's jurisdiction to review federal actions below thresholds approved for equivalent state agency actions Pursuant to §505.26 of this title (relating to Council Review and Approval of Thresholds for Referral), state agencies are authorized to adopt thresholds which, after council approval, will limit the actions below the threshold that may be referred to the council for consistency review, as provided in §505.32 of this title (relating to Requirements for Referral of an Individual Agency Action). Thresholds must be adopted by state agencies and approved by the council; therefore, it would be inappropriate to allow state thresholds to limit the council's ability to refer and review federal agency actions. However, general consistency agreements and general concurrences, respectively provided in §506.28 and §506.35, may be used to limit the council's ability to refer and review individual federal agency actions. No change was made based on these comments.

One commenter requested clarification of §506.12(d), which provides the procedure for applicants to request that the council designate either the state or the federal permit, but not both, as potentially subject to consistency review when equivalent state and federal permits are required. The commenter recommended that §506.12(d) be amended to include a schedule for council designation of either the federal or state permit as "the consistency permit" to avoid undue delay in the permitting process. The schedule by which state and federal agencies consider permit applications and decide whether to issue permits varies; therefore, a uniform schedule for council designation of "the consistency permit" would not easily mesh with the existing processes of the state and federal agencies. However, the council may issue general direction on the process, as provided in §506.12(d). No change was made based on this comment.

Section 506.20.

One commenter stated that consistency of federal actions should not be contingent on "adequate consideration" of CMP policies which are in the nature of recommendations, and requested that the language to that effect be deleted from §§506.20(2), 506.30(b)(5) and 506.40(b)(4). Most of the provisions in Chapter 506 are based on the federal regulations governing federal agency compliance with federally approved coastal management programs; the language to which this commenter refers is based on the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.39(c). Deleting this language, as suggested by the commenter, would not affect federal agencies' obligation to adequately consider the CMP's nonenforceable policies. Retaining the language provides more effective public notice of the federal requirements with which federal agencies must comply; therefore, this paragraphs has not been deleted.

Section 506.21.

One commenter recommended that §506.21(a) be amended to provide for a finding of no adverse effect instead of a "negative determination" to avoid confusing the concepts of adverse effects on CNRAs and consistency with the CMP goals and policies. The commenter noted that §505.30(a)(2) of this title (relating to Agency Consistency Determination) does not require a consistency determination if the pertinent state agency determines that an activity will not adversely affect a CNRA. The federal agency negative determination required by §506.21(a) essentially has the same substantive effect as the state agency finding of no adverse effects on CNRAs required by §505.30(a)(2) of this title (relating to Agency Consistency Determination). The terminology differs because §506.21(a) is based on the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.35(d), which uses the phrase "negative determination." No change was made based on this comment.

One commenter recommended that §506.21 be amended to clarify that it applies to all federal actions, not just federal activities or development projects. The Code of Federal Regulations, Title 15 Part 930, Subpart C, §930.35(d) provides that federal agencies may submit negative determinations for federal "activities" (to states with federally approved coastal management programs). The Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.31(c), provides that a federal activity "does not include the issuance of a Federal license or permit to an applicant or person or the granting of Federal assistance to an applicant agency." Therefore, no change was made to this section based on this comment.

Section 506.22.

One commenter questioned the basis for general consistency determinations under §506.22. General consistency determinations are authorized by the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.37(b), which provides that such determinations "may only be used in situations where the incremental actions are repetitive or periodic, substantially similar in nature, and do not directly affect the coastal zone when performed separately. " Provided that these requirements are met, federal agencies may issue a general consistency determination. It is anticipated that federal agencies will utilize the general consistency determination option to avoid case-by-case consistency review of minor actions No change was made based on this comment.

One commenter requested that §506.22(b) be revised to require that federal agencies consult with the council at the council's request because "periodic" consultations (on incremental actions authorized pursuant to a

general consistency determination) are too open-ended. Section 506.22(b) reflects the requirement imposed by the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.37(b), which provides, "[i]f a Federal agency issues a general consistency determination, it must thereafter periodically consult with the State agency to discuss the manner in which the incremental actions are being undertaken." Therefore, no change was made based on this comment.

Section 506.23.

Regarding §506.23, one commenter stated that the experience of other states with phased consistency determinations has been "tricky," and that the process can be a slippery slope after issuance of a first approval because of the inevitable political and financial pressures that develop in support of a project. The commenter recommended that the council approach phased consistency conservatively, and use cautionary and conditional language with all early statements regarding determinations made under this section. The council will consider consistency determinations on development projects carefully. No change was made to this section based on this comment.

Concerning §506.23, one commenter stated that draft EISs that are not finalized prior to federal approval of the CMP are subject to the full consistency review process and expressed concern that the potential for consistency review would adversely impact the relocation of the United States Navy's Mine Warfare Center of Excellence in Corpus Christi, Texas. As provided in §506.24(b), consistency determinations are required for phased development projects described in §506.23(b). Phased development project decisions which were specifically described, considered, and approved prior to management program approval (e.g., in a final EIS issued pursuant to the NEPA) are specifically exempted from the consistency determination requirement, pursuant to the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.38(b). The commenter correctly noted that this exemption does not include draft EISs; however, the purpose of federal consistency review is to ensure greater coordination and cooperation between the federal agencies and the state to allow for the protection of CNRAs. The council will coordinate with the federal agencies prior to federal approval to ensure an efficient federal consistency review process. No change was made based on this comment.

Section 506.24.

One commenter supported §506.24(a), and suggested that it would be helpful to determine the number of projects where the pertinent federal agency retains discretion to reassess and modify an ongoing activity (and therefore require a federal consistency determination), in terms of the demands on staff subsequent to federal approval of the CMP. The council will rely on GLO staff to assess the number of ongoing activities requiring consistency determinations pursuant to §506.24(a). No change was made to this subsection based on this comment.

Regarding §506.24(c), nine commenters suggested a phased-in approach to maintenance dredging of commercially navigable channels. Two of the nine commenters stated that such projects should be phased in over a period of no less than five years. The other commenters suggested a three to five year phase-in period. The council will consider entering into an agreement with the COE to phase in council review of maintenance dredging activities. No change was made based on this comment.

Two commenters supported §506.24(c), relating to ongoing maintenance of commercially navigable channels, for projects initiated prior to CMP approval. One of the commenters suggested that §506.24(c) should be amended to clarify that "CMP approval" means approval by the United States Department of Commerce. Section 506.24(b) and (c) has been amended to clarify that "approval" refers to federal approval.

Section 506.25. One commenter requested identification of the state entity that will receive federal consistency determinations and certifications. The public notice provisions (§§506.25, 506.32 and 506.41), include a new subsection (d), which requires that, after the comment period closes, the chairman must issue a written decision to refer the matter to the council or not to refer the matter to the council. This new subsection also provides that upon issuance of the chairman's decision, the council secretary will immediately notify the council members, the applicant, the federal agency, and any other affected parties.

Four commenters recommended that Chapter 506 be amended to provide for public notice and comment in only one section, as opposed to three sections (§§506.25, 506.32, and 506.41). The rule has not been amended to consolidate the public notice and comment requirements in §§506.25, 506.32 and 506.41, because these sections apply to substantively different portions of the chapter.

Section 506.26.

Two commenters stated that the schedule for council review of federal activities, provided in §506.26, appeared excessive. Another commenter objected to the presumption of council agreement, as provided in §506.26(c). One commenter requested the deletion of the phrase "with all required information" from §§506.26, 506.33, and 506.42 to ensure that the council's review occurs within the specified deadlines. The information required in §§506.26, 506.33, and 506.42 is required pursuant to existing federal regulations and is necessary to determine if a listed action will adversely affect CNRA's and to ensure consistency with CMP goals and policies. The proponent of the project is best able to provide this information. The schedule for council response to federal consistency determinations and the presumption of agreement is provided in the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.34 and §930.35. No change was made to this section based on these comments.

Section 506.27.

Regarding §§506.27(b), 506.34(b), 506.43(b), and 506.52, one commenter recommended that the council establish hearings procedures for admitting evidence, providing opportunity for public comment, and standards of review. The commenter also questioned the effect of a council decision to disagree with a consistency determination, pursuant to §506.27. For review of federal and state actions, the council will develop procedures governing receipt of evidence, public participation, and general practice before the council. A council decision to disagree with a federal consistency determination does not prohibit the federal agency from proceeding with a proposed action. The CZMA, 16 United States Code Annotated, §1456, requires federal agencies to comply with the CMP to the maximum extent practicable; however it does not require federal agencies to cease all actions pursuant to a council decision to disagree. The council may, in cases of "serious disagreements," seek secretarial mediation as provided in §506.27(e) or may seek an injunction against the federal agency in court. No change was made based on this comment.

One commenter requested the addition of a definition of the term "assistant administrator," as used in §§506.27(c), 506.34(c), 506.43(b) and (c), and 506.52(b). Based on this comment, a definition of "assistant administrator" has been added to §506.11.

One commenter asked for clarification of the effect of council disagreement on the grounds of insufficient information to make a consistency determination, as provided in §§506.27(d)(3), 506.34(d)(3), 506.43(d)(3), and 506.52(c)(3), and asked whether the federal agency applicant may submit additional information and request a new hearing. As provided in §506.27(d)(3), the council may disagree with a federal agency's consistency determination if the council finds that the federal agency failed to submit sufficient information to support the determination. As previously discussed in response to a comment on §506.27(b), the effect of a council decision to disagree with a federal agency's consistency determination does not prevent the federal agency from proceeding with the action. If the council disagrees with a federal consistency determination on the basis of failure to submit sufficient information, the federal agency may submit the requested information and may request that the council reconsider its decision; however, in cases where the council objects to a consistency determination on the grounds of insufficient information, the federal agency is prohibited from issuing the federal license or permit or approving the application for federal assistance. No change was made based on this comment.

Section 506.28.

One commenter asked whether the interagency coordination group (ICG) referenced in §506.28(b) will be a standing committee included in the CMP organizational structure, or an ad hoc committee organized around specific development projects. The ICG, defined in §506.11, is anticipated to be an ad hoc committee established to facilitate review of particular projects. The membership

of the ICG will vary depending on the location of the project and other factors. No change was made based on this comment

Regarding §506.28, one commenter supported the mechanisms to avoid duplicative consistency reviews of projects subject to an ICG comprehensive review. The commenter recommended revisions to subsection (b) of this section to include federal activities, as well as development projects Section 506. 28(a) describes the council's authority to issue general consistency agreements with respect to both federal activities and development projects. The general consistency agreement provisions in §506 28(b) govern federal development projects, but use of a similar process for federal activities is not precluded. No change was made based on this comment.

Section 506 30.

Five commenters stated that too much information is required in §506 30. Four commenters suggested that a copy of the federal license or permit application or OCS plan with a one-page description of the project and its location would suffice. The information requirements in §506.30(b)(2), (4), and (5), now §506.30(b)(1), (3), and (4), are based on the federal requirements provided in the Code of Federal Regulations, Title 15, Part 930, Subpart D, §930.58. Section 506.30(b)(3), now §506.30(b)(2), is designed to coordinate the review of all permits associated with one project. Based on these comments, §506.30(b)(1) has been deleted, and §506 30(b)(2), now §506.30(b)(1), has been amended to provide that applicants may submit the federal application and supporting materials to meet the requirements for information in §506 30(b)(2), now §506 30(b)(1).

One commenter stated that applicants should be required to identify and address each specific relevant policy in the consistency certification to avoid a generalized statement or the submission of a general EA Applicants must identify all relevant policies in the findings required under §506 30(b) (5), now §506 30(b)(4), and the findings should be supported in the consistency certification. Failure to fully analyze applicable policies may impede council consideration or, if information is insufficient, result in a council objection to a consistency certification No change has been made to this paragraph based on this comment

Regarding §506 30, one commenter requested a definition of an administratively complete consistency certification Another commenter requested that the federal consistency review process be revised to incorporate the language regarding administrative completeness, as provided in §504 2(c) of this title (relating to Nomination of a Geographic Area of Particular Concern) Section 506 30(b) establishes the information requirements for an administratively complete consistency certification In addition, §506 30(d) provides that if the council has not informed the applicant of the need for additional information within 15 days of receipt of the consistency certification, then the consistency certification is considered administratively complete Thus, a consistency certification is considered administratively complete 15 days after the date of receipt by the council secretary, unless the council notifies the applicant of the need for additional information within the 15-day period. No change was made based on this comment.

Regarding §506.30(c), one commenter asked how state and federal permits required for the same activity will be consolidated for purposes of consistency review Two commenters requested that §506.30(c) be amended to allow a single review for projects requiring multiple federal or state actions To facilitate and streamline council review, §506 30(c) requires that, to the extent practicable, applicants provide the council with consistency certifications on all federal permits associated with a project at the same time. Pursuant to §506.30(b)(3), applicants are required to provide a list of any federal, state, and local permits (subject to the CMP) which are associated with an action that received a consistency certification. Section 506.30(c) establishes a general process to allow for some flexibility. The council will publish a "manual of operations" detailing each step of the consistency review process, and the council will refine the manual as its experience with the process increases. Consequently, no changes were made in this subsection.

One commenter supported the language of §506.30(b)(5), now §506.30(b)(4) which provides that advisory policies are to be adequately considered and requested the addition of stronger language, such as "fully" or "strongly" considered. Section 506 30(b)(5), now §506 30(b)(4), is identical to the federal provisions in the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930 58(a)(4). No change was made based on this comment

Section 506 32

One commenter requested deletion of the provision allowing an extension of the public comment period in §506 32(c), and stated that the extension was unnecessary. Generally, the public comment period provided pursuant to §506 32(c) will be no more than 30 days An extended comment period may be appropriate for large projects involving several federal permits. Therefore, no change has been made to this subsection based on this comment

Section 506 33.

Nine commenters objected to the length of the schedule for consistency review of federal licenses and permits and OCS plans, and recommended reducing the schedule by one-half. One commenter stated that the schedule should be shortened for minor federal actions, such as nationwide 404 permits issued pursuant to the federal Clean Water Act, 33 United States Code Annotated, §1344 Section 506 33(e) and §506.42(e) provide for the conclusive presumption of the council's concurrence with consistency certifications for federal licenses and permits, if the license or permit has not been referred to the council within 90 days of submission of the consistency certification to the council secretary. Section 506 34(a) and §506 43(a) require the council to concur with or object to a consistency certification within 180 days of submission of the consistency certification to the council secretary. These schedules were not changed for the following reasons. First, these schedules are established in the Code of Federal Regulations, Title 15, Part 930. Second, the schedule relates back to the filing of the consistency certification, which must be filed at the same time the applicant files the application with the federal agency. Finally, shortening the schedule may result in the referral of more federal actions than would otherwise be the case, because there would be less time for the applicant to resolve any differences with the council. Therefore, no change was made based on these comment.

One commenter requested amendments to §§506.33, 506.34, 506.42 and 506.43, which would limit the council's review to the applicant's consistency certification, excluding review of the federal license or permit. Section 506. 34 and §506.43 have been amended to clarify that it is the applicant's consistency certification that is the subject matter of the council's objection or concurrence. However, §506.33 and §506 42 were not amended. These sections continue to reference federal licenses and permits, because the actions the council will refer include federal licenses and permits, listed in §506.12(a)(2) and (b)(2).

One commenter stated that §506.33(a) appears to allow the chairman to initiate council review of any federal license or permit, whether or not the project is located seaward of the CMP boundary, and recommended that council review be limited to federal licenses and permits for projects located seaward of the boundary. To be eligible for referral to the council, a federal action must be identified in §506.12(a) or (b), and must adversely affect a CNRA No change was made based on this comment

Section 506 35.

A commenter stated that one way to address inconsistency between state and federal consistency requirements is to develop "general concurrences" The commenter recommended that the GLO identify the federal activities and permits for projects eligible for general concurrences in the council's final rules The commenter further stated that general concurrences should be used to adopt "federal thresholds" identical to state thresholds Section 506.35 provides for council development of general concurrences, which may be used to exempt a class of minor actions from the requirements that applicants prepare consistency certifications and from the procedures for council review of individual consistency certifications, in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart D, §930.53(c). The GLO will identify those actions suitable for general concurrences and submit recommendations regarding those actions to the council. No change has been made based on this comment.

Regarding §506.35, one commenter asked whether general concurrences provide an opportunity to develop a Memorandum of Agreement (MOA), or if they are only appropriate for a certain level of activities. A general concurrence is only appropriate for a

class of actions having relatively minor impacts on CNRAs. A general concurrence is similar to a general permit, and will include an identification of actions covered and the conditions that must be met when performing such actions Persons filing applications for actions covered by a general concurrence will not have to submit consistency certifications to the council. No change has been made based on this comment.

A commenter stated that tailoring general concurrences around geographic areas is a sound idea that reflects some of the latest thinking about integrated ecosystem management Identifying the geographic area subject to the general concurrence, issued pursuant to §506.35, may be appropriate on a case-by-case basis, however, no change has been made based on this comment.

Section 506 40.

One commenter recommended that §506.40 be amended to require applicants to provide consistency certifications to the secretary of the interior, as opposed to the council secretary, and rely on the secretary of the interior to forward a copy of the certification to the council The CZMA, 16 United States Code Annotated, §1456(c)(3)(A) and (B), requires applicants to attach consistency certifications for all licenses and permits described in detail in plans submitted to the secretary of the interior However, the CZMA, 16 United States Code Annotated, §1456(c)(3)(A), requires all applicants for federal licenses and permits to submit consistency certifications to the council Routing consistency certifications through the secretary of the interior to the council is contrary to federal law and might unnecessarily delay council consideration. Therefore, no change was made based on this comment.

Section 506 41

One commenter recommended that §506.41 be amended to require that the "applicant" provide public notice of consistency certifications on OCS plans. To ensure uniform public notice, the council will publish notice of consistency certifications No change has been made based on this comment.

Section 506 42

Concerning §506 42(c), one commenter stated that confusion may result from the requirement that the council secretary shall place the action on the agenda of the earliest council meeting at which consideration of the action is "reasonably practicable," and recommended that the subsection be amended to provide a minimum time limit or standardized schedule The second sentence of §506 42(c) provides that if no regularly scheduled meeting will allow the council to consider the action within 90 days, the chairman shall schedule a special meeting to consider the action This provision clarifies that "reasonably practicable" means no later than 90 days after receipt of the consistency certification Therefore, no change has been made based on this comment

Section 506 50

Regarding §506 50, one commenter questioned the need for council review of applications for federal assistance because, in virtually all situations, the project will require at least one state or federal permit. The commenter stated that consistency issues should not be raised in the context of funding. Consistency review of federal assistance to state and local governments is required by the Code of Federal Regulations, Title 15, Part 930, Subpart F. Throughout the CMP development process, many people expressed a preference for early resolution of consistency issues. The review of federal assistance projects involves the council at the earliest stages of project development, prior to commitment of significant resources to the project. No change has been made to this section based on this comment.

