

TITLE 31 NATURAL RESOURCES AND CONSERVATION

PART 1 GENERAL LAND OFFICE

CHAPTER 26 COASTAL MANAGEMENT PROGRAM

SUBCHAPTER A GENERAL PROVISIONS

§26.1 Program for Special Management of Coastal Natural Resource Areas

- (a) The purpose of the Texas Coastal Management Program (CMP) is to make more effective and efficient use of public funds and to more effectively and efficiently manage coastal natural resource areas (CNRAs) and the activities that may affect them. The program is based on goals and policies that guide the use and development of CNRAs, preserve and protect CNRAs, and improve government processes. Under the Coastal Coordination Act, the commissioner of the General Land Office (commissioner) is charged with adopting rules promulgating the CMP goals and policies. The Coastal Coordination Act requires agency or subdivision actions to comply with these goals and policies.
- (b) The commissioner will exercise authority pursuant to the Coastal Coordination Act in the following ways.
- (1) The commissioner will study and review the principal coastal problems of state concern. This review will include examination of the current status and future trends of CNRAs; examination of conflicts between competing uses of CNRAs; and examination of policy issues with respect to local, state, or national interests and concerns related to CNRAs. The commissioner will examine alternative regulatory and other management approaches to these problems, identify data collection and research needs, and foster public education and participation.
 - (2) The commissioner will coordinate the performance of agencies, subdivisions, and programs by promulgating goals and policies to guide and serve as the basis for consistency review of agency and subdivision actions. The commissioner will examine the goals and policies in this chapter annually to review the effectiveness of the program and will propose revisions to the goals and policies, as necessary.
 - (3) The commissioner will coordinate the measures required to resolve identified coastal problems and make coastal management processes more visible, accessible, coherent, consistent, and accountable by reviewing agency and subdivision actions for consistency with the goals and policies in this chapter. Agency and subdivision actions subject to consistency review are those set forth in Texas Natural Resources Code, §33.2051 and §33.2053. The commissioner shall employ consistency review of agency and subdivision rules and policies as the primary technique for ensuring that agency and subdivision actions are consistent with the CMP goals and policies in this chapter.
 - (4) The commissioner will adopt guidance and procedural rules for the review of federal agency actions, activities, and outer continental shelf plans that incorporate the provisions of the federal regulations governing those reviews. The commissioner shall employ consistency review to ensure that federal agency actions, activities, and outer continental shelf plans are consistent with the CMP goals and policies in this chapter.
 - (5) The commissioner will implement a grants program to award funds to coastal local governments and other qualified entities for the planning and implementation of projects that address environmental problems affecting the coastal area, to promote sustainable economic development, and otherwise further the CMP goals and policies. The commissioner shall establish the procedures for making any determination related to awarding a grant. For each year or for each grant cycle, the commissioner shall promulgate guidance for the grants program describing the deadlines, schedule, eligibility requirements, funding policies, and approval

process.

(c) As directed in the Coastal Coordination Act, the General Land Office (GLO) will act as the lead agency in coordinating and implementing the CMP, in cooperation with other state agencies that have duties relating to coastal matters. The GLO, in coordination with other agencies and subdivisions, shall prepare a biennial report reviewing the effectiveness of the CMP as required by Texas Natural Resources Code, §33.204(f). On or before January 15 of each odd-numbered year, the GLO shall send the report to the legislature.

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

§26.2 Findings

(a) The commissioner finds that the coast is subject to the following uses:

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

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

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

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

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

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

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

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

(9) hunting, fishing, and other uses affecting terrestrial and aquatic wildlife.

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

§26.3 Definitions and Abbreviations

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

(1) Agency or subdivision--Any state agency, department, board, or commission or political subdivision of the state.

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Coastal Coordination Act--Texas Natural Resources Code, Chapter 33, Subchapter F.

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

(6) CMP coordinator--The GLO Coastal Resources staff member designated by the commissioner.

(7) Coastal hazard areas--Special hazard areas and critical erosion areas.

(8) Coastal natural resource area (CNRA)--Any area defined in Texas Natural Resources Code, §33.203(1) that is located within the coastal zone.

(9) Coastal waters--Waters under tidal influence and waters in the open Gulf of Mexico.

(10) Commissioner--Commissioner of the GLO.

(11) Committee--Coastal Coordination Advisory Committee.

(12) Critical areas--A coastal wetland, an oyster reef, a hard substrate reef, submerged aquatic vegetation, or a tidal sand or mud flat.

(13) Cumulative adverse effects--Adverse effects increasing in significance due to the collective effects of a number of actions.

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

(15) Practicable--Available and capable of being done after taking into consideration existing technology, cost, and logistics in light of the overall purpose of the activity.

(16) Public beach--Any public beach as defined in Chapter 61 of the Texas Natural Resources Code.

(17) Secondary adverse effects--Adverse effects which would result from a proposed action and cause significant modifications or alterations to the physical or chemical characteristics of coastal natural resource areas beyond the limit of the immediate project area.

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

(b) The following words, terms, and phrases, when used in this chapter shall have the following meanings, with respect to CNRAs.

(1) Coastal barrier--An undeveloped area on a barrier island, peninsula, or other protected area, as designated by United States Fish and Wildlife Service maps.

(2) Coastal historic area--A site that is specially identified in rules adopted by the Texas Historical Commission as being coastal in character and that is:

(A) a site on the National Register of Historic Places, designated under 16 United States Code, §470a and 36

Code of Federal Regulations, Chapter I, Part 63; or

(B) a state archaeological landmark, as defined by Texas Natural Resources Code, Subchapter D, Chapter 191.

(3) Coastal preserve--Any land, including a park or wildlife management area, that is owned by the state and that is subject to Chapter 26, Parks and Wildlife Code, because it is a park, recreation area, scientific area, wildlife refuge, or historic site; and designated by the Texas Parks and Wildlife Commission as being coastal in character.

(4) Coastal shore area--An area within 100 feet landward of the high water mark on submerged land.

(5) Coastal wetlands--Wetlands, as the term is defined by Texas Water Code, §11.502, located:

(A) seaward of the Coastal Facility Designation Line, established by rules adopted under Texas Natural Resources Code, Chapter 40;

(B) within rivers and streams to the extent of tidal influence, as shown on the Texas Commission on Environmental Quality's stream segment maps and described as follows:

(i) Arroyo Colorado from FM Road 1847 to a point 100 meters (110 yards) downstream of Cemetery Road south of the Port of Harlingen in Cameron County;

(ii) Nueces River from US Highway 77 to the Calallen Dam 1.7 kilometers (1.1 miles) upstream of U.S. Highway 77 in Nueces/San Patricio County;

(iii) Guadalupe River from State Highway 35 to the Guadalupe-Blanco River Authority Salt Water Barrier at 0.7 kilometers (0.4 miles) downstream of the confluence with the San Antonio River in Calhoun/Refugio County;

(iv) Lavaca River from FM Road 616 to a point 8.6 kilometers (5.3 miles) downstream of US Highway 59 in Jackson County;

(v) Navidad River from FM Road 616 to Palmetto Bend Dam in Jackson County;

(vi) Tres Palacios Creek from FM Road 521 to a point 0.6 kilometer (0.4 mile) upstream of the confluence with Wilson Creek in Matagorda County;

(vii) Colorado River from FM Road 521 to a point 2.1 kilometers (1.3 miles) downstream of the Missouri-Pacific Railroad in Matagorda County;

(viii) San Bernard River from FM Road 521 to a point 3.2 kilometers (2.0 miles) upstream of State Highway 35 in Brazoria County;

