Texas Register

Volume 18, Number 9, February 2, 1993 Page 619-719

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Texas Register

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POSTMASTER: Please send form 3579 changes to the *Texas Register*, P.O. Box 13824, Austin, TX 78711-3824.

How to Use the Texas Register

Information Available: The 10 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

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 Sections - sections adopted by state agencies on an emergency basis.

Proposed Sections - sections proposed for adoption.

Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

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

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 18 (1993) is cited as follows: 18 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 "18 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 18 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*, releases cumulative supplements to each printed volume of the *TAC* twice each year.

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
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:

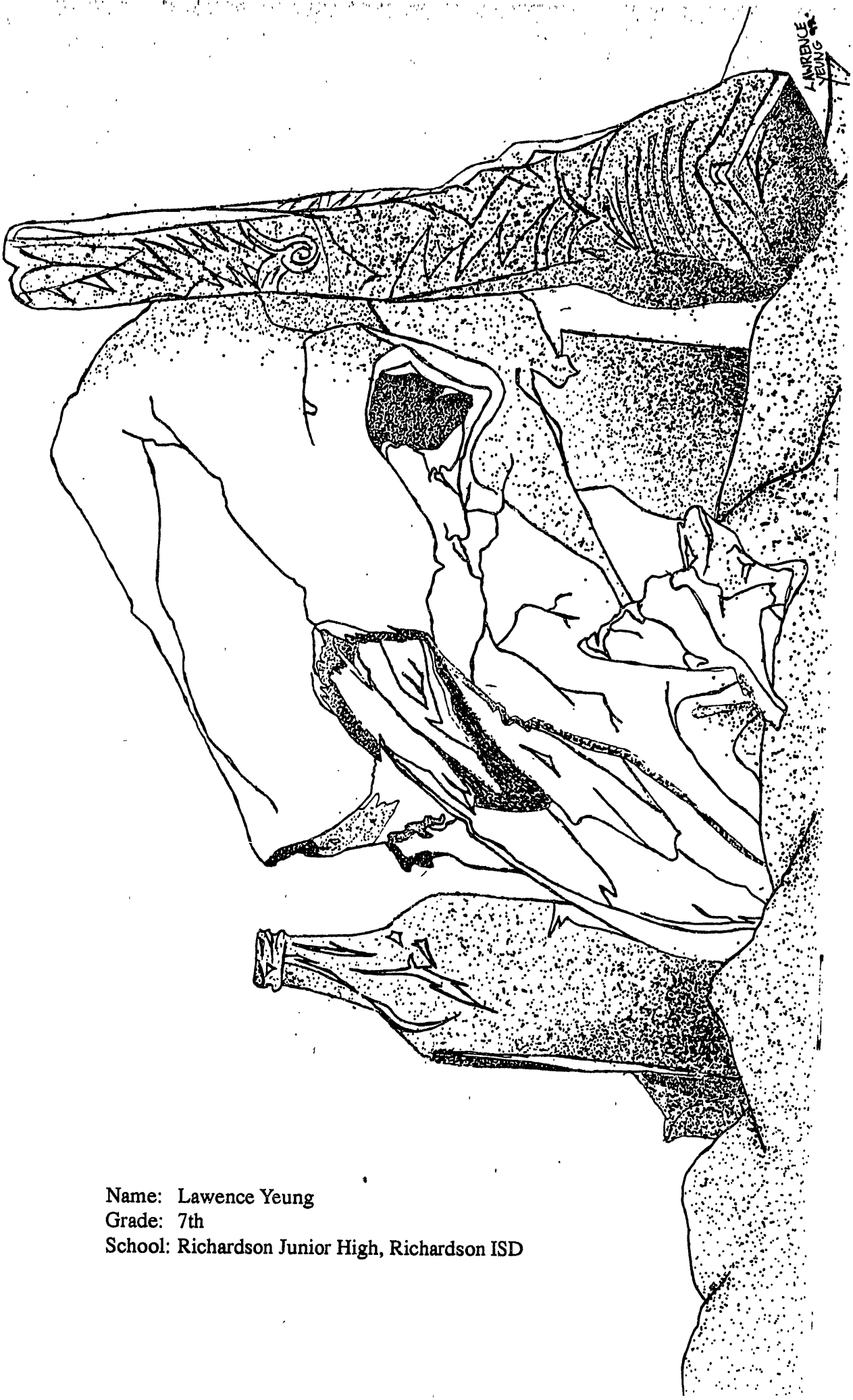
1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

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 22, April 16, July 13, and October 12, 1993). 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).

Update by FAX: An up-to-date *Table of TAC Titles Affected* is available by FAX upon request. Please specify the state agency and the TAC number(s) you wish to update. This service is free to *Texas Register* subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of $2.00 per page (VISA, MasterCard). (512) 463-5561.



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Grade: 7th
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Name: Adam Parsons
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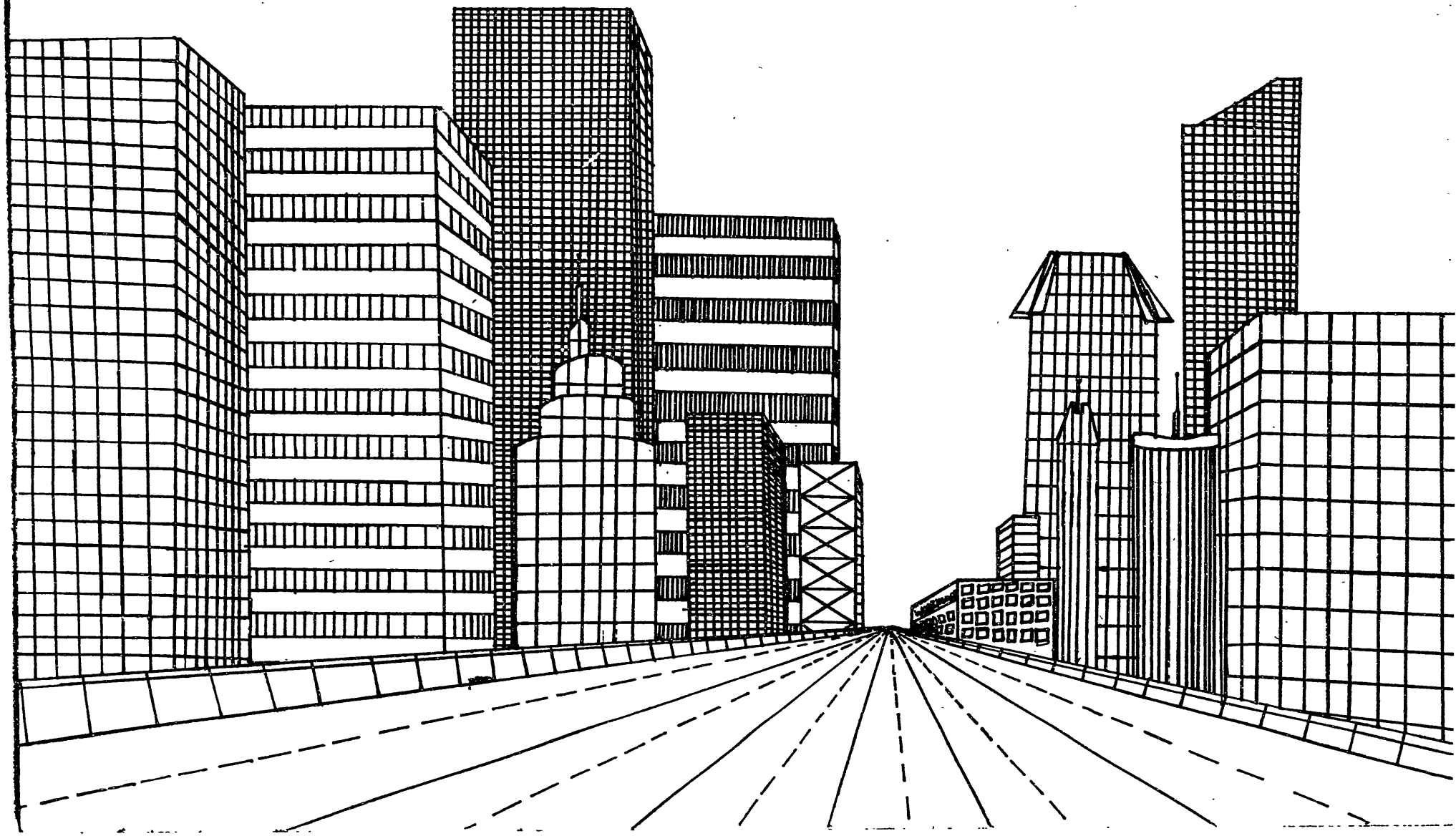

Name: George Johnson
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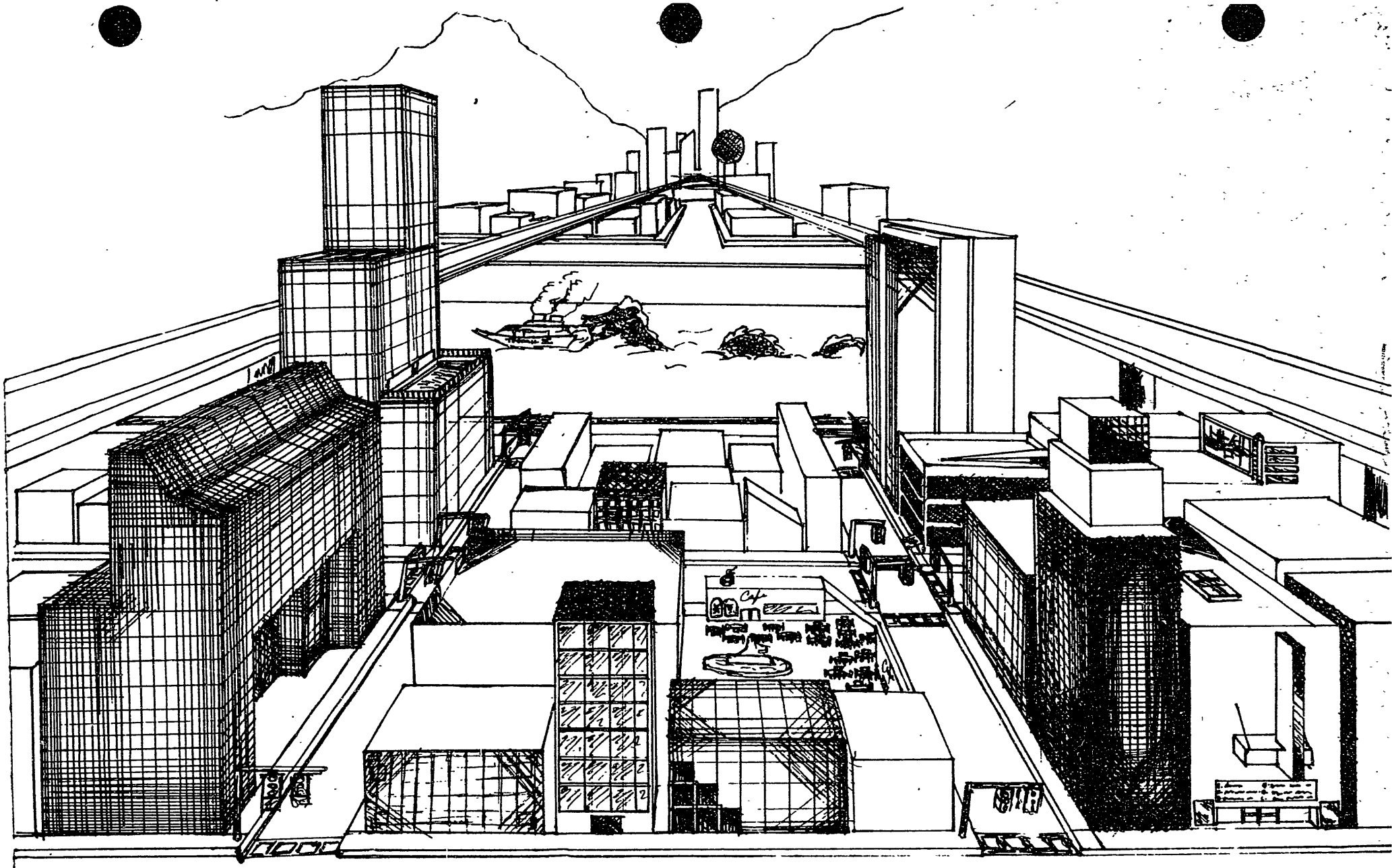

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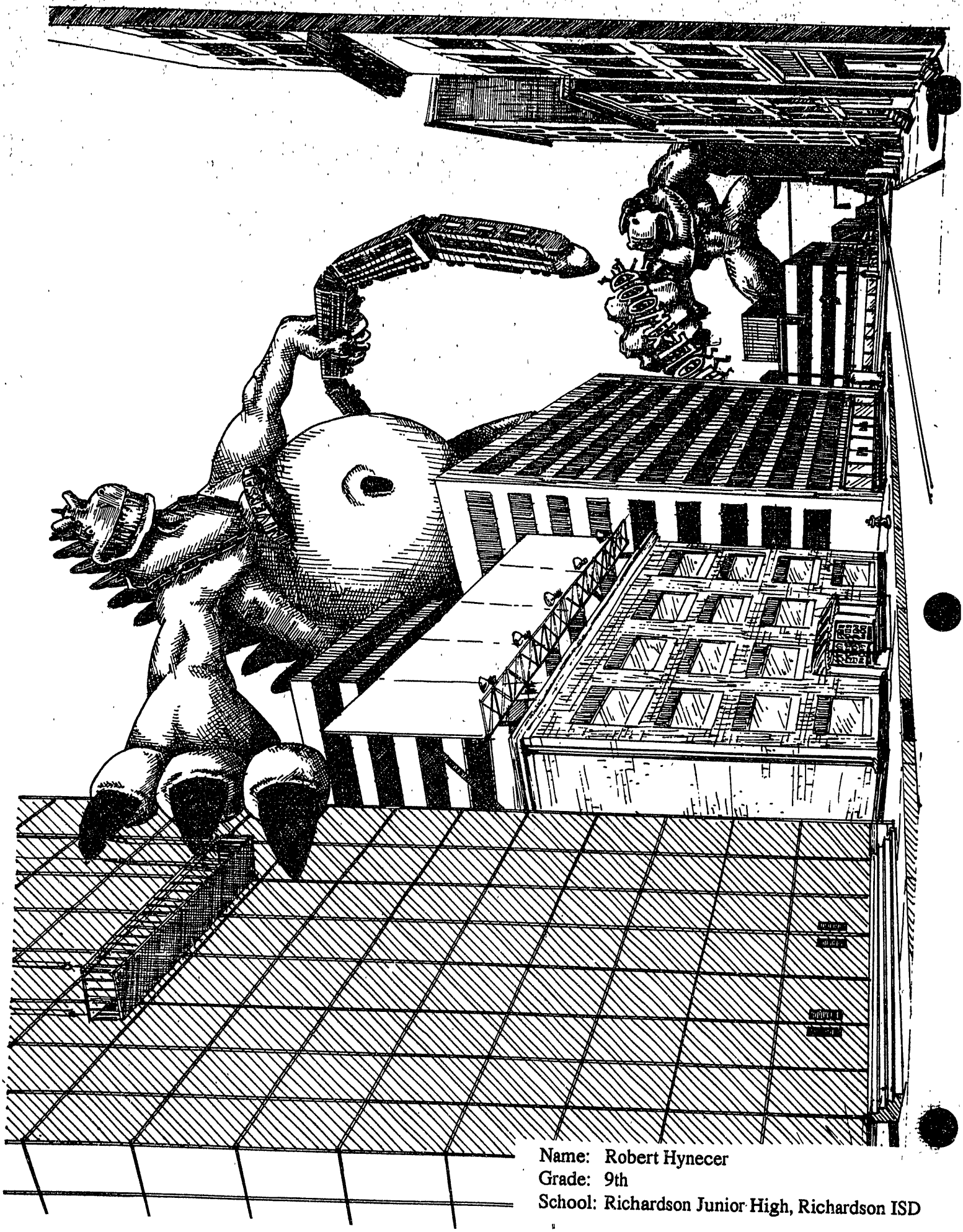

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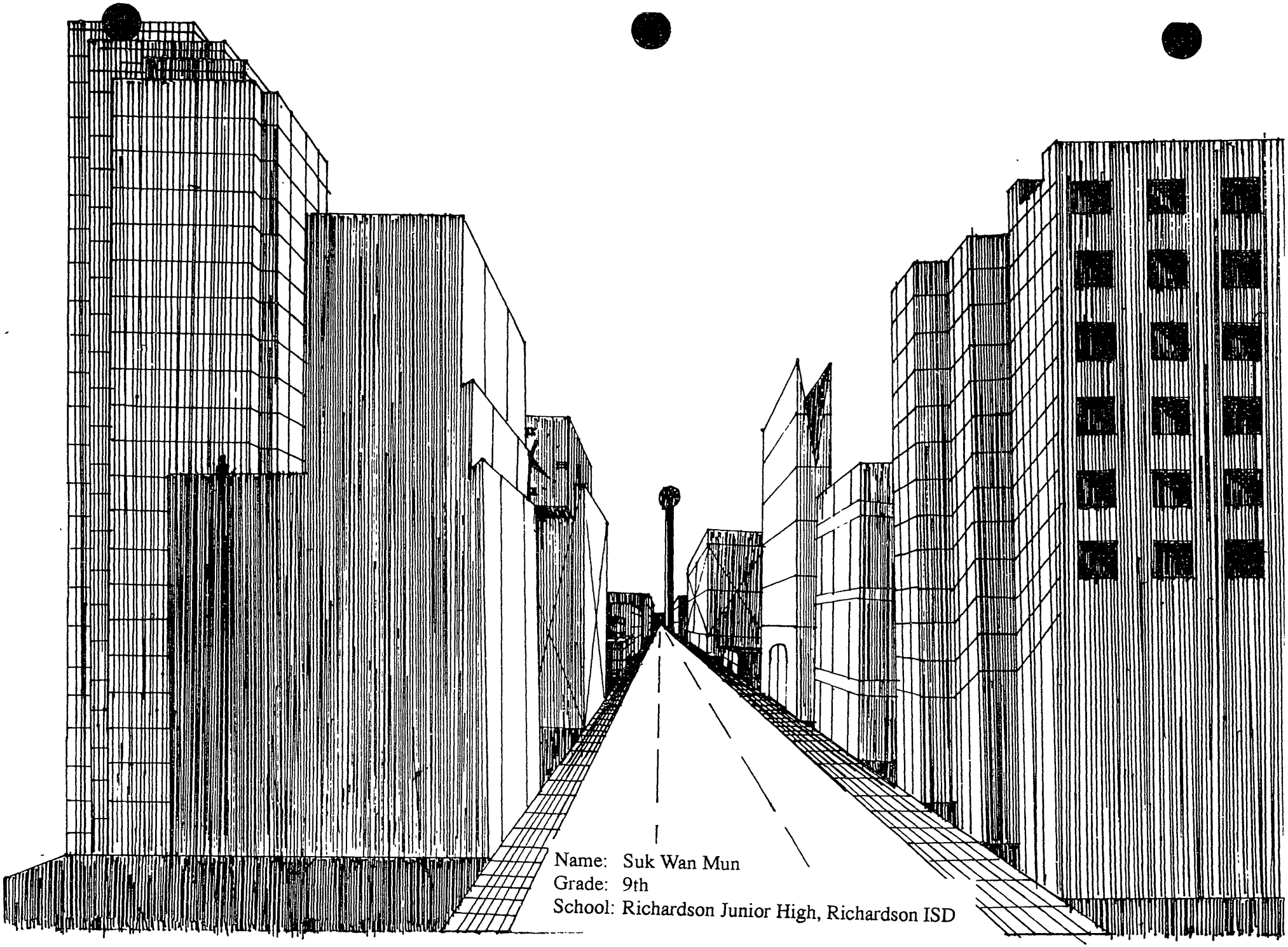
Grade: 9th
School: Richardson Junior High, Richardson ISD



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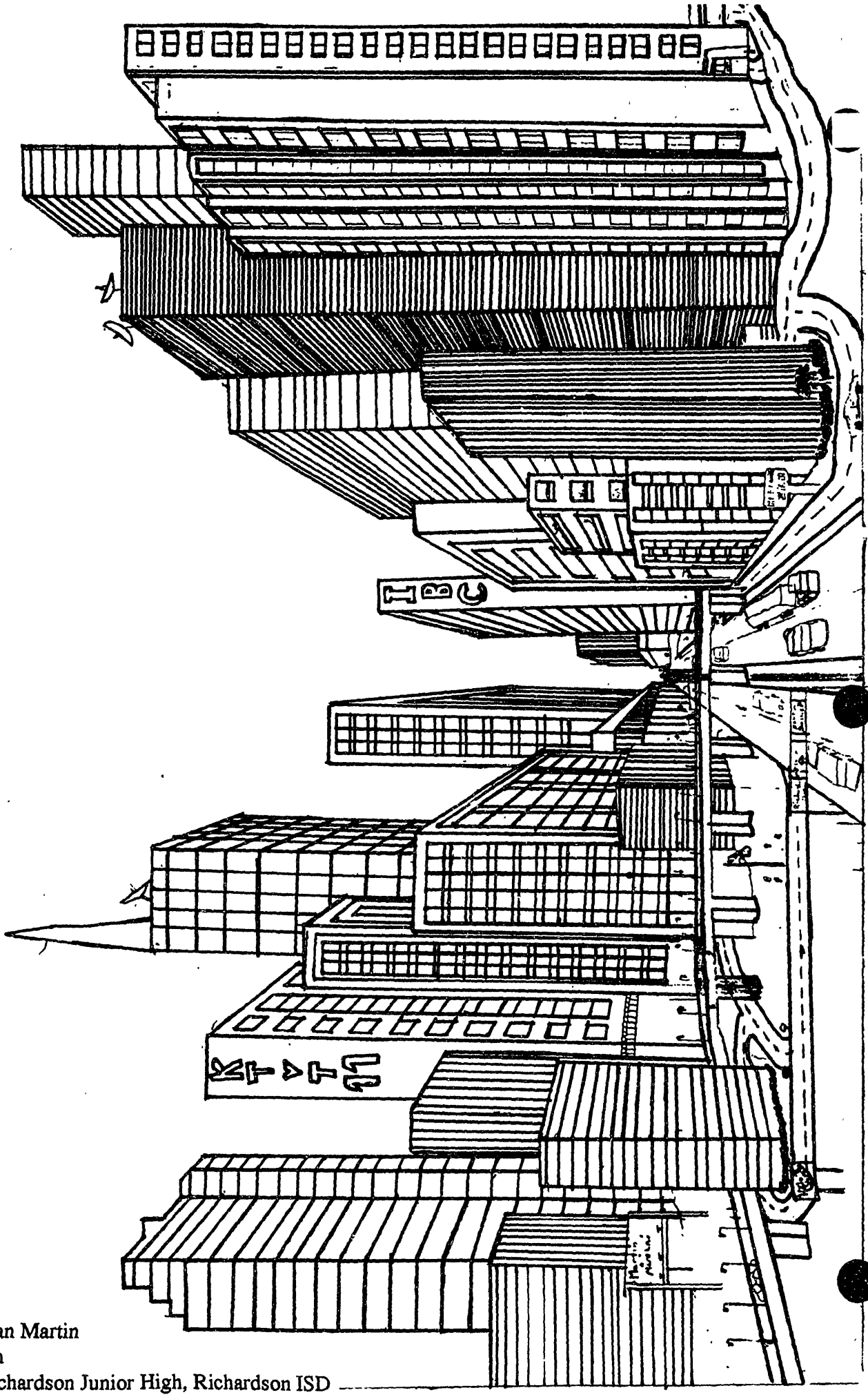
School: Richardson Junior High, Richardson ISD



Name: Stan Martin
Grade: 9th
School: Richardson Junior High, Richardson ISD

Emergency Sections

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the *Texas Register*, or on a stated date less than 20 days after filing, for no more than 120 days. The emergency action is renewable once for no more than 60 days.

Symbology in amended emergency sections. New language added to an existing section is indicated by the use of **bold text.** [Brackets] indicate deletion of existing material within a section.

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 229. Food and Drug

Licensing of Wholesale Distributors of Drugs-Including Good Manufacturing Practices

• **25 TAC §229.252**

The Texas Department of Health is renewing the effectiveness of the emergency adoption of amended §229.252, for a 60-day period effective January 27, 1993. The text of amended §229.252 was originally published in the October 6, 1992, issue of the *Texas Register* (17 TexReg 6843).

Issued in Austin, Texas on January 25, 1993.

TRD-9318145 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: January 27, 1993

Expiration date: February 16, 1993

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 15. Coastal Area Planning

Subchapter E. Interim Approval of Local Government Dune Protection and Beach Access Plans

• **31 TAC §§15.70-15.79**

The General Land Office is renewing the effectiveness of the emergency adoption of new §§15.70-15.79, for a 60-day period effective January 28, 1993. The text of new §§15.70-15.79 was originally published in the October 9, 1992, issue of the *Texas Register* (17 TexReg 6975).

Issued in Austin, Texas, on January 26, 1993.

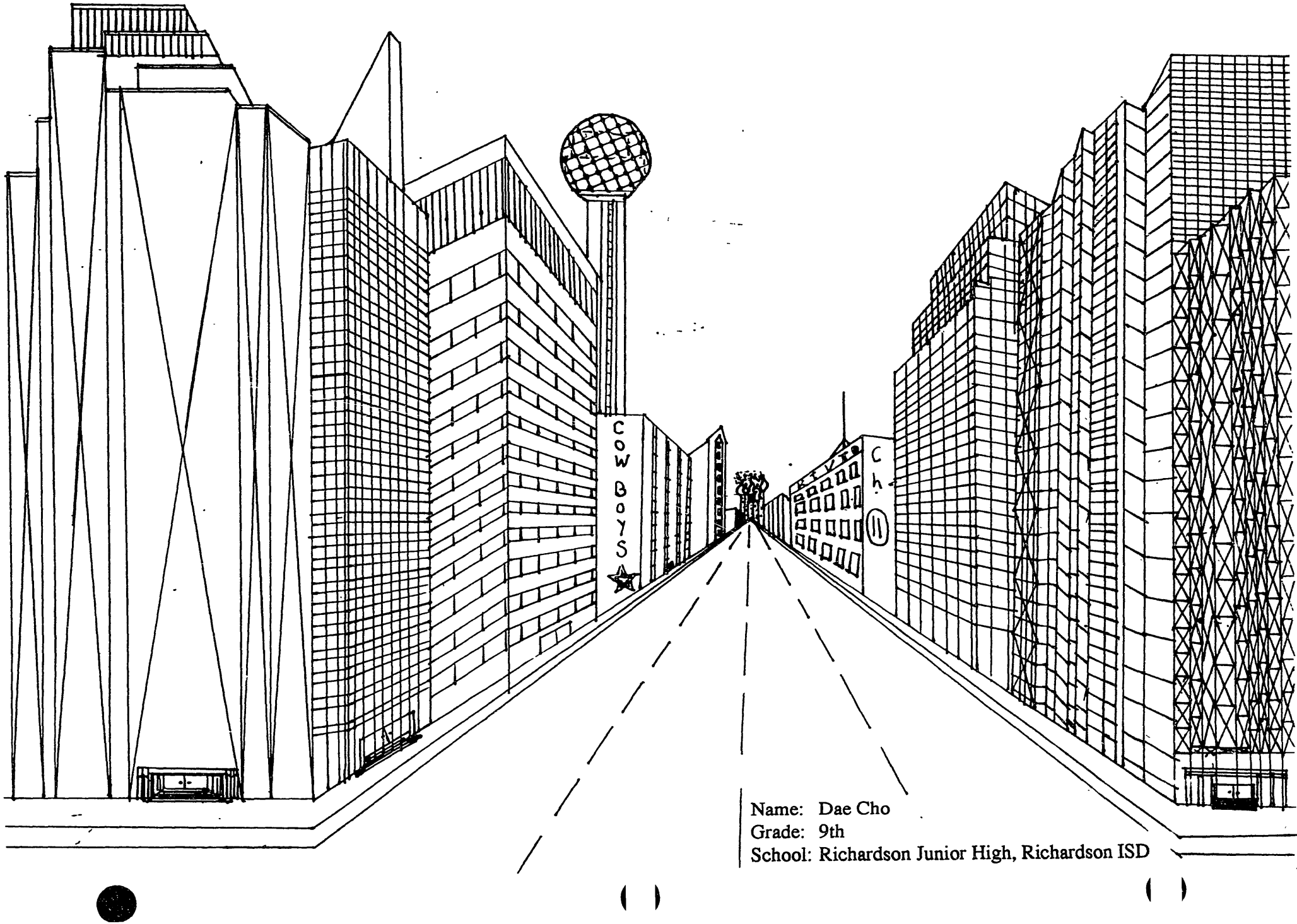
TRD-9318215 Garry Mauro
Commissioner
General Land Office

Effective date: January 28, 1993

Expiration date: March 29, 1993

For further information, please call: (512) 463-5007

♦ ♦ ♦



Name: Dae Cho
Grade: 9th
School: Richardson Junior High, Richardson ISD

Proposed Sections

Before an agency may permanently adopt a new or amended section, or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before any action may be taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive sections, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the use of **bold text.** [Brackets] indicate deletion of existing material within a section.

TITLE 22. EXAMINING BOARDS

Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Mandatory Continuing Education

• 22 TAC §535.71, §535.72

The Texas Real Estate Commission proposes amendments to §535.71 and §535.72, concerning approval of mandatory continuing education (MCE) providers, courses and instructors, presentation of courses, advertising, and records.

The amendment to §535.71 adopts by reference a series of revised forms used by applicants and providers. Minor changes have been made in the forms to obtain additional information such as social security numbers or business addresses or to eliminate unnecessary questions and provide additional space for answers. Two forms which relate to course schedules and schedule changes would no longer be required and two new forms are proposed for adoption. MCE Form 10-0, MCE Out of State Course Credit Request, would be used by real estate licensees to request MCE credit for a course taken to satisfy continuing education requirements of another state. MCE Form 12-0, State Bar Course Credit Request, would be used by real estate licensees to request MCE credit for a course offered by the State Bar of Texas.

Throughout §535.71 and §535.72, references to the application forms would be changed, and some passages would be shortened or rephrased for clarity.

The amendment to §535.71 also clarifies that providers who offer a course originally approved for another provider must use all materials required in the original course. The amendment would permit MCE credit to be given for specific core real estate courses and MCE courses could be used to satisfy prelicensing or salesman annual educational requirements. Providers would be required to provide students with a copy of the course outline and bibliography submitted to the commission as a part of the course instructor manual.

The amendment to §535.72 would eliminate requirements for providers to file course schedules or changes to course schedules with the commission. Providers would no longer be permitted to use enrollment agreements in lieu of precourse announcements regarding required attendance. Restrictions would be removed on use of facilities controlled by or identified with real estate brokerage firms or real estate franchise organizations and on a provider's use of a name identifying brokerages or franchises. Providers would be required to include separate fees for course materials in their advertisements if course materials are not included in the tuition.

The amendment to §535.72 also would revise the guidelines for instructors to receive MCE credit. Instructors would continue to receive credit once for each course for the portion taught by the instructor but would have to attend all the remainder of the course to receive additional credit.

Donald C. Roose, Director of Education, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Roose also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased efficiency in the review and approval of MCE providers, courses and instructors, and clarification of the requirements for providers in the offering or advertising of courses. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Donald C. Roose, Director of Education, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas, 78711-2188.

The amendments are proposed under Texas Civil Statutes, Article 6573a §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§535.71. Mandatory Continuing Education: Approval of Providers, Courses, and Instructors.

(a)-(b) (No change.)

(c) The commission adopts by reference the following forms [approved by the commission in 1990 and] published and available from the commission, P.O. Box 12188, Austin, Texas 78711-2188:

(1) MCE Form **1A-1** [1A-0], MCE Provider Application;

(2) MCE Form **1B-1** [1B-0], MCE Provider Application Supplement;

(3) MCE Form **2-2** [2-1], MCE Principal Information Form;

(4) MCE Form **3A-1** [3A-0], MCE Course Application;

(5) MCE Form **3B-2** [3B-1], MCE Course Application Supplement;

(6) MCE Form **3C-1** [3C-0], MCE Single Course Offering Application;

(7) MCE Form **4A-2** [4A-1], MCE Instructor Application;

(8) MCE Form **4B-2** [4B-1], MCE Instructor Application Supplement;

[(9) MCE Form 5-2, MCE Course Schedule;

[(10) MCE Form 6-2, MCE Course Schedule Change Notice;]

(9) [(11)] MCE Form 7-0, MCE Course Completion Card;

(10)[(12)] MCE Form **8-2** [8-1], MCE Course Completion Roster;

(11)[(13)] MCE Form **9-2** [9-1], MCE Correspondence Course Reporting Form; [and]

(12) MCE Form 10-0, MCE Out of State Course Credit Request;

(13)[(14)] MCE Form **11-3** [11-2], MCE Instructor Credit Request; **and**

(14) MCE Form 12-0, State Bar Course Credit Request.

(d) (No change.)

(e) To be approved to offer a classroom course for MCE credit, the provider must satisfy the commission that the course subject matter is appropriate for a continuing education course for real estate licensees and that the information provided in the course will be current and accurate.

(1) A provider applicant must submit an MCE Form **3A-1** [3A-0], MCE Course Application, the first time approval is sought to offer an MCE course. Once a course has been approved, no further approval is required for another approved pro-

vider to offer the same course. **Prior to advertising or offering the course, however,** [although] the subsequent provider must complete MCE Form 3B-1, [and] file the form with the commission, **and receive written or oral acknowledgement from the commission that all necessary documentation has been filed** [prior to advertising or offering the course]. Providers must submit an instructor's manual for each proposed course. A copy of the previously approved instructor's manual must also be submitted for each previously approved course the provider intends to offer. **Subsequent providers must offer the course as originally approved or as revised with the approval of the commission and must use all materials required in the original or revised course.** The commission will publish guidelines to aid providers in the development of instructor manuals. Each manual must contain the following:

(A)-(G) (No change.)

(2) The commission may approve a course for a single offering without regard to the requirements of paragraph (1) of this subsection. The provider must be approved by the commission in accordance with the provisions of this section. **The** [, and the] course may not be offered again during a providership unless the course has been approved by the commission for subsequent offerings by the original provider in accordance with the provisions of this section [and all requirements for approval, including payment of the application fee, have been satisfied]. The provider must submit MCE Form, **3C-1** [3C-0], MCE Single Course Offering Application.

(f) To be approved as an instructor of any MCE course, a person must satisfy the commission as to the person's competency in the subject matter to be taught and ability to teach effectively. An instructor applicant must submit through the proposed provider an MCE Form **4A-2** [4A-1], MCE Instructor Application, the first time approval is sought to teach an MCE course. For subsequent approval to teach a different course, an MCE Form **4B-2** [4B-1], MCE Instructor Application Supplement, must be submitted. Once an instructor has been approved to teach a course, no further approval is required for the instructor to teach the same course for another provider, although the subsequent provider must complete [the appropriate section of] MCE Form **4B-2** [4B-1] and file the form with the commission prior to using the instructor in the course.

(1) (No change.)

(2) The commission may also approve an instructor for a single offering of a course. The provider must submit an MCE Form **3C-1** [3C-0], MCE Single Course Offering Application, and provide additional information about the instructor's qualifications at the commission's request.

(g) (No change.)

(h) Fees shall be established by the commission in accordance with the provisions of the Real Estate Licensing Act, §7A, at such times as the commission deems appropriate. Fees are not refundable and must be submitted in the form of a cashier's check or money order, or, in the case of state agencies, colleges or universities, in a form of payment acceptable to the commission. If a provider seeks approval to offer a course previously approved for another provider, and less than one year remains for the course to be offered, the filing fee shall be one-half the current fee for approval of a course. **Provided,** [; provided] however, the full current fee is required for an application for approval of a single course offering.

(i)-(k) (No change.)

(l) A course must be devoted to one or more of the subjects specified under the course titles in the Act, §7(a)(2)-(4) and §7(a)(7)-(9), to real estate professionalism and ethics or to other subjects approved by the commission for MCE credit. MCE courses must be presentations of relevant issues and changes within the subject areas as they apply to the practice of real estate in the current market. The commission shall periodically publish lists of subjects other than legal topics which are approved for MCE credit. Courses approved by the commission for pre-licensing education or salesman annual education requirements provided in the Act, §7(d) and (e), **may be accepted** [are not acceptable] for satisfying MCE requirements **provided the student attended the entire course, and** [nor may] MCE courses **may** be accepted by the commission **as real estate related courses** for satisfying the education requirements of the Act, §7(d) and (e). The commission may not approve a course which promotes the sale of goods or services by the provider or by a vendor affiliated or associated with the provider. Providers may sell educational materials, such as textbooks or recordings, related to the subjects of the course.

(m) Providers must furnish students with copies, for students' permanent use, of **the outline of the subject matter and bibliography or source of updated subject matter which were submitted to and approved by the commission as part of the course instructor manual** [any printed material which is the basis for a significant portion of the course]. Ample space must be provided on handouts for notetaking or completion of any written exercises.

(n)-(p) (No change.)

(q) To be approved to offer a correspondence course for MCE credit, the provider must satisfy the commission that the course subject matter is appropriate for a continuing education course for real estate licensees and that the information provided in the course will be current and accurate. An applicant must submit an MCE Form **3A-1** [3A-0], MCE Course Application, the first time approval is sought to offer an MCE correspondence course. Once a course has been approved, no further approval is required for another approved provider to offer the same course. **Prior to advertising or offering the course, however,** [although] the subsequent provider must complete MCE Form **3B-2** [3B-1], [and] file the form together with the appropriate fee with the commission, **and receive written or oral acknowledgement from the commission that all necessary documentation has been filed** [prior to advertising or offering the course]. The commission will publish guidelines to aid providers in the development of correspondence courses. Each correspondence course must contain the following:

(1)-(8) (No change.)

§535.72. Mandatory Continuing Education: Presentation of Courses, Advertising, and Records.

(a) **Providers are not required to file course schedules with the commission** [Upon course approval a provider shall furnish the commission with an MCE Course Schedule, MCE Form 5-2, of all offerings of each course approved for MCE credit. The schedule must be filed at least 15 days prior to the date the first course will be presented].

(b) **Providers are not required to notify the commission of changes to their course schedules** [Providers shall notify the commission of any change to a filed MCE Course Schedule, Form 5-2, by filing MCE Course Schedule Change Notice Form 6-2, no later than 10 days prior to the original starting date of the course. In the event of an emergency, including without limitation course cancellation or change in location of the course, providers shall immediately notify the commission by telephone, but no later than the beginning of the next business day].

(c) The provider offering each MCE course shall file an MCE Course Completion Roster, MCE Form **8-2** [8-1], and, for each student completing the course, an MCE Course Completion Card, MCE Form 7-0, with the commission within 10 days following completion of the course. Prior to the commencement of each course, each student seeking MCE credit for that course shall print his or her name and license number on MCE Form **8-2** [8-1]. The names of students not seeking MCE credit must not appear on MCE Form **8-2** [8-1]. If the provider was in attendance, the provider shall sign MCE Form **8-2** [8-1]. If the pro-

vider was not in attendance, an authorized representative of the provider who was in attendance and for whom an authorized signature exemplar is on file with the commission shall sign MCE Form 8-2 [8-1]. The commission may not accept signature stamps, unsigned forms, or forms signed by persons for whom an authorized signature exemplar has not been previously filed with the commission. Providers must make every reasonable effort to ensure that no student is certified for MCE credit who has not attended all class sessions. Providers may not use students for administration or monitoring duties during the course if the use prevents the student's participation in a significant portion of the course.

(d) (No change.)

(e) Providers of MCE correspondence courses shall furnish each student with an MCE Correspondence Course Reporting Form, MCE Form 9-2 [9-1], at the time of the final examination. Upon completion of the examination the student shall sign MCE Form 9-2 [9-1]. To report successful course completion the provider shall file the completed MCE Form 9-2 [9-1] with the commission. Providers may not report correspondence courses on MCE Forms [5-2, 6-2,] 7-0, 8-2 [8-1], or 11-3 [11-2].

(f) A provider shall, prior to commencement of a course, announce that the provider will not certify a student for MCE credit unless the student attends all sessions of the course, that partial credit will not be given for partial attendance, that no make-ups or written work will be allowed for MCE credit, that the student must determine if the course is timely and appropriate for the student's MCE requirement, and that the student should retain the detachable portion of MCE Form 7-0 as documentation of attendance. In addition to [lieu of] the pre-course announcements, the provider is encouraged to [may] require each student to sign an enrollment agreement containing the foregoing information prior to the start of the course. If the provider has not advertised or otherwise made students aware of the provider's refund policy, the enrollment agreement must also contain the refund policy. If the course is offered in one continuous session with no meal break and no more than four hours of MCE credit is awarded, the provider may verify attendance by use of a course completion card, MCE Form 7-0, signed by each student attending all of the course. If the course involves a meal break or is presented in more than one session, such as a course offered for three hours each day for five days, the provider shall verify attendance prior to the beginning of each session, using the original course completion roster, MCE Form 8-2 [8-1], as the enrollment record. A provider shall retain attendance records for the period of time required by these sections for the retention of provider records.

(g) (No change.)

(h) Providers may not present MCE courses in the offices of[, or facilities controlled by, or identified with,] a real estate brokerage firm or real estate franchise organization. All MCE courses must be publicized as open to enrollment by the general public. Providers may give preference in enrollment to persons who need MCE credit to obtain, renew, or activate a license and may enroll all others on a space available basis.

(i) Advertising of MCE shall be subject to the following conditions.

(1) A person may not advertise a specific MCE course or represent in advertising that the person is [or will be] a provider until the person has received written approval from the commission for the providership and at least one course [or the provider has been approved and has notified the commission that the provider intends to offer a course previously approved for another provider]. A person may advertise an intention to offer MCE courses if no specific course is described and the advertisement clearly indicates the person has not been approved as a provider.

(2) A provider may not advertise **that a course has been approved** or offer a course until the provider has received written approval of the course. **If, however,** [or if] the course has been previously approved for another provider, **the course may be advertised once** [until] the commission has been notified of the provider's intention to offer the same course **and the provider has received written or oral acknowledgment from the commission that all necessary documentation has been filed.**

(3)-(5) (No change.)

(6) Any name a provider uses in advertising must not be deceptively similar to the name of any other approved MCE provider or school accredited by the commission or falsely imply a governmental relationship [or identify a real estate brokerage or franchise organization].

(7) If a provider requires students to purchase course materials which are not included in the tuition, any such fees must appear in the advertisement of the course.

(j) Providers shall retain student attendance records, including copies of completed MCE Form 8-2 [8-1], for a period of three years following the completion of a course and shall make copies of the records available to former students. A provider may charge a reasonable fee to defray the cost of copying student records. A provider's records must be kept at the location designated in the MCE Provider Application. Providers must obtain prior approval from the commission to change the location at which the provider's records are kept.

(k)-(l) (No change.)

(m) Providers shall request permission to change business name, street or mailing address, ownership, person responsible for records or day-to-day operations, or persons authorized to sign MCE forms at least 15 days prior to the desired date of change. Providers shall report any change in refund policy, attorney-in-fact, address of attorney-in-fact, or business telephone number as the change occurs. All changes must be submitted on MCE Form 1B-1 [1B-0], MCE Provider Application Supplement.

(n)-(o) (No change.)

(p) Providers may request MCE credit be given to instructors of MCE courses subject to the following guidelines.

(1) The instructors **may receive credit for portions** [must teach or be present for at least three hours] of the course **which they teach.**

(2) **The instructors may receive full course credit by attending all of the remainder of the course** [Credit may be requested only for time spent in classroom teaching or a combination of teaching and classroom attendance].

(3) MCE credit may be **granted** [requested] only once for each course.

(4) The provider must report the instructor on MCE Form 11-3 [11-2], and file that form with the commission along with other required forms for the course. The provider may not submit MCE Course Completion Card, MCE Form 7-0, for the instructor or obtain the signature of the instructor as a student on MCE Form 8-2 [8-1].

(q)-(r) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on January 22, 1993.

TRD-9318139

Mark A. Moseley
General Counsel
Texas Real Estate Commission

Earliest possible date of adoption: March 5, 1993

For further information, please call: (512) 465-3900

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Licenses

• 22 TAC §535.92

The Texas Real Estate Commission proposes an amendment to §535.92, concerning license renewals and satisfaction of mandatory continuing education (MCE) requirements.

The amendment clarifies that real estate brokers may have a license on inactive status. Like inactive salesmen, the inactive brokers would be required to furnish a residence address to the commission and report subsequent changes of address. The amendment also would permit the commission to issue a license to a previously licensed applicant prior to completing the investigation of a pending complaint; the license would be subject to disciplinary action based on the complaint.

The amendment also deletes language referring to inactive status that might be provided by the commission's enabling law, Texas Civil Statutes, Article 6573a; inactive status for brokers and salesmen is now expressly provided by the law. A number of nonsubstantive changes are made for clarity and to conform the section with the commission's current practice of permitting renewal applications to be filed no later than the day the license expires. The amendment also would require licensees to use forms approved by the commission when requesting MCE credit either for courses satisfying another state's continuing education requirements or for courses offered by the State Bar of Texas.

Donald C. Roose, Director of Education, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Roose also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the requirements for renewal of a real estate license. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Donald C. Roose, Director of Education, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h) , which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

§535.92. Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements.

(a)-(c) (No change.)

(d) An inactive broker or inactive salesman may renew a license by complying with the renewal procedures established by the commission. [An "inactive salesman" is a licensed salesman who is not sponsored by a licensed broker.] An inactive licensee [salesman] shall furnish a residence address at the time the licensee [salesman] becomes inactive and report all subsequent address changes.

(e) (No change.)

(f) Each licensee shall, as a condition of maintaining a license, pay the renewal fee [or fees when requested to do so by the commission. Payment of renewal fees must be made] no later than the day the current license expires. A licensee who fails timely to pay a renewal fee must apply for and receive a new active license in order to act as a real estate broker or salesman [file an original application which has been approved to regain licensure]. If the [original] application is filed within one year after [prior to] the expiration of an existing license, the commission may issue the new license prior to completing the investigation of any complaint pending against the applicant or of any matter revealed by the application without waiving the right to initiate an action to suspend or revoke the license after notice and hearing in accordance with the Act, §17.

(g) (No change.)

(h) If a licensee files a timely application to renew a license but has not satisfied applicable MCE requirements, the commission shall advise the applicant of the number of MCE hours required to renew the license and the time for satisfying MCE requirements. If MCE requirements have not been satisfied by the expiration date of the existing license, [and an inactive status is provided by the Act for the license,] the commission shall place the license in an inactive status. [If MCE requirements have not been satisfied by the expiration date of the existing license and no inactive status is provided by the Act for the license, the license expires; the licensee must then file an original application for a license which must be approved by the commission before a new license is issued.] Original applications and return to active status are subject to MCE requirements imposed by the Act. [If a application is filed prior to the expiration of the current license the licensee must satisfy the MCE requirements that would have been imposed for a timely renewal.

(i) A real estate licensee shall not receive MCE credit for a license renewal unless the licensee attends all of the MCE course. Credit shall not be given for attendance of the same course more than once during the term of the current license or during the two-year period preceding the filing of an application for late renewal or return to active status [original application]. Each licensee attending all sessions of a course shall sign the course completion form, MCE Form 7-0. A false statement to the commission concerning attendance at an MCE course shall be deemed a violation of the Act, §15(a)(2) [§15(2)], and of this section.

(j) A course [Courses] taken by a Texas licensee to satisfy continuing education [MCE] requirements of another state may be approved on an individual basis for MCE credit in this state upon the commission's determination that:

(1) (No change.)

(2) the course was approved for continuing education [MCE] credit by the other state;

(3) the Texas licensee's successful completion of the course has been evidenced by a course completion certificate, a letter from the provider, or such other proof as is satisfactory to the commission; [and]

(4) the subject matter of the course was predominately devoted to a subject acceptable for MCE credit in this state; and [.]

(5) the Texas licensee has filed MCE Form 10-0, MCE Out of State Course Credit Request, with the commission.

(k) A licensee shall file MCE Form 12-0, State Bar Course Credit Request, with the commission to request MCE credit for real estate related courses approved by the State Bar of Texas for minimum continuing legal education participatory credit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on January 22, 1993.

TRD-9318138

Mark A. Moseley
General Counsel
Texas Real Estate Commission

Earliest possible date of adoption: March 5, 1993

For further information, please call: (512) 465-3900

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 3. Traffic Law Enforcement

Accident Investigation

• 37 TAC §3.10

The Texas Department of Public Safety (DPS) proposes new §3.10, concerning DWI

accident response cost recovery-billing for services. Texas Civil Statutes, Article 6701l-1, §(n), requires the department to bill for services in response to an accident involving driving while intoxicated (DWI). Members of the department charging a DWI offense where the offense directly resulted in an accident requiring DPS response shall initiate billing for services.

Melvin C. Peeples, Assistant Chief of Fiscal Affairs, has determined that for the first five-year period the section is in effect there will be fiscal implications for state or local government as a result of enforcing or administering the section. The department has no historical data on which to estimate increase in revenue for state government. Any effect on local government is not applicable to DPS.

George C. King, Chief of Traffic Law Enforcement, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure the public that the department complies with statutory requirements to bill for services in DWI accident responses. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed cannot be determined.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The new section is proposed under the Texas Government Code, §411.004(3) and §411.006(4), which provides the director with the authority to adopt rules necessary for the control of the department, subject to the Public Safety Commission's approval.

§3.10. DWI Accident Response Cost Recovery–Billing for Services.

(a) Pursuant to Texas Civil Statutes, Article 67011-1, §(n), the Texas Department of Public Safety (DPS) complies with the requirement to bill for services in response to an accident involving driving while intoxicated (DWI).

(b) Members charging a DWI offense where the offense directly resulted in an accident requiring DPS response shall initiate billing for services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on January 11, 1993.

TRD-9318140 James R. Wilson
Director
Texas Department of Public Safety

Earliest possible date of adoption: March 5, 1993

For further information, please call: (512) 465-2000

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part IX. Texas Department on Aging

Chapter 255. State Delivery Systems

Planning and Service Areas Designation

• **40 TAC §255.12**

The Texas Department on Aging proposes an amendment to §255.12, concerning state procedures to designate planning and service areas. It incorporates into the Texas Administrative Code important aspects of the changes made to the Older Americans Act of 1965 as amended by the 1992 amendments.

Ann Ammons, director of field operations, Texas Department on Aging, has determined that for the first five-year period the section is in effect there will be no fiscal implications as a result of enforcing or administering the section.

Ms. Ammons also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be greater understanding of the roles and missions of area agencies on aging as a result of incorporating new language and simplifying previous language in the rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Request for public comment on the proposal may be submitted to Ann Ammons, Director of Field Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The new section is proposed under the Human Resources Code, §101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

§255.12. Designation of Planning and Service Area (PSA)

(a) A proposed PSA shall either be a combination of [contiguous with] or a subdivision of state planning regions as delineated by the governor and authorized by Local Government Code 391 [Texas Civil Statutes, Article 1011m]. A proposed PSA should not split an existing PSA.

(b) Existing PSAs shall continue to be designated unless [there is:] the designation of another PSA is necessary for the assurance of the efficient and effective administration of the programs authorized by the Older Americans Act.

[(1) demonstrated evidence that designation of an existing PSA is manifestly consistent with the purpose of the rules and regulations issued pursuant to the Act; or

[(2) the designation of another PSA is necessary for the assurance of the efficient and effective administration of the programs authorized by Title III of the Act and operating in the state.]

(c) The Texas Department on Aging [Committee] will document the basis for its designation of each PSA.

(d) State procedures to provide due process to affected parties, if the state agency initiates an action or proceedings to revoke designation, designate additional PSAs, divide the state into different PSAs, or other action otherwise affecting the boundaries of the PSA in the state will be as follows [Department will designate PSAs no later than December 1 of the year preceding the development of the two-year state plan].

(1) The State agency will provide notice of an action or proceedings to the affected area agencies on aging, grantee organizations and citizens advisory councils by certified mail.

(2) The State agency will provide in the notice the documentation for the need of the action or proceedings as follows:

(A) statutory authority for the action; and

(B) summary of projected impact of action on clients within service areas affected, and the improvements in service that will result from said action.

(3) The State agency will conduct public hearings for the action or proceedings as follows:

(A) hold hearings at strategic geographic locations across the state;

(B) give legal notice in local and regional newspapers of the times, dates, and locations of the public hearings at least 10 dates in advance;

(C) maintain a record, by registration of participants; and

(D) receive a report consisting of a summary of all oral testimony received at the hearings, copies of all written testimony, and a tabulation and listing of all persons attending. The report on the hearings will be presented in a public meeting of the Board within 30 days of the completion of the hearings.

(4) The State agency will request written comment from area agencies on aging, service providers, and older individuals on the action or proceedings.

(5) The State agency will allow an appeal to the Administration on Aging Commissioner of the decision of the Texas Board on Aging on the action or proceedings.

(6) The State agency will provide a plan for an orderly transition to ensure continuity in the provision of services to older persons in the PSA of any adversely affected grantee organization.

(e) An adversely affected party involved in an action or proceedings described in subsection (d) of this section, pertaining to due process, may bring an appeal as provided in subsection (d)(5) of this section, pertaining to appeals to the Commissioner on Aging, on the basis of the following:

(1) the facts and merits of the matter that is the subject of the action or proceeding; or

(2) procedural grounds.

(f) The Administration on Aging Commissioner's decision on the appeal described in subsection (d)(5) of this section, pertaining to submission of appeals to the Administration on Aging, may affirm or set aside the decision of the State agency and the Texas Board on Aging. If the Administration on Aging Commissioner sets aside the decision, the State agency shall nullify its action.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on January 27, 1993.

TRD-9318222 Mary Sapp
Executive Director
Texas Department on Aging

Earliest possible date of adoption: March 5, 1993

For further information, please call: (512) 444-2727

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Chapter 270. Adult Day Care

Statutes and Regulations

• 40 TAC §270.1

The Texas Department on Aging proposes new §270.1, concerning provision of adult day care as a service authorized under the Older Americans Act, Title III, as amended. This chapter establishes definitions, policies, and procedures to be followed when area agencies contract for this service or when they monitor this service to determine its effectiveness in promoting the health and independence of the elderly of Texas.

Ann Ammons, director of field operations, Texas Department on Aging, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Ammons, also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be greater understanding of the processes required of area agencies on aging to assure proper components of this service are included in contract stipulations and that monitoring of contracting programs is based on clear requirements established by the department. There is no effect on small businesses.

There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Request for public comments on the proposal may be submitted to Ann Ammons, Director of Field Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The new section is proposed under the Human Resources Code, §101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

§270.1. Adult Day-Care Service Standards.

(a) Purpose. This chapter establishes policies and procedures to be followed when area agencies on aging foresee the need to contract for and oversee the delivery of adult day care services in their planning and service area.

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

Adult Day Care–An array of services provided in a congregate setting to dependent older adults who need supervision but do not need institutionalization. These services may include any combination of social/recreational activities, health maintenance and monitoring, transportation, food, counseling, and/or physical therapy.

Unit of service–The unit of service is half a day. Three hours but less than six hours of covered service provided by the facility constitute one unit of service. Six hours or more of service constitute two units of service. Time spent in transportation provided by the facility shall be counted in the unit rate.

Service objective–The objective of adult day care services is to provide assistance to recipients residing in the community to prevent premature institutionalization and to provide respite for caregivers. Services are designed to address the physical, mental, social, and medical needs of clients through the provision of rehabilitative/restorative nursing and social services.

Target group–The program shall be provided for persons 60 years of age or older with priority given to meeting the needs of persons with the greatest economic or social needs and:

(A) who may not need continuing nursing care, but who require complete, full/part-time supervision in order to live in their own home or in the home of a relative; and/or

(B) who need assistance with activities of daily living in order to maintain themselves in the community; and/or

(C) who need intervention in the form of enrichment and opportunities for social interaction in order to prevent deterioration that would lead to an alternative housing placement.

(c) Service Activities. Adult Day care services program will provide or make arrangements for the provision of all the basic services provided as nursing services, physical rehabilitative services, nutrition services, other supportive services, and transportation services.

(1) Nursing services will consist of:

(A) assessing, observing, evaluating, and documenting a client's health condition and instituting appropriate intervention to stabilize or improve the client's condition to prevent complications;

(B) assisting the recipient in ordering medications;

(C) counseling the client on health needs and illness and involving significant others in the discussions of the immediate and long-term goals; and

(D) providing or supervising personal care services. The goal is to enable the client to restore, maintain, or improve his ability to perform such tasks.

(2) physical rehabilitative will consist of the following:

(A) restorative nursing; and

(B) group and individual exercises, including range of motion.

(3) nutrition services will consist of the following:

(A) one hot noon meal served between 11 a.m.-1 p.m. which supplies of the recommended daily allowance (RDA) for adults as recommended by the United States Department of Agriculture;

(B) special diets as required by the client's plan of care;

(C) supplementary mid-morning and mid-afternoon snack; and

(D) dietary counseling and nutrition education for the client and caregiver.

(4) Other supportive services will consist of cultural enrichment, educational, or recreational activities, and other social activities on site or in the community in a planned program to meet the social needs and interests of the clients.

(5) Transportation services will ensure that the facility make an efforts to provide transportation to and from the facility, if at all possible. If not, then staff will assist clients with other transportation arrangements.

(d) Service Outcomes. Services are designed to address the physical, mental, medical, and social needs of clients. The following depicts the service outcomes which should be the result of the Adult Day Care program.

(1) The client will be able to remain in a family environment, thereby allowing the family/caretaker a respite.

(2) The programs offered will be of a variety so that all clients will have the opportunity to participate at their individual level of capacity.

(3) The staff will have sufficient training in order to supervise clients in all program activities. This should include their ability to assess and recognize special clients' needs.

(4) The nursing program will provide quality instruction, education, supervision and consultation for the facility.

