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June 15, 2011

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Texas General Lands Office
Austin, TX 78711-2873

Re: Procedures for Coastal Zone Management Act (CZMA) Consistency Review (NSGLC 11-04-04)

This product was prepared by the National Sea Grant Law Center under award number NA09OAR4170200 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the authors and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce.

Dear Sheri,

In an April 7, 2011 email to Laurie Rounds, NOAA Ocean and Coastal Resource Management, the Texas General Lands Office sought the assistance of the National Sea Grant Law Center with outlining the state's process for Coastal Zone Management Act (CZMA) consistency review. Specifically, in preparation for the sunset of Texas' Coastal Coordination Council – the entity currently handling CZMA consistency review – the Texas GLO asked the Law Center to map the existing review process for each category of reviewable project (F1-F5, state actions and rulemaking, general plans, and local government actions), as well as establish lists of reviewable projects under each category.

Please find attached the lists of activities subject under Texas law to be reviewed for consistency with Texas' Coastal Management Plan (CMP), as well as flowcharts explaining the existing review process for each category of activity. The attached information is intended as advisory research only and does not constitute legal representation of the Texas General Lands Office or its constituents. It represents our interpretations of the relevant laws and regulations.

This report was prepared using traditional legal research methods, and using Texas laws and statutes found on Westlaw, an online legal database. The flowcharts are summarizations of Texas regulations governing consistency review, and decisions made using the flowcharts

should be made in consultation with the rules themselves (see 31 Texas Administrative Code §§ 505.10 et. seq. for state and local rules, and 31 Texas Administrative Code §§ 506.10 et. seq. for federal rules).

Sincerely,

A handwritten signature in blue ink, appearing to read 'Nick Lund', with a stylized, cursive script.

Nick Lund
Ocean and Coastal Law Fellow

State of Texas

Coastal Zone Management Act Consistency Review

Actions and Activities Subject to Consistency Review

**Nicholas J. Lund, Ocean & Coastal Law Fellow
National Sea Grant Law Center
June 2011**

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F1 – Federal Actions

31 Texas Administrative Code § 506.11(13) -- Federal Agency Action – A federal license or permit that a federal agency may issue that represents the proposed federal authorization, approval, or certification needed by the applicant to begin an activity.

- An action to renew, amend, or modify an existing license or permit shall NOT be considered an action subject to the CMP if:
 - The action only extends the time period of the existing authorization without authorizing new or additional work or activities;
 - The action would not increase pollutant loads to coastal waters or result in relocation of a wastewater outfall to a critical areas; or,
 - The action is not otherwise directly relevant to the Policies for Specific Activities and Coastal Natural Resource Areas.

DEPARTMENT OF THE INTERIOR

Federal Agency Actions – Occurring *Outside* CMP Boundary

- Permits under § 11 of the Outer Continental Shelf Lands Act in OCS waters
- Rights-of-way under § 5(e) of the Outer Continental Shelf Lands Act in OCS waters

ENVIRONMENTAL PROTECTION AGENCY

Fed. Agency Actions – Occurring *Inside* CMP Boundary

- National Pollutant Discharge Elimination System (NPDES) permits under 33 USCA § 1342
- Ocean dumping permits under 33 USCA § 1412
- Approvals of land disposal wastes under 42 USCA § 6924(d)
- Total Maximum Daily Load (TMDL) development and TMDL implementation plans under 33 USCA § 1313
- Approvals of National Estuary Program Comprehensive Management Plans under 33 § 1330f

Federal Agency Actions – Occurring *Outside* CMP Boundary

- NPDES permits under 33 USCA § 1342 in OCS waters
- Ocean dumping permits under 33 USCA § 1412 in OCS waters

FEDERAL AVIATION ADMINISTRATION

Fed. Agency Actions - Occurring *Inside* CMP Boundary

- Airport operating certificates under 49 USCA § 44702

FEDERAL ENERGY REGULATORY COMMISSION

Fed. Agency Actions - Occurring *Inside* CMP Boundary

- Certificates under § 7 of the Natural Gas Act 15 USCA § 717f
- Licenses under § 4 of the Federal Power Act
- Exemptions under § 403 of the Public Utility Regulatory Policies Act of 1978

NUCLEAR REGULATORY COMMISSION

Fed. Agency Actions - Occurring *Inside* CMP Boundary

- Licenses under § 103 of the Atomic Energy Act

US ARMY CORPS OF ENGINEERS

Fed. Agency Actions - Occurring *Inside* CMP Boundary

- Ocean dumping permits under 33 USCA § 1413
- Dredge and fill permits under 33 USCA § 1344
- Permits under § 9 of the Rivers and Harbors Act
- Permits under § 10 of the River and Harbors Act
- Memoranda of Agreement for mitigation banking

Federal Agency Actions – Occurring *Outside* CMP Boundary

- Ocean dumping permits under 33 USCA §1413 in OCS waters

US DEPARTMENT OF TRANSPORTATION

Fed. Agency Actions - Occurring *Inside* CMP Boundary

- Approvals under § 7(a) of the Federal-Aid Highway Amendments
- Approvals under § 502 of the General Bridge Act 33 USC § 525

Federal Agency Actions – Occurring *Outside* CMP Boundary

- Deep water port licenses under 33 USCA § 1503 in OCS waters

F1 – Federal Actions

APPLICANT FILES CONSISTENCY DETERMINATION

Upon filing an application for a Federal Action listed in F1 – Federal Actions sheet, applicant shall provide Council Secretary with consistency certification detailed in 31 TX ADC §506.30.

Red Box = Applicant Responsibility

Blue Box = Council Responsibility

- To be administratively complete, Council staff must have a signed copy of the CMP Consistency Statement. If there is no statement, one is required from the project manager assigned to the project.
- The Council chair or any three members may request additional information within 15 days.
- Council can provide assistance with Consistency Certification at applicant's request.

REVIEW FOR ADMINISTRATIVE COMPLETENESS

Consistency certification is reviewed for administrative completeness.

If project is on state-owned lands, it may be deferred to the Land Office Field Service.

TECHNICAL REVIEW

If administratively complete, post certification on Council's website and in the *Texas Register*.

Begin technical review. Projects are reviewed for impacts to CNRAs and consistency with the goals and policies of the CMP.

If project involves oil and gas and is on state-owned lands, it may be deferred to RRC.

PUBLIC COMMENT AND DECISION TO REVIEW

30-day comment period begins after consistency certification is published on Council's website.