Concerning §506.50, one commenter requested a definition of "the state single point of contact for the Texas Review and Comment System." Section 506. 11 has been amended to include a definition of "state single point of contact, " as suggested by this commenter

General Comments.

One commenter stated that the optimum regulatory structure for a CZMA program would provide the TNRCC with authority over all federal consistency matters, and suggested that the GLO be designated to represent the council as a statutory party at any permitting agency upon a majority vote of the council The Texas Natural Resources Code, §33.206(d), provides that the council shall review federal actions for consistency with the CMP goals and policies. Using separate entities to conduct federal and state consistency review may result in different application and/or interpretation of the CMP goals and policies. No change was made based on this comment

A commenter supported the language on federal consistency. No change was made based on this comment

One commenter questioned whether the United States Navy's regulations are eligible for rule consistency certification, as are state agency rules, pursuant to §505.20 of this title (relating to Council Review and Certification of Existing Agency Rules) The Code of Federal Regulations, Title 15, Part 930, upon which Chapter 506 is based, does not provide for rule certification for federal agencies. No change was made based on this comment

One commenter stated that consistency reviews will frustrate the state goal of coordinating and streamlining the environmental permitting process, and that the council's authority to review agency actions for consistency with the CMP is tantamount to another separate permitting process that may double regulatory lag, add considerably to development costs, and amplify opportunities for frivolous reviews. The consistency review process is not intended to be, nor is it, a separate permitting process Moreover, the consistency review process includes mechanisms to coordinate and streamline permitting processes. The consistency review process will evolve to accomplish the long-term goals of coordinating and streamlining these processes. No change was made based on this comment

One commenter disagreed with the conclusion that the CMP will have minimal fiscal impact. An additional cost/benefit analysis will be prepared prior to federal approval of the program. No change was made based on this comment.

One commenter stated that the efficient and continuous implementation of a federal consistency process for the CMP depends, in part, on institutionalizing the agreements and procedures with each federal agency. The commenter also stated that the spirit, intent, role, and importance of these procedures can be reinforced for existing and future agency staff via MOAs signed by each agency with the proper formality at the highest level. The GLO and the COE have discussed development of an MOA regarding federal consistency review of maintenance dredging activities. Other federal agencies have also expressed interest in developing MOAs to ensure an easier transition. The council will coordinate with federal agencies to develop MOAs No change was made based on this comment.

A commenter recommended addition of a specific statement that the CMP will not delay processing or issuance of agency permits to municipalities The council has worked diligently to ensure that the CMP does not unreasonably delay the processing or issuance of agency permits to any applicant. However, a statement promising no delay for a class of applicants is inappropriate and may not be true in isolated cases. Both the federal and state consistency review processes include deadlines for council action. If the council does not meet these deadlines, the council is prohibited from exercising its review authority Therefore, no change was made based on this comment.

Five commenters requested that the votes of at least three council members be required to initiate council review of a federal action. Two other commenters stated that §§506.26(a), 506 33(a), and 506.51(a) should be revised to require council review of federal activities or development projects upon referral by any council member, rather than exclusively limiting this authority to the chairman. The Texas Natural Resources Code, §33 206(d), provides that the council shall review a federal action submitted to the council by the council chairman. The statute does not allow council members to submit a federal action to the council for review. No change was made based on these comments.

One commenter requested that the CMP provide specific means to review and veto COE projects, when necessary. Another commenter asked for clarification of the council's authority to prohibit federal actions after federal approval of the CMP. The CZMA does not provide for a state "veto" of federal agency actions (e.g., COE projects). Instead, the council will review federal development projects, when submitted by the chairman, and either agree or disagree with the federal agency's consistency determination. A council decision to disagree with a federal consistency determination does not prohibit the federal agency from proceeding with the development project The council will coordinate with the COE and other federal agencies to

ensure that their actions comply with the CMP goals and policies to the maximum extent practicable. No change was made based on this comment.

A commenter requested that the council designate someone to address items such as "pre-consistency review" or to assist sponsors of local activities under the CMP. The staff of the GLO will be available to consult with local sponsors and to provide technical assistance on federal projects, as provided in the Texas Natural Resources Code, §33.204(d). No change was made based on this comment.

Three commenters requested that federal agencies be allowed to establish threshold levels for federal actions Another commenter requested the establishment of the federal thresholds prior to rule adoption. State agencies and local governments may establish thresholds for referral of their actions to the council As a product of state law, thresholds are inappropriate in the federal consistency process. However, general consistency agreements and general concurrences, respectively provided in §506.28 and §506.35, may be used to limit council review of individual federal agency actions. No change was made based on these comments

A commenter stated that the federal consistency provisions do not parallel the state consistency provisions. The federal consistency process is necessarily different from the state consistency process, due to the requirements of the Code of Federal Regulations, Title 15, Part 930. No changes were made based on this comment.

One commenter stated that one good aspect of the CMP is the requirement that federal agencies must meet the state requirements for consistency No change was made based on this comment.

One commenter stated that affected industries should be included in the consistency review process. The Coastal Coordination Act, Texas Natural Resources Code, Chapter 33, Subchapter F, establishes the council as the governmental body responsible for conducting state and federal consistency reviews. This chapter and Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies), governing council review of state agency and local government actions, provide for public participation in the review process. No change was made based on this comment.

One commenter stated that the language contained in the preamble to proposed Chapter 506 limits national security considerations to national emergencies. The preamble to proposed Chapter 506 does not narrow scope of national security considerations "National security" is identified in Chapter 10 of the CMP Document as "in the national interest," and §501.13 of this title (relating to Administrative Policies) requires state agencies to consider the national interest when making decisions. No change was made based on this comment

A commenter supported the language in the preamble to proposed Chapter 506 regarding the reasons why Texas is promulgating regulations on federal consistency. No change was made based on this comment.

One commenter stated that the phrase "state's rights," as used in the preamble to proposed Chapter 506, is an inflammatory statement that may polarize support for and/or opposition to the CMP. The commenter stated that characterizing federal consistency as an opportunity for coordination, cooperation, and partnerships may be more advantageous. The statement was not intended to polarize support for and/or opposition to the program. Rather, it was intended to recognize one of the prime benefits of federal approval, namely federal agency compliance with CMP policies. No change was made based on this comment.

Groups and associations in opposition because they requested changes in, or otherwise expressed dissatisfaction with, the chapter were: Champion International Corporation; Chevron U.S.A. Production Company; Exxon Chemical Company; Exxon Company, U.S.A.; Freese and Nichols, Inc.; Greater Houston Builders Association; Gulf Coast Waste Disposal Authority; Hoechst-Celanese Corporation; Hollywood Marine, Inc.; Houston Lighting and Power Company; Mitchell Energy and Development Corporation; Mobil Oil Corporation; Nueces County Economic Development Focus Group; Offshore Operators Committee; Pennzoil Company; Phillips Petroleum Company; Port of Brownsville; Real Estate and Economic Development Focus Group; Shell Western E&P, Inc.; Texaco, Inc.; Texas Chemical Council; Texas Department of Agriculture; Texas Ecologists; Texas Mid-Continent Oil and Gas Association (TMOGA); Texas Ports Association; Texas Railroad Commission; Texas and Southwestern Cattle Raisers Association; Texas Water Conservation Board, United States Department of the Army (Corps of Engineers); United States Department of Commerce (National Oceanic and Atmospheric Administration); United States Department of the Interior (Fish and Wildlife Service); United States Department of the Navy; Valero Refining Company.

Groups and associations expressing support for the chapter were: Galveston Bay Foundation.

The following groups and associations were neutral with regard to the adoption of this chapter: National Marine Fisheries Service (Habitat Conservation Division)

Groups and associations expressing general support or opposition to the CMP are listed under Chapter 501 of this title (relating to Coastal Management Program).

The new sections are adopted pursuant to the Texas Natural Resource Code, §33.204(a), which provides the council with the authority to promulgate rules that adopt the CMP goals and policies and pursuant to Texas APA, Subchapter A, §2001.004, which requires the council to adopt rules of practice setting forth the nature and requirements of all formal and informal procedures

§506.11. Definitions. The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Applicant-Any individual, public or private corporation, partnership, association, or other entity organized or existing under the laws of any state, or any state, regional, or local government that, following management program approval, files an application for a federal license or permit to conduct an activity affecting the Texas Coastal Management Program (CMP) area.

Applicant agency-Any unit of state or local government or any related public entity such as a special purpose district, which, following federal CMP approval, submits an application for federal assistance.

Assistant administrator-The assistant administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, United States Department of Commerce.

Associated facilities-All proposed facilities:

(A) which are specifically designed, located, constructed, operated, adapted, or otherwise used, in full or in major part, to meet the needs of a federal action (e.g., activity, development project, license, permit, or assistance); and

(B) without which the federal action, as proposed, could not be conducted.

CMP boundary-The CMP boundary established in §503.1 of this title (relating to the Coastal Management Program Boundary).

Coastal area-The geographic area comprising all the counties in Texas which have any tidewater shoreline, including that portion of the bed and water of the Gulf of Mexico within the jurisdiction of the State of Texas.

Consistency certification-The statement submitted by an applicant for a federal license or permit subject to federal consistency review certifying that the proposed activity complies with the CMP goals and policies.

Consistency determination-The statement and supporting documentation submitted by a federal agency undertaking or planning an activity subject to federal consistency review certifying that the activity is consistent with the CMP, to the maximum extent practicable.

Consistent to the maximum extent practicable-Being fully consistent with the CMP unless compliance is prohibited based upon the requirements of existing law

Federal action-A federal activity, federal license or permit, or federal assistance as defined in this section

Federal activity-Any function performed by or on behalf of a federal agency

in the exercise of its statutory responsibilities including federal development projects but not issuance of a federal license or permit.

Federal assistance–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.

Federal license or permit–Any authorization, certification, approval, or other form of permission which any federal agency is empowered to issue to an applicant, including renewals and major amendments of federal license and permit activities not previously reviewed by the state, renewals and major amendments of federal license and permit activities previously reviewed by the state which are filed after, and are subject to, amendments not in existence at the time of original state review, and renewals and major amendments of federal license and permit activities previously reviewed by the state which will cause effects within the CMP area substantially different from those originally reviewed by the state.

Interagency coordination group–For purposes of the general agreement in §506.28 of this title (relating to General Consistency Agreements), a group established to review proposed federal development projects and whose duties include, among other things, advising on the consistency determination. Voting members of the group shall include, at a minimum, representatives of the local project sponsor and federal and state natural resource and regulatory agencies with jurisdiction over the project. The group shall seek and promote broad participation by local governments and coastal citizen groups.

Outer continental shelf (OCS) plan–Any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 United States Code Annotated, §§1331-1356) and the regulations promulgated thereunder, which is submitted to the secretary of the interior or a designee following CMP approval and which describes in detail federal license or permit activities.

State single point of contact–The state single point of contact for the Texas Review and Comment System as defined by 1 TAC §5.194 (relating to Definitions).

§506.12. Federal Actions Subject to the Coastal Management Program.

(a) For purposes of this section, the following federal actions within the CMP boundary may adversely affect coastal natural resource areas (CNRAs):

(1) Federal Activities and Development Projects:

(A) United States Department of the Interior. Minor and technical modifications to the boundaries of the Coastal Barrier Resource System under 16 United States Code Annotated, §3503(c);

(B) United States Environmental Protection Agency. Selection of remedial actions under 42 United States Code Annotated, §9604(c);

(C) United States Army Corps of Engineers:

(i) small river and harbor improvement projects under 33 United States Code Annotated, §577;

(ii) water resources development projects under 42 United States Code Annotated, §1962d-5;

(iii) small flood control projects under 33 United States Code Annotated, §701s;

(iv) small beach erosion control projects under 33 United States Code Annotated, §426g;

(v) operation and maintenance of civil works projects under the Code of Federal Regulations, Title 33, Parts 335 and 338; and

(vi) dredging projects under the Code of Federal Regulations, Title 33, Part 336;

(vii) approval for projects for the prevention or mitigation of damages to shore areas attributable to federal navigation projects pursuant to 33 United States Code Annotated, §426i;

(viii) approval for projects for the placement on state beaches of beach-quality sand dredged from federal navigation projects pursuant to 33 United States Code Annotated, §426j;

(D) Federal Emergency Management Agency:

(i) model floodplain ordinances;

(ii) promulgation of floodplain rules; and

(iii) approval or suspension of a community's eligibility to sell flood insurance under the Code of Federal Regulations, Title 44, Part 59, Subpart B;

(E) General Services Administration:

(i) acquisitions under 40 United States Code Annotated, §602 and §603; and

(ii) construction under 40 United States Code Annotated, §605;

(F) All federal agencies. All other development projects.

(2) Federal License and Permit Activities:

(A) Environmental Protection Agency:

(i) National Pollution Discharge Elimination System (NPDES) permits under 33 United States Code Annotated, §1342;

(ii) ocean dumping permits under 33 United States Code Annotated, §1412;

(iii) approvals under 42 United States Code Annotated, §6924(d); and

(iv) approvals of National Estuary Program Comprehensive Conservation Management Plans under 33 United States Code Annotated, §1330f;

(B) United States Army Corps of Engineers:

(i) ocean dumping permits under 33 United States Code Annotated, §1413;

(ii) dredge and fill permits under 33 United States Code Annotated, §1344;

(iii) permits under 33 United States Code Annotated, §401;

(iv) permits under 33 United States Code Annotated, §403; and

(v) Memoranda of Agreement for mitigation banking;

(C) United States Department of Transportation:

(i) approvals under 23 United States Code Annotated, §106; and

(ii) approvals under 33 United States Code Annotated, §525;

(D) Federal Aviation Administration. Certificates under 49 United States Code Annotated, §1432;

(E) Federal Energy Regulatory Commission:

(i) certificates under 15 United States Code Annotated, §717f;

(ii) licenses under 16 United States Code Annotated, §797(e); and

(iii) exemptions under 16 United States Code Annotated, §2705(d);

(F) Nuclear Regulatory Commission. Licenses under 42 United States Code Annotated, §2133.

(3) State and Local Government Applications for Federal Assistance.

(A) United States Environmental Protection Agency. Funding for nonpoint source (NPS) abatement to cities with populations exceeding 100,000 under 33 United States Code Annotated, §1329.

(B) United States Department of Transportation. Federal assistance for construction of roads or rights-of-way for which an environmental impact statement (EIS) or environmental assessment (EA) is prepared.

(b) For purposes of this section, the following are federal actions outside the CMP boundary but within OCS waters, or on excluded federal land located within the coastal area, that may adversely affect CNRAs.

(1) Federal Activities and Development Projects: All federal agencies. Activities in OCS waters or within the coastal area occurring within federal lands excluded from the CMP boundary but which may adversely affect CNRAs.

(2) Federal License and Permit Activities:

(A) United States Department of the Interior:

(i) permits under 43 United States Code Annotated, §1340, in OCS waters; and

(ii) rights-of-way under 43 United States Code Annotated, §1334(e), in OCS waters;

(B) Environmental Protection Agency:

(i) NPDES permits under 33 United States Code Annotated, §1342, in OCS waters;

(ii) ocean dumping permits 33 United States Code Annotated, §1412, in OCS waters;

(C) United States Army Corps of Engineers. Ocean dumping permits under 33 United States Code Annotated, §1413, in OCS waters;

(D) United States Department of Transportation: Deep water port licenses under 33 United States Code Annotated, §1503, in OCS waters.

(3) OCS Exploration, Development, and Production Activities. United States Department of the Interior:

(A) OCS activities described in detail in OCS plans, including pipeline activities, that may adversely affect CNRAs;

(B) OCS lease sales within the western and central Gulf of Mexico under 43 United States Code Annotated, §1337.

(c) In the event that an activity falling below thresholds for referral approved under Chapter 505, Subchapter B of this title (relating to Council Certification of State Agency Rules and Approval of Thresholds for Referral) requires both a federal permit or license under Chapter 506 of this title (relating to Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies) and an equivalent state permit, authorization, or action under Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies), the council shall determine the consistency of the state action using the process provided in Chapter 505 of this title (relating to Council Procedure for State Consistency with Coastal Management Program Goals and Policies) in lieu of determining consistency of the federal action using the process prescribed in Chapter 506 of this title (relating to Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies). The determination regarding the consistency of the state action under Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies) shall constitute the state's consistency concurrence or objection for the equivalent federal action.

(d) In the event that an activity above thresholds for referral approved under Chapter 505, Subchapter B of this title (relating to Council Certification of State Agency Rules and Approval of Thresholds for Referral) requires both a federal permit or license and an equivalent state permit, authorization, or action under Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies), the council shall, upon the request of the applicant, direct that either the consistency of the state action be determined using the process provided in Chapter 5057 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies) or the consistency of the federal action be determined using the process prescribed in Chapter 506 of this title (relating to Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies), but not both. The determination regarding consistency under the process selected by the council shall constitute the state's determination regarding consistency of the equivalent federal or state action.

§506.20. Consistency Determinations for Federal Activities and Development Projects. At the earliest practicable time, but in no event later than 90 days prior to final approval, a federal agency considering the approval of a federal activity or development project listed in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program) shall provide the council secretary with a consistency determination that includes the following information:

(1) a brief statement, based upon an evaluation of the relevant CMP provisions, indicating whether or not the proposed activity or development project will be undertaken in a manner consistent with the CMP, to the maximum extent practicable; and

(2) a detailed description of the proposed activity or development project and its associated facilities which is adequate to permit an assessment of their probable effects on CNRAs, and comprehensive data and information sufficient to support the federal agency's consistency statement. The amount of detail in the statement evaluation, activity description, and supporting information shall be commensurate with the expected effects of the activity or development project on CNRAs. While federal agencies must be consistent to the maximum extent practicable with the enforceable, mandatory policies of the CMP, the agencies need only demonstrate adequate consideration of policies which are in the nature of recommendations. Federal agencies need not evaluate effects for which the CMP does not contain mandatory or recommended policies.

§506.21. Notification of Negative Determinations.

(a) If a federal agency determines that a proposed activity or development project listed in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program) will not adversely affect any CNRA, the federal agency shall at the earliest practicable time, but in no event later than 90 days prior to final approval, provide the chairman of the council with a notification briefly providing the reasons for the federal agency's negative determination.

(b) The chairman of the council, in coordination with the governor's office, may seek secretarial mediation (as provided in the Code of Federal Regulations, Title 15, Part 930, Subpart G, §930.110 et seq) whenever a serious disagreement arises over a negative determination.

