

TITLE 31 NATURAL RESOURCES AND CONSERVATION

PART 1 GENERAL LAND OFFICE

CHAPTER 28 PERMITTING ASSISTANCE AND PRELIMINARY CONSISTENCY REVIEW

SUBCHAPTER A GENERAL PROVISIONS

§28.1 Purpose

This chapter establishes the process by which an applicant may request and receive assistance with filing applications for permits or other proposed actions subject to the Texas Coastal Management Program (CMP). This chapter also establishes the process by which an applicant, agency, or subdivision proposing an activity subject to the CMP may request and receive a preliminary consistency review.

§28.2 Definitions

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

- (1) Agency of subdivision--Any state agency, department, board, or commission or political subdivision of the state.
- (2) Applicant--An individual or small business. In addition, the term includes a city, county, or special district.
- (3) Coastal zone--The area within the CMP boundary established in §503.1 of this title.
- (4) Commissioner--Commissioner of the General Land Office (GLO).
- (5) Committee--Coastal Coordination Advisory Committee.
- (6) CMP goals and policies--The goals and policies set forth in Chapter 501 of this title.
- (7) Permitting assistance coordinator--The GLO staff member designated by the commissioner.
- (8) Permitting assistance group (PAG)--The group composed of representatives of committee member agencies and other interested committee members.
- (9) Permit service center (PSC)--The center that administers permitting assistance for activities in the coastal zone. The PSC has an office that serves the Upper Coast and an office that serves the Lower Coast.
- (10) Program boundary--The CMP boundary established in §503.1 of this title.

(b) 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 shall retain the meaning provided in the pertinent agency or political subdivision policies or regulations.

§28.3 Permitting Assistance Group

- (a) Each committee member representing an agency shall appoint a representative to the permitting

assistance group (PAG). Each agency's PAG representative is responsible for submitting the information that his or her agency is required to provide under these rules. Other interested committee members not representing agencies may serve or appoint a representative to the PAG.

(b) The primary responsibility of the PAG is to conduct and coordinate preliminary consistency reviews. Preliminary consistency reviews are intended to create greater predictability in the permitting process by providing applicants with a non-binding, advisory set of preliminary recommendations and findings regarding a proposed action's likely consistency with goals and policies of the CMP.

(c) The preliminary consistency review process does not supplant the regular permitting process. Because the purpose of this process is to foster predictability and not reach a final result, preliminary consistency reviews may produce statements that must be qualified because the information provided by the applicant is incomplete, the review time is shorter, or the matter warrant additional public comment. **SUBCHAPTER B PERMITTING ASSISTANCE**

§28.10 Permit Service Center

(a) Permitting assistance is administered by the Permit Service Center (PSC). The purpose of the PSC is to serve as an outlet for basic permit information and provide applicants with permitting assistance for proposed activities in the coastal zone subject to the CMP.

(b) Assistance will be provided to applicants for proposed activities in the coastal zone requiring either one or more agency or subdivision permits or proposed actions subject to the CMP. These permits and actions are listed in subsection (c) of this section. Under Texas Natural Resources Code §33.205(a) and (b), these permits and actions must comply with goals and policies of the CMP.

(c) Agency or subdivision permits and actions:

(1) The General Land Office, the School Land Board, or a board for lease of state-owned lands when issuing or approving:

(A) a mineral lease plan of operations;

(B) a geophysical or geochemical permit;

(C) a coastal easement;

(D) a miscellaneous easement;

(E) a coastal lease;

(F) a surface lease;

(G) a structure registration;

(H) a cabin permit;

(I) a navigation district lease;

(J) certification of a local government beach access or dune protection plan; or

(K) an agency or subdivision wetlands mitigation bank.

- (2) The Public Utility Commission of Texas when issuing a certificate of convenience and necessity.
- (3) The Railroad Commission of Texas when issuing:
 - (A) a wastewater discharge permit;
 - (B) a waste disposal or storage pit permit; or
 - (C) a certification of a federal permit for the discharge of dredge or fill material.
- (4) The Texas Transportation Commission when approving:
 - (A) an acquisition of a site for the placement or disposal of dredge material from, or the expansion, relocation, or alteration of, the Gulf Intracoastal Waterway; or
 - (B) a transportation construction project or maintenance program.
- (5) The Texas Historical Commission and the Antiquities Committee when issuing:
 - (A) a permit for destruction, alteration, or taking of a coastal historic area; or
 - (B) a review of a federal undertaking affecting a coastal historic area.
- (6) The Texas Commission on Environmental Quality when issuing or approving:
 - (A) a wastewater discharge permit;
 - (B) a permit for a new concentrated animal feeding operation located one mile or less from a critical area or coastal waters;
 - (C) a permit for solid or hazardous waste treatment, storage, or disposal;
 - (D) creation of a special purpose district or approval of bonds for the purpose of construction of infrastructure on coastal barriers;
 - (E) levee improvement or flood control projects;
 - (F) a certification of a federal permit for the discharge of dredge or fill material;
 - (G) a declaration of an emergency and request for an emergency release of water;
 - (H) a new permit for an annual appropriation of:
 - (i) 5,000 or more acre-feet of water within the program boundary; or
 - (ii) 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast;
 - (I) an amendment to a water permit for an increase in an annual appropriation of:
 - (i) 5,000 or more acre-feet of water within the program boundary; or
 - (ii) 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast;