At close of comment period, Council reviews comments and determines whether action is consistent with CMP or should be put on council agency for review. Council Secretary notifies all parties of decision

If project impacts three acres or more, or less than three acres but best management practices are not applicable, it may be deferred to the TCEQ.

REFERRAL TO COUNCIL

Actions may be referred to the Council if it presents a significant unresolved dispute regarding CMP consistency

To refer a federal action to the Council, any THREE members must submit a request for referral to the Council Secretary by day 45.

By day 45, if there is no referral, the action is deemed consistent

REQUEST FOR REFERRAL

Three Council members submit a request for referral to the Council Secretary in writing within 45 days of receipt of the administratively complete consistency determination.

SCHEDULING THE REVIEW

Council Secretary adds the action to the agenda of the earliest Council meeting at which consideration of the action is reasonably practicable. If no regularly scheduled Council meeting will allow the Council to complete a review of the action within 90 days of receipt of the administratively complete consistency certification, the Council Secretary shall notify the chair, who shall schedule a special meeting.

The Council Secretary must provide notice (certified mail or hand delivery) to the federal agency applicant.

REVIEW

The Council shall consider the public comments received, the relevant CMP goals and policies, information submitted by the federal agency or applicant and other relevant information and determine whether the proposed action is consistent with the CMP goals and policies within 90 days of the date the Council Secretary received the administratively complete certification.

COUNCIL OBJECTION

An affirmative vote of two-thirds of the Council members is required to object to a consistency determination.

Required contents of the Council's objection can be found in 31 TX ADC § 506.34(d).

If the Council decides to object to a consistency determination, the Council Secretary shall notify the applicant, the federal agency and the assistant administrator.

If the Council does not object, the project is deemed consistent.

AGENCY ACTION AFTER COUNCIL OBJECTION

If found inconsistent with the CMP, the federal action shall not proceed, but the federal agency may proceed with an appeal under CFR Title 15, Part 930, Subpart H §§ 930.120 et. seq.

F2 – Federal Activities and Development Projects

31 Texas Administrative Code § 506.11(14) -- Federal Agency Activity – A function that is performed by or for a federal agency in the exercise of its statutory responsibility, including financial assistance, the planning, construction, modification, or removal of a public work, facility, or any other structure, and the acquisition, use, or disposal of land or water resources. The term does NOT include the issuance of a federal license or permit.

31 Texas Administrative Code § 506.11(16) -- Federal Development Project – A federal activity involving the planning, construction, modification, or removal of the public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources.

ALL FEDERAL AGENCIES

Federal Agency Activities – Occurring *Inside* CMP Boundary

- All development projects occurring within the CMP boundary
 - Development Project is “a Federal activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources.”
- Natural resource restoration plans developed under the Oil Pollution Act (OPA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Federal Agency Activities – Occurring *Outside* CMP Boundary

- All federal activities and development projects in OCS waters which may adversely affect CNRAs
- All federal activities and development projects within the Coastal Zone occurring within federal lands excluded from the CMP boundary but which may adversely affect CNRAs

INTERIOR DEPARTMENT

Federal Agency Activities – Occurring *Inside* CMP Boundary

- Modifications to the boundaries of the Coastal Barrier Resource System under 16 USCA § 3503(c)

ENVIRONMENTAL PROTECTION AGENCY (EPA)

Federal Agency Activities – Occurring *Inside* CMP Boundary

- Remedial actions under 42 USCA § 9604(c)

US ARMY CORPS OF ENGINEERS (USACE; COE)

Federal Agency Activities – Occurring *Inside* CMP Boundary

- Small river and harbor improvement projects under 33 USCA § 577
- Water resources development projects under 42 USCA § 1962d-5
- Small flood control projects under 33 USCA § 701s
- Small beach erosion control projects under 33 USCA § 426g
- Operation and maintenance of civil works projects under CFR Title 33, Parts 335, 338
- Dredging projects under CFR, Title 33, Part 336
- Approval for projects for the prevention or mitigation of damages to shore areas attributable to federal navigation projects pursuant to 33 USCA § 426i
- Approval for projects for the placement on state beaches of beach quality sand dredged from federal navigation projects pursuant to 33 USCA § 426j

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

Federal Agency Activities – Occurring *Inside* CMP Boundary

- Model floodplain ordinances
- Approval or suspension of a community's eligibility to sell flood insurance under CFR Title 44, Part 59, Subpart B

GENERAL SERVICES ADMINISTRATION (GSA)

Federal Agency Activities – Occurring *Inside* CMP Boundary

- Acquisitions under 40 USCA §§ 602 and 603
- Construction under 40 USCA § 605

F2 – Federal Activities and Development Projects

AGENCY PROVIDES CONSISTENCY CERTIFICATION

No later than 90 days before final approval, a federal agency considering the approval of a federal activity or development listed in F2 – Federal Activities or Development Plans shall provide Council Secretary with consistency certification detailed in 31 TX ADC §506.20.

Red Box = Applicant Responsibility
Blue Box = Council Responsibility

- Federal agencies may provide a general consistency determination for repeated activities which cumulatively may adversely affect CNRAs.
- If a general consistency statement is issued, the federal agency shall periodically consult with Council to discuss manner of incremental actions.
- Consistency determinations ARE required where an activity was initiated prior to the adoption of the CMP but the federal agency retains discretion to reassess and modify the activity.

CONSISTENCY DETERMINATIONS FOR DEVELOPMENT PROJECTS

If the project is a proposed development project:

The agency may submit a single consistency determination if it has sufficient information to determine consistency from planning to completion.

If it doesn't have sufficient information, the agency must submit a consistency determination for each decision.

REVIEW FOR COMPLETENESS

Consistency certification is reviewed for administrative completeness.

- To be administratively complete, Council staff must have a signed copy of the CMP Consistency Statement. If there is no statement, one is required from the project manager assigned to the project.
- The Council chair or any three members may request additional information within 15 days.
- Consistency review of NRDA restoration plans developed by federal agencies are handled by state NRDA trustee agencies.

NOTICE AND TECHNICAL REVIEW

If administratively complete, post certification on Council's website and in the *Texas Register*.

Begin technical review.

COMMENT PERIOD

30-day comment period begins after consistency certification is published on Council's website.

Projects are reviewed for impacts to CNRAs and consistency with the goals and policies of the CMP.