(5) The nutrition program will meet all RDA requirements as well as be pleasing to the program's participants. A nutritious, therapeutic diet will be planned to meet clients' individual needs.

(6) Clients' safety and accessibility needs will be considered during transportation efforts.

(e) Service Provider Eligibility. The following criteria must be met by a potential provider agency if it submits an application to provide Adult Day Care services.

(1) A facility licensed by the Texas Department of Public Health to provide adult day care services is eligible as a service provider.

(2) The provider agency contracted to deliver care must do so according to the requirements in the contract with the area agency on aging (AAA) and the Texas Department on Aging Standards, as applicable.

(3) Providers must meet all requirements of Title VI of the Civil Rights Act, the Rehabilitation Act of 1973, §504, the Age Discrimination Act of 1975, and the Americans with Disabilities Act of 1990.

(f) Facility Requirements. The service provider must ensure that the following requirements are met by the facility:

(1) a written daily activity schedule posted at least one week in advance;

(2) make available a brochure or letter which outlines the hours of operation, holidays, and a description of activities offered;

(3) emergency phone numbers posted near all phones;

(4) have an area available as a treatment/examination room;

(5) have a safe, secure, and suitable outdoor recreation and relaxation area for participants;

(6) have an adequate supply of materials for program activities;

(7) have first aid supplies, as recommended by the American Red Cross, on the premises;

(8) have sufficient chairs and tables to seat all clients, comfortably, at one time;

(9) have a provision for a quiet room/rest area indoors separate from other project activity;

(10) provision for a non-smoking area made to ensure the comfort of non-smoking participants;

(11) if located in a multipurpose center, the day care program self-contained with its own area and staff.

(g) staffing. The project will employ personnel sufficient to provide services to meet the needs of each client. Minimum requirements are as follows for the director or supervisor, the facility nurse, the activities director, the attendant, the house keeper/driver, dietitian consultant, and registered nurse consultant:

(1) Director or supervisor must have graduated from an accredited four year college or university and have one year of experience in human services or have an Associate Degree with three years of experience in human services or medically related program:

(A) be a registered nurse with one-year experience in a human service or medically related program; or

(B) meet the training and experience for a license as a nursing home administrator under the rules of the Texas Board of Licensure for Nursing Home Administrators.

(2) The facility nurse must be a registered nurse (RN) or a licensed vocational nurse (LVN). The facility nurse may also fulfill the function of facility director if he meets the qualifications for director.

(3) The activities director may fulfill the function of facility director if he meets the qualifications. One person cannot serve as nurse, director, and activities director, regardless of qualifications. The activities director must:

(A) have graduated from high school and;

(B) have two years of college plus two years of experience in working with the elderly; or

(C) have completed a state-approved activities director's course plus two years of experience in a patient-activities program in a healthcare setting.

(4) The attendant is responsible for:

(A) providing assistance with activities of daily living;

(B) assisting the activities director with recreational activities;

(C) providing protective supervision (observation and monitoring); and

(D) directing activities under the supervision of the activities director.

(5) The housekeeper/driver, if one is employed, is responsible for:

(A) operating the facility's vehicles in a safe manner;

(B) maintaining accurate daily mileage and expenditure records; and

(C) providing housekeeping and laundry services.

(6) The Dietitian Consultant is required as the facility must receive consultation from a dietician who plans and gives approval to luncheon menus. The dietitian should recommend nutritious snacks for mid-morning and mid-afternoon.

(7) The Registered Nurse consultant is required in facilities where the nurse is a licensed vocational nurse. A registered nurse consultant must work with the regular facility staff as a part of the team. The following types of assistance are appropriate tasks for the registered nurse consultant:

(A) reviewing plans of care and suggesting changes to them, if appropriate;

(B) assessing clients' health conditions;

(C) consulting with the LVN in solving problems involving client care and service planning;

(D) counseling clients on their health needs;

(E) training, consulting, and assisting the LVN in maintaining proper medical records; and

(F) in-service training for direct service staff.

(h) Staffing requirements. The intent of staffing requirements is to ensure that a responsible professional is at the facility when clients are present.

(1) Duty schedules and staffing patterns must be developed to ensure that at least the nurse, the facility director, or the activities director be in the facility when clients are present.

(2) The agency must ensure that the overall ratio of clinical service staff to clients is a least one to eight.

(3) All direct service staff must be free of communicable diseases.

(4) If volunteers are used as attendants, they must be free of communicable diseases, able to perform the duties prescribed, and 18 years of age or older.

(i) Training and Staff Development. A number of training requirements must be complied with by the service provider to ensure that performance of staff and safety of clients requirements are met.

(1) The facility must provide all staff with training in the fire/disaster and evacuation procedures within three workdays of employment.

(2) The facility must provide each client with training in the fire/disaster and evacuation plan within 30 days from the date of service initiation.

(3) The facility must provide direct delivery staff with a minimum of 24 hours of training during the first three months of employment and documenting that training includes:

(A) safety and emergency procedures, including the Heimlich maneuver;

(B) cardiopulmonary resuscitation;

(C) orientation to community resources;

(D) contracted and departmental agency policies, procedures, and forms;

(E) confidentiality as required by law;

(F) applicable health and safety codes, ordinances, and regulations;

(G) orientation to health care delivery including the following:

(i) basic body function and mechanics;

(ii) personal care techniques and procedures;

(iii) the aging process and implications for care; and

(iv) identification of abuse, neglect, or exploitation; and

(H) staff employed as substitutes on an infrequent basis are not required to have 24 hours of initial training. Substitutes, consultants, and volunteers must receive a minimum of three hours of orientation.

(j) Ongoing training. The facility must also provide a minimum of three hours of ongoing training to direct services staff during each consecutive three month-period after the first three months of employment. This training must include, but is not limited to, the following topics within a year from the employee's hire date:

(1) first aid;

(2) basic nutritional needs;

(3) activity and exercise for elderly and handicapped;

(4) mobility;

(5) special skin care needs;

(6) reality orientation/remotivation;

(7) death and dying;

(8) recreation needs; and

(9) cardiopulmonary resuscitation (CPR) refresher training.

(k) Records. Records will be maintained on all clients. The facility must ensure that each client's record contains at least the following information.

(1) initial assessment (Forms 2060 & 2059's);

(2) pertinent medical records;

(3) significant changes in the client's condition;

(4) significant complaints and results of investigation of complaints;

(5) records of termination;

(6) documentation, that the client was notified of complaint procedures and client rights; and

(7) a daily record of all treatments.

(8) plan of care records. For each client, the nurse and activities director must jointly develop a plan of care that includes information from the Form 2059 p.1-p.2. A meeting must be conducted at least once every six months by the facility director. At this meeting the program plan for the next six months and all new and modified individual plans of care must be described/discussed. Any significant changes in the plan of care which may affect eligibility or units of service must be discussed with the case manager before the effective date of change;

(9) miscellaneous records. The facility must maintain a daily record of attendance;

(10) incident reports. The facility must maintain incident reports. These reports include falls, arguments and allegations of abuse, neglect or exploitation;

(11) vehicle operations. The facility must manage upkeep and operations of facility vehicles. If transportation is provided by the facility, the drivers records must indicate the date and time of service provision. Records will also include provision of liability insurance and vehicle records indicating compliance with Texas Department of Public Safety inspection requirements;

(12) financial records. In a central location in the facility, staff must maintain financial records according to recognized fiscal and accounting procedures. These records include details on charges and payments made on behalf of each client. These records should be kept up to date and be made available for review without notice by TDPH, TDoA, or any other authorized agency;

(13) personnel records. Staff must keep personnel records in a central location in the facility. These records include staff qualifications, performance reports, attendance records, and staff development records.

(l) Administering of Medications.

(1) Clients are allowed to self-administer their own medication. Medications that are not self-administered may be given only by the facility nurse. The nurse must document this in the facility's records.

(2) The facility must ensure that each client has an individual medication record for medications administered by the facility nurse. The nurse must record the dose and method of administration. Staff should sign and date all entries.

(3) All medications must be labeled and stored according to established federal and state laws and the following requirements (except for self-administered medications that the client may keep).

(A) The clients' medication must be labeled and stored in a locked medical room or cabinet approved by the licensing agency. Staff must ensure that the label of each client's medication container clearly indicates:

(i) name and address of the pharmacy;

(ii) client's full name;

(iii) prescribing physician's name;

(iv) date prescription was dispensed;

(v) instructions for use; and

(vi) brand or generic name and strength of medication.

(B) Medications for each recipient must be stored in their original containers. Transferring between containers is prohibited by law.

(C) Medications requiring refrigeration must be stored in the medication room in a refrigerator used only for medicine storage or kept in a separate, permanently attached, and locked medication storage box in a refrigerator.

(D) Medications discontinued by a physician's order must be given to the client's family by the nurse within 10 days of the date of discontinuance. This must be documented in the client's record and signed by the nurse.

(E) Medications of deceased clients or medications which have passed the expiration date must be immediately given to the client's family by the nurse or immediately disposed of according to federal and state laws. Records of disposition of these medications must be kept.

(F) The client or responsible party may take his medication home daily. The facility, however, should plan with the client for medication to be available while attending the facility. (Staff may suggest to the client or family that the pharmacist divide the medication into two containers so the client will not have to take medications home.)

(G) Schedule II drugs stored at the facility may not be returned to the family or responsible party but must be disposed of according to state and federal laws.

(m) Initiation of Services.

(1) Eligibility Determination. Determination of eligibility for adult day care services involves the cooperative efforts of the case manager and the service provider.

(A) The case manager determines whether the client meets the eligibility criteria. If so, the case manager develops a service plan, refers the client to a service provider; and provides on-going case management for the client. In a face-to-face interview with the client, the case manager completes Form 2060 and page 1 and 2 of Form 2059.

(B) Referral is accomplished next. Unless a client needs a verbal referral for services, provider agencies receive written referrals based on the following priorities.

(i) client's choice; and

(ii) availability of eligible providers;

(iii) the case manager will send Form 2059 p. 1 and p. 2 to the service provider within seven working days, and come to an agreement of the service plan for the client. The case manager and service provider then establish the beginning date of coverage;

(iv) if services are denied, the client is entitled to receive written notification from the case manager. In an ongoing case if services are reduced, the client should receive written notification. At the same time, the client should be informed about his right to appeal;

(v) if verbal prior approval is required, initiate verbal approval by contacting the service provider in person or by telephoning within one workday after visiting the applicant and determining that a verbal prior approval is needed. In the verbal referral, give the service provider the following information:

(I) client identifying information;

(II) Form 2060, client needs assessment questionnaire score; and

(III) the information that is covered on Form 2060;

(IV) follow-up by sending the appropriate forms within seven days.

(C) Service provider response must be received. If the service provider is unable to provide services within the required time frame needed to meet the client's needs, or fails to begin services according to the negotiated agreement, the case manager may select another service provider to provide the services.

(D) Case manager follow-up must be accomplished. In addition to providing ongoing case management services to the client, the case manager discusses and reports to the supervisor at the service provider, any apparent deficiencies noted in the service provider's delivery of services. The service provider must ensure that a client is not without services for more than three days after service initiation. The case manager has the authority to change providers if the client is not served according to the agreed upon care plan.

(E) Reassessment must be accomplished. Each client should be reassessed as needed, at least every six months.

(F) Service Plan changes may be necessary. When the client requires an immediate change to the service plan, use verbal notification to approve the change. Review and discuss the situation with the service provider.

(n) Suspension of services. When suspension of services is necessary the following will be accomplished.

(1) No later than the first work day after services are suspended, the service provider must verbally notify the caseworker about the reason the service provider suspended services. Written notification must be sent within seven days of service suspension to the case manager.

(2) The service provider may suspend services if one or more of the following circumstances occur:

(A) the client leaves the service area;

(B) the client dies;

(C) the client is admitted to an institution or hospital;

(D) the client requests that services end;

(E) the case manager denies the client's eligibility.

(o) Client application requirements. The following requirements must be met by potential clients for this service.

(1) The target group for adult day care services is persons 60 years of age or older, who are physically limited in their ability to perform regular activities of daily living. Applicants are eligible for services if they score at least 25 in the client needs questionnaire (Form 2060).

(2) To receive services, the applicant must reside in a place other than the following:

(A) a hospital;

(B) a skilled nursing facility; or

(C) an intermediate care facility.

(p) Administrative Requirements. The following additional administrative requirements must be adhered to by the service provider.

(1) The service provider must be licensed by the Texas Department of Public Health, under the authority of the Human Resources Code, Title 6, §103.006 and §103.008. (You must also be certified by the Texas Department of Human Services if you intend to apply for funding from them.)

(2) Written procedures must be established and followed to ensure patient confidentiality, and for obtaining the written consent of the patient for release of confidential information.

(3) The service provider will notify clients where they may direct a complaint regarding the service provider.

(4) The service provider shall have the necessary legal authority to operate in conformity with federal, state and local laws and regulations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on January 27, 1993.

TRD-9318222

Mary Sapp
Executive Director
Texas Department on Aging

Earliest possible date of adoption: March 5, 1993

For further information, please call: (512) 444-2727

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Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part IX. Texas Department on Aging

Chapter 255. State Delivery Systems

Planning and Service Area Designation

• 40 TAC §255.12

The Texas Department on Aging has withdrawn from consideration for permanent adoption a proposed repeal §255.12 which appeared in the December 11, 1992 issue of the *Texas Register* (17 TexReg 8624). The effective date of this withdrawal is February 17, 1993.

Issued in Austin, Texas, on January 27, 1993

TRD-9318224 Mary Sapp
Executive Director
Texas Department on Aging

Effective date: February 17, 1993

For further information, please call: (512) 444-2727

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The Texas Department on Aging has withdrawn from consideration for permanent adoption a proposed new §255.12 which appeared in the December 11, 1992, issue of the *Texas Register* (17 TexReg 8624). The effective date of this withdrawal is February 17, 1993.

Issued in Austin, Texas, on January 27, 1993

TRD-9318225 Mary Sapp
Executive Director
Texas Department on Aging

Effective date: February 17, 1993

For further information, please call: (512) 444-2727

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Name: Tai Tran
Grade: 9th
School: Richardson Junior High, Richardson ISD

Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 13. CULTURAL RESOURCES

Part IV. Texas Antiquities Committee

Chapter 41. Practice and Procedure

Compliance with Rules and Regulations, Definitions, Issuance of Permits, Application for Archeological Permit

- **13 TAC §§41.3, 41.5, 41.17, 41.21**

The Texas Antiquities Committee adopts §§41.3, 41.5, 41.17, and 41.21. Section 41.17 is adopted with changes to the proposed text as published in the August 28, 1992, issue of the *Texas Register* (17 TexReg 5929). Sections 41.3, 41.5, and 41.21 are adopted without changes and will not be republished.

The amendments are needed to clarify definitions and provide uniform procedures and standards for enforcing the terms and conditions of antiquities permits. Further, the amendments ensure the timely reporting of archeological investigations on public lands, facilitate the completion of public works projects, expand the inventory of state-owned landmarks, and improve the management of state-owned archeological sites and historical properties.

The amendments to definitions and standards stipulate extension conditions in order to expedite completion of requirements. The amendments specify enforcement actions to be taken where the principal investigator, sponsor, or permittee has demonstrated continued non-compliance with agency rules and has defaulted on permit terms and conditions. Specifically, any Principal investigator and co-principal investigator who holds a defaulted permit cannot obtain additional permits. The probationary status of the principal investigator and co-principal investigator who hold defaulted permits will be automatically withdrawn upon the completion of the defaulted permit requirements.

A total of four commenters participated in the agency rule-making process. The Committee hear oral comments from one individual at its September 18, 1992, meeting held in Austin. Three individuals submitted written comments regarding the amendments. No groups or associations made comments for or against the amendments.

The first individual addressed concerns regarding permit periods, submission of good faith plans, and defaulted permit criteria. The second commenter expressed displeasure with the proposed permit issuance period and the alleged arbitrariness of the automatic extension period's length A third commenter questioned permit extension periods and the number of extensions granted; he suggested that more flexible terms and conditions should be provided on a case-by-case basis. The fourth individual questioned the lenient permit extension conditions allowed under the new amendments.

The first commenter urged that permit periods be negotiated on a case-by-case basis and reflect the variable nature of archeological investigations. The second commenter stated that a permit's time should depend on the nature of the project. The agency agrees with both commenters. Thus, changes to the amendments as proposed are necessary for the sections pertaining to permit periods. The Committee proposes to adopt amendments with changes to §41.17(c), which will broaden the time limits of permit periods. Additionally, the changes will authorize project-specific consideration of permit periods.

The first commenter also urged that holders of defaulted permits be allowed to submit a "Good-Faith Plan" outlining how the holder will complete unmet antiquities permit obligations. The Committee agrees and proposes to adopt amendments implementing such changes in §41.17(f)(1). The changes create provisions for the holders of defaulted permits to submit good faith plans.

Three commenters addressed the amendments which affect permit extensions. One individual felt that an automatic one-year extension was inadequate, particularly for major excavation projects. Another supported a one-year extension period, as long as genuine good faith efforts are demonstrated. The third commenter would like to see a flexible policy of multiple extensions.

The Committee responds that the amendments with changes will give affected parties every fair and reasonable chance to complete permit obligations without defaulting on the permit. First, the changes to the amendments allow for project-specific issues to be discussed and mediated. Second, a longer permit period for complex archeological data recovery projects may be granted. Lastly, the amendments will allow an automatic extension to the January 1, 1994, permit period plus negotiated extensions for major investigations and multiple permit holders. Thus, the agency proposes to adopt amendments with changes to §41.17(f)(2). The changes authorize full consideration of extension periods on a permit-by-permit basis.

Further, the agency proposes to adopt amendments with changes to §41.17(g) . The changes provide for existing permits, which expire on January 1, 1993, to be automatically extended to January 1, 1994. During the one-year extension period, the holder might negotiate another final extension period tailored to specific projects.

Regarding the asserted leniency of permit extensions, the Committee responds that the amendments with changes will strengthen what is required from principal investigators in order to eliminate the continued non-compliance with agency regulations and standards. If unsuccessful in reducing the high number of expired antiquities permits, the Committee may, at a later date, propose more stringent rules or issue final orders with the effect of rules, on a permit-by-permit basis, to enforce compliance with agency Rules of Practice and Procedure.

The Committee realizes that certain antiquities permits cannot be completed for reasons clearly beyond the control of the principal investigator, and thus the Committee has included changes to specify conditions under which an antiquities permit can be canceled. A new subsection (i), entitled "Permit cancellation", added to §41.17, authorizes the cancellation of an antiquities permit under stipulated conditions.

The amendments are proposed under the Natural Resources Code, Title 9, Chapter 191 (revised by Senate Bill 231, 68th Legislature, 1983, and by House Bill 2056, 70th Legislature, 1987), §191.052, which provides the Texas Antiquities Committee with the authority to promulgate rules and require contract or permit conditions to reasonably effect the purposes of Chapter 191.

§41.17. Issuance of Permits.

(a) Review by controlling of entities. It is the responsibility of the permit applicant to obtain all necessary permissions and signatures prior to submitting a permit application.

(b) (No change.)

(c) Permit period. Permits may be issued for any length of time as deemed necessary by the Committee in consultation with the principal investigator, sponsor, and permittee.

(d)-(e) (No change.)

(f) Permit expiration. The expiration date is specified in each permit and is the date by which all terms and conditions must be completed for that permit. It is the

responsibility of the permittee(s), sponsors, and principal investigators to meet any and all permit submission terms and conditions prior to the expiration date listed on the permit.

(1) Expiration notification. After October 1, 1992, principal investigators, co-principal investigators, permittee(s), and sponsors will be notified 60 days in advance of permit expiration. The notice regarding expired permits shall state the pending default date, list the terms and conditions to be met to complete permit requirements, and request submission of a good faith plan outlining how the holder will complete unmet antiquities permit obligations.

(2) Expiration extension. Permits may be extended for any length of time as deemed necessary by the Committee, principal investigator, sponsor, or permittee.

(g) Expiration exemption. Permits expired as of January 1, 1993, are automatically extended to January 1, 1994. These permits are eligible for one additional extension.

(h) Permit amendments. Proposed changes in the terms and conditions of the permit must be approved by the Committee and all parties will be notified when amendments are approved.

(i) Permit cancellation. The Committee may cancel an antiquities permit if one or more of the following conditions exists:

(1) the death of the principal investigator or co-principal investigator;

(2) failure of the project sponsor to fully fund investigation; and/or

(3) cancellation of the project by the sponsor.

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 January 6, 1993.

TRD-9318049 Kathleen McLaughlin-Neyland
Administrative Technician III
Texas Antiquities Committee

Effective date: February 12, 1993

Proposal publication date: August 28, 1992

For further information, please call: (512) 463-6096

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TITLE 22. EXAMINING BOARDS

Part XIII. Texas Board of Licensure for Nursing Home Administrators

Chapter 243. Application

• 22 TAC §§243.1-243.3

The Texas Board of Licensure for Nursing Home Administrators (TBLNHA) adopts the repeal of §§243.1-243.3, concerning application, without changes to the proposed text as published in the August 7, 1992, issue of the *Texas Register* (17 TexReg 5503).

The rules being repealed do not adequately reflect the application process. These rules are being replaced by rules that better reflect the application process, discontinue waivers, and will insure consistent and accurate instruction to preceptors.

The repeal of these rules will enable the agency to make new rules which will adequately describe the internal practices, procedures, and requirements used by the staff to process applications, and set standards for preceptors which these rules do not adequately set forth. In addition, the repeal of these rules will delete obsolete requirements.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 4442d, §8, which provide TBLNHA with the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the State to meet the requirements set forth in the Social Security Act, §1908 (42 United States Code Annotated, §1396g), the Federal rules and regulations promulgated thereunder, and other pertinent Federal authority; provided, however, that no rule shall be promulgated, altered, or abolished without the approval of a two-thirds majority of the Board.

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 January 15, 1993.

TRD-9318027 Janet Monteros
Assistant Attorney General
State of Texas Office of the Attorney General

Effective date: February 11, 1993

Proposal publication date: August 7, 1992

For further information, please call: (512) 458-1955

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• 22 TAC §§243.1-243.5

The Texas Board of Licensure for Nursing Home Administrators (TBLNHA) adopts new §§243.1-243.5, concerning application. Sections 243.1, 243.2, 243. 4, and 243.5 are adopted with changes to the proposed text as published in the August 7, 1992, issue of the *Texas Register* (17 TexReg 5503). Section 243.3 is adopted without changes and will not be republished.

The new rules are justified because they better reflect the application process than did the old rules. These rules will help potential licensees understand the process required to become licensed. The new rules and specifically the rules regarding the preceptor seminars are necessary to insure consistent and accurate instruction to preceptors by TBLNHA; therefore, insuring consistent and accurate instruction by preceptors to Administrators in Training (AITs).

This new chapter describes the internal practices, procedures, and requirements used by TBLNHA staff to process applications. These rules clarify these procedures, allow for criminal background checks of applicants, allow for no waiver of internship hours, clarify requirements of Administrator's in Training (AITs) training, and clarify requirements for preceptors.

The following comments were received during the comment period.

Section 243.1(d) should be changed to read "before taking an exam approved by the board".

How would §243.4 effect the approved college preceptorships?

Comments to §243.5(a)(2): this rule is not a clarification. It is a new requirement that persons wishing to be preceptors must attend a preceptor seminar conducted by TBLNHA; does the requirement that a preceptor attend a seminar mean that this is a one-time requirement or a continuing requirement every year or every licensing period? there is no real reason to repeat the preceptor seminar on a regular basis unless there are some major changes in the requirements. If this rule is adopted, existing preceptors in good standing should be grandfathered in, and not required to repeat the seminar; rather than making a new rule requiring a preceptor seminar, the agency should go back and look at the current manual. In addition, the agency might have a committee of administrators who have not been preceptors look at the manual to determine if there is anything unclear in it or if there is any way to make it better; the agency has the authority to refuse approval of anyone to be a preceptor if they cannot do the job and their performance is not adequate. Why require them to come in and take this enormous amount of time to attend a preceptor seminar? This requirement is too costly and administrators will refuse to be preceptors.

Comments to §243.5(d) oppose the new requirement that AIT training must be conducted in one facility by one preceptor at a time.

Comments to the preamble: the preamble states there will be no anticipated economic cost to persons who are required to comply, yet there will be a charge for the preceptor seminar.

Commenters opposing adoption of the new sections were: Texas Association of Homes

for the Aging; Texas Health Care Association; and an individual.

Response to §243.1(d): The wording of the rule has been changed to read "A complete application must be on file prior to taking the required board approved examinations."

Response to §243.4(b)-(i): These rules affect only the AITs who are precepted through the auspices of the board and not to the AITs attending an approved college program. As stated in the rules "an individual under the auspices of an approved college is bound by the rules of the college attended. " College programs are presently submitted to the education committee for approval of their internship program which serves as a certification process. The majority of the faculties have qualifications that exceed current Agency requirements.

Response to §243.5(a)(2): The agency believes that a preceptor seminar conducted by TBLNHA is necessary and proper to ensure accurate and consistent instruction to the AIT.

This rule has been changed. Section 243.5(a)(2) and §243.5(a)(3) have been merged to read, "Must be certified by TBLNHA by attending a preceptor seminar conducted by TBLNHA." Therefore, it is a clarification.

The preceptor certification is valid for two years from the date of certification. The agency disagrees with the comment that this requirement will prohibit administrators from becoming preceptors. Certified preceptors will receive valuable continuing education credit and will have a chance to share their experiences as preceptors. The agency feels that this will open a valuable line of communication between the preceptors and the agency. The agency feels that the preceptors should repeat the preceptor seminar every two years.

Response to §243.5(d): The agency feels that every AIT should have the preceptor's full attention. A one-on-one relationship will reduce restrictions of accessibility and will allow avenues for improved communication between the preceptor and the trainee. A preceptor that has more than one AIT in addition to his/her other professional responsibilities could possibly create a disservice to the AIT and the residents.

Response to Comments to the Preamble: There will be a charge for the preceptor seminars. This is a voluntary program and administrators are not required to participate.

The new sections are adopted under Texas Civil Statutes, Article 4442d, §8, which provide TBLNHA with the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the State to meet the requirements set forth in the Social Security Act, §1908 (42 United States Code Annotated, §1396g), the Federal rules and regulations promulgated thereunder, and other pertinent Federal authority; provided, however, that no rule shall be promulgated, altered, or abolished without the approval of a two-thirds majority of the Board.

§243.1. Application Procedures.

(a) Application for licensure may be obtained at the offices of TBLNHA, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756. On forms provided by the agency, an applicant for examination and qualification for a nursing home administrator's license will complete and submit the following information:

(1) an application for nursing home administrator's license;

(2) an application for examination;

(3) personal data information;

(4) a nonrefundable application/testing fee as set by the legislature payable by certified funds only (cashier's check or money order);

(5) a college transcript sent directly from the applicant's college to the agency;

(6) internship plan and calendars (if serving internship through the Board); and

(7) an applicant who has completed college level course work outside of the United States is responsible for having the foreign transcript evaluated and converted to semester or quarter hours recognized by United States colleges.

(b) Each applicant must answer all questions fully and precisely. Insufficient answers may be grounds for denial of application (see §243.2 of this title (relating to Denial of Application)). All answers must be typed or printed in indelible ink, and notarized where indicated. Any misrepresentation, deceit, or material misstatements of fact in this application may cause revocation, suspension, or disqualification of this application for licensure as a nursing home administrator.

(c) Upon TBLNHA's receipt of an application, the applicant becomes subject to a criminal background investigation. Failure to acknowledge prior convictions for other than minor traffic violations, will result in denial of the application. Any person convicted of a crime may present his or her case to the board and prove he or she has been rehabilitated in accordance with Texas Civil Statutes, Article 6252-13c.

(d) A complete application must be on file prior to taking the required board approved examinations. Complete applications must be received by TBLNHA seven days prior to the examination date. NO exceptions will be made.

(e) Applicants who are currently licensed in another state and are requesting partial endorsement:

(1) must comply with education requirements as listed in §247.2 of this title (relating to Minimum Requirements). Without a bachelor's degree, there must be no lapse in licensure;

(2) must be licensed and in good standing, as defined by the original State of licensure, for one year or more as a nursing home administrator and must be the administrator of record for at least one year; these requirements may be served in conjunction with one another; or if applicant has not been licensed for a minimum of one year, applicant must provide evidence of an approved six-month or 520-hour internship served in another state;

(3) must have all states in which a license was previously held submit a certification of tenure, test results, education, disciplinary history, and current status even if the license is inactive or expired;

(4) must make application on forms provided by the agency as referenced in subsection (a) of this section;

(5) must have passing NAB or PES test scores verified by the state(s) for which applicant has been previously licensed which may be accepted in lieu of the comprehensive examination as certified by the state that administered the test. All applicants must take the State Standards examination;

(6) may be issued a temporary license upon receipt and approval of a complete application and will be in effect for two weeks beyond the next scheduled examination. If a passing score is not achieved, the temporary license expires. If the applicant is unable to be present for the exam, the temporary license may be extended upon suitable documentation of the following: death in immediate family, natural disaster, or medical emergency. Otherwise, the temporary license will expire. There will be NO other exceptions.

(f) Upon TBLNHA's receipt of a complete application, the application remains valid for one year. If the applicant allows his or her file to remain inactive for one year or more, the application becomes null and void and the applicant will be required to register as a new applicant and meet the application requirements that exist at such time. A written request for extension will renew the application for one year from the date of receipt. Only one renewal for a term of one year will be granted.

§243.2. Denial of Application.

(a) Upon receipt of an application, TBLNHA staff will review and evaluate documents submitted for eligibility for licensure. If an application is deemed unacceptable, the applicant will receive written notification of all deficiencies and will be

given the opportunity to correct the deficiencies.

(b) If the application remains unsatisfactory, the applicant may exercise his/her right to petition the decision according to the procedures outlined in Chapter 251, concerning disciplinary process.

§243.4. Administrators-in-Training.

(a) An individual under the auspices of an approved college is bound by the rules of the college attended. Individuals who are receiving their internship training through a college shall indicate the college of enrollment and anticipated completion date on the internship plan form.

(b) An administrator in training (AIT) will follow the application procedures outlined in §243.1(a) of this title (relating to Application Procedures). The AIT must submit the internship plan form and calendars provided by the agency. Calendars must specify hours under direct supervision of the preceptor; daily topics covered; and number of hours served per day.

(c) AIT training may begin upon receipt of a letter of notice by the agency that a complete application along with a complete internship plan is on file. See §243.2 of this title (relating to Denial of Application).

(d) Each AIT will receive supervision from a preceptor certified by the board.

(e) Training requirements and procedures.

(1) AITs will serve an internship for a minimum period of 520 hours in a nursing home licensed by the Texas Department of Health for 60 beds or more and participating in Medicaid programs as a nursing facility.

(2) Eighty percent of training must be conducted between the hours of 6 a.m. and 9 p.m., Monday-Sunday. To receive credit, AITs may not train for less than two or more than six hours per training day, no more than 20 hours per week.

(3) The preceptor will provide direct supervision a minimum of four planned hours per every 20 hours of training conducted at the facility where the AIT is training.

(4) Any absence of an AIT shall be made up at the end of the internship.

(f) Preceptors will forward attendance calendars to the agency at the conclusion of each month of training if 20 hours or more of training have been completed. When less than 20 hours of training is conducted during the month, attendance calendars will be submitted when the 20 hour training threshold is reached.

(g) The board must be notified by the preceptor in writing within 10 working days from the date of the change if:

(1) the AIT leaves the program;

(2) there is a change of preceptor;

(3) there is a change in the training plan; or

(4) there is any change in the amount or kind of training provided.

(h) If the internship training program is interrupted for any reason, the AIT will have a period of one year from the date of filing the last performance evaluation report to resume training, otherwise the application becomes null and void and the AIT will be required to register as a new applicant and meet the application requirements that exist at such time. A written request for extension will renew the application for one year from the date of receipt. Only one renewal per application will be granted.

(i) AITs may not serve their training in a facility which is currently decertified for medicaid participation. Upon decertification, AIT training must be suspended and started over in a certified facility. Appropriate TBLNHA forms must be submitted before restarting the internship.

§243.5. Preceptorial Qualifications and Procedures.

(a) All persons desiring to serve as preceptors must:

(1) have an active Nursing Home Administrator's license;

(2) be certified by TBLNHA by attending a preceptor seminar conducted by TBLNHA. The preceptor certification is valid for two years from the date of certification.

(b) Eligibility requirements.

(1) An administrator with less than a bachelor's degree desiring to become a preceptor must have at least three years' experience as a licensed nursing home administrator in the State of Texas.

(2) An administrator with a bachelor's degree or higher educational achievement desiring to become a preceptor must have at least two years' experience as a licensed nursing home administrator in the State of Texas.

(3) If such administrator has obtained a license in Texas through partial endorsement, that administrator must have three years' experience as a licensed nursing home administrator with the most recent year in this state.

(c) Preceptor denial.

(1) The board may refuse to certify preceptors for training AITs if there is good cause to believe that the preceptor has failed to provide proper training for AITs previously assigned to him or her.

(2) Repeated allegations lodged with this board against a nursing home administrator, including decertification for medicaid participation, may be grounds for refusal to grant approval to be a preceptor. Approved AITs serving under that preceptor may be denied credit for their internship until such allegations have been resolved to the satisfaction of the board.

(d) No person may serve as a preceptor for more than one AIT at any given time.

(e) No person shall be precepted/trained by any relative who is related within the second degree by affinity or within the third degree by consanguinity.

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 January 15, 1993.

TRD-9318028 Janet Monteros
Assistant Attorney General
State of Texas Office of the Attorney General

Effective date: February 11, 1993

Proposal publication date: August 7, 1992

For further information, please call: (512) 458-1955

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Chapter 245. Examination

• 22 TAC §245.1

The Texas Board of Licensure for Nursing Home Administrators adopts an amendment to §245.1, concerning the exams required for licensure, with changes to the proposed text as published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8377).

The public will benefit from the enforcement of this rule by having Nursing Home Administrators who are better prepared to promote and protect the public health and welfare. The successfully completion of the NAB and State Standards exams will desmonstrate that the administrator possesses a thorough knowledge of the health care field and more specifically long term care.

The proposed rule eliminates the requirement of the State Comprehensive exam and replaces it with the nationally accepted NAB. Both the NAB and the State Standards exams will be required for licensure as a Nursing Home Administrator in Texas.

Consideration should be given to colleges teaching the 200-hour course allowing them to reorganize their course content to reflect this change.

The names of a commenter favoring adoption of the amendment was the Texas Health Care Association.

The agency agrees with the comment received and will work diligently to assist the colleges in their efforts to prepare for the rule change.

The amendment is adopted under Texas Civil Statutes, Article 4442d, §8, which provide TBLNHA with the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the State to meet the requirements set forth in the Social Security Act, §1908 (42 United States Code Annotated, §1396g), the Federal rules and regulations promulgated thereunder, and other pertinent Federal authority; provided, however, that no rule shall be promulgated, altered, or abolished without the approval of a two-thirds majority of the Board.

§245.1. Scheduling of Examinations and Re-examinations.

(a) The board will administer the state standards examination and the NAB examination for the purpose of determining applicants qualified for licensure effective April 1993.

(b)-(g) (No change.)

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 January 15, 1993.

TRD-9318029 Janet Monteros
Assistant Attorney General
State of Texas Office of the Attorney General

Effective date: February 11, 1993

Proposal publication date: December 4, 1992

For further information, please call: (512) 458-1955

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Part XIX. Polygraph Examiners Board

Chapter 391. Polygraph Examiner Internship

• 22 TAC §391.3

The Polygraph Examiners Board adopts an amendment to §391.3, concerning internship training schedule, without changes to the proposed text as published in the October 20, 1992, issue of the *Texas Register* (22 TexReg 7308).

The amendment is adopted so that the polygraph industry will be more closely regulated in areas that the Board determines to be critical.

This section insures that only qualified polygraph schools will be approved by the Board.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4413(29cc), the Texas Polygraph Examiners Act, §6(a), which provide the Polygraph Examiners Board with the authority to issue regulations consistent with the provisions of 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 January 25, 1993.

TRD-9318204 Bryan M. Perot
Executive Officer
Polygraph Examiners Board

Effective date: February 16, 1993

Proposal publication date: October 20, 1992

For further information, please call: (512) 465-2058

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 13. Health Planning and Resource Development

Administration of the Resident Physician Compensation Program

• 25 TAC §§13.41-13.44

The Texas Department of Health (department) adopts new §§13.41-13.44, without changes to the proposed text as published in the November 3, 1992, issue of the *Texas Register* (17 TexReg 7749).

The sections cover the administration of the Resident Physician Compensation Program. Specifically, the new sections cover purpose and scope, define terms used in the sections, establish limits on reimbursement amounts, and establish criteria for the method of reimbursement.

Under the State Appropriations Act (Act), the department is granted authority to partially reimburse Texas medical schools for stipends paid to primary care resident physicians during training. The new sections establish the procedures for the department's distribution of funds to state medical schools as partial reimbursement for stipends paid to primary and resident physicians.

No comments were received regarding adoption of the new section.

The new sections are adopted under the State Appropriations Act, §35, page II-29, which provides the Department of Health with the authority to allocate funds appropriated to the resident physician compensation program; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

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 January 25, 1993.

TRD-9318144 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

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Proposal publication date: November 3, 1992

For further information, please call: (512) 458-7261

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Chapter 98. HIV and STD Control

Subchapter A. Texas HIV Services Grant Program

General Provisions

The Texas Department of Health (department) adopts amendments to §98.7, §98.23 and §98.31 and §98.67. Section 98.7 and §98.67 are adopted with changes to the proposed text as published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8398). Section 98.23 and §98.31 are adopted without changes and will not be republished.

The amendments will validate the intentions of the original rules to include a member of the religious community on the HIV Services Advisory Committee. The modification of existing language will assist clients regarding complaint procedures and new language defines the department's procedures regarding investigation of public complaints. The modification of the categories on the HIV education Prevention, and Risk Reduction Advisory Committee will enable the Committee to provide more effective and knowledgeable advice to the HIV Division.

The amendments to §§98.7, 98.23 and 98.31 designate a membership category on the HIV Service Advisory Committee representing the religious community which was inadvertently omitted from the original rules; change the "financial evaluator with experience in developing cost-of-care analyses in the medical setting" category to a "person with AIDS/HIV" category to allow for consistent representation from this segment of the community by providing two "person with AIDS/HIV" categories; and include new language regarding client and public complaints which clarifies the Department's responsibilities regarding notification and investigation of complaints. Editorial corrections were also made to allow for consistency within the sections.

The amendment to §98.67 modifies the existing membership categories of the State HIV Education, Prevention and Risk Reduction Advisory Committee. The changes are as follows: change from "the Texas Department of Criminal Justice internal school system (Windham School System)" category to "person with AIDS/HIV;" change from "the planned parenthood/family planning program

representative" category to "family planning program representative;" change from "the Texas Association of Retarded Citizens" category to "representative with AIDS/HIV experience that is currently serving in an agency that advocates or promotes for the rights of individuals with disabilities;" change from the "community-based organization for hearing impaired" category to "representative with AIDS/HIV experience from a community with a population of less than 30,000;" and add "with HIV/AIDS experience" to all new and existing categories (excluding the "person with AIDS/HIV" and "parent" categories).

A summary of comments and the department's responses are as follows.

COMMENT: Concerning §98.67, a commenter suggested that the wording for two membership categories of the State HIV Education, Prevention and Risk Reduction Advisory Committee be changed. The commenter suggested that the category that represents the disabled should not be one of advocacy but one with an individual that works with the disabled in the HIV/AIDS education. The commenter further suggested to qualify the category that represents a community with a population of less than 30,000 as a community that is not served by a major metropolitan area.

RESPONSE: The department agrees with these comments and has made the appropriate changes.

COMMENT: Concerning §98.67, a commenter expressed concern that the department was deleting the representation of a community based organization for the hearing impaired.

RESPONSE: The staff disagreed with this comment. The individual in this position will represent and provide input concerning all disabilities. The hearing impaired will not be excluded. The department cannot create enough categories to represent every type of disability, so this rewording allows the department to select from a variety of individuals that would represent all individuals with disabilities.

The commenters were a member of the State HIV Education, Prevention, and Risk Reduction Advisory Committee and the Travis County Department of Human Services. The commenters were generally in favor of the amendments.

• 25 TAC §98.7

The amendment is adopted under the Human Immunodeficiency Virus Services Act, Health and Safety Code, Chapter 85, §§85.031-85.044, which provides the Texas Board of Health with the authority to establish advisory committees to assist the Board in the implementation of the HIV Services Grant Program and the State HIV Education Grant Program; the Health and Safety Code, §11. 016, which provides the Texas Board of Health with the authority to appoint advisory committees; and §12.001, which provides the Board with the authority to adopt rules to implement its duties.

§98.7. HIV Services Advisory Committee.

(a)-(c) (No change.)

(d) Membership. The board shall appoint a 15-member statewide HIV Services Advisory Committee consisting of a:

(1)-(6) (No change.)

(7) person with HIV/AIDS;

(8)-(10) (No change.)

(11) member of the religious community with experience in HIV/AIDS (clergy);

(12)-(15) (No change.)

(e) (No change.)

(f) Officers. The officers of the committee shall consist of a chairperson, vice-chairperson, and secretary and shall be selected at the committee's first regular meeting each year by the committee's membership. Officers shall serve one-year terms but terms will be extended until the first regular meeting of the committee in the new year and officers shall be eligible for re-election for one additional term. The chairperson will be the presiding officer of the committee. The vice-chairperson shall assume the authority and duties of the chairperson in his or her absence. The secretary shall be responsible for the minutes of each committee meeting.

(g)-(h) (No change.)

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 January 25, 1993.

TRD-9318169 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: February 15, 1993

Proposal publication date: December 4, 1992

For further information, please call: (512) 458-7463

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AIDS/HIV Services Providers

• 25 TAC §98.23, §98.31

The amendments are adopted under the Human Immunodeficiency Virus Services Act, Health and Safety Code, Chapter 85, §§85.031-85.044, which provides the Texas Board of Health with the authority to establish advisory committees to assist the Board in the implementation of the HIV Services Grant Program and the State HIV Education Grant Program; the Health and Safety Code, §11.016, which provides the Texas Board of Health with the authority to appoint advisory committees; and §12.001, which provides the Board with the authority to adopt rules to implement its duties.

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-9318170 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

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For further information, please call: (512) 458-7463

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Subchapter B. HIV Education Grant Programs

General Provisions

• 25 TAC §98.67

The amendment is adopted under the Human Immunodeficiency Virus Services Act, Health and Safety Code, Chapter 85, §§85.031-85.044, which provides the Texas Board of Health with the authority to establish advisory committees to assist the Texas Board in the implementation of the HIV Services Grant Program and the State HIV Education Grant Program; the Health and Safety Code, §11.016, which provides the Texas Board of Health with the authority to appoint advisory committees; and §12. 001, which provides the Board with the authority to adopt rules to implement its duties.

§98.67. State HIV Education, Prevention and Risk Reduction Advisory Committee.

(a)-(c) (No change.)

(d) Membership. The Board shall appoint a 15-member statewide AIDS/HIV Education, Prevention, and Risk Reduction Advisory Committee consisting of a:

(1) community-based youth outreach program representative with HIV/AIDS experience;

(2) Texas Youth Commission/local correctional facility representative with HIV/AIDS experience;

(3) person with HIV/AIDS;

(4) community-based drug treatment/outreach program representative with HIV/AIDS experience;

(5) family planning program representative with HIV/AIDS experience;

(6) local health department representative with HIV/AIDS experience;

(7) community-based program to reach gay/bisexual men representative with HIV/AIDS experience;

(8) an individual that is currently working with the disabled in matters of HIV/AIDS education;

(9) member of the religious community (clergy) with HIV/AIDS experience;

(10) representative with HIV/AIDS experience from a community with a population of less than 30,000 which is not served by a major metropolitan area;

(11) PTA representative with HIV/AIDS experience;

(12) parent;

(13) teacher/principal/HIV educator/HIV counselor with HIV/AIDS experience;

(14) community-based organization to reach Hispanics representative with HIV/AIDS experience; and

(15) community-based organization to reach African Americans representative with HIV/AIDS experience.

(e)-(h) (No change.)

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 January 25, 1993.

TRD-9318171 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

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Proposal publication date: December 4, 1992

For further information, please call: (512) 458-7463

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Chapter 133. Hospital Licensing

Standards

• 25 TAC §133.21, §133.29

The Texas Department of Health (department) adopts an amendment §133.21 and new §133.29, concerning hospital licensing standards (standards). New Section 133.29 is adopted with changes to the proposed text as published in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7840). The amendment to §133.21 is adopted without changes and will not be republished.

Section 133.21 adopts by reference the department's hospital licensing standards which included 12 Chapters.

New §133.29 is the first of the 12 Chapters in the standards that has been converted into the Texas Administrative Code format. New §133.29 replaces Chapter 12 of standards concerning the special licensing standards for the provision of mental health services in hospitals licensed by the department. The amendment to §133.21 will reflect the effective date for the transfer of Chapter 12 of the standards to new §133.29.

The new section provides clarification regarding a physician's evaluation of a voluntary patient who presents or is presented for mental health services in a hospital licensed by the department. The department has identified misinterpretations of current rules in Chapter 12 of the standards concerning the evaluation of a patient who presents or is presented to a hospital licensed by the department for voluntary admission to the identifiable part providing mental health services. The department has expanded the language in new §133.29 to clarify a general or special hospital's responsibility regarding the medical examination of a person before the person's admission to the hospital.

The department received one comment from a staff member concerning the proposed rules. The commenter stated that §133.29(i)(2)(A)(ii), relating to the evaluation of an unknown patient, should contain the provision that a psychiatrist conduct a face-to-face evaluation of a patient within 24 hours of admission. The department agrees and has made the change. Other changes made to the rules were editorial and for purposes of clarification.

The amendment and new section are adopted under the Health and Safety Code, §241.027, which provides the Texas Board of Health (board) with authority to adopt rules to establish and enforce minimum standards for the licensing of hospitals; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

§133.29. Special Licensing Standards for the Provision of Mental Health Services in Hospitals.

(a) Purpose. This section is adopted to improve the care and treatment of patients receiving mental health services in hospitals licensed by the Texas Department of Health (department) pursuant to the authority of the Health and Safety Code, Chapter 241.

(1) In addition to other applicable licensing standards, this section applies to:

(A) a person who applies to the department for the issuance of an initial license or a renewal license to operate a "hospital" as that term is defined in subsection (b)(7) of this section; and

(B) a person who holds a license issued by the department to operate a "hospital" as that term is defined in subsection (b)(7) of this section.

(2) This section does not apply to the provision of "mental health services," as that term is defined in subsection (b)(12) of this section, unless the hospital meets the criteria included in the definition of the term "hospital" contained in subsection (b)(7) of this section.

(3) This section applies only to the identifiable part of the hospital approved by the department for the admission and housing of patients receiving mental health services.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant–A person who seeks a license from the department to operate a hospital.

(2) Board–The Texas Board of Health.

(3) Chemical dependency–Has the meaning given in the Health and Safety Code, §462.001(3).

(4) Department–The Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

(5) Director–The director of hospital licensing, Texas Department of Health.

(6) Division–The Health Facility Licensure and Certification Division, Texas Department of Health.

(7) Hospital–A general or special hospital as defined in the Health and Safety Code, §241.003(4) and §241.003(11) that includes an identifiable part of the hospital for the provision of mental health services.

(8) Hospital administration–An individual who has the authority to represent the hospital and who is responsible for the operation of the hospital according to the policies and procedures of the hospital's governing body.

(9) Law–The Texas Hospital Licensing Law, Health and Safety Code, Chapter 241.

(10) License–The permission granted to a person by the department to operate a hospital.

(11) Licensee–A person who has been granted a license to operate a hospital by the department.

(12) Mental health services–The care provided in a hospital, the primary purpose of which includes the provision of inpatient chemical dependency treatment or psychiatric assessment, diagnostic services, psychiatric inpatient care, or treatment for mental illness.

(13) Mental illness–Has the meaning given in the Health and Safety Code, §571.003(4).

(14) Patronage–Intentionally or knowingly giving or receiving any remuneration directly or indirectly, overtly or covertly, in cash or in kind, in exchange for

recommending or referring a person for treatment.

(15) Person–Has the meaning given in the Health and Safety Code, §241.003(8) .

(16) Physician–An individual licensed by the Texas State Board of Medical Examiners to practice medicine in the State of Texas or an individual employed by any agency of the United States having a license to practice medicine in any state of the United States.

(17) Polypharmacy–Treatment of a patient by the simultaneous use of more than one psychoactive drug.

(18) Special treatment procedures–Those procedures which include the use of any of the following:

(A) restraint;

(B) seclusion;

(C) electro-convulsive therapy;

(D) psychosurgery;

(E) behavior modification;

(F) unusual, investigational, and experimental drugs or therapy;

(G) maintenance drugs that have abuse potential; or

(H) research projects that involve inconvenience or risk to the patient.

(19) Threat–Actions in response to a request for discharge that are illegal or unjustified by the patient's condition.

(20) Unusual medications–Medication that:

(A) has not been approved by the Food and Drug Administration for use in the United States; or

(B) is being used to treat conditions for which its use has not been demonstrated through rational scientific theory and evidence in biomedical literature, controlled clinical trials, or expert medical opinion.

(c) Application for license or renewal license. In addition to complying with all other requirements for licensure or relicensure contained in the Hospital Licensing Standards, which are adopted by reference in §133.21 of this title (relating to Standards–Adopted by Reference) and the documentation required by the department in §133.31(a)(2)-(4) of this title (relating to Time Periods for Processing and Issuing Hospital Licenses), an applicant for a license or a renewal license to operate a hospital subject to this section must also complete and submit a supplementary information section designed to provide additional information relating to the hospital's provision of mental health services. An incomplete application may be considered by the department as the basis to deny the issuance of a license or renewal license to operate a hospital.

(1) A hospital must notify the department of its intent to initiate the provision of mental health services before the provision of mental health services has begun.

(2) If the hospital intends to initiate the provision of mental health services, the hospital must submit plans and specifications for the identifiable part of the hospital providing mental health services for approval by the department using the procedures found in the Hospital Licensing Standards, Chapter 3 (relating to Renovation Projects); Chapter 4 (relating to Application of Standards); Chapter 5 (relating to Submittal Requirements); and Chapter 7, Subchapter 7-7 (relating to Psychiatric Nursing Unit/Chemical Dependency Unit) adopted by reference in §133.21 of this title (relating to Standards–Adopted by Reference).

(3) Patients admitted to the hospital for chemical dependency or mental health services must be admitted and housed in the identifiable part of the hospital that has been approved by the department for that purpose.

(d) Special standards for the licensure and relicensure of hospitals.

(1) Except as otherwise specifically stated in this section, the governing body shall ensure that the hospital is in compliance with the Medicare (Title XVIII of the Social Security Act, as amended) Conditions of Participation for Hospitals, contained in 42 Code of Federal Regulations, §§482.2-482.57.

(2) The board recommends that hospitals also be in compliance with 42 Code of Federal Regulations, §482.61 (relating to Special Medical Record Requirements for Psychiatric Hospitals) and §482.62 (relating to Special Staff Requirements for Psychiatric Hospitals).

(3) Current accreditation of a hospital by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) is deemed to be compliance with the Medicare conditions of participation and will discharge the hospital's obligation cited to meet 42 Code of Federal Regulations, §§482.2-482.57.

(e) Special treatment procedures. The board recommends that the hospital's governing body approve bylaws which require the hospital to adopt and enforce policies and procedures for the use of special treatment procedures that incorporate the standards set out in the current edition of the Consolidated Standards Manual published by the JCAHO.

(f) Administration of medications. The board recommends that the hospital's governing body adopt bylaws which require the hospital to adopt and enforce policies and procedures for the administration of medications that require all medications to be administered by licensed nurses, licensed physicians, or other licensed professionals authorized by law to administer medications.

(1) The policies and procedures should also require that all medication administration procedures performed by a licensed vocational nurse be under the direct supervision of a registered nurse.

(2) The policies and procedures should be consistent with the standards of care established in §401.587 of this title (relating to Patient Care Requirements for Licensure) adopted by the Texas Department of Mental Health and Mental Retardation (TxMHMR) or other professionally recognized and accepted standards of care in the area of prescribing practices for medications, including the use of polypharmacy, maximum dose levels, and consent to medication. The source or sources used in the development of the policies and procedures should be identified in the document.

(3) An example of a policy and procedure described in subparagraphs (A) and (B) of this paragraph relating to the use of polypharmacy was taken and modified from Subchapter J, Chapter 401 of this title (relating to the Licensure of Private Psychiatric Hospitals) which was adopted by the Texas Department of Mental Health and Mental Retardation to govern the use of polypharmacy in state hospitals under the jurisdiction of that agency. Polypharmacy is permissible only in accordance with one or more of the following. The physician initiating polypharmacy should be:

(A) the chief physician who has had experience as the clinical director of a state hospital, research institute, or state center, or the medical director of a state school; or

(B) the chief physician designee who is credentialed by the chief physician to act for and report to the chief physician in matters relating to the prescribing of psychoactive drugs; or

(C) a physician with documented training or experience that qualifies the physician to assume the chief physician's clinical responsibilities with regard to psychoactive drugs and evaluations.

(g) Patient rights. The board recommends that the governing body adopt bylaws that require the hospital to develop and enforce policies and procedures that include a patient rights policy based on the Health and Safety Code, Chapter 576 (relating to the Rights of Patients) and the standards set forth in the current edition of the Consolidated Standards Manual published by JCAHO.

(1) Statement of patient rights recommended. As part of the policies and procedures, the board recommends that the hospital adopt and enforce the Recommended Patient's Bill of Rights, which follows this paragraph. Copies of the Recommended Patient's Bill of Rights suitable for reproduction may be obtained from the director.

RECOMMENDED PATIENT'S BILL OF RIGHTS

When you apply for or receive mental health services in the State of Texas, you have many rights. Your most important rights are listed on these pages. A judge or lawyer will refer to the actual laws. If you want a copy of the laws that these rights come from, you can call the Texas Department of Health's Hospital Patient Information-Complaint Line at 1-800-228-1570.

A. Your Right To Know Your Rights

1. You have the right, under the recommendations of the Texas Board of Health, to be given a copy of these rights before you are admitted to the hospital as a patient. If you request, a copy will also be given to the person of your choice. If a guardian has been appointed for you or you are under 18 years of age, a copy will also be given to your parent, conservator, or guardian.

2. You also have the right to have these rights explained to you aloud within 24 hours of entering the hospital in a way that you can understand, (e.g., in your language if you are not English-speaking, in sign language if you are hearing impaired, in braille if you are visually impaired, or other appropriate methods).

B. Your Right To Make a Complaint

1. You have the right to make a complaint and to be told how to contact people who can help you. These people and their addresses and phone numbers are listed at the bottom of this page.

2. You have the right to be told about Advocacy, Inc., when you first enter the hospital and when you leave. Information about how to contact Advocacy, Inc., is also listed below.

3. If you believe any of your rights have been violated or you have other concerns about your care in this hospital, you may contact one or more of the following:

Office of Standards & Quality Assurance
Texas Department of Mental Health & Mental Retardation 1-800-LET-MHMR

Advocacy, Incorporated 1-800-223-4206

If you have been involuntarily committed and you believe that your attorney did not prepare your case properly or that your attorney failed to represent your point of view to the judge, you may wish to report the attorney's behavior to the Disciplinary Committee of the State Bar of Texas by writing:

Disciplinary Committee
State Bar of Texas
1414 Colorado
P. O. Box 12487
Austin, Texas 78711-2487

If you are a voluntary patient OR if you have been taken to the hospital against your will, turn to the back page for a listing of your special rights under the law in Texas. All patients should read Sections A-C of this document, which explain the rights that apply to everyone receiving services at this hospital.

·your condition will continue to deteriorate and you are unable to make an informed decision as to whether or not to stay for treatment.

This application must be filed within 24 hours of your request to be discharged.

·Third, if you are under 16 years old, and the person who admitted you (your parents, guardian, or conservator) doesn't want you to leave, you may not be able to leave. If you request release, the staff must explain to you whether or not you can sign yourself out and why. The hospital must notify the person who does have the authority to sign you out and tell that person that you want to leave. That person must talk to your doctor, and the doctor must document the date, time and outcome of the conversation in your medical record.

2. Within 24 hours of telling staff you want to leave, you have a right to be examined face-to-face and assessed for discharge readiness by your doctor, with input from your treatment team. The doctor should note in your medical record and tell you about any plans to file an application for court-ordered treatment or for detaining you for other clinical reasons. If the doctor finds that you are ready to be discharged, you should be discharged without further delay.

3. Nobody can ask a judge to commit you for services while you are a voluntary patient unless you leave the hospital without permission or you refuse or are unable to consent for appropriate and necessary treatment.

Even if you leave the hospital without permission or refuse or are unable to consent to appropriate and necessary treatment nobody can ask a judge to commit you unless:

·you are likely to cause serious harm to yourself or others; or

·your condition will continue to deteriorate and you are unable to make an informed decision as to whether or not to stay for treatment. If an order of protective custody is sought, the doctor must show that as a result of your deteriorating condition, you are very likely to present a risk of serious harm to yourself or others.

Note: The law is written to ensure that people who do not need treatment are not committed. The Texas Health and Safety Code says that any person who intentionally causes or helps another person cause the unjust commitment of a person to a mental hospital is guilty of a crime punishable by a fine of up to $5,000 and/or imprisonment in the county jail for up to one year.

E. Recommended Special Rights of Persons Apprehended for Emergency Detention (people brought to the hospital against their will)

1. You have the right to be told:

·where you are;

·why you are being held; and

·that you might be held for a longer time if a judge decides that you need treatment.

2. You have the right to call a lawyer. The people talking to you must help you call a lawyer if you ask.

3. You have a right to be seen by a doctor. You have a right to leave unless the doctor believes that:

- you may seriously harm yourself or others;
- the risk of this happening is likely unless you are restrained; and
- emergency detention is the least restrictive means of restraint.