(ix) Chocolate Bayou from FM Road 2004 to a point 4.2 kilometers (2.6 miles) downstream of State Highway 35 in Brazoria County;

(x) Clear Creek from Interstate Highway 45 to a point 100 meters (110 yards) upstream of FM Road 528 in Galveston/Harris County;

(xi) Buffalo Bayou (Houston Ship Channel) from Interstate Highway 610 to a point 400 meters (440 yards) upstream of Shepherd Drive in Harris County;

(xii) San Jacinto River from Interstate Highway 10 upstream to the Lake Houston dam in Harris County;

(xiii) Cedar Bayou from Interstate Highway 10 to a point 2.2 kilometers (1.4 miles) upstream of Interstate Highway 10 in Chambers/Harris County;

(xiv) Trinity River from Interstate Highway 10 to the border between Chambers and Liberty Counties;

(xv) Neches River from Interstate Highway 10 to a point 11.3 kilometers (7.0 miles) upstream of Interstate Highway 10 in Orange County;

(xvi) Sabine River from Interstate Highway 10 upstream to Morgan Bluff in Orange County; or

(C) within one mile of the mean high tide line of the portion of rivers and streams described by subparagraph (B) of this paragraph, except for the Trinity and Neches rivers.

(i) For the portion of the Trinity River described by subparagraph (B) of this paragraph, coastal wetlands include those wetlands located between the mean high tide line on the western shoreline of that portion of the river and FM Road 565 and FM Road 1409 or located between the mean high tide line on the eastern shoreline of that portion of the river and FM Road 563.

(ii) For the portion of the Neches River described by subparagraph (B) of this paragraph, coastal wetlands include those wetlands located within one mile of the mean high tide line of the western shoreline of that portion of the river or located between the mean high tide line on the eastern shoreline of that portion of the river and FM Road 105.

(6) Critical dune area--A protected sand dune complex on the Gulf shoreline within 1,000 feet of mean high tide designated by the land commissioner under Texas Natural Resource Code, §63.121.

(7) Critical erosion area--Has the meaning assigned to the term "critical coastal erosion area" by Texas Natural Resources Code, §33.601(4).

(8) Gulf beach--A beach bordering the Gulf of Mexico that is:

(A) located inland from the mean low tide line to the natural line of vegetation bordering the seaward shore of the Gulf of Mexico; or

(B) part of a contiguous beach area to which the public has a right of use or easement:

(i) continuously held by the public; or

(ii) acquired by the public by prescription, dedication, or estoppel.

(9) Hard substrate reef--A naturally occurring hard substrate formation, including a rock outcrop or serpulid worm reef, living or dead, in an intertidal or subtidal area.

(10) Oyster reef--A natural or artificial formation that is:

(A) composed of oyster shell, live oysters, and other living or dead organisms;

(B) discrete, contiguous, and clearly distinguishable from scattered oyster shell or oysters; and

(C) located in an intertidal or subtidal area.

(11) Special hazard area--An area designated under 42 United States Code Annotated, §4001 et seq, as having special flood, mudslide or mudflow, or flood-related erosion hazards and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30, VE, V, M, or E.

(12) Submerged land--Land located under waters under tidal influence or under waters of the open Gulf of Mexico, without regard to whether the land is owned by the state or a person other than the state.

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

(14) Tidal sand or mud flat--A silt, clay, or sand substrate, without regard to whether it is vegetated by algal mats, that occur in intertidal areas and that are regularly or intermittently exposed and flooded by tides, including tides induced by weather.

(15) Water of the open Gulf of Mexico--Water in this state, as defined by Texas Water Code, §26.001(5), that is part of the open water of the Gulf of Mexico and that is within the territorial limits of the state.

(16) Water under tidal influence--Water in this state, as defined by Texas Water Code, §26.001(5), that is subject to tidal influence according to the Texas Commission on Environmental Quality stream segment map. The term includes coastal wetlands.

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

(1) GLO--General Land Office;

(2) PUC--Public Utility Commission;

(3) RRC--Railroad Commission of Texas;

(4) Sea Grant--Texas Sea Grant College Program;

(5) SLB--School Land Board;

(6) THC--Texas Historical Commission;

(7) TCEQ--Texas Commission on Environmental Quality;

(8) TPWD--Texas Parks and Wildlife Department;

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

(10) TWDB--Texas Water Development Board; and

(11) TxDOT--Texas Department of Transportation.

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

§26.4 Coastal Coordination Advisory Committee

(a) The Coastal Coordination Advisory Committee (committee) advises the commissioner on matters related to the CMP. The committee shall:

(1) make recommendations regarding the referral and review of proposed actions subject to consistency with the CMP goals and policies;

(2) participate in coastal issue teams to facilitate interagency coordination and communication regarding CMP subject matter areas, including but not limited to water quality, grants, planning, and permitting; and

(3) review any other matters related to the CMP, as requested by the commissioner.

(b) The committee is composed of:

(1) a representative of each of the following entities designated by the presiding officer of that entity:

(A) the General Land Office;

(B) the Texas Parks and Wildlife Department;

(C) the Texas Commission on Environmental Quality;

(D) the Railroad Commission of Texas;

(E) the Texas Water Development Board;

(F) the Texas Department of Transportation;

(G) the State Soil and Water Conservation Board; and

(H) the Texas Sea Grant College Program.

(2) the following members appointed by the commissioner:

(A) a city or county elected official who resides in the coastal area;

(B) an owner of a business located in the coastal area who resides in the coastal area;

(C) a resident from the coastal area; and

(D) a representative of agriculture.

(c) Members of the committee serve five-year terms aligned with the five-year periods of the CMP assessment and strategy cycles.

(1) Members may serve partial terms. If a member's term has expired, that member will continue to serve until a replacement is appointed or designated.

(2) Appointed members serve at the pleasure of the commissioner. Designated members serve at the pleasure of the presiding officer of the entity from which the member was selected.

(d) To assist the commissioner and the committee, the CMP coordinator shall:

- (1) serve as the GLO's primary point of contact for matters related to the CMP;
 - (2) facilitate coordination among agencies and subdivisions subject to the CMP; and
 - (3) schedule, organize, and conduct meetings of the committee.
- (e) The committee shall meet as often as directed by the CMP coordinator or the commissioner.
- (f) In the event that a proposed action subject to consistency with the CMP goals and policies presents a significant unresolved consistency dispute, the committee may refer the matter to the commissioner for review pursuant to Chapter 505 (Procedures for State Consistency with Coastal Management Program Goals and Policies) or Chapter 506 (Procedures for Federal Consistency with Coastal Management Program Goals and Policies) of this title.
- (g) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the committee.

SUBCHAPTER B GOALS AND POLICIES

§26.10 Compliance with CMP Goals and Policies

- (a) State agencies, municipalities, and counties identified in this subchapter shall comply with the goals and policies in this subchapter when taking an action listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) or §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program).
- (b) The goals and policies in this subchapter apply only to those actions expressly identified in this subchapter.
- (c) Compliance with the goals and policies of this subchapter does not supersede or eliminate any legal duty to comply with other applicable statutory and regulatory requirements.

§26.11 Statutory and Constitutional Limits

- (a) A goal or policy may not require an agency or subdivision to perform an action that would exceed the constitutional or statutory authority of the agency or subdivision to which the goal or policy applies.
- (b) The requirements of this chapter may not be applied in a manner that would result in the taking, damage, or destruction of property without adequate compensation.
- (c) Nothing in these rules shall be construed as providing or allowing for the development of special area management plans, including a plan for an area designated under a national estuary program.