OPTION TO EXTEND COMMENT PERIOD

The chair or any three members of the Council may extend the comment period or schedule a public hearing on:

- The consistency determination; and
- Whether referral to the Council is appropriate

DECISION TO REVIEW

After 30 days, the comment period ends and Council members shall consider any comments received in response to the public notice and determine whether the federal activity should be placed on the agenda for review because it presents a significant unresolved dispute regarding consistency with the CMP.

Upon the Council's decision, council secretary notifies all Council members, applicant, federal agency.

By day 45, if there is no referral, the action is deemed consistent.

REFERRAL TO COUNCIL

Actions may be referred to the Council if it presents a significant unresolved dispute regarding CMP consistency.

To refer a federal action to the council, any THREE members must submit a request for referral to the council secretary by day 45.

SCHEDULING THE REFERRAL

If referred, the Council Secretary shall put the action on its agenda of the earliest Council meeting at which consideration of the activity is reasonably possible.

If no regularly scheduled meeting will allow that Council to complete review and notify the agency within 45 days of the receipt of the complete consistency determination, the Secretary shall notify the chair, who will schedule a special meeting.

The Council Secretary shall notify the federal agency of the hearing by certified mail or hand delivery.

COUNCIL REVIEW

Following the referral of a federal agency activity, the Council shall consider the public comments, the relevant CMP policies and goals, information submitted by the federal agency and other relevant information to determine CMP consistency.

COUNCIL DISAGREEMENT WITH CONSISTENCY DETERMINATION

If the Council decides to DISAGREE with a consistency determination:

- An affirmative vote of two-thirds of the Council members is required,
- The Council must notify the federal agency and the assistant administrator,
- The Council's finding must include the information included in 31 TX ADC § 506.27(d).

AGENCY MODIFICATION

The federal agency may modify an activity to achieve consistency with the CMP.

If it does not modify the activity, the governor, with the assistance of the chair of the Council, may seek secretarial mediation as provided in CFR Title 15, Part 930, Subpart G §§ 930.110 et seq.

POST CONSISTENCY MONITORING

Once a project is deemed consistent with the CMP, federal and state agencies shall cooperate to monitor the activity to ensure that it is undertaken in a manner consistent with the policies of the CMP.

REMEDIAL ACTION

If the Council believes that a) an approved activity is being undertaken in a manner inconsistent with the CMP or, b) an action determined not to affect coastal resources is being conducted in a way that in fact affects coastal resources, the council may request the federal agency take remedial action.

If, after requesting remedial action, serious disagreements continue, either party may request mediation services with the Secretary of Commerce or the Office of Ocean and Coastal Resource Management.

EXTENSION

If the Council places the action on its agenda but is unable to review the matter within 45 days of its receipt of a complete consistency determination, the chair or any three members will notify the federal agency and ask for an extension.

AGENCY APPROVAL

Federal agencies shall approve the first request for an extension of 15 days or less, and may consider a longer extension.

A federal agency shall not grant final approval to a listed federal agency activity until 90 days after it has provided the Council Secretary with a complete consistency determination, unless another time frame is agreed upon.

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graph TD; A[Supplemental Consistency Determination] --> B[General Consistency Agreements for Federal Activities]; B --> C[Council may issue a general consistency agreement for a federal activity other than a development project.]; C --> D[Public Comments]; D --> E[Conditions for General Consistency Agreements];
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SUPPLEMENTAL CONSISTENCY DETERMINATION

If a federal activity previously determined by the Council to be consistent with the CMP, but which has not yet begun, is determined to affect coastal resources in a way not reasonably foreseeable when the activity was originally proposed, the federal agency shall work with the Council to prepare a supplemental consistency determination.

Substantially different coastal effects are reasonably foreseeable if: a) the federal agency makes substantial changes that are relevant to CMP policies and goals, or, b) There is significant new information or circumstances relevant to the proposed activity's effect on any coastal use or resource.

The Council shall notify the federal agency of the need for supplemental coordination according to the procedures included in 31 TX ADC § 506.29

General Consistency Agreements for Federal Activities

Council may issue a general consistency agreement for a federal activity other than a development project.

PUBLIC COMMENTS

Prior to issuing a general concurrence, the Council shall request and consider public comments on the matter.

CONDITIONS FOR GENERAL CONSISTENCY AGREEMENTS

If the conditions of a general consistency agreement are satisfied, the federal activity is deemed consistent with the CMP and will not be subject to Council review.

A general consistency agreement may be issued if the following conditions are met:

- The federal agency elects to establish an interagency coordination team to advise agency on consistency;
- There are at least three Council members on the coordination team;
- A majority of Council members on the team agree that the activity is consistent with the CMP;
- The federal agency adopts the concurrence and submits it to the Council;
- After considering public comment, a majority of the Council members on the coordination team affirm their concurrence within 15 days of the close of the comment period.

F3 – Army Corps of Engineers Letters of Permission (LOPs)/15-Day Coordination Notices

Letters of Permission/15-Day Coordination Notices are granted through an abbreviated processing procedure which includes coordination with Federal and state fish and wildlife agencies in waters of the US (as defined by Section 10 of the Rivers and Harbors Act of 1899), only when the activity would not have significant individual or cumulative impacts on environmental values and should encounter no appreciable opposition (Federal Register, vol. 51, no. 219, November 13, 1986, p. 41240).

LOPs receive an expedited consistency review process as agreed to in General Concurrence #1, authorized by 31 TX ADC § 506.35

Activities covered:

- Work and the placement of structures in navigable waters of the United States, which are subject to the permitting requirements of §19 of the Rivers and Harbors Act of 1899, when these activities are authorized by the Corps under Letters of Permission.
- Discharges of dredged or fill material in waters of the United States, which are subject to the permitting requirements of §404 of the Clean Water Act, when these activities are authorized by the Corps under Letters of Permission.
- Oilfield Development (OFD) Permits. To be conducted by the Railroad Commission of Texas.
- Project revisions. Revisions to projects that are currently being reviewed for consistency and for which a Corps permit has not been issued.
- Minor modifications. Modifications to existing permits that have minimal environmental impact and do not require additional state water quality certification.

F3 – Corps' Letters of Permission/15-Day Coordination Notice

NOTIFICATION FROM CORPS

If the Corps proposes to authorize an activity by LOP or 15-Day Coordination Notice, the agency shall send to the Council Secretary and the responsible Council member agency a written notice containing the information set out in Section 3 of General Concurrence #1.