§506.22. General Consistency Determinations for Proposed Activities.

(a) Federal agencies may provide a general consistency determination, in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.37(b), for repeated activities other than development projects which cumulatively may adversely affect CNRAs.

(b) If a federal agency issues a general consistency determination, the federal agency shall periodically consult with the council to discuss the manner in which the incremental actions are being undertaken.

§506.23. Consistency Determinations for Development Projects.

(a) Federal agencies may provide a single consistency determination for a proposed development project, in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.37(c), where the agency has sufficient information to determine consistency from planning to completion.

(b) In cases where decisions related to a proposed development project will be made in phases based upon developing information, and the federal agency retains the discretion to implement alternative decisions on the basis of such information, a consistency determination shall be required for each decision in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.37(c).

§506.24. Consistency Determinations for Activities Initiated Prior to Federal Approval of the Coastal Management Program.

(a) Federal agencies shall provide a consistency determination for ongoing activities listed in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program), other than development projects, initiated prior to federal approval of the CMP where the agency retains discretion to reassess and modify the activity. In accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.38(a), federal agencies shall provide the council with a consistency determination for such ongoing activities no later than 120 days after program approval.

(b) Federal agencies shall provide a consistency determination, in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.38(b), for phased development projects described in §506.23(b) of this title (relating to Consistency Determinations for Development Projects) and initiated prior to federal approval of the CMP, for those phases of the project for which the agency retains discretion to reassess and modify the activity following CMP approval.

(c) Notwithstanding the requirements of §506.26 of this title (relating to Referral of Federal Activities and Development Projects), the council does not intend to refer a consistency determination for ongoing maintenance of commercially navigable channels for projects initiated prior to federal approval of the CMP, if the council and the United States Army Corps of Engineers agree to an extension of the deadline for council response to the consistency determination, as provided in the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.41(b).

§506.25. Public Notice and Comment.

(a) Upon receipt of a consistency determination, the council secretary shall publish public notice of the consistency determination in the *Texas Register*.

(b) The public notice shall provide a summary of the proposed activity, announce the availability of the consistency determination for inspection, and request that comments be submitted to the council secretary within 30 days of publication in the *Texas Register*.

(c) When appropriate, the chairman may extend the public comment period or schedule a public hearing on:

(1) the consistency determination; and

(2) whether referral to th e council is appropriate.

(d) After the close of the public comment period, the chairman shall issue a written decision to refer the matter to the council or not to refer the matter to the council for action. Upon issuance of the chairman's decision, the council secretary shall immediately notify the council members, applicant, federal agency, and other affected parties, if any.

§506.26. Referral of Federal Activities and Development Projects.

(a) The council shall review any federal activity or development project that the chairman refers to the council for review.

(b) To refer a federal activity or development project to the council, the chairman must submit the action to the council secretary in writing.

(c) The council secretary shall place the action on the agenda of the earliest council meeting at which consideration of the federal activity or development project is reasonably practicable.

(d) If the council does not issue a final decision, either agreeing with or disagreeing with a federal agency's consistency determination, within 45 days of the date the council secretary receives a consistency determination with all required information, then the chairman shall notify the federal agency of the status of the review and the basis for further delay.

(e) The federal agency may presume council agreement with the federal agency's consistency determination 45 days after the date the council secretary receives a consistency determination with all required information, unless the chairman requests an extension of time to review the matter. Federal agencies shall approve the first request for an extension of 15 days or less In considering whether a longer or additional extension period is appropriate, federal agencies should consider the magnitude and complexity of, or the information contained in, the consistency determination.

(f) A federal agency shall not grant final approval for an activity or develop ment project identified in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program) until after the expiration of 90 days from the date the federal agency provides the council secretary with its consistency determination, unless the federal agency and the council agree to an alternative period of time.

§506.27. Council Hearing to Review Federal Activities and Development Projects.

(a) Following referral of a federal activity or development project, the council shall review and either agree with or disagree with the consistency determination within 90 days of the date the council secretary received the consistency determination.

(b) The council secretary shall, by certified mail or hand delivery, provide notice of the hearing at which the council will review the federal activity or development project to the federal agency.

(c) If the council decides to disagree with a consistency determination, the council shall notify the federal agency and the assistant administrator of its decision to disagree with the consistency determination.

(d) The council's decision to disagree with the consistency determination shall include:

(1) a description of how the proposed activity is inconsistent with specific CMP goals and policies;

(2) a description of any available alternative measures that would permit the proposed activity to be conducted in a manner consistent to the maximum extent practicable with the CMP; and

(3) in cases where the council's decision to disagree is based upon a finding that the federal agency failed to supply sufficient information, the council shall include a description of the nature of the information requested and the necessity of having such information to determine the consistency of the federal activity with the CMP.

(e) The chairman of the council, in coordination with the governor's office, may seek secretarial mediation (as provided in Code of Federal Regulations, Title 15, Part 930, Subpart G, §930. 110 et seq) whenever a serious disagreement arises over a consistency determination.

§506.28. General Consistency Agreements.

(a) The council may issue a general consistency agreement with respect to a federal activity or development project. If the conditions of a general consistency agreement are satisfied, the federal activity or development project is deemed consistent, to the maximum extent practicable, with the CMP goals and policies and will not be subject to council review under §505.26 of this title (relating to Referral of Federal Activities and Development Projects).

(b) The council shall issue a general consistency agreement for a federal development project for which:

(1) the federal agency has elected to establish an interagency coordination group whose duties include advising the federal agency on the consistency of the project;

(2) the interagency coordination group includes among its voting members a minimum of three council members from natural resource agencies or their representatives;

(3) the interagency coordination group, including a majority of the council members or their representatives on the interagency coordination group, finds that the federal development project is consistent, to the maximum extent practicable, with the CMP goals and policies; and

(4) the federal agency adopts the finding of the interagency coordination group and submits it to the council as its consistency determination for the project

(c) Disposal or placement of dredged material in existing dredge disposal sites identified and actively used as described in an environmental assessment or environmental impact statement issued prior to the effective date of this chapter shall be presumed consistent with §501.14(j)(1) of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas), unless such existing disposal or placement is modified in design, size, use, or function, provided that the material is generated by maintenance dredging of commercially navigable waterways for which a federal development project undergoes evaluation pursuant to the interagency coordination group process under subsection (b) of this section and such process was initiated prior to the adoption of this chapter, and provided further, if the interagency coordination group approves the project that requires disposal or placement in confined sites and/or beneficial use of the dredged material from those waterways and results in cessation of open water disposal of dredged material and such project is authorized in a final supplemental environmental impact statement.

§506.30. Consistency Certifications for Federal License and Permit Activities.

(a) Upon filing an application for a federal license or permit listed under §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program), the applicant shall provide to the council secretary a consistency certification that reads as follows: The proposed activity complies with Texas' approved CMP and will be conducted in a manner consistent with such program.

(b) The applicant shall include with the consistency certification all of the following information:

(1) a detailed description of the proposed activity and its associated facilities which is adequate to permit an assessment of their probable effects on CNRAs Maps, diagrams, technical data, and other relevant material must be submitted when a written description will not adequately describe the proposed activity. The applicant may submit the federal application and all supporting material provided to the federal agency to meet the requirements of this paragraph, if the application and supporting material contain the required material;

(2) a list identifying all federal, state, and local permits or authorizations subject to the CMP and required for the proposed activity and its associated facilities;

(3) a brief assessment relating to the relevant elements of the CMP and the probable effects of the proposed activity and its associated facilities on CNRAs; and

(4) a brief set of findings, derived from the assessment, indicating that the proposed activity, its associated facilities, and their effects are all consistent with the provisions of the CMP. While federal license and permit activities must be consistent with the enforceable, mandatory policies of the CMP, applicants need only demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to effects for which the CMP does not contain mandatory or recommended policies.

(c) Applicants shall, to the extent practicable, consolidate related federal licenses and permits identified in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program) to assist the council in minimizing duplication of effort and unnecessary delays by reviewing all licenses and permits relating to a project at the same time.

(d) If the council has not notified the applicant within 15 days that additional information is required, the certification shall be considered complete for purposes of activating the time periods within which the council must act on the certification

§506.31. Council Assistance. Upon request of the applicant, the council shall provide assistance for development of the assessment and findings required by §506.30(b)(4) and (5) of this title (relating to Consistency Certifications for Federal License and Permit Activities).

§506.32. Public Notice and Comment.

(a) Upon receipt of a consistency certification, the council secretary shall publish public notice of the consistency certification in the *Texas Register*

(b) The public notice shall provide a summary of the proposed activity, announce the availability of the consistency certification for inspection, and request that comments be submitted to the council secretary within 30 days of publication in the *Texas Register*.

(c) When appropriate, the chairman may extend the public comment period or schedule a public hearing on:

(1) the consistency certification; and

(2) whether referral to the council is appropriate.

(d) After the close of the public comment period, the chairman shall issue a written decision to refer the matter to the council or not to refer the matter to the council for action. Upon issuance of the chairman's decision, the council secretary shall immediately notify the council members, applicant, federal agency, and other affected parties, if any.

§506.33. Referral of Federal License or Permit.

(a) The council shall review any federal license or permit that the chairman refers to the council for review.

(b) To refer a federal license or permit to the council, the chairman must submit the request for referral to the council secretary in writing.

(c) The council secretary shall add the action to the agenda of the earliest council meeting at which consideration of the action is reasonably practicable. If no regularly scheduled council meeting will allow the council to complete a review of the action within 90 days of receipt of the consistency certification, the council secretary shall notify the chairman, who shall schedule a special meeting to consider the action and any other appropriate matters.

(d) If the council has not issued a decision with respect to a federal license or permit within 90 days of the date when the council secretary receives a consistency certification with all required information, then the chairman shall notify the applicant and the federal agency of the status of the review and the basis for further delay.

(e) If the chairman does not refer a federal license or permit to the council within 90 days of the date when the council secretary receives a consistency certification with all required information, then that action is conclusively presumed to be consistent with the CMP.

§506.34. Council Hearing to Review Federal License or Permit.

(a) Following referral of a federal license or permit, the council shall review and either concur with or object to the consistency certification within 180 days of the date when the council secretary received the consistency certification.

(b) The council secretary shall, by certified mail or hand delivery, provide notice of the hearing at which the council will review the federal license or permit to the federal agency and the applicant.

(c) If the council decides to object to a consistency certification, the council shall notify the applicant, the federal agency, and the assistant administrator

(d) The council's objection shall include:

(1) a description of how the proposed activity is inconsistent with specific CMP goals and policies,

(2) a description of any available alternative measures that would permit the proposed activity to be conducted in a manner consistent with the CMP;

(3) in cases where the council objects on the grounds of insufficient information, a description of the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the CMP; and

(4) a statement informing the applicant of a right of appeal to the secretary of commerce on the grounds that the proposed activity is consistent with the objectives or purposes of the federal Coastal Zone Management Act (CZMA), 16 United States Code Annotated, §§1451-1464, or is necessary in the interest of national security as provided in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §930.120 et seq.

(e) If the council objects to a consistency certification related to a federal license or permit, the federal agency shall not issue the federal license or permit, except as provided in the appeals process established in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §930.120 et seq.

§506 35. General Concurrence. The council may develop general concurrences in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart D, §930.53(c)

§506.40 Consistency Certifications for Outer Continental Shelf Exploration, Development, and Production Activities

(a) Upon submission to the secretary of the interior or designee of an OCS plan, which must include a detailed description of the federal license or permit activities listed in §506 12(b)(3) of this title (relating to Federal Actions Subject to the Coastal Management Program), the person submitting the plan shall provide the council secretary with a copy of the plan along with a consistency certification that reads as follows: The proposed activities described in detail in this plan comply with Texas' approved CMP and will be conducted in a manner consistent with such program

(b) The person submitting the plan shall include all of the following information in support of the consistency certification

(1) a detailed description of the proposed activities and their associated facilities which is adequate to permit an assessment of their probable effects on CNRAs Maps, diagrams, technical data, and other relevant material must be submitted when a written description will not adequately describe the proposed activities;

(2) a list identifying all federal, state, and local permits or authorizations subject to the CMP and required for the proposed activities and their associated facilities;

(3) a brief assessment relating the probable effects of the activities and their associated facilities on CNRAs to the relevant elements of the CMP; and

(4) a brief set of findings, derived from the assessment, indicating that each of the proposed activities, their associated facilities, and their effects are all consistent with the provisions of the CMP While those activities listed in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program) must be consistent with the enforceable, mandatory policies of the CMP, the person submitting the plan need only demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to effects for which the CMP does not contain mandatory or recommended policies

(c) The council strongly encourages persons submitting plans to consolidate those related federal licenses and permits which are not required to be described in detail in the plan but which are subject to council review to assist the council in minimizing duplication of effort and unnecessary delays by reviewing all licenses and permits relating to a project at the same time

(d) If the council has not notified the person submitting the plan within 15 days that additional information is required, the certification shall be considered complete for purposes of activating the time periods within which the council must act on the certification.

§506 41. Public Notice and Comment.

(a) Upon receipt of a consistency certification, the council secretary shall publish public notice of the consistency certification in the *Texas Register.*

(b) The public notice shall provide a summary of the proposed activity, announce the availability of the consistency certification for inspection, and request that comments be submitted to the council secretary within 30 days of publication in the *Texas Register.*

(c) When appropriate, the chairman may extend the public comment period or schedule a public hearing on:

(1) the consistency certification, and

(2) whether referral to the council is appropriate

(d) After the close of the public comment period, the chairman shall issue a written decision to refer the matter to the

council or not to refer the matter to the council for action. Upon issuance of the chairman's decision, the council secretary shall immediately notify the council members, applicant, federal agency, and other affected parties, if any.

§506.42. Referral of Federal License or Permit Described in Outer Continental Shelf Plan.

(a) The council shall review any federal license or permit described in detail in an OCS plan that the chairman refers to the council for review.

(b) To refer a federal license or permit to the council, the chairman must submit the request for referral to the council secretary in writing.

(c) The council secretary shall place the action on the agenda of the earliest council meeting at which consideration of the action is reasonably practicable. If no regularly scheduled council meeting will allow the council to act on the action within 90 days of receipt of the consistency certification, the council secretary shall notify the chairman, who shall schedule a special meeting to consider the action and any other appropriate matters.

(d) If the council has not issued a decision with respect to a federal license or permit within 90 days of the date the council secretary received the consistency certification with all required information, then the chairman shall notify the person submitting the plan, the secretary of the interior, and the assistant administrator of the status of the review and the basis for further delay. If written notice is not postmarked within the 90 days provided for in this subsection, then the council's concurrence with the consistency certification shall be conclusively presumed.

(e) If the chairman does not refer a federal license or permit to the council within 90 days of the date the council secretary receives a consistency certification with all required information, then the council's concurrence with the consistency certification shall be conclusively presumed.

(f) If the council has not issued a decision with respect to a federal license or permit within 180 days of the date the council secretary receives a consistency certification with all required information, then the council's concurrence with the consistency certification shall be conclusively presumed.

§506.43 Council Hearing to Review Federal License or Permit Described in Outer Continental Shelf Plan

(a) Following referral of a federal license or permit, the council shall review and either concur with or object to the consistency certification within 180 days of the date the council secretary received the consistency certification.

(b) The council secretary shall, by certified mail or hand delivery, provide notice of the hearing at which the council will review the federal license or permit to the person submitting the plan, the secretary of the interior, and the assistant administrator.

(c) If the council decides to object to a consistency certification, the council shall notify the person submitting the plan, the secretary of the interior, and the assistant administrator.

(d) The council's objection shall include for each license or permit activity objected to:

(1) a description of how the proposed activity is inconsistent with specific CMP goals and policies;

(2) a description of any available alternative measures that would permit the proposed activity to be conducted in a manner consistent with the CMP;

(3) in cases where the council objects on the grounds of insufficient information, a description of the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the CMP; and

(4) a statement informing the person submitting the plan of a right of appeal to the secretary of commerce on the grounds that the proposed activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security as provided in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §930.120 et seq.

(e) If the council objects to a consistency certification related to a federal license or permit described in detail in a plan, the federal agency shall not issue the federal license or permit, except as provided in the appeals process established in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §930.120 et seq.

§506.44. Effect of Council Concurrence.

(a) If the council either issues a concurrence or is conclusively presumed to concur with the consistency certification of a person submitting a plan, then the person submitting the plan shall not be required to submit additional consistency certifications to the council secretary for the federal licenses and permits to which the concurrence applies

(b) To allow the council to monitor those license and permit activities described in detail in a plan whose consistency certification has received council concurrence, the person submitting the plan shall provide the council secretary with copies of applications for those license and permit activities.

§506.50. Notice to the Council of Applications for Federal Assistance.

(a) The state single point of contact shall provide the council secretary with copies of all applications for federal assistance listed in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program).

(b) The council secretary shall distribute copies of the applications to all council members.

§506.51. Referral of Applications for Federal Assistance.

(a) The council shall review any application for federal assistance that the chairman refers to the council for review.

(b) To refer an application for federal assistance to the council, the chairman must submit the request for referral to the council secretary in writing.

(c) The council secretary shall add the application to the agenda of the earliest council meeting at which consideration of the action is reasonably practicable.

(d) If the chairman does not refer an application to the council within 30 days of the date the council secretary receives a copy of the application, then the application is conclusively presumed to be consistent with the CMP.

§506.52. Council Hearing to Review Applications for Federal Assistance.

(a) Following referral of an application for federal assistance, the council shall review and either concur with or object to the application for federal assistance within the schedule established in the regulations governing the Texas Review and Comment System (1 TAC §5.191 et seq, relating to Introduction and General Provisions of Texas Review and Comment System).

(b) The council secretary shall, by certified mail or hand delivery, provide notice of the hearing at which the council will review the application for federal assistance to the applicant, the federal agency, and the assistant administrator.

(c) The council's objection shall include:

(1) a description of how the proposed activity is inconsistent with specific CMP goals and policies;

(2) a description of any available alternative measures that would permit the proposed activity to be conducted in a manner consistent with the CMP;

(3) in cases where the council objects on the grounds of insufficient information, a description of the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the CMP; and

(4) a statement informing the applicant of a right of appeal to the secretary of commerce on the grounds that the proposed activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security as provided in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §930.120 et seq.

(d) If the council objects to an application for federal assistance, the federal agency shall not approve assistance for the activity, except as provided in the appeals process established in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §930.120 et seq.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on September 19, 1994.