If the doctor decides that you don't meet all these criteria you must be allowed to leave. A decision concerning whether you must stay must be made within 24 hours, except that on weekends and legal holidays; the decision may be delayed until 4:00 in the afternoon on the first regular workday. The decision may also be delayed in the event of an extreme weather emergency. If the court is asked to order you to stay longer, you must be told that you have the right to a hearing within 72 hours.

4. If the doctor decides that you don't need to stay here, the hospital will arrange for you to be taken back to where you were picked up if you want to return, or to your home in Texas, or to another suitable place within a reasonable distance.

5. You have the right to be told that anything you say or do may be used in proceedings for further detention.

F. Recommended Special Rights of Persons Held on Order of Protective Custody

1. You have the right to call a lawyer or to have a lawyer appointed to represent you in a hearing to determine whether you must remain in custody until a hearing on court-ordered mental health services is held.

2. Before a probable cause hearing is held, you have the right to be told in writing:

- that you have been placed under an order of protective custody;
- why the order was issued; and
- the time and place of a hearing to determine whether you must remain in custody until a hearing on court-ordered mental health services.

This notice must also be given to your attorney.

3. You have the right to a hearing within 72 hours of your detention, except that on weekends or legal holidays, the hearing may be delayed until 4:00 in the afternoon on the first regular workday or in the event of an extreme weather emergency.

4. You have the right to be released from custody if:

- 72 hours have passed and a hearing has not taken place (excepting weather emergencies and extensions for weekends and legal holidays);
- order for court-ordered mental health services has not been issued within 14 days of the filing of an application (30 days if a delay was granted); or
- your doctor finds that you no longer need court-ordered mental health services.

STATEMENT THAT YOU HAVE RECEIVED THIS PAMPHLET/IT HAS BEEN EXPLAINED

I certify that:
_____I have received a copy of this document prior to admission.
_____Staff have explained its content to me in a language I understand within 24 hours of admission.
Name_____ Witness_____
Date_____ Date_____
Relationship of witness to patient:_____

C. Recommended Basic Rights for All Patients

1. You have all the rights of a citizen of the State of Texas and the United States of America,including the right of habeas corpus (to ask a judge if it is legal for you to be kept in the hospital), property rights, guardianship rights, family rights, religious freedom, the right to register and vote, the right to sue and be sued, the right to sign contracts, and all the rights relating to licenses, permits, privileges, and benefits under the law.

2. You have the right to be presumed mentally competent unless a court has ruled otherwise.

3. You have the right to a clean and humane environment in which you are protected from harm, have privacy with regard to personal needs, and are treated with respect and dignity.

4. You have the right to appropriate treatment in the least restrictive setting available. This is a setting that provides you with the highest likelihood for improvement and that is not more restrictive of your physical and mental liberties than is necessary for the most effective treatment and for protection against any dangers which you might pose to yourself and others.

5. You have the right to be free from mistreatment, abuse, neglect, and exploitation.

6. You have the right to be told in advance of all estimated charges being made, the cost of services provided by the hospital, sources of the program's reimbursement, and any limitations on length of services. As part of this right, you should have access to a detailed bill of services, the name of an individual at the facility to contact for any billing questions, and information about billing arrangements and available options if insurance benefits are exhausted or denied.

7. You have the right to fair compensation for labor performed for the hospital in accordance with the Fair Labor Standards Act.

8. Before your admission, you have the right to be informed of all hospital rules and regulations concerning your conduct and course of treatment.

Communication

9. You have the right to talk and write to people outside the hospital. You have the right to have visitors in private, make private phone calls, and send and receive sealed and uncensored mail.
NOTE: The rights can only be limited on an individual basis by your doctor for reasons of psychiatric necessity or security, and the reasons must be written in your medical record, signed, and dated by your doctor, and fully explained to you. The limit on your rights must be reviewed at least every seven days and if renewed, renewed in writing. In no case may your right to contact an attorney or an attorney's right to contact you be limited.

Confidentiality

10. You have the right to review the information contained in your medical record. If your doctor says you shouldn't see your record, you have the right at your expense to have another doctor of your choice review that decision. The right extends to your parent or conservator if you are a minor (unless you have admitted yourself to services) and to your legal guardian if you have been declared by the court to be legally incompetent.

11. You have the right to have your records kept private and to be told about the conditions under which information about you can be disclosed without your permission.

12. You have the right to be informed of the current and future use of products of special observation and audiovisual techniques, such as one-way vision mirrors, tape recorders, television, movies, or photographs.

Consent

13. You have the right to refuse to take part in research without affecting your regular care.

14. You have the right to refuse any of the following:

- surgical procedures;
- electroconvulsive therapy;
- unusual medications;
- hazardous assessment procedures;
- audiovisual equipment; or
- other procedures for which your permission is required by law.

15. You have the right to withdraw your permission at any time in matters to which you have previously consented.

Care and Treatment

16. You have the right to a treatment plan for your stay in the hospital that is just for you. You have the right to take part in developing that plan, as well as the treatment plan for your care after you leave the hospital.
NOTE: This right extends to your parent or conservator if you are a minor, or your legal guardian when applicable. You have the right to request that your parent/conservator or legal guardian take part in the development of the treatment plan. You have the right to request that any other person of your choosing, e.g., spouse, friend, relative, etc., take part in the development of the treatment plan. You have the right to expect that your request be reasonably considered and that you will be informed of the reasons for any denial of such a request. The staff of the hospital must document in your medical record that the parent, managing conservator, guardian, or other person of your choice was contacted to participate.

17. You have the right to be told about the care, procedures, and treatment you will be given; the risks, side effects, and benefits of all medications and treatment you will receive including those that are unusual or experimental; other treatments that are available; and what may happen if you refuse treatment.

18. You have the right not to be given medication you don't need or too much medication, including the right to refuse medication. However, you may be given appropriate medication without your consent if:

·your condition or behavior places you or others in immediate danger; or

·you have been admitted by the court and your doctor determines that medication is required for your treatment.

19. You have the right not to be physically restrained (restriction of movement of parts of the body by person or device or placement in a locked room alone) unless your doctor orders it and writes it in your medical record. In an emergency, you may be restrained for up to one hour before the doctor's order is obtained.

If you are restrained, you must be told the reason, how long you will be restrained, and what you have to do to be removed from restraint. The restraint has to be removed as soon as possible.

20. You have the right to meet with the staff responsible for your care and to be told of their professional discipline, job title, and responsibilities. In addition, you have the right to know about any proposed change in the appointment of staff, professional or otherwise, responsible for your care.

21. You have the right to request the opinion of another doctor at your own expense. You have the right to be granted a review of the treatment plan or specific procedure by the hospital medical staff.

22. You have the right to be told why you are being transferred to any program within or outside the hospital.

If you have questions concerning these rights or complaints about your care, call:

Office of Standards & Quality Assurance
Texas Department of Mental Health & Mental Retardation
1-800-LET-MHMR

D. Recommended Special Rights of Voluntary Patients

1. You should have the right to leave the hospital within 24 hours after you tell a staff person you want to go. If you want to leave, you need to say so in writing or tell a staff person. If you tell a staff person you want to leave the staff person should write it down for you. There are only three reasons why you would not be allowed to go:

·First, if you change your mind and want to stay at the hospital, you can sign a paper that says you do not wish to leave or you can tell a staff person that you don't want to leave, and the staff person should write it down for you.

·Second, if your doctor thinks you need to stay longer and an "application for court-ordered services or emergency detention," is filed with a judge, you may not be able to leave. The judge would be asked to decide if you should stay at the hospital or if you should be allowed to leave. You can only be made to stay if the judge decides that either:

·you are likely to cause serious harm to yourself;

·you are likely to cause serious harm to others; or

(2) Education of governing body, medical staff, nursing staff, and hospital employees. The board recommends that the hospital take the steps described in subparagraphs (A)-(C) of this paragraph to educate the members of the hospital's governing body, medical staff, hospital administration, nursing staff, and other hospital employees about the Recommended Patient's Bill of Rights.

(A) Copies of the Recommended Patient's Bill of Rights should be given to members of the hospital's governing body, medical staff, hospital administration, nursing staff, and other hospital employees. A copy of the complaint policy should also be given to each patient at the time of the patient's admission as set out in paragraph (4) of this subsection.

(B) The hospital administration should strive to provide an explanation of the content of the Recommended Patient's Bill of Rights to the members of the hospital's governing body, medical staff, hospital administration, nursing staff, and other hospital employees as early as possible in the person's association with the hospital.

(C) The hospital administration should schedule a review of the content of the Recommended Patient's Bill of Rights periodically for the benefit of the members of the hospital's governing body, medical staff, nursing staff and hospital administration, and other hospital employees and as soon as possible after the document is modified by the department.

(3) Display of rights policy. The board recommends that copies of the Recommended Patient's Bill of Rights should be displayed prominently at all times in all areas frequented by persons receiving mental health services, and as appropriate the person's family member, guardian, or friend (e.g., dayrooms, recreational rooms, waiting rooms, lobby areas). A sufficient number of copies should be kept on hand in each of these areas so that a copy may be readily available to anyone requesting one.

(4) Education of patient, family, friends. Before admission or acceptance for evaluation, a copy of the Recommended Patient's Bill of Rights should be given to each person, whether voluntarily admitted or accepted for evaluation before an emergency detention, and, as appropriate, to the person's family member, guardian, or friend. If a patient refuses to sign the document, the presentation of the document should be witnessed by two members of the hospital staff and the unsigned Recommended Patient's Bill of Rights should be placed in the medical record along with a note signed by the witness indicating the refusal by the patient.

(A) Within 24 hours of being admitted to the hospital to receive mental health services, the rights outlined in the Recommended Patient's Bill of Rights should be explained aloud to the patient in a way the patient can understand (e.g., in the patient's language if the patient is not English-speaking, in sign language if the patient is hearing-impaired). A duplicate copy of the Recommended Patient's Bill of Rights, signed and witnessed as described in this paragraph should be placed in the patient record.

(B) If, owing to the patient's condition at the time of admission and 24 hours later, the patient does not appear to understand the content of the rights document or the explanation of the rights document, the staff should give the patient another copy of the Recommended Patient's Bill of Rights and should attempt to provide an explanation periodically until understanding is reached or until discharge. The necessity for repeating the rights communication process should be documented in the patient's record, signed, and dated by the staff.

(h) Patient complaint policy. The board recommends that the governing body adopt bylaws that require the hospital to develop and enforce policies and procedures that include a procedure for receiving and responding to complaints from patients, their families, and friends involving patient rights and quality of care.

(1) Education of governing body, medical staff, nursing staff, and hospital employees; display. The board recommends that the hospital take the steps described in suparagraphs (A)-(C) of this paragraph to educate the members of the hospital's governing body, medical staff, hospital administration, and other employees.

(A) Copies of the patient complaint policy should be given to members of the hospital's governing body, medical staff, administration, and other hospital employees. A copy of the patient complaint policy should be given to the patient on admission under the requirements set out in paragraph (2) of this subsection.

(B) The hospital administration should strive to provide an explanation of the content of the patient complaint policy to the members of the hospital's governing body, medical staff, hospital administration, nursing staff, and other hospital employees as early as possible in the person's association with the hospital.

(C) The hospital administration should schedule a review of the content of the patient complaint policy periodically for the benefit of the members of the hospital's governing body, medical staff, hospital administration, nursing staff, and other hospital employees and as soon as possible after the document is modified by the hospital.

(2) Education of the patient, family, friends. The hospital should provide a copy of the patient complaint policy to each person admitted voluntarily or accepted for evaluation before an emergency detention, and, as appropriate, to the person's family member, guardian, or friend. The provision of the policy should be documented in the patient's record.

(A) Within 24 hours of being admitted to the hospital to receive mental health services, the patient complaint policy should be explained aloud to the patient in a way the patient can understand (e.g., in the patient's language if the patient is not English-speaking, in sign language if the patient is hearing-impaired).

(B) If, owing to the patient's condition at the time of admission and 24 hours later, the patient does not appear to understand the content of the complaint policy document or the explanation of the complaint document, the staff should give the patient another copy of the patient complaint policy and should attempt to provide an explanation periodically until understanding is reached or until discharge. The necessity for repeating the patient complaint policy should be documented in the patient's record, signed, and dated by the staff.

(3) Display of complaint line number. The hospital should post the complaint procedure in public areas throughout the hospital. The notice should include the telephone number of a 24-hour patient information and complaint line through which a patient, family member, guardian, or friend may file an oral complaint against the hospital and hospital personnel directly with the department. The notice should also contain the name and address of the department to facilitate the filing of written complaints.

(i) Compliance with other state law. The board recommends that the governing body adopt bylaws that require the hospital to develop and enforce a policy that requires active compliance with state laws that act to guard the patient against abuse and neglect and to protect other patient rights. The board recommends that the com-

pliance policy incorporate specific statements of responsibility, a review and investigation procedure, and procedures for the education of the governing body, the hospital administration, medical staff, nursing staff, and other hospital personnel in accordance with §§404. 81-404.87 of this title (relating to Patient Abuse in Private Psychiatric Hospitals). The board recommends that hospitals not employ, contract with, refer to, or accept referrals from any person who offers or accepts remuneration, in kind gifts or services, or other compensation of any kind for securing patients or patronage, including, securing patients or patronage in violation of the Health and Safety Code, §161.091. At a minimum, the governing body, the hospital administration, medical staff, nursing staff, and other hospital personnel should be aware of the state laws described in paragraphs (1) and (2) of this subsection and the respective obligations of each under such laws.

(1) Reporting requirements.

(A) The hospital, hospital personnel, medical staff, and nursing staff, shall report to the appropriate state agency or other enforcement authority any instance of:

(i) child abuse and neglect to the state or local law enforcement or the Texas Department of Human Services as required by the Family Code, §34.02 and if the acts occurred after the child's admission to the hospital, it is recommended that the acts also be reported to the department;

(ii) abuse and neglect of an elderly or disabled person to the Texas Department of Human Resources, and if the acts occurred after the elderly or disabled person's admission to the hospital, to the department as required by the Human Resources Code, §48.036; and

(iii) a patient death that requires an inquest under either the Code of Criminal Procedure, Article 49.04 relating to investigations by a justice of the peace, or the Code of Criminal Procedure, Article 49.25, relating to investigations by the county medical examiner, as appropriate, including a death when:

(I) the patient dies within 24 hours after admission to the hospital;

(II) the patient is killed or dies an unnatural death from a cause other than legal execution; or dies in the absence of one or more witnesses;

(III) the body of the patient is found and the circumstances of death are unknown;

(IV) the circumstances of the patient's death are such as to lead to suspicion that the death was by unlawful means;

(V) the patient commits suicide or the circumstances of the death indicate that the death may have been caused by suicide; or

(VI) the patient's attending physician is unable to certify the cause of death.

(B) The board recommends that the hospital report a patient death that is the subject of an inquest to the director within 24 hours.

(2) Protection against certain crimes and consumer abuses. The board recommends that the governing body adopt and the hospital administration enforce a policy of mental health services review, and if necessary, internal investigation to protect the personal and financial security of the hospital's patients and their families against violations of the criminal law and consumer abuses. The hospital, hospital personnel, and medical staff should report evidence of crimes or consumer abuses to the appropriate law enforcement or civil authority, including evidence of acts constituting any of the following:

(A) illegal remuneration, Health and Safety Code, Subchapter I, Chapter 161;

(B) deceptive trade practices, Business and Commerce Code, Chapter 17;

(C) deceptive business practices, Penal Code, §32.42;

(D) kidnaping and false imprisonment, Penal Code, §§20.01-20.04;

(E) assault and aggravated assault, Penal Code, §22.01 and §22.02;

(F) sexual assault and aggravated sexual assault, Penal Code, §22.011 and §22.021;

(G) injury to a child or an elderly person, Penal Code, §22.04;

(H) abandoning or endangering a child, Penal Code, §22.041; and

(I) theft, Penal Code, §31.03.

(3) Compliance with certain provisions of the Texas Mental Health Code. Under state law, a hospital subject to this section may also be responsible for complying with the Health and Safety Code, Chapters 571, 572, 573, and 576, respectively relating to general provisions, voluntary inpatient admission, emergency detention, and the rights of patients receiving mental health services. The board recommends that the governing body adopt bylaws that require the hospital to develop and enforce policies and procedures designed to protect the rights of persons voluntarily admitted to the hospital, accepted by the hospital for evaluation or admitted for emergency detention, or detained under an order of protective custody. The policies and procedures should, at a minimum include specific elements in the provision of mental health services by the hospital described in subparagraphs (A)-(E) of this paragraph.

(A) All voluntary admissions for inpatient mental health services should be ordered and clinically justified by a physician. A voluntary patient should not be accepted for observation or admission without a face-to-face evaluation by a physician. Any of the following will meet this standard:

(i) a face-to-face evaluation done during a 72-hour period immediately before admission by a physician who has treated the patient and is familiar with his or her case; or

(ii) a face-to-face evaluation done during a 24-hour period immediately before admission if the patient is unknown to the physician. If this evaluation is done by an emergency room physician who does not have admitting privileges, then the emergency room physician must contact a psychiatrist for consultation and admission orders. The psychiatrist should conduct a face-to-face evaluation of the patient within 24 hours of admission.

(B) A voluntary patient expressing a request for release should be given an explanation of the process for requesting release and afforded the opportunity to request release in writing. When the written request for release is signed or presented to any direct care staff of the hospital, it should be witnessed and timed and dated. Oral statements of the desire to be discharged should be treated as written requests for release and should be reduced to writing by staff if necessary. Without regard to whether a voluntary patient agrees to sign paperwork requesting discharge from services, the request should be documented and processed by the hospital staff. The refusal or inability of the patient to sign the request for discharge should be documented

on the unsigned written request. All written or prepared requests for discharge should be timed, dated, and signed by two persons on the hospital staff, who should provide information to the patient that pursuant to law, during the ensuing period of up to 24 hours, the patient should be observed and evaluated to determine the clinical appropriateness of seeking involuntary commitment to services. The form and format for requesting release and the information to be provided may be prescribed by the TxMHMR.

(C) When a voluntary patient requests release, as soon as possible, but not more than 24 hours after receipt of the request for release, the patient should be examined face-to-face and assessed for discharge readiness by the patient's physician, with input from the members of the treatment team.

(D) A patient should not be detained unless the person meets the criteria for emergency detention or involuntary commitment and the hospital uses the additional time to facilitate the detention or commitment process.

(i) If, in the physician's clinical judgment, a patient who is under 16 years of age meets the criteria for emergency detention or involuntary commitment, the physician must execute a certificate of medical examination within 24 hours of the patient's request for discharge and inform the patient and the patient's family, guardian, or conservator, of the intent to seek an emergency detention or involuntary commitment.

(ii) If, in the physician's clinical judgment, a patient who is 16 years of age or older meets the criteria for emergency detention or involuntary commitment, the physician must execute a certificate of medical examination within 24 hours of the patient's request for discharge and inform the patient. If the patient has authorized the release of the medical/mental health information the physician must provide such information to the persons authorized by the patient to receive it.

(iii) If, in the physician's clinical judgment, the patient does not meet the criteria for emergency detention or involuntary commitment, the patient must be discharged as soon as possible following the determination that pursuit of an emergency detention or involuntary commitment is not appropriate. In no case should the delay exceed 24 hours following the request for discharge.

(iv) Any instance in which a voluntary patient is detained should be supported by documentation that clearly describes the clinical rationale for detention and plans for disposition.

(E) Threats intended to influence a voluntary patient's decision to exercise the right to request discharge should be strictly prohibited.

(4) Emergency detention.

(A) A person temporarily accepted for emergency detention should be examined by a physician as soon as possible within the first 24 hours after apprehension.

(B) A person should be admitted to the hospital for emergency detention only if the physician who conducted the preliminary examination makes a written statement in the patient record that the person meets the criteria for admission set out in the Health and Safety Code, §573.022, relating to emergency admission and detention.

(i) A person should not be taken to a hospital for emergency detention unless the hospital administration agrees in advance to accept the person. A hospital should only accept such patients when a physician is available to immediately evaluate the person under the criteria for emergency detention set out in the Health and Safety Code, §573.002. Upon arrival at the hospital, the rights of persons apprehended for emergency detention, as contained in the Recommended Patient's Bill of Rights described in subsection (g)(1) of this section, should be provided and explained to the person by the hospital staff.

(ii) Submission of an application for voluntary admission after the person has been apprehended for emergency detention but before the preliminary evaluation for admission for emergency detention has been conducted should not negate the requirements for the preliminary evaluation for emergency detention under the Health and Safety Code, §573.022.

(C) A person apprehended under the Health and Safety Code, Subchapter A, Chapter 573, relating to apprehension by a peace officer, and detained under the Health and Safety Code, Subchapter B, Chapter 573, relating to emergency detention by order of a magistrate, should be released after the preliminary examination unless the person is admitted to the hospital under the Health and Safety Code, §573.022, relating to emergency admission and detention.

(D) A person admitted to a hospital under the Health and Safety Code, §573.022, should be released if the attending physician determines at any time during the emergency detention period that the person no longer meets one of the criteria required by the Health and Safety Code, §573.022(2).

(j) Enforcement of special standards.

(1) Compliance with this section required. Each hospital licensed by the department shall comply with the Medicare conditions of participation as provided in subsection (e)(1) of this section. Each hospital licensed by the department should comply with the recommendations of the board as they are recited in this section.

(2) Investigations. The director, the director's designee, or the division may enter and inspect a hospital at any time the director deems reasonable to assure compliance with this section, prevent violations of this section, or to investigate complaints made against the hospital. The director, the director's designee, or the division may document failure to conform to the recommendations of the board set out in this section.

(3) Notice; opportunity for correction; enforcement actions. If after an investigation, the director has reasonable cause to believe that a hospital has violated the law or the standards described in this section, the director shall provide notice to the hospital of the violation or violations and an opportunity for correction. If the hospital fails or refuses to correct the violation, the director may undertake any or all of the following enforcement actions:

(A) refuse to issue a license or a renewal license;

(B) suspend or revoke an existing license; or

(C) seek injunctive relief as provided by the law.

(4) Denial to issue, reissue, suspend, or revoke a hospital license. Action by the director to refuse to issue or reissue a license, or to suspend or revoke a hospital license shall be preceded by granting the hospital an opportunity for a hearing before the department to contest the proposed action. Notice and hearing will be governed by the board's formal hearing procedures described in Chapter 1 of this title (relating to Texas Board of Health) and the applicable provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

(5) Counsel concerning the importance and background of the recommendation. If the director, the director's designee, or the division has found that the hospital has failed or refused to incorporate the recommendations of the board into its policies and procedures, the director, the

director's designee, or the division should counsel with members of the hospital's governing body, medical staff, administration, or other hospital employees, as appropriate, to explain the importance and background of the recommendations and to encourage cooperation.

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 January 25, 1993.

TRD-9318168 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: February 15, 1993

Proposal publication date: November 10, 1992

For further information, please call: (512) 834-6645

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Chapter 229. Food and Drug

Licensing of Wholesale Distributors of Drugs-Including Good Manufacturing Practices

• 25 TAC §229.252

The Texas Department of Health (department) adopts an amendment to §229.252, without changes to the proposed text as published in the October 6, 1992, issue of the *Texas Register* (17 TexReg 6879).

The amendment enables the department to license and regulate wholesale drug distributors of compressed medical gases at a reduced fee. This amendment does not include those distributors of compressed medical gas who also transfill cylinders, because these facilities require more inspectional time for operations testing and record review. A reduced fee is also being established for small volume businesses that function as wholesale drug distributors at a median level. The majority of medical gas transfillers will be included in this category. Any place of business that is registered with the United States Food and Drug Administration as a manufacturer of compressed medical gases will be required to license with the department.

A summary of comments and the department's responses are as follows.

COMMENT: One commenter questioned the need for the department to regulate wholesale distributors of non-prescription drugs.

RESPONSE: The department has a mandate which provides for the safety of drugs, either over the counter (OTC) (some types), or prescription drugs. The department must also adhere to Food and Drug Administration (FDA) regulations which have specific requirements for OTC wholesale distributors. In addition, OTC drug efficacy and safety is sometimes predicated on certain external forces such as temperature, moisture, contaminates, and expiration date. The department inspects for these conditions.

COMMENT: A commenter stated that he did not believe regulating wholesale distributors of OTC drugs provided any benefit to the wholesaler.

RESPONSE: The department disagrees and believes the licensure and inspection of wholesale distributors is in the best interest of the citizens of the State of Texas by assuring that these products are maintained under conditions whereby they may not become contaminated.

COMMENT: One commenter requested the general number and types of wholesale distributors of OTC drugs.

RESPONSE: The department inspects approximately 1,959 wholesale distributors of OTC drugs. There are many types of wholesale drug distributors as defined in §229.251.

COMMENT: One commenter requested clarification as to what comprised an inspection

RESPONSE: Inspections involve a number of areas of concern from the perspective of the State as well as the FDA. Specifically, OTC drug wholesale distributors are reviewed to ensure that they are in compliance with the drug expiration requirements, that drugs are being stored in accordance with the manufacturer's recommendations, storage sites are provided which meet the Good Manufacturing Practices Guidelines (free of insects, moisture, and other contaminantes), records reflect the distribution of the OTC drugs providing an audit trail, standard operating procedures for disasters and recalls, and that OTC drugs sold are approved for sale in the State of Texas.

COMMENT: One commenter expressed his belief that the fees assessed as a tax were arbitrary and involved duplication.

RESPONSE: The department disagrees with the first part of the comment in that fees are set based on cost to provide the license, inspection, and collection of fees. Unless the OTC wholesale drug distributor is also a manufacturer and required to register with the United States Food and Drug Administration (FDA), the department is not aware of any duplication involving any other regulatory agency.

COMMENT: One commenter did not think that the benefits received by licensing warranted assessment of fees.

RESPONSE: The department disagrees, because licensing and inspection are an integral function of the wholesale distribution of OTC drug regulations. The fees are assessed so that these services can be accomplished and the public can be protected from contaminated and/or adulterated drugs.

COMMENT: One commenter thought that any increase in fees should be clearly detailed so as to justify the basis for the fee increase.

RESPONSE: The department agrees that fee increases should contain explanation as to the basis of the increase and this was done when fee amendments were proposed in April 1992. A public hearing was also conducted to accept comments and questions regarding the amendments.

COMMENT: One commenter expressed his concern that the emergency amendment reduced only one category of licensures (those under $200,000), and that companies from $200,000 up did not provide for parity as it pertains to a percent of sales.

RESPONSE: The department agrees that smaller companies should pay a lower fee, which is why the emergency amendment was adopted. However, the cost of licensing/inspections exceed the fees generated. The department is required to ensure that the regulations requiring licensing and inspections are enforced, therefore, fees must be set to provide adequate revenue to complete this function. The Department feels that large firms should pay a higher fee because the costs of inspection of the firms are substantially higher than that of smaller firms.

The commenters were Toudouze Market and Grandpa Brands companies. They were neither for or against the amendment, but they did offer comments and expressed concerns as previously mentioned.

The amendment is adopted under Texas Health and Safety Code, §431.241, which provides the Department with the authority to adopt necessary regulations pursuant to the enforcement of this Chapter; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

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 January 25, 1993.

TRD-9318146 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: February 15, 1993

Proposal publication date: October 6, 1992

For further information, please call: (512) 458-7248

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 15. Coastal Area Planning

Subchapter A. Management of the Beach/Dune System

• 31 TAC §§15.1-15.10

The General Land Office adopts new §§15.1-15.10, concerning identification of critical

dune areas, dune preservation, and the preservation and enhancement of public beach access, as required by recent amendments to state law with changes to the proposed text as published in the September 18, 1992, issue of the *Texas Register* (17 TexReg 6417).

This subchapter is adopted in order to implement the requirements of the Texas Natural Resources Code, §§61.001, et seq (Open Beaches Act) and the Texas Natural Resources Code, §§63.001, et seq (Dune Protection Act). The Open Beaches Act and the Dune Protection Act require the General Land Office to promulgate rules for the protection of critical dune areas and public beach use and access. The General Land Office is required to protect the public beach from erosion or reduction and adverse effects on public access and critical dune areas by regulating beachfront construction and other activities occurring along the shoreline of the Gulf of Mexico.

This subchapter is for use by state and local governments in managing the beach/dune system and provides minimum standards for managing the public beach and human activities occurring on the property fronting the Gulf of Mexico consistent with the Texas Natural Resources Code, §§61.001, et seq and the Texas Natural Resources Code, §§63.001, et seq.

Editorial changes that do not alter the content of this subchapter 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 subchapter and comments on the preamble to the proposed subchapter are combined at the end of the summary of comments.

Section 15.1.

General comments were received on §15.1, relating to policies. Based on these comments, the General Land Office has clarified that the statements contained in §15.1 are goals to be used as a basis for managing and regulating human impacts to the beach/dune system.

Four commenters requested that the General Land Office modify §15.1, relating to policies, to identify the protection of public health and safety as a policy of this subchapter and the protection and maintenance of a healthy beach/dune system as a public right for its protective functions and recreational value. These suggested changes have been adopted.

Concerning §15.1(2), one commenter suggested including local governments with coastal landowners to clarify that the General Land Office will aid both in preserving natural resources. Because the General Land Office intends to provide aid to both, this change has been made as recommended. Another commenter suggested that §15.1(2) be modified to provide that both private and public entities are held to the same standards and policy goals in protecting dunes and public beaches. In recognition of the goal that both the state and local governments protect all coastal lands, the General Land Office has changed this subsection based on this comment. Another commenter stated that the foredune ridge belongs to the state and the dunes landward of the foredune ridge do not. This statement is incorrect because it confuses ownership with regulatory authority. The open beach is subject to the public easement but does not "belong" to the state. However, landward of the public beach, the General Land Office and the local governments with jurisdiction over dunes and beaches fronting the Gulf of Mexico are charged with the duty of preserving all dunes, not just foredunes, within the geographic scope described in §15.3(a). Therefore, no change was made based on this comment.

Concerning §15.1(4), one commenter stated that mere minimization of man-made damage is inconsistent with this subchapter's stated intent and damage must not occur. To the contrary, the legislature has acknowledged that, in the course of human activity, some damage to dunes may be unavoidable. Materially weakening dunes or materially damaging dune vegetation is prohibited pursuant to the Dune Protection Act, §63.054(a). Further, the Dune Protection Act, §63.091, prohibits persons from conducting activities which will adversely affect dunes and dune vegetation unless they have a properly issued dune protection permit. This subchapter provides standards for individuals and local governments to follow when damage to dunes is unavoidable. This subchapter requires first that every effort be made to avoid adverse effects on dunes or dune vegetation, then, if those effects cannot be avoided, they must be kept to a minimum. This subchapter requires that local governments issuing dune protection permits add conditions to the permit mandating that the permittee use the mitigation sequence to restore damaged dunes and dune vegetation, pursuant to the Dune Protection Act, §63.055 and §63.057(b). No change was made based on this comment.

Concerning §15.1(5), one commenter compared a naturally occurring barrier reef to a man-made seawall to justify the use of a flat seawall as an "environmentally sound erosion response method". The comparison is not entirely correct because barrier reefs are not erosion response structures and are typically located in the shallow nearshore where they slow the wave energy before it reaches the shore. Seawalls are generally located on the beach and receive wave energy after some of the energy has been dissipated by the beach and nearshore. Barrier reefs are composed of many different types of fauna and are discontinuous and irregular. Flat seawalls are usually composed of a uniform inert material and can extend continuously for miles. Because of these differences, seawalls are not considered equal to barrier reefs. No change was made based on this comment.

Concerning §15.1(6), one commenter asked how the General Land Office can expect others to be responsible for the waste and mismanagement found in government, citing mismanagement of funds after Hurricane Hugo. Section 15.1(6) is a General Land Office flood protection policy which applies to state and local activities. It is the policy of the General Land Office to avoid waste of federal funds by requiring that local governments provide appropriate protection against the perils of flood losses and minimize exposure of property to flood damage. Two commenters suggested that the phrase "and ensuring that the insurance remain available and affordable" be removed from §15.1(6). It is a policy goal of the General Land Office, not a statutory mandate, to ensure that insurance remain available and affordable for appropriate development by providing standards which are consistent with the federal flood insurance program. The changes as recommended were not made. However, based on these comments, the General Land Office has reviewed and clarified the policy contained in §15.1(6).

Many commenters requested that the General Land Office modify §15.1(7), relating to public beach policies. One commenter requested that the subsection be modified to state that local governments shall assure adequate access for the public. The standard of "adequate" access does not apply to this provision. The Open Beaches Act uses the standard of "adequate" access with regard to local government acquisition of access ways in the Open Beaches Act, §61. 011(d)(1), and certificate conditions in the Open Beaches Act, §61.015(g). Based on this comment, however, the public beach policy contained in §15.1(7) has been changed to state that access points which are closed must be replaced consistent with the local government's dune protection and beach access plan. Another commenter asked that the General Land Office add language addressing prevention of destruction of public beaches and other public coastal resources. Because this is a General Land Office policy not identified in §15.1, this suggested change has been adopted in §15.1(5).

One commenter suggested that "practicable", as used in §15.1(7) and defined in §15.2, requires a value judgment which may be unacceptable in relation to beach use and access and suggested leaving that phrase out of this section. The definition of "practicable" has been modified to be consistent with the protection of public beach use and access.

Another commenter suggested that §15.1(7) be changed to allow for emergency closure of access points. The commenter stated that it could become necessary to close access points for public safety, for emergency traffic control, because of tidal flooding, for adjacent road repairs, etc., and it would not be practicable in most cases to establish another temporary replacement point. The General Land Office agrees with this comment and has made the recommended change in §15.7(g)(4), but not here in the policy section. Another commenter suggested that §15.1(7) be modified to include public beach use in addition to access. The General Land Office has made the recommended change. Two commenters observed that §15.1(7) inaccurately implies that a greater number of access points is synonymous with better access and recommended that the General Land Office consider emphasizing sound traffic planning and safety in fewer access points to improve traffic flow and safety. Based on these comments, this section has been changed by adding the word "enhance" and deleting "establish new". One commenter stated that the last sentence of §15.1(7) is too narrow and

might be interpreted to mean that only local governments could provide such access and that local governments might lack the authority to make private owners provide the easements as part of the permitting process. The last sentence of §15.1(7) is a policy goal based on the statutory requirement that local governments develop a plan for preserving and enhancing public beach use and access as provided in the Open Beaches Act, §61.015(a). In their plans, local governments may provide for beachfront construction certificate conditions, such as easement requirements, pursuant to the Open Beaches Act, §61.015(g). Specific provisions concerning the methods of enhancing public beach use and access would be inappropriate in the broad policy statements of §15.1(7). This is an issue to be addressed in the substantive provisions of this subchapter and in the local government plans.

It was suggested that §15.1(8) be changed to include "timely" in reference to governmental decision-making. This suggestion has been adopted.

Section 15.2.

One commenter suggested that the General Land Office add a definition of the word "agent" to §15.2. Because this term is not used in this subchapter and a definition of "agent" does not seem to further the purposes of either this subchapter or the statutes, the definition was not adopted. The permittee (not an agent, if any) is liable for violations of a local government's plan, this subchapter, or either statute. However, in response to this comment, the General Land Office has added a provision to the permit application requirements to the effect that local governments shall require that any person acting on behalf of a property owner identify the property owner.

One commenter requested that the definition of "applicant" in §15.2 be amended to provide that an applicant is any person applying for a certificate or a permit, but not for preliminary approval of any construction. This suggested change has been made, as the person seeking preliminary approval for construction must apply for a separate dune protection permit and beachfront construction certificate if a permit and certificate are required pursuant to this subchapter and a local government's plan.

Another commenter recommended that the definition of "backdune" in §15.2 be modified to include the phrase "backdunes receive vital rainwater nourishment from swale areas both seaward and landward of the backdunes". Vital rainwater nourishment to any portion of the beach/dune system usually occurs at the topographic highs where infiltration is greatest. The lower areas between dunes are less permeable due to the accumulation of finer sediments and detritus. These areas periodically store or collect rainwater which eventually evaporates or infiltrates slowly to the water table. Because these low areas (swales) should receive the same amount of protection as the dunes, the General Land Office has included swales in the "dune complex" definition, but not in the definition of "backdune". Three commenters suggested that the definition of "backdune" be restricted to the areas immediately adjacent to the foredunes; otherwise, stated the commenters, it could be interpreted to include broad land areas far landward of the foredune area and to overly restrict development. However, the regulated area can extend no farther than 1,000 feet landward of mean high tide of the Gulf of Mexico. The recommended change has not been made because, as defined by the relevant geological standards, backdunes are all dunes located landward of the foredunes, not just the first line of dunes located immediately landward of the foredunes.

Based on one comment, the definition of "beach access" in §15.2 has been modified to state that the public's right to access the beach is free "and unrestricted". This commenter asked that "free" be replaced by "unrestricted", but because "free and unrestricted access" appears in the Open Beaches Act, §61.011(a) and §61.013(a), "free" was not deleted and "and unrestricted" was added. Another commenter noted that "beach access", as defined in §15.2, is not only a right, but an accommodation afforded to the public through a local government's establishment and maintenance of pedestrian beach access points. Because no change was recommended, the General Land Office has made none.

One commenter recommended that the swale area be added to the definition of the "beach/dune system" in §15.2. Because swales are an integral part of a dune complex, "swales" were added to the definition of "beach/dune complex" in §15.2. In addition, a definition of "swales" has been added to §15.2.

In response to a few comments regarding the definition of "beachfront construction certificate" in §15.2, the definition of "beachfront construction certificate" has been modified based on the provisions in the Open Beaches Act, §61.015(f), and throughout this subchapter. Another commenter noted that in §15.2 under the definition of "beachfront construction certificate", as drafted, the United States Army Corps of Engineers has no authority to enhance public beach use and access. In fact, federal agencies are exempt from the Texas beachfront construction certification requirement by virtue of the supremacy clause, United States Constitution, Article VI, clause 2, unless otherwise required to comply with local government plans pursuant to a federal statute. In addition, federal agencies will be required to have proposed activities certified as consistent with the Texas Coastal Management Program, once the program is adopted, pursuant to the Coastal Zone Management Act, 16 United States Code, §1451, et seq. A commenter requested that the word "subsection" be replaced with "subchapter" in the definition of "beachfront construction certificate" in §15.2. This change was not made, as the definition was otherwise modified and "subsection" was deleted. A comment was received requesting that "(c)-(h)" be deleted from the reference to "the Open Beaches Act, §61.015(c)-(h)", in §15.2 in the definition of "beachfront construction certificate" This change has been adopted, as all of the Open Beaches Act, §61.015, is relevant to the definition of "beachfront construction certificate".

It was suggested that a new definition for "direct and indirect beach-related services" be added in §15.2. As recommended, the new definition, entitled "beach-related services", would add other services not identified with the specific services listed in §15.8(b)(2). Section 15.8(b) (2) has been modified and moved to §15.2, relating to definitions. The definition of "indirect beach-related services" was not defined exactly as this commenter suggested, because beach user fees cannot be used for such services. Based on this and other comments, this subchapter now also allows 10% of the beach user fee revenues for each fiscal year to be spent on administrative costs in §15.8(f). Some of the suggested items to be included in the definition of "beach-related services" are actually administrative costs. Therefore, not all of the recommended changes were made.

Two commenters recommended that the definition of "beach user fee" be modified in §15.2 based on the provisions in the Open Beaches Act, §61. 011(b). The definition has been modified.

In response to comments received, a new definition for "breach" has been added to §15.2.

One commenter suggested that a definition of "bulkhead" be added to §15.2. A definition of "bulkhead", obtained from the United States Army Corps of Engineers, has been added.

Seven commenters requested that the General Land Office define "casualty" in this subchapter. To avoid confusion with insurance law and custom, the General Land Office has not defined this term.

Under the definition of "coastal and shore protection project" in §15.2, one commenter stated that because dunes take so long to form, dunes cannot be revegetated. However, this subchapter requires that, even where dune vegetation is disturbed without damage to the dune, local governments shall require permittees to plant indigenous vegetation on the naturally formed or man-made dunes. This is what is meant by "revegetation". The definition for "coastal and shore protection project" has been modified to include this commenter's concerns by replacing "dune creation" with "construction of man-made vegetated mounds".

One commenter asked whether mobile beach vendors are included in the definition of "commercial facilities" in §15.2. Unless specifically exempt by statute or in this subchapter, any "commercial facility" that falls within the definition of that term is a commercial facility. Because this commenter requested no change, no change was made.

Many commenters requested that the definition of "construction" in §15.2 be narrowed. The General Land Office has modified the definition in order to clarify which activities are included under the term "construction". One commenter noted that the term "site work beyond the limits of the foundation" is confusing because, in the construction industry, "site work" means grading and paving required for driveways and swimming pools. To clarify, the General Land Office has deleted "beyond the limits of the foundation"

from the definition of "construction". Another commenter stated that there should be a threshold size of construction which triggers the requirements for a permit or certificate. In §15.3, the threshold requirement is based on geography and the impact of the activity. Local governments may address threshold size requirements for permits and certificates in their local plans. Therefore, no change was made to the definition of "construction" based on this comment. A commenter requested that the phrase "or the perimeter of exterior walls" be added to the definition of "construction" in §15.2. Because this suggestion is already addressed in the definition by the phrase "improvements to the size of any structure", no change was made. Two commenters stated that in §15.2, the definition of "construction", as drafted, went well beyond industry's use of the term. The definition of construction was modified to reflect the definition in the Open Beaches Act, §61.011(2). The definition of "construction" was further amplified to clarify, for local governments and the regulated community, the General Land Office's interpretation of the various types of construction identified in the statutory definition of "construction".

One commenter suggested that the definition of "coppice mounds" in §15.2 be modified to state that they are located on the seaward side of foredunes and may be unvegetated. The definition of "coppice mounds" was changed as suggested.

Several commenters recommended changes in §15.2 in the definition of "critical dune areas" which, if adopted, would have critical dune areas identified only seaward of the dune protection line. The General Land Office requires local governments to establish dune protection lines landward of all critical dune areas identified by the General Land Office. The relationship between critical dunes areas identified by the General Land Office and dune protection lines established and maintained by local governments is discussed in §15.3(d), relating to administration. Because the modification of the definition as suggested by these commenters is inconsistent with this subchapter, the modification is not adopted. One commenter recommended that the General Land Office insert "at least" between "within" and "1,000". This suggested change has not been made because critical dune areas may only be identified in the area 1,000 feet of mean high tide of the Gulf of Mexico. Another commenter requested that the General Land Office remove the reference to "public roads" and "coastal public lands". The General Land Office has instead modified the definition based on the definition of "critical dune areas" in the Dune Protection Act and to reflect the fact that state-owned land includes public roads and coastal public lands. In addition, three commenters suggested that the definition of "critical dune areas" be modified to state that critical dune areas are only those dunes and dune areas which are necessary for the protection of the described areas. On a geologic scale, coastal sand dunes are thin, linear, and relatively young depositional features that are essential to maintaining the dynamic equilibrium of the shoreline or barrier island. The basic function of dunes on a barrier island, peninsula, or gulf-fronting mainland is to serve as a reservoir of sediment for shorefront replenishment during severe storms and for helping to dissipate wave energy. A continuous belt of dunes acts as a barrier to wave overwash and flooding of the area landward of it. Like many shorelines of the world, the Texas coast is eroding. Therefore, all coastal sand dunes are considered "critical" to maintaining some stability of the shoreline. Another commenter suggested that the words "and similar property" be deleted from the definition of critical dune areas. This change has been made.

A commenter suggested that the word "nuisance" be deleted from the definition of "critical dune areas" in §15.2. Activities which unreasonably interfere with a right common to the general public constitute a public nuisance. Activities which aggravate erosion and, therefore, reduce the size of the public beach could be considered a public nuisance, as that would interfere with the public's common right to use, enjoy, and have access to the public beach. Activities conducted on adjacent property which unreasonably interfere with a person's right to use and enjoy his/her property constitute a private nuisance. Activities which reduce the size of the public beach by aggravating erosion may also constitute a private nuisance, as reduction of the public beach may cause migration of the landward boundary of the public beach easement and reduce the protection of adjacent private property. Dunes inhibit the reduction of the public beach by storing sand and providing sand to the sand budget. Therefore, considering the function of dunes in protecting the public beach from nuisance is an important criterion when identifying critical dune areas. No change was made based on this comment. The General Land Office has not modified the second sentence of the definition of "critical dune areas", as suggested by one commenter, to state that critical dune areas "may" include the "first line of backdunes immediately landward of the foredune ridge". This commenter stated that such a modification was necessary to contain critical dune areas within the boundaries delineated in the Dune Protection Act. Critical dune areas are identified in that portion of land which is 1,000 feet of mean high tide of the Gulf of Mexico, as provided by the Dune Protection Act, §63.121. The legislature specifically delineated the geographic scope. This subchapter's requirements are limited to that geographic scope; therefore, no change was made. Three commenters stated that, relating to the definition in §15.2 of "critical dune areas", critical dune areas are not definable by specific distance and that they should be identified to include all of the beach/dune system from the coppice mounds to the area behind the back swale. Another commenter similarly requested that the General Land Office modify the definition of "dune protection line" by expanding the geographic scope of the line. Because the response to these comments on the definitions of "critical dune areas" and "dune protection line" is the same, both comments are addressed here. While it is true that critical dune areas and the dune protection lines preserving them cannot be identified and established solely on the basis of geographic parameters, the jurisdiction of the General Land Office extends up to 1,000 feet landward of mean high tide of the Gulf of Mexico, and the jurisdiction of local governments extends no farther than the same 1,000 feet of mean high tide of the Gulf of Mexico. Therefore, the General Land Office and local governments cannot, pursuant to the Dune Protection Act, regulate activities affecting dunes which are located farther landward than that 1,000 feet. However, the General Land Office strongly encourages all efforts to protect those dunes which are located more than 1,000 feet landward of mean high tide of the Gulf of Mexico.

Relating to the definition of "dune" in §15.2, one commenter stated that dunes cannot be man-made. The General Land Office does not agree that dunes cannot be man-made because at some point, man-made vegetated mounds can acquire all of the protective features offered by naturally formed dunes. The General Land Office agrees that initially and for some period following their construction, man-made dunes will not offer the same protection capability that naturally formed dunes offer. One commenter recommended that the definition of "dune" in §15.2 be modified to include the two changes in slope characterizing dune formations: the slope between normal high tide and the upper dry beach, and the slope landward of the public beach. The original definition has been modified to include "abrupt change in slope landward of the dry beach". In addition, in response to various comments, a new definition of "swales" has been added to §15.2, relating to definitions. One commenter noted that in §15.2 the definition of "dune" appears to include landscaping mounds. The General Land Office has added a definition of "dune vegetation". This definition should solve the problem identified by this commenter.

A definition of "dune complexes" has been added to §15.2 at the request of one commenter. The term encompasses all topographical features of the area, including dunes of any size or continuity and swales.

One commenter requested that the definition of "dune protection and beach access plan or plan" in §15.2 be modified to state that the plan is required by the Dune Protection Act and the Open Beaches Act. This modification was adopted, as it clarifies General Land Office and local government authority under the statutes.

One commenter stated that the language in the definition of "dune protection line" in §15.2 may create a conflict between a county commissioners court and a municipality in that county. A municipality may only establish a dune protection line if the county in which it is located has delegated this authority to the municipality. The definition has been modified to clarify this point. Another commenter requested that the General Land Office modify this definition by stating that the local government's dune protection line is established for the purpose of protecting dunes and dune vegetation that encompass, at a minimum, all critical dune areas, as defined in this subchapter, within 1,000 feet of mean high tide of the Gulf of Mexico. This suggested change has been adopted, as local governments may establish the line landward of critical dune areas, but not farther landward

than 1,000 feet of mean high tide of the Gulf of Mexico. One commenter suggested that the General Land Office modify the definition of "dune protection line" by adding "pursuant to the Dune Protection Act, §63.011". This comment has been adopted as it clarifies the authority of local governments to establish and maintain a dune protection line.

A few commenters requested that the General Land Office define "enhance" in this subchapter. Local governments are required to adopt plans for the preservation and enhancement of public beach use and access for that portion of the public beach within their jurisdiction. Such preservation and enhancement is site specific and is best addressed by local governments. A generic statewide definition may not be applicable to all portions of the public beach. Therefore, no change was made based on these comments.

Based on a comment, the General Land Office has modified the definition of "dune protection permit or permit" in §15.2 to include local government authorization of construction "or other regulated activities". In reference to the definition of "dune protection permit or permit" in §15.2, one commenter asked when a permit would be issued outside a dune protection line, but within a critical dune area. Local governments are required to establish dune protection lines landward of all critical dune areas; therefore, this situation should not happen.

One commenter suggested that a definition of "eroding area", as well as the geographic limits of eroding areas, be added to §15.2 because major portions of the coast are eroding, some at a faster rate than others. This comment has been adopted.

Three commenters requested that the definition of "erosion response structure" in §15.2 be modified by adding the phrase "or the foundation of a structure which is the functional equivalent of" a bulkhead, seawall, or retaining wall. The language of these comments was modified and adopted, as the purpose of this provision is to guard against the effects caused by such structures. Another commenter stated that jetties are considered structures that protect waterways rather than beaches and, therefore, should not be included in the definition of "erosion response structure" in §15.2. Jetties are erosion response structures used to stabilize the shoreline and prevent it from migrating or eroding laterally (as opposed to landward). Therefore, the suggested change was not adopted.

One commenter recommended that in the definition of "foredunes" in §15.2, the term "grass-covered" be replaced with "vegetated" to eliminate possible confusion. This change has been made. Another commenter felt that in the definition of "foredunes" in §15.2, the term "often interrupted" was an unwarranted conclusion. It has been replaced with "may be interrupted". The term "breaks" appears in the definition of "foredunes" in §15.2. This term is defined in Webster's New Collegiate Dictionary and has not been defined in this subchapter.

A few comments were received on the definition of "industrial facilities" in §15.2. Based on these comments, the definition has been modified to conform with the Standard Industrial Classification Manual as adopted by the Executive Office of the President, Office of Management and Budget (1987 ed.). The definition of "commercial facilities" in §15.2 has also been modified based on these comments.

Three commenters requested that the definition of "line of vegetation" in §15.2 be modified to state that the line "usually" spreads continuously inward. The General Land Office did not adopt this suggestion, as the definition in the Open Beaches Act, §61.001(5), does not include the word "usually". One commenter asked that the General Land Office delete the second sentence in the definition of the line of vegetation. Because this sentence explains the importance of the line of vegetation, the General Land Office has not deleted the sentence. A commenter suggested that the phrase "used to determine" be deleted from the definition of "line of vegetation" in §15.2, regarding public beach boundary determinations. Because the line of vegetation is typically used to determine the landward extent of the public beach boundary, no change was made based on this comment. In response to this and other comments, the General Land Office has reorganized §15.3 and added a provision, new §15.3(b), which explains the method for determining the public beach boundary for areas with no marked vegetation line, or where the line is discontinuous or modified, as provided in the Open Beaches Act, §61. 016 and §61.017. Based on these comments, the General Land Office has also modified §15.10(b).

A commenter requested that special purpose districts or units of government be added to the definition of "local governments" in §15.2. This suggested change was adopted, as the intent of this subchapter and the statute is to include all governmental or quasi-governmental entities, unless otherwise exempt under this subchapter or the statutes.

In response to comments received, a new definition for "man-made vegetated mound" has been added to §15.2.

Several commenters asked that a definition of "mitigation" be added to §15.2. In response to these comments, the General Land Office has added this definition in §15.4(f)(3).

Pertaining to the definition of "mitigation sequence" in §15.2, one commenter stated that dunes can be nurtured or enhanced but never restored. The definition has been modified to reflect this concern.

Several commenters asked for a definition in §15.2 of "open spaces". This term has been defined where it appears in §15.3(l)(4)(B)(vii), now §15.3(s) (4)(A)(v).

The General Land Office inadvertently excluded "beach use and access" from the definition of "permit or certificate condition" in §15.2. This omission has been rectified.

Two commenters suggested that the General Land Office exempt governmental entities from the definition of "person" in §15.2. Federal agencies are exempt where so provided in the Dune Protection Act and the Open Beaches Act. In addition, federal agencies are exempt pursuant to the supremacy clause, United States Constitution, Article VI, clause 2., unless otherwise provided in the United States Code. However, a federal agency may be prohibited from conducting activities which are certified by the state as inconsistent with the Texas Coastal Management Program (pursuant to the Coastal Zone Management Act, 16 United States Code, §1451, et seq), once that program is adopted. Since the statute applies to all human activity affecting dunes, dune vegetation, and public beaches, no blanket exemption of governmental entities is justified.

Many comments were received regarding the definition of "practicable" in §15.2. While one commenter held that the term should never be used, as it requires a value judgment, most comments stated that "best available" should be deleted. Based on these comments, the definition of "practicable" has been modified.

Many commenters noted that the definition section, §15.2, contained the definition of "public beach" which appears in the Open Beaches Act, §61. 013(c), rather than the definition of "public beach" which appears in the Open Beaches Act, §61.001(8). The General Land Office agrees that the various definitions of "public beach" contained in the Open Beaches Act may cause some confusion. However, for the purposes of this subchapter, the definition of "public beach" provided in the Open Beaches Act, §61.013(c), is the operative definition. Therefore, no change was made based on this comment. One commenter stated that the definition of "public beach", as drafted, would include vast areas beyond the dune protection line. The definition of the "public beach" is derived from the Open Beaches Act and does not affect the location of the dune protection line. That line shall be established and maintained by local governments at a location no farther than 1,000 feet of mean high tide for the purpose of preserving sand dunes pursuant to the Dune Protection Act, §63.012. Another commenter suggested changes to the last sentence of the definition of "public beach" in §15.2. Because the definition of "public beach" has been modified based on other comments, this suggested change has not been adopted.

Three commenters stated that the definition of "recreational vehicle" in §15.2 was an expansion of the statutory definition. Two of these commenters suggested that the word "jeep" be deleted. This suggested change was not adopted, as "jeep" appears in the statute. One commenter suggested that the terms "motorcycle" and "or humanly propelled" be deleted. These terms have been deleted as they do not appear in the Dune Protection Act, §63.002(4). In addition, motorcycles and humanly propelled mechanized vehicles being used for recreational purposes would be included under "any other mechanized vehicle used for recreational purposes". Motorcycles not being used for recreational purposes will be regulated as vehicles in order to be consistent with ordinary traffic regulations.

A definition for "restoration" has been added to §15.2 at the request of several commenters.

A commenter requested that a definition of "retaining wall" be added to §15.2. This definition has been added.

One commenter requested a definition for "sand piles" in §15.2. The General Land Office prefers the term "man-made vegetated mound", which has been defined in §15.2 and is now used throughout this subchapter where appropriate.

Another commenter suggested that §15.2 include a definition of "seawall". The commenter wanted the definition to be specific in height and extent, but that proposal is too narrow because the General Land Office considers any erosion response structure (of any length) that is designed to withstand wave forces a seawall. This definition has been added.

One commenter wanted the definition of "washover areas" in §15.2 amended to include receding waters from bays. Because this suggestion would make the definition more restrictive and ignore overwash processes on the upper coast, it was not adopted. However, based on this comment, the definition has been modified.

Section 15.3.

Numerous general comments were received on §15.3. Four commenters stated that since the geology and ecology of the barrier islands do not recognize artificial political boundaries, the General Land Office should require one unified plan and one uniform beach user fee for the Texas Gulf Coast in §15. 3. Although the General Land Office agrees with the geographical premise of this comment, the statutes clearly give each local government (as defined in the statutes) the authority to develop its own dune protection and beach access plan. Statewide consistency will be addressed by regulating the elements common to all areas of the Texas coast under this subchapter. Therefore, no change was made based on this comment. Conversely, another commenter expressed the opinion that since Mustang Island and Padre Island are environmentally different areas, they should be treated differently. The General Land Office agrees that a wide range of problems occur on the Texas coast, not all of which occur on each portion of the coast. It is the responsibility of each local government to address the problems unique to the beaches within its jurisdiction. The best mechanism for the handling of problems specific to certain areas is through the drafting and implementation of local government dune protection and beach access plans. The General Land Office will ensure overall consistency in the management of the beach/dune system, but local governments will address all individual issues. Therefore, no change was made based on this comment. In addition, regarding §15.3, one commenter stated that the General Land Office must oversee the process of local government management of the beach/dune system. The General Land Office was placed in an oversight role by the Texas Legislature. That oversight role will be exercised through the approval of local government dune protection and beach access plans as well as through the General Land Office's review and comment authority over individual permits and certificates. Because this subchapter already addresses this commenter's concerns, no change was made based on this comment.

Another commenter requested that the General Land Office and local governments work together to save the habitat and observed that wildlife was being "scraped to death". Because the commenter did not refer to a specific section, this comment was not addressed specifically in this subchapter.

One commenter asked how those local government plans with General Land Office interim approval would be affected by this subchapter (§15.3). Those local governments which have received General Land Office interim approval of their dune protection and beach access plans must meet the same standards identified in this subchapter within the same time frame as all other local governments. Therefore, revisions of those plans with interim approval may be required. The General Land Office will work closely with those local governments, as with all local governments, during the drafting process. In addition, in the Spring of 1993, the General Land Office intends to publish in the *Texas Register* a "model dune protection and beach access plan" for voluntary use by local governments in the plan drafting process.

A commenter expressed concern over the application of this subchapter, (§15.3), to existing structures in areas which are already developed. This subchapter does not apply retroactively to existing structures. However, this subchapter does apply to modifications of existing structures which are regulated activities within the geographic scope of this subchapter. No change was made based on this comment.

One commenter asked that the General Land Office clarify that the authority to integrate the various beach/dune programs into one plan as required in §15.3(a) is provided through the Dune Protection Act, the Open Beaches Act, and this subchapter, and not through local ordinances. Section 15.3(a) was modified based on this comment.