The information required of the applicant in Section 3 includes:

- A detailed description of the proposed activity and its associated facilities adequate to permit an assessment of their probable effects on CNRAs;
- A list identifying all federal, state, and local permits or authorizations subject to the CMP that are required for the proposed activity and its associated facilities;
- A brief assessment of the probable effects of the proposed activity and its associated facilities on CNRAs; and
- A finding, based on the above assessment, that the proposed activity will be consistent with all applicable CMP goals and policies.

SCHEDULING REVIEW

The Council Secretary shall be responsible for coordinating with the Council members and Council member agency staff regarding any such notice.

Council must review the proposed activity within 15 days of receipt of notice from the Corps.

COUNCIL OBJECTION

If the Council determines within 15 days of receipt of notice from the Corps that the proposed activity may have significant adverse effects on CNRAs, or that additional information is necessary before making a consistency determination, the Council agency staff shall send written notice of the finding to the Corps and to the Council Secretary that the proposed activity will be reviewed for CMP consistency under the council's F1 rules.

PRESUMED CONCURRENCE

If the Council does not provide the Corps with written notice of its consistency review decision it is presumed to have concurred with the applicant's consistency determination.

Red Box = Applicant Responsibility

Blue Box = Council Responsibility

F4 – Outer Continental Shelf Plans

31 Texas Administrative Code § 506.11(19) -- Outer Continental Shelf (OCS)

Plan – A plan for the exploration or development of, or production from, an area leased under the Outer Continental Shelf Lands Act (43 USCA §§ 1331-1356) and the rules adopted under that Act that is submitted to the secretary of the United States Department of the Interior after federal approval of the CMP.

INTERIOR DEPARTMENT

OCS Exploration, Development, and Production Activities

- Federal agency actions described in detail in OCS plans, including pipeline activities, that may adversely affect CNRAs
- OCS lease sales within the western and central Gulf of Mexico under 43 USCA § 1337.

F4 – Outer Continental Shelf Plans

PLAN SUBMITTED WITH CONSISTENCY DETERMINATION

Upon filing an OCS plan with the Secretary of the Interior or designee, the submitter shall provide Council Secretary with consistency certification detailed in 31 TX ADC §506.40(a)-(c).

Red Box = Applicant Responsibility
Blue Box = Council Responsibility

REVIEW FOR COMPLETENESS

Consistency certification is reviewed for administrative completeness.

- To be administratively complete, CMP staff must have a signed copy of the CMP Consistency Statement. If there is no statement, one is required from the project manager assigned to the project.
- The Council chair or any three members may request additional information within 15 days.

TECHNICAL REVIEW

If administratively complete, post certification on Council's website and in the *Texas Register*.

Begin technical review.

- Projects are reviewed for impacts to CNRAs and consistency with the goals and policies of the CMP.
- If project is located on state-owned lands, it may be deferred to Land Office Field Service
- If project impacts three acres or more, it may be deferred to TCEQ.
- If project involves oil and gas and is on state-owned lands, it may be deferred to RRC.
- If project impacts less than three acres but the best management practices are not applicable, it may be deferred to TCEQ.

PUBLIC COMMENT

30-day comment period begins after consistency certification is published on Council's website.

Where appropriate, the chair or any three members of the Council may extend the public comment period or schedule a public hearing on a) the consistency certification, or b) whether referral to the Council is appropriate.

PRELIMINARY REVIEW

At close of comment period, Council reviews comments and determines whether all parts of OCS plan are consistent with CMP or should be put on Council agenda for review. Council Secretary notifies all parties of decision.

By day 45, if there is no referral, the action is deemed consistent



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graph TD; A[COUNCIL REFERRAL] --> B[SCHEDULING AND NOTICE OF REFERRAL]; B --> C[COUNCIL REVIEW]; C --> D[REQUIREMENTS FOR OBJECTION]; D --> E[ ]; D --> F[ ]; style E fill:none,stroke:none; style F fill:none,stroke:none;
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COUNCIL REFERRAL

- Parts of OCS Plans may be referred to the Council if it presents a significant unresolved dispute regarding CMP consistency.
- To refer a part of an OCS Plan to the Council, any THREE members must submit a request for referral to the Council Secretary by day 45.

SCHEDULING AND NOTICE OF REFERRAL

If referred, Council Secretary shall put the action on the agenda of the earliest Council meeting at which consideration is reasonably possible. If no regularly scheduled meeting is practical within 90 days of receipt of an administratively complete consistency certification, the Council Secretary shall notify the chair, and organize a special meeting.

The Council Secretary shall notify, by certified mail or hand delivery, the person submitting the OCS Plan of the hearing.

If the council has not issued a decision with respect to the matter within 45 days of receiving the complete certification, the Council Secretary shall notify the person submitting the plan, the Secretary of the Interior, and the assistant administrator of the status of the review and the basis for further delay.

COUNCIL REVIEW

Following referral, the Council shall consider the public comments, the relevant CMP goals and policies, information submitted by the federal agency or applicant, and other relevant information and determine whether any part of the OCS plan relating to federal agency actions required to authorize proposed activities described in the OCS plan is consistent with the CMP plan within 90 days of receipt of the complete consistency certification.

REQUIREMENTS FOR OBJECTION

An affirmative vote of two-thirds of Council members is needed to object to a consistency certification.

The Council's objection shall include the requirements set forth in 31 TX ADC § 506.43(d)

COUNCIL CONCURRENCE

If the Council issues a concurrence or is presumed to concur with the consistency certification for an OCS Plan, the person submitting the Plan is not required to submit subsequent certifications for federal actions described in the OCS Plan.

The person submitting the OCS Plan shall provide council with copies of applications for subsequent federal actions to allow Council to monitor those federal actions.

COUNCIL OBJECTION

If the Council objects to a consistency certification related to a federal action described in detail in an OCS Plan, the federal agency shall not take the federal action when it is proposed, except as provided in the appeals process established in CFR Part 15, Part 930, Subpart H, §§ 930.120 et. seq.

FAILURE TO COMPLY WITH AN APPROVED OCS PLAN

The Dept. of the Interior and the Council shall cooperate to monitor OCS Plan

If the Council finds substantial incompliance, they shall transmit their claim to BOEMRE as per 31 TX ADC § 506.45(b)

The Director of the Office of Ocean and Coastal Resource Management proceeds under 31 TX ADC § 506.45(c)-(d).