TRD-9448290 Garry Mauro
Chairman
Coastal Coordination Council

Effective date. June 15, 1994

Proposal publication date: March 18, 1994

For further information, please call. (512) 305-9129

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TITLE 34. PUBLIC FINANCE

Part IX. Texas Bond Review Board

Chapter 181. Bond Review Board

Subchapter A. Bond Review Rules

• 34 TAC §§181.2, 181.3, 181.12

The Texas Bond Review Board adopts amendments to §181.2 and §181.3, and new §181.12, concerning policies and procedures, without changes to the proposed text as published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5456).

The amendments clarify procedures, and the new section clarifies agency policy on charges for public records, in compliance with Texas Civil Statutes, Article 6252-17a, which require agencies to adopt rules specifying charges for public records

No comments were received regarding adoption of the amendments and new section.

The amendments are adopted under §3, Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 (Texas Civil Statutes, Article 717k-7), which gives the Texas Bond Review Board the authority to adopt rules governing application for review, the review process, and reporting requirements involved in the issuance of state bonds. The new section is adopted in compliance with actions taken by the 73rd Texas Legislature in House Bill 1009 in relation to Texas Civil Statutes, Article 6252-17a, which require agencies to adopt rules specifying charges for copies of open records

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 9, 1994.

TRD-9448366 Albert L. Bacarisse
Executive Director
Texas Bond Review Board

Effective date· October 11, 1994

Proposal publication date: July 15, 1994

For further information, please call: (512) 463-1741

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VI. Texas Department of Criminal Justice

Chapter 157. State Jail Felony Facilities

• 37 TAC §§157.87, 157.91, 157.95

The Texas Department of Criminal Justice adopts amendments to §§157. 87, 157.91, and 157.95, concerning state jail felony facilities, without changes to the proposed text as published in the August 12, 1994, issue of the *Texas Register* (19 TexReg 6343).

The sections will provide for additional available capacity in state jails by increasing the number of beds that can be built and used in each dormitory housing unit.

How the sections will function. The sections are standards for providing physical plant for each confinee in a state jail, and are adjusted to allow for 54 rather than 50 confinees in each dormitory housing unit.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Government Code, §492.013(a), which gives the Board authority to adopt rules as necessary for the operation of the department.

Cross-Reference by Statute Government Code, Chapter 507, gives the Board authority to oversee the state jail felony system.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448395 Carl Reynolds
General Counsel
Texas Department of Criminal Justice

Effective date: October 12, 1994

Proposal publication date: August 12, 1994

For further information, please call: (512) 463-9693

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Chapter 163. Community Justice Standards

• 37 TAC §163.45

The Texas Department of Criminal Justice adopts an amendment to §163.45 concerning allocation formula for community corrections program, without changes to the proposed text as published in the August 12, 1994, issue of the *Texas Register* (19 TexReg 6343).

The section will provide fair and equitable state funding for community corrections programs operated by community supervision and corrections departments.

The section applies a formula to distribute approximately $50 million in state funding, but includes 5.0% increase and decrease brackets that keep recipients from experiencing the drastic changes in funding that would result from pure application of the formula.

No comments were received regarding adoption of the amendment.

Statutory authority; interpretation of how provisions authorize or require the sections. The amendment is adopted under the Government Code, ™492.013(a), which gives the Board authority to adopt rules as necessary for the operation of the department.

Cross-Reference by Statute. Government Code, §499.071(b), and Code of Criminal Procedure, Article 42.13, §10(a)(3), provide for the adoption of an allocation formula for community corrections program funding.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448393 Carl Reynolds
General Counsel
Texas Department of Criminal Justice

Effective date: October 12, 1994

Proposal publication date: August 12, 1994

For further information, please call: (512) 463-9693

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part XII. Texas Board of Occupational Therapy Examiners

Chapter 361. Statutory Authority and Definitions

• 40 TAC §361.1, §361.2

The Texas Board of Occupational Therapy Examiners adopts the repeal of §361.1 and §361.2, concerning statutory authority, without changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5934).

This rule is being repealed for the purpose of expanding and clarifying the rules.

This repeal will delete vague language, and allow for clarification of the authority of the board to make rules and establishment of a policy of non-discrimination in enforcing them.

No comments were received regarding the repeal of this repeal.

The repeal is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 20, 1994.

TRD-9448347 Sherry L Lee
Executive Director
Texas Board of
Occupational Therapy
Examiners

Effective date: October 11, 1994

Proposal publication date: August 2, 1994

For further information, please call: (512) 443-8202

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Chapter 361. Statutory Authority

• 40 TAC §361.1

The Texas Board of Occupational Therapy Examiners adopts new §361.1, concerning statutory authority, without changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5934).

The new section is being adopted for the purpose of expanding and clarifying the rules.

The new section clarifies the statutory authority of the board, and states that the board does not discriminate in the discharge of its authority.

No comments were received regarding the adoption of the new section.

The new section is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 20, 1994.

TRD-9448335 Sherry L. Lee
Executive Director
Texas Board of
Occupational Therapy
Examiners

Effective date: October 11, 1994

Proposal publication date: August 2, 1994

For further information, please call: (512) 443-8202

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Chapter 362. Definitions

• 40 TAC §362.1

The Texas Board of Occupational Therapy Examiners adopts new §362.1, concerning definitions, with changes to the proposed text as published in the August 2, 1994 issue of the *Texas Register* (19 TexReg 5935).

This rule is being adopted for the purpose of expanding and clarifying the rules. The changes consist only of grammar/syntax in definitions.

This rule expands the former definitions in the rules to include more specific definitions for various pertinent terms used throughout the rules.

No comments were received regarding the adoption of the new section.

The new section is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§362.1. Definitions. The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise.

Act–The Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851.

AOTA–American Occupational Therapy Association.

AOTCB–American Occupational Therapy Certification Board.

Applicant–A person who applies for a license to the Texas Board of Occupational Therapy Examiners.

Application Review Committee–Reviews and makes recommendations to the board concerning applications which require special consideration.

Board–The Texas Board of Occupational Therapy Examiners (TBOTE).

Certified Occupational Therapy Assistant (COTA)–A person who is certified in accordance with guidelines established by the American Occupational Therapy Certification Board and holds a valid license to practice occupational therapy in the state of Texas.

Class A Misdemeanor–An individual adjudged guilty of a Class A misdemeanor shall be punished by:

(A) a fine not to exceed $3,000;

(B) confinement in jail for a term not to exceed one year; or

(C) both such fine and imprisonment. (Vernon's Texas Codes Annotated, Penal Code, §12.21.)

Close Personal Supervision–Implies direct, on-site contact whereby the supervising OTR or COTA is able to respond immediately to the needs of the patient.

Complete Application–Notarized application form with photograph, license fee, and all other required documents.

Complete Renewal–Contains renewal fee, continuing education record card (if applicable), home/work address(es) and phone number(s), and supervision form (if applicable).

Consultation–The provision of occupational therapy expertise to an individual or institution. This service may be provided on a one time only basis or on an ongoing basis.

Continuing Education Committee–Reviews and makes recommendations to the board concerning continuing education requirements and special consideration requests.

Continuing Supervision, OT–Includes frequent, face-to-face meetings which occur at the worksite of the temporary licensee and regular interim communication between the supervising OTR and the temporary licensee by telephone, written report, or conference. The contact must occur at the worksite of the temporary licensee at minimum on a weekly basis.

Continuing Supervision, OTA–Includes frequent, face-to-face meetings which occur at the worksite of the temporary licensee and regular interim communication between the supervising OTR and the temporary licensee by telephone, written report, or conference. The contact must occur at the worksite of the temporary licensee at minimum on a weekly basis. Sixteen hours of supervision per month must be documented and can include the minimum weekly supervisory contacts made at the worksite of the temporary licensee.

Coordinator of Occupational Therapy Program–The employee of the Executive Council who carries out the functions of the Texas Board of Occupational Therapy Examiners.

Direct Service–Refers to the provision of occupational therapy services to individuals to develop, improve, and/or restore occupational functioning.

Evaluation–Refers to a process of determining an individual's status for the purpose of determining the need for occupational therapy services or for implementing a treatment program.

Examination–The American Occupational Therapy Certification Board certification examination.

Executive Council–The Executive Council of Physical Therapy and Occupational Therapy Examiners.

Executive Director–The employee of the Executive Council who functions as its agent. The Executive Council delegates implementation of certain functions to the Executive Director.

First Available AOTCB Examination–Refers to the first scheduled AOTCB examination after successful completion of all educational requirements.

General Supervision–Includes frequent, weekly face-to-face meetings at the worksite and regular interim communication between the OTR and the COTA by telephone, written report, or conference.

Investigation Committee–Reviews and makes recommendations to the board concerning complaints and disciplinary actions regarding licensees and facilities.

License–Document issued by the Texas Board of Occupational Therapy Examiners which authorizes the practice of occupational therapy in Texas.

Medical Condition–A condition of acute trauma, infection, disease process, psychiatric disorders, addictive disorders, or post surgical status where prudence and custom require the services of a physician.

Monitored Services–The checking on the status/condition of students, patients, clients, equipment, programs, services, and staff in order to make appropriate adjustments and recommendations. Minimum contact for the purpose of monitoring will be one time a month.

Non-Medical Condition–A condition where the ability to perform occupational roles is impaired by developmental disabilities, learning disabilities, the aging process, sensory impairment, psycho-social dysfunction, or other such conditions which does not require the routine intervention of a physician.

Occupational Therapist (OT)–A person who holds a Temporary License to practice as an occupational therapist in the state of Texas, who is waiting to receive results of taking the first available AOTCB examination, and who is required to be under continuing supervision of an OTR.

Occupational Therapist, Registered (OTR)–A person who is certified in accordance with guidelines established by the American Occupational Therapy Certification Board and holds a valid license to practice occupational therapy in the state of Texas.

Occupational Therapy Assistant (OTA)–A person who holds a Temporary License to practice as an occupational therapy assistant in the state of Texas, who is waiting to receive results of taking the first available AOTCB examination, and who is required to be under continuing supervision of an OTR.

"OT Aide" or "OT Orderly"–A person who aids in the practice of occupational therapy and whose activities require on-the-job training and on-site supervision by an OTR or COTA.

Physician–An individual licensed by the Texas State Board of Medical Examiners, e.g. Medical Doctors (M.D.) and Doctors of Osteopathy (D.O.).

Place(s) of Business–Any facility in which a licensee practices.

Practice–Engagement in occupational therapy as a licensed clinician, practitioner, educator, or consultant.

Provisional License–A license issued to applicants in good standing from another state, District of Columbia, or Territory of the United States requesting licensure; or a license issued to an applicant certified by the AOTCB and who has been employed as an OTR or COTA within the past six months in a non-licensing state; or a license issued to an applicant certified by the AOTCB, who has not been licensed in Texas, but who has been employed as an OTR or COTA within five years of the date of application in a non-licensing state.

Recognized Educational Institution–An educational institution offering a course of study in occupational therapy that has been accredited or approved by the American Occupational Therapy Association.

Regular License–A license issued to an applicant who has met the academic requirements and who has been certified by the AOTCB.

Rules–Refers to the TBOTE Rules.

Temporary License–A license issued to an applicant who meets all the qualifications for a license except taking the first available AOTCB examination after completion of all educational requirements; or a license issued to an applicant certified by the AOTCB and who has not worked as an OTR or COTA in the past five years prior to the date of application.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 20, 1994

TRD-9448334 Sherry L. Lee
Executive Director
Texas Board of Occupational Therapy Examiners

Effective date: October 11, 1994

Proposal publication date: August 2, 1994

For further information, please call: (512) 443-8202

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Chapter 363. Consumer/Licensee Information

• 40 TAC §363.1

The Texas Board of Occupational Therapy Examiners adopts new §363.1, concerning consumer/licensee information, without changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5936).

The new section is being adopted for the purpose of expanding and clarifying the rules.

The new section will set the procedure for addressing the board; requires licensees to be knowledgeable of the rules and requires board meetings to be in accordance with the Open Meetings Act.

No comments were received regarding the adoption of the new section.

The new section is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 20, 1994.

TRD-9448333 Sherry L. Lee
Executive Director
Texas Board of Occupational Therapy Examiners

Effective date: October 11, 1994

Proposal publication date: August 2, 1994

For further information, please call: (512) 443-8202

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Chapter 364. Requirements for Licensure

• 40 TAC §364.1

The Texas Board of Occupational Therapy Examiners adopts new §364.1, concerning requirements for licensure, without changes to the proposed text as published in the August 2, 1994 issue of the *Texas Register* (19 TexReg 5936).

rule is being adopted for the purpose of xpanding and clarifying the rules.

rule sets educational requirements and mination requirements for licensure. It provides additional requirements for reign-trained applicants in accordance with Act.

comments were received regarding the doption of this rule.

he rule is adopted under the Occupational herapy Practice Act, Texas Civil Statutes, rticle 8851, which provides Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act carry out its duties in administering this ct.

his agency hereby certifies that the rule as dopted has been reviewed by legal counsel nd found to be a valid exercise of the agency's legal authority.

ssued in Austin, Texas, on September 20, 994.

RD-9448332 Sherry L. Lee
Executive Director
Texas Board of
Occupational Therapy
Examiners

ffective date: October 11, 1994

roposal publication date: August 2, 1994

or further information, please call: (512) 443-8202

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apter 365. Types of Licenses

40 TAC §365.1

The Texas Board of Occupational Therapy Examiners adopts new §365.1, concerning types of licenses, without changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5937).

The new section is being adopted for the purpose of expanding and clarifying the rules.

The new section sets requirements for temporary licensure, regular licensure, and provisional licensure.

No comments were received regarding the adoption of the new section.

The new section is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 20, 1994.

TRD-9448331 Sherry L. Lee
Executive Director
Texas Board of
Occupational Therapy
Examiners

Effective date: October 11, 1994

Proposal publication date: August 2, 1994

For further information, please call: (512) 443-8202

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Chapter 365. Functions and Organizations of the Board

• 40 TAC §365.3, §365.4

The Texas Board of Occupational Therapy Examiners adopts the repeal of §365.3 and §365.4, concerning functions and organizations of the board, without changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5938).

This rule is being repealed for the purpose of expanding and clarifying the rules.

This repeal will delete vague language, and allow for clarification of the rules.

No comments were received regarding the repeal of these rules.

The repeals are adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 20, 1994.

TRD-9448346 Sherry L Lee
Executive Director
Texas Board of
Occupational Therapy
Examiners

Effective date: October 11, 1994

Proposal publication date: August 2, 1994

For further information, please call: (512) 443-8202

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Chapter 366. Application for License

• 40 TAC §366.1

The Texas Board of Occupational Therapy Examiners adopts new §366.1, concerning application for license, without changes to the proposed text as published in the August 5, 1994, issue of the *Texas Register* (19 TexReg 6087).

The new section is being adopted for the purpose of expanding and clarifying the rules

The new section sets requirements for applying for licensure, and requires licensees to be knowledgeable of the Act and rules.

No comments were received regarding the adoption of the new section.

The new section is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 20, 1994.

TRD-9448351 Sherry L. Lee
Executive Director
Texas Board of
Occupational Therapy
Examiners

Effective date: October 11, 1994

Proposal publication date: August 5, 1994

For further information, please call: (512) 443-8202

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Chapter 367. Types of Licenses

• 40 TAC §367.1

The Texas Board of Occupational Therapy Examiners adopts the repeal of §367.1, concerning continuing education, without changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5939).

This rule is being adopted for the purpose of expanding and clarifying the rules.

This rule sets requirements for continuing education as a condition for licensure renewal.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 20, 1994.

TRD-9448345 Sherry L Lee
Executive Director
Texas Board of
Occupational Therapy
Examiners

Effective date: October 11, 1994

Proposal publication date: August 2, 1994

For further information, please call: (512) 443-8202

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Chapter 367. Continuing Education

• 40 TAC §367.1

The Texas Board of Occupational Therapy Examiners adopts new §367.1, concerning continuing education, without changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5938).

The new section is being adopted for the purpose of expanding and clarifying the rules.

The new section sets requirements for continuing education as a condition for licensure renewal.

No comments were received regarding the adoption of the new section.

The new section is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 20, 1994.

TRD-9446330 Sherry L. Lee
Executive Director
Texas Board of
Occupational Therapy
Examiners

Effective date: October 11, 1994

Proposal publication date: August 2, 1994

For further information, please call: (512) 443-8202

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Chapter 368. Open Records

• 40 TAC §368.1

The Texas Board of Occupational Therapy Examiners adopts new §368.1, concerning open records, with changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5939).

This rule is being adopted for the purpose of expanding and clarifying the rules.

This rule providing for inspection of public records under the Texas Open Records Act and setting charges in accordance with those established by the General Services Commission.

No comments were received regarding the adoption of the new section.

The new section is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§368.1. Open Records.

(a) Open Records Requests. Inspection of Public Records under the Texas Open Records Act, Texas Civil Statutes, Article 8890, §9(c) and (d), provide that all of the records of the board are public records and are available for public inspection during normal business hours except that investigative files and records of the board are confidential. In addition, the exceptions to disclosure in Texas Civil Statutes, Article 6252-17a, may protect certain information. This rule is promulgated pursuant to Article 6252-17a to establish a records review process that is efficient, safe, and timely to the public and to the agency.

(1) Requests must be in writing and reasonably identify the records requested.

(2) Records access will be by appointment only.

(3) Records access is available only during the regular business hours of the agency.

(4) Unless confidential information is involved, review may be by physical access or by duplication at the requestor's option. Any person, however, whose request would be unduly disruptive to the ongoing business of the office may be denied physical access and will be provided the option of receiving copies. Costs of duplication shall be the responsibility of the requesting party in accordance with the established board fee policy, payable at the time of receipt of records, if in person; or in advance, if by mail. The board may, in its discretion, waive fees if it is in the public interest to do so.

(5) When the safety of any public record is at issue, physical access may be denied and the records will be provided by duplication as previously described.

(6) Confidential files will not be made available for inspection or for duplication except under certain circumstances, e.g. court order.

(7) All open records request appointments will be referred to the executive director or designee before complying with a request.

(8) The open records coordinator for the agency is the executive director and the alternate is the director's designee

(b) Charges for Copies of Public Records. The charge to any person requesting reproductions of any readily available record of the Texas Board of Occupational Therapy Examiners will be the charges established by the General Services Commission.

(c) The board may waive these charges if there is a public benefit. The executive director of the Executive Council of Physical Therapy and Occupational Therapy Examiners is authorized to determine whether a public benefit exists on a case by-case basis.

This agency hereby certifies that the rule adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 20, 1994.

TRD-9446329 Sherry L. Lee
Executive Director
Texas Board of
Occupational Therapy
Examiners

Effective date: October 11, 1994

Proposal publication date: August 2, 1994

For further information, please call: (512) 443-8202

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Chapter 369. Display of License

• 40 TAC §§369.1-369.3

The Texas Board of Occupational Therapy Examiners adopts new §369.1-369.3, concerning display of license, with changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5940).