Another commenter asked that the General Land Office specify what is meant by "certain" local governments in §15.3(a) and list those counties and municipalities that must adopt and implement dune protection and beach access programs. The Open Beaches Act, §61.015, provides that "local government(s) with ordinance authority over construction adjacent to public beaches and each county that contains any area of public beach within its boundaries shall adopt a plan for preserving and enhancing access to and use of public beaches within the jurisdiction of the local government". The Dune Protection Act, §63.011(a), provides that "after notice and hearing, the commissioners court of each county that has within its boundaries mainland shoreline, a barrier island, or a peninsula located on the seaward shore of the Gulf of Mexico shall establish a dune protection line". Therefore, "certain" local governments are local governments having such authority under the Dune Protection Act and the Open Beaches Act.

One commenter asked whether the county commissioners courts would have the authority and responsibility to adopt and enforce plans as required in §15. 3(a). The statutory authority of local governments to adopt such plans has been clarified in this subsection.

Two commenters requested that the General Land Office establish time requirements for the establishment of critical dune areas and dune protection lines. The time requirement for identifying critical dune areas has been clarified in new §15.3(e). The time requirement for establishing dune protection lines has been added to §15.3(g) (previously §15.3(e).

One commenter suggested that the phrase "that are essential to the protection of state-owned land, public beaches, and submerged land" be added at the end of §15.3(b), now §15.3(d). This suggestion was not adopted, because new §15.3(d) describes the geographic scope of both the dune protection line and the critical dune areas, i.e., within 1,000 feet of mean high tide of the Gulf of Mexico. The phrase suggested by this commenter is actually incorporated in the definition of "critical dune areas". Therefore, no change was made based on this comment.

Two commenters stated that the provisions in §15.3(b), now §15.3(d), regarding the establishment of dune protection lines and the identification of critical dune areas, are necessary for the protection of public resources, which include wildlife habitat heavily used by endangered species such as the piping plover. The General Land Office agrees with this statement, but this subchapter already requires local governments to consider impacts to all natural resources when considering permit and certificate applications. Natural resources are to be considered in the permit application, but they are not identified in the statutory criteria for the identification of critical dune areas or the establishment of dune protection lines. Therefore, no change was made based on this comment.

One commenter requested that in §15.3(b)-(d), now §15.3(c)-(l), the General Land Office clarify who identifies the critical dune areas and how; the relationship between the critical dune areas and the dune protection lines and the specific procedures and criteria used by local governments to establish the dune protection lines; the procedures and standards to be used by the General Land Office to determine whether the dune protection line is adequate; and the information that local governments must submit regarding the adequacy of the dune protection line, including public input. Section 15.3 has been modified to clarify these issues.

Regarding §15.3(c), one commenter suggested that this subchapter be modified to allow local governments to reduce and set the limits of the geographic scope of the beachfront construction certification area. The statute identifies the geographic scope of the certification area. To clarify the statutory basis of §15.3(c), that provision has been modified to exactly copy the geographic scope of the beachfront construction certification area, as provided in the Open Beaches Act, §61.011(d)(6).

One commenter suggested that §15.3(c) be modified by adding "that affects or may affect

public access to and use of public beaches". Because §15.3 only deals with the statutorily mandated geographic scope, and because this subchapter does not require a certificate unless the activity affects or may affect public beach use and access, no change was made based on this comment. Two commenters suggested that §15.3(c) be amended by adding language describing the statutory requirements regarding public beach use and access. This provision has been modified based on these comments. One commenter stated that §15.3(c) seems to encompass more territory than the statute intended and expressed doubt that there is statutory authority for the last sentence of the subsection as proposed. However, the Open Beaches Act, §61.011(d)(6), provides that the General Land Office shall promulgate rules for the regulation of "...construction on land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the public beach or to any closer public road not parallel to the beach, or to within 1,000 feet of mean high tide, whichever is greater, that affects or may affect public access to and use of public beaches". A local government must use a two-step analysis when reviewing beachfront construction certificates. First, it must determine whether the construction is even within the geographic area being regulated by the Open Beaches Act. Second, if the construction is within the regulated area, the local government must determine whether the proposed activity affects or may affect public beach use and access. Because this subsection merely describes the geographic area being regulated, no change was made based on this comment. One commenter asked when the General Land Office will provide standards for beachfront construction. These standards are provided in §15.3(c). The General Land Office does not anticipate providing standards other than those contained in this subchapter. In addition, the model plan developed by the General Land Office will address the practical application of these standards in greater detail.

Two commenters requested that §15.3(d), now §15.3(f), relating to establishment of dune protection lines, be limited to the exact language of one provision in the Dune Protection Act. Section 15.3 has been modified to clarify that the various requirements in §15.3(d), now §15.3(f), are all based on the provisions in the Dune Protection Act. New sections were added and the language in the proposed sections was amended to address these commenters' concerns. Section 15.3(d), now §15.3(f), sets forth the standards which local governments must adhere to in establishing the line pursuant to the Dune Protection Act, §63.121, which provides that the General Land Office shall promulgate rules for the identification and protection of critical dune areas. Section 15.3(d), now §15.3(f), (h), and (l), also identifies the statutory requirements provided in the Dune Protection Act, §63.013(b), which requires that local governments notify the General Land Office of the public hearing on the establishment or modification of a dune protection line, and the Dune Protection Act, §63.014, which requires that a map or drawing or a written description of the line be provided to the General Land Office after the line has been established or modified. It would be impossible for the General Land Office to assist and advise local governments on the establishment of the dune protection line without a description of the dune protection line and notice of the public hearing on the dune protection line. Because there seems to be some confusion related to the statutory authority of the General Land Office to require this information, this section has been modified. One commenter suggested that the General Land Office require that local governments review and modify the location of their dune protection line every few years or, at least, after a hurricane. This comment has resulted in the insertion of new §15.3(k).

Three commenters suggested that the General Land Office clarify the procedural and substantive requirements in §15.3(d), now §15.3(f), for modifying a dune protection line, pursuant to the Dune Protection Act. Section 15.3(d), now §15.3(f), has been modified based on this comment. These commenters also asked how the General Land Office can require a local government to modify a dune protection line which does not protect all critical dune areas, and two of these commenters stated that the General Land Office had no authority to approve the establishment of a dune protection line. The General Land Office will review the location of dune protection lines pursuant to the following procedure. Local governments must establish dune protection lines either before or at the same time the local government adopts a dune protection and beach access plan. The General Land Office may assist and advise local governments in establishing or altering the line. The local governments must either send the information regarding the line to the General Land Office as required in §15.3, if it establishes the line prior to adopting its plan, or include the information in their local plans. The adequacy of the location of the line with respect to critical dune areas is one factor that the General Land Office will consider when determining whether to approve the local dune protection and beach access plans. Based on this and other comments, §15.3 has been modified. In the plan approval, by rulemaking, the General Land Office will state that the local government receiving that approval has established the dune protection line in a location which is seaward of all critical dune areas.

Many commenters requested that the General Land Office add language to §15.3(e), now in §15.3(f), stating that local government authority to establish and modify dune protection lines is provided in the Dune Protection Act, §63.011(a). Section 15.3(f) has been modified to reflect that local government authority has been provided by the Dune Protection Act, §63.011. One commenter suggested that the title of §15.3(e), now §15.3(l), be amended to read "public hearings for establishing and modifying dune protection lines". Because changing this title would better describe the purpose of §15.3(e), now §15.3(l), the title has been changed based on this comment. One commenter noted a typographical error in the third sentence of §15.3(e), now §15.3(l). The word "that" has been replaced by the word "than". Another commenter requested that local governments be required to publish notice of intent to establish a dune protection line in the *Texas Register*. Local governments are not required to do so pursuant to this subchapter; however, the Office of the Secretary of State, *Texas Register* Publications section, does allow such notice to be published in the "In Addition Sections" of the *Texas Register*. The General Land Office encourages local governments to use their discretion in providing such notice, as appropriate, in addition to the notice required pursuant to the Dune Protection Act.

One commenter asked that the General Land Office clarify in §15.3(f), now §15.3(m), whether citations of the ordinances and policies demonstrating local government authority to implement and enforce local plans would be sufficient. Because such citations would be sufficient, this section was modified based on this comment. Four comments were received suggesting that §15.3(f), now §15.3(m), be clarified to state that the integration of the various beach/dune programs is to be done within a single government and is not intergovernmental. Section 15.3(f), now §15.3(m), was modified based on this comment. In addition, based on these commenters' concerns, the General Land Office has clarified whether local governments are required to develop and incorporate a flood protection program into their dune protection and beach access plans in §15.3(f), now §15.3(m). Two commenters suggested that the General Land Office clarify that "statutes" are also a source of local government authority in §15.3(f), now §15.3(m). Because such a modification of §15.3(f), now §15.3(m), clarifies local government authority for the regulated community, this section was modified based on this comment.

Another commenter asked that local governments not be placed at a disadvantage because of potential conflict between the General Land Office and the Attorney General's Office in §15.3(f) and (g), now §15.3(m) and (o). Based on this comment, the General Land Office and the Attorney General's Office intend to enter into a memorandum of agreement to establish standards and procedures for resolving any conflicts relevant to local government dune protection and beach access plans.

One commenter noted that the proposed subchapter omitted a section addressing the required elements for local government dune protection and beach access plans in §15.3(f) and (g), now §15.3(m) and (o). Based on this and other similar comments received, the General Land Office has added §15.3(n) to address this issue. In addition, in the Spring of 1993, the General Land Office will publish in the *Texas Register* a "model dune protection and beach access plan" which will further clarify the required elements of local government plans.

A commenter suggested that §15.3(g), now §15.3(o), be modified to state that General Land Office approval of local government plans will be accomplished by adoption of the local government plans in this subchapter. Pursuant to this subchapter, local government dune protection and beach access

plans are approved, not adopted, in this subchapter. Therefore, no change was made based on this comment. One commenter asked about the time frame for General Land Office approval of local government plans. As provided in §15. 3(o) and (p), local governments shall submit dune protection and beach access plans to the General Land Office and the Attorney General's Office no later than 180 days from the effective date of this subchapter. The General Land Office will grant or deny certification of each local government plan within 60 days of receipt of the plan, pursuant to the Open Beaches Act, §61.015(b). If certification is denied, the local government will have an additional 60 days to revise and resubmit its plan. The General Land Office and the Attorney General's Office will determine whether the local government has complied with this subchapter and the statute in drafting its local plan. No change was made based on this comment. Another commenter asked whether there would be opportunity for public comment on the local plans. Local governments must follow the same public hearing and comment procedures required for adoption of county commissioners court orders and ordinances when adopting local plans. No change was made based on this comment.

Two comments were received requesting that the General Land Office add a provision relating to future modifications of dune protection and beach access plans. Based on these comments, the General Land Office has modified §15.3(g) , now §15.3(o). At a public hearing, one person commented that the local government should not be required in §15.3(g), now §15.3(o), to formally approve its dune protection and beach access plan prior to submission to the General Land Office for state approval. The only mechanism for formal state approval is through rulemaking. The General Land Office cannot approve a draft of a local plan in its rulemaking. However, as requested in two comments, §15.3(g), now §15.3(o), has been clarified to provide that the General Land Office legal and technical staff may assist a local government, prior to that local government formally adopting its plan, in meeting the requirements for state agency approval. Local governments requesting state assistance shall nevertheless submit their plans for state approval using the same process as other local governments (as required in this subchapter, §15.3).

One commenter stated that although this subchapter provides that the intent of the Open Beaches Act and the Dune Protection Act was to provide or increase local government authority, this subchapter appears to shift the authority from the local governments to the state in §15.3(g) and (h), now §15.3(o) and (p). To the contrary, the legislature intended the Dune Protection Act and the Open Beaches Act to increase both local and state authority over activities adversely affecting beaches and dunes. It should be noted that §15.3(g), now §15.3(o), simply identifies the responsibilities of the General Land Office, the Attorney General's Office, and local governments, as statutorily mandated. Section 15.3(h), now §15.3(p), identifies the deadline for submission of the local government plans. While the state has the responsibility of approving local plans, it is the responsibility of the local governments to draft and implement the plans and issue permits and certificates consistent with the requirements of their state-approved plans. The state will not approve or deny local permits and certificates; the state will review and comment on permits and certificates. However, if a local government violates its own plan, the state may take the appropriate action to bring the local government into compliance as provided in §15.9 and §15.10 of this subchapter. No change was made based on this comment.

One commenter recommended that §15.3(h), now §15.3(p), be modified to allow local governments 180 days from the date that the General Land Office adopts this subchapter to submit their dune protection and beach access plans to the state agencies for approval. This suggestion has been adopted to allow local governments sufficient time to prepare their plans. Another commenter asked that the General Land Office clarify whether the penalties referred to in §15.3(h), now §15.3(p), were the same penalties identified in §15.9, §15.10, or both. Section 15.10 provides for the withdrawal of General Land Office approval of local government plans, not penalties. Section 15.3(h), now §15.3(p), has been modified to clarify that the penalties referred to are those in §15.9. This commenter also asked whether the General Land Office would draft a plan for implementation by a local government that failed to develop its own plan, pursuant to §15.3(h), now §15.3(p). The General Land Office will not draft a local plan and then require a local government to implement and enforce it. However, local governments that fail to adopt plans will not be authorized to permit construction within the geographic scope of this subchapter. Therefore, §15.3(h), now §15.3(p), has been modified to clarify this issue. The General Land Office will draft and publish a "model dune protection and beach access plan" that a local government may voluntarily use in whole or in part, if it does not wish to draft its own original plan. Much of a local government's plan will be based on elements unique to that government; therefore, the model plan will have to be modified by local governments choosing to use it. While this subchapter addresses many requirements of dune protection and public beach use and access, local governments are in the best position to address many of the procedural aspects of local plans, such as who will review and issue permits and certificates. Based on this and other comments, the General Land Office has clarified §15. 3(h), now §15.3(p), with respect to submissions of revised plans that have not been modified to address state comments regarding statutory requirements and this subchapter's requirements.

There was some confusion expressed as to when a local government would have to comply with this subchapter and the local plans in relation to §15.3(i). Based on these comments, §15.3(i) has been deleted and §15.3(h), now §15. 3(p), has been modified.

A commenter requested that §15.3(j)(2), now §15.3(q)(2), relating to areas exempt from local government plans, be modified based on the language of the Dune Protection Act, §63.015, and the Open Beaches Act, §61.021. Section 15.3(j)(2), now §15.3(q)(2), has been so modified, based on this comment. Another commenter stated that, regarding §15.3(j)(2), now §15.3(q) (2), both state and federal entities should work with the General Land Office to ensure that there is consistency in dune protection efforts and to ensure that the lands described in §15.3(j)(2), now §15.3(q)(2), are not unprotected. The General Land Office agrees and encourages the appropriate federal and state entities to protect dunes in a manner consistent with this subchapter. No change was made based on this comment.

One commenter requested that the General Land Office modify §15.3(j)(3), now §15.3(q)(3), based on the Open Beaches Act, §61.021, and the Dune Protection Act, §63.003. Section 15.3(j)(3), now §15.3(q)(3), has been so modified.

Two commenters requested that "public land" be included in §15.3(k), now §15.3(r), as provided in the Texas Natural Resources Code, §31.161, et seq. However, the term "public land" does not appear in §31.161. This suggested change was not adopted. One commenter asked that the General Land Office amend §15.3(k), now §15.3(r), by including "public land" as provided in the Open Beaches Act, §61.022(e). This suggested change was adopted. Another commenter requested that the General Land Office add the word "local" before the term "beachfront construction certificate" in §15.3(k), now §15.3(r), to differentiate the operation of different levels of governmental regulation. The term "beachfront construction certificate" does not appear in §15.3(k), now §15.3(r). However, a "beachfront construction certificate" is defined in §15.2 as "the document issued by a local government...." In addition, the State of Texas is not authorized to issue a beachfront construction certificate; this authority rests solely with local governments. For these reasons, no change was made based on this comment.

One commenter requested in §15.3(k), now §15.3(r), that a permit or certificate be required for pipelines, utility easements, roads, and water and wastewater projects. Unless otherwise exempt pursuant to the Open Beaches Act or the Dune Protection Act, these activities will require a permit and/or certificate if they are located within the geographic scope of this subchapter and if they will adversely affect dunes, dune vegetation, or public beach use and access. Therefore, no change was made based on this comment.

Regarding §15.3(l), now §15.3(s), two commenters suggested various modifications relevant to the requirement that permits and certificates be issued concurrently. In response to these comments, the General Land Office has added that concurrent issuance is required "when an activity requires both". Another commenter asked that the General Land Office require only one permit for both dune protection and beachfront construction. Local governments have the option of using a single permit for dune protection and beachfront construction as part of their state-

approved plan. Local governments could also require one permit which has two parts. "Part A" could be the dune protection portion and "Part B" could be the beachfront construction portion. This decision is best left to local governments, and the General Land Office does not require any particular method. A commenter also suggested that §15. 3(l), now §15.3(s), be modified to state that dune protection permits and beachfront construction certificates "may" typically be required for the same activities. The General Land Office has adopted this suggestion because there may be situations where only a permit or only a certificate is needed. This commenter requested that the General Land Office add language stating that the local governments are encouraged to satisfy the statutory and regulatory requirements through standard exemptions and general permits. In addition, four commenters requested that §15.4(l), now §15.3(s), be modified to allow for general permits. Standard exemptions and general permits may be addressed in a local plan. However, local governments must include specific provisions as to when a general permit would be allowed. The state will consider such provisions carefully when determining whether to approve the local plan. Standard exemptions and general permits shall not be provided by local governments unless adverse effects to dunes, dune vegetation, and public beach use and access can be accurately identified. Standard exemptions and general permits are not encouraged because they may not always be appropriate. No change was made based on these comments.

In a public hearing, concern was expressed that §15.3(l), now §15.3(s), prohibits construction of roads and slab foundations seaward of the dune protection line. Roads are not prohibited, but there are standards regarding preferable locations for roads. These standards are qualified by the term "where practicable". Due to public comment, the prohibition on the construction of slabs or impervious surfaces has been strictly limited. Section 15.4(c)(7), now §15.4(c)(8), has been modified to restrict slabs or impervious surfaces only within the first 200 feet landward of the natural vegetation line. The reasons for limiting construction of slabs or other impervious surfaces within critical dune areas are twofold: preventing dune destruction (in order to achieve a level grade for pouring the slab, the existing dune is scraped, changing the natural contour, altering drainage patterns, and increasing the loss of sand and vegetation in the beach/dune system); and preserving the natural movement of sand (a concrete slab or other impervious surface placed on the dune surface stops the natural transfer of sand from that portion of the dune area; and if constructed in eroding areas, slabs may increase the wave forces on the foundation, causing scour around and weakening of the foundation).

At a public hearing, one commenter noted that, pursuant to §15.3(l)(1), now §15.3(s)(1), it is almost impossible to relieve oneself in the dunes. The General Land Office strongly encourages local governments to provide restroom facilities for the public. Such facilities may be funded with beach user fees, as well as other means available to local governments. A commenter asked that the General Land Office add language to §15.3(l)(1), now §15. 3(s)(1), stating that, in addition to prohibiting persons from damaging dunes and dune vegetation without a properly issued dune protection permit, no person shall allow another person to cause damage to dunes and dune vegetation without a properly issued permit. Because this suggestion unnecessarily imposes broad responsibilities on individuals, no change was made based on this comment. One commenter strongly objected to the permitting of activity that damages dunes and dune vegetation. Because the Dune Protection Act, §63. 054(a) and §63.091, prohibits the material weakening of dunes, but does not prohibit damage to dunes and dune vegetation, the General Land Office is not empowered to prohibit all damage to (in the absence of such material weakening of) dunes and dune vegetation. No change was made based on this comment.

A commenter requested that §15.3(l)(2), now §15.3(s)(2), be modified to require permittees to comply with local ordinances which regulate activities otherwise exempt from a dune protection permit. Based on this comment, §15. 3(l)(2), now §15.3(s)(2), has been modified to state that where a local government has the authority to regulate these activities, permittees must comply with the local laws. However, the state cannot and should not enforce local laws unrelated to its enforcement authority as provided in the Dune Protection Act and the Open Beaches Act. One commenter suggested that the General Land Office delete all language after the third comma of §15.3(l)(2), now §15.3(s)(2), relating to exempt activities, to read in accordance with the statute. This change was not adopted because §15.3(l)(2), now §15.3(s) (2), reads in accordance with the Dune Protection Act, §63.052, up to the third comma and in accordance with the Open Beaches Act, §61.023, after the third comma. Because this subchapter regulates activities pursuant to both statutes, it is important to clarify for the regulated community that although the activities in §15.3(l)(2), now §15.3(s)(2), are exempt from dune protection permit requirements, the activities are not exempt from beachfront certification requirements and related requirements under the Open Beaches Act. Because the authority to draft §15.3(l)(2), now §15.3(s)(2), in this manner is directly derived from both statutes, no change was made based on this comment.

One commenter expressed "disgust" regarding the oil and gas exemption in §15.3(l)(2)(A), now §15.3(s)(2)(A). This exemption is mandated by the legislature in the Dune Protection Act, §63.052. Because local governments and the General Land Office cannot regulate oil and gas activities under the Dune Protection Act, no change was made based on this comment. Two commenters wanted the General Land Office to delete the exemptions in §15.3(l)(2), now §15.3(s)(2). These exemptions are provided in the statute. No change was made based on these comments.

Two commenters expressed concern that the exemptions for activities identified in the Dune Protection Act, §63.052, and in this subchapter, §15.3(l)(2), now §15.3(s)(2), undermine the purpose of the Dune Protection Act. Because these exemptions are statutorily mandated, no change was made based on this comment. These commenters also asked the General Land Office to clarify whether this exemption also includes an exemption from the requirements of mitigation for damage to dunes and dune vegetation. It does. Finally, these commenters inquired whether the exemption of "reasonable and necessary activities directly related to the exempt activity..." served to expand the statutory exemption. The language merely identifies the extent of the exemption and does not expand it. Therefore, no change was made based on these comments.

Two commenters requested that §15.3(l)(2)(A), now §15.3(s)(2)(A), relating to the oil and gas exemption, be modified by deleting "underlying critical dune areas or seaward of a dune protection line". This suggested change has been adopted to clarify the extent of the exemption. These commenters also requested that §15.3(l)(2)(A), now §15.3(s)(2)(A), be further modified by ensuring that offshore-to-onshore transportation by pipeline is included in the exemption. This suggested change has been adopted. At a public hearing, one commenter asked when pipelines would be regulated under the dune protection portions of this subchapter, despite the exemption in §15.3(l)(2)(A), now §15.3(s)(2)(A). The exemption includes pipelines used for transportation of oil and gas from a production site. The General Land Office has modified this provision for clarification. In addition, the General Land Office has added definitions of "pipeline" and "production and gathering facilities" to §15.2.

A commenter expressed concern that cattle grazing (exempt in §15.3(l)(2) (B), now §15.3(s)(2)(B)) would be regulated under this subchapter at a future date. The cattle grazing exemption is legislatively mandated in the Dune Protection Act, §63.052. Therefore, the General Land Office cannot and does not attempt to regulate cattle grazing. Since cattle grazing is exempt by operation of the statute, no change was made based on this comment.

One commenter requested that §15.3(l)(2)(C), now §15.3(s)(2)(C), relating to the recreational activities exemption, be replaced with the exact language of the statutory provision on which this exemption is based. This suggested modification was adopted. However, because the proposed language that appeared in §15.3(l)(2)(C), now §15.3(s)(2)(C), identified the extent of the exemption, that language has been added to the new definition of "recreational activity" in §15.2.

One commenter requested that those activities which are exempt from the permit requirements, as provided in the Dune Protection Act, §63.052, be required to comply with the mitigation requirements of this subchapter. The mitigation requirements are triggered by a permit, acts in violation of a permit, and acts without a permit which require a permit. Therefore, no change was made based on this comment.

One commenter suggested that the words "cause" and "or allow" be deleted from §15.3(l)(3), now §15.3(s)(3). Because these words appear in the statute, no change was made based on this comment. Two commenters noted that the Open Beaches Act, §61.011(d)(6), was more expansive than §15.3(l)(3), now §15.3(s)(3), the provision in this subchapter which parallels the statute. Section 15.3(l)(3), now §15.3(s)(3), has been modified to match the statutory provision. Two commenters requested that §15.3(l)(3), now §15. 3(s)(3), relating to acts prohibited without a certificate, be modified to clarify that a local government is required to certify that an applicant's proposed construction is consistent with the local government's plan. This subsection was modified based on these comments. Another commenter incorrectly stated that §15.3(l)(3), now §15.3(s)(3), only applied to dune walkovers. Many types of construction may adversely impact public beach use and access. While dune walkovers may be the most obvious potential problem, there are many other types of construction which a local government is required to review. No change was made to this subchapter based on this comment. One commenter asked that §15.3(l)(3), now §15.3(s)(3), be limited to construction which adversely affects public beach use and access. The Open Beaches Act, §61. 011(d)(6), addresses certification of construction which affects or may affect public access to and use of public beaches, without using the term "adverse". Because §15.3(l)(3), now §15.3(s)(3), relates to the certificate, no change was made based on this suggestion.

Another commenter suggested that the General Land Office draft and publish a standardized application form for permits and certificates that are required under §15.3(l)(4), now §15.3(s)(4). The General Land Office agrees that a standard application might be helpful to local governments and the regulated community, but it cannot require that such an application be used. The Open Beaches Act, §61.015(a), specifically provides that local governments "shall to the greatest extent practicable incorporate the local government's ordinary land use planning procedures". However, as a standard application may be helpful to many local governments, the General Land Office will draft and publish a "model" application as part of the "model dune protection and beach access plan". Both may be voluntarily used by local governments as guidance documents.

Two commenters asked that §15.3(l)(4), now §15.3(s)(4), relating to permit application requirements, be amended to recommend, not mandate, that local governments require applicants to submit the listed information and items. Section 15.3(l)(4), now §15.3(s)(4), was otherwise changed based on the number and content of various comments received; however, the listed items in §15.3(l)(4), now §15.3(s)(4), as amended, are to be required by local governments unless otherwise provided. Another commenter requested that permit and certificate applicants show the location of dunes and swales as part of the application. This comment was adopted, as it is essential that the local government have such information to determine whether damage to dunes and dune vegetation will occur and the location of dunes and swales is now required to be included in the grading and layout plan. One commenter expressed concern that the applications required in §15.3(l)(4), now §15.3(s)(4), would have to be approved by the state. The state's involvement regarding permits and certificates is limited to review and comment prior to a final decision made by the local governments. Therefore, state approval is not required. No change was made based on this comment.

Many commenters asked that the General Land Office require that applicants provide proof of the financial capability necessary to comply with the terms and conditions of permits and certificates as part of the permit or certificate application. This comment was raised in relation to various subsections in this subchapter. Based on these comments, this requirement has been added to the permit application requirements.

Fourteen comments were received regarding the perceived expense of complying with the permit application requirements in §15.3(l)(4), now §15. 3(s)(4). Based on these comments, §15.3(l)(4), now §15.3(s)(4), has been completely restructured and modified to provide different standards for different types of construction. Section 15.3(s)(4) now allows local governments to issue a single permit encompassing the requirements of a dune protection permit and a beachfront construction certificate. Definitions of "large-scale construction" and "small-scale construction" have been added to §15.2. These definitions are based on FEMA's definitions of these types of construction. One commenter recommended that the permit application requirements in §15.3(l)(4), now §15.3(s)(4), be modified to require the inclusion of information regarding the presence of any federally listed endangered or threatened species on the site of the proposed construction. Because local governments are required to consider effects on all natural resources in §15.3(l)(4), now §15.3(s)(4), no change was made based on this comment. One commenter requested that §15.3(l)(4), now §15.3(s)(4), be amended to require that a certified engineer or the General Land Office independently verify certain information in the application. Local governments may choose to address the requirement of independent verification in their plans, but there is no such requirement in this subchapter due to the expense involved. Therefore, no change was made based on this comment. Regarding §15. 3(l)(4), now §15.3(s)(4), a commenter asked what sort of permit would be required in the situation where a dune overlaps property lines and only a portion of the dune will be damaged. The same standards apply in this situation as to the situation where the entire dune is located on one person's property and that person causes damage to a portion of a dune. No change was made based on this comment.

Many commenters noted that §15.3(l)(4)(B)(iv) and §15.3(l)(4)(B)(xiv) require the same information. Section 15.3(l)(4)(B)(iv) refers to the proposed finished floor elevation of the structure. Based on these comments, "and the finished floor elevation" was added to §15.3(l)(4)(B)(xiv), now §15.3(s)(4) (A)(ix), and §15.3(l)(4)(B)(iv) was deleted. A commenter suggested that §15.3(l)(4)(B) include finished building elevation. This comment has been adopted and the suggested modification was incorporated into §15.3(l)(4)(B) (xiv), now §15.3(s)(4)(A)(ix).

A few commenters suggested that the General Land Office modify §15.3(l)(4) (B)(ix), which requires applicants to submit blueprints. Based on these comments, the requirement for blueprints has been modified and is in new §15. 3(s)(4)(C)(i). For all construction projects, blueprints will be required if the applicant has the information. Several commenters requested that the word "elevation" be added between "plan and" "view" in §15.3(l)(4)(B)(viii), now §15.3(s)(4)(A)(vi). Based on these comments, the language has been modified as requested. One commenter suggested that the application requirements in §15.3(l)(4)(B)(xi), now §15.3(s)(4)(A)(xiv), include a site/location map identifying adjacent lot lines, proposed roadways and driveways, and proposed landscaping. These suggestions were adopted.

Many commenters noted that §15.3(l)(4)(B)(xi)(I), now §15.3(s)(4)(A)(xiv)(I), and §15.3(l)(4)(B)(i) require the same information. Based on these comments, §15.3(l)(4)(B)(i) has been deleted and the word "tract" has replaced the word "lot" in §15.3(s)(4)(A)(xiv)(I)-(VI).

Two commenters requested that §15.3(l)(4)(B)(xi)(III), now §15.3(s)(4)(A)(xiv)(VI), and §15.3(l)(4)(B)(xii), now §15.3(s)(4)(A)(viii), include the location of walkways, dune walkovers, and man-made vegetated mounds in relation to the construction site. These suggested modifications have been made.

One commenter requested that §15.3(l)(4)(B) include the FEMA "Elevation Certificate". Because this is already required by local governments who participate in the National Flood Insurance Program, this comment was adopted in §15.3(s)(4)(C)(iv).

One commenter stated that §15.3(l)(4)(E), relating to information required for a permit or certificate application, appears to require the hiring of a building contractor and to allow local governments to reject an application on the basis of the contractor chosen by the applicant. This provision has been deleted.

A few comments were received on §15.3(l)(4)(G), now §15.3(s)(4)(B)(iii), relating to information on alternatives in the applications for permits and certificates. Based on these comments, the General Land Office has modified this provision to address concerns regarding the scope of the requirement.

Several comments were received on §15.3(l)(4)(l)(v), now §15.3(s)(4)(C) (iii), relating to erosion rates in the area of the proposed construction. These commenters unanimously requested that the General Land Office require local governments to consider the erosion rate data of the University of Texas at Austin, Bureau of Economic Geology, instead of requiring the applicant to independently determine the erosion rate. The General Land Office has adopted this comment because the provision as drafted was

too burdensome to individuals. The Bureau of Economic Geology's historical erosion rate data is adequate for this application process. However, local governments should be aware that this data does not take into account short-term (and usually more severe) erosion caused by storms, hurricanes, or the migration of tidal inlets.

One commenter asked that the last sentence of §15.3(l)(4)(I)(vi), now §15.3(s)(4)(D)(iii), relating to a local government's consideration of a proposed activity's impact on flood protection, be deleted. The information identified in this sentence should be considered by local governments when issuing or denying certificate applications; therefore, this sentence was not deleted. However, based on this comment, this sentence was modified to more clearly state the sort of information that is required.

Many comments were received on §15.3(l)(5), now §15.3(s)(5), requesting that the word "or" between "dune protection permit" and "beachfront construction certificate" be deleted and replaced with "and/or". The General Land Office has adopted this suggestion, as activities requiring a permit will typically also require a certificate. One commenter suggested that the word "preliminary" be deleted from the first sentence of §15.3(l)(5), now §15. 3(s)(5), relating to master planned development. The General Land Office has adopted this suggestion to avoid confusion regarding what is "preliminary". A commenter noted that §15.3(l)(5), now §15.3(s)(5), appeared to allow local governments considerable latitude in proceeding with approval of master planned development before state review. Local governments retain any authority they now have to approve such use plans. Both the state and local governments have increased authority over land use plans regarding impacts to dunes, dune vegetation, and public beach use and access.

Another commenter expressed concern that in §15.3(l)(5), now §15.3(s)(5) , and §15.3(l)(6), now §15.3(s)(5)(C), the state and local governments need not approve any application. Because some proposed activities, if permitted, may violate the statutes, this subchapter, or a local government's plan, there is no guarantee that applications will be approved. The purpose of this subchapter is to provide standards for persons and local governments respectively proposing and reviewing construction. This commenter further stated that there is considerable uncertainty regarding repair of structures after a storm. The provisions in this subchapter, §15.3(m)(4), now §15.3(t) (4), and §15.5(c), relating to post-storm repairs, are intended to provide certainty. No change was made based on this comment.

One commenter requested that §15.3(l)(5)(A), now §15.3(s)(5)(A), be changed to provide that local governments must consider the applicant's proposal, as opposed to the applicant's ability, to mitigate effects on dunes, dune vegetation, and beach use and access. This suggested change has been adopted, as the local government must review the mitigation proposal, not just the applicant's ability to mitigate. Based on this comment, §15.4(f) has been modified to clarify that if, for any reason, an applicant cannot demonstrate the ability to mitigate adverse effects on dunes and dune vegetation, the local government is not authorized to issue the permit or certificate. Section 15.5 has not been modified based on this comment because encroachments on the public beach are prohibited in §15.5(c) and impairment of public beach access points is strictly limited in §15.5(b)(2). Another commenter requested that §15.3(l)(5)(A), now §15.3(s)(5)(A) be modified to include local government consideration of effects to dunes, dune vegetation, and public beach use and access. This suggested change was adopted.

Based on many comments received, the General Land Office has modified the language and content of §15.3(l)(5)(B), now §15.3(s)(5)(B), relating to land use plans. The term "land use plan" has been replaced with "master planned development". As revised, new §15.3(s)(5)(B) provides that local governments may approve master planned developments (now defined in §15.2) under a separate ordinance or county commissioners court order, and not under its dune protection and beach access plan. The separate ordinance or court order is subject to the approval of the General Land Office and Attorney General's Office with regard to the dune protection and public beach access and use provisions. The provisions of the separate ordinance or court order shall be consistent with this subchapter and the statutes.

Local governments that authorize master planned developments pursuant to their dune protection and beach access plans shall do so subject to the procedural and substantive requirements of this subchapter.

Regarding §15.3(l)(6), now §15.3(s)(6), a commenter expressed concern that congressionally authorized projects might be impacted by the denial of a dune protection permit. This commenter requested that an exemption for federal projects be added because the impacts of such projects are documented pursuant to the National Environmental Policy Act, 42 United States Code, §4321, et seq. Unless otherwise exempt under the Dune Protection Act and the Open Beaches Act, or on the grounds of federal supremacy pursuant to the United States Constitution, Article VI, clause 2., federal activities are not exempt. No change was made based on this comment.

One commenter requested that the word "final" be added before "permit or certificate" in §15.3(l)(6)(A), now §15.3(s)(6)(A), relating to state agency comments. To add the term "final" would imply that there is more than one type of permit and certificate. The Dune Protection Act and the Open Beaches Act, respectively, authorize local governments to issue only permits and certificates, not final permits or certificates or non-final permits or certificates. Because such a modification is not authorized by either statute, no change was made based on this comment.

With regard to §15.3(l)(6)(A), now §15.3(s)(6)(A), one commenter stated that permits should be issued on the local level only and that the state should only enforce violations. Because this section is already consistent with this comment, no change was made. Regarding §15.3(l)(6)(A), now §15. 3(s)(6)(A), at a public hearing, one person asked if local governments could issue a permit even if the state agencies negatively commented on the application. Yes. Local governments have the exclusive authority to issue permits. If the state identifies potential violations of a local government's plan and that local government issues the permit or certificate, the state may use the various enforcement options in the Dune Protection Act, §63.181, and the Open Beaches Act, §61.018, to secure local government compliance. No change was made based on this comment.

Eighteen comments were received on §15.3(l)(6)(A), now §15.3(s)(6)(A), relating to the lack of a time limit for state agency comment on permits and certificates. Based on these comments, the General Land Office has clarified that local governments may issue a permit and certificate even if the state does not comment.

Four commenters asked that §15.3(l)(6), now §15.3(s)(6), be amended. One asked that the General Land Office state that public hearings are statutorily required for dune protection permits in the Dune Protection Act, §63.056(a), but not for beachfront construction certificates. The others asked that §15.3(l)(6)(A), now §15.3(s)(6)(A), be modified to require local governments to hold public meetings, not public hearings, when deciding whether to issue permits or certificates. The General Land Office has clarified this provision, but the requirements as to whether a "hearing" or "meeting" is required are governed by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the Open Meetings Act, Texas Civil Statutes, Article 6252-17, unless otherwise provided in the Open Beaches Act and the Dune Protection Act.

Three commenters requested various changes to §15.3(l)(7), now §15.3(s) (7), relating to local government review. One commenter suggested that the General Land Office add that a local government must consider whether the activity complies with the local government's dune protection and beach access plan. Another commenter was concerned that this provision was vague and suggested that it be clarified by adding consideration of dune protection standards and beachfront construction standards. These suggestions have been adopted, as such consideration is clearly required under the statutes. Another commenter expressed concern that §15.3(l)(7)(E), now §15.3(s)(7)(E), might expand local government review to such areas as tax liabilities. The General Land Office has clarified this provision based on these comments. Another commenter requested that this provision be modified by adding that local governments shall consider resource information made available to them by federal and state resource entities. This provision has been so modified.

Seven comments were received on §15.3(m), now §15.3(t), relating to changes in construction methods and materials for permitted or certified construction activities. Based on these comments, the General Land Office

has limited the project changes which require a new permit or certificate to those changes which adversely affect dunes, dune vegetation, and public beach use and access within the geographic scope of this subchapter.

One commenter requested that master planned development, or a land use plan, be exempted from §15.3(m)(1), now §15.3(t)(1), relating to the one-year term of permits and certificates. Based on this comment, new §15.3(t)(2) has been added. In addition, the General Land Office has replaced the term "land use plan" with "master planned development".

Sixteen comments were received on §15.3(m)(1), now §15.3(t)(1), relating to the terms of permits and certificates. Suggested terms ranged from 18 months to five years. While the reasons for the expansion of the terms varied, all commenters agreed that a one-year term would adversely impact development. Based on these comments, the General Land Office has modified the term limits of permits. The time limit for local government retention of administrative records, as provided in §15.3(n)(2), now §15.3(u)(2), has also been changed to be consistent with the changes made to new §15.3(t)(1). These commenters also expressed concern over provisions related to renewal of permits and certificates. Many commenters stated that the term of the renewed permit or certificate should be entirely within a local government's discretion. This provision has been modified based on these comments.

One commenter stated that §15.3(m)(1), now §15.3(t)(1), containing the requirement that permittees resubmit all of the original application information as part of the application for a renewal, was far too burdensome. The General Land Office agrees. This provision has been modified to require local governments to keep the original permit or certificate application until the deadline for renewing the permit or certificate has passed. Permittees will not need to submit the same information twice. Three commenters suggested that the General Land Office modify §15.3(m)(1), now §15.3(t)(1), to provide that permittees shall begin construction within two years of permit issuance. That requirement has not been added.

Four commenters suggested that §15.3(m)(2), now §15.3(t)(3), be modified to grandfather previously permitted activities. The General Land Office has added "pursuant to its dune protection and beach access plan" after "by a local government" to clarify this issue. Two commenters suggested changes to §15.3(m)(2), now §15.3(t)(3), relating to validity of permits issued in violation of a local government's plan or after a material change has occurred. Based on these comments, this provision has been changed to state that such permits are "voidable", not "void". In addition, as recommended by one of these commenters, the phrase "at the time the permit or certificate was issued" was added.

One commenter requested that the General Land Office modify §15.3(m)(3), now §15.3(t)(4), to state that material changes "can include" the listed conditions, replacing the statement that material changes "include" the listed conditions. This suggested change was not adopted because this provision addresses changes to the proposed construction site. Local governments may address the definition of "material", with respect to changes, in the local plans. One commenter asked whether §15.3(m)(3), now §15.3(t)(4), would require an applicant to go through the entire permit application process again if, at the last minute, the required information were unavailable. Local governments could, in that instance, wait to make any decision on the permit and allow permittees to gather the missing information and append it to the original application without requiring that another application be prepared. No change was made based on this comment.

One commenter asked that the last sentence of §15.3(m)(4), now §15.3(t) (5), be deleted. This subchapter complements the Attorney General's existing post-storm construction policy. The General Land Office will not promulgate rules at odds with that policy. The Open Beaches Act does not authorize the construction of structures on the public beach. Post-storm construction on the public beach may only be undertaken in very limited circumstances, as allowed under traditional enforcement of the Open Beaches Act and now under this subchapter. Under the Open Beaches Act, permits and certificates issued prior to a storm authorizing construction of structures landward of the public beach are no longer valid if that storm causes the public beach easement to migrate so that the construction site encroaches on the public beach. At that point, a permittee must apply for another permit, as the first permit authorized construction landward of the public beach, not construction on the public beach. Therefore, §15.3(m)(4), now §15.3(t)(5), prohibits post-storm construction, maintenance, and repair of structures on the public beach under the authority of permits or certificates issued prior to a storm. Because this provision merely states the law as provided in the Open Beaches Act, this suggestion was not adopted. One commenter noted that §15.3(m)(4), now §15. 3(t)(5), fails to state who enforces the termination of the permit. Permittees are required to cease construction after the public beach boundary migrates to the site of the construction. The local government may enforce the termination pursuant to its local plan, and the state may enforce it pursuant to the enforcement provisions in the Open Beaches Act, §61.018. The General Land Office has clarified that §15.3(m)(4), now §15.3(t)(5), applies to any migration of the public beach boundary, whether natural or artificial. This commenter was also concerned that the termination of the permit or certificate could result in a lawsuit. While that is certainly a possibility, a lawsuit could also result if a permittee were to continue construction after the landward migration of the public beach boundary. Because the termination of the permit or certificate gives notice to the permittee and provides certainty to the regulated community, no change was made based on this comment.

One commenter asked that the General Land Office modify §15.3(n), now §15.3(u), to require local governments to provide permittees, as well as the state agencies, copies of the administrative record. In addition, this commenter asked that the permittee be notified when a state agency requests the administrative record. This suggestion has been adopted because the permittee has the right to see the administrative record and the right to know if the state is reviewing the permitted or certified activities.

A commenter requested that §15.3(n)(1)(B), now §15.3(u)(1)(B), be modified by adding that the record should consist of a record of final decisions, whether the permit or certificate was granted or denied. This change was adopted.

Another commenter asked that the General Land Office amend §15.3(n)(1)(B), now §15.3(u)(1)(B), to allow local governments to provide the minutes, not the transcripts, of the local government's meeting at which the decision whether to issue the permit or certificate was made. The General Land Office has amended this provision based on this suggestion and statutory requirements. Under the Open Meetings Act, Texas Civil Statutes, Article 6252-17, §3B, local governments are required to prepare and retain minutes or make a tape recording of each of their open meetings. This provision has been further amended to require local governments to provide the state with a copy of the minutes, a tape of the meeting, or a transcript, if any. If a local government has a transcript of the meeting already prepared, the local government shall submit the transcript.

Three commenters stated that §15.3(n)(2), now §15.3(u)(2), which provides that local governments must submit the administrative record to the state, places too high a burden on local governments. This provision has been clarified to require local governments to send the state agency only the parts of the administrative record which were not previously submitted to the state as part of the state review of the application. These commenters asked that the General Land Office modify this provision to provide only that local governments make the record "available" for inspection by the state. Such a modification would in many cases prevent the state from reviewing the administrative record altogether, as the General Land Office and the Attorney General's Office do not have representatives located in all areas along the coast. Therefore, no change was made based on this suggestion.

One commenter asked that the General Land Office add a new section requiring local governments to review permitted and certified sites and, if appropriate, issue a certificate of completion to demonstrate that the terms of the dune protection permits and beach construction certificates have been fulfilled. This suggested change has not been adopted, as it places an unnecessary burden on local governments. The local governments will undoubtedly be monitoring activities during construction to determine compliance with permits and certificates. The local government may, at its discretion, issue a certificate of completion, but there is no compelling regulatory reason to do so.

Section 15.4.

One commenter requested that the General Land Office clarify the procedural requirements a local government must follow when issuing, denying, or conditioning a dune protection permit. The General Land Office has modified §15.4 on the basis of this suggestion and those provisions are now contained in §15.4(b), (d), and (e). The modifications in §15.4(b) clarify that the local government shall make the following determinations prior to issuing a permit: the proposed activity is not a prohibited activity as defined in §15. 4(c), §15.5, or §15.6; the proposed activity will not materially weaken dunes or dune vegetation based on the application of technical standards resulting in substantive findings under §15.4(b), now §15.4(d); and there are no practicable alternatives to the proposed activity and the impacts cannot be avoided as provided in §15.4(d)(1), now §15.4(f)(1). The General Land Office has further clarified the sequence of events which should occur when a proposed activity will not materially weaken dunes, but will result in damage to dunes. In addition, the General Land Office has reordered §15.4 for clarification based on this comment.

Another commenter suggested the addition of a section in §15.4 or §15.6 addressing protection of historic and archaeologic resources. The Texas Historical Commission has the authority to regulate historic and archaeologic resources within its jurisdiction. Local governments may be otherwise required, pursuant to the Historical Commission's regulations, to comply with any notification procedures promulgated by that commission. Therefore, no change was made based on this comment.

Two commenters asked that the General Land Office modify the language in §15.4(a) that addresses activities "seaward of critical dune areas". Because that phrase seemed to confuse the public, the phrase has been changed to "a critical dune area and seaward of a dune protection line" in §15.4(a) and wherever it appears in this subchapter.

One commenter requested that "within a critical dune area or seaward of a dune protection line" be added after "dune vegetation" in §15.4(b), now §15.4(d). Because this addition will clarify the geographic scope of this subchapter, the suggested modification was made.

A commenter requested that §15.4(b), now §15.4(d), be modified by listing only material weakening of dunes as a criterion for denying a permit. This suggestion has been adopted, as the Dune Protection Act, §63.054(a), prohibits "material weakening" but not damage. This commenter also asked that the General Land Office add "or materially damage" before "dune vegetation" in §15.4(b), now §15.4(d), as provided in the Dune Protection Act, §63. 054(a). This provision was changed based on this comment. This commenter also suggested modification of §15.4(b), now §15.4(d), to reflect the statutory language found in the Dune Protection Act, §63.054(b). This provision was modified based on this comment. However, it should be noted that this subchapter requires that local governments consider impacts on surrounding dunes and dune vegetation when considering whether to issue a permit. All dunes are geologically linked. To assert that damage to one dune is isolated damage is to ignore the scientific reality that dunes are composed of an entire support system, and all dunes rely on the dunes surrounding them. This commenter requested that the word "erosion" in §15.4(b), now §15.4(d), be deleted. Because the General Land Office is statutorily required to respond to the problem of erosion, and because dunes serve the vital function of storing and transporting the sand which slows the erosion process, this suggested change was not adopted. One commenter stated that §15.4(b), now §15.4(d), appeared to effectively stop all alteration of dunes because local governments would be required to reject a permit application for proposed activities similar to existing construction on adjacent properties. This interpretation is not supported by the language contained in §15.4(b), as drafted. However, §15.4(b) has been modified based on other comments.

One commenter inquired whether the General Land Office has determined what level of damage constitutes "material weakening". The General Land Office has added criteria to address this concern regarding §15.4(d), now §15.4(f). Two commenters asked that the General Land Office clarify the substantive standards of review in §15.4(b), now §15.4(d), which a local government must employ when reviewing a permit application. Based on these comments, as well as confusion expressed by the public, the General Land Office has clarified this provision to state that the local government must determine that no material weakening will occur as a result of the proposed activity. Second, the General Land Office has provided technical standards for the determination of material weakening. Regarding §15.4(b), now §15.4(e), two commenters stated that the permit process was too detailed and expensive for a single-family dwelling permittee. The permit application requirements in §15. 3(l)(4), now §15.3(s)(4), have been modified pursuant to this and other comments. Based on these comments, the General Land Office has modified §15. 4(b), now §15.4(e), consistent with the modifications in §15.3(l)(4), now §15.3(s)(4).

Two commenters asked that §15.4(b)(2), now §15.4(e)(2), and §15.4(c) be modified to require local governments to consider only impacts to dunes and dune vegetation within critical dune areas and seaward of the dune protection line. This suggested change has been adopted, as the local government is only required to protect the areas seaward of the dune protection line and within critical dune areas. However, local governments are encouraged to use all existing authority they may have to protect all dunes.

One commenter asked whether the General Land Office intends to prevent businesses from operating on the beach or the beach/dune system. This subchapter does not prohibit the operation of most types of businesses landward of the public beach. However, under §15.4(b)(4), now §15.4(e)(4), construction of new industrial facilities is prohibited. Construction and operation of other businesses may be allowed, pursuant to the requirements of this subchapter, the statutes, and any other applicable laws. As to the inquiry regarding the public beach, activities such as construction and operation of businesses on the public beach are viewed as encroachments. Any impairment of public beach use, enjoyment, or access must be certified by the local government as consistent with its dune protection and beach access plan. Because no change was suggested and no change seems necessary, no modification was made to this subchapter based on this comment.

One commenter requested the deletion of §15.4(b)(4)-(7), now §15.4(e)(4) -(7), and §15.4(b)(9)-(12), now §15.4(e)(9)-(11), on the grounds that those provisions were not specifically identified in the Dune Protection Act, §63.054(b), relating to local government considerations when determining whether to grant a permit. However, the Dune Protection Act, §63.054(b), provides, in addition to the items listed for local government consideration, that local governments shall consider the requirements for the protection of critical dune areas. Local government consideration of §15.4(b)(4)-(7), now §15.4(e)(4)-(7), and §15.4(b)(9)-(12), now §15.4(e)(9)-(11), is an integral component of protection of critical dune areas. Section 15.4(b)(4) is necessary because the preconstruction dune type, dune height, and dune vegetation is essential information to a local government when determining if an activity will materially weaken dunes. Regarding §15.4(b)(5), now §15. 4(e)(5), knowledge of the local erosion rate will enable the local government to better evaluate the potential effect of the location and design of the proposed construction on local sand movement. The object of this evaluation is to decrease the risk of flooding and acceleration of erosion, and the vulnerability of the proposed construction to these forces as well. Section 15. 4(b)(6), now §15.4(e)(6), was not deleted because to issue a permit for construction that will adversely affect dunes, a local government must have assurance that the damage will be effectively compensated for (in order to achieve the required 1:1 criteria). Section 15.4(b)(7), now §15.4(e)(7), is essential to determine whether the proposed activity will cause excessive or misdirected channelling of stormwater which could erode dunes and adjacent properties. Because knowledge of the vegetation type and percent cover is necessary for determining if a dune will be weakened, §15.4(b)(9) was not deleted and has been incorporated into §15.4(b)(4), now §15.4(e)(4). Section 15.4(b)(10), now §15.4(e)(9), is necessary to help the local government minimize the damaging effects of hurricanes and erosion. The information in §15.4(b)(11), now §15.4(e)(10), is necessary for the local government to determine whether special construction or elevation standards apply to that project site. Section 15.4(b)(12), now §15.4(e)(11), will help the local government determine the best mitigation methods for its portion of the coast. Local governments may collect mitigation information from permit applications, dune vegetation experts, or as provided by the state. Individual applicants may not have to bear the burden of gathering this information for the local government and should contact the permitting authority for assistance. Therefore, no change was made based on these comments.

Eight commenters requested that the type of erosion rate data required be clarified in §15.4(b)(5), now §15.4(e)(5). This subsection has been modified to include the most recent local historical erosion rate data as published by the University of Texas at Austin, Bureau of Economic Geology. In addition, based on these comments, the General Land Office has added new §15. 3(s)(4)(E) which provides that the General Land Office shall be the state contact for erosion rate data questions.

One commenter suggested that §15.4(b)(5), now §15.4(e)(5), be modified by replacing "will" with "may" in both cases where "will" appears. This suggested modification has been adopted.

Two commenters requested that the General Land Office modify §15.4(b)(8), now §15.4(e)(8), regarding floral and faunal habitat. Based on these comments, §15.4(b)(8), now §15.4(e)(8) has been modified, although the language suggested was not adopted.

One commenter expressed concern that §15.4(c) would prohibit implementation of any shore protection project or beneficial use of dredged material from federal navigation projects for beach nourishment and would adversely affect federal navigation projects as well. Federal projects are exempt pursuant to the Open Beaches Act and the Dune Protection Act, where so provided. In addition, federal agencies are exempt under the supremacy clause, United States Constitution, Article VI, clause 2., unless otherwise provided in the United States Code. However, a federal agency may be prohibited from conducting activities which are certified by the state as inconsistent with the Texas Coastal Management Program (pursuant to the Coastal Zone Management Act, 16 United States Code, §1451, et seq), once the program is adopted. Therefore, no change was made based on this comment.

One commenter requested that the General Land Office delete §15.4(c)(1) and §§15.4(c)(1)(A)-(B), relating to moving sand off of the construction site. This commenter stated that the deletion of these subsections was necessary to conform with the Dune Protection Act, §63.121, and the Open Beaches Act, §61.011(d)(6). However, those provisions provide the General Land Office's general authority to, respectively, promulgate rules for the protection of critical dune areas and promulgate rules regarding beachfront construction within the statutorily defined geographic scope which affects or may affect public beach use and access. There is nothing in either of those sections which prevents the General Land Office from prohibiting the activities described in §15.4(c)(1) and §§15.4(c)(1)(A)-(B). Moving sand out of the beach/dune system depletes the local sand budget (which harms both dunes and beaches) and, therefore, aggravates erosion. Pursuant to the general authority vested in the General Land Office and the technical justification for exercising the general authority in these provisions, no change was made based on these comments.

Two commenters requested that §15.4(c)(1)(B) be modified by adding "or approved dune enhancement and beach nourishment projects". The suggested addition was adopted for accreting areas only.

Six commenters asked that the General Land Office modify §15.4(c)(2), now §15.4(c)(2) and (3), to state that depositing sediments of a "significantly" different grain size and mineralogy in critical dune areas or seaward of a dune protection line is prohibited, as opposed to prohibiting material which is simply different. The General Land Office has adopted the term "unacceptable" instead of "significantly different", as it has been pointed out that it might be extremely difficult to conduct beach nourishment projects without the modification.

Three commenters requested that §15.4(c)(2) be modified to exempt materials related to the installation or maintenance of public beach access roads running generally perpendicular to the public beach. Because the Open Beaches Act requires local governments to preserve and enhance public beach use and access, this suggested change was adopted. Regarding §15.4(c)(2), one commenter stated that the placement of fill might require a United States Army Corps of Engineers permit, if the area of fill deposition were determined to be wetlands. Because no change was suggested, no change was made based on this comment. A commenter requested that the General Land Office change §15. 4(c)(2) to base the prohibition against depositing contaminated sediments on the concentration, and not the presence, of contaminants. The General Land Office has adopted this suggested change. Also based on this comment, the General Land Office has modified all other references to "toxic" materials or "contaminants" in this subchapter to conform to the modifications to §15.4(c)(2).

One commenter stated that there seemed to be an inconsistency between §15. 4(c)(4), now §15.4(c)(5), relating to the prohibition of construction and operation of industrial facilities, and the definition of industrial facilities in §15.2. These provisions are consistent. The prohibition exempts facilities which are already operating in full compliance with all relevant laws. Section 15.4(c)(4), now §15.4(c)(5), has been modified to clarify this point.

Four commenters stated that §15.4(c)(5), now §15.4(c)(6), was too restrictive, as it appeared to prohibit the use of all recreational vehicles seaward of the dune protection line and within critical dune areas. It does. As provided in the Dune Protection Act, §63.057(a), and pursuant to the General Land Office's authority under §63.121, local governments shall not issue a permit for the operation of recreational vehicles seaward of a dune protection line.

Eleven commenters commented on §15.4(c)(7), now §15.4(c)(8), relating to the prohibition of construction of concrete slabs. These commenters suggested amendments ranging from deleting the subsection to exempting single-family dwellings. However, one commenter stated that constructing a slab on grade was a "silly idea". Two other commenters recommended leaving the statement because concrete slabs are in effect hard erosion response structures like seawalls and should be treated as such. Concrete slabs or other impervious surfaces can increase the loss of sand or vegetation in dunes. In some areas of the Texas coast, dunes are lowered (in some cases, by 10 feet) to the FEMA base flood elevation. The people that lower dunes to that elevation do not understand that FEMA's "base flood elevation" relates to the minimum appropriate height of structures for protection from floods, not to dune height. In fact, the base flood elevation is based in part on the existing condition of dunes and dune complexes. Activities which alter dunes may result in higher base flood elevations and may adversely affect a community's participation in the national flood insurance program. In addition, the sand removed from the dune is inevitably lost from the beach/dune system. When the remnant of the dune is graded and a concrete slab or impervious surface replaces the dune, the exchange of sand within the beach/dune system is limited. FEMA recognizes the differences of expert opinion among designers and engineers as to the use of slabs on grade and grade beams in eroding areas. Their use may improve the lateral resistance of pile foundations; however, they may also increase the wave forces on the foundation and the scour around the foundation. Because of the volume and cogency of comments, the General Land Office has modified this subsection.

One commenter asked whether the term "waste" in §15.4(c)(8), now §15. 4(c)(9), included organic matter such as Christmas trees. Because Christmas trees and other organic matter are frequently used to reconstruct dunes, this provision has been amended to exclude the deposition of such organic matter when properly permitted by a local government. Another commenter stated that §15.4(c)(8), now §15.4(c)(9), would prevent the use of gravel and caliche as construction materials. The subsection has been modified to include "that are not part of the permitted on-site construction".