F5 – TRACS Notices; Requests for Federal Financial Assistance

31 Texas Administrative Code § 506.11(15) -- Federal Assistance – Assistance provided under a federal program to an applicant entity through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other forms of financial aid. Except as otherwise requested by the applicant entity, council review of federal assistance for consistency with the CMP goals and policies is limited to federal programmatic requirements for project level funding. Agency management decisions such as funding priorities and allocation of funds among various projects are not subject to review. For purposes of the review procedures in this chapter, the term includes only the transfer or commitment of funds from the federal agency directly to an applicant entity.

State and Local Government Applications for Federal Assistance

- Federal assistance for state and local government activities that may adversely affect Coastal Natural Resource Areas (CNRAs).
- Does NOT include applications from local governments and subdivisions to the Texas Water Development Board for financial assistance through the State Water Pollution Control Revolving Fund or the Colonia Wastewater Treatment Assistance Program.

F5 – Applications for Federal Assistance

APPLICATION FOR FEDERAL ASSISTANCE

If the state single point of contact receives an application for federal assistance the state single point of contact shall distribute a copy of the application to the Council Secretary. If an application is not submitted to the state single point of contact, the applicant shall provide a copy of the application to the Council Secretary, who shall provide copies to all Council members.

In addition to the application, the applicant shall provide Council with a brief evaluation on the relationship between the proposed activity and CMP policies and goals and an evaluation of any reasonably foreseeable coastal effects.

REQUEST FOR REFERRAL

The Council shall review any application for federal assistance that any THREE members of the Council refer for review, after submitting a request for referral to the Council Secretary in writing.

SCHEDULING REVIEW

The Council Secretary shall add the application to the agenda of the earliest Council meeting at which the consideration of the application is reasonably practicable.

If the Council doesn't refer an application to the Council within 30 days of the date the Council Secretary a copy of the application, the application is presumed to be consistent with the CMP.

NOTIFICATION

Following a referral, the Council Secretary shall, by certified mail or hand delivery, notify the applicant, the federal agency and the assistant administrator of the hearing on the application for federal assistance.

OBJECTION

If the Council decides to object to an application for federal assistance, its objection shall comply with the requirements of 31 TX ADC § 506.52(c).

If the Council objects to an application for federal assistance, the federal agency shall not approve the assistance for the activity, except as provided in the appeals process established in CFR Title 15, Part 930, Subpart H, §§ 930.12 et. seq.

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graph TD; A[NOTIFICATION OF SUBSTANTIAL CHANGES] --> B[SUPPLEMENTAL COORDINATION]; B --> C[MONITORING]; C --> D[NOTIFICATION OF SUBSTANTIAL CHANGES OR EFFECTS]; D --> E[CONTINUED NONCOMPLIANCE];
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NOTIFICATION OF SUBSTANTIAL CHANGES

If a federal assistance project has previously been determined by the Council to be consistent with the CMP but has not yet begun, the applicant shall further coordinate with the Council if the proposed activity will affect any coastal use or resources in a manner substantially different than was reasonably foreseeable when the proposed activity was originally described.

Substantially different coastal effects are reasonably foreseeable if a) the applicant entity makes substantial changes to the activity that are relevant to CMP goals and policies, or b) there are significant new circumstances or information relevant to the proposed activity or its effect on any coastal use or resource.

SUPPLEMENTAL COORDINATION

The Council may notify the applicant entity, the federal agency, and the director if the Council believes proposed activities should be subject to supplemental coordination.

Council notification shall include the information required in 31 TX ADC § 506.53(b).

MONITORING

Federal agencies and the Council shall cooperate in their efforts to monitor federal assistance activities in order to confirm that such activities continue to conform to federal and state requirements.

NOTIFICATION OF SUBSTANTIAL CHANGES OR EFFECTS

The Council shall notify the relevant federal agency representative of any federal assistance activity that the Council claims: a) is being conducted or is having an effect on any coastal use different than originally described and, as a result, is no longer consistent with the CMP, or b) was previously determined not to affect any coastal use or resource but is being conducted in a manner substantially different than previously described and, as a result, affects a coastal use or resource in a manner inconsistent with the CMP.

The Council notification shall include the requirements stated in 31 TX ADC § 506.54(c).

CONTINUED NONCOMPLIANCE

If, after 30 days following a request for remedial action, the Council maintains that the applicant entity is still failing to comply substantially with the CMP, the Council may file a written objection with the director.

Director proceeds as set forth in 31 TX ADC § 506.54(e)-(f).

State – State Actions and Rulemaking Subject to the Coastal Management Plan

31 Texas Administrative Code § 505.11

Land Office, School Land Board, or a board for lease of state-owned lands

STATE ACTION when issuing or approving:

- A mineral lease plan of operations
- A geophysical or geochemical permit
- A miscellaneous easement
- A surface lease
- A structure registration
- A coastal easement
- A coastal lease
- A cabin permit
- A navigation district lease
- Certification of a subdivision beach access or dune protection plan
- An agency or subdivision wetlands mitigation bank

RULEMAKING

- Promulgation of rules governing or authorizing the above Actions
- Any rule governing an individual action described above, including thresholds for referral
- A land office rule governing the prevention of, response to, or remediation of a coastal oil spill

Public Utility Commission of Texas (PUC)

STATE ACTION when issuing:

- Issuing a certificate of convenience and necessity

RULEMAKING

- Promulgation of rules governing or authorizing the above Actions
- Any rule governing an individual action described above, including thresholds for referral

Railroad Commission of Texas (RRC)

STATE ACTION when issuing:

- A wastewater discharge permit
- A waste disposal storage pit permit

- A certification of a federal permit for the discharge or dredge or fill material

RULEMAKING

- Promulgation of rules governing or authorizing the above Actions
- Any rule governing an individual action described above, including thresholds for referral

Texas Transportation Commission

STATE ACTION when approving:

- 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
- An environmental document for a transportation construction project or maintenance plan

RULEMAKING

- Promulgation of rules governing or authorizing the above Actions
- Any rule governing an individual action described above, including thresholds for referral

Texas Historical Society (THC)

STATE ACTION when issuing:

- A permit for the destruction, alteration, or taking of a coastal heritage area
- A review of a federal undertaking affecting a coastal historic area

RULEMAKING

- Promulgation of rules governing or authorizing the above Actions
- Any rule governing an individual action described above, including thresholds for referral