or

(J) a change in the purpose of use of an annual appropriation of water to a more consumptive use of:

(i) 5,000 or more acre-feet of water within the program boundary; or

(ii) 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast.

(7) The Parks and Wildlife Commission when issuing or approving:

(A) an oyster lease;

(B) a permit for taking, transporting, or possessing threatened or endangered species;

(C) a permit for disturbing marl, sand, shell, or gravel on state-owned land; or

(D) development by a person other than the Parks and Wildlife Commission that requires the use or taking of any public land in a state park, wildlife management area, or preserve.

(8) A subdivision when issuing a dune protection permit or beachfront construction certificate that authorizes:

(A) construction activity that is located 200 feet or less landward of the line of vegetation and that results in the disturbance of more than 7,000 square feet of dunes or dune vegetation;

(B) construction activity that results in the disturbance of more than 7,500 cubic yards of dunes;

(C) a coastal shore protection project undertaken on a gulf beach or 200 feet or less landward of the line of vegetation and that affects more than 500 linear feet of gulf beach; or

(D) a closure, relocation, or reduction in existing public beach access or public beach access designated in an approved local government beach access plan, other than for a short term.

(9) An action to renew, amend, or modify an existing permit, certificate, lease, easement, approval, or other action is not an action under this section if the action is taken under a rule that has been certified under Texas Natural Resources Code §33.2052 and:

(A) for a wastewater discharge permit, if the action is not a major permit modification that would:

(i) increase pollutant loads to coastal waters; or

(ii) result in relocation of an outfall to a critical area;

(B) for solid, hazardous, or nonhazardous waste permits, if the action is not a Class III modification under rules of the Texas Natural Resource Conservation Commission; or

(C) for any other action, if the action:

(i) only extends the period of the existing authorization and does not authorize new or additional work or activity; or

(ii) is not directly relevant to Texas Natural Resources Code §33.205(a) and (b).

(10) Except as provided by paragraph (6)(H) - (J) of this subsection, this does not apply to an agency permit or action authorizing an activity outside the program boundary.

(d) The PSC also provides permitting assistance for the following equivalent federal actions:

(1) Environmental Protection Agency: National Pollution Discharge Elimination System (NPDES) permits under 33 United States Code Annotated, §1342.

(2) United States Army Corps of Engineers: Dredge and fill permits under 33 United States Code Annotated, §1344.

§28.11 Permitting Assistance Coordinator

The permitting assistance coordinator will perform the following functions:

(1) Applicant Assistance: Upon the request of an applicant, the permitting assistance coordinator will assist the applicant and monitor the status of the application until the permitting agency or subdivision has all information necessary to decide to issue, condition, or deny the permit. The coordinator will be responsible for providing preapplication assistance, on behalf of the PAG, by performing the services described in §504.12 of this chapter.

(2) Permitting Coastal Issue Team Meetings: The permitting assistance coordinator will schedule, organize, and conduct meetings of the committee's permitting coastal issue team to discuss recommendations regarding particular permit applications or other proposed actions subject to the CMP, or any other coastal permitting or regulatory matters.

(3) Chair of the PAG: The permitting assistance coordinator will serve as the chair of the PAG and will facilitate the preliminary consistency review process conducted by the PAG, as described in Subchapter C of this chapter.

(4) Permit Streamlining: The permitting assistance coordinator will help identify any permitting issues, policies, or practices that create the potential for delay in permitting decisions. The coordinator will work with permitting agency or subdivision representatives and coastal issue team members to develop and implement recommendations to reduce duplication, improve, and streamline permitting processes.

(5) Reporting: The permitting assistance coordinator will document applicant requests for assistance, track permit reviews, and provide reports and data on permitting assistance activities in accordance with federal and state reporting requirements.

§28.13 Permitting Assistance Services

Upon the request of an applicant, the permitting assistance coordinator shall provide the following:

(1) A list of the permits or other approvals necessary for the proposed activity. This list informs the applicant of which permitting agencies or subdivisions must review and approve the proposed activity.