§26.12 Goals

The goals of the Texas Coastal Management Program (CMP) are:

- (1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs);
- (2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone;
- (3) to minimize loss of human life and property due to the impairment and loss of protective features of

CNRAs;

- (4) to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone;
- (5) to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone;
- (6) to coordinate agency and subdivision decision-making affecting CNRAs by establishing clear, objective policies for the management of CNRAs;
- (7) to make agency and subdivision decision-making affecting CNRAs efficient by identifying and addressing duplication and conflicts among local, state, and federal regulatory and other programs for the management of CNRAs;
- (8) to make agency and subdivision decision-making affecting CNRAs more effective by employing the most comprehensive, accurate, and reliable information and scientific data available and by developing, distributing for public comment, and maintaining a coordinated, publicly accessible geographic information system of maps of the coastal zone and CNRAs at the earliest possible date;
- (9) to make coastal management processes visible, coherent, accessible, and accountable to the people of Texas by providing for public participation in the ongoing development and implementation of the Texas CMP; and
- (10) to educate the public about the principal coastal problems of state concern and technology available for the protection and improved management of CNRAs.

§26.13 Administrative Policies

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

- (1) require applicants to provide information necessary for an agency or subdivision to make an informed decision on a proposed action listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) or §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program);
- (2) identify the monitoring established to ensure that activities authorized by actions listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) or §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program) comply with all applicable requirements;
- (3) identify circumstances in which agencies and subdivisions have the authority to issue variances from standards or requirements for the protection of CNRAs, including the grounds for granting variances; and
- (4) take into account the national interest as defined in the Texas Coastal Management Program Final Environmental Impact Statement, August 1996, Part II, Chapter 7.

(b) A threshold for referral adopted by an agency under the provisions of Chapter 505 of this title (relating to Council Procedures for Consistency Reviews) of this title shall be set at a level that is reasonably calculated to ensure that actions that may have unique and significant adverse effects on coastal natural resource areas

are above the threshold for referral.

§26.15 Policy for Major Actions

(a) For purposes of this section, "major action" means an individual agency or subdivision action listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program), §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program), or §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program), relating to an activity for which a federal environmental impact statement under the National Environmental Policy Act, 42 United States Code Annotated, §4321, et seq is required.

(b) Prior to taking a major action, the agencies and subdivisions having jurisdiction over the activity shall meet and coordinate their major actions relating to the activity. The agencies and subdivisions shall, to the greatest extent practicable, consider the cumulative and secondary adverse effects, as described in the federal environmental impact assessment process, of each major action relating to the activity.

(c) No agency or subdivision shall take a major action that is inconsistent with the goals and policies of this chapter. In addition, an agency or subdivision shall avoid and otherwise minimize the cumulative adverse effects to coastal natural resource areas of each of its major actions relating to the activity.

§26.16 Policies for Construction of Electric Generating and Transmission Facilities

(a) Construction of electric generating facilities and electric transmission lines in the coastal zone shall comply with the policies in this section.

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

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

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

(4) Electric transmission lines to or on Coastal Barrier Resource System Units and Otherwise Protected Areas designated on maps dated October 24, 1990, as those maps may be modified, revised, or corrected, under the Coastal Barrier Resources Act, 16 United States Code Annotated, §3503, on coastal barriers shall:

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

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

(b) The PUC shall comply with the policies in this section when issuing certificates of convenience and necessity and adopting rules under the Public Utility Regulatory Act, Texas Utilities Code §11.001, et seq., governing construction of electric generating facilities, electric transmission lines, and associated facilities in the coastal zone.

§26.17 Policies for Construction, Operation, and Maintenance of Oil and Gas Exploration and Production Facilities

- (a) Oil and gas exploration and production on submerged lands shall comply with the policies in this section.
- (1) In or near critical areas, facilities shall be located and operated and geophysical and other operations shall be located and conducted in such a manner as to avoid and otherwise minimize adverse effects, including those from the disposal of solid waste and disturbance resulting from the operation of vessels and wheeled or tracked vehicles, whether on areas under lease, easement, or permit or on or across access routes thereto. Where practicable, buffer zones for critical areas shall be established and directional drilling or other methods to avoid disturbance, such as pooling or unitization, shall be employed.
- (2) Lessees, easement holders, and permittees shall construct facilities in a manner that avoids impoundment or draining of coastal wetlands, if practicable, and shall mitigate any adverse effects on coastal wetlands impounded or drained in accordance with the sequencing requirements in this section.
- (3) Upon completion or cessation of operations, lessees, easement holders, and permittees shall remove facilities and restore any significantly degraded areas to pre-project conditions as closely as practicable, unless facilities can be used for maintenance or enhancement of CNRAs or unless restoration activities would further degrade CNRAs.
- (b) To the extent applicable to the public beach, the policies in this section are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public.
- (c) The GLO and SLB shall comply with the policies in this section when approving oil, gas, and other mineral lease plans of operation and granting surface leases, easements, and permits and adopting rules under the Texas Natural Resources Code, Chapters 32, 33 and 51 - 53, governing oil and gas exploration and production on submerged lands.

§26.18 Policies for Discharges of Wastewater and Disposal of Waste from Oil and Gas Exploration and Production Activities

- (a) Disposal of oil and gas waste in the coastal zone shall comply with the policies in this section.
- (1) No new commercial oil and gas waste disposal pit shall be located in any CNRA.
- (2) Oil and gas waste disposal pits shall be designed to prevent releases of pollutants that adversely affect coastal waters or critical areas.
- (b) Discharge of oil and gas exploration and production wastewater in the coastal zone shall comply with the following policies.
- (1) All discharges shall comply with all provisions of surface water quality standards established by the TCEQ under §501.21 of this title.
- (2) To the greatest extent practicable, new wastewater outfalls shall be located where the discharge will not adversely affect critical areas. Existing wastewater outfalls that adversely affect critical areas shall be either discontinued or relocated so as not to adversely affect critical areas within two years of the effective date of this section.
- (3) The RRC shall notify the TCEQ and the TPWD upon receipt of an application for a new permit to discharge produced waters to waters under tidal influence. In determining compliance with the policies in

this section, the RRC shall consider the effects of salinity from the discharge.

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

§26.19 Policies for Construction and Operation of Solid Waste Treatment, Storage, and Disposal Facilities

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

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

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

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

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

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

(4) Hazardous waste land treatment facilities, waste piles, storage surface impoundments, and landfills shall not be located within 1,000 feet of an area subject to active coastal shoreline erosion, if the area is protected by a barrier island or peninsula, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water. On coastal shorelines which are subject to active shoreline erosion and which are unprotected by a barrier island or peninsula, a separation distance from the shoreline to the facility must be at least 5,000 feet, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water.

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

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

(7) Hazardous waste landfills are prohibited if there is a practicable alternative to such a landfill that is

reasonably available to manage the types and classes of hazardous waste which might be disposed at the landfill.