Texas Commission on Environmental Quality (TCEQ)

STATE ACTION when issuing or approving:

- A wastewater discharge permit
- A permit for a new concentrated animal feeding operation located one mile or less from a critical area or coastal waters
- A permit for solid or hazardous waste treatment, storage, or disposal
- Creation of a special purpose district or approval of bonds to construct infrastructure on coastal barriers
- Levee improvement or flood control projects
- A certification of a federal permit for the discharge of dredge or fill material
- A declaration of an emergency and request for an emergency release of water

- A new permit for an annual appropriation of:
 - 5,000 or more acre-feet of water within the program boundary, or
 - 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast
- An amendment to a water permit for an increase in the annual appropriation of:
 - 5,000 or more acre-feet of water within the program boundary;
 - 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast
- A change in the purpose of use of an annual appropriation of water to a more consumptive use of:
 - 5,000 or more acre-feet of water within the program boundary;
 - 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast

RULEMAKING

- Promulgation of rules governing or authorizing the above Actions
- Any rule governing an individual action described above, including thresholds for referral
- Rules governing air pollutant emissions, on-site sewage disposal systems, or underground storage tanks

Texas Parks and Wildlife Department (TPWD)

STATE ACTION when issuing or approving:

- An oyster lease
- A permit for taking, transporting, or possessing threatened or endangered species
- A permit for disturbing marl, sand, shell, or gravel on state-owned lands
- Development by a person other than the TPWD that requires the use or taking of any public land in a state park, wildlife management area or preserve.

RULEMAKING

- Promulgation of rules governing or authorizing the above Actions
- Any rule governing an individual action described above, including thresholds for referral

State Soil and Water Conservation Board

RULEMAKING

- A State Soil and Water Conservation Board rule governing agricultural or silvicultural nonpoint source pollution

- Any rule governing an individual action described above, including thresholds for referral

State – State Agency Actions

AGENCY PRODUCES CONSISTENCY DETERMINATION

When a state agency is proposing an action listed in State – State Actions and Rulemaking Subject to the Coastal Management Plan, that agency must issue a written determination that the proposed action is consistent with the CMP goals and policies and must make either a Consistency Determination or a Determination of No Direct and Significant Adverse Effect.

AGENCY REQUIREMENTS

For actions that exceed the agency's threshold for referral, the agency shall provide a written explanation supporting the Consistency Determination or Determination of No Direct and Significant Adverse Effect, with requirements listed in 31 TX ADC § 505.30(c).

When publishing a notice of receipt of an application or request for agency proposed action, the agency shall include a statement that the application or requested action is consistent with the CMP goals and policies.

Agencies shall maintain a record of all proposed actions that are subject to the CMP and provide such a record to the Council on a quarterly basis.

Has the agency filed a REQUEST FOR PRELIMINARY CONSISTENCY REVIEW with the chair of the Permitting Assistance Group (PAG)?

No

Red Box = State Agency Responsibility
Blue Box = Council Responsibility

Yes

Council Secretary shall publish NOTICE of request and a brief explanation of the matter in the *Texas Register*, along with a request for a 30-day public comment.

At the close of the comment period, Council Secretary shall share public comments with the PAG.

PERMITTING ASSISTANCE GROUP REVIEW

The PAG shall be convened within 45 days of the receipt of a request for preliminary consistency review and require that the following written information be produced:

- A statement from each agency involved anticipating whether the agency intends to approve or deny the permit;
- If the agency intends to deny, an explanation for the denial and recommendations for improvement that would lead to approval;
- If enough information is available, a preliminary statement as to whether the project is likely consistent with the CMP;
- If the project is to be found inconsistent, an explanation and recommendations to achieve consistency.

Has the action been referred for Council review to determine consistency review?

No

Action is considered consistent with the CMP

Yes

REQUEST FOR REFERRAL

A proposed action can be referred to the Council for review only if:

- The agency has proposed the action;
- The agency's consistency determination was contested by either a) a Council member or an agency that was party to a formal ADR hearing, or b) a Council member or other person by filing written comments where the proposed action is one which a formal ADR hearing is unavailable;
- A person from the above bullet files a request for referral within ten days of the date the action is proposed alleging an unresolved CMP consistency dispute; and
- Any three Council members agree within 13 days of the date the action is proposed that there is a significant unresolved dispute regarding CMP consistency.

Someone meeting these requirements may file a Request for Referral that adheres to the requirements of 31 TX ADC § 505.33.

Are consistency review THRESHOLDS in effect?

If so, in order to be referred, the proposed action must meet the above requirements as well as exceed the agency's thresholds and, if a formal ADR hearing is available, have been contested in that hearing.

The Council must consider and act on a matter referred to them before the 26th day after the date the agency or subdivision proposed the action.

NOTICE TO COUNCIL

Upon receipt of a timely Request for Referral the Council Secretary shall provide by fax or overnight mail a copy to each Council member. To accept the Request, any three Council members must agree that there is a significant unresolved dispute regarding CMP consistency and submit the action to the Council within 13 days of the agency proposing the action.

SCHEDULING THE REVIEW

Council Secretary shall put the action on the agenda of the earliest Council meeting at which consideration of the matter is practicable. The secretary may notify the chair, who will schedule a special meeting if the matter cannot be considered before the 26th day after the agency proposed the action.

NOTICE

The Council Secretary shall, by certified mail or hand delivery, provide notice of the hearing to a) the agency proposing the action; b) the applicant, if any, before the agency; c) the person(s) filing the Request for Referral; d) all persons who were named as parties to the formal hearing, if the action was subject to such a hearing; and e) the governor, for the purpose of designating a local elected official to the Council pursuant to TNRC § 33.204(d).

The notice to the applicant and agency must include a statement that no person may conduct activities authorized by the proposed action that would irreparably alter or damage the CNRA identified in the applicable policy.

CONDUCTING THE REVIEW

In conducting the review, the Council shall consider only: a) the record before the agency proposing the reviewed action; b) the agency's findings; c) applicable laws and rules; d) any additional information provided by the agency; and e) oral or written testimony offered by any person regarding the CMP.

If the agency did not hold a hearing, make a record, or make findings, the Council may do so for a complete and thorough review.

The Council must consider and act on a referred matter before the 26th day after the agency proposed the action.

Pending Council review, no person may conduct activities authorized by the agency action that would irreparably alter or damage the CNRA identified in the applicable policy unless authorized under the Texas Administrative Procedure Act.