(2) A simple, understandable statement of all permit or approval requirements. This statement gives the applicant an initial indication of how the proposed activity should be designed, carried out, or maintained to receive the permits or approvals.

(3) A coordinated schedule for each agency or subdivision's decision on the permit applications or other approvals. This schedule informs the applicant of the general timeline and sequence in which the permitting

agencies or subdivisions will likely review the proposed activity and grant or deny the applications for permits or other approvals.

(4) A list of all information the agencies or subdivisions need to declare the applications for the permits or other approvals administratively complete. This list informs the applicant of the project-specific information and data that must be collected and included in each application before the permitting agencies or subdivisions can begin the review and approval process.

(5) Assistance in completing the applications as needed. This gives the applicant the opportunity to obtain explanations or clarifications about the information or data specifically required for each application and how to complete and submit each application. **SUBCHAPTER C PRELIMINARY CONSISTENCY REVIEW**

§28.20 Requests for Preliminary Consistency Review

(a) An agency, subdivision or applicant seeking a permit or other proposed action listed in §504.10(c) of this chapter may request a preliminary consistency review.

(b) A request for preliminary review must be submitted to the permitting assistance coordinator in writing. The request must:

(1) describe the proposed activity and its probable impacts on coastal natural resource areas;

(2) identify the CMP goals and policies applicable to the proposed activity; and

(3) indicate whether any application have been filed with the agencies or subdivisions required to permit or approve the proposed activity, and state whether those applications have been declared administratively complete.

(c) The time period for a preliminary review commences when the permitting assistance coordinator receives the request. Upon receipt of the request, the coordinator will:

(1) file a notice for publication in the *Texas Register* requesting public comment on the consistency of the proposed activity which is the subject of the request;

(2) forward the request to each agency or subdivision required to permit or approve the proposed activity; and

(3) forward the request to all members of the PAG.

(d) Public comments will be accepted for 30 days and must be submitted to the permitting assistance coordinator. Upon the close of the comment period, the coordinator will distribute all public comments to the members of the PAG.

(e) The PAG may meet as needed to discuss the request for preliminary consistency review and any related matters. The permitting assistance coordinator will schedule, organize, and chair meetings of the PAG.

§28.21 Preliminary Statement from Permitting Agencies or Subdivisions

(a) Each permitting agency or subdivision must submit a written preliminary statement to the PAG no later than 45 days after receipt of the request for preliminary consistency review.

(b) The preliminary statement must indicate whether the permitting agency or subdivision anticipates

approving or denying the application.

- (c) If the permitting agency or subdivision anticipates denying the application, the preliminary statement must include an explanation of the grounds for denial and recommendations for resolving the grounds in a way that would allow the application to be approved.
- (d) If enough information is already available, the preliminary statement must include a determination that the proposed activity is likely be found consistent with the CMP goals and policies.
- (e) If the proposed activity is likely to be found inconsistent with the goals and policies of the CMP, the preliminary statement should include an explanation and recommendation for resolving the inconsistency in a way that would allow the project to be found consistent.
- (f) If the permitting agency or subdivision finds that there is insufficient information, the agency or subdivision may qualify its preliminary statement. A qualified statement must explain the insufficiencies and identify, to the extent practicable, any significant issues that are likely to arise during the regular permitting process and that may result in denial of the application.

§28.22 Preliminary Findings

- (a) Each PAG member must submit a preliminary finding to the permitting assistance coordinator in writing no later than ten days after receipt of the permitting agency or subdivision's preliminary statement.
- (b) The preliminary finding must object to or concur with the agency or subdivision's preliminary statement based on whether the proposed permit or action would likely be found consistent with the CMP goals and policies.
- (c) If the preliminary finding states that the proposed permit or approval is likely to be found inconsistent with the CMP goals and policies, the finding must include an explanation and recommendation for resolving the inconsistency. The finding should explain the nature of the problem in a way that will help the requestor resolve it during the regular permitting process.
- (d) If a PAG member finds that there is insufficient information, opportunity for public comment, or time to fully and completely evaluate the proposed activity, the PAG member may qualify the finding. A qualified finding should explain the nature of the insufficiencies in a way that will help the requestor resolve these issues during the regular permitting process.

SUBCHAPTER D ASSISTANCE WITH FEDERAL FUNDS

§28.30 Assisting Applicants for Federal Licenses and Permits with Consistency Certifications

The permitting assistance coordinator will provide applicants for federal licenses or permits with assistance regarding the means for ensuring that the proposed activity will be conducted in a manner consistent with the goals and policies of the CMP. Upon request by an applicant, the coordinator will identify any enforceable policies applicable to the proposed activity, based on the information the applicant has submitted.