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

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

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

§26.20 Policies for Prevention, Response and Remediation of Oil Spills

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

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

§26.21 Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters

(a) TCEQ rules shall:

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

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

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

(4) identify and rank waters that are not attaining designated uses and establish total maximum daily pollutant loads in accordance with those rankings using scientifically valid models calibrated and validated with monitored data and with public input from affected stakeholders; and

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

(A) impair designated uses of coastal waters; or

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

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

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

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

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

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

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

§26.22 Policies for Nonpoint Source (NPS) Water Pollution

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

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

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

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

§26.23 Policies for Development in Critical Areas

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

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

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

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

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

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

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

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

(A) on-site, in-kind;

(B) off-site, in-kind;

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

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

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

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

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

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

(B) the activity will cause or contribute, after consideration of dilution and dispersion, to violation of any applicable surface water quality standards established under §501.21 of this title;

(C) the activity violates any applicable toxic effluent standard or prohibition established under §501.21 of this title;

(D) the activity violates any requirement imposed to protect a marine sanctuary designated under the Marine Protection, Research, and Sanctuaries Act of 1972, 33 United States Code Annotated, Chapter 27; or

(E) taking into account the nature and degree of all identifiable adverse effects, including their persistence, permanence, areal extent, and the degree to which these effects will have been mitigated pursuant to subsections (c) and (d) of this section, the activity will, individually or collectively, cause or contribute to significant adverse effects on:

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

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

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

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

(b) The TCEQ and the RRC shall comply with the policies in this section when issuing certifications and adopting rules under Texas Water Code, Chapter 26, and the Texas Natural Resources Code, Chapter 91, governing certification of compliance with surface water quality standards for federal actions and permits authorizing development affecting critical areas; provided that activities exempted from the requirement for a permit for the discharge of dredged or fill material, described in Code of Federal Regulations, Title 33, §323.4 and/or Code of Federal Regulations, Title 40, §232.3, including but not limited to normal farming, silviculture, and ranching activities, such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, shall not be considered activities for which a certification is required. The GLO and the SLB shall comply with the policies in this section when approving oil, gas, or other mineral lease plans of operation or granting surface

leases, easements, and permits and adopting rules under the Texas Natural Resources Code, Chapters 32, 33 and 51 - 53, and Texas Water Code, Chapter 61, governing development affecting critical areas on state submerged lands and private submerged lands, and when issuing approvals and adopting rules under Texas Natural Resources Code, Chapter 221, for mitigation banks operated by subdivisions of the state.

(c) Agencies required to comply with this section will coordinate with one another and with federal agencies when evaluating alternatives, determining appropriate and practicable mitigation, and assessing significant degradation. Those agencies' rules governing authorizations for development in critical areas shall require a demonstration that the requirements of subsection (a)(1) - (7) of this section have been satisfied.

(d) For any dredging or construction of structures in, or discharge of dredged or fill material into, critical areas that is subject to the requirements of §501.15 of this title (relating to Policy for Major Actions), data and information on the cumulative and secondary adverse affects of the project need not be produced or evaluated to comply with this section if such data and information is produced and evaluated in compliance with §501.15(b) - (c) of this title.

§26.24 Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands

(a) Development on submerged lands shall comply with the policies in this section.

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

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

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

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

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

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

(A) does not significantly interfere with public navigation;

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

(C) avoids and otherwise minimizes shading of critical areas and other adverse effects.

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

- (A) construction and maintenance of other development associated with the facility;
 - (B) direct release to coastal waters and critical areas of pollutants from oil or hazardous substance spills or stormwater runoff; and
 - (C) deposition of airborne pollutants in coastal waters and critical areas.
- (8) Where practicable, pipelines, transmission lines, cables, roads, causeways, and bridges shall be located in existing rights-of-way or previously disturbed areas if necessary to avoid or minimize adverse effects and if it does not result in unreasonable risks to human health, safety, and welfare.
- (9) To the greatest extent practicable, construction of facilities shall occur at sites and times selected to have the least adverse effects on recreational uses of CNRAs and on spawning or nesting seasons or seasonal migrations of terrestrial and aquatic wildlife.
- (10) Facilities shall be located at sites which avoid the impoundment and draining of coastal wetlands. If impoundment or draining cannot be avoided, adverse effects to the impounded or drained wetlands shall be mitigated in accordance with the sequencing requirements of §501.23 of this title. To the greatest extent practicable, facilities shall be located at sites at which expansion will not result in development in critical areas.
- (11) Where practicable, piers, docks, wharves, bulkheads, jetties, groins, fishing cabins, and artificial reefs shall be constructed with materials that will not cause any adverse effects on coastal waters or critical areas.
- (12) Developed sites shall be returned as closely as practicable to pre-project conditions upon completion or cessation of operations by the removal of facilities and restoration of any significantly degraded areas, unless:
- (A) the facilities can be used for public purposes or contribute to the maintenance or enhancement of coastal water quality, critical areas, beaches, submerged lands, or shore areas; or
 - (B) restoration activities would further degrade CNRAs.
- (13) Water-dependent uses and facilities shall receive preference over those uses and facilities that are not water-dependent.
- (14) Nonstructural erosion response methods such as beach nourishment, sediment bypassing, nearshore sediment berms, and planting of vegetation shall be preferred instead of structural erosion response methods.
- (15) Major residential and recreational waterfront facilities shall to the greatest extent practicable accommodate public access to coastal waters and preserve the public's ability to enjoy the natural aesthetic values of coastal submerged lands.
- (16) Activities on submerged land shall avoid and otherwise minimize any significant interference with the public's use of and access to such lands.
- (17) Erosion of Gulf beaches and coastal shore areas caused by construction or modification of jetties, breakwaters, groins, or shore stabilization projects shall be mitigated to the extent the costs of mitigation are reasonably proportionate to the benefits of mitigation. Factors that shall be considered in determining whether the costs of mitigation are reasonably proportionate to the cost of the construction or modification and benefits include, but are not limited to, environmental benefits, recreational benefits, flood or storm protection benefits, erosion prevention benefits, and economic development benefits.

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

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

§26.25 Policies for Dredging and Dredged Material and Placement

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

(1) Dredging and dredged material disposal and placement shall not cause or contribute, after consideration of dilution and dispersion, to violation of any applicable surface water quality standards established under §501.21 of this title.

(2) Except as otherwise provided in paragraph (4) of this subsection, adverse effects on critical areas from dredging and dredged material disposal or placement shall be avoided and otherwise minimized, and appropriate and practicable compensatory mitigation shall be required, in accordance with §501.23 of this title.

(3) Except as provided in paragraph (4) of this subsection, dredging and the disposal and placement of dredged material shall not be authorized if:

(A) there is a practicable alternative that would have fewer adverse effects on coastal waters, submerged lands, critical areas, coastal shore areas, and Gulf beaches, so long as that alternative does not have other significant adverse effects;

(B) all appropriate and practicable steps have not been taken to minimize adverse effects on coastal waters, submerged lands, critical areas, coastal shore areas, and Gulf beaches; or

(C) significant degradation of critical areas under §501.23(a)(7)(E) of this title would result.

(4) A dredging or dredged material disposal or placement project that would be prohibited solely by application of paragraph (3) of this subsection may be allowed if it is determined to be of overriding importance to the public and national interest in light of economic impacts on navigation and maintenance of commercially navigable waterways.

(b) Adverse effects from dredging and dredged material disposal and placement shall be minimized as required in subsection (a) of this section. Adverse effects can be minimized by employing the techniques in this subsection where appropriate and practicable.

(1) Adverse effects from dredging and dredged material disposal and placement can be minimized by controlling the location and dimensions of the activity. Some of the ways to accomplish this include:

(A) locating and confining discharges to minimize smothering of organisms;

(B) locating and designing projects to avoid adverse disruption of water inundation patterns, water circulation, erosion and accretion processes, and other hydrodynamic processes;

(C) using existing or natural channels and basins instead of dredging new channels or basins, and discharging materials in areas that have been previously disturbed or used for disposal or placement of dredged material;

(D) limiting the dimensions of channels, basins, and disposal and placement sites to the minimum reasonably required to serve the project purpose, including allowing for reasonable overdredging of channels and basins, and taking into account the need for capacity to accommodate future expansion without causing additional adverse effects;

(E) discharging materials at sites where the substrate is composed of material similar to that being discharged;

(F) locating and designing discharges to minimize the extent of any plume and otherwise control dispersion of material; and

(G) avoiding the impoundment or drainage of critical areas.