This rule is being adopted for the purpose of expanding and clarifying the rules.

This rule requires licensees to display renewal license certificates and provides for wallet renewal certificate; prohibits duplication of same; requires licensees to notify the board in writing of name or address change within 30 days; and sets requirements as to who may use titles and initials: occupational therapist (OT), occupational therapist registered (OTR), occupational therapy assistant (OTA), certified occupational therapy assistant (COTA).

No comments were received regarding the adoption of the new section.

The new sections are adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§369.1. Display of License.

(a) Licenses must be displayed in accordance with the Act, ™23.

(b) The original license and renewal certificate must be prominently displayed in the licensee's principal place of business as designated by the licensee. The wallet-sized license renewal certificate must be carried by the licensee when in other practice settings. Reproduction of the original license and/or renewal certificate is

authorized for institutional file purposes and not for public display.

(c) A licensee shall not make any alteration(s) on a license and/or renewal certificate.

§369.2. Changes of Name or Address of Licensees.

(a) A licensee shall notify the board in writing of changes in name, residential and/or primary business address and/or supervisor within 30 days of such change(s).

(b) Failure to provide the changes requested in subsection (a) of this section may cause a licensee to be subject to disciplinary action.

§369.3. Use of Titles.

(a) Only an occupational therapist with a temporary license may use the title "Occupational Therapist" and the initials "OT." Only a registered occupational therapist with a regular license may use the title "Occupational Therapist, Registered" and the initials "OTR." The use of "L" shall not be used in conjunction with the initials "OT" or "OTR" to denote licensure status.

(b) Only an occupational therapy assistant with a temporary license may use the title "Occupational Therapy Assistant" and the initials "OTA." Only a certified occupational therapy assistant with a regular license may use the title "Certified Occupational Therapy Assistant" and the initials "COTA." The use of "L" shall not be used in conjunction with the initials "OTA" or "COTA" to denote licensure status.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director
Texas Board of
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For further information, please call: (512) 443-8202

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Chapter 369. Requirements for Licensing

• 40 TAC §369.1

The Texas Board of Occupational Therapy Examiners adopts the repeal of §369.1, concerning display of license, without changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5940).

The repeal is being adopted for the purpose of expanding and clarifying the rules.

The new rule will require licensees to display renewal license certificates and provides for wallet renewal certificate; prohibits duplication of same; requires licensees to notify the board in writing of name or address changes within 30 days; and sets requirements as to who may use titles and initials: occupational therapist (OT), occupational therapist registered (OTR), occupational therapy assistant (OTA), certified occupational therapy assistant (COTA).

No comments were received regarding the adoption of the repeal.

The repeal is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

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Executive Director
Texas Board of
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For further information, please call: (512) 443-8202

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Chapter 370. License Renewal

• 40 TAC §370.1

The Texas Board of Occupational Therapy Examiners adopts new §370.1, concerning license renewal, without changes to the proposed text as published in the August 5, 1994 issue of the *Texas Register* (19 TexReg 6087).

The new section is being adopted for the purpose of expanding and clarifying the rules.

The new section sets requirements for annual renewal of licenses and prohibits renewal for failure to repay Texas Guaranteed Student Loan.

No comments were received regarding the adoption of the new section.

The new section is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Board of
Occupational Therapy
Examiners

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For further information, please call: (512) 443-8202

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Chapter 371. Application for License

• 40 TAC §371.1, §371.2

The Texas Board of Occupational Therapy Examiners adopts the repeal of §371.1 and §371.2, concerning inactive/retiree status, without changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5941).

This rule is being adopted for the purpose of expanding and clarifying the rules.

The new rules will establish conditions for inactive status and payment of fee and submission of continuing education; and establishes conditions for retiree status including payment of fee.

No comments were received regarding the adoption of the repeals.

The repeals are adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9448343 Sherry L Lee
Executive Director
Texas Board of
Occupational Therapy
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For further information, please call: (512) 443-8202

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Chapter 371. Inactive/Retiree Status

• 40 TAC §371.1, §371.2

The Texas Board of Occupational Therapy Examiners adopts new §371.1 and §371.2, concerning inactive/retiree status, without changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5941).

The new sections are being adopted for the purpose of expanding and clarifying the rules.

The new sections establish conditions for inactive status and payment of fee and submission of continuing education; and establishes conditions for retiree status including payment of fee

No comments were received regarding the adoption of the new sections.

The new sections are adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director
Texas Board of
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For further information, please call: (512) 443-8202

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Chapter 372. Referral

• 40 TAC §372.1

The Texas Board of Occupational Therapy Examiners adopts new §372.1, concerning referral, with changes to the proposed text as published in the August 5, 1994, issue of the *Texas Register* (19 TexReg 6088)

The new section is being adopted for the purpose of expanding and clarifying the rules

The new section requires a referral from a physician before commencement of direct treatment; and sets other conditions of referral.

No comments were received regarding the adoption of the new section

The new section is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act

§372.1 Referral

(a) Consultation, monitored services, and evaluation for need of services may be provided without a referral from a physician.

(b) Occupational therapy for nonmedical conditions (refer to §362.1 of this title (relating to Definitions)) does not require a physician referral. However, a physician referral must be requested at any time during the evaluation or treatment process when necessary to insure the safety and welfare of the consumer.

(c) The provision of direct treatment by an occupational therapist for medical conditions requires a referral from a physician licensed by the Texas State Board of Medical Examiners to practice in the State of Texas. A referral may be an oral or written order to initiate services. If an oral referral is received, it must be followed by a request for a written order to be signed by the physician requesting the services.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Board of
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For further information, please call: (512) 443-8202

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Chapter 373. Supervision

• 40 TAC §373.1

The Texas Board of Occupational Therapy Examiners adopts new §373.1, concerning supervision, with changes to the proposed text as published in the August 2, 1994 issue of the *Texas Register* (19 TexReg 5942) as follows changes in subsections (a)(3), (7), (9) and (b)

The new section is being adopted for the purpose of expanding and clarifying the rules.

The new section requires supervision of certified occupational therapy assistants by occupational therapists registered; supervision of OT aides and orderlies; and supervision of OTs and OTAs with temporary licenses.

No comments were received regarding the adoption of the new section.

The new section is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§373.1. Supervision

(a) Supervision of COTAs.

(1) The OTR shall delegate responsibilities to the COTA that are within the scope of his or her training

(2) A COTA shall provide occupational therapy services only under the general supervision of a licensed OTR

(A) A minimum of eight hours of supervision per month for full time COTAs must be documented on a "COTA Supervision Form" prescribed by the board. (COTAs employed part time shall prorate the required supervision. If the COTA is employed less than 20 hours per month, a minimum of four hours of supervision is required.) The COTA Supervision Form" must be submitted by the COTA with his or her annual license renewal.

(B) The manner of supervision shall depend on the treatment setting, patient/client caseload, and the competency of the COTA as determined by the supervising OTR.

(C) The supervising OTR need not be physically present or on the premises at all times.

(3) The OTR is responsible for completing the patient's evaluation/assessment. The supervising OTR may delegate any evaluative task to a COTA that the OTR and COTA agree is within the competency level of that COTA.

(4) The supervising OTR is responsible for developing and modifying the patient's treatment plan. The treatment plan must include the following components: goals, interventions/modalities, frequency, and duration.

(5) The supervising OTR has overall responsibility for providing the supervision necessary to protect the health and welfare of the consumer receiving treatment by a COTA However, this does not absolve the COTA from his or her professional responsibilities.

(6) The supervising OTR is responsible for writing the patient's discharge summary.

(7) It is the responsibility of the OTR and the COTA to ensure that all documentation prepared by the COTA which becomes part of the patient's/client's permanent record is co-signed by the supervising OTR.

(8) These rules shall not preclude the COTA from responding to emergency situations in the patient's condition which require immediate action.

(9) It is the responsibility of the COTA to notify the board within 30 days of a change in the primary OTR supervisor on a form provided by the board.

(b) Supervision of an "OT Aide" or "OT Orderly."

(1) The OTR or COTA is responsible for the actions of the "OT Aide" or "OT Orderly" during patient contact.

(2) An OTR or COTA using "OT Aide" or "OT Orderly" personnel to assist with the provision of occupational therapy services must provide close personal supervision in order to protect the health and welfare of the consumer.

(3) Delegation of tasks to "OT Aides" or "OT Orderlies."

(A) The primary function of an "OT Aide" or "OT Orderly" functioning in an occupational therapy setting is to perform designated routine tasks related to the operation of an occupational therapy service. An OTR or COTA may delegate to an "OT Aide" or "OT Orderly" only specific tasks which are not evaluative or recommending in nature, and only after insuring that the "OT Aide" or "OT Orderly" has been properly trained for the performance of the tasks. Such tasks include, but are not limited to:

(i) routine department maintenance;

(ii) transportation of patients/clients;

(iii) preparation or setting up of treatment equipment and work area;

(iv) assisting patients'/clients' with their personal needs during treatment;

(v) assisting in the construction of adaptive equipment and splints;

(vi) clerical, secretarial, administrative activities;

(vii) carrying out a predetermined segment or task in the patient's care.

(B) The OTR or COTA shall not delegate to an "OT Aide" or "OT Orderly":

(i) performance of occupational therapy evaluative procedures;

(ii) initiation, planning, adjustment, modification, or performance of occupational therapy procedures requiring the skills or judgment of an OTR or COTA;

(iii) making occupational therapy entries directly in patients' or clients' official records;

(iv) acting on behalf of the occupational therapist in any matter related to occupational therapy which requires decision making or professional judgment.

(c) Supervision of an occupational therapist or an occupational therapy assistant with a temporary license.

(1) Temporary License Pending Passage of Certification Examination.

(A) A person issued a temporary occupational therapy license pending passage of the certification examination must practice occupational therapy under the continuing supervision of an OTR.

(B) A minimum of 16 hours of documented supervision per month is required for an OTA. An OTA employed part time shall prorate the required supervision. (If the OTA is employed less than 20 hours per month, a minimum of four hours of supervision is required.)

(C) The temporary licensee will certify to the board as to the name, license number, and address of his or her supervisor on a form provided by the board during the application process.

(D) The temporary licensee must notify the board within 15 days of a change in the OTR supervisor.

(E) The temporary licensee shall not supervise an occupational therapy student, an occupational therapy assistant, or an "OT Aide" or "OT Orderly."

(F) All documentation completed by an individual holding a temporary license pending passage of the certification examination which becomes part of the patient's/client's permanent file must be co-signed by the supervising OTR.

(2) Provisional Licenses.

(A) OTRs with provisional licenses are excluded from supervision requirements.

(B) COTAs with provisional licenses will require general supervision by a licensed OTR.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director
Texas Board of
Occupational Therapy
Examiners

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For further information, please call. (512) 443-8202

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Chapter 374. Continuing Education

• 40 TAC §374.1

The Texas Board of Occupational Therapy Examiners adopts new §374.1, concerning disciplinary actions, without changes to the proposed text as published in the August 5, 1994, issue of the *Texas Register* (19 TexReg 6088).

This rule is being adopted for the purpose of expanding and clarifying the rules.

This rule provides the types of disciplinary actions that may be imposed by the board; defines some examples of practicing occupational therapy in a manner detrimental to the public health and welfare and sets levels of disciplinary action for licensees; and sets procedures for processing of complaints concerning the practice of occupational therapy by a licensee.

No comments were received regarding the adoption of this rule.

The rule is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director
Texas Board of
Occupational Therapy
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For further information, please call: (512) 443-8202

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Chapter 374. Disciplinary Actions

• 40 TAC §374.1, §374.2

The Texas Board of Occupational Therapy Examiners adopts new §374.1 and §374.2, concerning disciplinary actions, without changes to the proposed text as published in the August 5, 1994, issue of the *Texas Register* (19 TexReg 6088).

This rule is being adopted for the purpose of expanding and clarifying the rules.

This rule provides the types of disciplinary actions that may be imposed by the board; defines some examples of practicing occupational therapy in a manner detrimental to the public health and welfare and sets levels of disciplinary action for licensees; and sets procedures for processing of complaints concerning the practice of occupational therapy by a licensee.

No comments were received regarding the adoption of the new section.

The new section is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director
Texas Board of
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Proposal publication date: August 5, 1994

For further information, please call: (512) 443-8202

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Chapter 375. Fees

• 40 TAC §375.1

The Texas Board of Occupational Therapy Examiners adopts repeal of §375. 1, concerning fees, without changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5944).

The rule is be being adopted for the purpose of expanding and clarifying the rules.

The rule setting requirements concerning the payment of fees.

No comments were received regarding the adoption this rule.

The rule is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director
Texas Board of
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Examiners

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Proposal publication date: August 2, 1994

For further information, please call: (512) 443-8202

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Chapter 375. Complaints

• 40 TAC §375.1

The Texas Board of Occupational Therapy Examiners adopts new §375.1, concerning fees, without changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5944).

The new section is being adopted for the purpose of expanding and clarifying the rules.

The new section will be setting requirements concerning the payment of fees.

No comments were received regarding the adoption of the new section.

The new section is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Board of
Occupational Therapy
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For further information, please call. (512) 443-8202

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Chapter 376. Registration of Facilities

• 40 TAC §§376.1-376.9

The Texas Board of Occupational Therapy Examiners adopts new §§376. 1-376.9, concerning registration of facilities, without changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5944).

The new sections are being adopted for the purpose of expanding and clarifying the rules.

The new sections set definitions for registration of occupational therapy facilities; requires licensees to practice in registered facilities or in exempt facilities; sets requirements for application for registration of occupational therapy facilities; sets requirements for registered facilities; sets exemptions for registration of occupational therapy facilities; provides for renewal of registration of occupational therapy facilities and payment of annual renewal fee; provides penalties for failure to register facilities; provides for restoration of registration of OT facilities and payment of fee; and provides types of disciplinary action imposed by the board for failure to register OT facilities.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director
Texas Board of
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Examiners

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For further information, please call: (512) 443-8202

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Chapter 377. License Certificate

• 40 TAC §§377.1-377.4

The Texas Board of Occupational Therapy Examiners adopts the repeal of §§377.1-377 4, concerning the display of license certificate, without changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5946).

This rule is being repealed for the purpose of expanding and clarifying the rules.

This repeal will delete vague language, and allow for clarification of certificate display and information requirements

No comments were received regarding the repeal of this rule

The repeal is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 443-8202

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Chapter 379. License Renewal

40 TAC §379.1

Texas Board of Occupational Therapy miners adopts the repeal of §379.1, concerning license renewal, without changes to proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5946).

This rule is being repealed for the purpose of expanding and clarifying the rules.

This repeal will delete vague language, and allow for clarification of the license renewal process.

No comments were received regarding the repeal of this rule.

The repeal is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chapter 381. Denial, Suspension, or Revocation of a License and Guidelines Pursuant to Texas Civil Statutes, Article 6252-13c and 62521-3d

• 40 TAC §381.1

The Texas Board of Occupational Therapy Examiners adopts the repeal of §381.1, concerning denial, suspension, or revocation of a license and guidelines, without changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5946).

This rule is being repealed for the purpose of expanding and clarifying the rules.

This repeal will delete vague language, and allow for clarification of the disciplinary measures available to the board.

No comments were received regarding the repeal of this rule.

The repeal is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 443-8202

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Chapter 383. Referral and Supervision

• 40 TAC §383.1

The Texas Board of Occupational Therapy Examiners adopts the repeal of §383.1, concerning referral and supervision, without changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5947).

This rule is being repealed for the purpose of expanding and clarifying the rules.

This repeal will delete vague language, and allow for clarification of referral and supervision requirements.

No comments were received regarding the repeal of this rule.

The repeal is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chapter 385. Complaints

• 40 TAC §385.1

The Texas Board of Occupational Therapy Examiners adopts the repeal of §385.1, concerning complaints, without changes to the proposed text as published in the August 2, 1994, issue of the *Texas Register* (19 TexReg 5947).

This rule is being repealed for the purpose of expanding and clarifying the rules.

This repeal will delete vague language, and allow for clarification of the process developed by the board for the handling of complaints.

No comments were received regarding the repeal of this rule.

The repeal is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Examiners

Effective date: October 11, 1994

Proposal publication date: August 2, 1994

For further information, please call: (512) 443-8202

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OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meetin. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department of Agriculture

Thursday, September 29, 1994, 1:00 p.m.

Texas Department of Agriculture, 1700 North Congress Avenue, 924A

Austin

Texas Agricultural Finance Authority Revenue Bond Committee Meeting

AGENDA

Discussion and action on request for proposal for senior managing underwriter for the Revenue Bond Program.

Contact: Robert Kennedy, P.O. Box 12847, Austin, Texas 78711, (512) 463-7639

Filed: September 21, 1994, 2:35 p.m.

TRD-9448424

Thursday-Friday, September 29-30, 1994, 3:30 p.m. and 9:00 a.m. respectively.

Texas Department of Agriculture, 1700 North Congress Avenue, 924A

Austin

Texas Agricultural Finance Authority

AGENDA

Thursday, September 29

Working session on applications and portfolio for the Texas Agricultural Finance Authority Loan Guaranty Program and Texas Agricultural Diversification Grant Program

Friday, September 30:

Discussion and action on: minutes of last meeting, restructuring of the outstanding guaranties to United Bean Marketing Cooperative and Wright Fibers, Inc., renewal of guaranty to Tyler Rose Nursery; loan portfolio of Texas Agricultural Finance Authority Loan Guaranty Program; Young Farmer Loan Guarantee application material; Young Farmer Loan Guarantee rules; Farm and Ranch Program; request for proposal for senior managing underwriter for Revenue Bond Program; discussion and consent on grants awarded under the Texas Agricultural Diversification Grant Program, discussion on next meeting date.

Contact: Robert Kennedy, P.O Box 12847, Austin, Texas 78711, (512) 463-7639.

Filed: September 21, 1994, 2 35 p.m.

TRD-9448423

Thursday, October 27, 1994, 10:00 a.m. (Rescheduled from Thursday, September 22, 1994, 10:00 a.m.)

Texas Department of Agriculture, 1700 North Congress Avenue, 928B

Austin

Office of Hearings

AGENDA

Administrative hearing to review alleged violations of Texas Agriculture Code, §§103 001-103 015, 101 001-101.021, and/or 102 001-102 172 (Vernon 1982) by Edinburg Distributing Company as petitioned by Griffin and Brand Sales Agency, Inc.

Contact: Barbara Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: September 21, 1994, Noon.

TRD-9448416

Thursday, October 27, 1994, 11:00 a.m. (Rescheduled from Thursday, September 15, 1994, 10:00 a.m.)