Two commenters asked that the General Land Office clarify §15.4(c)(9), now §15.4(c)(10), relating to the prohibition of cisterns, septic tanks, and septic fields seaward of any structure. Section 15.4(c)(9), now §15.4(c)(10), has been modified, based on these comments, to provide that the cisterns, septic tanks, and septic fields are to be landward of the structures which they service, not landward of any structure located on the site.

Four commenters asked that the General Land Office expand the scope of §15.4(c)(10), now §15.4(c)(11), to include fireworks and firearms except in cases where public safety is at issue. Because this sort of regulation is best addressed through local government police power, relating to public safety, no change was made based on this comment. In addition, one commenter asked that the General Land Office expand this provision to include seismographic charges. Seismographic charges not directly related to the production of oil and gas are prohibited as the subchapter is drafted. If such charges are related to oil and gas production, then no permit is required pursuant to the Dune Protection Act, §63.052.

Two commenters asked that the General Land Office specify in §15.4(d), now §15.4(f),

that the mitigation sequence is required for damage to dunes and dune vegetation seaward of the dune protection line and within critical dune areas. This suggested change has been adopted, as those will be the areas regulated by local governments. However, the General Land Office recommends that local governments should use all of their existing authority to require persons to mitigate damage to dunes and dune vegetation wherever it occurs.

Four commenters asked that the General Land Office replace "damage" with "adversely affect" or "adverse effect", where appropriate, in all cases where "damage" appears in §15.4(d), now §15.4(f). This suggested change has been adopted, as the Dune Protection Act, §63.091, prohibits damaging, destroying, or removing a sand dune or a portion of a sand dune as well as killing, destroying, or removing in any manner any vegetation growing on a sand dune within the geographic scope of the regulations. Therefore, the term "damage" is too narrow. In addition, because this provision has apparently caused some confusion to the public, §15.4(d), now §15.4(f), has been modified. The General Land Office has added definitions of "effect" and "affect" to §15.2 in response to numerous requests.

Many commenters expressed confusion relating to the mitigation sequence required in §15.4(d), now §15.4(f). Based on these comments, the General Land Office has restructured and modified §15.4(d), now §15.4(f), to clarify the relationship between the mitigation sequence and a local government's decision to issue, deny, or condition a permit.

One commenter requested that in §15.4(d), now §15.4(f), the General Land Office require local governments to send permits to the Texas Parks and Wildlife Department for review and comment relating to impacts to fish and wildlife. The General Land Office will endeavor to coordinate with the Texas Parks and Wildlife Department on a case-by-case basis when a proposed activity will impact the natural resources within that agency's jurisdiction. In addition, the Texas Parks and Wildlife Department has its own regulatory requirements for activities impacting the natural resources within its jurisdiction.

In §15.4(d), now §15.4(f), one commenter suggested that "washover channel" be changed to "washover area". This subsection was modified as suggested. Another commenter asked whether impacts caused by activities undertaken prior to the effective date of this subchapter would have to be mitigated. This subchapter will not be retroactively applied by either the General Land Office or local governments. While this question pertains to dune protection, it should be noted that, under the Open Beaches Act, the Attorney General's Office retains its traditional enforcement authority for all encroachments on public beach use and access.

A commenter asked whether a pipeline transport company would have to mitigate for damage to dunes and dune vegetation as provided in §15.4(d), now §15.4(f). Yes, pipelines constructed for the purpose of commercial transportation of oil and gas or any other substance are regulated and not exempt from the permit requirements under the Dune Protection Act and this subchapter, including §15.4(d), now §15.4(f).

One commenter suggested that "practicable", as used in §15.4(d)(1), now §15.4(f)(1), requires a value judgment which may be unacceptable and suggested leaving that phrase out of this section. Without the use of the term "practicable", avoidance of adverse effects would be required in all circumstances, resulting in a prohibition of all actions which adversely affect dunes and dune vegetation. This provision is not drafted to prohibit all activities which have such adverse effects. Rather, this provision requires local governments and permittees to carefully consider the best means and methods for avoiding such adverse effects based on the "practicability" of those means and methods. No change was made based on this comment.

A commenter asked why the General Land Office is only requiring protection of critical dune areas and dunes seaward of a dune protection line in §15. 4(d)(1), now §15.4(f)(1). These dunes and dune areas represent the extent of the jurisdiction to protect dunes of, respectively, the General Land Office and local governments as provided in the Dune Protection Act, §63.012 and §63.121. No change was made based on this comment.

One commenter asked that the General Land Office modify §15.4(d)(1), now §15.4(f)(1), to provide that local governments may require permittees to avoid "material" damage to dunes and dune vegetation. Based on other comments, "damage" has been replaced with "adverse effects" wherever it appears in recognition that the term "damage" does not accurately cover all of the effects to dunes and dune vegetation described in the Dune Protection Act, §63.091, relating to conduct prohibited without a properly issued permit. No change was made based on this comment.

A commenter requested that §15.4(d)(1)(A), now §15.4(f)(1)(A), be amended to clarify which pipelines are exempt and which are regulated. The provision was modified. This commenter also stated that the exemption in the Dune Protection Act, §63.052, is broader than implied in §15.4(d)(1)(A), now §15.4(f)(1)(A). However, the statutory exemption is narrowly confined to production of oil and gas. The General Land Office is using the common oil and gas industry interpretation of production of oil and gas to provide that the statutory exemption includes activities directly related to oil and gas production and exploration. Because virtually any pipeline could be construed to be "related to" production of oil and gas, the restriction provided in §15.4(d)(1)(A), now §15.4(f)(1)(A), is essential to determine the extent of the exemption. This commenter also stated that the reference to an exempt facility in §15.4(d)(1)(A), now §15.4(f)(1)(A), was confusing. This provision was modified based on this comment.

Two commenters asked that the General Land Office delete "across barrier islands" in §15.4(d)(1)(A)(i), now §15.4(f)(1)(A). This section was modified as recommended.

One commenter asked the General Land Office to clarify §15.4(d)(1)(A)(ii), now §15.4(f)(2)(A), relating to conditions under which a local government may allow permittees to construct pipelines across dune areas. The General Land Office has modified this provision based on this comment.

In §15.4(d)(1)(A)(ii), now §15.4(f)(2)(A), one commenter asked if the local government is required to issue a permit for non-exempt pipelines where there is no "practicable alternative". A local government may issue a permit, but it is not required to do so. No change was made based on this comment.

A commenter requested that the General Land Office add "critical" after "crossing" in §15.4(d)(1)(A)(ii), now §15.4(f)(2)(A). This suggested change was adopted, as the geographic scope of state and local protection of dunes under the Dune Protection Act is limited, respectively, to the critical dune areas located within 1,000 feet of mean high tide and those dunes located seaward of the dune protection line. However, the General Land Office strongly encourages local governments to use all existing authority to protect dunes within their jurisdiction, irrespective of location.

In §15.4(d)(1)(A)(ii), now §15.4(f)(2)(A), two commenters wanted to delete "washover channels" as an acceptable pipeline location. Because washover areas are known to be reactivated during storms, even buried pipelines may be subject to scour and damage. This subsection has been modified to reflect the recommendation.

A commenter noted that the "avoidance techniques" in §15.4(d)(1)(A)-(D) were actually minimization techniques, as they are not designed to avoid impacts to dunes and dune vegetation. In response to this comment, the General Land Office has moved the techniques which are minimization techniques to new §15.4(f)(2).

Three commenters expressed concern regarding §15.4(d)(1)(B), now §15. 4(f)(1)(B), relating to construction being located as far as practicable landward of the foredunes. One commenter stated that construction should be located as far landward as practicable from all dunes within critical dune areas and seaward of the dune protection line, not just foredunes. Because the Dune Protection Act and this subchapter pertain to the protection of critical dune areas and not simply foredunes, this provision was amended based on these comments. Two of these commenters stated that such a "setback" is not supported by the Dune Protection Act. This provision does not constitute a "setback". Rather, it is to be used by local governments and permittees to avoid adverse effects to dunes and dune vegetation within critical dune areas and seaward of a dune protection line. The adverse effects on those dunes and that dune vegetation proportionately decrease as the distance between them and construction increases. In addition, this requirement is qualified by the determination that such location is "practicable". Because this provision directly relates to the General Land Office's authority to adopt rules for the protection of critical dune areas, pursuant to the Dune Protection Act, §63. 121, no change was made based on these comments.

Four commenters requested that the General Land Office clarify that §15. 4(d)(1)(B)(i), now §15.4(f)(1)(B), applies to construction seaward of the dune protection line and within critical dune areas. This clarification has been made.

In §15.4(d)(1)(B)(i), now §15.4(f)(2)(i), one commenter suggested that the General Land Office add "accounting for trends of dune movement and beach erosion in that area" to the end of the sentence. This suggestion has been incorporated into this subchapter.

Four commenters expressed concern that §15.4(d)(1)(B)(i), now §15.4(f) (1)(B), and §15.4(d)(1)(B)(iv), now §15.4(f)(2)(B)(iv), restrict public beach access. Based on these comments, these provisions have been modified to clarify that the General Land Office is not restricting public beach access in this or any other subsection and local governments shall only permit a minimum of private beach access points from subdivisions.

One commenter asked that the General Land Office modify §15.4(d)(1)(B) (iii), now §15.4(f)(2)(B)(ii), to provide that private pedestrian beach access be routed through washovers or elevated walkways only where practicable. Two commenters asked that the General Land Office add restrictions on local government permits for pedestrian access through washover channels. Pursuant to other comments, the General Land Office has modified the requirement. Because washover areas may have a history of use for public access, §15.4(d) (1)(B)(iii), now §15.4(f)(2)(B)(ii), was modified.

Four commenters requested that the General Land Office delete washover areas from §15.4(d)(1)(B)(iii), now §15.4(f)(2)(B)(ii), and only require that walkovers be used for beach access. This suggested change was not adopted based on the historical use of washovers as access points. In addition, as suggested by one commenter, the encouragement of the joint use of walkovers has been added.

Two commenters noted that the General Land Office had inadvertently omitted §15.4(d)(1)(B)(iv). This correction was made in Texas General Land Office Corrections of Error published in the October 2, 1992, issue of the *Texas Register* (17 TexReg 6810).

Five comments were received on §15.4(d)(1)(C) and §15.4(d)(1)(C)(i), now §15.4(f)(1)(C), relating to the location of roads. The commenters stated either that these provisions were too restrictive or that the General Land Office did not have the authority to establish such requirements. Some commenters stated that the requirements might result in unmanageable road patterns and uneconomical and infeasible use of the property. These considerations should enter into the permitting decision by local governments when determining what is practicable. Local governments have the discretion to determine whether the applicant has planned the location of a road as far landward as practicable. The General Land Office has the authority to promulgate rules for the protection of critical dune areas. Roads located on dunes directly and negatively impact dunes. Roads can also impact dunes indirectly by affecting natural drainage and wind patterns. Under the authority provided in the Dune Protection Act, §63.121, the General Land Office mandates that local governments require permittees to minimize these impacts using the techniques identified in §15.4(d)(1)(C) and §15.4(d)(1) (C)(i), now §15.4(f)(1)(C). Therefore, no change was made based on these comments.

Two commenters asked that §15.4(d)(1)(C)(i), now §15.4(f)(1)(C), be strengthened to limit road construction on dunes or prohibit road construction on dunes. This provision states that road construction shall be located as far landward of dunes as practicable, not on the dunes. Section 15.4(d)(1)(C)(i), now §15.4(f)(1)(C), has been modified to clarify this point.

Four commenters wanted "washover channels" deleted from the list of preferred access road construction sites in §15.4(d)(1)(C)(ii), now §15. 4(f)(2)(C)(i). Because washover areas are frequently inundated during storms and placing any materials (especially impervious surfaces) within them may cause a hazard to the public and landward state-owned lands, and given the historic use of washovers as access points to the beach, "washover channels" has been deleted from this subsection.

Two commenters wanted an exact angle for the orientation of beach access roads to be specified in §15.4(d)(1)(C)(ii), now §15.4(f)(2)(C)(i). The orientation should be at an oblique angle but the appropriate angle depends on the prevailing wind direction and the amount of property available for accessway construction. In addition, one commenter opposed the construction of new vehicular access roads because they become the "weak place in the natural dune system". Any proposed beach access road must follow the local government's approved beach access plan. The dune protection requirements must be balanced with the beach access requirements. However, nothing in this subchapter is intended to restrict beach use and access. Therefore, no change was made based on this comment.

One commenter wanted §15.4(d)(1)(C)(iii) revised to require that existing vehicular access roads be reconstructed "if they do not cross berms of adequate elevation". Most existing vehicular access roads are at the same elevation as the beach and do not cross berms. The General Land Office agrees with this commenter's suggestion. However, it is best addressed in §15.4(f) (2)(C)(i), previously §15.4(d)(1)(C)(ii).

Three commenters stated that the General Land Office appeared to encourage the proliferation of vehicular public beach access points at the expense of dunes in §15.4(d)(1)(C)(iii), now §15.4(f)(2)(C)(ii). This subsection has been modified to clarify the following points. First, this provision establishes a preference for the use of existing roads, as opposed to the construction of new roads. Second, a delicate balance must be achieved between dune protection and public beach use and access. Local governments must use all existing authority to protect dunes, but not at the expense of public beach use and access. These commenters suggested that the General Land Office should prohibit the operation of vehicles on the public beach. The General Land Office provides no such prohibition in this subchapter. However, local governments have the authority to prohibit the operation of vehicles on the beach if those governments provide other means of access consistent with their dune protection and beach access plans. For example, a local government may close the beach to vehicles if that local government provides other access, such as off-beach parking and pedestrian access ways, complete with access for disabled persons and free access, consistent with the local plan.

One commenter stated that §15.4(d)(1)(C)(iv), now §15.4(f)(2)(C)(iii), should apply to all dunes and not just to critical dune areas. To include all dunes, regardless of location, as opposed to critical dune areas, would go beyond the General Land Office's statutory authority. Therefore, no change was made based on this comment.

One commenter noted that §15.4(d)(1)(C)(iv), now §15.4(f)(2)(C)(iii), appeared to allow vehicles to be parked on public beach access roads. This subsection has been modified to clarify that vehicles may be used, not parked, along public beach access roads.

Four commenters requested that the General Land Office add "and stormwater retention basins" after "when locating new channels" in §15.4(d)(1)(D), now §15.4(f)(1)(D) and §15.4(f)(2)(D). This suggestion has been adopted. Three commenters wanted a definition for "artificial channel" because they felt §15.4(d)(1)(D), now §15.4(f)(1)(D) and §15.4(f)(2)(D), could be broadly interpreted and destroy any prospect for the reopening of Packery Channel. Section 15.4(d)(1)(D), now §15.4(f)(1)(D) and §15.4(f)(2)(D), is intended to discourage "new artificial channels" that direct stormwater flow through dunes and damage the beach/dune system. Since 1959, with the passage of the Open Beaches Act, private individuals have been prohibited from dredging new channels across the beach easement. The cited provision states that new channels may be permitted only if there is no practicable alternative and if the channels are located in a manner which avoids erosion. However, this subchapter does not refer to navigation channels and the location of the proposed Packery Channel is within a washover area where no dunes exist. One commenter wanted §15.4(d)(1)(D), now §15.4(f)(1)(D) and §15.4(f)(2)(D), to be relabeled "Artificial Runoff Channels". Because the original intent of this subsection was to discourage the construction of any new stormwater runoff channels through dunes, this comment was adopted. One commenter wanted the deletion of the word "practicable" because these new channels would breach dunes. "Practicable" was not deleted, but the section has been modified based on this comment.

A commenter stated that the General Land Office should include provisions relating to off-site compensation in §15.4(d)(3), now §15.4(f)(3). Because §15.4(d)(4), now §15.4(f)(4)(B), provides the standards for off-

site compensation, no change was made based on this comment.

In §15.4(d)(3), now §15.4(f)(3), one commenter suggested that when permitting dune restoration and rehabilitation projects local governments consider General Land Office recommendations to discourage improper projects. Because carefully planned projects generally lead to successful dune restoration, this suggestion was adopted. In addition, the General Land Office has added a requirement in §15.4(d)(3), now §15.4(f)(3), and new §15.4(f) (5), that local governments consider the advice of the General Land Office, federal and state natural resource agencies, and dune vegetation experts.

One commenter wanted standards for determining what is "superior or equal" dune vegetation as stated in §15.4(d)(3), now §15.4(f)(3). Local governments will determine what is "superior or equal" dune vegetation and will base this determination on the local climate, vegetation type, and sediment quality typical of the area. Determination of whether the permittee has succeeded in establishing superior or equal dune vegetation will depend on such considerations as how well plants are established, percentage of vegetative cover, stability of dune formations, height, and continuity of dune formations. Because the quality of the vegetative cover is important to the success of a mitigation project, §15.3(d)(3), now §15.4(f)(3), was modified. Another commenter stated that in §15.4(d)(3), now §15.4(f)(3), the General Land Office should provide less protection to critical dune areas adjacent to developed areas. This approach would leave developed areas of the Texas coast barren of dunes and dune vegetation and, therefore, unprotected from the devastating effects of storm surge and erosion. The Dune Protection Act does not authorize different levels of protection for areas which have experienced different levels of development. Therefore, no change was made based on this comment.

Some commenters also asked that the General Land Office clarify that the compensation applies to critical dune areas and areas seaward of the dune protection line. This suggested change has been adopted in §15.4(f), which applies to all of the mitigation sequence. Many commenters expressed confusion regarding various requirements in §15.4(d)(3), now §15.4(f)(3), relating to compensation for damage to dunes and dune vegetation. In response to these comments, the General Land Office has amended new §15.4(f)(3) and new §15. 4(g) as follows. First, local governments are required to incorporate as conditions in dune protection permits compensation requirements for any unavoidable adverse impacts to dunes or dune vegetation which occur after the permittee has minimized such damage. Second, where feasible, a permittee is required to successfully complete compensatory mitigation prior to or concurrent with the commencement of construction. Third, objective standards regarding the success and effectiveness of compensatory mitigation have been added.

Three commenters requested that the General Land Office modify §15.4(d)(3) , now §15.4(f)(3), regarding the protective abilities of pre-existing dunes and dune vegetation. The General Land Office has clarified that "ability to protect" refers to the dunes and dune vegetation, not to local governments. One commenter requested deletion of the phrase "in the ability to protect" and deletion of §15.4(d)(3)(A)-(B), now §15.4(f)(3). This commenter stated that the "best professional judgment" of local government authorities is a sufficient basis for determining when restored, rehabilitated, and repaired dunes and dune vegetation are equivalent or superior to the pre-existing dunes and dune vegetation. The General Land Office is required to adopt rules for the protection of critical dune areas pursuant to the Dune Protection Act, §63.121. As part of this requirement, the General Land Office is adopting this subchapter which provides minimum compensation standards for adverse effects on dunes and dune vegetation within critical dune areas along the Texas coast. Each local government may use its best judgment to determine whether an applicant's proposed mitigation plan will achieve the General Land Office's minimum requirements as well as any additional requirements established by the local government. The General Land Office's standards are baseline standards. The General Land Office's standards identify the result which must be achieved, not the means by which the result is achieved. Therefore, no change was made based on this comment.

Two commenters inquired as to the purpose of §15.4(d)(4)(D), now §15. 4(f)(4)(B)(iv), relating to notifying FEMA of any proposed off-site compensation. FEMA bases its Flood Insurance Rate Map (FIRM) zones and a community's federal subsidy on many factors, one of which is the location, size, and stability of dunes within a community. The purpose of this provision is to give FEMA notice of changes in location, size, and stability of dunes within a community. With such notice, FEMA will be able to inform the local government whether a proposed action will affect that community's participation in the National Flood Insurance Program. In this subchapter, the General Land Office authorizes a local government, pursuant to its state-approved dune protection and beach access plan, to impact dunes in certain situations, and, in the case of off-site mitigation, to restore dunes in a different location. The General Land Office will not put local governments in the position of having state approval for activities which may later result in that local government's federal flood insurance subsidy being suspended or even revoked. This notice requirement is intended to protect individuals and local governments that depend on that subsidy from being unfairly surprised when FEMA officials conduct field inspections or revise the FIRMs in their community. Therefore, no change was made based on this comment.

One commenter expressed "bewilderment" at the use of the phrase "construction site" in §15.4(d)(4), now §15.4(f)(4), relating to off-site compensation for damage to dunes and dune vegetation. "Construction site" means the site upon which the permitted construction occurs. Because this seems clear, no change was made based on this comment.

This same commenter asked what 1:1 meant. The 1:1 ratio is the amount of compensation (sand volume and square footage of vegetation) for the amount of sand or vegetation disturbed or destroyed. The General Land Office has defined this where the term appears.

Three commenters stated that the off-site compensation requirement in §15. 4(d)(4), now §15.4(f)(4), was "innocuous" but, if strictly interpreted, would deny projects that would help the local economy. The projects they cited were within the bay system, an area not covered by this subsection. Therefore, no change was made based on this comment.

Two commenters noted that the General Land Office inadvertently omitted the word "to" between "permittees" and "provide" in §15.4(d)(5), now §15.4(f) (4)(C). The provision has been corrected.

One commenter requested that the existing dune/swale topography as in §15. 4(d)(5)(B) and (E), now §15.4(f)(4)(C)(ii) and (c), be included in the list of information required by local governments for proposed off-site compensation. This information is required to be included in the "grading and layout" plan.

One commenter asked that the General Land Office add "proposed" before "date" in §15.4(d)(5)(C), now §15.4(f)(4)(C)(vii), relating to the initiation of compensation. This suggested change has been adopted. However, the General Land Office has added a provision which requires permittees to notify the local government in writing of the actual date of initiation. A permittee who fails to begin compensation on the proposed date must provide the local government with the reason for the delay.

Regarding §15.4(d)(6), now §15.4(f)(5), one commenter stated that removal of "temporary sand fencing" would cause secondary damage to the man-made vegetated mound. Sand fencing comes in many different forms and has different effects on mound creation depending on the density of the fencing and how it is placed. Sometimes, the sand accumulates on the downwind side of the fencing; sometimes, the fencing acts as a windbreak that allows newly planted vegetation to take hold. In both of these examples, the fencing may be taken out with little or no damage to the man-made mound. The General Land Office does recognize that the fencing may become trapped within a mound. The applicant must use his best judgment in determining whether to withdraw a buried sand fence or leave it in place. No change was made based on this comment. This commenter also stated that it was "ludicrous" to have to get permission from "the property owner or the state" before removing vegetation from private property or state-owned property and that permission from the state should always be required. Permission is always required from the property owner, but a permit is not always required from the local government. A permit is not required outside a critical dune area or landward of a dune protection line. State permission is required only for the removal of vegetation from state-owned property. A person must apply for a permit to remove in any manner any vegetation growing on a dune

seaward of a dune protection line or within a critical dune area, as provided in the Dune Protection Act, §63.091. The state does not have the authority to grant permission for the removal of vegetation from private property, nor can the state issue a permit allowing that activity. However, the state does have the authority to review and comment on such permits. Based on this comment, §15.4(d)(6), now §15.4(f)(5), has been modified to clarify the approval issue. Two commenters noted that the requirement that permittees plant indigenous vegetation and the requirement that local governments encourage the planting of indigenous vegetation are inconsistent in §15.4(d)(6), now §15.4(f)(5). Based on these comments, the General Land Office has deleted the provision stating that local governments "encourage" the planting of indigenous vegetation. Four commenters asked that the General Land Office clarify that the permission required for the removal of vegetation applies to critical dune areas. This suggested change has not been adopted because this subchapter neither condones nor allows trespassing on state-owned or private property for the removal of vegetation. The distinction these commenters failed to make is that no permit is required for the removal of vegetation from a dune landward of a dune protection line and outside a critical dune area. This provision has been modified to clarify the permission issue.

One commenter stated that dune reconstruction is an "impossibility" and, therefore, should not have standards as those in §15.4(e), now §15.4(f)(3) (A). Because dunes and dune vegetation may be damaged during construction, the General Land Office has established mitigation standards which enable a permittee to restore dunes. In addition, the commenter stated that dune shape is an "exceedingly poor criterion". That phrase has been replaced with "dune contour". In addition, the General Land Office has modified §15.4(e), now §15.4(f)(3)(A), to include criteria that will help a permittee to restore dunes where they would form naturally.

One commenter inquired as to the meaning of the term "appropriate methodology" as used in §15.4(e)(3), regarding the stabilization of foredunes in "washover channels". Because washover areas are often reactivated by storms, it is difficult for foredunes to occur naturally within them. The "appropriate methodology" refers to stabilizing the fringes of washover areas as described in the 1991 Dune Protection and Improvement Manual for the Texas Gulf Coast. Section 15.4(e)(3) has been deleted because compensation of damage to dunes or dune vegetation should not be restricted to washover areas.

Two commenters wanted "sand flats" to be replaced by "re-entrants and breaches" in §15.4(f), now §15.4(f)(3)(B). This comment has been adopted without the term "re-entrant" because the term was not defined by the commenter and is not a common geomorphological term used for sandy (non-rocky) coastal areas. In addition, "washover channels" has been changed to "washover areas".

Concerning §15.4(f), now §15.4(f)(3)(B), one commenter asked if blowouts and washover areas should be treated differently. Blowouts and breaches are more preferable locations for dune repair than washover areas because less unstabilized sand is likely to be relocated landward (during storms) from blowouts than from washover areas. No change was made to the section. One commenter requested that the General Land Office add a new section to §15.4(f), now §15.4(f)(3)(B), providing that local governments must require avoidance, minimization, and compensation for any impairment of public beach access previously provided by the washover. This suggested change has not been adopted, as this subchapter requires that current access be maintained and enhanced pursuant to a local dune protection and beach access plan. The mitigation sequence applies to dune protection.

One commenter stated that the two-year compensation time frame was unrealistic. Section 15.4(g) allows a landowner who absolutely cannot avoid any impacts to dunes to mitigate that damage. The General Land Office recognizes that man-made vegetated mounds will not afford the same protection as natural dunes; however, the statute plainly allows people to make use of their private property. The two-year time frame for the mitigation sequence (construction of man-made vegetated mounds) was adopted after reviewing past revegetation/mitigation projects where a healthy stand of vegetation was achieved on a damaged natural dune. It takes at least two years to determine whether the new vegetation will thrive. Therefore, the section was modified based on this comment.

Nine comments were received on §15.4(g)(1), relating to the initiation of compensatory mitigation. Various solutions were suggested to the perceived problems with this subsection as drafted. Based on these comments, the General Land Office has modified this subsection.

Concerning §15.4(g)(2), one commenter stated that creating man-made vegetated mounds equal or superior to the natural dunes was an impossibility and that the General Land Office does not understand dunes. The General Land Office does, however, recognize natural unvegetated dunes that occur along the coastal bend and southern portions of the coast as affording some protection to landward properties and to the public beach during storms. Regarding the "equal or superior" standard, it is true that it may take years for a dune to acquire an adequate vegetative cover, but that is all that exists to measure for equality or superiority. It would be counterproductive to excavate a mound to see how many roots and tendrils composed the vegetated mound body. The subsection was not modified. One of these commenters requested that the last sentence of §15.4(g)(2), relating to completion of compensation, be deleted, stating that it was unnecessary and potentially confusing. This provision is drafted to provide local governments and permittees information as to the compensation required. It also requires local governments to allow only cost-efficient compensation, by requiring that permittees preserve and maintain the dunes and dune vegetation that are reconstructed during the compensation process. To allow otherwise would encourage financial waste and could result in greater damage to dunes and dune vegetation surrounding the compensation area if permittees were to "begin" compensation many times without maintaining the affected area. In the interest of keeping such costs down and minimizing any collateral damage to the surrounding dunes and dune vegetation, no change was made based on these comments.

Two commenters suggested that the General Land Office amend §15.4(g)(3), now §15.4(g)(4), relating to certification of completion of compensation, by deleting sentence three and adding new language. Because the suggested language states more clearly the intent of sentence three, that sentence has been deleted and replaced by a modified version of the suggested language. One commenter wanted the compensation ratio changed from 1:1 because this would not achieve mounds "equal or superior" to the natural dune that had been destroyed. Because dune mitigation does not include compensation for "habitat downtime", the ratio was left as proposed.

Based on comments received regarding §15.4(g)(3), now §15.4(g)(4), the General Land Office has added new §15.4(g)(3) which provides criteria for local governments to use when determining whether compensation is complete.

Three commenters asked the General Land Office to add "time of year" in §15.4(g)(4), now §15.4(g)(5), relating to violations of the compensation deadline. Because this is an important factor in determining whether a permittee's efforts have been hampered by natural events, this suggested change has been adopted.

One commenter offered the general comment on §15.4, §15.5, and §15.6 that the proposed standards allow for "subjective determination of whether the proposed construction would materially affect the dune" and, thus, allow for subjective determination for issuing a permit or certificate. The so-described "subjective" nature of these subsections is in fact a reasonable accommodation of the geologic, geographic, and climatic differences of the Texas coast and the variations in local government regulation of shorefront development. These subsections allow local governments to determine which criteria work for them and to make their own determinations in issuing permits. The local governments can include more comprehensive criteria within their dune protection and beach access plans. Therefore, no change was made.

Section 15.5.

Three general comments were received on §15.5, relating to beachfront construction standards. These comments concerned the balance between state and local authority over beachfront construction. The General Land Office and the Attorney General's Office have the authority to approve a local government's beach access and use plan which must be incorporated into its dune protection and beach access plan pursuant to the Open Beaches Act, §61.015(b). Local governments with ordinance authority over construction adjacent to public beaches and each county that has jurisdiction over the public beach have the authority to establish beach access and

use plans pursuant to the Open Beaches Act, §61.015(a). It is up to the local government to determine the best means for addressing preservation and enhancement of public beach use and access as required by the Open Beaches Act, §61.015(a). The state agencies will review a local government's proposed plan and certify whether it achieves the purpose of the statute. The General Land Office will not retroactively apply the requirements of this subchapter.

Three commenters requested that §15.5(a), relating to local government certification of beachfront construction, be modified to apply to the specific local government that has jurisdiction over the construction site. This suggested change was adopted, as the affirmative finding required in this subsection cannot be made by just any local government. One commenter stated that §15.5(a), relating to beachfront construction standards, appeared to prohibit any change which might inhibit potential beach access. This section was amended based on other comments. Therefore, no change was made based on this comment. Two commenters suggested that §15.5(a) be modified to more closely follow the Open Beaches Act, §61.015, relating to beach access and use plans. Based on this comment, the General Land Office has modified §15. 5(a) by requiring local governments to make a finding that the proposed construction is consistent with its state-approved beach access and use plan. The modification also requires that local government plans shall provide that beachfront construction will not encroach on the public beach or interfere with or otherwise impair the public's right to use and have access to and from the public beach.

Four commenters suggested that the General Land Office clarify §15.5(b) by changing the language to reflect that the construction would cause certain impacts, not that the construction required the permittee to cause certain impacts. This suggestion was adopted.

Two commenters requested that the General Land Office modify §15.5(b)(2) to apply only to an access route which is in active use by the general public and to provide that a local government need only ensure that "adequate" access is maintained. There is no authority to weaken the Open Beaches Act in such a manner. The standard is not active use of access points by the public, nor is it adequate beach access, unless one is referring to certificate conditions, (Open Beaches Act, §61.015(g)), or to the acquisition of beach access (Open Beaches Act, §61.011(d)(1)), issues not relevant to this provision. Therefore, no change was made based on these comments.

One commenter requested that §15.5(c)(1) be modified to prohibit construction that "materially" encroaches on the public beach, as opposed to construction that encroaches on the public beach. These provisions of this subchapter complement the Attorney General's existing enforcement policies, which are based on Open Beaches Act case law. The Open Beaches Act case law clearly holds that encroachments on the public beach, whether material or non-material, are not allowed. Therefore, no change was made based on this comment.

One commenter expressed concern that §15.5(c)(1), relating to prohibition of construction on the public beach, destroys the use and occupation of pre-existing structures. Repair and maintenance of structures built prior to the effective date of this subchapter are subject to the requirements contained herein. A certificate applicant who proposes to expand a structure or to impair public beach use and access will be subject to whatever restrictions apply under that local government's state-approved dune protection and beach access plan. Because no change was suggested and no change is necessary, this subsection was not amended. One commenter stated that §15.5(c)(1), relating to prohibition of construction on the public beach, be modified to prohibit local governments from issuing certificates for construction that encroaches on the public beach based on the local governments' determinations regarding the construction, not solely on the construction proposal. Because other modifications were made to this provision, the suggested amendment has been made. One commenter requested that the phrase "any person proposing" be deleted and replaced with "for" in §15.5(c) (1). This provision has been clarified based on this comment.

Many comments were received regarding §15.5(c)(2)(A) and (B). These provisions were based on the Attorney General's post-storm reconstruction enforcement policy. However, due to the general confusion expressed by these commenters, these provisions have been deleted and §15.5(c)(2) has been modified.

Two commenters stated that they were opposed to the requirement for the provision of obtaining access from private land pursuant to §15.5(d), relating to dedication of new access points. One commenter stated that this provision allowed too much local government discretion. Requiring dedication of land to the public as a condition of approving development is a common, widely used, and accepted tool that promotes the public good. In addition, during the General Land Office's 1990 public hearings and workshops, coastal residents and officials unanimously recommended that local governments employ this type of land use planning tool to manage beachfront development. Eleven commenters expressed confusion regarding §15.5(d), relating to dedication of new beach access points. These commenters suggested various solutions relating to the local government's authority to require such access, to the definition of "dedication", and to state guidance regarding such dedication. In response to these comments, the General Land Office has modified §15.5(d) to clarify these points. The clarifications include provisions allowing for local government discretion as to the proper method for complying with local plans and as to the content of those plans. In addition, a definition of "dedication" has been added. Six commenters stated that §15.5(d)(1) was either confusing, lacking statutory authority, lacking standards, or lacking provisions allowing local governments to use discretion when determining if dedication of new beach access points is necessary. In response to these comments, the General Land Office has deleted §15.5(d)(1) and replaced it with new language that should alleviate the problems raised by these commenters. Access standards are provided by the General Land Office in this subchapter as well as by the local government in its dune protection and beach access plan. Local government discretion will be used in developing the plan and in determining whether the particular construction is consistent with the plan. Regarding the General Land Office's statutory authority, the Open Beaches Act, §61.011(d)(2), requires the General Land Office to promulgate rules for the protection of the public easement from reduction caused by development. The public beach easement which the state and local governments are required to protect includes use of and access to the public beach. Clearly, the protection of the use easement includes protection of the access easement because without access the use easement is meaningless. The Open Beaches Act, §61.011(d)(5), also requires the General Land Office to promulgate rules on the contents and certification of beach access and use plans and standards for local government review of construction on land adjacent to and landward of public beaches. Therefore, the General Land Office has the statutory authority to provide standards and provisions for local government plans and local government review of individual certificates. Local governments also have statutory authority to: establish beach access and use plans; to conduct such reviews of beachfront construction certificate applications; and to require preservation and enhancement of beach use and access. The Open Beaches Act, §61.015, requires local governments to adopt a plan for preserving and enhancing access to and use of public beaches within their jurisdiction. The Open Beaches Act, §61.015(d), requires local governments to determine whether proposed beachfront construction is consistent with their plans. The Open Beaches Act, §61.015(g), allows a local government to include in its plan any reasonable terms and conditions it finds necessary to assure adequate public beach access and use rights consistent with the Dune Protection Act. Based on these comments, this provision has been modified using the authority provided by the Open Beaches Act.

One commenter stated that there were no provisions for boat speed limits and restricting access from the Gulf of Mexico to the public beach in §15. 5(d). The General Land Office does not have the authority to provide such restrictions in this subchapter; therefore, no change was made based on this comment.

Three comments were received on §15.5(d)(2), relating to dedication of access. These comments were based on the desire that local governments have more discretion to decide when such dedication is necessary. Based on these comments, the General Land Office has modified this provision. In addition, as requested by one commenter, the General Land Office has changed the term "beach access" in this subsection to "access to and from the beach".

Section 15.6.

One commenter requested that the General Land Office clarify the scope of §15.6(a), relating to concurrent dune protection and beachfront construction standards, by adding language stating that this subsection applies to either dune protection permits or beachfront construction certificates or to both. This modification has been adopted for the purpose of clarification.

Three comments were received on §15.6(b), relating to the location of construction. Regarding the comments on the General Land Office's statutory authority, the Open Beaches Act, §61.011(d)(2), requires the General Land Office to promulgate rules for the protection of the public beach easement from erosion and reduction caused by development. Some coastal development practices limit the natural transfer of sand within the beach/dune system and can also aggravate erosion of adjacent properties. In addition, the Open Beaches Act, §61.015, requires local governments to adopt a plan for preserving and enhancing access to and use of public beaches within their jurisdiction. These statutory requirements include the obligation that the General Land Office, local governments, and property owners act with foresight when construction is proposed adjacent to the public beach. To allow construction immediately adjacent to the public beach is to ignore the real and obvious risk that such construction will eventually end up on the public beach because of the migratory nature of the public beach easement. In Senate Bill 1053, the legislature also recognized the legal issues which arise when persons locate structures too close to the public beach. In the Open Beaches Act, the legislature notified property owners of this problem and required full disclosure to prospective purchasers of property adjacent to the public beach. The Open Beaches Act, §61.025(a), states that "structures erected seaward of the vegetation line (or other applicable easement boundary) or that become seaward of the vegetation line as a result of natural processes are subject to a lawsuit by the State of Texas to remove the structures".

Section 15.6(b) embodies the state's appropriate policy choice by providing requirements for the protection of the state's financial and natural resources as well as those that belong to the public and individual property owners. This subsection in no way represents a "setback", as stated by one commenter, as there is no requirement that structures be placed in any particular location landward of the public beach, nor does this subsection prohibit construction immediately adjacent to the public beach. This subsection does represent the state's effort to protect the public beach easement from present and future encroachments by providing that local governments shall require that permittees locate structures as far landward as is practicable. These commenters raised the same issues regarding the policy reasons and authority for such a requirement, (§15.6(b)), pursuant to the Dune Protection Act, as they raised in their comments on §15.4(d)(1)(B), now §15.4(f)(1)(B). The General Land Office has responded to their comments on authority (under the Dune Protection Act) to require construction to be located as far as practicable landward and on local government flexibility in the response to comments on §15.4(d)(1)(B), now §15.4(f)(1)(B).

Some of these commenters requested that §15.6(b) be limited to areas seaward of the dune protection line. Because these are concurrent dune protection and beach access standards, such limitation is not statutorily authorized by the Open Beaches Act. Therefore, no change was made based on these comments. One commenter stated that persons should not be allowed to build structures which will damage dunes and swales under any circumstances. The Dune Protection Act, §63.091, states that a person may not damage, destroy, or remove a sand dune or a portion of a sand dune seaward of a dune protection line or within a critical dune area, unless a permit is properly issued. No change was made based on this comment. Two commenters stated that §15.6(b) should be modified to state that local governments shall not allow any construction which may aggravate erosion, as opposed to construction which aggravates erosion. This flexibility for local government decision-making has been added to this provision. Another commenter stated that §15.6(b) could be interpreted to be a blanket prohibition on construction of retaining walls. Based on numerous comments, the subsection was modified.

A commenter stated that §15.6(b)-(h) contained good technical standards, but asked how these standards related to the standards provided in §15.4 and §15.5. This commenter asked which provisions would prevail in the case of a conflict, §15.4, §15.5, or §15.6? Based on this comment, it has been clarified that the provisions in §15.6 apply to all construction. While no conflicts were identified by this commenter, the General Land Office has reviewed and modified these provisions, where necessary, to ensure that no conflicts exist.

One commenter wanted the landowners to have the flexibility to determine the method of erosion response in §15.6(c). Present shorefront development practices along the lower Texas coast have resulted in the continuous "hardening" of the shoreline. This method for erosion response has been mostly chosen by landowners concerned about protecting their private property. While this is certainly a valid concern, little or no consideration has been given to the effects of these structures on the public beach and on adjacent shores and properties. The local governments and the General Land Office are given the responsibility of comprehensively addressing the effects of erosion response structures. Based on these observations, this comment was not adopted. Two commenters requested that the General Land Office modify §15.6(c) by adding that no structure which is the functional equivalent of an erosion response structure may be permitted by a local government within 200 feet of the public beach. The General Land Office has already modified the definition of "erosion response structure" to include structures which are the functional equivalent of erosion response structures. This provision was modified with respect to the 200-foot limit and with respect to retaining walls, based on this and other comments.

One commenter requested that the General Land Office clarify the prohibition of erosion response structures in §15.6(c) as it relates to the permitting of construction of coastal and shore protection projects in §15.7(b). Coastal and shore protection projects include erosion response structures as defined under this subchapter. The General Land Office has clarified these provisions. Regarding §15.6(c), one commenter stated that erosion response structures may be the only viable means for preventing the destruction of buildings and infrastructures and suggested two provisions allowing such structures when there is no viable alternative and when the applicant provides mitigation for impacts attributed to the structure. These suggestions, if adopted, could mislead an applicant to develop a property without any concern for the natural environment and the adjacent properties. The General Land Office cannot accept this approach because it lacks support in the physical realities prevailing on the Texas coast. In most cases, the only way to mitigate the damage caused by an erosion response structure is to replace the sand that was lost to the local sand budget (this is encouraged rather than adding more "hard" erosion response structures). Because of the paucity of readily available beach-quality material for beach nourishment for many portions of the Texas coast, the high cost of such material, and the temporary nature of the benefits of beach nourishment, the mitigation comment was not adopted.

Three commenters stated that in §15.6(b) and (d) it makes little sense to prohibit the restoration of a pre-existing erosion response structure if it has suffered more than 50% damage. However, this approach is consistent with typical nonconforming use ordinances and with insurance practices concerning total constructive loss.

Two commenters wanted "flood" deleted from §15.6(d)(1). Because this subsection allows for the protection of public facilities only, the comment was modified by deleting "flood" and including "immediately" between "facility" and "landward".

Four commenters requested that the General Land Office modify §15.6(d)(2) to allow the repair of erosion response structures that protect all structures, not just private dwellings. The General Land Office has modified §15.6(d)(2) by replacing "private dwelling" with "habitable structure". The General Land Office has added a distinction between the protection of "habitable structures" and "amenities" as now defined in §15.2.

Two commenters suggested that the monitoring requirement in §15.6(e) was inconsistent with the prohibition of erosion response structures in §15.6(d). The General Land Office inadvertently placed §15.6(e) in the wrong section. It is now located under §15.7(c) and §15.6 has been renumbered accordingly.

In §15.6(f), now §15.6(e), one commenter requested the General Land Office add the official FEMA language for construction in V-zones. Because this clarifies the subsection, this request was adopted.

In §15.6(f), now §15.6(e), one commenter requested that the General Land Office add

that a local government shall not issue a permit or certificate that does not comply with FEMA minimum requirements or the local FEMA-approved ordinance or county court order. This comment was adopted.

One commenter asked that the General Land Office address standards for wind and wave damage in §15.6(f), now §15.6(e). This suggestion was included under the FEMA standards in §15.6(e).

Five commenters inquired as to the importance of the requirement that local governments and permittees comply with FEMA's regulations in §15.6(f)(1), now §15.6(e)(1). This subsection is important because local governments that do not comply with FEMA's requirements place their community's federal subsidy for flood insurance in jeopardy. There is nothing in this subchapter that allows local government circumvention of FEMA's requirements. It is important that this concept be clearly stated to inform the regulated community that construction activities along the gulf shoreline are subject to overlapping local, state, and federal statutes and regulations. Therefore, no change was made based on these comments.

Five commenters suggested that the General Land Office modify §15.6(g), now §15.6(f), relating to construction in eroding areas. Most of these comments stated that this provision was unworkable without a definition of "eroding areas". This definition has been added. One commenter stated that the General Land Office had no authority to adopt rules relating to erosion. However, the Open Beaches Act, §61.011(d)(2), specifically provides that the General Land Office shall promulgate rules for protection of the public easement against erosion or reduction caused by development. No change was made based on this comment. Another commenter stated that the entire subsection should be deleted to allow "certain" types of construction in eroding areas. This suggested change was not adopted because "certain" was not defined, and because most types of construction may be permitted in eroding areas. One commenter stated that the General Land Office should postpone the adoption of regulations until various debates and studies on erosion are complete and until this subchapter can be coordinated with FEMA's regulations. The General Land Office regards the historical erosion rates published by the University of Texas at Austin, Bureau of Economic Geology, as the most comprehensive study of erosion for the Texas coast. These erosion rates can effectively help local governments decide what is an eroding area and help them plan beachfront development accordingly. This commenter also stated that it would be more appropriate to allow "amenities", as that term has now been defined in §15.2, to be located seaward of any dwellings so that their loss would not prohibit the use of the dwellings. It is not the purpose of this subchapter to determine which structures can most easily be "lost" to erosion or to the public beach easement. That approach would not demonstrate foresight on the part of the state. As another commenter stated, a primary focus of Senate Bill 1053 (amending the Dune Protection Act and the Open Beaches Act) was the threat and reality that construction located on the edge of the beach may eventually encroach on the beach. No change was made based on this comment. One commenter asked that construction activities behind the Galveston seawall be exempt. The County of Galveston, or the City of Galveston (if delegated the authority to address dune protection and public beach use and access), may exempt in its plan construction behind the seawall provided that such an exemption is rescinded if dunes form naturally or are restored, or if that area becomes part of the public beach. Another commenter requested more specificity for the public. Based on these comments, the General Land Office has modified §15.6(g), now §15.6(f).

In §15.6(g), now §15.6(f), one commenter stated that the subsection as drafted did not address the problem of erosion and should discourage all development in eroding areas. This subsection has been clarified.

A commenter requested that the General Land Office clarify the prohibition on concrete slabs in §15.4(c)(7), now §15.4(c)(8), as it relates to §15. 6(g), now §15.6(f). This has been done by deleting the reference to slab foundations in §15.6(g). Section 15.4(c)(7), now §15.4(c)(8), is the controlling provision. One commenter noted that the requirement that "loose shell" be used to stabilize driveways in §15.6(g), now §15.6(f), ignored the obvious difficulty of obtaining the shell, a depleted resource in Texas. Based on this comment, the General Land Office has modified this subsection by adding that alternatives such as gravel or crushed limestone may be used.

Three commenters wanted §15.6(g) and (h), now §15.6(f) and (g), deleted and replaced with language regarding project design and impacts on natural hydrology. Section 15.6(h), now §15.6(g), has been modified to include the recommendation with a qualifier that a project's drainage shall not cause erosion to adjacent properties, critical dunes, or the public beach.

Section 15.7.

One commenter questioned how §15.7 would affect the proposed beach nourishment project in Galveston. As modified, this subchapter should not prohibit the project.

Eight commenters suggested changes in §15.7. One wanted "better" beach sand for beach nourishment projects, while others wanted "less stringent" criteria. Because there is a paucity of readily available beach-quality material for beach nourishment on many portions of the Texas coast, this subsection has been modified to allow local governments to approve beach nourishment projects which, after full investigation, are demonstrated to be using the best and most effective sediments available and to most closely approximate the character of the existing material, assuming the sediments meet the appropriate toxicity standards. In addition, one commenter wanted the subsection expanded to ensure that there is no adverse impact to dunes from transporting the material. The subsection was modified as recommended.

A commenter asked about the rights of individuals to have input into a local government's beach access plan. All local government plans must be legally enforceable and must be in the form of an ordinance, in the case of municipalities, or a county commissioners court order, in the case of counties. The public will have the same input into the plan as with other local laws. No change was made based on this comment.

One commenter requested that the General Land Office clarify that §15.7(a) is also applicable to the actions of local governments. This clarification has been made.

Two commenters wanted to delete the remainder of §15.7(b) after the second sentence. One commenter wanted the section modified to encourage carefully planned beach nourishment projects where there is a strong likelihood of success. Because the subsection was confusing, the remainder of §15.7(b) after the second sentence was deleted and modified to encourage carefully planned projects.

A comment was received stating that the General Land Office should also require local governments to ensure that public beach use and access is preserved and enhanced as part of any beach nourishment project authorized by §15.7(c), now §15.7(d). Because a local government's activities on the public beach are required to be consistent with that local government's plan, including the provisions regarding preservation and enhancement of beach use and access, this suggested change was adopted.

In §15.7(c), now §15.7(d), one commenter wanted the General Land Office to include "and the project sponsor demonstrates" between "finds" and "that". This suggestion was adopted.

As requested by one commenter, §15.7(c)(4), now §15.7(d)(5), has been modified by adding that local governments must find that the removal of sediments as part of a beach nourishment project does not have adverse impacts on flora and fauna.

One commenter asked whether §15.7(d), now §15.7(e), requires local governments to apply for a permit to reconstruct the foredune ridge within their jurisdiction. Yes. In addition, specifications regarding projects of this type should be included in a local government's dune protection and beach access plan.

Concerning §15.7(d), now §15.7(e), one commenter stated that sand dunes are never created or reconstructed. This subsection was changed to replace "reconstructed dunes" with "restored dunes". One commenter stated that the 20-foot seaward limit for reconstructing dunes on the public beach contained in §15.7(d), now §15.7(e), may not be appropriate in all communities along the Texas Gulf Coast. The General Land Office has consulted with the Attorney General's Office in modifying this provision to allow for different circumstances in different communities.

The General Land Office has modified §15.7(d)(3), now §15.7(e)(3) to be consistent with the modifications made to §15.4(d), now §15.4(f)(3)(A)(i), based on comments received on the latter subsections.

In §15.7(d)(4)(C), now §15.7(e)(4)(C), the General Land Office has clarified that unacceptable sediments for dune restoration also include clay-sized material.

In §15.7(d)(4)(D), now §15.7(e)(5)(D), one commenter requested that the local government should restrict or disapprove all non-biodegradable items and encourage recycling. Section 15.7(e)(5)(B) was modified to reflect the request.

Five commenters wanted §15.7(d)(4)(E), now §15.7(e)(5)(E), deleted or substantially modified. Because scraping natural dunes will materially weaken them and decrease their protective capability, this portion of the subsection was not modified. Regarding scraping of the beach for construction of man-made vegetated mounds, the subsection was modified to allow scraping on accreting beaches only, and to require approval and monitoring of the scraping by the local government.

Two comments were received on §15.7(d)(6), now §15.7(e)(7), relating to the time limit for state agency comment on permits and certificates. One commenter suggested modifying the language to read that if the General Land Office or the Attorney General's Office failed to comment on an application within 15 days of receipt, approval of the permit application would be presumed. Another commenter stated that silence of the state agencies must be given a meaning and that the comments of the agencies must bind the agencies. It is well established that estoppel does not run against state agencies. Therefore, the General Land Office did not adopt these suggestions.

In response to two comments, the General Land Office has added "within a critical dune area or seaward of the dune protection line" to clarify the geographic scope of the prohibition of construction on reconstructed dunes in §15.7(d)(7), now §15.7(e)(8).

One commenter requested that the General Land Office modify §15.7(e), now §15.7(f), to clarify that the provisions regarding the construction of dune walkovers are conditions and not circumstances. This suggested change has been adopted for the purpose of clarification.

Two commenters requested that §15.7(e)(2), now §15.7(f)(2), be modified to state that local governments shall require permittees to "locate and" construct dune walkovers in a manner that will not interfere with public beach use and access, as opposed to only requiring that walkovers be constructed in that manner. This suggested change has been adopted, as location may be crucial in avoiding impairment of access in many cases.

Five comments were received on §15.7(e)(3), now §15.7(f)(3), relating to the requirement that dune walkovers be immediately relocated after the landward migration of the public beach. All commenters agreed that "immediately" was an unworkable time frame and some commenters raised the salient point that when dunes migrate seaward, the walkovers may have to be extended seaward. Regarding "immediately", the General Land Office has modified the time frame to provide that local governments shall require permittees to relocate dune walkovers within 30 days of any major storm event or any other action causing significant landward migration of the public beach boundary. This requirement must be included as a condition in any permit or certificate authorizing construction of dune walkovers. In cases other than a major storm event, where landward dune migration occurs slowly over a period of time or where dune walkovers must be lengthened to allow for the natural seaward migration of dunes, the permittee shall apply for a permit or certificate authorizing such construction. Local governments are required to assess the status of the public beach boundary within their jurisdiction within 30 days after a major storm or other event causing significant landward migration of the public beach boundary. If a local government determines that walkovers or other structures are encroaching on the public beach during its post-storm assessment or at any other time, that local government must notify the General Land Office, the Attorney General's Office, and the property owner of the encroachment within 10 days. In addition, on-beach structures are considered encroachments under the Open Beaches Act and are subject to an injunction. Based on the comments received, §15.7(e)(3), now §15.7(f)(3), has been modified.

Two commenters commented on the amount of beach access and the beach access requirements contained in §15.7(f), now §15.7(g). One commenter stated that his/her community had too much access, and another stated that there was too little access. Local governments are required to establish beach access and use plans which preserve and enhance public beach access pursuant to the Open Beaches Act, §61.015(a). In these plans, the local governments must demonstrate to the state agencies how their particular access and use plans are consistent with the Open Beaches Act, the Dune Protection Act, and this subchapter. No change was made based on these comments, as the issue of amount of access will be addressed on an individual basis for each local government.

Many comments were received on §15.7(f), now §15.7(g), relating to the standards a local government must follow pursuant to this subchapter, as required under the Open Beaches Act, §61.022(b). Two commenters requested that the General Land Office modify §15.7(f), now §15.7(g), to recognize the necessity for closing individual access points to the public beach in emergencies related to public safety. Based on these comments, this suggested change has been adopted in new §15.7(g)(4). Another commenter requested that the General Land Office modify §15.7(f), now §15.7(g), to require local governments to regulate pedestrian or vehicular beach access, traffic, and parking in a manner that preserves and enhances public safety, in addition to preserving and enhancing the public rights of access to and use of the public beach. This suggested change has not been adopted, as the Open Beaches Act, §61.022(c), provides that the adoption or amendment of vehicular traffic regulations, except those for public safety, is subject to certification by the General Land Office. Therefore, public safety traffic regulations are not subject to the same procedural requirements under the Open Beaches Act as other traffic regulations. Eight commenters stated that this subchapter, particularly §15.7(f), now §15.7(g), seemed to promote vehicular access at the expense of dunes and in preference to other prohibited or restricted activities. The purpose of this subchapter is to preserve and enhance the public use and access, not to promote any particular technique of achieving the preservation and enhancement of use and access. Local governments are required to develop beach use and access plans, as part of their overall dune protection and beach access plans, which are consistent with the Open Beaches Act and this subchapter. Local governments may close the beach to vehicles if the closure is consistent with the Open Beaches Act, the Dune Protection Act, and this subchapter, as provided in the Open Beaches Act, §61.022(b) and §61.015(a). Many commenters expressed concern over the perceived conflict between dune protection and beach use and access. Local governments that impact dunes and dune vegetation for the purpose of preserving beach use and access are subject to the same requirements as a private person. Therefore, any damage to dunes or dune vegetation caused by a local government must be mitigated by that local government.

One commenter incorrectly stated that §15.7(f), now §15.7(g), relating to preservation and enhancement of public access, exceeded the General Land Office's statutory authority under the Open Beaches Act. This commenter stated that ordinances regulating traffic on the beach, other than access to the beach, should not be subject to these regulations. The Open Beaches Act addresses the impact, not the subject matter, of traffic regulations. As provided in the Open Beaches Act, §61.022(b)-(d), local governments cannot regulate vehicular traffic so as to prohibit vehicles from an area of public beach or impose or increase fees for public beach access, parking, or use in any manner inconsistent with the Open Beaches Act or this subchapter. Traffic regulations must meet the standards identified in the Open Beaches Act and this subchapter. Local governments proposing to adopt or amend such traffic regulations, except those for public safety, are required to submit a plan to the General Land Office and the Attorney General for review. The General Land Office must certify that the proposed regulations are consistent or inconsistent with the Open Beaches Act and this subchapter. These requirements do not apply to any existing local government traffic regulation or beach access, parking, or use fee adopted or enacted before the effective date of this subchapter; however, the former law (the Open Beaches Act prior to the 1991 amendments) is continued in effect for the purpose of existing regulations or fees until the regulations or fees are amended or changed in whole or in part. No change was made based on this comment.

One commenter requested that the General Land Office modify §15.7(f), now §15.7(g), relating to preservation and enhancement of public access, by clarifying that this provision

applies to "access and use", not just to access points. This suggested change has been adopted, as it more clearly identifies the statutory requirements under the Open Beaches Act, §61.022(b)-(d). A commenter requested that the General Land Office clearly provide standards which are acceptable for preservation and enhancement of beach use and access in §15.7(f), now §15.7(g). This suggested change has been adopted and minimum access standards have been included in new §15.7(g)(1).

Two commenters requested that the General Land Office modify §15.7(f)(1), now §15.7(g)(2), to eliminate the requirement that land that could potentially be used as beach access not be abandoned, relinquished, or conveyed by a local government unless equivalent or better access is first obtained. Based on this comment, §15.7(f)(1), now §15.7(g)(2), has been modified to provide that such potential beach access may be abandoned, relinquished, or conveyed where that local government has otherwise enhanced and preserved public beach use and access. Where a local government has not done so, it is not allowed to abandon, relinquish, or convey such potential beach access.

One commenter requested that the General Land Office modify §15.7(f)(2), now §15.7(g)(3), to more closely follow the Open Beaches Act, §61.022(b) -(d), in order to clarify the statutory provisions for the regulated community. This suggested modification has been made.

A commenter requested that the title of §15.7(g), now §15.7(h), be changed to "request for state agency approval of beach access plan". The title has been changed to clarify that the state approves the plan as a whole, and not simply access, as provided in the Open Beaches Act, §61.015(a).