(2) Dredging and disposal and placement of material to be dredged shall comply with applicable standards for sediment toxicity. Adverse effects from constituents contained in materials discharged can be minimized by treatment of or limitations on the material itself. Some ways to accomplish this include:

(A) disposal or placement of dredged material in a manner that maintains physiochemical conditions at discharge sites and limits or reduces the potency and availability of pollutants;

(B) limiting the solid, liquid, and gaseous components of material discharged;

(C) adding treatment substances to the discharged material; and

(D) adding chemical flocculants to enhance the deposition of suspended particulates in confined disposal areas.

(3) Adverse effects from dredging and dredged material disposal or placement can be minimized through control of the materials discharged. Some ways of accomplishing this include:

(A) use of containment levees and sediment basins designed, constructed, and maintained to resist breaches, erosion, slumping, or leaching;

(B) use of lined containment areas to reduce leaching where leaching of chemical constituents from the material is expected to be a problem;

(C) capping in-place contaminated material or, selectively discharging the most contaminated material first and then capping it with the remaining material;

(D) properly containing discharged material and maintaining discharge sites to prevent point and nonpoint pollution; and

(E) timing the discharge to minimize adverse effects from unusually high water flows, wind, wave, and tidal actions.

(4) Adverse effects from dredging and dredged material disposal or placement can be minimized by

controlling the manner in which material is dispersed. Some ways of accomplishing this include:

- (A) where environmentally desirable, distributing the material in a thin layer;
- (B) orienting material to minimize undesirable obstruction of the water current or circulation patterns;
- (C) using silt screens or other appropriate methods to confine suspended particulates or turbidity to a small area where settling or removal can occur;
- (D) using currents and circulation patterns to mix, disperse, dilute, or otherwise control the discharge;
- (E) minimizing turbidity by using a diffuser system or releasing material near the bottom;
- (F) selecting sites or managing discharges to confine and minimize the release of suspended particulates and turbidity and maintain light penetration for organisms; and
- (G) setting limits on the amount of material to be discharged per unit of time or volume of receiving waters.

(5) Adverse effects from dredging and dredged material disposal or placement operations can be minimized by adapting technology to the needs of each site. Some ways of accomplishing this include:

- (A) using appropriate equipment, machinery, and operating techniques for access to sites and transport of material, including those designed to reduce damage to critical areas;
- (B) having personnel on site adequately trained in avoidance and minimization techniques and requirements; and
- (C) designing temporary and permanent access roads and channel spanning structures using culverts, open channels, and diversions that will pass both low and high water flows, accommodate fluctuating water levels, and maintain circulation and faunal movement.

(6) Adverse effects on plant and animal populations from dredging and dredged material disposal or placement can be minimized by:

- (A) avoiding changes in water current and circulation patterns that would interfere with the movement of animals;
- (B) selecting sites or managing discharges to prevent or avoid creating habitat conducive to the development of undesirable predators or species that have a competitive edge ecologically over indigenous plants or animals;
- (C) avoiding sites having unique habitat or other value, including habitat of endangered species;
- (D) using planning and construction practices to institute habitat development and restoration to produce a new or modified environmental state of higher ecological value by displacement of some or all of the existing environmental characteristics;
- (E) using techniques that have been demonstrated to be effective in circumstances similar to those under consideration whenever possible and, when proposed development and restoration techniques have not yet advanced to the pilot demonstration stage, initiating their use on a small scale to allow corrective action if unanticipated adverse effects occur;

(F) timing dredging and dredged material disposal or placement activities to avoid spawning or migration seasons and other biologically critical time periods; and

(G) avoiding the destruction of remnant natural sites within areas already affected by development.

(7) Adverse effects on human use potential from dredging and dredged material disposal or placement can be minimized by:

(A) selecting sites and following procedures to prevent or minimize any potential damage to the aesthetically pleasing features of the site, particularly with respect to water quality;

(B) selecting sites which are not valuable as natural aquatic areas;

(C) timing dredging and dredged material disposal or placement activities to avoid the seasons or periods when human recreational activity associated with the site is most important; and

(D) selecting sites that will not increase incompatible human activity or require frequent dredge or fill maintenance activity in remote fish and wildlife areas.

(8) Adverse effects from new channels and basins can be minimized by locating them at sites:

(A) that ensure adequate flushing and avoid stagnant pockets; or

(B) that will create the fewest practicable adverse effects on CNRAs from additional infrastructure such as roads, bridges, causeways, piers, docks, wharves, transmission line crossings, and ancillary channels reasonably likely to be constructed as a result of the project; or

(C) with the least practicable risk that increased vessel traffic could result in navigation hazards, spills, or other forms of contamination which could adversely affect CNRAs;

(D) provided that, for any dredging of new channels or basins subject to the requirements of §501.15 of this title (relating to Policy for Major Actions), data and information on minimization of secondary adverse effects need not be produced or evaluated to comply with this paragraph if such data and information is produced and evaluated in compliance with §501.15(b)(1) of this title.

(c) Disposal or placement of dredged material in existing contained dredge disposal sites identified and actively used as described in an environmental assessment or environmental impact statement issued prior to the effective date of this chapter shall be presumed to comply with the requirements of subsection (a) of this section unless modified in design, size, use, or function.

(d) Dredged material from dredging projects in commercially navigable waterways is a potentially reusable resource and must be used beneficially in accordance with this policy.

(1) If the costs of the beneficial use of dredged material are reasonably comparable to the costs of disposal in a non-beneficial manner, the material shall be used beneficially.

(2) If the costs of the beneficial use of dredged material are significantly greater than the costs of disposal in a non-beneficial manner, the material shall be used beneficially unless it is demonstrated that the costs of using the material beneficially are not reasonably proportionate to the costs of the project and benefits that will result. Factors that shall be considered in determining whether the costs of the beneficial use are not reasonably proportionate to the benefits include, but are not limited to:

(A) environmental benefits, recreational benefits, flood or storm protection benefits, erosion prevention benefits, and economic development benefits;

(B) the proximity of the beneficial use site to the dredge site; and

(C) the quantity and quality of the dredged material and its suitability for beneficial use.

(3) Examples of the beneficial use of dredged material include, but are not limited to:

(A) projects designed to reduce or minimize erosion or provide shoreline protection;

(B) projects designed to create or enhance public beaches or recreational areas;

(C) projects designed to benefit the sediment budget or littoral system;

(D) projects designed to improve or maintain terrestrial or aquatic wildlife habitat;

(E) projects designed to create new terrestrial or aquatic wildlife habitat, including the construction of marshlands, coastal wetlands, or other critical areas;

(F) projects designed and demonstrated to benefit benthic communities or aquatic vegetation;

(G) projects designed to create wildlife management areas, parks, airports, or other public facilities;

(H) projects designed to cap landfills or other water disposal areas;

(I) projects designed to fill private property or upgrade agricultural land, if cost-effective public beneficial uses are not available; and

(J) projects designed to remediate past adverse impacts on the coastal zone.

(e) If dredged material cannot be used beneficially as provided in subsection (d)(2) of this section, to avoid and otherwise minimize adverse effects as required in subsection (a) of this section, preference will be given to the greatest extent practicable to disposal in:

(1) contained upland sites;

(2) other contained sites; and

(3) open water areas of relatively low productivity or low biological value.

(f) For new sites, dredged materials shall not be disposed of or placed directly on the boundaries of submerged lands or at such location so as to slump or migrate across the boundaries of submerged lands in the absence of an agreement between the affected public owner and the adjoining private owner or owners that defines the location of the boundary or boundaries affected by the deposition of the dredged material.