Texas Department of Agriculture, 1700 North Congress Avenue, 928B

Austin

Office of Hearings

AGENDA:

Administrative hearing to review alleged violations of Texas Agriculture Code, §§103.001-103.015, 101.001-101.021, and/or 102.001-102.172 (Vernon 1982) by Edinburg Distributing Company as petitioned by Chaparral Fruit Sales, Inc.

Contact: Barbara Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: September 21, 1994, Noon.

TRD-9448414

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State Board of Barber Examiners

Sunday, October 2, 1994, 1:00 p.m.

9101 Burnet Road, Suite 103

Austin

Board Members

AGENDA:

Call the meeting to order with roll call, read and possibly approve minutes from September 13, 1994 board meeting; new business: discussion of and possible action concerning a State Auditor's Office draft report presented to the Board; and adjournment

Contact: B. Michael Rice, 9101 Burnet Road, Suite 103, Austin, Texas 78758, (512) 835-2040.

Filed: September 20, 1994, 11:05 a.m.

TRD-9448308

♦ ♦ ♦

Texas Child Care Development Board

Wednesday, September 28, 1994, 10:00 a.m. (Rescheduled from September 15, 1994.)

Sam Houston State Office Building, Room 710, 201 East 14th Street

Austin

AGENDA:

Welcome and introductory remarks. Approval of minutes. Discussion of enrollment policy for children of non-state employees. Draft letter for Center parents from CCDB. Discussion of interagency contract with the Office of the Attorney General. Report on state child care initiatives. Report on Capitol Complex Center. Adjourn.

Contact: Alice Embree, P.O. Box 12017, Austin, Texas 78711-2017, (512) 463-2181, Ext. 2220.

Filed: September 20, 1994, 4:55 p.m.

TRD-9448365

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Texas Commission on Children and Youth

Friday, September 30, 1994, 9:00 a.m.

1100 Congress Avenue, Lieutenant Governor's Committee Room, State Capitol

Austin

AGENDA:

I. Commission work session

II. Lunch

III. Commission work session continues

Contact: Mary Acree, P.O. Box 13106, Austin, Texas 78711, (512) 305-9056.

Filed: September 22, 1994, 9:51 a.m.

TRD-9448452

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Texas Board of Chiropractic Examiners

Monday, October 3, 1994, 9:00 a.m.

333 Guadalupe, Tower III, Suite 825

Austin

Enforcement Committee

AGENDA:

The Enforcement Committee of the Texas Board of Chiropractic Examiners will meet on Monday, October 3, 1994, at 9:00 a.m. to conduct informal conferences on cases 94-202, 94-201, 94-200, 94-199, 94-183, 94-173, 94-166, and 94-185 concerning possible violations by its licensees.

Contact: Patte B. Kent, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6700.

Filed: September 22, 1994, 9:51 a.m.

TRD-9448453

Tuesday, October 4, 1994, 10:00 a.m.

333 Guadalupe, Tower III, Room 102

Austin

Board

AGENDA:

Consideration, discussion, any appropriate action and/or approval of: 1) minutes of August 17, 1994 meeting; 2) report of the president; 3) report of the executive director; 4) consideration and appropriate action on publication in the *Texas Register* of proposed rules §71.1 Definitions, §71.3 Qualification of Applicants, §71.12 National Board Examination, §75.1 Grossly Unprofessional Conduct, §79.1 General Requirements for Provisional Licensure, §79.2 Specific Requirements of Applicants, §80.1 Delegation of Authority, §80.2 Titles; 5) committee reports: a) Enforcement Committee 1) enforcement actions for fiscal year 1994 and fiscal year 1995; b) Education Committee 1) examination dates, 2) July, 1994, examination and licensee list; 6) approval of committee appointments; 7) executive session: the Board may meet from time to time in executive session to consult with its attorneys regarding matters authorized by §551.071 of the Government Code.

Contact: Patte B. Kent, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6700.

Filed: September 22, 1994, 9:51 a.m.

TRD-9448454

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The Daughters of the Republic of Texas, Inc.

Wednesday, September 28, 1994, 2:00 p.m.

Alamo Hall, Alamo Complex, Alamo and Houston

San Antonio

Board of Management

AGENDA:

2:00 p.m. Open meeting

Call to order, determination of quorum

Reports or discussion preview to reports of committees operating State-owned properties

Report of Alamo Committee-Virginia Nicholas; discussion

2:30 p.m. Recess to closed/executive session

Discussion of matters affecting state-owned properties pursuant to Article 551; §551.004; §7; §551.03; §551.071; §551.074; §552.007 if necessary thereof.

3:30 p.m. Open meeting

Call to order, determination of quorum

Report of Library Commission-Mrs. Bruce Nell Gooler

Discussion

4:00 p.m. Recess to closed/executive session

Reports or discussion pertaining to State-owned properties

5:00 p.m. Recess to open meeting

5:15 p.m. Recess to closed/executive session

Contact: Gail Loving Barnes, 2922 Chisum, Odessa, Texas 79762, (915) 366-7085.

Filed: September 20, 1994, 3:05 p.m.

TRD-9448355

Thursday, September 29, 1994, 10:00 a.m.

Alamo Hall, Alamo Complex, Alamo and Houston

San Antonio

Board of Management

AGENDA:

10:00 a.m. Open meeting

Call to order, determination of quorum

Reports of discussion preview to reports of committees operating State-owned properties

Report or French Legation-Louise Hall

Discussion

Alamo report

Discussion

10:30 a.m. Recess to closed/executive session

11:45 a.m. Recess to open meeting

Noon. Recess to closed/executive session

3:00 p.m. Open meeting

Review

3:30 p.m. Private session

Contact: Gail Loving Barnes, 2922 Chisum, Odessa, Texas 79762, (915) 366-7085.

Filed: September 20, 1994, 3:05 p.m.

TRD-9448354

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Texas Interagency Council on Early Childhood Intervention

Thursday, September 29, 1994, 9:00 a.m.

4412 Spicewood Springs Road

Austin

Interagency Council on Early Childhood Intervention

AGENDA:

According to the complete agenda, the Interagency Council on Early Childhood Intervention will hear public comments; discussion and approval from August 17, 1994, meeting; discussion and approval of advisory committee and director's forum report; discussion and approval of posting of a new rule to 25 TAC related to establishing a cost for copies requested under the Open Records Act; discussion and approval of internal auditor based on the recommendation of the internal audit sub-committee; discussion and approval of the technical assistance and training plan for fiscal year 1995; discussion and approval of legislative and budgetary issues to be addressed during the upcoming legislative session; discussion and presentation of overview of report by Best Start Inc.; and FYI.

Contact: Linda Hill, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 502-4900.

Filed: September 21, 1994, 4:30 p.m.

TRD-9448434

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Texas Energy Coordination Council

Thursday, September 29, 1994, 2:00 p.m.

Energy Information Center, 6700 West Loop South

Houston

AGENDA:

Texas Energy Coordination Council, September 29, 1994, Energy Information Center, Room 409

1. Discuss TECC contract and review budget.

2. Comments and review of TECC RFP.

3. Review TECC logo (if ready).

Contact: Alan B. Sowards, Sam Houston Building, Room 104, Austin, Texas 78701, (512) 463-1609.

Filed: September 21, 1994, 5:03 p.m.

TRD-9448448

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Texas Department of Health

Thursday, October 13, 1994, 8:30 a.m.

Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

Maternal and Child Health Advisory Committee

AGENDA:

The committee will receive public comments; discuss the approval of the minutes from the July 14, 1994 meeting; in a work session will discuss and possibly act on: recommendations to the legislature; proposed Texas Children's Health Agenda; perinatal health plan; and goals of Healthy 2000.

Contact: Madelin Walls, 1100 West 49th Street, Austin, Texas 78752, (512) 458-7700. For ADA assistance, contact Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: September 21, 1994, 4:21 p.m.

TRD-9448435

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Texas Higher Education Coordinating Board

Friday, September 30, 1994, 9:30 a.m.

Texas Women's University, ACT Building, 16th Floor

Denton

Campus Planning Committee

AGENDA:

View and/or presentations: Texas Women's University; Hubbard Hall renovation; new Movement Science Complex (presentation); purchase of a lot at 1218 Autin; and purchase of seven lots Austin Street (preliminary). East Texas State University-Sowers Education Building renovation.

Contact: Dr. Don Brown, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: September 21, 1994, 10:59 a.m.

TRD-9448412

Friday, September 30, 1994, 1:00 p.m.

University of North Texas, Administration Building, Room 204

Denton

Campus Planning Committee

AGENDA:

View and/or presentations: University of North Texas-Engineering Technology Building renovation; and Chemistry and Biology Buildings renovation. University of North Texas USC at Fort Worth-New Health Education Science Building and Vivarium addition.

Contact: Dr. Don Brown, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: September 21, 1994, 10:58 a.m.

TRD-9448411

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Texas Department of Housing and Community Affairs

Friday, September 30, 1994, 9:30 a.m.

TDHCA, 811 Barton Springs Road, Suite 700

Austin

Low Income Housing Tax Credit Committee Meeting

AGENDA:

The Low Income Housing Tax Credit Committee of the Board will meet to discuss, consider and possibly act upon the following:

Changes in the current set asides categories that were created in accordance with §49.5 and related sections of the Tax Credit Rules. Adjourn.

Contact: Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

Filed: September 20, 1994, 11:43 a.m.

TRD-9448309

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Texas Juvenile Probation Commission/State Board of Education Joint Task Force

Thursday, September 29, 1994, 9:00 a.m.

William B. Travis Building, 1701 North Congress Avenue

Austin

Committee Meeting

AGENDA:

Call to order; approval of minutes; review and approval of model policy guidelines; vacancy-staff presentation of social services prevention and direct intervention (law enforcement models) legislative recommendations; collaborative training opportunities; continuation of task force; communication with full Boards; OJJDP training update; public comment; scheduling next task force meeting; other; and adjourn.

Contact: Bernard Licarione, Ph.D., P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: September 20, 1994, 4:10 p.m.

TRD-9448362

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Texas Department of Licensing and Regulation

Thursday, September 29, 1994, 9:30 a.m.

920 Colorado, E.O. Thompson Building, Third Floor

Austin

Inspections and Investigations, Manufactured Housing

AGENDA:

According to the complete agenda, the Department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Jose Luis Iglesias doing business as Iglesias Brothers Home Movers for violation of the Texas Civil Statutes, Article 5221f, §7(d), Article 9100, 16 TAC §69.125(c)(1) and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: September 20, 1994, 10:20 a.m.

TRD-9448305

Thursday, October 6, 1994, 10:00 a.m.

John H. Reagan Building, 105 West 15th Street, Room 101

Austin

Policies and Standards

AGENDA:

To hear public comments on the proposal to adopt the following rules:

Chapter 68–Elimination of Architectural Barriers

Chapter 70–Industrialized Housing and Buildings

Contact: Jimmy G. Martin, 920 Colorado, Austin, Texas 78711, (512) 463-7348.

Filed: September 21, 1994, 2:35 p.m.

TRD-9448426

Tuesday, October 18, 1994, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Third Floor

Austin

Inspections and Investigations, Auctioneering

AGENDA:

According to the complete agenda, the Department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Morris-Taibel for violation of the Texas Civil Statutes, Article 8700, §7(a) (3) and (7), Article 9100, Texas Government Code, Chapter 2001 and the Business and Commercial Code, §17.46(b)(5).

Contact: Paula Hamje, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: September 20, 1994, 10:13 a.m.

TRD-9448304

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Texas State Board of Medical Examiners

Tuesday, September 20, 1994, 3:30 p.m.

1812 Centre Creek Drive, Suite 300

Austin

Emergency Agenda

Disciplinary Panel

AGENDA:

1. Call to order

2. Roll call

3. Consideration of the temporary suspension of the license of Rafael A. Aguirre-Moran, M.D., License Number D-6922

4. Adjourn

Reason for emergency: Information has been received by the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: September 20, 1994, 1:01 p.m.

TRD-9448316

Thursday, September 29, 1994, 8:30 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Reciprocity Committee

AGENDA:

The agenda includes review of endorsement applicants referred to the Reciprocity Committee by the executive director for determinations of eligibility for licensure; review a request to withdraw an application; review requests to reconsider applications; consider a recommendation of ineligibility; discuss and take action on proposed rule changes and proposed changes to application.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: September 21, 1994, 4:31 p.m.

TRD-9448437

Thursday, September 29, 1994, 8:30 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Disciplinary Process Review Committee

AGENDA:

1. Call to order

2. August 1994 enforcement report

3. Discussion and recommendations concerning proposed Memorandum of Understanding with the Texas Medical Foundation

4. Executive session to review selected files, two year old cases, and cases dismissed by informal settlement conferences

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: September 21, 1994, 4:31 p.m.

TRD-9448441

Thursday, September 29, 1994, 8:30 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Examination Committee

AGENDA:

1. Call to order

2. Roll call

3. Review of examination applicants

4. Review of committee assignment of licensure application files

5. Review of Americans with Disabilities questions on licensure application

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext 402.

Filed: September 21, 1994, 4:31 p.m.

TRD-9448442

Thursday, September 29, 1994, 1:30 p.m.

1812 Centre Creek Drive, Suite 300

Austin

Ad Hoc Committee to Study Pain Management

AGENDA:

1. Call to order

2. Roll call

3. Creation of guidelines related to treatment of intractable pain

4. Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: September 21, 1994, 4:31 p.m.

TRD-9448440

Thursday, September 29, 1994, 3:00 p.m.

1812 Centre Creek Drive, Suite 300

Austin

Public Information Committee

AGENDA:

1. Call to order

2. Roll call

3. Speaker, Roy Ray, Chairman of the State Legislative Committee for American Association for Retired Persons

4. Ken Smith, Compliance Officer, Texas State Board of Medical Examiners, presentation of procedures for reporting physicians' compliance with posting complaint procedure notification

5. Review of news bulletin to Legislature

6. Discussion of procedures for Board member travel reimbursement

7. Review and discussion of news article for local paper campaign and plan of action for public awareness

8. Review of pending projects: cooperative work with others (map, public presentations) and media alternatives (PSA, print)

9. Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: September 21, 1994, 4:31 p.m.

TRD-9448439

Thursday, September 29, 1994, 4:00 p.m.

1812 Centre Creek Drive, Suite 300

Austin

Standing Orders Committee

AGENDA:

1. Call to order

2. Roll call

3. Recommendation from Board of Acupuncture Examiners for approval of acupuncture licensure applicants

4. Discussion and action on proposed amendments to Chapter 183, as recommended by the Texas State Board of Acupuncture Examiners

5. Consideration of waiver requested by Karl J. Hasik, M.D., to supervise nurse practitioners at four rural health clinics

6. Discussion and action on proposed amendments to Chapter 166.2, Continuing Medical Education

7. Discussion and action on proposed amendments to Chapter 175 related to fees

8. Discussion and action on proposed amendments to Chapter 173 related to applications

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: September 21, 1994, 4:31 p.m.

TRD-9448438

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Texas National Guard Armory Board

Sunday, October 2, 1994, 10:00 a.m.

Conference Room, Building 64, Camp Mabry, 2200 West 35th

Austin

AGENDA:

Administrative matters

Executive director's update

Construction/renovation/maintenance update

Property/leases

Establish date of next meeting

Contact: Sandra Hille, P.O. Box 5426, Austin, Texas 78763, (512) 406-6907.

Filed: September 21, 1994, 2:19 p.m.

TRD-9448421

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Texas Natural Resource Conservation Commission

Thursday, September 29, 1994, 8:30 a.m.

1700 North Congress Avenue, Stephen F. Austin State Building, Room 123

Austin

AGENDA:

The Commission will meet in executive session.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: September 21, 1994, 5:03 p.m.

TRD-9448447

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Public Utility Commission of Texas

Wednesday, September 21, 1994, 9: a.m.

7800 Shoal Creek Boulevard

Austin

Emergency Revised Agenda

AGENDA:

In addition to the previously submitte agenda, the Commissioners will also cor sider the appeal of Examiner's Order Num ber 52 in Docket Number 12065–complair of Kenneth D. Williams against Houstc Lighting and Power Company.

Reason for emergency: Prompt Commissic action is necessary to preserve jurisdictio over the subject matter of the appeal.

Contact: John M. Renfrow, 7800 Shoa Creek Boulevard, Austin, Texas 7875' (512) 458-0100.

Filed: September 20, 1994, 1:27 p.m.

TRD-9448315

Friday, September 30, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A prehearing conference will be held at the above date and time in Docket Number 13439–petition of Central Power and Ligh Company for a good cause exception to the earnings monitoring report filing requirements of Public Utility Commission Substantive Rule 23.12(b)(2)(B)(i).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757 (512) 458-0100.

Filed: September 20, 1994, 4:10 p.m.

TRD-9448361

Tuesday, October 4, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A prehearing conference is scheduled for the above date and time in Docket Number 13444: application of Golden Spread Electric Company, Inc. for approval of notice of intent

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

iled: September 21, 1994, 9:08 a.m.

TRD-9448376

Monday, December 12, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A hearing on the merits will be held at the above date and time in Docket Number 13218–application of Southwestern Bell Telephone Company to introduce personality logo listing and line distinction listing.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1994, 10:50 a.m.

TRD-9448306

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Center for Rural Health Initiatives

Friday, September 30, 1994, 9:30 a.m.

211 East Seventh Street, Seventh Floor Conference Room

Austin

Outstanding Rural Scholar Recognition Program Advisory Committee

AGENDA:

Discuss program status; review proposed rules and recommend changes; establish application deadline for fiscal year 1995; and set date for next meeting.

Contact: Bill Lydon, P.O. Drawer 1708, Austin, Texas 78767-1708, (512) 479-8891.

Filed: September 20, 1994, 4:42 p.m.

TRD-9448364

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Texas Savings and Loan Department

Tuesday, October 11, 1994, 2:00 p.m.

300 West 15th Street, Room 502

Austin

AGENDA:

The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application of Golden West Financial Corporation, Oakland, California to charter a state savings bank to be known as World Savings Bank of Texas, SSB, Austin, Travis County, Texas from which record the Commissioner will determine whether to grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: September 21, 1994, 10:10 a.m

TRD-9448403

Wednesday, October 12, 1994, 9:00 a.m.

300 West 15th Street, Room 502

Austin

The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application of AmWest Savings Association, Bryan, Texas to operate a loan office at Norwood and Highway 183, Hurst, Tarrant County, Texas from which record the Commissioner will determine whether to grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: September 21, 1994, 10:09 a.m.

TRD-9448402

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Texas Sustainable Energy Development Council

Friday, September 30, 1994, 8:30 a.m.