A comment was received requesting that §15.7(g)(4)(B), now §15.7(h)(4) (B), relating to vehicular control plans, be modified to require local governments to include citations of all legal authority allowing local governments to impose vehicular controls. This suggested change has been adopted, as local governments submitting ordinances must demonstrate to the state their authority to adopt such ordinances.

One commenter expressed concern that §15.7(g)(4)(D), now §15.7(h)(4)(D), relating to the means and methods of upgrading the availability of public parking and access ways, including funding for improvements, implied that the state would have to approve the funding plan. No such approval is required. The purpose behind this requirement is to ensure that the local governments have the means to undertake the proposed future vehicular controls. Without such assurances, many local governments would be able to comply with this subchapter by providing plans alone, a result not allowed by the Open Beaches Act, §61.015(b), which provides that the General Land Office must certify local government plans as consistent or inconsistent with the Open Beaches Act and this subchapter. The General Land Office cannot provide such certification unless the local government demonstrates that it has the means to implement the plan. Therefore, no change was made based on this comment.

One commenter noted that §15.7(i) was exactly the same as §15.7(f)(1), now §15.7(g)(2). The General Land Office inadvertently included this provision twice in this subchapter. Section 15.7(i) has been deleted. The section has been renumbered accordingly. Comments regarding §15.7(i) have been addressed with the comments on §15.7(f)(1), now §15.7(g)(2).

A commenter asked that the General Land Office clarify that the plan referred to in §15.7(j) is a vehicular control plan. This clarification has been made. One commenter stated that in §15.7(j), the requirement that local governments give the state 90 days notice before any change can be made to the vehicular control plan is too long a time frame and does not allow for emergencies. The General Land Office has not modified the 90-day time frame for changes to a local government's vehicular control plan which are not based on an emergency. However, §15.7(j) has been modified to provide for emergency situations involving public safety.

One commenter noted that §15.7(k) was exactly the same as §15.7(f)(2), now §15.7(g)(3). The General Land Office inadvertently included this provision twice in this subchapter. Section 15.7(k) has been deleted. The section has been renumbered accordingly..

Twelve commenters commented on §15.7(l), now §15.7(k), relating to maintenance of the public beach. Six commenters requested that the General Land Office ban heavy machinery or impose greater restrictions on its use. This suggestion is reflected in the subsection. Six commenters asked the General Land Office to limit the prohibition to those activities which "significantly" redistribute sand. One commenter requested that the General Land Office modify §15.7(l), now §15.7(k), to prohibit "significant" alterations of the beach profile. Based on these suggestions, the section was modified. Another commenter asked that the last sentence be deleted. The last sentence has not been deleted.

In §15.7(l), now §15.7(k), one commenter requested the General Land Office allow "mechanical devices that sweep debris with a maximum surface penetration of one inch, while returning sand to the beach". Because the suggested language is too limited, it was not adopted in its entirety.

One commenter asked the General Land Office to change §15.7(m), now §15. 7(l), to exactly restate the Open Beaches Act, §61.014(b), and provide that persons shall not "cause" the display of signs indicating that the public beach is private. The General Land Office has modified this subsection based on this comment. This commenter also asked that §15.7(m), now §15.7(l), be modified to provide that the public's right of access is only guaranteed by the Open Beaches Act, not by this subchapter, or the common law right of the public. Because the Open Beaches Act codifies the common law right and this subchapter is promulgated pursuant to the Open Beaches Act, no change was made based on this comment. Another commenter requested that the General Land Office modify §15.7(m), now §15.7(l), to clarify that signs may not be displayed indicating that the public does not have the right of "use and" access to public beaches. This suggested change has been made, as the public's easement on the public beach includes both the right to use and to have access to the public beach, pursuant to the Open Beaches Act, §61.011(a). In response to one comment, nothing in the law prevents a private property owner from displaying a sign on his/her private property if that sign is unrelated to limiting the public's right to use and access the public beach.

Section 15.8.

One commenter stated that §15.8 "failed to address a major impetus of Senate Bill 1053-the provision that a local government must have an approved plan before it can charge beach user fees". Based on this comment, §15.8 has been modified to clearly state that to be eligible for General Land Office approval of a beach user fee, a local government must have a state-approved dune protection and beach access plan. Three commenters objected to a local government being allowed to charge beach user fees. The Open Beaches Act, §61.011(b), allows local governments to collect fees from those persons who use beach facilities and services. The revenues collected from these fees can only be spent on beach-related services. Therefore, the fees collected are to be used for the purpose of preserving and maintaining public beach use and access. One commenter strongly protested the charging of fees for parking on the public beach. Local governments may charge fees for that purpose, but must also provide areas where no fee is charged for parking, pursuant to §15.8(g), now §15.8(h). In addition, local governments cannot charge fees which unfairly limit access to and use of the public beach, pursuant to §15.8(b)(2) (B), now §15.8(c)(2)(B). Because the Open Beaches Act allows beach user fees to be charged generally, as well as specifically for parking, no change was made based on these comments.

One commenter asked how the state agencies will coordinate their responsibilities pursuant to §15.8, relating to beach user fees. The General Land Office has coordinated with the Attorney General's Office on the portions of this subchapter which are subject to the jurisdiction of both agencies. To the extent that local governments comply with this subchapter, the General Land Office will generally be satisfied that local governments are complying with the Open Beaches Act. The General Land Office and the Attorney General's Office will continue to work together in an effort to provide a consistent state response regarding public beach issues.

Four commenters stated that §15.8(a), now §15.8(b), relating to reciprocity of beach user fees, was vague and unhelpful to local governments. Based on these comments, the General Land Office has clarified that within each county, local governments are required to establish a reciprocity system among the different municipalities and the county authorized to charge fees. Existence of such a system is a condition of state approval of dune protection and beach access plans.

Twenty-four comments were received on §15.8(b), now §15.8(c), relating to the amount and proper use of beach user fees. In response to these comments, the General Land Office has modified the appropriate subsections in §15.8 and has moved the amended definition of "beach-related services" to §15.2. It has also been clarified that beach-related services must be reasonable services; the public facilities and public services funded by beach user fees must be beach-related; the "fee" referred to is a beach user fee; no more than 10% of beach user fee revenues may be spent on administrative costs; the fee must not exceed the actual cost of providing public facilities and services; the fee cannot unfairly limit in any manner public access to and use of the public beach; fees collected for parking for access to the public beach are included in beach user fees; and beach user fee revenues may only be spent on expenditures directly related to beach-related facilities and services. In response to some comments, but not mentioned in this subchapter, the following should be noted: tax revenues which are spent on beach-related services are not to be included in beach user fee revenue accounts, though they may certainly continue to be properly collected; and the General Land Office does not provide for a reduced fee for access and use of a renourished beach.

The General Land Office had modified §15.8(c), now §15.8(d), relating to a local government's beach user fee plan, in response to five comments. The term "amended" has not been deleted, as it appears in the Open Beaches Act, §61.022(c), and the term "increase" in §15.8(d), now §15.8(e), has been replaced with "amend" to comport with this modification in §15.8(c), now §15.8(d), and with the Open Beaches Act, §61.022(c). In addition, the General Land Office has clarified that the local government must also identify the nature and amount of all existing beach user fees charged within the county where that local government is located, in addition to its own fees. Local governments are required to provide the General Land Office with citations of all legal authority for the collection of such fees, not copies of the statutes, court orders, and ordinances.

In response to one comment, the General Land Office has revised §15.8(d), now §15.8(e), relating to state agency approval of beach user fees, to state that a local government cannot impose or amend a fee that is inconsistent with the beach user fee plan contained in its dune protection and beach access plan.

One commenter requested that §15.8(e), now §15.8(f), be amended to require local governments to publish the amount and use of beach user fee revenues. No change was made based on this comment because this information is already available to the public pursuant to the Open Records Act, Texas Civil Statutes, Article 6252-17a.

Three comments were received on §15.8(e), now §15.8(f), relating to withdrawal of state agency approval of plans. One commenter stated that revoking state approval of a local plan should be a remedy available to the state in sections other than §15.8(e), now §15.8(f). It is. The General Land Office has clarified in §15.10(f) that withdrawal of state approval is always a remedy for violations of the local government's plan, this subchapter, or either statute. The other commenter requested that the General Land Office clarify that the revocation would apply to any pertinent dune protection and beach access plan, as opposed to the plan. This clarification has been made.

In §15.8(e), now §15.8(f), one commenter suggested that the General Land Office add "and which impair or damage dunes or beach nourishment" to the end of the subsection. The suggested modification was not made because this subsection relates to the use of the beach user fee revenues, not the impact of activities funded by beach user fee revenues.

Six commenters suggested various modifications to §15.8(f), now §15.8(g) , relating to beach user fee accounts. Some of these commenters requested that the General Land Office provide that beach user fees do not have to be directly traceable and directly related to beach-related services. This suggested change has not been adopted, as the General Land Office, the Attorney General's Office, and the local governments would be in violation of the Open Beaches Act, §61.011(b), which provides that the fee must cover the local government's cost of discharging its responsibilities regarding public beaches and that the fee cannot exceed the cost of such public facilities and services. In addition, the definition of "beach-related services", as amended pursuant to other comments and contained in §15.2, is broad enough to encompass all relevant expenses related to the public beach. One commenter asked that the General Land Office clarify that §15.8(f)(3), now §15.8(g) (3), requires separate accounts and separate financial statements. This suggested change has been adopted.

Three comments were received on §15.8(g), now §15.8(h), relating to free public beach access. Based on these comments, the General Land Office has made the following modifications. The local governments required to comply with this subsection are those that collect a beach user fee for on-beach parking or driving. Even where the entire beach within a local government's jurisdiction is benefiting from a beach nourishment project, that local government is nevertheless required to provide some free access. The General Land Office has clarified that the free beach access requirement applies to each state-approved dune protection and beach access plan, not to each governmental entity with jurisdiction over the public beach.

Based on one comment received expressing confusion regarding the interaction between state and federal law, the General Land Office has modified §15.8(h), now §15.8(i).

The General Land Office received one comment on §15.8(i), now §15.8(j), regarding the identity of local governments charging beach user fees. Based on this comment, §15.8(i), now §15.8(j), has been modified.

Concerning §15.8(j), now §15.8(k), one commenter requested that the General Land Office require that 0.5% of any property tax paid to a local government be spent on beach nourishment within that local government's jurisdiction. Because the General Land Office has no statutory authority to impose such a requirement, no change was made based on this comment.

Section 15.9.

Ten commenters raised various issues regarding §15.9, relating to penalties. Three commenters were concerned with exacting penalties from local governments. One said it should be made clearer that local governments can be penalized. Another stated that local governments should be exempt. The General Land Office has clarified that local governments in violation of their plans, this subchapter, or either statute are liable for penalties. Two other commenters raised questions as to enforcement. Local governments may employ the same mechanisms to enforce their dune protection and beach access plans that they would to enforce any other county commissioners court order or local ordinance. The state retains its authority to enforce any violations of this subchapter and the statutes, as provided in the Open Beaches Act, §61.018, and the Dune Protection Act, §63.181. One commenter requested that the amount of penalties be increased. The minimum and maximum amounts of the penalties are set by the legislature in the Open Beaches Act, §61.018(c), and the Dune Protection Act, §63.181(b). Therefore, no change was made based on this comment. Two commenters asked whether §15.9 constituted "double jeopardy". No, it does not. Penalties for each violation of each statute may be assessed for each day that a violation occurs, as provided in the statutes. No change was made based on this comment. Finally, one commenter asked which activities would make local governments liable for penalties. Activities for which local governments will be liable for penalties include, but are not limited to, the failure to: submit a dune protection and beach access plan; maintain and enforce the state-approved plan; and implement the state-approved plan. Section 15.9 was modified based on these comments.

Section 15.10.

One commenter suggested that in §15.10(a) "subsection" be deleted and be replaced with "subchapter". This change has been made. This commenter also requested that the General Land Office specify that the plan referred to is a local government's plan. This change has been adopted.

One commenter requested that the public beach presumption provided in §15. 10(c) be clarified with respect to a declaratory suit by a person owning property adjacent to the Gulf of Mexico. This issue has been clarified based on this comment.

One commenter suggested that "or in part" be deleted and asked the meaning of an "island or peninsula not accessible . . . in part" in §15.10(c). The commenter thought this might suggest to some that the portion of South Padre Island north of Park Road 100 is not a public beach and warned that this subchapter should not suggest that no public beach ex-

ists except where paralleled by a road. The General Land Office has made the recommended change.

It was suggested that §15.10(e) be modified to require local governments to report only "known" violations to the state. Another commenter stated that this section fails to define the time period suggested by the language "immediately inform" and was concerned about the penalties that could be assessed against a local government. According to this commenter, this section does not state when the time period begins. Based on these comments, §15. 10(e) has been modified.

Based on various comments received regarding §15.10(f), the General Land Office has clarified the provisions in that subsection relating to withdrawal of state approval of local plans and the legal effect of such action.

As requested by one commenter, §15.10(g) was clarified with respect to notification of withdrawal of state approval.

A few commenters asked the General Land Office to clarify the appeals process under this subchapter. Based on these comments, new §15.10(i) was added.

General Comments.

Many commenters requested that the preamble to this subchapter be modified. One commenter asked that the General Land Office describe other adverse effects of development located too close to the water's edge, such as wind-blown debris and possible health and environmental effects from damaged septic systems. Another commenter asked the General Land Office to include language describing the public health and safety benefit of healthy beaches and dunes and the value of a healthy system in protecting public and private property. Finally, a commenter stated that there was no mention of oil and gas production. Other than development, no industry was singled out in the proposed subchapter preamble. Oil and gas are natural resources, and natural resources were discussed in the preamble. One commenter recommended adding "dune sand consumes wave energy during storms". One commenter stated that the preamble is in error concerning west Galveston Island and Highway 87. Because the proposed subchapter preamble is not printed again as the final subchapter preamble, no change was made based on these comments.

One commenter suggested that minimizing damage to dunes was unacceptable because any damage will "materially weaken dunes". The same commenter stated that dunes can be replaced, restored, or repaired only by nature and never by man, and therefore no dunes should be damaged or disturbed. In addition, the 1: 1 compensation was "not adequate". It may take many years for dunes to develop naturally. Natural dune development varies with sediment supply to the beach and rainfall patterns. Dune stability is determined by the amount, type, and density of vegetative cover. Certainly, the General Land Office knows the importance of natural sand dunes to the balance of the local sand budget and to the protection of private property. Avoidance of damage to dunes or dune vegetation is always preferable to repairing dunes and mitigating damage. We must, however, allow people to make use of their private property, and this subchapter ensures some compensation for resource loss if dunes are disturbed or destroyed.

The question whether natural dunes can never be repaired or restored to the same quality can be answered by reviewing past dune restoration projects on the Texas coast. Published research suggests that disturbed dunes may be stabilized with vegetation. Examples of recently repaired dunes are located on Mustang Island, where natural sand dunes were revegetated after pipeline installation. Because of the commenter's concern, the General Land Office has modified this subchapter, replacing "man-made or reconstructed dune" with "man-made vegetated mound" and added a definition for "restoration".

One commenter recommended that guidelines for "dune nurturing" be added to this subchapter. Suggested guidelines include using beach sand, planting vegetation conducive to dune growth, and denying human activities between coppice mounds and the swale area located landward of the most landward dune. Section 15.4(d) has been modified to include some of these recommendations.

Another commenter wanted to eliminate existing beach access ways from State Highway 87. Each local government is responsible for developing a beach access and use plan addressing specific issues such as the one raised by this commenter. Therefore, no change was made based on this comment.

A comment was received stating that this subchapter lacks dune protection standards for inlet areas. Because inlets typically lack dunes, dune protection standards do not apply. However, the Attorney General's Office maintains that inlets and washover areas are part of the public beach; therefore the portions of this subchapter relevant to public beach use and access apply.

One commenter wanted this subchapter to be revised to direct local governments, with financial, in-kind, and technical support of the state to: describe existing conditions; give notice to beachfront property owners that they must protect dunes; and describe the consequences of noncompliance. The General Land Office will make every effort to help the local governments comply with the regulations and to educate the public.

One commenter wanted salt cedar listed as an acceptable method for protecting dunes and for promoting new dune growth. Local governments may include the use of salt cedar as a possible method of dune restoration in their dune protection and beach access plans. However, it has not been listed in this subchapter.

Fourteen comments were received generally addressing the 1,000-foot maximum geographic limit for General Land Office identification of critical dune areas and for local government establishment of dune protection lines. Many commenters were confused as to the extent of the application of this subchapter within the 1,000 feet. The General Land Office has clarified this issue in §15.3, relating to administration. The 1,000 feet represents the maximum jurisdictional limit placed on the General Land Office and local governments. Within that 1,000 feet, the General Land Office is required to identify critical dune areas, pursuant to the Dune Protection Act, §63.121. Also within that 1,000 feet, local governments are required to establish and maintain a dune protection line which preserves dunes, as required by the Dune Protection Act, §63.011. That line must also preserve all critical dune areas, as required by this subchapter, §15.3(f), pursuant to the General Land Office's authority to promulgate rules for the protection of critical dune areas as provided in the Dune Protection Act, §63.121. Both the critical dune areas identified by the General Land Office and the dune protection line established to preserve critical dune areas may be located no farther than 1,000 feet of mean high tide of the Gulf of Mexico. They may be located closer seaward than 1,000 feet of mean high tide of the Gulf of Mexico if such location complies with this subchapter and the Dune Protection Act. Within critical dune areas and seaward of a dune protection line, dune protection permits will be required only for activities that will damage, destroy, or remove any dune or any portion of a dune or kill, destroy, or remove in any manner any vegetation growing on a sand dune, as provided in the Dune Protection Act, §63.091. Therefore, if no dunes or dune vegetation will be adversely affected, as described in the statute and this subchapter, no dune protection permit is required.

While it is the responsibility of the General Land Office to identify critical dune areas, local governments are responsible, within the same geographic scope, for establishing and maintaining a dune protection line for the purpose of preserving sand dunes. The criteria for establishing and maintaining dune protection lines, as determined by the General Land Office, are that such dune protection lines must be located in a manner which protects all critical dune areas identified by the General Land Office. The purpose of establishing and maintaining a dune protection line landward of the critical dune area is to provide certainty to the regulated community as to the boundary of the regulated area and to avoid the establishment of two different areas that the local government must regulate. The General Land Office will conduct field inspections within the counties and municipalities establishing dune protection lines. If, upon such inspections, the General Land Office determines that all critical dune areas are seaward of the various dune protection lines, the General Land Office will notify the local government establishing the dune protection line of this determination prior to the local government's public hearing (as required in the Dune Protection Act, §63.014, regarding the establishment of the dune protection line) and state in this subchapter granting approval of the local government's dune protection and beach access plan that the General Land Office has determined that the dune protection line is properly located. Local governments are required in the Dune Protection Act, §63.014, to define the line by

presenting it on a map or drawing, by making a written description, or by both means. In the map, drawing, or description, the local government must demonstrate that all dune areas within 1,000 feet of mean high tide of the Gulf of Mexico are seaward of the line. The General Land Office will be notified as to the adequacy of public input via the public hearing required by the Dune Protection Act, §63.013. There is no additional public input requirement in the statute or in this subchapter for the establishment of dune protection lines.

The General Land Office has also clarified the jurisdictional requirement for beachfront construction certificates. The Open Beaches Act, §61.011(d)(6) , requires the General Land Office to promulgate rules governing construction on land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the beach or to any closer public road not parallel to the beach, or to within 1,000 feet of mean high tide, whichever is greater, that affects or may affect public access to and use of public beaches.

Therefore, the maximum geographic limit, though broad, is qualified by the requirement that the land must be adjacent to and landward of public beaches and by the requirement that the proposed activity affects or may affect public access to and use of public beaches. If a person proposes an activity which is within the geographic scope, the local government must determine whether the proposed activity is located adjacent to and landward of the public beach and whether the proposed activity affects or may affect public beach access.

Pursuant to this subchapter and the Open Beaches Act, not all activities will require beachfront construction certificates even if they are located within 1,000 feet of mean high tide or seaward of the first public road generally parallel to the public beach or of any closer road not parallel to the public beach.

Eighteen general comments were received on the perceived cost of compliance with this subchapter, many stating that such cost would halt development along the Gulf Coast. Some commenters also stated that any restriction upon property will reduce its value. Other commenters stated that the General Land Office did not consider the cost to the local governments and the cost of the permit to the permittees.

In passing Senate Bill 1053, the legislature recognized that it is essential that the state provide standards for development along the coast to offset decades of unchecked development which has resulted in aggravation of erosion, adverse impacts on public beach use and access, and destruction of the dunes and dune vegetation-Texas' best defense against storms.

The purpose of this subchapter is to ensure that the Texas coast is preserved so that citizens may continue to enjoy and use it as appropriate. Development will not be halted as this subchapter contains no prohibitions on construction. The added expense of complying with this subchapter is a cost directly related to the real cost of impacting dunes and dune vegetation and public beach use and access. The standard is replacement of the equivalent or superior of that which is damaged. These measures are necessary to preserve and protect critical dune areas and the public beach.

In enacting the Dune Protection Act, §63.001(3) and §63.001(5), the legislature found that persons have caused environmental damage in the process of developing the shoreline for various purposes and that these practices constitute serious threats to the safety of adjacent property, to public highways, and to the taxable basis of adjacent property and constitute a real danger to natural resources and to the health, safety, and welfare of persons living, visiting, or sojourning in the area. In recognition of this problem, local governments along the coast are already subjecting many of the activities regulated under this subchapter to permit requirements found in this subchapter. Many local governments already have building permit requirements, and any local government participating in the Federal Flood Insurance Program is already required to regulate many of these activities.

This subchapter is based in large part on these existing programs, and many of the requirements contained in this subchapter are taken directly from existing local government permitting requirements. Some local governments have informed the General Land Office that their existing requirements will put them in immediate compliance with this subchapter. One local government representative commented that some of these requirements represent the way her government has already been operating. She stated that "those restrictions [on construction] are written into everyone's permit". Many people who expressed these concerns reside in areas where much of this subchapter is already being enforced under separate local government authority. For these reasons, no changes were made based on these general comments. Nevertheless, changes were made in the permitting requirements to alleviate concerns that they were too onerous and costly.

One commenter asked whether the General Land Office had considered the Texas Catastrophe Property Insurance Act requirements when drafting this subchapter. Those requirements were reviewed and considered by the General Land Office when drafting this subchapter. Another commenter asked that the General Land Office require insurance certificates and compliance with flood and catastrophic building requirements as part of the permit application requirements. Based on other comments, §15.3(1)(4), now §15.3(s)(4), was modified to address some of this commenter's concerns. In addition, all applicants are required to comply with the regulatory programs relevant to beachfront construction. A local government may require any information it deems necessary to determine whether a permit or certificate should be issued allowing beachfront construction.

One commenter requested that the General Land Office provide some system for notifying private property owners about the requirements of this subchapter and local government plans. Local governments are required to hold public hearings when establishing a dune protection line, pursuant to the Dune Protection Act, §63.013(a). Local governments are also required to file a map or description of the dune protection line with the clerk of the county or municipality, pursuant to the Dune Protection Act, §63.014. Persons conveying property fronting on the Gulf of Mexico are required to inform the prospective purchasers of the public easement on the public beach, pursuant to the Open Beaches Act, §61.025. In addition, local governments must use their ordinary hearings procedures to adopt a dune protection and beach access plan, as this may only be done in an ordinance or a county commissioners court order.

One commenter stated that the General Land Office should modify this subchapter to provide that local governments only have the authority to require changes in proposed construction plans which reasonably could be anticipated to have a "materially adverse effect" on the public's access to the beach. The pertinent statutes give local governments much more authority than that. The Dune Protection Act, §63.055, provides that local governments may include in a permit the terms and conditions it finds necessary to assure the protection of life, natural resources, and property. The Open Beaches Act, §61.015(g), provides that local governments may include in the certification any reasonable terms and conditions it finds necessary to assure adequate public beach access and use rights consistent with the Dune Protection Act. Therefore, no change was made based on this comment.

One commenter inquired about dispute resolution between local governments and the state with regard to application of the statutes or this subchapter. Pursuant to the Open Beaches Act, §61.018, the state retains its enforcement authority for any violation(s) of the statute or this subchapter. Pursuant to the Dune Protection Act, §63.181, the state retains its enforcement authority for any violation(s) of the statute or this subchapter. Based on this comment, these issues have been clarified in §15.10.

One commenter stated that this subchapter should not allow the expenditure of public funds to manage or restore dunes or dune vegetation which a private owner has damaged or allowed to be damaged. If such damage is illegal, pursuant to the Dune Protection Act, §63.181(a), the state may collect damages for injury to natural resources in violation of the statute or this subchapter. If the damage is permitted, the permittee must mitigate the damage. No change was made based on this comment.

One commenter stated that the General Land Office should "encourage no development along the beaches and that, in a few areas, no development is encouraged". The purpose of this subchapter is to allow development to occur in a manner which is consistent with the protection of dunes and dune vegetation and the preservation and enhancement of public beach use and access. It is not the purpose of this subchapter to discourage development. No change was made based on this comment.

Two commenters requested that the General Land Office amend this subchapter to provide discretionary, not mandatory, integration of local governments' dune protection programs and beach access programs into a single dune protection and beach access plan for each local government. Because these commenters suggested this modification for every provision which implicitly or explicitly requires or refers to integration of the programs, these comments are treated as a general comment on this subchapter. Rather than respond to these comments in each provision where integration of the programs is required, this single response shall address each of the comments made regarding integration of the dune protection and beach access programs unless otherwise provided in the preamble of this subchapter.

There are many reasons why the General Land Office has required the integration of the dune protection and beach access programs into a single dune protection and beach access plan for each local government. Unifying the dune protection and beach access requirements in a single local plan will aid the regulated community by avoiding the duplication and undue expense which would result from having two separate programs with overlapping requirements which govern overlapping geographic areas. As required by the General Land Office, local governments will have one set of regulations (the local plan) to develop and implement. Under this subchapter, local governments are allowed to issue a single permit for activities which would otherwise require a dune protection permit and beachfront construction certificate. This option has been added to this subchapter to alleviate concerns regarding the regulatory burden of a dual permitting process. A person who considers undertaking beachfront construction will only have to look to and comply with one set of regulations which represent the requirements of both programs. This approach will be less confusing to the regulated community.

Relating to the integration of the dune protection and beach access plans, these commenters also suggested that the Attorney General's authority was strictly limited to the requirements of the Open Beaches Act. The Open Beaches Act and the Dune Protection Act provide for regulation of generally the same activities and geographic areas, and their requirements are scientifically and legally related. The Open Beaches Act, §§61.011(d)(3), 61.015(a), and 61. 015(g), recognizes that dune protection and preservation of beach use and access are connected by requiring the following integrated approaches: the General Land Office promulgates rules needed to mitigate for any adverse effect on public access and critical dune areas; local governments adopt a plan for preserving and enhancing access to and use of public beaches within the jurisdiction of the local government consistent with the Open Beaches Act, §61.011, the Dune Protection Act, and this subchapter promulgated thereunder; and a local government may include in beachfront construction certificates any reasonable terms and conditions it finds necessary to assure adequate public beach access and use rights consistent with the Dune Protection Act. The Dune Protection Act, in §63.053(b) and §63.121, also recognizes that dune protection and preservation of beach use and access are connected by requiring the following integrated approaches: after establishing a dune protection line, local governments may charge reasonable fees for beach-related services as provided for in the Open Beaches Act, §61.015, and subject to all requirements in the Open Beaches Act; and the General Land Office promulgates rules for the identification and protection of critical dune areas which are essential to the protection of public beaches and other state-owned land. In 1991, the legislature passed Senate Bill 1053 which simultaneously amended the Dune Protection Act and the Open Beaches Act. This subchapter adopts the same approach to management of the beach/dune system. The General Land Office has not amended this subchapter based on these comments.

Four comments were received regarding "indirect impacts" as defined and used in this subchapter. Because these commenters suggested either deletion or modification of the term "indirect impact" in every provision in which the term appears, these comments are treated as a general comment on the term. Rather than respond to these comments in each provision where "indirect impact" appears, this single response shall address each of the comments made regarding the term. In addition, another commenter requested that "adversely affect" be defined. Because this term is generally related to "indirect impacts", the General Land Office has combined the response to that comment with the comments on "indirect impacts".

The definition of "indirect impacts" is taken from the definition of "indirect effects" as provided by the Council on Environmental Quality in Volume 40 of the Code of Federal Regulations, §1508.8(b). The General Land Office adopted the federal definition of this term to provide consistent state and federal terminology for the regulated community and to avoid the possibility of confusing the regulated community and local governments. The General Land Office used the term "impact" because, as provided in the federal definition, the terms "effect" and "impact" are synonymous. To be more consistent with the federal definition, the definition of "effects" replaces "impacts" in §15.2 of this subchapter and includes both direct and indirect effects, consistent with the federal regulations.

A definition of "impacts" or "effects" is necessary to aid local governments in implementing their dune protection plans, to aid the regulated community in complying with the local plans, and to provide certainty regarding implementation of the local plans. The Open Beaches Act, in §§61. 013(b), 61.011(d)(3), and 61.011(d)(6), respectively, uses the terms "affect adversely", "adverse effects", and "affects or may affect" regarding impacts on public beach use and access. An action which "affects" beach use and access is an action which produces an "effect" upon beach use and access. Because "affects" and "effects" are triggers for certain requirements in the Open Beaches Act and are not defined in that statute, it is important that these terms be defined. The Dune Protection Act, §63.054(b), requires local governments to consider cumulative impacts when determining whether to grant a dune protection permit. The term "cumulative impacts" is not defined in the Dune Protection Act. The definition of "cumulative impacts" is taken from the federal definition of that term as provided in Volume 40 of the Code of Federal Regulations, §1508.7, and includes both "direct impacts" and "indirect impacts". Aside from these specific reasons for defining "effects" and "impacts", the General Land Office is required to adopt rules and provide standards regarding: the protection of critical dune areas; the mitigation of adverse effects on public access and dune areas; and the construction of land within the geographic scope of this subchapter that affects or may affect public access to and use of public beaches, as provided in the Dune Protection Act, §63.121, and the Open Beaches Act, §61.011(d)(3) and §61.011(d)(6), respectively. Pursuant to these requirements, the General Land Office has identified "indirect effects" as a factor to be considered by local governments when considering whether an activity will "affect" or produce an "effect" on dune protection and public beach use and access.

In response to specific comments on the use and definition of "indirect impacts", the General Land Office offers the following responses. It is true that most activities will have some indirect effect on dune protection and beach use and access. However, the indirect effect(s) of a proposed activity is just one factor that a local government must consider when determining whether to issue a permit or certificate. In response to a commenter's inquiry as to the meaning of "beneficial" effects, a beneficial effect is one which improves the functions of the affected natural resource. In response to another commenter's inquiry, the General Land Office agrees that such "effects" are immaterial to a dune protection line. As drafted, this subchapter addresses this commenter's concerns by requiring that local governments consider effects on critical dune areas and dunes seaward of the dune protection line, not the line itself. Two other commenters suggested modifications to the definition of "indirect impacts" which would make the term more inclusive. These suggested changes would result in a definition which is inconsistent with the federal definition. For these various reasons, these modifications were not adopted.

Two commenters requested that "shall" be replaced with "may" or "should" in almost every case where the term "shall" appears in relation to obligations of local governments under this subchapter. Rather than respond to each of these comments where they appear, these comments are treated as a general comment that most of this subchapter should be within the discretion of local governments. This single response addresses each of the comments these commenters made regarding mandatory versus discretionary requirements in this subchapter, unless otherwise provided in the preamble of this subchapter.

The 1991 legislative amendments to the Dune Protection Act and the Open Beaches Act were enacted, in part, to increase state

and local authority over activities occurring along the Texas Gulf Coast. Both the state and local governments are now vested with new and more comprehensive authority to regulate activities which occur within the geographic scope of the statutes and which have certain effects on dunes, dune vegetation, and public beach use and access. The authority provided to the state and the local governments overlaps, yet there are distinctions. The state was placed in an oversight role. That role includes the complex task of addressing problems occurring along the Texas Gulf Coast in a comprehensive manner. Some of the problems the state must address are erosion response, protection of the public beach and the public's rights regarding the beach, and protection of dunes. The state is the best entity to protect its property rights and the rights of the public. Counties are not in the best legal or practical position to provide such large-scale protection, and their variable approaches on an individual basis would result in sporadic protection, a result clearly not intended by the legislature.

The state is required to provide consistent procedures and standards for local governments and the public to follow when permitting and undertaking activities regulated under the statutes. The statewide standards and procedures identified in this subchapter are provided pursuant to the requirement that the state examine and address the problems occurring on the entire Texas coast. The state, in its oversight role, has a duty to ensure that the problems identified by the legislature are addressed by adopting rules for local governments to follow and the state to enforce. If the state were to make the requirements of this subchapter completely discretionary, as suggested by these two commenters, then there would be no assurance that these minimal standards would be adopted by local governments along the entire coast. The state cannot enforce discretionary requirements and therefore would be in violation of the statutes. The state must provide minimum standards for protection of the coast through enforceable regulations. Further, to ensure that local governments and citizens are aware of baseline standards that the state requires and enforces, this subchapter must be mandatory.

Similarly, counties are required to provide procedures and standards for the municipalities within their jurisdiction (unless they delegate such authority to the municipalities) and the public to follow when undertaking those same activities. In the local commissioners court orders and ordinances, local governments are authorized to address those problems which are specific to the portion of the Gulf Coast within their jurisdiction. In their regulations, local governments can achieve a very specific and effective approach to the problems which are unique to their area. However, as provided in both statutes, local governments must exercise their authority in a manner which is consistent with the statewide standards. For these reasons, the requirements of this subchapter have not been changed from mandatory to discretionary requirements.

Several comments were received regarding the mitigation sequence. Some commenters wanted the term "compensation" deleted and replaced with "mitigation". Other commenters asked that the General Land Office clarify the meaning of "compensation" and whether it was a requirement that permittees "pay" for adverse effects to dunes and dune vegetation or a requirement that dunes and dune vegetation be restored, rehabilitated, and repaired. To avoid confusion and to provide consistency between state and federal law, the mitigation sequence has been modified (in each case where it appears in this subchapter) to comport with the federal definition of "mitigation", as provided in Volume 40 of the Code of Federal Regulations, §1508.20.

City of Galveston, Legal Department; City of Galveston, Planning Department; City of Port Aransas; Coastal Bend Environmental Coalition; Coastal Technology Corporation; Corpus Christi Parks and Recreation Department; County of Nueces; Department of the Army, Galveston District, Corps of Engineers; Feferman and Rehler, L.L.P.; Flour Bluff/Padre Island Civic League; Galveston Beach and Shore Committee, Technical Committee; Galveston Island Hotel and Motel Association; Galveston Realty Company; McLeod, Alexander, Powel and Apffel; Office of the Attorney General, State of Texas; Padre Island Area Council; Padre Island Business Association; Potter Construction; PRI Environmental; Purple Sage Construction, Inc.; Railroad Commission of Texas; Shiner, Moseley and Associates, Inc.; Texas Gulf Beach and Shore Preservation Society; Texas Historical Commission; Texas Independent Producers and Royalty Owners Association (TIPRO); Texas Mid-Continent Oil and Gas Association; Texas Parks and Wildlife Department; The Woodlands Corporation; United States Department of Commerce, National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management; United States Department of the Interior, Fish and Wildlife Service; United States Environmental Protection Agency; and West Galveston Island Community Forum.

The new sections are adopted under the Texas Natural Resources Code, §§61.011, 61.015(b), and 63.121, which provides the General Land Office with the authority to identify and protect critical dune areas and to preserve and enhance public beach access.

§15.1. Policy. The General Land Office has identified the following goals as a basis for managing and regulating human impacts on the beach/dune system:

(1) to assist coastal citizens and local governments in protecting public health and safety and in protecting, preserving, restoring, and enhancing coastal natural resources including barrier islands and peninsulas, mainland areas bordering the Gulf of Mexico, and the floodplains, beaches, and dunes located there;

(2) to aid coastal landowners and local governments in using beachfront property in a manner compatible with preserving public and private property, protecting the public's right to benefit from the protective and recreational functions of a healthy beach/dune system, conserving the environment, conserving flora and fauna and their habitat, ensuring public safety, and minimizing loss of life and property due to inappropriate coastal development and the destruction of protective coastal natural features;

(3) to foster mutual respect between public and private property owners and to assist local governments in managing the Texas coast so that the interests of both the public and private landowners are protected;

(4) to promote dune protection and ensure that adverse effects on dunes and dune vegetation are avoided whenever practicable. If such adverse effects cannot be avoided and have been minimized, every effort must be made to repair, restore, and rehabilitate existing dunes and dune vegetation;

(5) to prevent the destruction and erosion of public beaches and other coastal public resources, to encourage the use of environmentally sound erosion response methods, and to discourage those methods such as rigid shorefront structures which can have a harmful impact on the environment and public and private property;

(6) to aid communities located on barrier islands, peninsulas, and mainland areas bordering the Gulf of Mexico which are extremely vulnerable to flooding and property damage due to violent storms by working to reduce flood losses, by minimizing any waste of public funds in the national flood insurance program, and by ensuring that the insurance remains available and affordable;

(7) to protect the public's right of access to, use of, and enjoyment of the public beach and associated facilities and services as established by state common law and statutes. The public has vested property rights in Texas' public beaches, and free use of and access to and from the beaches are guaranteed. The Open Beaches Act requires local governments to preserve and enhance use of public beaches and access between the beaches and public roads. If an access point must be closed, then existing law requires it to be replaced with equal or better access consistent with the appropriate local dune protection and beach access plan. Whenever practicable, local governments should enhance public beach use and access;

(8) to provide coordinated, consistent, responsive, timely, and predictable governmental decision making and permitting processes;

(9) to recognize that the beach/dune system contains resources of statewide value and concern, which local governments are in the best position to manage on a daily basis. This subchapter is designed to provide local governments with the necessary tools for effective coastal management and are regarded as a minimum standard; local governments are encouraged to develop procedures that provide greater protection for the beach/dune system;

(10) to educate the public about coastal issues such as dune protection, beach access, erosion, and flood protection, and to provide for public participation in the protection of the beach/dune system and in the development and implementation of the Texas Coastal Management Program.

§15.2. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Affect–As used in this subchapter regarding dunes, dune vegetation, and the public beach, "affect" means to produce an effect upon dunes, dune vegetation, or public beach use and access.

Amenities–Any nonhabitable major structure including swimming pools, bathhouses, detached garages, cabanas, pipelines, piers, canals, lakes, ditches, artificial runoff channels and other water retention structures, roads, streets, highways, parking areas and other paved areas (exceeding 144 square feet in area), underground storage tanks, and similar structures.

Applicant–Any person applying to a local government for a permit and/or certificate for any construction or development plan.

Backdunes–The dunes located landward of the foredune ridge which are usually well vegetated but may also be unvegetated and migratory. These dunes supply sediment to the beach after the foredunes and the foredune ridge have been destroyed by natural or human activities.

Beach access–The right to use and enjoy the public beach, including the right of free and unrestricted ingress and egress to and from the public beach.

Beach/dune system–The land from the line of mean low tide of the Gulf of Mexico to the landward limit of dune formation.

Beachfront construction certificate or certificate–The document issued by a local government that certifies that the proposed construction either is consistent with the local government's dune protection and beach access plan or is inconsistent with the local government's dune protection and beach access plan. In the latter case, the local government must specify how the construction is inconsistent with the plan, as required by the Open Beaches Act, §61.015.

Beach maintenance–The cleaning or removal of debris from the beach by handpicking, raking, or mechanical means.

Beach profile–The shape and elevation of the beach as determined by surveying a cross section of the beach.

Beach-related services–Reasonable and necessary services and facilities directly related to the public beach which are provided to the public to ensure safe use of and access to and from the public beach, such as vehicular controls, management, and parking (including acquisition and maintenance of off-beach parking and access ways); sanitation and litter control; lifeguarding and lifesaving; beach maintenance; law enforcement; beach nourishment projects; beach/dune system education; beach/dune protection and restoration projects; providing public facilities such as restrooms, showers, lockers, equipment rentals, and picnic areas; recreational and refreshment facilities; liability insurance; and staff and personnel necessary to provide beach-related services. Beach-related services and facilities shall serve only those areas on or immediately adjacent to the public beach.

Beach user fee–A fee collected by a local government in order to establish and maintain beach-related services and facilities for the preservation and enhancement of access to and from and safe and healthy use of public beaches by the public.

Blowout–A breach in the dunes caused by wind erosion.

Breach–A break or gap in the continuity of a dune caused by wind or water.

Bulkhead–A structure or partition built to retain or prevent the sliding of land. A secondary purpose is to protect the upland against damage from wave action.

Coastal and shore protection project–A project designed to slow shoreline erosion or enhance shoreline stabilization, including, but not limited to, erosion response structures, beach nourishment, sediment bypassing, construction of man-made vegetated mounds, and dune revegetation.

Commercial facility–Any structure used for providing, distributing, and selling goods or services in commerce including, but not limited to, hotels, restaurants, bars, rental operations, and rental properties.

Construction–Causing or carrying out any building, bulkheading, filling, clearing, excavation, or substantial improvement to land or the size of any structure. "Building" includes, but is not limited to, all related site work and placement of construction materials on the site. "Filling" includes, but is not limited to, disposal of dredged materials. "Excavation" includes, but is not limited to, removal or alteration of dunes and dune vegetation and scraping, grading, or dredging a site. "Substantial improvements to land or the size of any structure" include, but are not limited to, creation of vehicular or pedestrian trails, landscape work (that adversely affects dunes or dune vegetation), and increasing the size of any structure.

Coppice mounds–The initial stages of dune growth formed as sand accumulates on the downwind side of plants and other obstructions on or immediately adjacent to the beach seaward of the foredunes. Coppice mounds may be unvegetated.

Critical dune areas–Those portions of the beach/dune system as designated by the General Land Office that are located within 1,000 feet of mean high tide of the Gulf of Mexico that contain dunes and dune complexes that are essential to the protection of public beaches, submerged land, and state-owned land, such as public roads and coastal public lands, from nuisance, erosion, storm surge, and high wind and waves. Critical dune areas include, but are not limited to, the dunes that store sand in the beach/dune system to replenish eroding public beaches.

Cumulative impact–The effect on beach use and access, on a critical dune area, or an area seaward of the dune protection line which results from the incremental effect of an action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

Dedication–Includes, but is not limited to, a restrictive covenant, permanent easement, and fee simple donation.

Dune–An emergent mound, hill, or ridge of sand, either bare or vegetated, located on land bordering the waters of the Gulf of Mexico. Dunes are naturally formed by the windward transport of sediment, but can also be created via man-made vegetated mounds. Natural dunes are usually found adjacent to the uppermost limit of wave action and are marked by an abrupt change in slope landward of the dry beach. The term includes coppice mounds, foredunes, dunes comprising the foredune ridge, backdunes, swales, and man-made vegetated mounds.

Dune complex–Any emergent area adjacent to the waters of the Gulf of Mexico in which several types of dunes are found or in which dunes have been established by proper management of the area. In some portions of the Texas coast, dune complexes contain depressions known as swales.

Dune Protection Act–Texas Natural Resources Code, §63. 001, et seq.

Dune protection and beach access plan or plan–A local government's legally enforceable program, policies, and procedures for protecting dunes and dune vegetation and for preserving and enhancing use of and access to and from public beaches, as required by the Dune Protection Act and the Open Beaches Act.

Dune protection line–A line established by a county commissioners court or

the governing body of a municipality for the purpose of preserving, at a minimum, all critical dune areas identified by the General Land Office pursuant to the Dune Protection Act, §63.011, and §15.3(f) of this title (relating to Administration). A municipality is not authorized to establish a dune protection line unless the authority to do so has been delegated to the municipality by the county in which the municipality is located. Such lines will be located no farther than 1,000 feet landward of the mean high tide of the Gulf of Mexico.

Dune protection permit or permit-The document issued by a local government to authorize construction or other regulated activities in a specified location seaward of a dune protection line or within a critical dune area, as provided in the Texas Natural Resources Code, §63.051.

Dune vegetation-Flora indigenous to natural dune complexes on the Texas coast and can include coastal grasses and herbaceous and woody plants.

Effect or effects-"Effects" include: direct effects-those impacts on public beach use and access, on critical dune areas, or on dunes and dune vegetation seaward of a dune protection line which are caused by the action and occur at the same time and place; and indirect effects-those impacts on beach use and access, on critical dune areas, or on dunes and dune vegetation seaward of a dune protection line which are caused by an action and are later in time or farther removed in distance than a direct effect, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems. "Effects" and "impacts" as used in this subchapter are synonymous. "Effects" may be ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.

Eroding area-A portion of the shoreline which is experiencing an historical erosion rate of greater than one foot per year based on published data of the University of Texas at Austin, Bureau of Economic Geology.

Erosion-The wearing away of land or the removal of beach and/or dune sediments by wave action, tidal currents, wave currents, drainage, or wind. Erosion includes, but is not limited to, horizontal recession and scour and can be induced or aggravated by human activities.

Erosion response structure-A hard or rigid structure built for shoreline stabilization which includes, but is not limited to, a jetty, retaining wall, groin, breakwater, bulkhead, seawall, riprap, rubble mound, revetment, or the foundation of a structure which is the functional equivalent of these specified structures.

FEMA-The United States Federal Emergency Management Agency. This agency administers the National Flood Insurance Program and publishes the official flood insurance rate maps.

Foredunes-The first clearly distinguishable, usually vegetated, stabilized large dunes encountered landward of the Gulf of Mexico. On some portions of the Texas Gulf Coast, foredunes may also be large, unvegetated, and unstabilized. Although they may be large and continuous, foredunes are typically hummocky and discontinuous and may be interrupted by breaks and washover areas. Foredunes offer the first significant means of dissipating storm-generated wave and current energy issuing from the Gulf of Mexico. Because various heights and configurations of dunes may perform this function, no standardized physical description applies. Foredunes are distinguishable from surrounding dune types by their relative location and physical appearance.

Foredune ridge-The high continuous line of dunes which are usually well vegetated and rise sharply landward of the foredune area but may also rise directly from a flat, wave-cut beach immediately after a storm.

Habitable structures-Structures suitable for human habitation including, but not limited to, single or multi-family residences, hotels, condominium buildings, and buildings for commercial purposes. Each building of a condominium regime is considered a separate habitable structure, but if a building is divided into apartments, then the entire building, not the individual apartments, is considered a single habitable structure. Additionally, a habitable structure includes porches, gazebos, and other attached improvements.

Industrial facilities-Include, but are not limited to, those establishments listed in Part 1, Division D, Major Groups 20-39 and Part 1, Division E, Major Group 49 of the Standard Industrial Classification Manual as adopted by the Executive Office of the President, Office of Management and Budget (1987 edition). However, for the purposes of this subchapter, the establishments listed in Part 1, Division D, Major Group 20, Industry Group Number 209, Industry Numbers 2091 and 2092 are not considered "industrial facilities". These establishments are listed as follows in "Appendix I".

Appendix I

A local government is not authorized to issue a permit or certificate authorizing construction or operation of the industrial facilities listed in this appendix within critical dune areas or seaward of a dune protection line, as provided in §15.4(c)(5) of this title (relating to Dune Protection Standards), with the exception of activities in Part 1, Division D, Major Group 20, Industry Group 209, Industry Numbers 2091 and 2092, as provided in the definition of "industrial facilities" in §15.2 of this title (relating to Definitions). This appendix is taken from the Standard Industrial Classification Manual as adopted by the Executive Office of the President, Office of Management and Budget (1987 ed.).

DIVISION D. MANUFACTURING

Major Group 20.	Food and kindred products, except Industry Numbers 2091 and 2092
Major Group 21.	Tobacco products
Major Group 22.	Textile mill products
Major Group 23.	Apparel and other finished products made from fabrics and similar materials
Major Group 24.	Lumber and wood products, except furniture
Major Group 25.	Furniture and fixtures
Major Group 26.	Paper and allied products
Major Group 27.	Printing, publishing, and allied industries
Major Group 28.	Chemicals and allied products
Major Group 29.	Petroleum refining and related industries
Major Group 30.	Rubber and miscellaneous plastics products
Major Group 31.	Leather and leather products
Major Group 32.	Stone, clay, glass, and concrete products
Major Group 33.	Primary metal industries
Major Group 34.	Fabricated metal products, except machinery and transportation equipment
Major Group 35.	Industrial and commercial machinery and computer equipment
Major Group 36.	Electronic and other electrical equipment and components, except computer equipment
Major Group 37.	Transportation equipment
Major Group 38.	Measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks
Major Group 39.	Miscellaneous manufacturing industries

DIVISION E. TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES

Major Group 49.	Sanitary services (sewerage systems, refuse systems, sanitary services not elsewhere classified)

MISCELLANEOUS FOOD PREPARATIONS AND KINDRED PRODUCTS

Industrial facilities listed in Industry Number 2091 are not considered "industrial facilities" as defined in §15.2 of this title (relating to Definitions).

2091 Canned and Cured Fish and Seafoods

Establishments primarily engaged in cooking and canning fish, shrimp, oysters, clams, crabs, and other seafoods, including soups; and those engaged in smoking, salting, drying, or otherwise curing fish and other seafoods for the trade. Establishments primarily engaged in shucking and packing fresh oysters in nonsealed containers, or in freezing or preparing fresh fish, are classified in Industry 2092.

- Canned fish, crustacea, and mollusks
- Caviar, canned
- Chowders, fish and seafood: canned
- Clam bouillon, broth, chowder, juice: bottled or canned
- Codfish: smoked, salted, dried, and pickled
- Crab meat, canned and cured
- Finnan haddie (smoked haddock)
- Fish and seafood cakes: canned
- Fish egg bait, canned
- Fish, canned and cured
- Fish: cured, dried, pickled, salted, and smoked
- Herring: smoked, salted, dried, and pickled
- Mackerel: smoked, salted, dried, and pickled
- Oysters, canned and cured
- Salmon: smoked, salted, dried, canned, and pickled
- Sardines, canned
- Seafood products, canned and cured
- Shellfish, canned and cured
- Shrimp, canned and cured
- Soups, fish and seafood: canned
- Stews, fish and seafood: canned
- Tuna fish, canned

MISCELLANEOUS FOOD PREPARATIONS AND KINDRED PRODUCTS

Industrial facilities listed in Industry Number 2092 are not considered "industrial facilities" as defined in §15.2 of this title (relating to Definitions).

2092 Prepared Fresh or Frozen Fish and Seafoods

Establishments primarily engaged in preparing fresh and raw or cooked frozen fish and other seafoods and seafood preparations, such as soups, stews, chowders, fishcakes, crabcakes, and shrimpcakes. Prepared fresh fish are eviscerated or processed by removal of heads, fins, or scales. This industry also includes establishments primarily engaged in the shucking and packing of fresh oysters in nonsealed containers.

- Chowders, fish and seafood: frozen
- Crabcakes, frozen
- Crabmeat picking
- Crabmeat, fresh: packed in nonsealed containers
- Fish and seafood cakes, frozen
- Fish Fillets
- Fish sticks
- Fish: fresh and frozen, prepared
- Oysters, fresh: shucking and packing in nonsealed containers
- Seafoods, fresh and frozen
- Shellfish, fresh and frozen
- Shellfish, fresh: shucked, picked, or packed
- Shrimp, fresh and frozen
- Soups, fish and seafood: frozen
- Stews, fish and seafood: frozen

Large-scale construction-Construction activity greater than 5,000 square feet in area and habitable structures greater than two stories in height. Multiple-family habitable structures are typical of this type of construction.

Line of vegetation-The extreme seaward boundary of natural vegetation which spreads continuously inland. The line of vegetation is typically used to determine the landward extent of the public beach.

Local government-A municipality, county, any special purpose district, any unit of government, or any other political subdivision of the state.

Man-made vegetated mound-A mound, hill, or ridge of sand created by the deliberate placement of sand or sand trapping devices including sand fences, trees, or brush and planted with dune vegetation.

Master planned development-A document containing maps, drawings, narrative, tables, and other forms of communication that provides information about the proposed use of specific land and/or water that include, but is not limited to, as appropriate, descriptions of land and/or water uses, land and/or water use intensities, building and/or site improvement locations and sizes, relationships between buildings and improvements, vehicular and pedestrian access and circulation systems, parking, utility systems, stormwater management an treatment systems, geography, geology, impact assessments, regulatory-approved checklist, and phasing. Information in the master plan may be conceptual or detailed depending on the status of its regulatory approval.

Mitigation sequence-The series of steps which must be taken if dunes and dune vegetation will be adversely affected. First, such adverse effects shall be avoided. Second, adverse effects shall be minimized. Third, the dunes and dune vegetation adversely affected shall be repaired, restored, or replaced. Fourth, the dunes and dune vegetation adversely affected shall be replaced or substituted to compensate for the adverse effects.

National Flood Insurance Act-42 United States Code, §§4001, et seq.

Natural resources-Land, fish, wildlife, insects, biota, air, surface water, groundwater, plants, trees, habitat of flora and fauna, and other such resources.

Open Beaches Act-Texas Natural Resources Code, §§61. 001, et seq.

Owner or operator--Any person owning, operating, or responsible for operating commercial or industrial facilities.

Permit or certificate condition–A requirement or restriction in a permit or certificate necessary to assure protection of life, natural resources, property, and adequate beach use and access rights (consistent with the Dune Protection Act) which a permittee must satisfy in order to be in compliance with the permit or certificate.

Permittee–Any person authorized to act under a permit or a certificate issued by a local government.

Person–An individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, state, municipality, commission, political subdivision, or any international or interstate body or any other governmental entity.

Pipeline–A tube or system of tubes used for the transportation of oil, gas, chemicals, fuels, water, sewerage, or other liquid, semi-liquid, or gaseous substances.

Practicable–In determining what is practicable, local governments shall consider the effectiveness, scientific feasibility, and commercial availability of the technology or technique. Local governments shall also consider the cost of the technology or technique.

Production and gathering facilities–The equipment used to recover and move oil or gas from a well to a main pipeline, or other point of delivery such as a tank battery, and to place such oil or gas into marketable condition. Included are pipelines used as gathering lines, pumps, tanks, separators, compressors, and associated equipment and roads.

Public beach–As used in this subchapter, "public beach" is defined in the Texas Natural Resources Code, §61.013(c).

Recreational activity–Includes, but is not limited to, hiking, sunbathing, and camping for less than 21 days. As used in §15.3(s)(2) (C) of this title (relating to Administration), recreational activities are limited to the private activities of the person owning the land and the social guests of the owner. Operation of recreational vehicles is not considered a recreational activity, whether private or public.

Recreational vehicle–A dune buggy, marsh buggy, minibike, trail bike, jeep, or any other mechanized vehicle used for recreational purposes.

Restoration–The process of constructing man-made vegetated mounds, repairing damaged dunes, or vegetating existing dunes.

Retaining wall–A structure designed primarily to contain material and to prevent the sliding of land.

Sand budget–The amount of all sources of sediment, sediment traps, and transport of sediment within a defined area. From the sand budget, it is possible to determine whether sediment gains and losses are in balance.

Seawall–An erosion response structure that is specifically designed to withstand wave forces.

Seaward of a dune protection line–The area between a dune protection line and the line of mean high tide.

Small-scale construction–Construction activity less than or equal to 5,000 square feet and habitable structures less than or equal to two stories in height. Single-family habitable structures are typical of this type of construction.

Structure–Includes, without limitation, any building or combination of related components constructed in an ordered scheme that constitutes a work or improvement constructed on or affixed to land.

Swales–Low areas within a dune complex located in some portions of the Texas coast which function as natural rainwater collection areas and are an integral part of the dune complex.

Washover areas–Low areas that are adjacent to beaches and are inundated by waves and storm tides from the Gulf of Mexico. Washovers may be found in abandoned tidal channels or where foredunes are poorly developed or breached by storm tides and wind erosion.

§15.3. Administration.

(a) Integration of dune protection and beach access programs. The Dune Protection Act and the Open Beaches Act require certain local governments to adopt and implement programs for the preservation of dunes and the preservation and enhancement of use of and access to and from public beaches. These Acts provide for regulation of generally the same activities and the same geographic areas, and their requirements are scientifically and legally related. Local governments required to adopt dune protection and beach access programs shall integrate them into a single plan consisting of procedural and substantive requirements for management of the beach/dune system within their jurisdiction. The authority to integrate such plans is provided pursuant to the Dune Protection Act, the Open Beaches Act, and this subchapter. The local government plans shall be consistent with the requirements of the Open Beaches Act, the Dune Protection Act, and this subchapter, and each shall, whenever possible, incorporate the local government's ordinary land use planning procedures.

(b) Boundary of the public beach. The public beach is defined in the Open Beaches Act, §61.013(c), and §15.2 of this title (relating to Definitions). The line of vegetation is defined in the Open Beaches Act, §61. 001(5), and §15.2 of this title (relating to Definitions). The line of vegetation is typically used to determine the landward extent of the public beach. However, there are portions of the Texas coast where there is no marked vegetation line or the line is discontinuous or modified. In those portions of the coast, the line of vegetation shall be determined consistent with §15. 10(b) of this title (relating to General Provisions) and the Open Beaches Act, §61.016 and §61.017.

(c) Beachfront construction certification areas. The General Land Office, in conjunction with the Attorney General's Office, has the responsibility of protecting the public's right to use and have access to and from the public beach and of providing standards to the local governments certifying construction on land adjacent to the Gulf of Mexico consistent with such public rights. The Open Beaches Act, §61.011(d)(6), limits the geographic scope of the beachfront construction certification area to the land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the public beach or to any closer public road not parallel to the beach, or the area up to 1,000 feet of mean high tide, whichever distance is greater. For this area, local governments shall prepare a beach access and use program, pursuant to the Open Beaches Act, §61.015, for inclusion in their dune protection and beach access plans to control any adverse effects of beachfront construction on public beach use and access. Applications for beachfront construction certificates shall be reviewed by local governments for consistency with their dune protection and beach access plans.