AFFIRM OR PROTEST

The Council may affirm or protect the agency's proposed action.

The only basis for protest can be inconsistency with the CMP.

AFFIRM

If the Council affirms or fails to protest the action, it is considered consistent with the CMP.

PROTEST

To protest an agency's consistency determination requires an affirmative vote of TWO-THIRDS of all Council members.

If Council protests, it must report its findings in writing to the agency within 26 days of the action's proposal. The report must adhere to the requirements of 31 TX ADC § 505.38(a).

AGENCY REACTION TO COUNCIL PROTEST

After protest, agency shall review its findings and determine whether to modify or amend its proposed action to make it consistent with the CMP. The agency shall notify the Council Secretary of its decision within 20 days of the date of receipt of written protest. The Secretary shall notify the Council members via certified mail or hand delivery.

ATTORNEY GENERAL OPINION

Any three regular members of the Council may call a special meeting requesting the AG to issue an opinion on the consistency of the proposed action. A Council member's request for such a meeting must be made in writing to the Council Secretary within 10 days of the agency's decision. A special meeting to consider whether to request an AG opinion shall be held within 20 days of the secretary receiving the third request for a special meeting.

If referred to the AG, the AG's office shall issue an opinion before the 26th day after the date the Council requests the opinion. The agency is stayed from taking the proposed action during this time.



ENFORCEMENT

If the AG issues an opinion saying that the proposed agency action is inconsistent with the CMP the AG shall file suit in a district court of Travis County unless otherwise directed by Council.

The AG may enter into a settlement agreement with regard to the proposed action.

State – State Agency Rules, Rule Amendments, and Thresholds

Is the rule or rule amendment at issue a NEW rule or a rule or rule amendment existing BEFORE June 15, 1995?

New

Red Box = State Agency Responsibility

Blue Box = Council Responsibility

Existing

Has the agency filed a Request for Pre-Certification Review?

Yes

No

REQUEST FOR PRE-CERTIFICATION REVIEW

The agency shall file a Request for Pre-Certification Review with the Council Secretary and attach a draft copy of the rule. The Request shall allow the Council a minimum of 30 days to review the draft rule.

Council shall comment in writing within the time period specified by the agency on the applicable CMP goals and policies and potential inconsistencies. The Council shall make recommendations about how to correct any inconsistencies.

AGENCY REQUIREMENTS FOR NEW RULES

When proposing to adopt or amend a rule listed under State – State Actions and Rules, the agency shall:

- Include the requirements listed in 31 TX ADC § 505.22(a) in the preamble to the proposed rule published in the *Texas Register*; and
- Simultaneously with the publishing of the proposed rule in the *Texas Register*, submit a copy of the proposed rule to the Council Secretary, who shall distribute it to the Council.

An agency files a Request for Certification with the Council Secretary. The Request includes a copy of the rule and a consistency statement.

NOTICE OF REQUEST AND SCHEDULING REVIEW

Council Secretary shall distribute copies of the Request to all Council members and schedule the matter on the agenda of the earliest council meeting where review is practicable.

Prior to the meeting, Secretary shall publish notice of availability and request public comment in *Texas Register*.

TIMELINE FOR REVIEW

Council shall make a consistency determination on or before the 120th day after the Secretary receives the Request.

COUNCIL REVIEW

If the Council finds the rule consistent, it shall issue a written confirmation.

If not, the Council shall issue a written statement denying certification, explaining the basis for its denial and recommending rule amendments to obtain certification.

COUNCIL COMMENT AND AGENCY AFFIRMATION

During the comment period provided by the agency, Council members should comment on the consistency of the proposed rule or amendment.

Upon adoption of the rule or amendment, the agency shall affirm that it has taken into account the goals and policies of the CMP by issuing a reasoned determination that the rule or amendment is consistent with the CMP.

OPTIONAL AGENCY CERTIFICATION POST-ADOPTION

After a rule or amendment has been adopted, an agency *may* continue by seeking certification that the rule or amendment is consistent with the CMP by filing a written Request for Certification with the Council Secretary.

Has the agency requested expedited review?

Yes

No

REQUIREMENTS FOR EXPEDITED REVIEW

An agency may seek expedited review when the agency's rule or amendment only if:

- They've announced their intention to seek expedited review in the preamble to the rule published in the *Texas Register*;
- The agency has filed a Notice of Intent to Seek Expedited Review Certification with an attached copy of the rule; and
- The agency submitted the draft rule for pre-certification review.

EXPEDITED REVIEW

If these conditions are met, the Council shall provide expedited certification of a rule or amendment within 26 days of the date the rule or amendment was adopted or before the effective date of the rule or amendment, whichever is later.

SCHEDULING THE REVIEW

The Council Secretary shall place the matter on the agenda of the earliest Council meeting at which consideration is practicable.

COUNCIL REVIEW

After considering any testimony or other relevant information at the hearing, the Council shall rule on consistency.

COUNCIL DECISION

If the Council finds the rule consistent with the CMP it shall issue a written certification of consistency.

If not, it shall issue a written denial, including grounds for the denial and recommended rule changes to obtain certification.

The agency may amend the rule and resubmit it for certification.


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graph TD; A[ ] --> B[DENIAL OF CERTIFICATION]; B --> C[CERTIFICATION AFTER THE EFFECTIVE DATE OF A RULE]; C --> D[AGENCY INCONSISTENCY AND FINDINGS OF DEFICIENCY]; A --> D;
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DENIAL OF CERTIFICATION

A Council may only base a denial of certification on:

- Consistency issues raised in comments to the agency by the Council or the public during pre-certification review; or
- Substantial changes made to the rule made upon final adoption that raise new consistency issues.

CERTIFICATION AFTER THE EFFECTIVE DATE OF A RULE

Where council certification of a rule takes place AFTER the effective date of a rule, Council review is limited for an action taking place under the rule if:

- The agency files a request for certification of the rule or amendment within 7 days of the date of adoption;
- The action is undertaken pursuant to the rule or amendment for which certification is sought; and
- The action was initiated after the rule or amendment was adopted and before the Council acted on the request for certification.

AGENCY INCONSISTENCY AND FINDINGS OF DEFICIENCY

If an agency has implemented its rules in a manner inconsistent with the CMP, or has amended certified rules in a manner inconsistent with the CMP, the Council may issue a Notice of Program Deficiency including the specific finding of deficiency, the basis for such findings, and recommendations for correction within a reasonable period.