3710 Lake Austin Boulevard, Lower Colorado River Authority, Board of Directors Conference Room

Austin

AGENDA:

I. Call to order

II. Discuss administrative matters

a. Administrative update

b. Endorsement of Wind Energy Workshop at Alternative Energy Institute

c. Recommendations for council vacancy

III Discuss strategic planning

a. Prioritization of goals for all categories: production, consumption, education and policy

b. Discuss procedure for developing action steps and need to continue Southwest Texas Facilitation Contract

c. Discuss October meeting schedule

IV. Discuss public participation plan

V. Adjourn

Contact: Charlotte Banks, 1700 North Congress Avenue, Room 850, Austin, Texas 78701, (512) 463-1745

Filed: September 20, 1994, 4:10 p.m.

TRD-9448359

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Texas Department of Transportation

Thursday, September 29, 1994, 9:00 a.m.

200 East Riverside Drive, Room 101

Austin

Texas Transportation Commission

AGENDA:

Delegations: Dallas, Jim Wells, Delta, Hunt, Fannin and Grayson Counties. Approve minutes. Awards/recognitions/resolutions. Presentations: Port of Houston and I-35 Corridor Coalition. Contract awards/rejections/assignments. Project development plan. Routine minute orders. District/division reports. Environmental project. Interstate, U.S., State, and FM Road projects. Transportation planning: authorize allocation of Federal Transportation Planning funds to MPOs, and approval of 1995-1997 Statewide Transportation Improvement Program. Multimodal transportation. Briefing on changes to the department's policy for matching fund-participation ratio. Progress report on implementation of Americans with Disabilities Act. Approval of building overrun in El Paso County. Rulemaking: 43 TAC Chapters 1, 11, 23, 25, 27, and 31. Executive session for legal counsel and land acquisition matters. Open comment period.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630.

Filed: September 21, 1994, 2:27 p.m.

TRD-9448422

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University Interscholastic League

Tuesday, September 27, 1994, 10:00 a.m.

Wyndham Hotel, IH-35 South at Ben White

Austin

Advisory Council

AGENDA:

I. Introduction and opening remarks

II. Review of legislative charge

III. Old business

A. Viability of AAAAA alignment

B. Independent Hearing Officer

C. Review of State Comptroller of Public Accounts Management and Performance Review of the UIL

IV. New business

V. Announcements and adjournment.

Contact: C. Ray Daniel, 23001 Lake Austin Boulevard, Austin, Texas 78703, (512) 471-5883.

Filed: September 21, 1994, 4:32 p.m.

TRD-9448443

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University of Texas Health Science Center at San Antonio

Wednesday, September 28, 1994, 3:00 p.m.

7703 Floyd Curl Drive, Room 422A MED

San Antonio

Institutional Animal Care and Use Committee

AGENDA:

1. Approval of minutes
2. Protocols for review
3. Subcommittee reports
4. Other business

a. Semi-annual review of programs

Contact: Molly Greene, 7703 Floyd Curl Drive, San Antonio, Texas 78284-7822, (210) 567-3717.

Filed: September 21, 1994, 9:08 a.m.

TRD-9448375

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The University of Texas Medical Branch

Monday, October 3, 1994, 1:00 p.m.

Love Field, Main Terminal Building, Conference Room A, 8008 Cedar Springs Road

Dallas

Managed Health Care Advisory Committee

AGENDA:

Call to order

Approval of minutes from May 16, 1994 committee meeting

Receive status report from MHCAC staff on fiscal year 1995 funding and contracts.

Discussion, consideration and possible action regarding fiscal year 1995 operating budget for the Managed Health Care Advisory Committee.

Discussion, consideration and possible action regarding fiscal year 1996-1997 Legislative Appropriations Request for operating funds.

Discussion, consideration and possible action regarding fiscal year 1996-1997 Legislative Appropriations Request for health care facility construction.

Discussion, consideration and possible action regarding requirements for accreditation of contract hospitals.

Discussion, consideration and possible action regarding funding for telemedicine pilot projects.

Discussion regarding employee health care issues (e.g. T.B. testing, H.I.V. testing and counseling).

Receive report from MHCAC staff regarding the status of medical construction projects at Lubbock and Texas City.

Receive report from MHCAC staff regarding the status of facility expansion schedules.

Discussion of new TDCJ regional alignment.

Recess to executive session to discuss response to court orders in Ruiz litigation pursuant to §551.071, Government Code. Discussion and approval of date and location of next committee meeting. Adjournment.

Contact: Cril Payne, UTMB, 621 Administration Building, Galveston, Texas 77555-0124, (409) 772-4898.

Filed: September 21, 1994, 11:03 a.m.

TRD-9448413

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Texas Workers' Compensation Insurance Fund

Wednesday, September 28, 1994, 8:30 a.m.

100 Congress Avenue, Suite 600

Austin

Board of Directors

AGENDA:

Call to order; roll call; review and approval of the minutes of the August 31, 1994, Board meeting; report of the Administrative Committee; report of the Finance Committee; report of the Operations Committee; fund status report; financial report; report on Grassroots Program; public participation; executive session; action items resulting from executive session deliberations; Revenue Bond Debt Service Reduction Program; announcements; and adjourn.

Contact: Beth Naylor, 100 Congress Avenue, Austin, Texas 78701, (512) 404-7142.

Filed: September 20, 1994, 3:35 p.m.

TRD-9448358

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Regional Meetings

Meetings Filed September 20, 1994

The Burnet County Appraisal District Board of Directors will meet at 110 Avenue H, Suite 106, Marble Falls, September 2[illegible] 1994, at Noon. Information may be ob tained from Barbara Ratliff, P.O. Drawer E Burnet, Texas 78611, (512) 756-82[illegible] TRD-9448360.

The Coastal Bend Council of Gover ments Executive Board will meet in th Conference Room, 2910 Leopard Stree Corpus Christi, September 30, 1994, Noon. Information may be obtained fron John P. Buckner, P.O. Box 9909, Corpu Christi, Texas 78469, (512) 883-5743 TRD-9448356.

The Coastal Bend Council of Governments Membership will meet in the Confer ence Room, 2910 Leopard Street, Corpu Christi, September 30, 1994, at 2:00 p.m Information may be obtained from John P Buckner, P.O. Box 9909, Corpus Christi Texas 78469, (512) 883-5743. TRD-9448357.

The Lower Rio Grande Valley Development CouncilLRGVDC Board of Director will meet at Harold's Country Kitchen, 2111 East Business Highway 83, Donna, September 29, 1994, at 1:30 p.m. Information may be obtained from Kenneth N. Jones, Jr., 4900 North 23rd Street, McAllen, Texas 78504, (210) 682-3481. TRD-9448319.

The Lubbock Regional MHMR Center Board of Trustees met in the Board Room, 1602 Tenth Street, Lubbock, September 26, 1994, at Noon Information may be tained from Gene Menefee, P.O. Box 28 Lubbock, Texas 79408, (806) 766-0202. TRD-9448363.

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Meetings Filed September 21, 1994

The Austin-Travis County MHMR Center Finance and Control Committee met at 1430 Collier Street, Austin, September 26, 1994, at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9448409.

The Brazos River Authority (Revised Agenda.) Administrative Policy Committee Board of Directors will meet at 4400 Cobbs Drive, Waco, September 28, 1994, at 11:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9448427.

The Brazos Valley Quality Work Force Planning Committee will meet at 715 University Drive, College Station, September 27, 1994, at 11:30 a. m. Information may be obtained from Patty Groff, 301 Post Office Street, Bryan, Texas 77801-2142, (409) 821-2505. TRD-9448436.

The Education Service Center, Regio XV Board of Directors will meet at 61[illegible]

...th Irene Street, San Angelo, September 7, 1994, at 1:30 p.m. Information may be btained from Clyde Warren, P.O. Box 199, San Angelo, Texas 76902, (915) ...-6571. TRD-9448377.

... **Gray County Appraisal District** Ap...aisal Review Board will meet at 815 ...th Sumner, Pampa, September 28, 1994, ... 2:00 p.m. Information may be obtained ...m Sherri Schaible, P.O. Box 836, Pampa, ...exas 79066-0836, (806) 665-0791. TRD-448446.

The Kempner Water Supply Corporation Board of Directors will meet at 4020 ...akecliffe Drive, Harker Heights, September 27, 1994, at 3:00 p.m. Information may ...e obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, (512) ...32-3701. TRD-9448372.

The Leon County Central Appraisal District Board of Directors met at 103 North Commerce, Corner of Highway 7 and 75, Leon County Central Appraisal District Office, Gresham Building, Centerville, September 26, 1994, at 7:00 p.m. Information ...y be obtained from Donald G. Gillum, P.O. Box 536, Centerville, Texas 75833, (903) 536-2252. TRD-9448428.

The Texas Panhandle Mental Health Authority Board of Trustees, TPMHA will meet at 7201 I-40 West, Second Floor, Amarillo, September 29, 1994, at 10:30 a.m. Information may be obtained from Shirley Hollis, P.O. Box 3250, Amarillo, Texas 79116-3250, (806) 353-3699, Fax: (806) 353-9537. TRD-9448410.

The San Antonio-Bexar County Metropolitan Planning Organization Transportation Steering Committee met at the International Conference Center, Convention Center Complex, San Antonio, September 26, 1994, at 1:30 p.m. Information may be obtained from Charlotte A. Roszelle, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9448400.

The Scurry County Appraisal District Board of Directors will meet at 2612 College Avenue, Snyder, October 4, 1994, at 8:00 a.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9448425.

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, September 27, 1994, at 2:30 p.m. Information may be obtained from Mollie Parker, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9448401.

The West Central Texas Council of Governments Executive Committee will meet at 1025 East North Tenth Street, Abilene, September 28, 1994, at Noon. Information may be obtained from Brad Helbert, 1025 East North Tenth Street, Abilene, Texas 79604, (915) 672-8544. TRD-9448415.

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Meetings Filed September 22, 1994

The Alamo Area Council of Governments will meet at 118 Broadway, Suite 420, San Antonio, September 27, 1994, at 10:30 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9448451.

The Southwest Milam Water Supply Corporation Board met at 114 East Cameron Street, Rockdale, September 26, 1994, at 7:00 p.m. Information may be obtained from Dwayne Jekel, P.O. Box 232, Rockdale, Texas 76567, (512) 446-2604. TRD-9448449.

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IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Bond Review Board

Bi-Weekly Report on the 1994 Allocation of the State Ceiling on Certain Private Activity Bonds

The information that follows is a report of the allocation activity for the period of August 27, 1994-September 9, 1994. Pursuant to §2(d) of Article 5190.9a, on September 1, any amounts of volume cap remaining in the separate subceilings are combined under one ceiling. All applications that have not received volume cap are placed on one list in an order determined by a lottery number received in January, or by date of application, regardless of project type. On September 1 reservations for the remaining volume cap are given.

Total amount of the $901,550,000 state ceiling remaining unreserved as of September 9, 1994: $0

Following is a comprehensive listing of applications which have received a reservation date pursuant to the Act from August 27, 1994 through September 9, 1994: ISSUER USER DESCRIPTION AMOUNT

1) City of Dallas HFC; Eligible Borrowers; MRBs $30,000,000;

2) East Texas HFC; Eligible Borrowers; MRBs $23,387,613.96;

3) Robstown IDC; Concrete Pipe & Products; IDBs $2,000,000;

4) McKinney IDC; Delta Daily Foods; IDBs $9,000,000;

5) Development Corp of Wylie; Universal Display & Fixtures IDBs; $4,500,000,

6) Gulf Coast IDA; Gruma Corporation; IDBs $7,000,000;

7) Central TX HFC; Quattro Partners; Homestead Apartments $150,000.

Following is a comprehensive listing of applications which have issued and delivered the bonds and received a Certificate of Allocation pursuant to the Act from August 27, 1993 through September 9, 1994: ISSUER USER DESCRIPTION AMOUNT

1) Orange County Port; Coastal Films, Inc.; IDBs $5,000,000;and Navigation District IDC

Following is a comprehensive listing of applications which were either withdrawn or canceled pursuant to the Act from August 27, 1994 through September 9, 1994: NONE

Following is a comprehensive listing of applications which released a portion of their reservation pursuant to the Act from August 27, 1994-September 9, 1994: ISSUER USER DESCRIPTION AMOUNT RELEASED

1) Southeast Texas HFC; Garland Oaks Residential Rental; $150,000;

2) Orange County Port; Coastal Films, Inc.; IDBs $2,000,000.and Navigation District IDC.

Issued in Austin, Texas, on September 13, 1994.

TRD-9448367 Albert L. Bacarisse
Executive Director
Texas Bond Review Board

Filed: September 20, 1994

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Coastal Coordination Council

Dissenting Statement of Commissioner Barry Williamson: Re: Coastal Management Program Rules

Last Friday, the Coastal Coordination Council (CCC) approved final adoption of coastal management program (CMP) rules (Title 31, Chapters 501 and 504-506) over my objection. I was the lone dissenter. I would like to take this opportunity to briefly summarize some of my continuing concerns about the CMP rules.

Costs of the Program. I am concerned that the CCC has imposed a regulatory scheme on the citizens of this State without any information regarding the costs of that scheme to the public. The other members of the CCC apparently recognize that there is insufficient information regarding costs of the program because the CCC was in unanimous support of the General Land Office's (GLO's) suggestion to hire a consultant to conduct a thorough cost study of the CMP. I applaud the decision to obtain additional cost information. However, I disagree with the decision to approve the rules despite the lack of such information. The costs of regulatory mandates imposed on the public should be of paramount concern to regulators, not an afterthought.

Conflicts With Existing Law The CMP rules approved Friday may contain provisions that conflict with well-established Texas law. For instance, I believe that the threshold adoption procedures of Chapter 505 may result in adoption of thresholds in violation of Administrative Procedure Act. Apparently staff of the Attorney General's Office has similar concerns because they suggested that a task force examine this issue and report back to the CCC at its next meeting. I agree that this issue should be examined; however, it seems illogical to me to examine it after the rules have already been adopted.

Practicable I remain concerned about the definition of the term "practicable." Although the definition has been amended, questions still remain regarding its interpreta-

tion. Specifically, it is still not clear whether one factor alone can determine whether an alternative is practicable. The existing definition in the U.S. Army Corps of Engineers 404(b)(1) guidelines should have been used. The Corps' definition has been in effect for many years and is well understood by industry and regulators.

New Issues. Finally, in its rush to adoption, the CCC has not taken the time to examine the rules thoroughly. Nor has the CCC provided sufficient opportunity for all interested parties to have their concerns about the CMP rules addressed.

For instance, we discovered for the first time last week that the proposed Special Area Management Plan (SAMP) provisions could have effectively deprived mineral and leasehold interest owners of their property rights. Fortunately, I raised this issue in time for it to be corrected before final rules were adopted. However, no one can be certain that similar problems do not remain hidden in the extremely complex, 800 pages of preambles and rules.

I remain concerned that the rules adopted by the CCC go above and beyond the program the Texas Legislature envisioned when it adopted the Coastal Coordination Act in 1991. The CMP, as adopted, does not simply coordinate activities of state and federal agencies. In fact, it creates an additional regulatory hurdle for thousands of Texans who chose to live and work in coastal Texas. I will continue to work to see that this burden is minimized as the program is implemented.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448280 Garry Mauro
Chairman
Coastal Coordination Council

Filed: September 19, 1994

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Texas Department of Commerce

Request for Proposals to Develop and/or Operate Statewide, Regional and Industry-wide Projects for Dislocated Workers

In accordance with the Job Training Partnership Act (JTPA), Public Law 97-300 as amended August 6, 1992, the Texas Department of Commerce (Commerce) announces a Request for Proposals (RFP) to develop and/or operate Statewide, Regional and Industry-wide projects for dislocated workers The Dislocated Worker Training and Employment Program is authorized under Title III of the JTPA as amended by the Omnibus Trade and Competitiveness Act of 1988. The programs will assist dislocated workers in obtaining employment and/or further the State in the development of policies and procedures which improve the quality of services and related outcomes for dislocated workers

The total funds available is $3 million

Detailed information regarding the project format is set forth in the Request for Proposal instructions which will be available on or about October 3, 1994 at the following location Texas Department of Commerce, Work Force Development Division, 211 East Seventh Street, Suite 1000, P O Box 12728, Austin, Texas 78711.

The deadline for receipt of proposals in response to this request will be Thursday, November 10, 1994 at 4:00 p.m. (CST). Responses received after this deadline will not be considered.

A Proposers' Conference will be held on Tuesday, October 11, 1994 beginning at 9:00 a.m., at a location to be announced at a later date. Information regarding the Bidders' Conference and its final location may be accessed by calling Jennifer Jacob at (512) 936-0345. All interested parties are invited to attend. To submit requests for auxiliary aids and services, please contact Jennifer Jacob at (512) 936-0345 or TDD (512) 936-0555.

Commerce reserves the right to accept or reject any or all proposals submitted. Commerce is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the material provided only as a means of identifying the various contractor alternatives. Commerce intends to use responses as a basis for further negotiation of specific project details with potential contractors. Commerce will base its choice on demonstrated competence, qualifications, and evidence of superior conformance with criteria. This RFP does not commit Commerce to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates Commerce to award a contract or to pay any costs incurred in the preparation of a response. Commerce specifically reserves the right to vary all provisions set forth any time prior to execution of a contract where Commerce deems it to be in the best interest of the State of Texas.

The Texas Department of Commerce is an equal opportunity employer/program. Auxiliary aids and services will be made available to individuals with disabilities if requested.

For further information regarding this notice, please contact: Jennifer Jacob, Texas Department of Commerce, Work Force Development Division, 211 East Seventh Street, Suite 1000, P.O. Box 12728, Austin, Texas 78711, (512) 936-0345, TDD (512) 936-0555.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448391 Deborah C. Kastrin
Executive Director
Texas Department of Commerce

Filed: September 21, 1994

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Texas Education Agency

Public Notice Announcing the Availability of the Elementary and Secondary Education Act (ESEA) Chapter 2 Annual Evaluation Report for School Years 1991-1992 and 1992-1993

Chapter 2 of Title I of the ESEA provides federal financial assistance to state and local educational agencies to improve elementary and secondary education through a variety of targeted assistance programs and services for children attending both public and private nonprofit schools.

The ESEA Chapter 2 Annual Evaluation Reports for 1991-1992 and 1992-1993 are now available to the public through each regional education service center (ESC). In addition, colleges and universities in Texas were requested to place a copy of the report in their campus libraries. Parents, teachers, school administrators, private nonprofit school personnel, local community organizations, businesses, and other interested persons or agencies may

review the document or copy it at personal expense at any ESC or college or university library where the document is on file.