(d) Critical dune areas and dune protection lines. The commissioner of the General Land Office, as trustee of the public lands of Texas, has the responsibility to identify and protect Texas' critical dune areas that are essential to the protection of coastal public land, public roads, public beaches, and other public resources. Local governments have the responsibility to establish dune protection lines for the purpose of preserving sand dunes within their jurisdiction. The Dune Protection Act, §63.121 and §63.012, respectively, limits the geographic scope of critical dune areas and the location of the dune protection line to that portion of the beach within 1,000 feet of mean high tide of the Gulf of Mexico.

(e) Identification of critical dune areas. Pursuant to the authority provided in the Dune Protection Act, §63.121, the General Land Office has identified critical dune areas as all dunes and dune complexes located within 1,000 feet of mean high tide of the Gulf of Mexico. This identification is based on the determination that all of the various protective functions served by the dunes and dune complexes located within that 1,000 feet are essential to the protection of public beaches, submerged land, and state-owned land, such as public roads and coastal public lands, from nuisance, erosion, storm surge, and high wind and waves. Critical dune areas are related to dune protection lines in that local governments are

required to establish such lines for the purpose of preserving dunes in a location landward of all critical dune areas. Criteria for establishing dune protection lines shall, at a minimum, include the criteria for establishing critical dune areas in this subsection.

(f) Establishment of dune protection lines. Pursuant to the authority provided in the Dune Protection Act, §63.011, local governments shall establish and maintain dune protection lines which preserve, at a minimum, the dunes within the critical dune areas as defined in this subchapter. A local government must conduct a field inspection to determine the appropriate location of the line unless it proposes to establish or relocate its line at a distance of 1,000 feet of mean high tide of the Gulf of Mexico, as that 1,000 feet is the maximum extent of the local government's jurisdiction for establishing dune protection lines.

(g) Deadline for establishment of dune protection lines. Local governments shall establish dune protection lines as part of the dune protection component of their local plans. The local plans shall be submitted to the state no later than 180 days after the effective date of this subchapter. Therefore, local governments shall establish dune protection lines no later than 180 days after this subchapter goes into effect.

(h) Information required regarding dune protection lines. Local governments are required to submit the following information to the General Land Office to allow state evaluation of the adequacy of the dune protection line location: a map or drawing of the line; a written description of the line; or a written description and a map or drawing. This information shall be included in the local government's dune protection and beach access plan and must clearly designate for the public and the state the location of the line and the location of dunes seaward of the line. All maps, drawings, or descriptions shall incorporate sufficient elements of the Texas State Plane Coordinate System to enable such description to be located on the ground and shall be tied to and/or include the Texas State Plane Coordinates for two or more monumented points along any described boundary. Each local government shall file a map or drawing or description of its dune protection line with the clerk of the county or municipality establishing the line.

(i) State assistance in the establishment of local government dune protection lines. The General Land Office may assist and advise local governments in establishing or modifying a dune protection line. Pursuant to the Dune Protection Act, §63.013, local governments shall notify the General Land Office of the establishment of dune protection lines and any subsequent change in a line. Upon such notification, the General Land Office shall review the location of the line by examining the map or description of the line submitted to the state and by conducting field inspections, as necessary. The General Land Office will review the location of the line to determine whether the line meets the geographic standard of being located landward of all critical dune areas. If the General Land Office is satisfied that the line meets that geographic standard, the General Land Office will notify the local government of this finding in writing. If the line does not meet that geographic standard, the General Land Office will assist and advise the local government in adjusting the line.

(j) State review of dune protection line location. Each local government shall submit the information regarding the location of the dune protection line, as required in subsection (h) of this section, to the General Land Office as part of its dune protection and beach access plan. In determining whether to approve the local plan, the General Land Office will review the various components of the plan, including the adequacy of the location of a local government's dune protection line (with respect to the protection of critical dune areas), based on the geographic standards provided in subsection (i) of this section.

(k) Local government review of dune protection line location. Each local government shall review its dune protection lines every five years to determine whether the line is adequately located to achieve the purpose of preserving critical dune areas. In addition to the five-year review, each local government shall review the adequacy of the location of the line within 90 days after a tropical storm or hurricane affects the portion of the coast in its jurisdiction.

(l) Provisions for public hearings on dune protection lines. Local governments shall provide notice of a public hearing to consider establishing or modifying a dune protection line by publishing such notice at least three times in the newspaper with the largest circulation in the county. The notice shall be published not less than one week nor more than three weeks before the date of the hearing. Notice shall be given to the General Land Office not less than one week nor more than three weeks before the hearing. In the notice to the General Land Office, local governments shall also include the information described in subsection (h) of this section.

(m) Local government authority. Local governments shall include in the plans submitted to the General Land Office and the Attorney General's Office citations of all statutes, policies, and ordinances which demonstrate the authority of the local government to implement and enforce the plan in a manner consistent with the requirements of this subchapter. Local government plans shall also demonstrate the coordination, on the local level, of the dune protection, beach access, erosion response, and flood protection programs (if participating in the National Flood Insurance Program under the National Flood Insurance Act). Each local government shall integrate these programs into one plan for the management of the beach/dune system within its jurisdiction. The General Land Office will provide written guidance on the form and content of the plan upon written request by a local government.

(n) Content of local government dune protection and beach access plans. Local government plans shall contain procedural mechanisms and substantive requirements necessary for compliance with this subchapter, the Dune Protection Act, and the Open Beaches Act. Local governments shall attach copies of this subchapter, the Dune Protection Act, and the Open Beaches Act to their plans, and their plans shall state that these state laws are incorporated into the plans. A local government shall also state in its plan that any person in violation of the incorporated state laws is in violation of its local plan.

(o) Submission of local government plans to state agencies. Local governments shall submit dune protection and beach access plans to the General Land Office for review, comment, and certification as to compliance with this subchapter, the Dune Protection Act, and the Open Beaches Act and to the Attorney General's Office for review and comment. A local government's governing body must formally approve the plan prior to submission to the state agencies. Prior to formally approving its plan, a local government may request legal and technical advice from the General Land Office for assistance in meeting the requirements for state agency approval. The General Land Office shall either grant or deny certification of a local government's formally approved dune protection and beach access plan within 60 days of receipt of the plan. In the event of denial, the General Land Office shall send the plan back to the local government with a statement of specific objections and the reasons for denial, along with suggested modifications. On receipt, the local government shall revise and resubmit the plan for state agency review. The General Land Office shall use the same procedure for reviewing revised plans as the procedure used for reviewing the plan originally submitted. The General Land Office's certification of local government plans shall be by adoption into the rules authorized under the Texas Natural Resources Code, §61.011. The rules adopted by the General Land Office to certify plans will consist of state approval of the plans, but the text of plans will not be adopted by the General Land Office. Local governments may amend their dune protection and beach access plans by submitting

the proposed changes to the General Land Office for review, comment, and certification and to the Attorney General's Office for review and comment. The General Land Office shall process the proposed plan amendments using the same procedures and criteria as used in approving the initial submissions.

(p) Submission deadline for dune protection and beach access plans. Local governments shall submit dune protection and beach access plans to the General Land Office and the Attorney General's Office no later than 180 days from the effective date of this subchapter. If the General Land Office does not approve a plan, the local government shall submit revisions of the plan until the plan is approved. However, any local government that submits a revised plan that has not been modified to address the state comments regarding the statutory requirements and the minimum standards identified in this subchapter is presumed to be in violation of this subchapter, the Open Beaches Act, and the Dune Protection Act. Local governments that fail to submit plans within 180 days of the effective date of this subchapter will be liable for penalties as provided in §15.9 of this title (relating to Penalties). Further, local governments that fail to submit plans by that deadline will not be authorized to permit construction within the geographic scope of this subchapter.

(q) Areas exempt from local government plans. Local government dune protection and beach access plans shall not include the following areas, which are exempt from regulation by local governments:

(1) national park areas, national wildlife refuges, or other designated national natural areas;

(2) state park areas, state wildlife refuges, or other designated state natural areas; and

(3) beaches on islands and peninsulas not accessible by public road or ferry facility for as long as that condition exists.

(r) State-owned or public land not exempt from local government plans. Local government plans shall apply to all state-owned or public land other than parks and refuges, subject to the provisions of the Texas Natural Resources Code, §§31.161, et seq.

(s) Acts prohibited without a dune protection permit or beachfront construction certificate. An activity requiring a dune protection permit may typically also require a beachfront construction certificate and vice versa. Local governments shall, whenever possible, issue permits and certificates concurrently when an activity requires both. In their dune protection and beach access plans, local governments may combine the dune protection permit and the beachfront construction certificate into a single permit or a two-part permit; however, they are not required to do so.

(1) Acts prohibited without a dune protection permit. Unless a dune protection permit is properly issued by a local government authorizing the conduct, no person shall:

(A) damage, destroy, or remove a sand dune or a portion of a sand dune seaward of a dune protection line or within a critical dune area; or

(B) kill, destroy, or remove in any manner any vegetation growing on a sand dune seaward of a dune protection line or within a critical dune area.

(2) Activities exempt from permit requirements. Pursuant to the Dune Protection Act, §63.052, the following activities are exempt from the requirement for a dune protection permit, but are subject to the requirements of the Open Beaches Act and the rules promulgated under the Open Beaches Act. Where local governments have separate authority to regulate the following activities, permittees shall comply with the local laws as well. The activities exempt from the permit requirements are:

(A) exploration for and production of oil and gas and reasonable and necessary activities directly related to such exploration and production, including construction and maintenance of production and gathering facilities located in a critical dune area which serve wells located outside of a critical dune area, provided that such facilities are located no farther than two miles from the well being served;

(B) grazing livestock and reasonable and necessary activities directly related to grazing;

(C) recreational activities other than operation of a recreational vehicle.

(3) Acts prohibited without a beachfront construction certificate. No person shall cause, engage in, or allow construction on land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the public beach or to any closer public road not parallel to the beach, or to within 1,000 feet of mean high tide, whichever is greater, that affects or may affect public use of and access to and from public beaches unless the construction is properly certified by the appropriate local government as consistent with its local plan, this subchapter, and the Open Beaches Act.

(4) Permit and certificate application requirements. Local governments shall require that all permit and certificate applicants fully disclose in the application all items and information necessary for the local government to make a determination regarding a permit or certificate. Local governments may require more information, but they shall require that applicants for dune protection permits and beachfront construction certificates provide, at a minimum, the following items and information.

(A) For all proposed construction (large- and small- scale), local governments shall require applicants to submit the following items and information:

(i) the name, address, phone number, and, if applicable, fax number of the applicant, and the name of the property owner, if different from the applicant;

(ii) a complete legal description of the tract and a statement of its size in acres or square feet;

(iii) the number of proposed structures and whether the structures are amenities or habitable structures;

(iv) the number of parking spaces;

(v) the approximate percentage of existing and finished open spaces (those areas completely free of structures);

(vi) the floor plan and elevation view of the structure proposed to be constructed or expanded;

(vii) the approximate duration of the construction;

(viii) a description (including location) of any existing or proposed walkways or dune walkovers on the tract;

(ix) a grading and layout plan identifying all elevations (in reference to the National Oceanographic and Atmospheric Administration datum), existing contours of the project area (including the location of dunes and swales), and proposed contours for the final grade;

(x) photographs of the site which clearly show the current location of the vegetation line and the existing dunes on the tract;

(xi) the effects of the proposed activity on the beach/dune system which cannot be avoided should the proposed activity be permitted, including, but not limited to, damage to dune vegetation, alteration of dune size and shape, and changes to dune hydrology;

(xii) a comprehensive mitigation plan which includes a detailed

description of the methods which will be used to avoid, minimize, mitigate and/or compensate for any adverse effects on dunes or dune vegetation;

(xiii) proof of the applicant's financial capability to mitigate or compensate for adverse effects on dunes and dune vegetation (i.e., by submitting an irrevocable letter of credit or a performance bond) or to fund eventual relocation or demolition of structures (i.e., as through proof of Upton-Jones coverage in the National Flood Insurance Program);

(xiv) an accurate map or plat of the site identifying:

(I) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(II) the location of the property lines and a notation of the legal description of adjoining tracts;

(III) the location of the structures, the footprint or perimeter of the proposed construction on the tract;

(IV) proposed roadways and driveways and proposed landscaping activities on the tract;

(V) the location of any seawalls or any other erosion response structures on the tract and on the properties immediately adjacent to the tract; and

(VI) if known, the location and extent of any man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract.

(B) For all proposed large-scale construction, local governments shall require applicants to submit the following additional items and information:

(i) if the tract is located in a subdivision and the applicant is the owner or developer of the subdivision, a certified copy of the recorded plat of the subdivision, or, if not a recorded subdivision, a plat of the subdivision certified by a licensed surveyor, and a statement of the total area of the subdivision in acres or square feet;

(ii) in the case of multiple-unit dwellings, the number of units proposed;

(iii) alternatives to the proposed location of construction on the tract or to the proposed methods of construction which would cause fewer or no adverse effects on dunes and dune vegetation or less impairment of beach access; and

(iv) the proposed activity's impact on the natural drainage pattern of the site and the adjacent lots.

(C) For all proposed construction (large- and small- scale), if applicants already have the following items and information, local governments shall require them to be submitted in addition to the other information required:

(i) a copy of a blueprint of the proposed construction;

(ii) a copy of a topographical survey of the site;

(iii) the most recent local historical erosion rate data (as determined by the University of Texas at Austin, Bureau of Economic Geology) and the activity's potential impact on coastal erosion; and

(iv) a copy of the FEMA "Elevation Certificate".

(D) For all proposed construction (large- and small- scale), local governments shall provide to the state the following information:

(i) a copy of the community's most recent flood insurance rate map identifying the site of the proposed construction;

(ii) a preliminary determination as to whether the proposed construction complies with all aspects of the local government's dune protection and beach access plan;

(iii) the activity's potential impact on the community's natural flood protection and protection from storm surge; and

(iv) a description as to how the proposed beachfront construction complies with and promotes the local government's beach access policies and requirements, particularly, the dune protection and beach access plan's provisions relating to public beach ingress/egress, off-beach parking, and avoidance of reduction in the size of the public beach due to erosion.

(E) For all proposed construction (large- and small- scale), the General Land Office shall be the state contact for erosion rate data questions and may supply technical information to the local government.

(5) Master planned development. Local governments may adopt separate ordinances or county commissioners court orders authorizing master planned developments located within the geographic scope of this subchapter. These ordinances and orders shall be consistent with and address the dune protection and beach access requirements of this subchapter, the Dune Protection Act and Open Beaches Act. The ordinances and orders shall be submitted to the General Land Office and the Attorney General's Office for review and approval to ensure consistency with this subchapter. When considering approval of a master planned development or construction plans and setting conditions for operations under such plans, local governments shall consider:

(A) the plan's potential effects on dunes, dune vegetation, public beach use and access, and the applicant's proposal to mitigate for such effects throughout the construction;

(B) the contents of the master planned development; and

(C) whether any component of the master planned development, such as installation of roads or utilities, or construction of structures in critical dune areas or seaward of a dune protection line, will subsequently require a dune protection permit or a beachfront construction certificate. If a dune protection permit or beachfront construction certificate will be necessary, the local government shall require the developer to apply for the permit and/or certificate as part of the master planned development approval process. This requirement only applies if the local government is authorizing activities impacting critical dune areas and public beach use and access under its dune protection and beach access plan.

(6) State agency comments.

(A) A person proposing to conduct an activity for which a permit or certificate is required shall submit a complete application to the appropriate local government. The local government shall forward the complete application, including any associated materials, to the General Land Office and the Attorney General's Office. The application, any documents associated with the application, and information as to when the decision will be made must be received by the General Land Office and the Attorney General's Office no later than 10 working days before the local government is first scheduled to act on the permit or certificate. Local governments shall not act on a permit or certificate application if the General Land Office and the Attorney General's Office have not received the application for the permit or certificate at least 10 working days before the local government is first scheduled to act on the permit or certificate. However, a local government may act on such applications if the state agencies received the application

within the proper time frame and the state does not submit comments on the application to the local government.

(B) The General Land Office and the Attorney General's Office may submit comments on the proposed activity to the local government.

(7) Local government review. When determining whether to approve a proposed activity, a local government shall review and consider:

(A) the permit or certificate application;

(B) the proposed activity's consistency with this subchapter and the local government's dune protection and beach access plan, including the dune protection and beachfront construction standards contained in both;

(C) any other law relevant to dune protection and public beach use and access which affects the activity under review;

(D) the comments of the General Land Office and the Attorney General's Office; and

(E) any other information the local government may consider useful to determine consistency with the local government's dune protection and beach access plan, including resource information made available to them by federal and state natural resource entities. A local government shall not issue a dune protection permit or beachfront construction certificate that is inconsistent with its plan, this subchapter, and other state, local, and federal laws related to the requirements of the Dune Protection Act and Open Beaches Act.

(t) Term and renewal of permits and certificates.

(1) A local government's dune protection permits or beachfront construction certificates shall be valid for no more than three years from the date of issuance. A local government may renew a dune protection permit or beachfront construction certificate allowing proposed construction to continue if the activity as proposed in the application for renewal meets the applicable state and local standards and the permittee supplements the information provided in the original permit or certificate application materials with additional information indicating any changes to the original information provided by the applicant. For the purpose of maintaining administrative records for permits, certificates, and renewals, if any, local governments are required to keep all original application materials submitted by any applicant for three years, as provided in subsection (u) of this section. Each renewal of a permit and certificate allowing construction shall be valid for no more than 90 days. A local government shall issue only two renewals for each permit or certificate. After the local government issues two renewals, the permittee must apply for a new permit or certificate. In addition, local governments shall require a permittee to apply for a new permit or a certificate if the proposed construction is changed in any manner which causes or increases adverse effects on dunes, dune vegetation, and public beach use and access within the geographic scope of this subchapter.

(2) Local governments that choose to authorize master planned developments may adopt a different term limit for permits and certificates only if the master planned development is authorized under a separate, state-approved ordinance or county commissioners court order. Each master planned development will be deemed to be a new local ordinance or county commissioners court order subject to state approval regarding effects on dunes, dune vegetation, and public beach use and access.

(3) Any dune protection permit or beachfront construction certificate allowing beachfront construction issued by a local government pursuant to its dune protection and beach access plan shall be voidable under the following circumstances.

(A) The permit or certificate is inconsistent with this subchapter or the local government's plan at the time the permit or certificate was issued.

(B) A material change occurs after the permit or certificate is issued.

(C) A permittee fails to disclose any material fact in the application.

(4) A local government shall require that a permittee apply for a new permit or certificate in the event of any material changes. Material changes include human or natural conditions which have adversely affected dunes, dune vegetation, or beach access and use that either:

(A) did not exist at the time the permittee prepared the original permit or certificate application; or

(B) were not considered by the local government making the permitting decision because the permittee failed to provide information regarding the site condition in the original application for a permit or certificate.

(5) A permit or certificate automatically terminates in the event the certified construction comes to lie within the boundaries of the public beach by artificial means or by action of storm, wind, water, or other naturally influenced causes. Nothing in the certificate shall be construed to authorize the construction, repair, or maintenance of any construction within the boundaries of the public beach at any time.

(u) Administrative record.

(1) Local governments shall compile and maintain an administrative record which demonstrates the basis for each final decision made regarding the issuance of a dune protection permit or beachfront construction certificate. The administrative record shall include copies of the following:

(A) all materials the local government received from the applicant as part of or regarding the permit or certificate application;

(B) the transcripts, if any, or the minutes and/or tape of the local government's meeting during which a final decision regarding the permit or certificate was made; and

(C) all comments received by the local government regarding the permit or certificate.

(2) Local governments shall keep the administrative record for a minimum of three years from the date of a final decision on a permit or certificate. Local governments shall send to the General Land Office or the Attorney General's Office, upon request by either agency, a copy of those portions of the administrative record that were not originally sent to those agencies for permit or certificate application review and comment. The record must be received by the appropriate agency no later than 10 working days after the local government receives the request. The state agency reviewing the administrative record shall notify the appropriate permittee of the request for a copy of the administrative record from the local government. Upon request of the permittee, a local government shall provide to the permittee copies of any materials in the administrative record regarding the permit or certificate which were not submitted to the local government by the permittee (i.e., the permit application) or given to the permittee by the local government (i.e., the permit).

§15.4. Dune Protection Standards.

(a) Dune protection required. This section provides the standards and procedures local governments shall follow in is-

suing, denying, or conditioning dune protection permits. A local government shall protect dunes and dune vegetation from adverse effects resulting directly or indirectly from construction in a critical dune area or seaward of its dune protection line, as cumulatively required by the Dune Protection Act, this subchapter, and that local government's dune protection and beach access plan.

(b) Procedures for local government permit determinations and permit issuance. Before issuing a dune protection permit, a local government shall make the following determinations.

(1) The proposed activity is not a prohibited activity as defined in subsection (c) of this section, §15.5 of this title (relating to Beachfront Construction Standards), or §15.6 of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards).

(2) The proposed activity will not materially weaken dunes or materially damage dune vegetation based on the application of technical standards resulting in substantive findings under subsection (d) of this section.

(3) There are no practicable alternatives to the proposed activity and the impacts cannot be avoided as provided in subsection (f)(1) of this section.

(4) The applicant's mitigation plan will adequately minimize, mitigate, and/or compensate for any unavoidable adverse effects, as provided in subsections (f)(2)-(5) of this section.

(c) Prohibited activities. A local government shall not issue a permit or certificate authorizing the following actions within critical dune areas or seaward of that local government's dune protection line:

(1) activities that are likely to result in the temporary or permanent removal of sand from the portion of the beach/dune system located on or adjacent to the construction site, including:

(A) moving sand to a location landward of the critical dune area or dune protection line; and

(B) temporarily or permanently moving sand off the site, except for purposes of permitted mitigation, compensation, or an approved dune restoration or beach nourishment project and then only from areas where the historical accretion rate is greater than one foot per year, and the project does not cause any adverse effects on the sediment budget;

(2) depositing sand, soil, sediment, or dredged spoil which contains the toxic materials listed in Volume 40 of the Code of Federal Regulations, Part 302.4, in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments;

(3) depositing sand, soil, sediment, or dredged spoil which is of an unacceptable mineralogy or grain size than the sediments found on the site (this prohibition does not apply to materials related to the installation or maintenance of public beach access roads running generally perpendicular to the public beach);

(4) creating dredged spoil disposal sites, such as levees and weirs, without the appropriate local, state, and federal permits;

(5) constructing or operating industrial facilities not in full compliance with all relevant laws and permitting requirements prior to the effective date of this subchapter;

(6) operating recreational vehicles;

(7) mining dunes;

(8) constructing concrete slabs or other impervious surfaces within 200 feet landward of the natural vegetation line (a concrete slab may be permitted in the described area if it supports and does not extend beyond the perimeter of a habitable structure elevated on pilings and if no walls are erected that prohibit the natural transfer of sand; an impervious surface may be permitted in the described area if it does not exceed 0.5% of the area of the permitted habitable structure);

(9) depositing trash, waste, or debris including inert materials such as concrete, stone, and bricks that are not part of the permitted on-site construction;

(10) constructing cisterns, septic tanks, and septic fields seaward of any structure serviced by the cisterns, septic tanks, and septic fields; and

(11) detonating bombs or explosives.

(d) Technical standards for local government determination as to material weakening of dunes and material damage of dune vegetation within a critical dune area or seaward of a dune protection line. A local government may approve a permit application only if it finds as a fact, after a full investigation, that the particular conduct proposed will not materially weaken any dune or materially damage dune vegetation or reduce the effectiveness of any dune as a means of protection against erosion and high wind and water. In making the finding as to whether such material weakening or material damage will occur, a local government shall use the following technical standards. Failure to meet any one of these standards will result in a finding of material weakening or material damage and the local government shall not approve the application for the construction as proposed.

(1) The activity shall not result in the potential for increased flood damage to the proposed construction site or adjacent property.

(2) The activity shall not result in runoff or drainage patterns that aggravate erosion on or off the site.

(3) The activity shall not result in significant changes to dune hydrology.

(4) The activity shall not disturb unique flora or fauna or result in adverse effects on dune complexes or dune vegetation.

(5) The activity shall not significantly increase the potential for washovers or blowouts to occur.

(e) Local government considerations when determining whether to issue a dune protection permit. Local governments shall consider the following items and information when determining whether to grant a permit:

(1) all comments submitted to the local government by the General Land Office and the Attorney General's Office;

(2) cumulative and indirect effects of the proposed construction on all dunes and dune vegetation within critical dune areas or seaward of a dune protection line;

(3) cumulative and indirect effects of other activities on dunes and dune vegetation located on the proposed construction site;

(4) the pre-construction type, height, width, slope, volume, and continuity of the dunes, the pre-construction condition of the dunes, the type of dune vegetation, and percent of vegetation cover on the site;

(5) the local historical erosion rate as determined by the University of Texas at Austin, Bureau of Economic Geology, and whether the proposed construction may alter dunes and dune vegetation in a manner that may aggravate erosion;

(6) the applicant's mitigation plan for any unavoidable adverse effects on dunes and dune vegetation and the effectiveness, feasibility, and desirability of any proposed dune reconstruction and revegetation;

(7) the impacts on the natural drainage patterns of the site and adjacent property;

(8) any significant environmental features of the potentially affected dunes and dune vegetation such as their value and

function as floral or faunal habitat or any other benefits the dunes and dune vegetation provide to other natural resources;

(9) wind and storm patterns including a history of washover patterns;

(10) location of the site on the flood insurance rate map; and

(11) success rates of dune stabilization projects in the area.

(f) Mitigation. The mitigation sequence shall be used by local governments in determining whether to issue a permit, after the determination that no material weakening of dunes or material damage to dunes will occur within critical dune areas or seaward of the dune protection line. The mitigation sequence consists of the following steps: avoiding the impact altogether by not taking a certain action or parts of an action; minimizing impacts by limiting the degree or magnitude of the action and its implementation; rectifying the impact by repairing, rehabilitating, or restoring the affected environment; and compensating for the impact by replacing resources lost or damaged. If, for any reason, an applicant cannot demonstrate the ability to mitigate adverse effects on dunes and dune vegetation, the local government is not authorized to issue the permit. A local government shall require a permittee to use the mitigation sequence as a permit condition if that local government finds that an activity will result in any adverse effects on dunes or dune vegetation seaward of a dune protection line or on critical dune areas. When a local government requires mitigation as a permit condition, it shall require that the permittee follow the order of the mitigation sequence as provided in this subsection.

(1) Avoidance. Avoidance means avoiding the effect on dunes and dune vegetation altogether by not taking a certain action or parts of an action. Local governments shall require permittees to avoid adverse effects on dunes and dune vegetation. Local governments shall not issue a permit allowing any adverse effects on dunes or dune vegetation located in critical dune areas or seaward of the dune protection line unless the applicant proves there is no practicable alternative to the proposed activity, proposed site, or proposed methods for conducting the activity, and the activity will not materially weaken the dunes or dune vegetation. Local governments shall require permittees to include information as to practicable alternatives in the permit application. Local governments shall review the permit application to determine whether the permittee has considered all practicable alternatives and whether one of the practicable alternatives would cause less adverse effects on dunes and dune vegetation than the proposed activity. Local governments shall require that permittees undertaking construction in critical dune areas or seaward of a dune protection line use the following avoidance techniques.

(A) Routing of non-exempt pipelines. Non-exempt pipelines are any pipelines other than those subject to the exemption in §15.3(s)(2)(A) of this title (relating to Administration). Local governments shall not allow permittees to construct non-exempt pipelines within critical dune areas or seaward of a dune protection line unless there is no practicable alternative.

(B) Location of construction and beach access. Local governments shall require permittees proposing construction seaward of dune protection lines and within critical dune areas to locate all such construction as far landward of dunes as practicable. Local governments shall not restrict construction which provides access to and from the public beach pursuant to this provision.

(C) Location of roads. Local governments shall require permittees constructing roads parallel to beaches to locate the roads as far landward of critical dune areas as practicable and shall not allow permittees to locate such roads within 200 feet landward of the natural vegetation line.

(D) Artificial runoff channels. Local governments shall not permit construction of new artificial channels, including stormwater runoff channels, unless there is no practicable alternative.

(2) Minimization. Minimization means minimizing effects on dunes and dune vegetation by limiting the degree or magnitude of the action and its implementation. Local governments shall require that permittees minimize adverse impacts to dunes and dune vegetation by limiting the degree or magnitude of the action and its implementation. If an applicant for a dune protection permit demonstrates to the local government that adverse effects on dunes or dune vegetation cannot be avoided and the activity will not materially weaken dunes and dune vegetation, the local government may issue a permit allowing the proposed alteration, provided that the permit contains a condition requiring the permittee to minimize adverse effects on dunes or dune vegetation to the greatest extent practicable.

(A) Routing of non-exempt pipelines. Non-exempt pipelines are any pipelines other than those subject to the exemption in §15.3(s)(2)(A) of this title (relating to Administration). If a permittee demonstrates that there is no practicable alternative to crossing critical dune areas, the local government may allow a permittee to construct a pipeline across previously disturbed areas, such as blowout areas. Where use of previously disturbed areas is not practicable, the local government shall require the permittee to avoid adverse effects on or disturbance of dune surfaces and shall require the mitigation sequence if the adverse effects are unavoidable.

(B) Location of construction and beach access.

(i) Local governments shall require permittees to minimize construction and pedestrian traffic on or across dune areas to the greatest extent practicable, accounting for trends of dune movement and beach erosion in that area.

(ii) Local governments may allow permittees to route private and public pedestrian beach access to and from the public beach through washover areas or over elevated walkways in their approved dune protection and beach access plans. All pedestrian access routes and walkways shall be clearly and conspicuously marked with permanent signs by the local government if the beach access is public.

(iii) Local governments shall minimize proliferation of excessive private access by permitting only the minimum necessary private beach access points to the public beach from any proposed subdivision, multiple dwelling, or commercial facility. In some cases, the minimum beach access points may be only one access point. In determining the appropriate grouping of access points, the local government shall consider the size and scope of the development.

(iv) Local governments and the owners and operators of commercial facilities, subdivisions, and multiple dwellings shall post signs in areas where pedestrian traffic is high, explaining the functions of dunes and the importance of vegetation in preserving dunes.

(C) Location of roads.

(i) Wherever practicable, local governments may require permittees to locate beach access roads in washover areas, blowout areas, or other areas where dune vegetation has already been disturbed; local governments shall require permittees to build such roads along the natural land contours, to minimize the width of such roads, and where possible, improve existing access roads with elevated berms near the beach that prevent channelization of floodwaters. Where practicable, local governments shall require permittees to locate roads at an oblique angle to the prevailing wind direction.

(ii) Wherever practicable, local governments shall provide vehicular access to and from beaches by using existing roads or from roads constructed in accordance with paragraph (1)(C) of this subsection and clause (i) of this subparagraph. Local governments shall not apply this provision in a manner which restricts public beach access.

(iii) Local governments shall include in any permit authorizing the construction of roads a permit condition prohibiting persons from using or parking any motor vehicle on, through, or across dunes in critical dune areas except for the use of vehicles on designated access ways.

(D) Artificial runoff channels. Local governments shall only authorize construction of artificial runoff channels (that direct stormwater flow) if the channels are located in a manner which avoids erosion and unnecessary construction of additional channels. Local governments shall require that permittees make maximum use of natural or existing drainage patterns, whenever practicable, when locating new channels and stormwater retention basins. However, if new channels are necessary, local governments shall require that permittees direct all runoff inland and not to the Gulf of Mexico through critical dune areas, where practicable.

(3) Mitigation. Mitigation means repairing, rehabilitating, or restoring affected dunes and dune vegetation. Local governments shall add conditions to all permits requiring that permittees mitigate all adverse effects on dunes and dune vegetation which will occur after a permittee has avoided and minimized such adverse effects to the greatest extent practicable. Local governments shall require that permittees mitigate such adverse effects by repairing, rehabilitating, or restoring the affected dunes and dune vegetation. Local governments shall require that the permittee repair, rehabilitate, or restore affected dunes (to the same volume as the pre-existing dunes) and dune vegetation to be superior or equal to the pre-existing natural dunes and dune vegetation in the dunes and dune vegetation's ability to protect adjacent public and private property from potential flood damage, nuisance, and erosion and to protect natural resources. When determining the appropriate mitigation method, local governments shall consider the recommendations of the General Land Office, federal and state natural resource agencies, and dune vegetation experts.

(A) Mitigation standards for dunes. Local governments may allow a permittee to mitigate adverse effects on dunes using vegetative or mechanical means. Local governments shall require that a permittee proposing to restore dunes use the following techniques:

(i) restore dunes to approximate the naturally formed dune position or location, contour, volume, elevation, vegetative cover, and sediment content in the area;

(ii) allow for the natural dynamics and migration of dunes;

(iii) use discontinuous or continuous temporary sand fences or an approved method of dune restoration, where appropriate, considering the characteristics of the site; and

(iv) restore or repair dunes using indigenous vegetation that will achieve the same protective capability or greater capability as the surrounding natural dunes.

(B) Stabilization of critical dune areas. Local governments shall give priority for stabilization to blowouts and breaches when permitting restoration of dunes. Before permitting stabilization of washover areas, local governments shall:

(i) assess the overall impact of the project on the beach/dune system;

(ii) consider any adverse effects on hydrology and drainage which will result from the project; and

(iii) require that equal or better public beach access be provided to compensate for impairment of any public beach access previously provided by the washover area.

(4) Compensation. Compensation means compensating for the effects on dunes and dune vegetation by replacing or providing substitute dunes and dune vegetation.

(A) On-site compensation. On-site compensation consists of replacement of the affected dunes or dune vegetation on the site where the dunes and dune vegetation were originally located. A local government shall require a permittee's compensation efforts to be located on the construction site, where practicable. A local government shall require a permittee to follow the standards provided in paragraph (3)(A) of this subsection and paragraph (3)(C)(iii)-(v) of this subsection when replacing dunes or dune vegetation.

(B) Off-site compensation. Local governments shall require that a permittee's compensation efforts take place on the construction site unless the permittee demonstrates the following facts to the local government:

(i) on-site compensation is not practicable;

(ii) the off-site compensation will be located as close to the construction site as practicable;

(iii) the proffered off-site compensation has achieved a 1:1 ratio of proposed adverse effects on successful, completed, and stabilized restoration prior to beginning construction;

(iv) the permittee has notified FEMA, Region 6, of the proposed off-site compensation.

(C) Information required for off-site compensation. Local governments shall require permittees to provide the following information when proposing off-site compensation:

(i) the name, address, phone number, and fax number, if applicable, of the owner of the property where the off-site compensation will be located;

(ii) a legal description of property intended to be used for the proposed off-site compensation;

(iii) the source of sand and the dune vegetation;

(iv) all information regarding permits and certificates issued for the restoration of dunes on the compensation site;

(v) all relevant information regarding the success, current status, and stabilization of the dune restoration efforts on the compensation site;

(vi) any increase in potential flood damage to the site where the adverse effects on dunes and dune vegetation will occur and to the public and private property adjacent to that site; and

(vii) the proposed date of initiation of the compensation. Local governments shall include a condition in each permit authorizing off-site compensation which requires permittees to notify local governments in writing of the actual date of initiation within 10 working days after compensation is initiated. If the permittee fails to begin compensation on the date proposed in the application, the permittee shall provide the local government with the reason for the delay. Local governments shall take this reason into account when determining whether a permittee has violated the compensation deadline.

(5) Compensation for adverse effects on dune vegetation. Local governments shall require that permittees compensate for adverse effects on dune vegetation by planting indigenous vegetation on the affected dunes and shall consider the recommendations of the General Land Office,

federal and state natural resource agencies, and dune vegetation experts. Local governments may allow a permittee to use temporary sand fencing or another approved method of dune restoration. Local governments shall prohibit a permittee from compensating for adverse effects on dune vegetation by removing existing vegetation from private or state-owned property unless the permittee has received prior written permission from the property owner or the state. In addition to the requirement that permission be obtained from the property owner, all persons are prohibited from removing vegetation from a critical dune area or seaward of a dune protection line unless specifically authorized to do so in a dune protection permit. Local governments shall include conditions in such permits requiring the permittee to provide a copy of the written permission for vegetation removal and to identify the source of any sand and vegetation which will be used to compensate for adverse effects on dunes and dune vegetation in the mitigation plan contained in the permit application.

(g) Mitigation or compensation deadline.

(1) Initiation of compensation. Local governments shall require permittees to begin compensation for any adverse effect(s) to dunes and dune vegetation prior to or concurrent with the commencement of construction. If compensation is not completed prior to commencement of construction, the local government shall require that the permittee provide the local government with proof of financial responsibility in an amount equal to that necessary to complete the mitigation. This can be done in the form of an irrevocable letter of credit, performance bond, or any other instrument acceptable to the local government.

(2) Completion of compensation. Local governments shall require permittees to conduct compensation efforts continuously until the repaired, rehabilitated, and restored dunes and dune vegetation are equal or superior to the pre-existing dunes and dune vegetation. These efforts shall include preservation and maintenance pending completion of compensation.

(3) Local government determination of completion of compensation. Local governments shall determine a compensation project complete when the dune restoration project's position, contour, volume, elevation, and vegetative cover has reached a level that matches or exceeds the surrounding naturally formed dunes.

(4) State agency notification of compensation certification. Local governments shall provide written notification to the General Land Office after determining that the compensation is complete. The General Land Office may conduct a field inspection to verify compliance with this subchapter. If the local government does not receive an objection from the General Land Office regarding the completion of compensation within 30 working days after the General Land Office is notified in writing, the local government may certify that the compensation is complete.

(5) Violation of compensation deadline. The General Land Office recognizes that the time necessary to restore dunes and dune vegetation varies with factors such as climate, time of year, soil moisture, plant stability, and storm activity. The permittee shall be deemed to have failed to achieve compensation if a 1:1 ratio has not been achieved within three years after beginning compensation efforts.

§15.5. Beachfront Construction Standards.

(a) Local government certification of beachfront construction. This section provides the standards local governments shall follow when preparing that portion of the dune protection and beach access plan specifically related to issuing or conditioning beachfront construction certificates. In general, within its jurisdiction, a local government shall not allow diminution of the size of public beaches and shall preserve and enhance public access between public beaches and public roads lying landward. A local government certification shall consist of one of two affirmative findings: an affirmative finding by a local government that the proposed construction is consistent with the beach access portion of a local government's dune protection and beach access plan and does not encroach upon the public beach, nor does it interfere with, or otherwise restrict, the public's right to use and have access to and from the public beach; or an affirmative finding that the proposed construction is inconsistent with the beach access portion of a local government's dune protection and beach access plan. The beach access portion of the local government's dune protection and beach access plan shall provide that beachfront construction will not adversely affect or allow encroachments upon the public beach or interfere with or otherwise impair the public's right to use and have access to and from the public beach.

(b) Prohibition of certification. Local governments shall not issue a certificate authorizing beachfront construction if the local government determines that the construction:

(1) reduces the size of the public beach in any manner; or

(2) closes or otherwise impairs any existing public beach access point unless the local government simultaneously provides or requires the permittee to provide equivalent or better public access.

(c) Encroachments on public beaches.

(1) Prohibition of construction on the public beach. A local government is prohibited from issuing a certificate authorizing any person to undertake any construction on the public beach or any construction that encroaches in whole or in part on the public beach. This prohibition does not prevent the approval of man-made vegetated mounds and dune walkovers under a properly issued dune protection permit and beachfront construction certificate. Any issuance or approval of a permit, certificate, or any other instrument contrary to this subsection is void.

(2) Construction landward of the public beach. Local governments shall not issue any beachfront construction certificate authorizing construction landward of the public beach that functionally supports or depends on, or is otherwise related to, proposed or existing structures that encroach on the public beach, regardless of whether the encroaching structure is on land that was previously landward of the public beach.

(d) Dedication of new beach access points.

(1) Pursuant to the authority provided in the Open Beaches Act, §61.015(g), and as a condition of beachfront construction certification as to consistency with a local government's plan, a local government shall require a permittee to dedicate to the public new public beach access or parking area(s), where necessary, for consistency with the beach access and use, vehicular control, or beach user fee provisions of the pertinent state-approved dune protection and beach access plan. Such provisions shall incorporate the standards for pedestrian and vehicular access established in §15.7 of this title (relating to Local Government Management of the Public Beach).

(2) A local government shall require a permittee to dedicate an access area if it issues a certificate allowing a permittee to conduct activities which will impair access to and from the beach in any manner. Such a dedicated access area shall provide access equivalent to or better than the access impaired by the permittee's activity and shall be consistent with the pertinent provisions regarding beach access and use, vehicular controls, or beach user fees as contained in that local government's dune protection and beach access plan.

§15.6. Concurrent Dune Protection and Beachfront Construction Standards.

(a) Local government application of standards. This section provides the standards local governments shall follow when

issuing, denying, or conditioning dune protection permits and beachfront construction certificates. This section applies to all construction within the geographic scope of this subchapter and to either permits or certificates or both. The requirements of this section are in addition to the requirements in §15.4 of this title (relating to Dune Protection Standards), and §15.5 of this title (relating to Beachfront Construction Standards).

(b) Location of construction. Local governments shall require permittees to locate all construction as far landward as is practicable and shall not allow any construction which may aggravate erosion.

(c) Prohibition of erosion response structures. Local governments shall not issue a permit or certificate allowing construction of an erosion response structure. However, a local government may issue a permit or certificate authorizing construction of a retaining wall, as defined in §15.2 of this title (relating to Definitions), under the following conditions. These conditions only apply to the construction of a retaining wall; all other erosion response structures are prohibited.

(1) A local government shall not issue a permit authorizing the construction of a retaining wall within the area 200 feet landward of the line of vegetation.

(2) A local government may issue a permit authorizing construction of a retaining wall in the area more than 200 feet landward of the line of vegetation.

(d) Existing erosion response structures. In no event shall local governments issue permits or certificates authorizing maintenance or repair of an existing erosion response structure on the public beach or the enlargement or improvement of the structure within 200 feet landward of the natural vegetation line. Also within 200 feet landward of the natural vegetation line, local governments shall not issue a permit or certificate allowing any person to maintain or repair an existing erosion response structure if the structure is more than 50% damaged, except under the following circumstances.

(1) When failure to repair the structure will cause unreasonable hazard to a public building, public road, public water supply, public sewer system, or other public facility immediately landward of the structure.

(2) When failure to repair the structure will cause unreasonable flood hazard to habitable structures because adjacent erosion response structures will channel floodwaters to the habitable structure.

(e) Construction in flood hazard areas.

(1) A local government shall not issue a permit or certificate that does not comply with FEMA's regulations governing construction in flood hazard areas. FEMA prohibits man-made alteration of sand dunes and mangrove stands within Zones V1-30, V, and VE on the community's flood insurance rate maps which would increase the potential for flood damage.

(2) A local government shall inform the General Land Office and the FEMA regional representative in Texas before it issues any variance from FEMA regulations or allows any activity done in variance of FEMA's regulations found in Volume 44 of the Code of Federal Regulations, Parts 59-77. Variances may adversely affect a local government's participation in the National Flood Insurance Program.

(3) A local government shall not issue a permit or certificate that does not comply with FEMA minimum requirements or with the FEMA-approved local ordinance or county commissioners court order.

(f) Construction in eroding areas. Local governments with jurisdiction over eroding areas shall follow the standards provided in §15.4 of this title (relating to Dune Protection Standards) and §15.5 of this title (relating to Beachfront Construction Standards). If there is any conflict between this subsection, §15.4 of this title (relating to Dune Protection Standards), and §15.5 of this title (relating to Beachfront Construction Standards), this subsection applies. The General Land Office may supply information for or assist a local government in defining eroding areas. In addition, because of the higher risk of damage from flooding or erosion in such areas, local governments shall:

(1) require that structures built in eroding areas be elevated on pilings in accordance with FEMA minimum standards or above the natural elevation (whichever is greater);

(2) require that structures located on property adjacent to the public beach be designed for feasible relocation;

(3) prohibit a permittee from paving or altering the ground below the lowest habitable floor (however, gravel or crushed limestone may be used to stabilize driveways); and

(4) require financial assurance to fund eventual relocation or demolition of the proposed structure (i.e., through proof of Upton-Jones coverage in the National Flood Insurance Program).

(g) Construction affecting natural drainage patterns. Local governments shall not issue a certificate or permit authorizing construction unless the construction and property design is designed so as to minimize impacts on natural hydrology. Such projects shall not cause erosion to adjacent properties, critical dune areas, or the public beach.

§15.7. Local Government Management of the Public Beach.

(a) Standards applicable to local governments. This section provides standards applicable to local government issuance, denial, or conditioning of permits or certificates, as well as all other local government activities relating to management of public beaches.

(b) Construction of coastal and shore protection projects. Local governments shall encourage carefully planned beach nourishment and sediment bypassing for erosion response management and prohibit erosion response structures within the public beach and 200 feet landward of the natural vegetation line.

(c) Monitoring. A local government or the state may require a permittee to conduct or pay for a monitoring program to study the effects of a coastal and shore protection project on the public beach. Further, permittees are required to notify the state and the appropriate local government of any discernible change in the erosion rate on their property.

(d) Requirements for beach nourishment projects. A local government shall not allow a beach nourishment project unless it finds and the project sponsor demonstrates that the following requirements are met.

(1) The project is consistent with the local government's dune protection and beach access plan.

(2) The sediment to be used is of effective grain size, mineralogy, and quality or the same as the existing beach material.

(3) The proposed nourishment material does not contain the toxic materials listed in Volume 40 of the Code of Federal Regulations, Part 302.4, in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments.

(4) There will be no adverse environmental effects on the property surrounding the area from which the sediment will be taken or to the site of the proposed nourishment.

(5) The removal of sediment will not have any adverse impacts on flora and fauna.

(6) There will be no adverse effects caused from transporting the nourishment material.

(e) Restored dunes on public beaches. Sand dunes, either naturally created or restored, may aid in the preservation of the common law public beach rights by slowing beach erosion processes. Except as otherwise provided, local governments shall allow restoration of dunes on the public beach only under the following conditions. Restored dunes may be located farther seaward than the 20-foot restoration area only upon an affirmative demonstration by the permit applicant that substantial dunes would likely form farther seaward naturally. Such seaward extension past the 20-foot area must first receive prior written approval of the General Land Office and the Attorney General's Office. In the absence of such an affirmative demonstration by the applicant, a local government shall require the applicant to meet the following standards relating to the location of restored dunes.

(1) Local governments shall require persons to locate restored dunes in the area extending no more than 20 feet seaward of the landward boundary of the public beach. Local governments shall ensure that the 20-foot restoration area follows the natural migration of the vegetation line.

(2) Local governments shall not allow any person to restore dunes, even within the 20-foot corridor, if such dunes would restrict or interfere with the public use of the beach at normal high tide.

(3) Local governments shall require persons to restore dunes to be continuous with any surrounding naturally formed dunes and shall approximate the natural position, contour, volume, elevation, vegetative cover, and sediment content of any naturally formed dunes in the proposed dune restoration area.

(4) Local governments shall require persons restoring dunes to use indigenous vegetation that will achieve the same protective capability as the surrounding natural dunes.

(5) Local governments shall not allow any person to restore dunes using any of the following methods or materials:

(A) hard or engineered structures;

(B) materials such as bulkheads, riprap, concrete, or asphalt rubble, building construction materials, and any non- biodegradable items;

(C) fine, clayey, or silty sediments;

(D) sediments containing the toxic materials listed in Volume 40 of the Code of Federal Regulations, Part 302.4 in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments; and

(E) sand obtained by scraping or grading dunes or the beach.

(6) Local governments may allow persons to use the following dune restoration methods or materials:

(A) piles of sand having similar grain size and mineralogy as the surrounding beach;

(B) temporary sand fences conforming to General Land Office guidelines;

(C) organic brushy materials such as used Christmas trees; and

(D) sand obtained by scraping accreting beaches only if the scraping is approved by the local government and the project is monitored to determine any changes that may increase erosion of the public beach.

(7) Local governments shall protect restored dunes under the same restrictions and requirements as natural dunes under the local government's jurisdiction. All applications submitted to a local government for reconstructing dunes on the public beach shall be forwarded to both the General Land Office and the Attorney General's Office at least 10 working days prior to the local government's consideration of the permit. Failure of the General Land Office or the Attorney General's Office to submit comments on an application for such restored dunes shall not waive, diminish, or otherwise modify the beach access and use rights of the public.

(8) Local governments shall not allow a permittee to construct or maintain a private structure on the restored dunes within critical dune areas or seaward of a dune protection line, except for specifically permitted dune walkovers or similar access ways.

(f) Dune walkovers. Local governments shall only allow dune walkovers, including other similar beach access mechanisms, which extend onto the public beach under the following circumstances.

(1) Local governments shall require that permittees restrict the walkovers, to the greatest extent possible, to the most landward point of the public beach.

(2) Local governments shall require that permittees construct and locate the walkovers in a manner that will not interfere with or otherwise restrict public use of the beach at normal high tides.

(3) Local governments shall require that permittees relocate walkovers to follow any landward migration of the public beach or seaward migration of dunes using the following procedures and standards.

(A) After a major storm or any other event causing significant landward migration of the landward boundary of the public beach, local governments shall require permittees to shorten any dune walkovers encroaching on the public beach to the appropriate length for removal of the encroachment. This requirement shall be contained as a condition in any permit and certificate issued authorizing construction of walkovers. Local governments are required to assess the status of the public beach boundary within 30 days after a major storm or other event causing significant landward migration of the public beach. After the assessment, local governments shall inform the General Land Office and the Attorney General's Office of any encroachments on the public beach within 10 days of completing the assessment.

(B) In cases where the migration of the landward boundary of the public beach occurs slowly over a period of time or where a dune walkover needs to be lengthened because of the seaward migration of dunes, the permittee shall apply for a permit or certificate authorizing the modification of the structure.

(g) Preservation and enhancement of public beach use and access. A local government shall regulate pedestrian or vehicular beach access, traffic, and parking on the beach only in a manner that preserves or enhances existing public right to use and have access to and from the beach. A local government shall not impair or close an existing access point or close a public beach to pedestrian or vehicular traffic without prior approval from the General Land Office.

(1) For the purposes of this subchapter, beach access and use is presumed to be preserved if the following criteria are met.

(A) Parking on or adjacent to the beach is adequate to accommodate one car for each 15 linear feet of beach.

(B) Where vehicles are prohibited from driving on and along the beach, ingress/egress access ways are no farther apart than 1/2 mile.

(C) Signs are posted which conspicuously explain the nature and extent

of vehicular controls, parking areas, and access points. Local governments may establish their own beach access and use standards for General Land Office approval and certification based upon the General Land Office's affirmative finding that such standards preserve and enhance the public's right to use and access the public beach.

(2) A local government shall have an adopted, enforceable, written policy prohibiting the local government's abandonment, relinquishment, or conveyance of any right, title, easement, right-of-way, street, path, or other interest that provides existing or potential beach access, unless an alternative equivalent or better beach access is first provided by the local government consistent with its dune protection and beach access plan.

(3) This provision does not apply to any existing local government traffic regulations enacted before the effective date of this subchapter, and the former law is continued in effect until the regulations are amended or changed in whole or in part. New or amended vehicular traffic regulations enacted for public safety, such as establishing speed limits and pedestrian rights-of-way, are exempt from the certification procedure but must nevertheless be consistent with the Open Beaches Act and this subchapter.

(4) This subchapter does not prevent a local government from using its existing authority to close individual beach access points for emergencies related to public safety. However, the standards and procedures for such emergency closures shall be included in its state-approved dune protection and beach access plan.

(h) Request for state agency approval of beach access plan. When requesting approval, a local government shall submit a plan to the General Land Office and the Attorney General's Office providing the following information:

(1) a current description and map of the entire beach access system within its jurisdiction;

(2) the status of beach access demonstrated through evidence such as photographs, surveys, and statistics regarding the number of beach users;

(3) a detailed description of the proposed beach access plan replacing the existing beach access system. Such description shall demonstrate the method of providing equivalent or better access to and from the public beaches; and

(4) a vehicular control plan, if the local government proposes either new or amended vehicular controls for the public beach. The vehicular control plan must include, at a minimum, the following information:

(A) an inventory and description of all existing vehicular access ways to and from the beach and existing vehicular use of the beach;

(B) all legal authority, including local government ordinances that impose existing vehicular controls;

(C) a statement of any short-term or long-range goals for restricting or regulating vehicular access and use;

(D) an analysis and statement of how the proposed vehicular controls are consistent or inconsistent with the state standards for preserving and enhancing public beach access set forth in this subchapter. If a local government or the state determines that the vehicular controls are not consistent with state standards, the local government shall prepare a plan for achieving consistency within a period of time to be determined by the General Land Office and the Attorney General's Office. This plan shall include a detailed description of the means and methods of upgrading the availability of public parking and access ways, including funding for such improvements; and

(E) a description of how vehicular management relates to beach construction management, beach user fees, and dune protection within the jurisdiction of the local government.

(i) Integration of vehicular control plan and other plans. The vehicular control plan may be a part of a local government's beach access and use plan required under the Texas Natural Resources Code, §61.015, any beach user fee plan required under the Texas Natural Resources Code, §61.022, and any dune protection program required under the Texas Natural Resources Code, Chapter 63. The General Land Office encourages local governments to combine and integrate these various plans and programs.

(j) State agency approval of vehicular control plan. A local government shall submit the vehicular control plan to the General Land Office and the Attorney General's Office no later than 90 working days prior to taking any action on the plan. This provision does not prevent a local government from exercising its existing authority over vehicular controls in emergencies. The standards and procedures for such emergency vehicular controls shall be submitted to the state in the vehicular control portion of a local government's dune protection and beach access plan. A plan may be approved if the vehicular controls are found to be consistent with the Open Beaches Act and with this subchapter. Prior to final adoption or implementation of a new or amended vehicular control ordinance, the local government shall obtain state certification of the plan for the vehicular control pursuant to the Open Beaches Act, §61.022.

(k) Maintaining the public beach. Local governments shall prohibit beach maintenance activities unless maintenance activities will not materially weaken dunes or dune vegetation or reduce the protective functions of the dunes. Local governments shall prohibit beach maintenance activities which will result in the significant redistribution of sand or which will significantly alter the beach profile. All sand moved or redistributed due to beach maintenance activities shall be returned to a location seaward of a dune protection line or within critical dune areas. The General Land Office encourages the removal of litter and other debris by handpicking or raking and strongly discourages the use of machines (except during peak visitation periods) which disturb the natural balance of gains and losses in the sand budget and the natural cycle of nutrients.

(l) Prohibitions on signs. A local government shall not cause any person to display or cause to be displayed on or adjacent to any public beach any sign, marker, or warning, or make or allow to be made any written or oral communication which states that the public beach is private property or represent in any other manner that the public does not have the right of access to and from the public beach or the right to use the public beach as guaranteed by this subchapter, the Open Beaches Act, and the common law right of the public.

§15.8. Beach User Fees.

(a) Eligibility. Local governments shall not initiate or amend a beach user fee unless the governing body of the local government with jurisdiction over the area subject to the fee has a state approved dune protection and beach access plan.

(b) Reciprocity of fees. Within each county, local governments are required to establish a state-approved system for reciprocity of fees and fee privileges among the county and the different local governments authorized to charge beach user fees. The establishment of a system of beach user fee reciprocity shall be a condition of state approval of local dune protection and beach access plans.

(c) Amount of beach user fees.

(1) A local government shall not impose a fee or charge for the exercise of the public right of access to and from public beaches. A local government may charge beach users a fee in exchange for providing

services to beach users in general. A local government may only impose a beach user fee if the fee is reasonable taking into account the cost to the local government of providing public services and facilities directly related to the public beach. A reasonable fee is one that recovers the cost of providing and maintaining beach-related services. In addition, any fee collected for off-beach parking to provide access to and from the public beach is considered a beach user fee.

(2) Local governments shall not impose a beach user fee which:

(A) exceeds the necessary and actual cost of providing reasonable beach-related public facilities and services;

(B) unfairly limits public use of and access to and from public beaches in any manner;

(C) is inconsistent with this subsection or the Open Beaches Act; or

(D) discriminates on the basis of residence.

(d) Beach user fee plan. A local government that proposes a new or amended beach user fee shall first prepare a plan that includes, at a minimum, the following information:

(1) a description of the current beach access system within its jurisdiction demonstrated through evidence such as photographs, surveys, and statistics regarding the number of beach users;

(2) a listing and description of all existing beach user fees charged by the local government and by all other local governments in the same county;

(3) all legal authority, including local ordinances that authorize the collection of existing beach user fees;

(4) an analysis and statement of how the proposed user fee is or is not consistent with state standards set forth in this subchapter for preserving and enhancing public beach access;

(5) how the beach user fee relates to beachfront construction, vehicular controls, and parking, and dune protection within the jurisdiction of the local government;

(6) a statement of any short-term or long-range goals relating to the collection and use of beach user fees.

(e) State agency approval of beach user fees. A local government shall not impose a beach user fee or amend an existing beach user fee that is inconsistent with the beach user fee portion of its dune protection and beach access plan. To receive state approval for initiating its beach user fee plan or amending a beach user fee, a local government shall submit its beach user fee plan to the General Land Office and the Attorney General's Office no later than 90 working days prior to any local government action on the beach user fee. The General Land Office shall certify whether the initiation or amendment of a beach user fee is consistent with this subchapter and the Open Beaches Act. Certification of consistency shall be by adoption into the rules authorized by the Open Beaches Act.

(f) Beach user fee revenues. Revenues from beach user fees may be used only for beach-related services. For each fiscal year, a local government shall not spend more than 10% of beach user fee revenues on reasonable administrative costs directly related to beach-related services. Each local government shall send quarterly reports to the General Land Office stating the amount of beach user fee revenues collected and itemizing how beach user fee revenues are expended. The General Land Office may prescribe reporting forms or methods. The General Land Office shall suspend the local government's privilege to collect fees and shall revoke approval of any pertinent dune protection and beach access plan if the beach user fee revenues have been spent on services which are not beach-related.

(g) Beach user fee accounts. Local governments shall follow the following methods for administering beach user fee accounts.