(g) Emergency dredging shall be allowed without a prior consistency determination as required in the applicable consistency rule when:

(1) there is an unacceptable hazard to life or navigation;

(2) there is an immediate threat of significant loss of property; or

(3) an immediate and unforeseen significant economic hardship is likely if corrective action is not taken within a time period less than the normal time needed under standard procedures. The CMP coordinator shall be notified at least 24 hours prior to commencement of any emergency dredging operation by the agency or entity responding to the emergency. The notice shall include a statement demonstrating the need for emergency action. Prior to initiation of the dredging operations the project sponsor or permit-issuing agency shall, if possible, make all reasonable efforts to meet with the CMP coordinator to ensure consideration of and consistency with applicable policies in this subchapter. Compliance with all applicable policies in this subchapter shall be required at the earliest possible date. The permit-issuing agency and the applicant shall submit a consistency determination within 60 days after the emergency operation is complete.

(h) Mining of sand, shell, marl, gravel, and mudshell on submerged lands shall be prohibited unless there is an affirmative showing of no significant impact on erosion within the coastal zone and no significant adverse effect on coastal water quality or terrestrial and aquatic wildlife habitat within any CNRA.

(i) The GLO and the SLB shall comply with the policies in this section when approving oil, gas, and other mineral lease plans of operation and granting surface leases, easements, and permits and adopting rules under the Texas Natural Resources Code, Chapters 32, 33, and 51 - 53, and Texas Water Code, Chapter 61, for dredging and dredged material disposal and placement. TxDOT shall comply with the policies in this subchapter when adopting rules and taking actions as local sponsor of the Gulf Intracoastal Waterway under Texas Transportation Code, Chapter 51. The TCEQ and the RRC shall comply with the policies in this section when issuing certifications and adopting rules under Texas Water Code, Chapter 26, and the Texas Natural Resources Code, Chapter 91, governing certification of compliance with surface water quality standards for federal actions and permits authorizing dredging or the discharge or placement of dredged material. The TPWD shall comply with the policies in this section when adopting rules at Chapter 57 of this title (relating to Fisheries) governing dredging and dredged material disposal and placement. The TPWD shall comply with the policies in subsection (h) of this section when adopting rules and issuing permits under Texas Parks and Wildlife Code, Chapter 86, governing the mining of sand, shell, marl, gravel, and mudshell.

(j) To the extent practicable, agencies and subdivisions should maximize the use of collaborative partnerships between federal and non-federal interests to plan, fund, and implement projects for the beneficial use of dredged material, and should further endeavor to coordinate such projects with the U.S. Army Corps of Engineers.

(k) Notwithstanding the requirements of this policy, all projects for the beneficial use of dredged material proposed under the Coastal Erosion Planning and Response Act (CEPRA), Texas Natural Resources Code, Chapter 33, Subchapter H, shall comply with Chapter 15 of this title and all other statutory and regulatory requirements applicable to CEPRA projects.

§26.26 Policies for Construction in the Beach/Dune System

(a) Construction in critical dune areas or areas adjacent to or on Gulf beaches shall comply with the following policies:

(1) Construction within a critical dune area that results in the material weakening of dunes and material damage to dune vegetation shall be prohibited.

(2) Construction within critical dune areas that does not materially weaken dunes or materially damage dune vegetation shall be sited, designed, constructed, maintained, and operated so that adverse "effects" (as defined in §15.2 of this title (relating to Coastal Area Planning)) on the sediment budget and critical dune areas are avoided to the greatest extent practicable. For purposes of this section, practicability shall be determined by considering the effectiveness, scientific feasibility, and commercial availability of the technology or technique. Cost of the technology or technique shall also be considered. Adverse effects (as defined in Chapter 15 of this title (relating to Coastal Area Planning)) that cannot be avoided shall be:

- (A) minimized by limiting the degree or magnitude of the activity and its implementation;
- (B) rectified by repairing, rehabilitating, or restoring the adversely affected dunes and dune vegetation; and
- (C) compensated for on-site or off-site by replacing the resources lost or damaged seaward of the dune protection line.

(3) Mitigation and compensation for adverse effects that cannot be avoided or minimized shall provide at least a one-to-one replacement of the dune volume and vegetative cover, and preference shall be given to stabilization of blowouts and breaches and on-site compensation.

(4) The ability of the public, individually and collectively, to exercise its rights of use of and access to and from public beaches shall be preserved and enhanced.

(5) Non-structural erosion response methods such as beach nourishment, sediment bypassing, nearshore sediment berms, and planting of vegetation shall be preferred instead of structural erosion response methods. Subdivisions shall not authorize the construction of a new erosion response structure within the beach/dune system, except as provided by subsection (b) of this section or a retaining wall located more than 200 feet landward of the line of vegetation. Subdivisions shall not authorize the enlargement, improvement, repair or maintenance of existing erosion response structures on the public beach. Subdivisions shall not authorize the repair or maintenance of existing erosion response structures within 200 feet landward of the line of vegetation except as provided in §15.6(d) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards).

(b) Construction of structural shore protection projects, including geotextile shore protection projects, in critical dune areas or areas adjacent to or on Gulf Beaches shall comply with the following policies:

(1) The size and the length of a shore protection project shall be determined as part of a site-specific construction and maintenance plan, taking into account both technical requirements and policy issues as described under this subsection, and shall be limited to the minimum size necessary to fulfill the project's goals and purposes.

(2) A shore protection project shall only be used to protect community developments, public infrastructure, and for other lawful public purposes and shall not be used solely to protect individual structures or properties. A community development may include a neighborhood or aggregation of residences or commercial structures.

(3) A shore protection project located parallel to the shore shall be located landward of the boundary of state-owned submerged land as determined by a coastal boundary survey conducted in accordance with Texas Natural Resources Code §33.136, and shall avoid and otherwise minimize adverse effects to dunes and dune vegetation.

(4) To maximize the protection offered by a shore protection project, to enhance the survivability of the project, and to minimize adverse effects to natural resources, a shore protection project shall be located according to the following preferred order:

(A) In an area where a foredune ridge is present, where practicable, a shore protection project shall be located landward of the foredune ridge;

(B) Where there is no foredune ridge, a project shall be located landward of the line of vegetation, where practicable;

- (C) Where it is not practicable to locate a shore protection project landward of the line of vegetation, a project shall be located at the line of vegetation; or
- (D) Where there is no other practicable location, a shore protection project shall be located at the most landward point of the public beach provided that the project sponsor has provided financial assurance that the pre-project beach width will be maintained through beach nourishment.
- (5) A shore protection project shall not adversely affect sea turtle nesting areas or an endangered species.
- (6) Shore protection projects shall not be constructed on stable or accreting beaches.
- (7) A shore protection project shall be designed to avoid and otherwise minimize any adverse effects to adjacent beaches or properties at either end of a project.
- (8) To the extent allowed by law, a dune protection permit is required to authorize the construction of a shore protection project in the beach/dune system.
- (9) A mitigation plan shall be submitted for any adverse effects to critical dune areas as a result of the construction and presence of a shore protection project.
- (10) Public input shall be incorporated into a local government's review and approval of a shore protection project. Methods to obtain public input include public meetings, notices by mail to affected property owners, publication of notices in local newspapers, the *Texas Register*, and web sites.
- (11) The success criteria for a shore protection project shall be developed by a project sponsor with consideration for the health and maintenance of the beach/dune system.
- (12) The sponsor of a shore protection project shall be responsible for the ongoing maintenance of the project and, if necessary, beach nourishment and/or removal of the project.
- (13) Sand from the beach/dune system shall not be used to fill or cover a shore protection project. Where appropriate, a shore protection project shall remain covered with sand and dune vegetation with a preference for natural dune vegetation. The sand and vegetation used to cover a shore protection project shall conform to the standards for dune restoration projects as described in §15.4 (relating to Dune Protection Standards) and §15.7, (relating to Local Government Management of the Public Beach) of this title.
- (14) Long-term monitoring of a shore protection project shall be required to determine the project's effect on the beach/dune system and the project's effectiveness. Prior to the construction of a shore protection project, a project sponsor shall collect scientifically valid baseline data for monitoring the line of vegetation, the extent of the dry beach, a beach profile, and any other characteristics necessary for evaluating the project's effectiveness.
- (15) Existing public access in the area of a shore protection project shall be replicated if not enhanced. A local government shall not impair or close an existing public access point or close a public beach to pedestrian or vehicular traffic without prior approval of the GLO as required under the Open Beaches Act, Texas Natural Resource Code Annotated, Chapter 61, and the Beach/Dune rules, Chapter 15 of this title.
- (c) The GLO shall comply with the policies in this section when certifying local government dune protection and beach access plans and adopting rules under the Texas Natural Resources Code, Chapters 61 and 63. Local governments required by the Texas Natural Resources Code, Chapters 61 and 63, and Chapter 15 of this title (relating to Coastal Area Planning) to adopt dune protection and beach access plans shall comply with the applicable policies in this section when issuing beachfront construction certificates and dune