If the agency fails to correct the deficiencies, the Council may revoke certification of the agency rules after notice and a period of public comment.

General Plans

General Plans include any comprehensive statement in words, maps, illustrations, or other media issued by a state agency or political subdivision that recommends, proposes, evaluates, or formulates policies or future courses of action involving activities affecting coastal natural resource areas.

General plans include, but are not limited to:

- State Emergency Management Plan
- State Oil and Hazardous Substance Spill Contingency Plan
- State-Owned Coastal Wetlands Conservation Plan
- State Water Quality Management Plan
- Artificial Reef Plan
- State Water Plan
- Long-Range Dredging and Disposal Plan
- Regional Solid Waste Management Plans

Agencies developing general plans may ask the council for a non-binding advisory opinion regarding the CMP consistency of the plan.

General Plans – Advisory Opinions

Has the General Plan already been drafted?

Yes

Red Box = Applicant Responsibility

Blue Box = Council Responsibility

No

REQUEST FOR ADVISORY OPINION

The agency or subdivision that has prepared a general plan may request a non-binding advisory opinion on the consistency of its general plan by submitting a request in writing to the Council Secretary.

REQUEST FOR COUNCIL PARTICIPATION

An agency developing a general plan may submit a written request to the Council Secretary requesting Council participation. The agency sets the schedule for plan development.

COUNCIL REVIEW

The Council Secretary shall forward copies of the request to all Council members.

The Council shall consider the general plan within 90 days of receiving the request.

COUNCIL PARTICIPATION

The Council may direct the workgroup to participate in the development of the plan and make regular reports to the Council.

At the request of the agency, the Council may enter into a memorandum of agreement establishing the manner of Council participation in development, criteria to be used in evaluation, and criteria to determine the adequacy of alternatives for resolving potential inconsistencies.

WORKGROUP REVIEW

Prior to the issuance of an advisory opinion, the Council chair *may* direct a workgroup to review the general plan and make a recommendation to the Council regarding the consistency of the plan.

ISSUANCE OF ADVISORY OPINION

Within 90 days of receiving the request, the Council shall issue an advisory opinion indicating whether actions taken pursuant to the plan are likely to be consistent or inconsistent with the CMP goals and policies.
The advisory opinion shall also:

- Identify all goals and policies of the general plan;
- Identify and consistency issues of concern to the Council;
- Identify portions or provisions of the plan that are likely to lead to future inconsistent actions;
- Include recommendations for the resolution of identified consistency issues.

Local Government Actions Subject to CMP

31 Texas Administrative Code § 505.60 – Subdivision Actions Subject to Coastal Management Program

There are only two local government (also referred to as “subdivision”) actions that may adversely affect a CNRA and must therefore be consistent with the CMP:

- **Dune Protection Permits**
- **Beachfront Construction Certificates**

Even then, in order to require consistency, such permits must authorize:

- 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 cubic yards of dunes; or,
- Construction activity that results in the disturbance of more than 7,500 cubic yards of dunes; or,
- 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,
- 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.

Local Government Actions

Is the local government proposing a Dune Protection Permit or a Beachfront Construction Certificate?

Yes

Red Box = Local Government Responsibility
Blue Box = Council Responsibility

Note: Term "subdivision" used interchangeably
with "local government" in regulations.

No

LOCAL GOVT. ACTIONS SUBJECT TO CMP

Does the Dune Protection Permit or Beachfront Construction Certificate authorize:

- 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 dune or dune vegetation; or,
- Construction activity that results in the disturbance of more than 7,500 cubic yards of dunes; or,
- 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,
- 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.

No

Local government action is not subject to CMP consistency.

Yes

CONSISTENCY REQUIREMENT

Prior to proposing a Dune Protection Permit or Beachfront Construction Certificate, local governments must comply with CMP goals and policies specified in 31 TX ADC § 505.62(a).

CONSISTENCY DETERMINATION

A local government proposing an action subject to CMP consistency shall issue a written determination that the proposed action is consistent with CMP goals and policies.

Has the local government requested preliminary review?

Yes

No

LOCAL GOVERNMENT REQUEST

Before taking final action, a local government may request preliminary consistency review by submitting the request in writing to the Council Secretary, the chair of the Permitting Assistance Group and the applicant.

PUBLIC NOTICE

Upon receiving the request, Council Secretary shall publish in the *Texas Register* a notice of the request including a brief explanation of the matter and of any potential consistency issues, as well as a request for a 30-Day public comment period.

PERMITTING ASSISTANCE GROUP

The Permitting Assistance Group shall convene and, after considering public comments, respond to a request for preliminary assistance as specified in 31 TX ADC § 505.31 (See flowchart for State Agency Actions).

REQUIREMENTS FOR REFERRAL


A local government action subject to CMP consistency may be referred to the Council for review if:

- The local government has proposed the action;
- The consistency determination has been contested by a Council member or other person by filing written comments with the local government;
- The person filing the written comments files a Request for Referral complying with the requirements of 31 TX ADC § 505.65(b) within ten days of the date of the action was proposed alleging a significant unresolved dispute regarding the action's CMP consistency; and,
- Any three Council members agree within 13 days that the action was proposed that there is a significant unresolved dispute regarding CMP consistency.

SCHEDULING REVIEW

Upon receipt of a Request for Referral, the Council secretary shall circulate it to all Council members. To accept the Request, any three Council members must agree to place the matter on the agenda within 13 days of agency proposal of the action.

The Council Secretary shall add the proposed action to the agenda of the earliest Council meeting. If no meeting will allow the Council to review the matter before the 26th day that the action was proposed, the Council Secretary shall notify the chair, who shall schedule a special meeting.




SUBDIVISION FAILURE TO AMEND OR MODIFY

If the Council finds that the local government failed to amend or modify its proposed action the Council shall refer the matter to the Attorney General for a legal opinion on consistency of the proposed action with the CMP.

The local government is stayed from taking the proposed action until the Attorney General issues his opinion.

The Attorney General shall issue his opinion before the 26th day after the Council requests the opinion.



ENFORCEMENT

If the Attorney General issues an opinion that the proposed action is inconsistent with the CMP and the local government fails to implement the Council's recommendation, the Attorney General shall file suit in a district court of Travis County unless otherwise directed by the Council.

The Attorney General may enter into a settlement agreement with regard to the proposed action.