(1) Beach user fee revenues shall be maintained and accounted for so that fee collections may be directly traced to expenditures on beach-related services. Beach user fee revenues shall not be commingled with any other funds and shall be maintained in separate bank accounts.

(2) Beach user fee revenues shall be maintained in a separate account and documented in a separate financial statement for each beach user fee. Beach user fee revenue account balances and expenditures shall be documented according to generally accepted accounting principles.

(h) Free beach access. Local governments that collect a beach user fee for on-beach parking or driving or for off-beach parking for beach access shall maintain free public beach access by providing areas where no fee is charged for parking on or off the beach and for pedestrian access. This requirement applies to each state-approved dune protection and beach access plan, not to each local government with jurisdiction over the public beach.

(i) Access for disabled persons. Local governments shall establish, preserve, and enhance access for disabled persons. Provisions for access for disabled persons shall be included in local government dune protection and beach access plans.

(j) Identification of fee and non-fee areas. For any local government collecting a beach user fee for on-beach parking or driving, both fee and non-fee beach areas shall be conspicuously marked with signs that clearly indicate, at a minimum, the location of both the fee and non-fee areas and the identity of the local government collecting the fee. In addition, maps identifying fee and non-fee areas shall be provided to the public by any local government collecting a beach user fee.

(k) Coordination with other beach-related plans. The beach user fee plan shall be a part of a local government's beach access and use plan required under the Open Beaches Act, §61.015, any vehicular control plan required under the Open Beaches Act, §61.022, and any dune protection program required under the Texas Natural Resources Code, Chapter 63. The General Land Office requires local governments to combine and integrate these various plans.

§15.9. Penalties.

(a) In addition to any penalties assessed by a local government, any person (as defined in this subchapter) who violates either the Dune Protection Act, the Open Beaches Act, this subchapter, or a permit or certificate condition is liable to the General Land Office for a civil penalty of not less than $50 nor more than $1,000 per violation per day. Each day the violation occurs or continues constitutes a separate violation. Violations of the Dune Protection Act, the Open Beaches Act, and the rules adopted pursuant to those statutes are separate violations, and the General Land Office may assess separate penalties. The assessment of penalties under one Act does not preclude another assessment of penalties under the other Act for the same act or omission. Conversely, compliance with one statute and the rules adopted thereunder does not preclude the General Land Office from assessing penalties under the other statute and the rules adopted pursuant to that statute.

(b) Local governments are included in the definition of "person" in §15.2 of this title (relating to Definitions), and as such, they are liable for penalties for any violations of this subchapter, the Dune Protection Act, and the Open Beaches Act. A local government will be liable for penalties for such violations, including, but not limited to, failure to submit a dune protection and beach access plan to the General Land Office and the Attorney General's Office; failure to maintain and enforce its plan; and failure to implement the plan. These violations are in addition to any other violations

of this subchapter for which a local government may be liable for penalties.

(c) In determining whether the assessment of penalties is appropriate, the General Land Office will consider the following mitigating circumstances: acts of God, war, public riot, or strike; unforeseeable, sudden, and natural occurrences of a violent nature; and willful misconduct by a third party not related to the permittee by employment or contract.

§15.10. General Provisions.

(a) Construction. A local government's ordinances, orders, resolutions, or other enactments covered by this subchapter shall be read in harmony with this subchapter. If there is any conflict between them which cannot be reconciled by ordinary rules of legal interpretation, this subchapter controls. Certification of a local government's beach access and use plan by the General Land Office may not be construed to expand or detract from the statutory or constitutional authority of that local government or any other governmental entity, nor may any person construe such certification to authorize a local government or any other governmental entity to alienate public property rights in public beaches.

(b) Boundary of the public beach. The attorney general shall make determinations on issues related to the location of the boundary of the public beach and encroachments on the public beach pursuant to the requirements of the Open Beaches Act, §61.016 and §61.017, and §15.3 (b) of this title (relating to Administration). The General Land Office and the local governments will consult with the attorney general whenever questions of encroachment and boundaries arise with respect to the public beach.

(c) Public beach presumption. Except for beaches on islands or peninsulas not accessible by public road or ferry facility, in administering its plan a local government shall presume that any beach fronting the Gulf of Mexico within its jurisdiction is a public beach unless the owner of the adjacent land obtains a declaratory judgment otherwise under the Open Beaches Act, §61.019. That section provides that any person owning property fronting the Gulf of Mexico whose rights are determined or affected by this subchapter may bring suit for a declaratory judgment against the state to try the issue or issues.

(d) Violations. No person shall violate any provision of this subchapter, a local government dune protection and beach access plan, or any permit or certificate or the conditions contained therein.

(e) Reporting violations. Any local government with knowledge of a violation or a threatened violation of a permit, a certificate, its dune protection and beach access plan, the Dune Protection Act, the Open Beaches Act, or this subchapter shall inform the General Land Office of the violations within 24 hours.

(f) Withdrawal of plan certification. The General Land Office may withdraw certification of all or any part of a local government's dune protection and beach access plan if the local government does not comply with its plan, this subchapter, the Dune Protection Act, or the Open Beaches Act. Without further action by the General Land Office, a local government loses, by operation of law, the authority to issue permits or certificates authorizing construction within the geographic scope of this subchapter and the privilege to collect beach user fees if state agency certification of its dune protection and beach access plan is withdrawn.

(g) Notice of withdrawal of plan certification. The General Land Office will notify the local government and the Attorney General's Office 60 days prior to withdrawing General Land Office certification of the local government's plan. The local government may submit to the General Land Office any evidence demonstrating full compliance with its plan, this subchapter, the Dune Protection Act, and the Open Beaches Act. The General Land Office will consider the good faith efforts of any local government to immediately and fully comply with those laws during the 60-day period after the notification of intent to withdraw certification.

(h) The provisions contained in this subchapter do not limit the authority of the General Land Office and the Attorney General's Office to enforce this subchapter, the Dune Protection Act, and the Open Beaches Act pursuant to the Texas Natural Resources Code, §63.181 and §61.018.

(i) Appeals. The Dune Protection Act, §63.151, and the Open Beaches Act, §61.019, contain the provisions for appeals related to 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 legal authority.

Issued in Austin, Texas, on January 27, 1993.

TRD-9318226 Garry Mauro
Commissioner
General Land Office

Effective date: February 17, 1993

Proposal publication date: September 18, 1992

For further information, please call: (512) 463-5007

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Title 34. Public Finance
Part I. Comptroller of Public Accounts
Chapter 7. Administration of State Lottery Act
Subchapter D. Lottery Game Rules

• 34 TAC §7.304

The Comptroller of Public Accounts adopts new §7.304, concerning on-line game rules (general), without changes to the proposed text as published in the December 22, 1992, issue of the *Texas Register* (17 TexReg 9007).

The purpose of the new section is to provide general game details and requirements for all Texas Lottery on-line games, including the sale of tickets, drawings, claim procedures, validated requirements, payment of prizes, and settlement procedures. An emergency section was filed November 6, 1992, and published in the November 13, 1992 issue of the *Texas Register* (17 TexReg 7977).

No comments were received regarding adoption of the new section.

The new section is adopted under the State Lottery Act, §2.02, which provides the comptroller with the authority to adopt all rules necessary to administer the State Lottery 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 January 26, 1993.

TRD-9318184 Tres Lorton
Senior Legal Counsel,
General Law Section
Comptroller of Public
Accounts

Effective date: February 16, 1993

Proposal publication date: December 22, 1992

For further information, please call: (512) 463-4028

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• 34 TAC §7.305

The Comptroller of Public Accounts adopts new §7.305, concerning "Lotto Texas" on-line game rule, without changes to the proposed text as published in the December 22, 1992, issue of the *Texas Register* (17 TexReg 9010).

The purpose of the new section is to provide specific game details and requirements for the Texas Lottery's on-line game "Lotto Texas," such as type of play, prizes, method of selecting winning numbers, drawings, and the allocation of revenues. An identical emergency section was filed November 6, 1992, and published in the November 13, 1992 issue of the *Texas Register* (17 TexReg 7979).

No comments were received regarding adoption of the new section.

The new section is adopted under the State Lottery Act, §2.02, which provides the comptroller with the authority to adopt all rules necessary to administer the State Lottery 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 January 26, 1993.

TRD-9318185 Tres Lorton
Senior Legal Counsel,
General Law Section
Comptroller of Public
Accounts

Effective date: February 16, 1993

Proposal publication date: December 22, 1992

For further information, please call: (512) 463-4028

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. 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 prior to 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 named 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. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the Office of the Secretary of State in lobby of 221 East 11th Street, Austin. These notices may contain 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 on Aging

Thursday, February 4, 1993, 9:30 a.m. The Texas Board on Aging's Area Agency on Aging (AAA) Operations Committee will meet at the Texas Department on Aging, 1949 South IH-35, Third Floor Large Conference Room, Austin. According to the agenda summary, the committee will consider and possibly act on: call the meeting to order; discuss approval of the November 23, 1992, and January 7, 1993, minutes; hold a public hearing on rules for designation of planning and service areas; review comments on published standards and recommend to board for final adoption; review standards for publication and recommend to board; and status report on indirect costs.

Contact: Mary Sapp, P.O. Box 12687, Austin, Texas 78711, (512) 444-2727.

Filed: January 27, 1993, 11:03 a.m.

TRD-9318229

Thursday, February 4, 1993, 1 p.m. The Texas Board on Aging's Planning Committee of the Texas Department on Aging will meet at the Texas Department on Aging, 1949 South IH-35, Third Floor Small Conference Room, Austin. According to the complete agenda, the committee will consider and possibly act on: calling the meeting to order; discuss approval of the minutes of September 24, 1992 meeting; review process for discretionary grants/projects; review quarterly state plan report; review quarterly discretionary grants/projects report; review needs assessment design for state and regional levels; review planning process and format for regional plans; implementation plan for the statement of board position on the role of area agencies on aging and recommend to board; and adjourn.

Contact: Mary Sapp, P.O. Box 12687, Austin, Texas 78711, (512) 444-2727.

Filed: January 27, 1993, 11:03 a.m.

TRD-9318230

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Texas Air Control Board

Monday, February 22, 1993, Wednesday, March 10, 1993, Wednesday, March 24, 1993, and Wednesday, April 14, 1993, 9 a.m. The Permits Program of the Texas Air Control Board will meet at 12118 North IH-35, Park 35 Technology Center, Building A, Room 201S, Austin. According to the agenda summary, the board will conduct four work sessions to solicit comments and discuss implementation of the Federal Clean Air Act, Title V operating permit program.

Contact: Art Corcoran, 121118 North IH-35, Park 35 Circle, Austin, Texas 78753, (512) 908-1237.

Filed: January 27, 1993, 9:20 a.m.

TRD-9318221

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Texas Commission for the Blind, Texas Rehabilitation Commission

Monday-Tuesday, February 8-9, 1993, 9 a.m. The State Independent Living Council of the Texas Commission for the Blind, Texas Rehabilitation Commission will meet at the Doubletree Hotel, 6505 IH-35 North, Austin. According to the agenda summary, on Monday, the council will call the meeting to order; hear agency reports from Texas Rehabilitation Commission and the Texas Commission for the Blind; public comment; discuss state independent living plan; and on Tuesday, hear agency program reports on independent living services from Texas Rehabilitation Commission and Texas Commission for the Blind; discuss other business; and adjourn.

Contact: Mel Fajkus, 4900 North Lamar Boulevard, Austin, Texas 78756, (512) 483-4133.

Filed: January 26, 1993, 3:06 p.m.

TRD-9318208

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Coastal Coordination Council

Thursday, February 4, 1993, 10 a.m. The Coastal Coordination Council will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the complete agenda, the council will call the meeting to order; make opening remarks; discuss approval of minutes of November 5, 1992 meeting; report from the executive committee; reschedule May 6, 1993 meeting to June 3, 1993; GLO Beach/Dune Management Rules; state agency task force; progress reports to NOAA; CMP boundary considerations; CMP goal statement; status report on dolphin deaths in Coastal Bend area bays; discuss produced waters issue and EPA proposed ban; open discussion; and adjourn.

Contact: Janet Fatheree, 1700 North Congress Avenue, Room 730, Austin, Texas 78701-1495, (512) 463-5385.

Filed: January 27, 1993, 4:24 p.m.

TRD-9318250

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Texas Department of Criminal Justice

Wednesday, February 10, 1993, 3 p.m. The Board of Criminal Justice, Subcommittee on Health Care of the Texas Department of Criminal Justice will meet at the TDCJ Austin Office, 816 Congress Avenue, Suite 500, Austin. According to the complete agenda, the subcommittee will call the meeting to order; discuss approval of minutes; introductions; discuss managed health care program; jail inmate bed health care delivery; JCAHO accreditation standards; critical medical staffing status; Ruiz update; interactive video update; farewell to Dr. Alexander; and adjourn.

Contact: Andrea Scott, P.O. Box 99, Huntsville, Texas 77342-0099, (409) 294-2931.

Filed: January 27, 1993, 3:23 p.m.

TRD-9318240

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Daughters of the Republic of Texas, Inc.

Friday, February 5, 1993, 8:30 a.m. The Board of Management of the Daughters of the Republic of Texas, Inc. will meet at the Howard Johnson North-Plaza Hotel, 7800 North IH-35, Austin. According to the agenda summary, the board will make a determination of quorum-public session; give invocation; pledge to flags; reports and recommendations for action by committees operating state owned properties; recess to closed/executive session; reconvene in open meeting, public session to discuss motions arising from closed/executive session; and adjourn.

Contact: Betty F. Burr, 613 Bostwick, Nacogdoches, Texas 75961, (409) 564-7478.

Filed: January 28, 1993, 9:37 a.m.

TRD-9318259

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Texas Commission for the Deaf and Hearing Impaired

Friday, February 12, 1993, 9 a.m. The Texas Commission for the Deaf and Hearing Impaired will meet at 1524 South IH 35, #200, Austin. According to the agenda summary, the commission will call the meeting to order; hear chairperson's report; discuss approval of minutes; interim executive director's report; budget/financial report; BEI report; information items; plan next commission meeting; adjourn; and hold public hearing.

Contact: Ralph H. White, 1524 South IH 35, #200, Austin, Texas 78704, (512) 444-3323.

Filed: January 28, 1993, 8:47 a.m.

TRD-9318253

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East Texas State University

Friday, February 5, 1993, 9 a.m. The Board of Regents of the East Texas State University will meet at East Texas State University, McDowell Administration Building, Commerce. According to the complete agenda, the board will discuss approval of its agenda and minutes of the November 6, 1992 meeting; consider the follow matters: 1993-1994 curriculum changes; ETSU-Commerce; adjustments to Fiscal Year 1993 Operating Budget; ETSU-Commerce and Texarkana; Summer 1993 Faculty Salary Budget, ETSU-Comerce and Texarkana; approval of authority to execute banking transactions, ETSU-Texarkana; tuition and fee schedule, ETSU-Commerce and Texarkana; housing system fee schedule-ETSU-Commerce; summer repair projects, ETSU-Commerce; meet in executive session pursuant to Article 6252-17, §2(g); determination of date and location of spring and summer board meetings; and policy on faculty leaves of absence.

Contact: Charles Turner, East Texas State University, E. T. Station, Commerce, Texas 75429, (903) 886-5539.

Filed: January 27, 1993, 2:49 p.m.

TRD-9318239

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Employees Retirement System of Texas

Friday, February 5, 1993, 9:30 a.m. The Group Benefits Advisory Committee of the Employees Retirement System of Texas will meet at the Employees Retirement System of Texas, Auditorium (First Floor), 18th and Brazos Streets, Austin. According to the agenda summary, the committee will call the meeting to order; recognize visitors and guests; discuss approval of minutes from previous meeting; announcement/update-chair; ERS update; standing subcommittee appointments; ad hoc subcommittee appointments and action plan; other related benefit matters; and adjourn.

Contact: James W. Sarver, 18th and Brazos Streets, Austin, Texas 78701, (512) 867-3217.

Filed: January 27, 1993, 1:27 p.m.

TRD-9318234

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Texas Department of Housing and Community Affairs

Monday, February 8, 1993, 2 p.m. The Audit Committee of the Board of Directors of the Texas Department of Housing and Community Affairs will meet at 811 Barton Springs Road, Suite 300, Austin. According to the complete agenda, the committee will consider and possibly act on: approval of fiscal year 1993 internal audit plan; presentation and recommendation of approval of KPMG management letter for Housing Finance Division; recommendations for handling allegations of impropriety within the department; update on status of KPMG audit of community affairs (including proposed management letter comments); update on status of state auditors examination (including proposed management letter comments; update on status of audit issues as requested by committee at December 7, 1992 audit committee meeting; update on internal audit activities and findings. Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822 or Relay Texas at 1 (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3937.

Filed: January 26, 1993, 3:31 p.m.

TRD-9318209

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Texas Department of Insurance

Wednesday, February 3, 1993, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of Don Childers of Amarillo, for a Group I, Legal Reserve Life Insurance Agent's license.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: January 26, 1993, 3:51 p.m.

TRD-9318210

Friday, February 5, 1993, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the appeal of the Bowler Hat Antique Mall from a decision of the Texas Workers' Compensation Insurance Facility.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: January 26, 1993, 3:51 p.m.

TRD-9318213

Friday, February 5, 1993, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the proposed plan of merger of Fidelity National Title Insurance Company of Texas, Austin, into Fidelity National Title Insurance Company, Phoenix, Arizona with Fidelity National Title Insurance Company being the survivor.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: January 26, 1993, 3:51 p.m.

TRD-9318211

Monday, February 8, 1993, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Grady Dean Smith of Henderson, who holds a Group I, Legal Reserve Life Insurance Agent's license.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: January 26, 1993, 3:51 p.m.

TRD-9318212

Thursday, February 25, 1993, 9 a.m. The State Board of Insurance of the Texas Department of Insurance will meet in Room 100, William P. Hobby Building, 333 Guadalupe Street, Austin. According to the complete agenda, the board will hold a public hearing under Docket Number R-1966 to consider possible adoption of proposed amendments to 28 TAC §5.401 which provides protection to applicants for private passenger automobile insurance who have not had such insurance prior to application.

Contact: Angelina Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: January 27, 1993, 11:39 a.m.

TRD-9318232

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Lamar University System, Board of Regents

Monday, February 1, 1993, 6:30 p.m. The Board of Regents of Lamar University System met at Nation's Bank, Suite 1000, 2615 Calder, Beaumont. According to the complete agenda, the board met in executive session, pursuant to provisions of Vernon's Civil Statutes, Article 6252-17, §2(g) for the purpose of interviewing candidate for position of President of Lamar-Beaumont.

Contact: James A. (Dolph) Norton, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: January 26, 1993, 1:37 p.m.

TRD-9318200

Tuesday, February 2, 1993, 2 p.m. The Board of Regents of Lamar University System will meet at the John Gray Institute, Chancellor's Conference Room, 855 Florida, Beaumont. According to the complete agenda, the board will meet in executive session, pursuant to provisions of Vernon's Civil Statutes, Article 6252-17, §2(g) for the purpose of interviewing candidate for position of President of Lamar-Beaumont.

Contact: James A. (Dolph) Norton, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: January 26, 1993, 1:37 p.m.

TRD-9318199

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Texas Department of Licensing and Regulation

Tuesday, February 9, 1993, 9 a.m. The Inspections and Investigations, Personnel Employment Services of the Texas Department of Licensing and Regulation will meet at 920 Colorado, E.O. Thompson Building, Third Floor Conference Room, Austin. 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 Keegan and Keegan for violation of Vernon's Texas Civil Statutes, Articles 5221a-7, §7(a), §7(c), and §3(a)(9), 16 TAC §63. 20(c), §63.40(a) and §63.71(a)(8) and 9100.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 475-2899.

Filed: January 27, 1993 4:29 p.m.

TRD-9318251

Thursday, February 16, 1993, 9 a.m. The Inspections and Investigations, Manufactured Housing of the Texas Department of Licensing and Regulation will meet at 920 Colorado, E.O. Thompson Building, Room 1012, Austin. 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 Tommy Phillips doing business as Western Star Mobile Home Service for violation of 16 TAC §§69.28(a), 69.121(c) and 69.54(b)(1), Article 6252-13(a) and Article 9100.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: January 27, 1993, 11:11 a.m.

TRD-9318231

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Texas State Board of Medical Examiners

Thursday, February 11, 1993, 12:30 p.m. The Hearings Division of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the division will hold a termination request, Steven Paul Bowers, M.D., Dallas; probationary appearances: Emerson Emory, M.D., Dallas; Carlos Antonio Fernandez, M.D., El Paso; Adolph Frederick Kauffmann III, M.D., Fort Worth; Victor Eugene McCall, M.D., Duncanville; Ardashes Mirzatuny, M.D., Terrell; and John Summerfield Townsend IV, M.D., Temple. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: January 26, 1993, 11:41 a.m.

TRD-9318196

Friday, February 12, 1993, 9 a.m. The Hearings Division of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the agenda summary, the division will hold probationary appearances; and termination and modification requests. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: January 26, 1993, 11:41 a.m.

TRD-9318197

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Texas Parks and Wildlife Department

Friday, February 12, 1993, 10:30 a.m. The Aquaculture Executive Committee of the Texas Parks and Wildlife Department will meet at the Capitol View Terrace, Marriott at the Capitol, 701 East 11th Street, Austin. According to the agenda summary, the committee will call the meeting to order; discuss approval of minutes;

presentation of aquaculture strategic plan and report to Legislature; aquaculture discussions and public comments; discuss other business; and adjourn.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: January 26, 1993, 1:37 p.m.

TRD-9318201

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Texas State Board of Physical Therapy Examiners

Tuesday, February 16, 1993, 9 a.m. The Texas State Board of Physical Therapy Examiners will meet at 3001 South Lamar Boulevard, Suite 101, Austin. According to the agenda summary, the board will discuss approval of minutes; introduce new board member; review and discuss criterion-referenced grading; committee reports; executive director's report; chairperson's report; new business; and adjourn.

Contact: Sherry L. Lee, 3001 South Lamar Boulevard, Suite 101, Austin, Texas 78704, (512) 443-8202.

Filed: January 27, 1993, 2:47 p.m.

TRD-9318237

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Public Utility Commission of Texas

Monday, February 8, 1993, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will conduct a prehearing conference in Docket Number 11647-application of Central Telephone Company of Texas to amend certificate of convenience and necessity within Hamilton County.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 26, 1993, 2:59 p.m.

TRD-9318207

Tuesday, February 9, 1993, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11735-application of Texas Utilities Electric Company for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 27, 1993, 3:25 p.m.

TRD-9318242

Wednesday, February 24, 1993, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11253-complaint of the Sunmeadow Community Improvement Association of Friendswood, against Southwestern Bell Telephone Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 27, 1993, 3:25 p.m.

TRD-9318243

Thursday, April 29, 1993, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will conduct a prehearing in Docket Number 11681-application of United Telephone Company of Texas, Inc., for authority to locate and maintain certain records outside the State of Texas.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 26, 1993, 2:59 p.m.

TRD-9318206

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State Securities Board

Thursday, February 11, 1993, 9 a.m. The Enforcement Division of the State Securities Board will meet at the State Office of Administrative Hearings, Clements Building, 300 West 15th Street, Fourth Floor, Room 408, Austin. According to the agenda summary, the division will hold a hearing for the purpose of determining whether the registration of Euro-Atlantic Securities, Inc., as a dealer in securities in Texas should be revoked or suspended, and whether the application of Dean S. Dignoti as a securities salesman and agent should be denied and whether a Cease and Desist order should be issued prohibiting Euro-Atlantic Securities, Inc. and Dean S. Dignoti from offering for sale securities in violation of the Securities Act of the State of Texas.

Contact: John Morgan, 221 West Sixth Street, Austin, Texas 78701, (512) 474-2233.

Filed: January 27, 1993, 11:03 a.m.

TRD-9318228

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Interagency Council on Sex Offender Treatment

Friday, February 5, 1993, 9:30 a.m. The Board of the Interagency Council on Sex Offender Treatment will meet at 1106 Clayton Lane, #205E, Second Floor Conference Room, Austin. According to the complete agenda, the board will convene by chair Judy Briscoe; discuss adoption of minutes; election of new officers; executive director's report; review regulatory options for RSOTP's; discuss approval of biennial report; proposed standards of care; registry criteria rules; approval of training proposal on assessment tools; discuss other business; hear public comment; and adjourn.

Contact: Eliza May, P.O. Box 12546, Austin, Texas 78711-2546, (512) 454-1314.

Filed: January 27, 1993, 8:53 a.m.

TRD-9318219

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Texas Surplus Property Agency

Thursday, February 4, 1993, 10:30 a.m. The Governing Board of the Texas Surplus Property Agency will meet at the General Services Commission, Room 402 (Board Room), 1711 San Jacinto Street, Austin. According to the complete agenda, the board will discuss approval of the minutes of November 17, 1992 board meeting; general public presentations; handling fee rate review; approval of completion of Houston District Warehouse expansion; and discuss internal audit function.

Contact: Marvin J. Titzman, P.O. Box 8120, San Antonio, Texas 78208, (210) 661-2381.

Filed: January 27, 1993, 1:12 p.m.

TRD-9318233

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Texas Water Commission

Wednesday, February 10, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider approving the following matters hazardous waste permits; water quality permits; renewals; amendments; district matters; rate matters; water right permits; examiner memorandums and briefing of Keep Texas Beautiful, Inc. In addition, the commission will consider items previously posted for open meeting at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but, not limited to rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: January 27, 1993, 3:58 p.m.

TRD-9318244

Wednesday, February 10, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider approving the following matters enforcement actions; examiner's proposal for decision; review of rates; meet in executive session; in addition, the commission will consider items previously posted for open meeting at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but, not limited torescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: January 27, 1993, 3:58 p.m.

TRD-9318245

Tuesday, February 16, 1992, 2:30 p.m. The Texas Water Commission will meet at the Glasscock County Courthouse, District Courtroom, Highway 158 and Curry Street, Garden City. According to the agenda summary, the commission will hold a public hearing to consider an application for a municipal solid waste facility permit by Glasscock County, Proposed Permit Number MSW2154.

Contact: Ann Scudday, P.O. Box 13087, Austin, Texas 78711, (512) 908-6687.

Filed: January 28, 1993, 9:19 a.m.

TRD-9318257

Thursday, February 18, 1993, 1 p.m. The Texas Water Commission will meet at the Hallettsville City Hall, 101 North Main Street, Hallettsville. According to the agenda summary, the commission will hold a public meeting to consider an application for a municipal solid waste facility permit by the City of Hallettsville, Proposed Permit Number MSW2220.

Contact: Ann Scudday, P.O. Box 13087, Austin, Texas 78711, (512) 908-6687.

Filed: January 28, 1993, 9:19 a.m.

TRD-9318256

Friday, February 26, 1993, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on Joy Powell and Irene Powell doing business as Powell Farm Well's to consider an application for a water certificate of convenience and necessity (CCN) to allow them to provide water utility service in Denton County. Applicants also propose decertification of a portion of the City of Denton's CCN Number 10195. The proposed water utility service area is approximately seven miles southeast of downtown Denton, and includes approximately 15 acres and 15 current customers. Docket Number 9835-C. Staff of the commission is recommending this Docket Number 9835-C be combined with Docket Number 9833-G, which is an application for a water rate increase submitted by Joy Powell and Irene Powell doing business as Powell Farm Well.

Contact: Deborah Thomas, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 27, 1993, 3:59 p.m.

TRD-9318248

Tuesday, March 16, 1993, 11 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Weatherford Community Center, 701 Narrow Street, Weatherford. According to the agenda summary, the commission will consider an application for renewal of Permit 13438-01 for authorization to discharge treated domestic wastewater from the facility located approximately one mile southwest of the intersection of Interstate Highway 20 and Farm to Market Road 1187 in Parker County.

Contact: Bill Zukauckas, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 27, 1993, 3:58 p.m.

TRD-9318246

Tuesday, April 6, 1993, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 211, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on a petition filed by Chalk Hill Water Supply Corporation requesting authorization for conversion to a Special Utility District; and transfer of Certificate of Convenience and Necessity Number 11746 from Chalk Hill Water Supply Corporation to Chalk Hill Special Utility District.

Contact: Elizabeth Bourbon, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 27, 1993, 3:59 p.m.

TRD-9318249

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Texas Workers' Compensation Research Center

Wednesday, February 10, 1993, 10 a.m. The Board of Directors of the Texas Workers' Compensation Research Center will meet at the Stephen F. Austin Building, Room 119, 1700 South Congress Avenue, Austin. According to the complete agenda, the board will discuss and act on the following items: call the meeting to order; discuss approval of minutes of meetings of November 16, 1992 and November 23, 1992; make announcements; research progress report; election of vice-chair; approval of board of director's annual report; revision of agency goal; set schedule for Fiscal Year 1993 meetings; and adjourn. Individuals who may require auxiliary aids or services for this meeting should contact Lavon Guerrero at (512) 346-6197 at least two days prior to the meeting so that appropriate arrangements can be made.

Contact: Annette Gula, 3636 Executive Center Drive, Suite G-22, Austin, Texas 78731, (512) 346-6197.

Filed: January 28, 1993, 8:58 a.m.

TRD-9318254

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Regional Meetings

Meetings Filed January 26, 1993

The Brazos Valley Development Council Regional Advisory Committee on Aging will meet at the Council Offices, 3006 East 29th Street, Suite 2, Bryan, February 2, 1993, at 2:30 p.m. Information may be obtained from Roberta Lindquist, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 776-2277. TRD-9318202.

The East Texas Council of Governments Private Industry Council met at the ETCOG Office, Kilgore, February 1, 1993, at 1:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9318205.

The Gulf Bend Mental Health and Mental Retardation Center Parent Advisory Committee/Texas Children's MH Plan will meet at 1404 Village Drive, Victoria, February 3, 1993, at 7 p.m. Information may be obtained from Linda F. White, 1404 Village Drive, Victoria, Texas 77901, (512) 575-0611. TRD-9318195.

The Gulf Coast Quality Work Force Planning Committee TechForce 2000 Inc. will meet at the Harris County Private Industry Council, I-10 East and Federal Road, Nations Bank Building, Houston, February

2, 1993, at 10 a.m. Information may be obtained from Karen E. Baird, 250 North Sam Houston Parkway East, Houston, Texas 77060, (713) 591-9306. TRD-9318198.

The Houston-Galveston Area Council H-GAC General Assembly met at the Westin Galleria Hotel, Monarch Room, 24th Floor, 5060 West Alabama, Houston, January 29, 1993, at 6:30 p.m. Information may be obtained from Cynthia Marquez, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9318194.

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Meetings Filed January 27, 1993

The Austin-Travis County MHMR Center Board of Trustees met at 1430 Collier Street, Board Room, Austin, January 28, 1993, at 7 a.m. Information my be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78704, (512) 447-4141 or (512) 440-4031. TRD-9318252.

The Colorado River Municipal Water District Board of Directors will meet at the Guest Quarters Hotel, 303 West 15th Street, Austin, February 2, 1993, at 4 p.m. Information may be obtained from O. H. Ivie, P.O. Box 869, Big Spring, Texas 79720, (915) 267-6341. TRD-9318236.

The Concho Valley Council of Governments Private Industry Council will meet at 2014 Willow Drive, San Angelo, February 3, 1993, at 5:15 p.m. Information may be obtained from Monette Molinar, 5002 Knickerbocker Road, San Angelo, Texas 76904, (915) 944-9666. TRD-9318216.

The South Texas Development Council Regional Review Committee will meet at the Zapata County Commissioner's Court, Zapata County Courthouse Annex, Zapata, February 4, 1993, at 1:30 p.m. Information may be obtained from Juan Vargas, P.O. Box 2187, Laredo, Texas 78044-2187. TRD-9318238.

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Meetings Filed January 28, 1993

The Creedmoor Maha Water Supply Corporation Board of Directors will meet at 1699 Laws Road, Mustang Ridge, February 3, 1993, at 7 p.m. Information may be obtained from Charles P. Laws, 1699 Laws Road, Buda, Texas 78610, (512) 243-1991. TRD-9318258.

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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 Air Control Board

Public Notification of Availability of the Texas Vehicle Emission Inspection Request for Proposal (RFP)

On November 5, 1992, the United States Environmental Protection Agency (EPA) released federal rulemaking requiring states to implement specific programs and standards for emission testing of vehicles. EPA's rulemaking is based on the authority and responsibility that the 1990 Federal Clean Air Act delegated to EPA.

EPA rulemaking requires "Basic" programs for areas with only moderate air pollution problems. In Texas, the Dallas/Fort Worth and Beaumont/Port Arthur nonattainment areas are classified as basic. "Enhanced" programs are required for more seriously polluted areas. In Texas, Houston and El Paso fall into the enhanced category. While the rulemaking does provide some flexibility in the design of a state's vehicle testing program, the consequences of failing to develop or implement an effective program are severe.

Faced with these requirements, the Texas Air Control Board (TACB) staff began an in-depth analysis that compared the limitations of our current decentralized vehicle emission testing program with test only program designs. There are a number of key differences between a "decentralized" program and a "test only" program. A traditional decentralized vehicle emission inspection program utilizes a large number of privately owned and operated stations which are licensed by the state to conduct inspections. The primary business of these stations is typically general automotive repair, gasoline retail sales, vehicle sales, or other vehicle-related interests. A traditional test only inspection program utilizes a small number of high-volume, inspection-only facilities either operated by the state or by a state appointed contractor. Repairs must be obtained elsewhere.

While the TACB analysis was initiated with an emphasis on preserving our existing decentralized inspection approach, it rapidly became apparent that the necessary enhancements would be beyond Texas' financial resources and burdensome to both the motorist and the state. On the other hand, it was also clear that implementation of a traditional test only program, while significantly easier to enforce and less expensive, was not acceptable due to its potential impact on local businesses and difficulties with public acceptance. Therefore, TACB proposed a modification to the test only program approach that would maximize, to the extent possible, "Texas Content."

This modification to the traditional test only approach is an innovative design that includes managing and operating contractors with the intent to maximize local and private business participation while ensuring effective program management and enforcement. Each managing contractor will be selected, through a competitive bid proposal process, for each Texas nonattainment/program area. Each managing contractor will have the responsibility for locating, constructing, equipping, and assisting the state with program oversight of high-volume, test-only emission inspection facilities within each nonattainment/program area. Individual emission test facilities will be leased to separate operating contractors from a managing contractor, with a preference granted to local and Texas resident business investors. It is the intent of TACB to provide equal opportunity for ali potential operating contractors. The responsibilities of the operating contractors will be to provide staffing, perform testing, and collect emission inspection test fees.

All competitive bid proposals, prepared and submitted by potential managing contractors, will conform to, and be evaluated based on, all criteria presented in the Texas Vehicle Emission Inspection/Maintenance (I/M) RFP document. Only those proposals which comply with the RFP shall receive consideration. The final draft of the RFP document was reviewed and approved for release in a regular meeting by the Board on January 15, 1993. The TACB will publish copies of the I/M RFP and make them available upon request. Copies of this document will also be filed with the Texas State Library located at 1201 Brazos, Austin.

Because this document is extremely large, it will not be published in the *Texas Register*.

To request a copy of the I/M RFP, you may contact the TACB offices in Austin during our regular business hours (8 a.m.-5 p.m., Monday-Friday) beginning February 2, 1993 at: The Texas Air Control Board Air Quality Planning, 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1457. The closing date for receipt of proposals is April 2, 1993, at 4 p.m.

Note: The TACB is permitted to recover the costs associated with copying and mailing documents. Therefore, there may be a nominal charge associated with obtaining a copy of the final draft of the RFP due to its size.

Issued in Austin, Texas, on January 25, 1993.

TRD-9318174 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

Filed: January 25, 1993

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Texas Commission on Alcohol and Drug Abuse

Notices of Request for Proposals

The Texas Commission on Alcohol and Drug Abuse (TCADA), under the authority of the Texas Health and Safety Code, Title 6, Subtitle B, Chapter 464, gives notice of the following requests for proposals (RFPs).

TAP RFP–The treatment alternatives to incarceration program request for proposals (TAP RFP) is soliciting applications for chemical dependency treatment services through the fee-for-service mechanism. Applicants shall be located in Bexar, Dallas, El Paso, Harris, Tarrant, or Travis county. The RFP will be available January 27, 1993.

TTC RFP–The transitional treatment centers request for proposals is soliciting applications for residential and outpatient chemical dependency treatment services for adult offenders who have completed primary treatment at an in-prison therapeutic community (ITC) or substance abuse felony punishment facility (SAFP). Treatment services will be purchased through a fee-for-service mechanism. The RFP will be available February 10, 1993.

POS RFP–The purchase of service request for proposals (POS RFP) is soliciting applications for chemical dependency treatment services which can be purchased through a fee-for-service mechanism. The RFP will be available January 27, 1993.

To request a copy of the RFP, call the Funding Processes Department at (512) 867-8752, or Tex-An 243-8752, or write to: Texas Commission on Alcohol and Drug Abuse, Funding Processes Department, 720 Brazos Street, Suite 403, Austin, Texas 78701.

Please specify which RFP you are requesting.

The application submission date for the POS RFP and TAP RFP is 5 p.m. on March 10, 1993. The application submission date for the TTC RFP is 5 p.m. on March 18, 1993. Subject to provisions and requirements cited in the RFPs, contracts will be executed for the period of September 1, 1993-August 31, 1994.

The amount of funds that will be available for the contract period is not known at the time the RFPs are released. TCADA currently administers two sources of public funds that can be used for treatment services: Substance Abuse Prevention and Treatment Block Grant (SAPT) which authorized $69,360,133 for fiscal year 1993; and state funds appropriated through the General Appropriations Act, Article II. State funds that will be available for State Fiscal Year 1994 are subject to action of the 73rd State Legislature.

Eligible providers are private nonprofit, public, or for-profit entities that are licensed by TCADA for the site(s) where treatment services will be delivered. The provider shall be licensed and providing treatment services prior to the contract start date, September 1, 1993.

Additional eligibility requirements can be found in the RFPs.

For technical assistance with the applications, contact the Funding Processes Department at (512) 867-8265.

Individuals who are hearing impaired or others needing auxiliary aids or services should notify Lynn Brunn-Shank at (512) 867-8113 or RELAY Texas (1 (800) 735-2989).

Issued in Austin, Texas, on January 27, 1993.

TRD-9318217 Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug Abuse

Filed: January 27, 1993

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The Texas Commission on Alcohol and Drug Abuse (TCADA), under the authority of the Texas Health and Safety Code, Title 6, Subtitle B, Chapter 461, gives notice of the pathological and compulsive gambling treatment request for proposals (GAM RFP). The RFP is soliciting applications from TCADA contractors of alcohol and drug abuse treatment services which can be purchased through a fee-for-service mechanism.

To request a copy of the RFP, call the Funding Processes Department at (512) 867-8265, or Tex-An 243-8265, or write to: Texas Commission on Alcohol and Drug Abuse, Funding Processes Department, 720 Brazos Street, Suite 403, Austin, Texas 78701.

The application submission date is 5 p.m. on March 1, 1993. Subject to provisions and requirements cited in the RFP, contracts with providers will be executed for the period of April 1, 1993-August 31, 1993.

The amount of funds available annually is $1,425,000 in state funds appropriated in General Appropriations Act, Article 2.

Eligible providers are private nonprofit, public, or for-profit TCADA contractors of alcohol and drug abuse treatment services.

Additional eligibility requirements can be found in the RFP.

For technical assistance with the applications contact the Funding Processes Department at (512) 867-8265.

Individuals who are hearing impaired or other needing auxiliary aides or service should notify Lynn Brunn-Shank at (512) 867-8113 or RELAY Texas (1 (800) 735-2989).

Issued in Austin, Texas, on January 27, 1993.

TRD-9318218 Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug Abuse

Filed: January 27, 1993

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Comptroller of Public Acounts

Request for Proposals

Notice of Request for Proposals. Pursuant to Texas Civil Statutes, Article 6252-11c (Use of Private Consultants by State Agencies), the Comptroller of Public Accounts announces its Request for Proposals (RFP) for a management performance review of the Calhoun County Independent School District (CCISD). The purpose of the RFP is to obtain proposals for an independent review of the adequacy and efficiency of administrative and support resources available to the educational process in CCISD, and to issue a report that helps ensure that available resources are utilized in the most effective and cost efficient manner possible.

Contact. Parties interested in submitting a proposal should contact Dena Dupont in the General Counsel's Office, Comptroller of Public Accounts, 111 East 17th Street, Room 113, Austin, Texas 78774, (512) 475-0252, for a complete copy of the RFP. The RFP will be available for pickup at the previously mentioned address on Tuesday, February 2, 1993, between 1 p.m. and 5 p.m. (CST), and during normal business hours thereafter.

Mandatory Bidder's Conference. All persons desiring to submit a proposal pursuant to the RFP are required to attend a bidder's conference to be held Tuesday, February 9, 1993, at 3:30 p.m. (CST) in Room 114 of the comptroller's office at 111 East 17th Street, Austin.

Closing date. Proposals must be received in the General Counsel's Office no later than 4 p.m. (CST), on Thursday, February 18, 1993. Proposals received after this date and time will not be considered.

Award procedure. All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make a recommendation to the Deputy Comptroller who will then make a recommendation to the comptroller. The comptroller will make the final selection. A proposer may be asked to clarify its proposal at any point throughout the evaluation process. The evaluation committee may elect to require oral presentations by some or all proposers for this purpose.

The comptroller reserves the right to accept or reject any or all proposals submitted. The comptroller is under no legal or other requirements to execute a contract on the basis of this notice or the distribution of the RFP. Neither this notice nor the RFP commits the comptroller to pay for any costs incurred prior to the execution of a contract.

Anticipated schedule of events. RFP available February 2, 1993 (1 p.m. CST); Questions on RFP due by February 5, 1993 (4 p.m. CST); Mandatory Bidder's Conference, February 9, 1993 (3:30 p.m. CST); Proposals due by February 18, 1993 (4 p.m. CST); Contract with Successful Proposer executed no earlier than March 5, 1993.

Issued in Austin, Texas, on January 27, 1993.

TRD-9318220 Arthur F. Lorton
Senior Legal Counsel
General Law Section
Comptroller of Public Accounts

Filed: January 27, 1993

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General Land Office

Consultant Proposal Request

The Texas General Land Office recently awarded a contract to develop documentation manuals for software systems used by the General Land Office Information Systems Division that will permit the agency to more effectively utilize the subject software systems associated with its information systems programs. The contract must be amended to facilitate completion of the project.

Pursuant to the provisions of Texas Civil Statutes, Article 6252-11c, the General Land Office is requesting proposals for consulting services to complete the development of these documentation manuals. The consultant will demonstrate an in-depth understanding of the project software (Framemaker 3.0 and GLO-Tracker) and advise the General Land Office staff in the accomplishment of the goals of this project. The consulting services requested constitute an extension and modification of the scope of services currently being performed under contract by Jerry Amundson doing business as Amundson & Associates, a private consultant. It is the intent of the General Land Office to award the amended contract to this consultant unless a significantly better offer is submitted.

The closing date for receipt of offers of consulting services is 5 p.m., February 15, 1993. Further information can be obtained by contacting Stephen Paxman at (512) 463-5105.

The consultant selected will demonstrate considerable direct experience in analysis and design of end-user software documentation.

Issued in Austin, Texas, on January 26, 1993.

TRD-9318214 Garry Mauro
Commissioner
General Land Office

Filed: January 26, 1993

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs at 811 Barton Springs Road, Suite 300, Austin, Texas 78704, at 10 a.m. on Tuesday, February 16, 1993, with respect to three issues of multi-family housing refunding revenue bonds (the Bonds) to be issued as follows by the Texas Department of Housing and Community Affairs (the issue): $8,690,000 Texas Department of Housing and Community Affairs Multi-Family Housing Refunding Revenue Bonds (Colorado Club Development) Series 1993 (the Series 1993 Bonds); $12,490,000 Texas Department of Housing and Community Affairs Multi-Family Housing Refunding Revenue Bonds (High Point III Development) Series 1993A (the Series 1993 A Bonds); and $13,880,000 Texas Department of Housing and Community Affairs Multi-Family Housing Refunding Revenue Bonds (Remington Hill Development) Series 1993B (the Series 1993B Bonds).

The proceeds of the Series 1993 Bonds will be loaned to 794 Normandy Limited Partnership, to refund the outstanding principal amount of the Texas Housing Agency Multi-Family Housing Revenue Bonds, Series 1985l Lyndon Insurance Company Surety Bond/Colorado Club Development) originally issued in the aggregate principal amount of $8,800,000 (the 1985 Bonds). The project financed with the proceeds of the 1985 Bonds and to be refinanced from the proceeds of the Series 1993 Bonds (the 1993 Project) is a 300-unit apartment complex located at 912 Normandy Drive, Houston. The current owners of the 193 Project are Drever Partners, Inc. and Tassajara Partners. 794 Normandy Limited Partnership will be formed in connection with the issuance of the Bonds, and its limited partner will be related to the current owners of the 1993 Project.

The proceeds of the Series 1993A and Series 1993B Bonds will be loaned to Double G Properties Limited Partnership, a Georgia limited partnership, to refund the outstanding principal amount of the Texas Housing Agency Multi-Family Housing Revenue Refunding Bonds, Series 1987A Bonds (High Point III Development) originally issued in the aggregate principal amount of $12,490,000 and the Texas Housing Multi-Family Housing Revenue Refunding Bonds, Series 1987B (Remington Hill Development) originally issued in the aggregate principal amount of $13,880,000 (collectively, the 1987 Bonds).

The projects financed with the proceeds of the 1987 Bonds and to be refinanced from the proceeds of the Series 1993A and Series 1993B Bonds are a 372-unit apartment complex located at 9010 Markville Drive, Dallas, with respect to the Series 1993A Bonds (the 1993A Project) and 440-unit apartment complex located at 5701 Overton Ridge Boulevard, Fort Worth, with respect to the Series 1993B Bonds (the 1993B Project). The current owner of the 1993A Project is High Point Dallas Ventures, Inc. The current owner of the 1993B Project is Remington Hill Ventures, Inc. Double G Properties Limited Partnership will be formed in connection with the issuance of the Series 1993A and Series 1993B Bonds, and its general partner will be related to the current owners of the 1993A Project and 1993B Project.

All interested persons are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Mario Aguilar at the Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Suite 300, Austin, Texas 78704, (512) 475-2121.

Persons who intend to appear at the hearing and express their views are invited to contact Mario Aguilar in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Mario Aguilar prior to the date scheduled for the hearing.

This notice is published and the previously described hearing is to be held in satisfaction of the requirements of the Internal Revenue Code of 1986, §147(f), as amended, regarding the public approval prerequisite to the exemption from federal income taxation of the interest on the Bonds.

Individuals who require auxiliary aids for services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822, or Relay Texas at 1 (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Issued in Austin, Texas, on January 27, 1993.

TRD-9318227 Henry Flores
Executive Director
Texas Department of Housing and Community Affairs

Filed: January 27, 1993

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Public Utility Commission of Texas

Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on November 17, 1992, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 50, 52, and 54. A summary of the application follows.

Docket and Title Number. Application of Lufkin-Conroe Telephone Exchange, Inc. to amend certificate of convenience and necessity within Angelina County, Docket Number 11599, before the Public Utility Commission of Texas.

The Application. In Docket Number 11599, Lufkin-Conroe Telephone Exchange, Inc. seeks approval of its application to transfer a small portion of territory from the applicant's Central exchange to its Lufkin exchange.

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 Office at (512) 458-0256, or (512) 458-0221 teletypewriter for the deaf on or before February 16, 1993.

Issued in Austin, Texas, on January 22, 1993.

TRD-9318165 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: January 25, 1993

♦ ♦ ♦

Notice of Intent to File Pursuant to PUC Substantive Rule 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 McAllen ISD, McAllen.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for McAllen ISD pursuant to Public Utility Commission Substantive Rule 23.27(k). Docket Number 11725.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for McAllen ISD. The geographic service market for this specific service is the McAllen 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) 458-0256, or (512) 458-0221 teletypewriter for the deaf.

Issued in Austin, Texas, on January 22, 1993.

TRD-9318164 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: January 25, 1993

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Texas Environmental Awareness Network

Notice of Monthly Meeting

The Texas Environmental Awareness Network, an association of state agencies and environmental and educational organizations, will meet Wednesday, February 3, 1993, at 1:30 p.m. at the Texas Parks and Wildlife Department headquarters, TP&W Commission Hearing Room, 4200 Smith School Road, Austin, Texas 78744.

Agenda items include: Briefing on Texas Teacher Intern Program; Discussion and adoption of Mission, Goals and Objectives; Science Summit II Update; and TEAN Environmental Education Order Form Booklet.

More information on the above-listed matters is available from John Williams, TEAN Secretary, at (512) 473-3227.

Issued in Austin, Texas, on January 25, 1993.

TRD-9318156 John Williams
Secretary
Texas Environmental Awareness Network

Filed: January 25, 1993

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Texas Water Commission

Enforcement Order

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An agreed enforcement order was entered regarding Texas Hydraulics doing business as Precise Hard Chrome (SWR 38542) on January 14, 1993, assessing $143,040 in administrative penalties with $19,304 deferred.

Information concerning any aspect of this order may be obtained by contacting Sally Jo Hahn, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-2056.

Issued in Austin, Texas, on January 22, 1993.

TRD-9318203 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: January 26, 1993

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Meeting Notice

A meeting of the Scientific/Technical Advisory Committee of the Galveston Bay National Estuary Program is schedule for: Thursday, February 4, 1993, 9 a. m., Crystal Ballroom, The Inn at San Luis, 5400 Seawall Boulevard, Galveston.

The S/TAC will discuss the combined efforts to develop Project Fact Sheets, the Priority Problems Report and the Characterization Report. These reports will help guide the GBNEP task forces in drafting CCMP initiatives and will also be used to revise the Priority Problems List. S/TAC will also discuss the revised TWC water quality standards and the development of potential Technical Assessments for FY94. S/TAC will further discuss the results of the perturbation rankings taken from the Ecosystem Impact Matrix. There are a variety of other items which will be discussed as well.

Issued in Houston, Texas, on January 21, 1993.

TRD-9318149 Frank S. Shipley, Ph.D.
Program Manager
Galveston Bay National Estuary Program

Filed: January 25, 1993

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1993 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1993 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on July 30, November 5, November 30, and December 28. A asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 Friday, January 1	Monday, December 28	Tuesday, December 29
2 Tuesday, January 5	Wednesday, December 30	Thursday, December 31
3 Friday, January 8	Monday, January 4	Tuesday, January 5
4 Tuesday, January 12	Wednesday, January 6	Thursday, January 7
5 Friday, January 15	Monday, January 11	Tuesday, January 12
6 Tuesday, January 19	Wednesday, January 13	Thursday, January 14
Friday, January 22	1992 ANNUAL INDEX	
7 Tuesday, January 26	Wednesday, January 20	Thursday, January 21
8 Friday, January 29	Monday, January 25	Tuesday, January 26
9 Tuesday, February 2	Wednesday, January 27	Thursday, January 28
10 Friday, February 5	Monday, February 1	Tuesday, February 2
11 Tuesday, February 9	Wednesday, February 3	Thursday, February 4
12 Friday, February 12	Monday, February 8	Tuesday, February 9
13 Tuesday, February 16	Wednesday, February 10	Thursday, February 11
14 *Friday, February 19	Friday, February 12	Tuesday, February 16
15 Tuesday, February 23	Wednesday, February 17	Thursday, February 18
16 Friday, February 26	Monday, February 22	Tuesday, February 23
17 Tuesday, March 2	Wednesday, February 24	Thursday, February 25
18 Friday, March 5	Monday, March 1	Tuesday, March 2
19 Tuesday, March 9	Wednesday, March 3	Thursday, March 4
20 Friday, March 12	Monday, March 8	Tuesday, March 9
21 Tuesday, March 16	Wednesday, March 10	Thursday, March 11
22 Friday, March 19	Monday, March 15	Tuesday, March 16
23 Tuesday, March 23	Wednesday, March 17	Thursday, March 18
24 Friday, March 26	Monday, March 22	Tuesday, March 23
25 Tuesday, March 30	Wednesday, March 24	Thursday, March 25
26 Friday, April 2	Monday, March 29	Tuesday, March 30
27 Tuesday, April 6	Wednesday, March 31	Thursday, April 1
28 Friday, April 9	Monday, April 5	Tuesday, April 6
29 Tuesday, April 13	Wednesday, April 7	Thursday, April 8
Friday, April 16	FIRST QUARTERLY INDEX	
30 Tuesday, April 20	Wednesday, April 14	Thursday, April 15

31 Friday, April 23	Monday, April 19	Tuesday, April 20
32 Tuesday, April 27	Wednesday, April 21	Thursday, April 22
33 Friday, April 30	Monday, April 26	Tuesday, April 27
34 Tuesday, May 4	Wedesday, April 28	Thursday, April 29
35 Friday, May 7	Monday, May 3	Tuesday, May 4
36 Tuesday, May 11	Wednesday, May 5	Thursday, May 6
37 Friday, May 14	Monday, May 10	Tuesday, May 11
38 Tuesday, May 18	Wednesday, May 12	Thursday, May 13
39 Friday, May 21	Monday, May 17	Tuesday, May 18
40 Tuesday, May 25	Wednesday, May 19	Thursday, May 20
41 Friday, May 28	Monday, May 24	Tuesday, May 25
42 Tuesday, June 1	Wednesday, May 26	Thursday, May 27
43 *Friday, June 4	Friday, May 28	Tuesday, June 1
44 Tuesday, June 8	Wednesday, June 2	Thursday, June 3
45 Friday, June 11	Monday, June 7	Tuesday, June 8
46 Tuesday, June 15	Wednesday, June 9	Thursday, June 10
47 Friday, June 18	Monday, June 14	Tuesday, June 15
48 Tuesday, June 22	Wednesday, June 16	Thursday, June 17
49 Friday, June 25	Monday, June 21	Tuesday, June 22
50 Tuesday, June 29	Wednesday, June 23	Thursday, June 24
51 Friday, July 2	Monday, June 28	Tuesday, June 29
52 Tuesday, July 6	Wednesday, June 30	Thursday, July 1
53 Friday, July 9	Monday, July 5	Tuesday, July 6
Tuesday, July 13	SECOND QUARTERLY INIDEX	
54 Friday, July 16	Monday, July 12	Tuesday, July 13
55 Tuesday, July 20	Wednesday, July 14	Thursday, July 15
56 Friday, July 23	Monday, July 19	Tuesday, July 20
57 Tuesday, July 27	Wednesday, July 21	Thursday, July 22
Friday, July 30	NO ISSUE PUBLISHED	
58 Tuesday, August 3	Wednesday, July 28	Thursday, July 29
59 Friday, August 6	Monday, August 2	Tuesday, August 3
60 Tuesday, August 10	Wednesday, August 4	Thursday, August 5
61 Friday, August 13	Monday, August 9	Tuesday, August 10
62 Tuesday, August 17	Wednesday, August 11	Thursday, August 12
63 Friday, August 20	Monday, August 16	Tuesday, August 17
64 Tuesday, August 24	Wednesday, August 18	Thursday, August 19
65 Friday, August 27	Monday, August 23	Tuesday, August 24
66 Tuesday, August 31	Wednesday, August 25	Thursday, August 26
67 Friday, September 3	Monday, August 30	Tuesday, August 31
68 Tuesday, September 7	Wednesday, September 1	Thursday, September 2
69 *Friday, September 10	Friday, September 3	Tuesday, September 7

70 Tuesday, September 14	Wednesday, September 8	Thursday, September 9
71 Friday, September 17	Monday, September 13	Tuesday, September 14
72 Tuesday, September 21	Wednesday, September 15	Thursday, September 16
73 Friday, September 24	Monday, September 20	Tuesday, September 21
74 Tuesday, September 28	Wednesday, September 22	Thursday, September 23
75 Friday, October 1	Monday, September 27	Tuesday, September 28
76 Tuesday, October 5	Wednesday, September 29	Thursday, September 30
77 Friday, October 8	Monday, October 4	Tuesday, October 5
Tuesday, October 12	THIRD QUARTERLY INDEX	
78 Friday, October 15	Monday, October 11	Tuesday, October 12
79 Tuesday, October 19	Wednesday, October 13	Thursday, October 14
80 Friday, October 22	Monday, October 18	Tuesday, October 19
81 Tuesday, October 26	Wednesday, October 20	Thursday, October 21
82 Friday, October 29	Monday, October 25	Tuesday, October 26
83 Tuesday, November 2	Wednesday, October 27	Thursday, October 28
Friday, November 5	NO ISSUE PUBLISHED	
84 Tuesday, November 9	Wednesday, November 3	Thursday, November 4
85 Friday, November 12	Monday, November 8	Tuesday, November 9
86 Tuesday, November 16	Wednesday, November 10	Thursday, November 11
87 Friday, November 19	Monday, November 15	Tuesday, November 16
88 Tuesday, November 23	Wednesday, Novmber 17	Thursday, November 18
89 Friday, November 26	Monday, November 22	Tuesday, November 23
Tuesday, November 30	NO ISSUE PUBLISHED	
90 Friday, December 3	Monday, November 29	Tuesday, November 30
91 Tuesday, December 7	Wednesday, December 1	Thursday, December 2
92 Friday, December 10	Monday, December 6	Tuesday, December 7
93 Tuesday, December 14	Wednesday, December 8	Thursday, December 9
94 Friday, December 17	Monday, December 13	Tuesday, December 14
95 Tuesday, December 21	Wednesday, December 15	Thursday, December 16
96 Friday, December 24	Monday, December 20	Tuesday, December 21
Tuesday, December 28	NO ISSUE PUBLISHED	

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues requested. Each copy of a back issue is $5 including postage. You may use your Mastercard or Visa to purchase back issues or subscription services. To order by credit card, please call the *Texas Register* at (512) 463-5561. All purchases made by credit card will be subject to an additional 1.9% service charge. Fore more information, please write to the *Texas Register*, P.O. Box 13824, Austin, TX 78711-3824 or call (512) 463-5561.

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