protection permits.

§26.27 Policies for Development in Coastal Hazard Areas

(a) Subdivisions participating in the National Flood Insurance Program shall adopt ordinances or orders governing development in special hazard areas under Texas Water Code, Chapter 16, Subchapter I, and Texas Local Government Code, Chapter 240, Subchapter Z, that comply with construction standards in regulations at Code of Federal Regulations, Title 44, Parts 59 - 60, adopted pursuant to the National Flood Insurance Act, 42 United States Code Annotated, §§4001 et seq.

(b) Pursuant to the standards and procedures under the Texas Natural Resources Code, Chapter 33, Subchapter H, the GLO shall adopt or issue rules, recommendations, standards, and guidelines for erosion avoidance and remediation and for prioritizing critical erosion areas.

§26.28 Policies for Development Within Coastal Barrier Resource System Units and Otherwise Protected Areas on Coastal Barriers

(a) Development of new infrastructure or major repair of existing infrastructure within or supporting development within Coastal Barrier Resource System Units and Otherwise Protected Areas designated on maps dated October 24, 1990, as those maps may be modified, revised, or corrected, under the Coastal Barrier Resources Act, 16 United States Code Annotated, §3503(a), shall comply with the policies in this section.

(1) Development of publicly funded infrastructure shall be authorized only if it is essential for public health, safety, and welfare, enhances public use, or is required by law.

(2) Infrastructure shall be located at sites at which reasonably foreseeable future expansion will not require development in critical areas, critical dunes, Gulf beaches, and washover areas within Coastal Barrier Resource System Units or Otherwise Protected Areas.

(3) Infrastructure shall be located at sites that to the greatest extent practicable avoid and otherwise minimize the potential for adverse effects on critical areas, critical dunes, Gulf beaches, and washover areas within Coastal Barrier Resource System Units or Otherwise Protected Areas from:

(A) construction and maintenance of roads, bridges, and causeways; and

(B) direct release to coastal waters, critical areas, critical dunes, Gulf beaches, and washover areas within Coastal Barrier Resource System Units or Otherwise Protected Areas of oil, hazardous substances, or stormwater runoff.

(4) Where practicable, infrastructure shall be located in existing rights-of-way or previously disturbed areas to avoid or minimize adverse effects within Coastal Barrier Resource System Units or Otherwise Protected Areas.

(5) Development of infrastructure shall occur at sites and times selected to have the least adverse effects practicable within Coastal Barrier Resource System Units or Otherwise Protected Areas on critical areas, critical dunes, Gulf beaches, and washover areas and on spawning or nesting areas or seasonal migrations of commercial, recreational, threatened, or endangered terrestrial or aquatic wildlife.

(b) TCEQ rules and approvals for the creation of special districts and for infrastructure projects funded by issuance of bonds by water, sanitary sewer, and wastewater drainage districts under Texas Water Code, Chapters 49, 50, and 59; water control and improvement districts under Texas Water Code, Chapter 50;

municipal utility districts under Texas Water Code, Chapter 54; regional plan implementation agencies under Texas Water Code, Chapter 54; special utility districts under Texas Water Code, Chapter 65; stormwater control districts under Texas Water Code, Chapter 66; and all other general and special law districts subject to and within the jurisdiction of the TCEQ, shall comply with the policies in this section. TxDOT rules and approvals under Texas Transportation Code Chapter 201, et seq., governing planning, design, construction, and maintenance of transportation projects, shall comply with the policies in this section.

§26.29 Policies for Development in State Parks, Wildlife Management Areas or Preserves

Development by a person other than the Parks and Wildlife Department that requires the use or taking of any public land in such areas shall comply with Texas Parks and Wildlife Code, Chapter 26.

§26.30 Policies for Alteration of Coastal Historic Areas

(a) Development affecting a coastal historic area shall avoid and otherwise minimize alteration or disturbance of the site unless the site's excavation will promote historical, archaeological, educational, or scientific understanding.

(b) The THC shall comply with the policies in this section when adopting rules and issuing permits under the Texas Natural Resources Code, Chapter 191, governing alteration of coastal historic areas. The THC shall comply with the policies in this section when issuing reviews under the National Historic Preservation Act, §106 (16 United States Code Annotated, §470f), and the regulations enacted pursuant thereto, Code of Federal Regulations, Title 36, Chapter 1, Part 63.

§26.31 Policies for Transportation Projects

(a) Transportation construction projects and maintenance programs within the coastal zone shall comply with the policies in this section.

(1) Pollution prevention procedures shall be incorporated into the construction and maintenance of transportation projects to minimize pollutant loading to coastal waters from erosion and sedimentation, use of pesticides and herbicides for maintenance of rights-of-way, and other pollutants from stormwater runoff.

(2) Transportation projects shall be located at sites that to the greatest extent practicable avoid and otherwise minimize the potential for adverse effects from construction and maintenance of additional roads, bridges, causeways, and other development associated with the project; and direct release to CNRAs of pollutants from oil or hazardous substance spills, contaminated sediments or stormwater runoff.

(3) Where practicable, transportation projects shall be located in existing rights-of-way or previously disturbed areas if necessary to avoid or minimize adverse effects.

(4) Where practicable, transportation projects shall be located at sites at which future expansion will not require development in coastal wetlands except where such construction is determined to be essential for evacuation in the case of a natural disaster.

(5) Construction and maintenance of transportation projects shall avoid the impoundment and draining of coastal wetlands. If impoundment or draining cannot be avoided, adverse effects to the impounded or drained wetlands shall be mitigated in accordance with the sequencing requirements of §501.23 of this title.

(6) Construction of transportation projects shall occur at sites and times selected to have the least adverse effects practicable on recreational uses of CNRAs and on spawning or nesting seasons or seasonal migrations of terrestrial or aquatic species.

(7) Beach-quality sand from maintenance of roadways adjacent to Gulf beaches shall be beneficially used by placement on Gulf beaches where practicable. Where placement on Gulf beaches is not practicable, the material shall be placed in critical dune areas.

(b) TxDOT rules and project approvals under Texas Transportation Code §§455.001 - 455.004; 456.001 - 456.008; 456.021 - 456.026; and 456.042 and Texas Transportation Code §221.001, et seq. governing transportation projects within the coastal zone, shall comply with the policies in this section.