Interested persons or agencies may also request a copy at no charge from the Texas Education Agency, Document Control Center, Room 6-108, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9304.

Issued in Austin, Texas, on September 21, 1994.

TRD-9448379 Criss Cloudt
Executive Associate Commissioner for Policy Planning and Technology Services
Texas Education Agency

Filed: September 21, 1994

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Request for Proposals Concerning Support Services for Providing National Comparative Data, 1994-1995 through 1998-1999

This Request for Proposals (RFP) #701-95-002 is filed under the Texas Education Code, §35.028.

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals from education service centers, colleges and universities, nonprofit organizations, and for-profit organizations for providing national comparative data on student performance as required by the Texas Education Code, §35.028, for school years 1994-1995 through 1998-1999.

Description. The Texas Education Code, §35.028, requires the state assessment program to obtain nationally comparative results for the subject areas and grade levels for which criterion-referenced assessment instruments are adopted. This proposal is therefore requesting support services to obtain national comparative results for writing, reading, and mathematics for Grades 4 and 10; for writing, reading, mathematics, science, and social studies for Grade 8; and for reading and mathematics for Grades 3, 5, 6, and 7.

Dates of Project. Support services for providing national comparative data will be conducted during the 1994-1995 school year through the 1998-1999 school year. Proposers should plan for a starting date of no earlier than November 15, 1994, and an ending date of no later than August 31, 1999.

Project Amount. Funding will be provided for one project. Project funding subsequent to the 1994-1995 school year will be based on satisfactory progress of the previous year's objectives and activities and general budget approval by the State Board of Education and the commissioner of education.

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out all requirements contained in the RFP. The TEA will base its selection on, among other things, demonstrated competence and qualifications of the proposer. The selection criteria and the review process are specified in the RFP. The TEA reserves the right to select from the highest ranking proposals those that address all requirements in the RFP.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or to pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP #701-95-002 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFP number in your request.

Further Information. For clarifying information about the RFP, contact Keith Cruse, Division of Student Assessment, Texas Education Agency, (512) 463-9536.

Deadline for Receipt of Proposals. A proposal must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m., Friday, October 21, 1994, to be considered.

Issued in Austin, Texas, on September 21, 1994.

TRD-9448380 Criss Cloudt
Executive Associate Commissioner for Policy Planning and Technology Services
Texas Education Agency

Filed: September 21, 1994

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Texas Department of Health

Designation of Sites Serving Medically Underserved Populations

The Department of Health is required under Texas Civil Statutes, Article 4495b, §3.06, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of its designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as sites serving medically underserved populations: Agape Clinic, located at 4105 Junius, Dallas (Dallas County), Texas; the Center for Cancer and Blood Disorders of the Children's Medical Center of Dallas, located at 1935 Motor Street, Dallas (Dallas County), Texas; and the medical practice of Raymond C. Blackburn, M.D., located at 5959 Harry Hines Boulevard, Dallas (Dallas County), Texas. Designations are based on proven eligibility as sites serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Demetria Montgomery, M.D., Chief, Bureau of Community Oriented Primary Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7771. Comments will be accepted for 30 days from the date of this notice.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448275 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: September 19, 1994

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Public Hearing Concerning the Early and Periodic Screening, Diagnosis, and Treatment-Comprehensive Care Program

The Texas Department of Health will be holding a public hearing regarding the recently proposed amendment to rules concerning the Early and Periodic Screening, Diagnosis, and Treatment-Comprehensive Care Program (EPSDT-CCP). The proposed amendment was published in the September 9, 1994, issue of the *Texas Register* (19 TexReg 7060). The proposed amendment will allow payment for vaccines not covered elsewhere in Medicaid. Currently, Purchased Health Services (Medicaid) cover vaccines for influenza and pneumococcal disease, and EPSDT covers vaccines for childhood immunizations. The proposed amendment would allow the EPSDT-CCP to provide additional special immunizations in certain instances when medically necessary.

The public hearing will be held on Friday, September 30, 1994, at 3:00 p.m., Room G-107, Texas Department of Health, 1100 West 49th Street, Austin, Texas. For further information regarding the hearing or the proposed amendment, contact Janet Kres at (512) 458-7111, extension 2863.

Issued in Austin, Texas, on September 20, 1994

TRD-9448352 Susan K Steeg
General Counsel
Texas Department of Health

Filed: September 20, 1994

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Texas Department of Human Services

Public Notice-Availability of Intended Use Report

The Texas Department of Human Services has published a report outlining the intended use of federal block grant funds during fiscal year 1995 for Title XX social services programs administered by the Texas Department of Human Services (TDHS), the Texas Department of Health (TDH), and the Texas Department of Protective and Regulatory Services (TDPRS) The report describes services funded through this federal source and includes a distribution-of-funds section which provides financial information on the allocation of funds to all social services.

Public comment was sought in the development of the Intended Use Report. The Texas Health and Human Services Commission held four public hearings across the state in October and November of 1993 and in March of 1994. Representatives of TDHS, TDH, and TDPRS participated in these hearings Oral and written testimony was received from 121 people on the recommended use of Title XX funds. These comments were taken into consideration by advisory committees, staff, and the boards of each agency as they developed their operating plans for fiscal year 1995 and their legislative appropriation requests for fiscal years 1996 and 1997. On July 8, 1994, the proposed Intended Use Report was made available to the public for review and comment No comments were received

Summary of Public Comments on the Intended Use Report: expand community alternatives, prevent further budget cuts; provide transportation for persons with disabilities so they can go to work; spend more money on family planning services; revise proposed standards for child care providers to avoid burdensome procedures and increased costs to families; need more funding for home services and personal attendant services; need more day care funding so welfare mothers can get jobs; do not reduce funds in the in-home and family support program; need better system for employing home care providers and attendants; redirect funding away from institutional care to independent care; increase funding for attendant care programs; expand funding for CLASS program; need to expand access for community-based services; expand respite for caregivers; raise the ceiling on In-Home and Family Care programs; use co-pay programs in order to serve more people with disabilities; need to change minimum standards for child care in the areas of corporal punishment and child care ratios; expand funding for adult foster care; provide employment assistance for people with disabilities; and increase funding for family violence shelters and non-residential services.

Response to Comments: Decisions regarding distribution of funds to the various programs continues to be a function of legislative mandates, appropriations, assessment of need, the Health and Human Services strategic plan, and input from advisory committees, and the public. Without increased funding, services generally must be maintained at the same level. In the event that state and federal funds are totally or partially unavailable, necessary reductions in services will be made.

To obtain free copies of the report: Send a written request to Nancy Murphy, Section Manager, Media and Policy Services, Mail Code W-402, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030. For further information, please call (512) 450-3765.

Issued in Austin, Texas, on September 20, 1994.

TRD-9448368 Nancy Murphy
Section Manager for Media and Policy Services
Texas Department of Human Services

Filed September 20, 1994

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Texas Department of Insurance

Notice of Call for Issues Related to Biennial Title Hearing

Texas Insurance Code, Article 9.07(c), requires the Department of Insurance to hold a biennial hearing to consider adoption of premium rates and such other matters and subjects relative to the regulation of the business of title insurance as may be requested by any title insurance company, any title insurance agent, any member of the public, or as the Department may determine necessary to consider Notice of the hearing will appear in the *Texas Register* at a later date. Any title insurance company, title insurance agent, or member of the public that would like to request that any matter or subject, other than the rates for title insurance, be considered at the biennial hearing must provide a detailed description of the matter or subject no later than October 17, 1994 All requests should be addressed to the Office of the Chief Clerk, P.O. Box 149104, Mail Code 113-1C, Austin, Texas 78714-9104.

Issued in Austin, Texas, on September 20, 1994.

TRD-9448323 D. J. Powers
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: September 20, 1994

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

1. Application for incorporation in Texas for National Motor Club of America, Inc., a domestic third party administrator, (doing business under the assumed name of National Motor Club). The home office is Dallas, Texas.

2. Application for a name change in Texas for First Benefit Corporation, a foreign third party administrator. The proposed new name is CoreSource/First Benefit Corporation. The home office is Indianapolis, Indiana.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 105-6A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on September 21, 1994.

TRD-9448399 D. J. Powers
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: September 21, 1994

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Public Utility Commission of Texas

Notice of Intent to File Pursuant to Public Utility Commission Substantive Rules 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR- Custom Service for Crowley ISD, Crowley, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of a 10-Station Addition to the Existing Plexar-Custom Service for Crowley ISD pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 13443.

The Application. Southwestern Bell Telephone Company is requesting approval of a 10-station addition to the existing Plexar-Custom Service for Crowley ISD. The geographic service market for this specific service is the Crowley, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on September 20, 1994.

TRD-9448318 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: September 20, 1994

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of a customer-specific contract to provide CentraNet service to Delta Airlines.

Tariff Title and Number. Application of GTE Southwest Incorporated Notice of Intent to File a Customer-Specific Contract for Delta Airlines, Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 13448.

The Application. GTE Southwest Incorporated is requesting approval of a customer-specific contract to provide 1,540 CentraNet lines to Delta Airlines at its DFW Airport business address at 3200 East Airfield Drive, Terminal 4E, DFW Airport, Texas 75261.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on September 20, 1994.

TRD-9448353 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: September 20, 1994

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Public Notice

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application pursuant to Public Utility Commission Substantive Rule 23.26 to introduce two new optional residential White Pages directory features.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of the introduction of two new optional residential White Pages directory features called Line of Distinction and Personality Logo pursuant to Public Utility Commission Substantive Rule 23.26. Docket Number 13218.

The Application. Southwestern Bell Telephone Company is requesting approval to offer optional Line of Distinction and Personality Logo listings in the residential White Pages directory.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf on or before October 21, 1994.

Issued in Austin, Texas, on September 20, 1994.

TRD-9448317 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: September 20, 1994

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Texas Department of Transportation

Public Notices

The Texas Traffic Records Council is scheduled to have a meeting October 6, 1994, 10:00 a.m. at the Department of Health located at 1100 West 49th Street, Austin Texas The Traffic Records Council is a Texas Department of Transportation advisory committee composed of representatives for TxDOT, Department of Public Safety, Texas Health Department, metropolitan planning organizations, and county and city officials. The purpose of the Traffic Records Council is to improve the traffic record systems in Texas. Items on the Council's agenda includes reports from its Technology and Standards, and Education and Information committees. There will also be a report on the Annual Traffic Records Forum scheduled for November 1 and 2, 1994.

For further information, contact Jim Taylor, Traffic Operations Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701, (512) 416-3150

Issued in Austin, Texas, on September 21, 1994

TRD-9448373 Diane L Northam
Legal Executive Assistant
Texas Department of Transportation

Filed. September 21, 1994

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The Texas Department of Transportation is requesting project proposals for the Texas Highway Safety Plan (HSP) for federal fiscal year (FY) 1996 (October 1, 1995-September 30, 1996)

The Texas HSP is developed through a process beginning the preceding fiscal year through the collection of project proposals from local jurisdictions, as well as from agencies or organizations with statewide responsibility and interests in traffic safety. The program of work developed in the HSP is intergovernmental in nature and functions, either directly or indirectly, through grants-in-aid agreements and contracts awarded to local jurisdictions, other state agencies, educational institutions and public contractors

Authority and Responsibility. Federal grant involvement in traffic safety dates from the passage of the national Highway Safety Act of 1966 Texas passed supporting legislation in 1967. The Texas Traffic Safety Program was made an integral part of the Texas Department of Transportation in 1979, and the Department's districts then assumed responsibility for local projects. The program operates within the Traffic Safety Section of the Traffic Operations Division The executive director of the department is the designated Governor's Highway Safety Representative HSP Program Areas The FY96 HSP will be divided into 12 program areas One is mostly approved and funded by FHWA, ten are mostly funded and approved by NHTSA, and one is primarily funded solely from state resources In addition to federal and state funds, some participating local governments provide "matching" funds

The first six program areas were designated national program areas by federal regulation in 1982. The seventh, motorcycle safety, was added in 1986 and received federal designation as a national priority area in 1988. Currently, the twelve programs with planned federal or state funding for FY96 are:

1. Police Traffic Services· Selective traffic enforcement projects (STEPS) to apprehend reckless drivers, enforce speed limits including the national maximum speed limit, and provide specialized training for law enforcement officers

2 Alcohol and Other Drug Countermeasures· STEPs to apprehend drunk drivers, programs to deter underage youth access to alcoholic beverages, comprehensive programs to support anti- driving while intoxicated (DWI) activities from apprehension and arrest through adjudication, public information and education programs on alcohol/other drug use and driving, education programs for convicted DWI offenders, and education programs for youth

3. Emergency Medical Services: Training for rural emergency medical services technicians, local projects, data management, and public education

4 Occupant Protection Community and volunteer programs, public education to provide child safety seats and occupant safety belts, law enforcement STEPs to enforce mandatory use laws, observational surveys, and effectiveness evaluations of existing projects

5 Information Services. Development of software for traffic safety practitioners for problem identification, countermeasure design and evaluation, specialized analyses of vehicular crash occurrences and causal factors, improvements to data collection and the automated accident file, and other traffic records systems Joint efforts with other state agencies to improve the state's traffic records system

6 Roadway Safety Course development and training, consulting engineering services, traffic surveillance, problem identification and pedestrian/bicycle safety design

7 Motorcycle Safety Public awareness

8 Planning and Administration: Operation of the traffic safety program and traffic safety functions in 25 Texas Department of Transportation districts

9 Community Traffic Safety Programs· Problem identification, plan development, and program implementation for selected communities and college/university campuses

10 Public Information and Education State and local media campaigns, material development and productions, statewide theme support, drug-free project celebration support and newsletter production and distribution

11 School Bus Safety School bus crash data studies and training materials

12 Pedestrian/Bicycle Safety Community school zone safety, accident investigation, public education and community programs

HSP Development Each TxDOT district prepares a District Highway Safety Plan, to include potential local projects, and submits it to the Traffic Safety Section for consideration and incorporation into the HSP Likewise, project proposals submitted by statewide agencies and organizations are collected and grouped by applicable program area All project proposals received are carefully reviewed and scored competitively and then assigned a

priority. The planning process includes methods of forecasting a federal dollar amount that may be anticipated for the forthcoming fiscal year. These anticipated funds are then distributed to each of the program areas and using the project priority rankings it is possible to decide which projects will fall within the available funding limits. When a draft project list has been determined, the program area managers are then able to draft the program area narratives that will become part of the HSP. The first draft of the HSP is usually completed in early March of each year and sent to all TxDOT districts, the statewide agencies and organizations, and the federal government for review and comment.

HSP Review and Approval: Following the review and comment period, the final draft of the HSP is prepared and submitted to the Transportation Commission for approval in May or June of each year. Upon approval, it is submitted to the Governor's Office for review and comment and then forwarded to the federal government (U.S. Department of Transportation) for approval. When approved by the federal government, the HSP becomes operational on October 1 of every year. Two federal agencies provide funding to implement the HSP; the Federal Highway Administration (FHWA) and the National Highway Traffic Safety Administration (NHTSA).

HSP Implementation: When the HSP has received federal approval, TxDOT districts will begin working with local jurisdictions to develop grant agreements for the approved projects. TxDOT Traffic Safety Section program managers also will begin similar activities with statewide subgrantees and contractors. All traffic safety grant agreements and contracts are then reviewed and processed for TxDOT approval.

Proposal submission should be in the following format: name of submitting agency/organization; project title; problem statement, what is the problem?, statistical data which will indicate a need for the project, where is the effort to be done? which of the federal priority areas are applicable to the project?; objectives, clearly stated and indicate when each will be accomplished; action plan, a month-by-month schedule of project activities; evaluation, relate how the project will be evaluated or measured in terms of achieving the objectives; cost estimate (include budget by category; e.g., labor, other direct costs, and indirect costs), and any other additional information, i.e., who will supervise or coordinate project?, include years of experience or knowledge of subject.

A copy of the FY 1995 HSP and proposal submission forms can be obtained by writing to John McKay, Traffic Safety Section, TxDOT Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483, (512) 416-3170, fax 416-3349

HSP Project Proposals should be submitted by Wednesday, November 30, 1994 to Susan N Bryant, Chief, Traffic Safety Section, at the previously stated address

Proposals may be submitted for multi-year projects, up to a maximum of three years

Proposals selection for local projects will be based on the following criteria Save City/Save County ranking (Save City/Save County ranking procedure is a set of formulae developed by the Texas Transportation Institute for TxDOT that are based on crash rate and severity and designed to provide a ranking of problem severity for each city and county in Texas. These rankings are used to assist in problem identification to ensure that funds are used as effectively as possible, to aid in countermeasure development, and to enhance the ability to evaluate program efforts and support program decisions.); subgrantee resources such as personnel, equipment, training, and administrative support; continuation of an existing grant; whether the project is in a priority area; and innovativeness of the project. Availability of local matching funds is a bonus criterion.

Proposal selection for state projects will be based on the following criteria. If there a statewide impact, the project should provide statewide support and should be cost effective and needed annually. The quality of the project will also be considered. If there is not statewide impact, state projects will be selected based on Save City/Save County ranking; the lack of local resources to enter into an agreement for the project; cost effectiveness of the project; annual need for the project; quality of the project; subgrantee resources such as personnel, equipment, training, and administrative support; continuation of an existing grant; whether the project is in a priority area; and the innovativeness of the project, with local match funds a bonus criterion.

Legislative mandate, public opinion, and resource availability may also influence proposal selection.

Issued in Austin, Texas, on September 21, 1994.

TRD-9448374 Diane L. Northam
Legal Executive Assistant
Texas Department of Transportation

Filed: September 21, 1994

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Request for Proposals

Notice of Invitation The Texas Department of Transportation (TxDOT) intends to engage an architect/engineer, pursuant to Texas Government Code, Chapter 2254, Subchapter A, to provide the following services: schematic design, detailed plans, specifications, estimates and construction administration for a Radio and Traffic Signal Shop with an Asphalt Testing Laboratory to be located within the existing district headquarters site at 4615 North West Loop 410, San Antonio, Texas

Deadline for Proposals Proposals can be hand delivered to Texas Department of Transportation, General Services Division, 150 East Riverside Drive, Suite 406N, Austin, Texas 78704, or mailed to 125 East 11th Street, Austin, Texas 78701-2483 The deadline for proposals will be 5 00 p m on Tuesday, November 15, 1994 No proposals will be accepted after this date and time

Agency Contact For additional information contact Rick Andrews or Ully Flores at the above address or by phone at (512) 416-3048 or fax (512) 416-3072

Issued in Austin, Texas, on September 19, 1994

TRD 9448273 Diane L Northam
Legal Executive Assistant
Texas Department of Transportation

Filed September 19, 1994

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