§26.32 Policies for Emission of Air Pollutants

TCEQ rules under Texas Health and Safety Code, Chapter 382, governing emissions of air pollutants, shall comply with regulations at Code of Federal Regulations, Title 40, adopted pursuant to the Clean Air Act, 42 United States Code Annotated, §§7401, et seq, to protect and enhance air quality in the coastal area so as to protect CNRAs and promote the public health, safety, and welfare.

§26.33 Policies for Appropriations of Water

(a) Impoundments and diversion of state water within 200 stream miles of the coast, to commence from the mouth of the river thence inland, shall comply with the policies in this section.

(1) The TCEQ shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state. It is the public policy of the state to provide for the conservation and development of the state's natural resources, including:

(A) the control, storage, preservation, and distribution of the state's storm and floodwaters and the waters of its rivers and streams for irrigation, power, and other useful purposes;

(B) the reclamation and irrigation of the state's arid, semiarid, and other land needing irrigation;

(C) the reclamation and drainage of the state's overflowed land and other land needing drainage;

(D) the conservation and development of its forest, water, and hydroelectric power;

(E) the navigation of the state's inland and coastal waters; and

(F) the maintenance of a proper ecological environment of the bays and estuaries of Texas and the health of related living marine resources.

(2) In this section, "beneficial inflows" means a salinity, nutrient, and sediment loading regime adequate to maintain an ecologically sound environment in the receiving bay and estuary system that is necessary for the maintenance of productivity of economically important and ecologically characteristic sport or commercial fish and shellfish species and estuarine life upon which such fish and shellfish are dependent.

(3) In its consideration of an application for a permit to store, take, or divert water, the TCEQ shall assess the effects, if any, of the issuance of the permit on the bays and estuaries of Texas. For permits issued within an area that is 200 river miles of the coast, to commence from the mouth of the river thence inland, the TCEQ shall include in the permit, to the greatest extent practicable when considering all public interests, those conditions considered necessary to maintain beneficial inflows to any affected bay and estuary system.

(4) For the purposes of making a determination under paragraph (3) of this subsection, the TCEQ shall consider among other factors:

(A) the need for periodic freshwater inflows to supply nutrients and modify salinity to preserve the sound environment of the bay or estuary, using any available information, including studies and plans specified in and other studies considered by the TCEQ to be reliable; together with existing circumstances, natural or otherwise, that might prevent the conditions imposed from producing benefits;

(B) the ecology and productivity of the affected bay and estuary system;

(C) the expected effects on the public welfare of not including in the permit some or all of the conditions considered necessary to maintain the beneficial inflows to the affected bay or estuary;

(D) the quantity of water requested and the proposed use of water by the applicant, as well as the needs of those who would be served by the applicant;

(E) the expected effects on the public welfare of the failure to issue all or part of the permit being considered; and

(F) for the purposes of this section, the declarations as to preferences for competing uses of water as found in Texas Water Code, §11.024 and §11.033, as well as the public policy statement in paragraph (1) of this subsection.

(5) In its consideration of an application to store, take, or divert water, the TCEQ shall consider the effect, if any, of the issuance of the permit on existing instream uses and water quality of the stream or river to which the application applies. The TCEQ shall also consider the effect, if any, of the issuance of the permit on fish and wildlife habitats.

(6) On receipt of an application for a permit to store, take, or divert water, the TCEQ shall send a copy of the permit application and any subsequent amendments to the TPWD. In making a final decision on any application for a permit, the TCEQ, in addition to other information, evidence, and testimony presented, shall consider all information, evidence, or testimony presented by the TPWD and the TWDB.

(7) Permit conditions relating to beneficial inflows to affected bays and estuaries and instream uses may be suspended by the TCEQ if the TCEQ finds that an emergency exists and cannot practically be resolved in other ways. Before the TCEQ suspends a permit under this paragraph, it must give written notice to the TPWD of the proposed suspension. The TCEQ shall give the TPWD an opportunity to submit comments on the proposed suspension within 72 hours from such time and the TCEQ shall consider those comments before issuing its order imposing the suspension.

(8) In its consideration of an application for a permit under this section, the TCEQ shall assess the effects, if any, of the issuance of the permit on water quality in coastal waters. In its consideration of an application for a permit to store, take, or divert water in excess of 5,000 acre feet per year, the TCEQ shall assess the effects, if any, on the issuance of the permit on fish and wildlife habitats and may require the applicant to take reasonable actions to mitigate adverse effects on such habitat. In determining whether to require an applicant to mitigate adverse effects on a habitat, the TCEQ may consider any net benefit to habitat produced by the project. The TCEQ shall offset against any mitigation required by the United States Fish and Wildlife Service pursuant to Code of Federal Regulations, Title 33, §§320 - 330, any mitigation authorized by this subchapter.

(9) Unappropriated water and other water of the state stored in any facility acquired by and under the control of the TWDB may be released without charge to relieve any emergency condition arising from drought, severe water shortage, or other calamity, if the TCEQ first determines the existence of the emergency and requests the TWDB to release the water.

(10) Five percent of the annual firm yield of water in any reservoir and associated works constructed with state financial participation within 200 river miles of the coast, to commence from the mouth of the river

thence inland, is appropriated to the TPWD for use to make releases to bays and estuaries and for instream uses, and the TCEQ shall issue permits for this water to the TPWD under procedures adopted by the TCEQ. This paragraph applies only to reservoirs and associated works on which construction begins on or after September 1, 1985. This section does not limit or repeal any other authority of or law relating to the TPWD or the TCEQ.

(11) The TWDB, in coordination with the TCEQ and TPWD, shall identify ways to assist in providing flows to meet instream needs, including protection of water quality, protection of terrestrial or aquatic wildlife habitat, and bay and estuary inflow needs, in the implementation of the Texas Water Bank, Texas Water Code, Chapter 15, Subchapter K. This may include, but not be limited to, the purchase by the TPWD and/or the TWDB of water rights deposited in the Texas Water Bank in order to provide for existing instream uses and beneficial inflows to bays and estuaries if funds are available and such purchase is not prohibited by law. The TCEQ shall facilitate the approval of any necessary permit amendments to achieve this purpose.

(12) An applicant for a new or amended water right permit shall submit a water conservation plan in accordance with 30 TAC §295.9 (relating to Water Conservation and Drought Contingency Plans). The TCEQ shall consider the information contained in the water conservation plan in determining whether any feasible alternative to the proposed appropriation exists, whether the proposed amount to be appropriated as measured at the point of diversion is reasonable and necessary for the proposed use, the term and other conditions of the water right and to ensure that reasonable diligence will be used to avoid waste and achieve water conservation. Based upon its review, the TCEQ may deny or grant, in whole or in part, the requested appropriation.

(b) The TCEQ rules and authorizations under Texas Water Code, Chapter 11, governing review and action on applications for new permits or amendments proposing changes to existing permits for diversions or impoundments of state water within 200 stream miles of the coast, and TCEQ rules and approvals governing creation of districts and issuance of district bonds for levee and flood control projects within the coastal zone, shall comply with the policies in this section.

§26.34 Policies for Levee and Flood Control Projects

(a) Drainage, reclamation, channelization, levee construction or modification, or flood- or floodwater-control infrastructure projects shall be designed, constructed, and maintained to avoid the impoundment and draining of coastal wetlands to the greatest extent practicable. If impoundment or draining of coastal wetlands cannot be avoided, adverse effects to the wetlands shall be mitigated in accordance with the sequencing requirements in §501.23 of this title.

(b) TCEQ rules and approvals for the levee construction, modification, drainage, reclamation, channelization, or flood- or floodwater-control projects, pursuant to the Texas Water Code, §16.236, shall comply with the policies in this section.